

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Brandes, Chair
Senator Gibson, Vice Chair

MEETING DATE: Monday, February 15, 2021**TIME:** 2:30—6:00 p.m.**PLACE:** Pat Thomas Committee Room, 412 Knott Building**MEMBERS:** Senator Brandes, Chair; Senator Gibson, Vice Chair; Senators Baxley, Boyd, Bradley, Broxson, Mayfield, Polsky, Rodrigues, Rouson, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	CS/SB 54 Banking and Insurance / Burgess (Similar H 719, Compare H 273, S 420)	Motor Vehicle Insurance; Repealing provisions which comprise the Florida Motor Vehicle No-Fault Law; revising the motor vehicle insurance coverages that an applicant must show to register certain vehicles with the Department of Highway Safety and Motor Vehicles; revising financial responsibility requirements for owners or lessees of for-hire passenger transportation vehicles; providing an exception to the circumstances under which a person who is damaged may bring a civil action against an insurer; revising coverages subject to premium discounts for specified motor vehicle equipment; specifying persons whom medical payments coverage must protect, etc. BI 01/26/2021 Fav/CS JU 02/15/2021 Fav/CS RC	Fav/CS Yeas 7 Nays 2
2	CS/SB 228 Commerce and Tourism / Bradley (Similar H 121)	Notaries Public; Authorizing an employer of a notary public to require the use of a particular technology and provider in performing a notarial act with respect to an electronic record; modifying requirements for entries in the electronic journal maintained by an online notary public; clarifying that an online notary public is entitled to select his or her remote online notarization service provider; clarifying limitations on fees charged for online notarizations, etc. CM 01/25/2021 Fav/CS JU 02/15/2021 Fav/CS RC	Fav/CS Yeas 10 Nays 0

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Judiciary

Monday, February 15, 2021, 2:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/SB 234 Criminal Justice / Book (Compare H 41, H 193, S 126, S 162)	Registration of Sexual Predators and Sexual Offenders; Specifying how days are calculated for the purposes of determining permanent residence, temporary residence, and transient residence; requiring the reporting of certain vehicle information; redefining the term "sexual offender" to clarify a provision related to release from sanction; clarifying a requirement relating to the timing of reporting of international travel or a change of residence to another state or jurisdiction, etc. CJ 01/26/2021 Fav/CS JU 02/15/2021 Favorable RC	Favorable Yeas 10 Nays 0
4	SB 270 Perry (Similar H 21)	Construction Defects; Defining the term "material violation"; requiring that a person submit a construction defect claim to the warranty provider before bringing a cause of action; requiring that a claimant submit a construction defect claim to the warranty provider before serving a notice of claim; authorizing a person served with a copy of a notice of claim to perform a reasonable inspection of the property subject to the claim; requiring, instead of authorizing, a person served with a notice to serve a copy of the notice to specified persons under certain circumstances, etc. JU 02/15/2021 Favorable CA RC	Favorable Yeas 9 Nays 1
5	SB 354 Harrell (Identical H 495)	Restitution; Specifying that courts are not bound by fair market value in determining restitution amounts; authorizing courts to exercise discretion in furthering the purposes of restitution, etc. JU 02/15/2021 Fav/CS CJ RC	Fav/CS Yeas 10 Nays 0
6	SB 474 Bracy	Prosecuting Children as Adults; Increasing the age of a child at which a state attorney may, or is required to, request a court to transfer the child to adult court for criminal prosecution; increasing the age of a child at which a state attorney may file an information against the child for criminal prosecution as an adult, etc. JU 02/15/2021 Favorable CJ RC	Favorable Yeas 9 Nays 1

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Monday, February 15, 2021, 2:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 622 Perry (Similar H 473)	Liens and Bonds; Requiring that a copy of a notice of nonpayment be served on the surety; prohibiting a person from requiring a claimant to furnish a certain waiver in exchange for or to induce certain payments; authorizing a lienor to record one claim of lien for multiple direct contracts; revising information to be included in a notice of commencement; requiring service of documents relating to construction bonds to be made in a specified manner, etc. JU 02/15/2021 Fav/CS GO RC	Fav/CS Yeas 10 Nays 0
8	SB 402 Rodrigues (Compare H 35)	Public Notice and Voting Rights Restoration Database; Authorizing legal notifications in certain cases to be published on a website established by the Supreme Court, in lieu of newspaper publication; specifying that website publication constitutes proof of publication, unless otherwise determined by a court; authorizing a county to publish such legal notifications in a newspaper, subject to certain limitations, etc. JU 01/25/2021 Temporarily Postponed JU 02/15/2021 Temporarily Postponed ACJ AP	Temporarily Postponed
9	SB 686 Brandes	Offers of Judgment; Authorizing parties to serve exclusive offers of judgment; specifying that parties serving exclusive offers of judgment are not required to specify an amount being offered for attorney fees and costs; providing requirements relating to grounds for challenging the validity of offers, etc. JU 02/15/2021 Fav/CS BI RC	Fav/CS Yeas 6 Nays 4

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 54

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; Senator Burgess, and others

SUBJECT: Motor Vehicle Insurance

DATE: February 17, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Knudson	Knudson	BI	Fav/CS
2. Bond	Cibula	JU	Fav/CS
3. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 54 repeals the Florida Motor Vehicle No-Fault Law (No-Fault Law), which requires every owner and registrant of a motor vehicle in this state to maintain Personal Injury Protection (PIP) coverage. Beginning January 1, 2022, the bill enacts financial responsibility requirements for liability for motor vehicle ownership or operation, as follows:

- For bodily injury (BI) or death of one person in any one crash, \$25,000, and, subject to that limit for one person, \$50,000 for BI or death of two or more people in any one crash.
- The bill sets a lower financial responsibility requirement of \$15,000 for BI or death of one person, and \$30,000 for BI or death of two or more persons, for persons having a household income of 200 percent or less of the federal poverty guidelines and for full time students attending a secondary or post-secondary school.
- The existing \$10,000 financial responsibility requirement for property damage (PD) is retained.

The bill increases required coverage amounts for garage liability and commercial motor vehicle insurance. It increases the cash deposit amount required for a certificate of self-insurance establishing financial responsibility for owners and operators of motor vehicles that are not for-hire vehicles.

The bill requires insurers to offer medical payments coverage (MedPay) with limits of \$5,000 or \$10,000 to cover medical expenses of the insured. Insurers may also offer other policy limits that exceed \$5,000. Insurers must offer a zero deductible option for MedPay, and may also offer

deductibles of up to \$500. Insurers must reserve \$5,000 of MedPay benefits for 30 days to pay physicians or dentists who provide emergency services and care or who provide hospital inpatient care.

The repeal of the No-Fault Law eliminates the limitations on recovering pain and suffering damages from PIP insureds, which currently require bodily injury that causes death or significant and permanent injury. Under the bill, the legal liability of an uninsured motorist insurer includes damages in tort for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of past and future capacity for the enjoyment of life.

The bill creates a new framework to govern all third-party claims against motor vehicle insurers for bad faith failure to settle. The bill requires the third-party claimant in a bad faith failure to settle action to show the insurer violated its duty of good faith to the insured and in bad faith failed to settle the claim. The bill requires motor vehicle insurers to follow claims handling best practices standards based on long-established good faith duties related to claim handling, claim investigation, defense of the insured, and settlement negotiations.

The bill establishes that it is a condition precedent to bringing a third-party action for bad faith failure to settle that the claimant serve a detailed demand for settlement within the insured's policy limits. The third-party bad faith claimant may condition the demand for settlement on taking a 2 hour examination under oath (EUO) of the insured, limited to discovering possible sources of recovery. The claimant may withdraw the demand for settlement after the EUO. If the insured refuses to submit to the EUO, the insurer may tender policy limits without obtaining a release of the insured, and if the insurer does so, it no longer has a duty to defend the insured, and may not be held liable if there is an excess judgment against the insured. The bill provides a safe harbor to the insurer in a third-party bad faith failure to settle action providing that an insurer is not liable for bad faith if it tenders (offers to pay) policy limits in exchange for a release of its insured from further liability within 60 days after receiving a demand for settlement from a single claimant. Where there are multiple claimants, the insurer is not liable for bad faith if it initiates an interpleader action within 60 days after receiving the competing demands.

The bill requires the trier of fact, when determining if an insurer in bad faith failed to settle, to consider certain actions of the insurer such as compliance with best practices along with certain actions of the insured and claimant. The bill also prohibits punitive damages in a third-party bad faith failure to settle action.

The bill provides that if a motor vehicle insurer fails to timely provide information related to liability insurance coverage as required by s. 627.4137, F.S., the claimant may file an action to enforce the section, and is entitled to an award of reasonable attorney fees and costs to be paid by the insurer.

The bill authorizes the exclusion of a specifically named individual from specified insurance coverages under a private passenger motor vehicle policy, with the written consent of the policyholder.

The bill allows an insurer that offers comprehensive coverage to offer a separate windshield deductible of up to \$200, provided the insured is given an actuarially sound discount for electing

the deductible and provided that a no deductible option is offered. The bill also prohibits auto repair shops from coercing consumers, paying referral fees, or giving rebates or gifts related to a windshield claim.

The Florida Office of Insurance Regulation estimates that implementation of this bill requires salaries and benefits at a recurring cost of \$228,602 annually, commencing in FY 2021-22.

The effective date of the bill is January 1, 2022.

II. Present Situation:

Motor Vehicle Insurance

The first recorded motor vehicle accident occurred in Ohio City, Ohio in 1891.¹ Only 6 years later, the first automobile liability insurance policy would be issued by Travelers Insurance Company in Dayton, Ohio, protecting the driver if his vehicle killed or injured someone or damaged their property.² These coverages today are provided through bodily injury liability and property damage liability insurance. In 1925, Connecticut passed the first financial responsibility law requiring owners of automobiles to demonstrate the ability to financially respond when they are at fault for damages caused to other persons and property. As the automobile became an ubiquitous part of American life, more states passed financial responsibility laws. Today, every state has a financial responsibility law regarding owning or operating a motor vehicle.

All states except New Hampshire require the purchase of property damage coverage, which pays for any damage the insured causes to the property of others.³ Every state, except Florida and New Hampshire, requires bodily injury liability coverage (BI), which covers an insured that is at-fault in an accident for damages related to the bodily injuries of others negligently caused by the insured.⁴ Bodily injury liability coverage does not provide coverage for an insured's own injuries. The most common minimum mandatory limit of bodily injury coverage – mandated by 34 states – is \$25,000 in coverage for injuries to any one person and \$50,000 in coverage for injuries to multiple persons, subject to the \$25,000 limit for one person. This is often referred to as limits of \$25,000/\$50,000. Of the 48 states that require BI coverage, the lowest mandatory limit is \$15,000/\$30,000. The highest required limit is \$50,000/\$100,000. The following table details the financial responsibility insurance coverage requirements by state:

¹ https://ohiohistorycentral.org/w/World%27s_First_Automobile_Accident

² https://ohiohistorycentral.org/w/World's_First_Automobile_Insurance_Policy?rec=2597.

³ National Association of Insurance Commissioners, Overview – Auto Insurance https://content.naic.org/article/consumer_insight_does_your_vehicle_have_right_protection_best_practices_buying_auto_insurance.htm (last accessed January 26, 2021).

⁴ See *id.*

FINANCIAL RESPONSIBILITY REQUIREMENTS BY STATE			
ST	Minimum Limits (thousands)	ST	Minimum Limits (thousands)
AL	BI 25/50 PD 25	MT	BI 25/50 PD 20
AK	BI 50/100 PD 25	NE	BI 25/50 PD 25 UM 25/50
AZ	BI 25/50 PD 15	NV	BI 25/50 PD 20
AR	BI 25/50 PD 25	NH	Financial Responsibility Only ⁵
CA	BI 15/30 PD 5	NJ	BI ⁶ 15/30 PD 5 PIP ⁷ 15
CO	BI 25/50 PD15	NM	BI 25/50 PD 10
CT	BI 25/50 PD 25 UM 25/50	NY	BI ⁸ 25/50 PD 10 PIP 50
DE	BI 25/50 PD 10 PIP 15/30	NC	BI 30/60 PD 25 UM 30/60/25
FL	PIP 10 PD 10	ND	BI 25/50 PD 25 UM 25/50 PIP 30
GA	BI 25/50 PD 25	OH	BI 25/50 PD 25
HI	BI 20/40 PD 10 PIP 10	OK	BI 25/50 PD 25
ID	BI 25/50 PD 15	OR	BI 25/50 PD 20 UM 25/50 PIP 15
IL	BI 25/50 PD 20 UM 25/50	PA	BI 15/30 PD 5 Med 5
IN	BI 25/50 PD 25	RI	BI 25/50 PD 25
IA	BI 20/40 PD 15	SC	BI 25/50 PD 25 UM 25/50/25
KS	BI 25/50 PD 25 PIP ⁹	SD	BI 25/50 PD 25 UM 25/50
KY	BI 25/50 PD 25	TN	BI 25/50 PD 15
LA	BI 15/30 PD 25	TX	BI 30/60 PD 25
ME	BI 50/100 PD 25 Med 2 UM 50/100	UT	BI 25/65 PD 15 PIP 3
MD	BI 30/60 PD 15 UM 30/60/15	VT	BI 25/50 PD 10 UM 50/100/10
MA	BI 20/40 PD 5 UM 20/40 PIP 8	VA	BI 25/50 PD 20 UM 25/50/20
MI	BI 20/40 PD 10 PIP ¹⁰ PPI 1000	WA	BI 25/50 PD 10
MN	BI 30/60 PD 10 PIP 40 UM 25/50	WV	BI 25/50 PD 25 UM 25/50/25
MS	BI 25/50 PD 25	WI	BI 25/50 PD 10 UM 25/50
MO	BI 25/50 PD 20 UM 25/50	WY	BI 25/50 PD 20

⁵ New Hampshire does not require the purchase of insurance to meet the state's financial responsibility law, but drivers that purchase insurance must do so at minimum limits of \$25,000/\$50,000 for BI, \$25,000 for PD, and \$1,000 for medical payments coverage.

⁶ New Jersey allows drivers to purchase a "basic policy" that only includes \$5,000 of PD, \$15,000 of PIP, and an optional \$10,000 for BI.

⁷ The New Jersey PIP benefit provides \$250,000 in benefits for specified severe injuries.

https://www.state.nj.us/dobi/division_consumers/insurance/basicpolicy.shtml (last accessed Jan. 25, 2021).

⁸ New York requires that BI limits be at least \$50,000/\$100,000 for death. <https://dmv.ny.gov/insurance/insurance-requirements> (last accessed January 25, 2021).

⁹ Kansas PIP coverage must provide \$4,500 per person for medical expenses, \$900 per month for 1 year for disability or loss of income, \$25 per day for in-home services, \$2,000 for funeral expenses, \$4,500 for rehabilitation expenses, survivor benefits for loss of income up to \$900 per month for 1 year.

¹⁰ Michigan changed its mandatory PIP medical coverage effective July 1, 2020. Previously, Michigan required PIP coverage with no maximum limit. Now, Michigan requires the purchase of PIP coverage with a coverage limit of at least \$250,000.

However, Medicaid enrollees may purchase only \$50,000 in PIP coverage if other household members have an auto insurance policy or health insurance covering accidents. A Medicare enrollee (parts A and B) may opt-out of PIP if their household members have an auto insurance policy or health insurance covering auto accidents.

https://www.michigan.gov/documents/autoinsurance/MI_New_Auto_Ins_Law_678454_7.pdf (last accessed Jan. 25, 2021).

Florida's Financial Responsibility Law

Florida's financial responsibility law exists to ensure that the privilege of owning or operating a motor vehicle on the public streets and highways is exercised with due consideration for others and their property, to promote safety, and to provide financial security requirements for the owners or operators of motor vehicles who are responsible to recompense others for injury to person or property caused by a motor vehicle.¹¹ The financial responsibility law requires drivers of motor vehicles with 4 or more wheels to purchase both personal injury protection (PIP) and property damage liability (PD) insurance.¹² Florida law does not require insurance coverage for motorcycles; however, if a motorcyclist is involved in an accident, that person's license and registration are subject to suspension if insurance was not purchased.

A driver in compliance with the requirement to carry PIP coverage is not required to maintain bodily injury liability coverage, except that Florida law requires proof of ability to pay monetary damages for bodily injury and property damage liability arising out of a motor vehicle accident or serious traffic violation.¹³ The owner and operator of a motor vehicle need not demonstrate financial responsibility, i.e., obtain BI and PD coverages, until *after the accident*.¹⁴ At that time, a driver's financial responsibility is proved by the furnishing of an active motor vehicle liability policy. The minimum amounts of liability coverages required are \$10,000 in the event of bodily injury to, or death of, one person, \$20,000 in the event of injury to, or death of, two or more persons, and \$10,000 in the event of damage to property of others, or \$30,000 combined BI/PD policy.¹⁵ The driver's license and registration of the driver who fails to comply with the security requirement to maintain PIP and PD insurance coverage is subject to suspension.¹⁶ A driver's license and registration may be reinstated by obtaining a liability policy and by paying a fee to the Department of Highway Safety and Motor Vehicles.¹⁷

Personal injury protection (PIP) insurance compensates insureds injured in accidents regardless of fault.¹⁸ Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.¹⁹ This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.²⁰ In contrast, under a tort liability system, the negligent party is responsible for damages caused and an accident victim can sue the at-fault driver to recover economic and non-economic damages. The concept of PIP insurance was developed during the 1960's in response to concerns that began to be voiced regarding some of the perceived shortcomings of the tort system, in particular its ability to handle automobile accident claims in an accurate and

¹¹ Section 324.011, F.S.

¹² See ss. 324.022, F.S. and 627.733, F.S.

¹³ See ch. 324, F.S.

¹⁴ Section 324.011, F.S.

¹⁵ Section 324.022, F.S.

¹⁶ Section 324.022(2), F.S.

¹⁷ Section 324.022(3), F.S.

¹⁸ Section 627.733, F.S.

¹⁹ See s. 627.731, F.S.

²⁰ Section 627.737, F.S.

expeditious fashion.²¹ The proposed solution was the “no-fault” system in which each driver insures him or herself for bodily injuries caused by an auto accident, and to the extent of that first-party coverage, tort claims based on fault would be abandoned. Florida is one of 12 no-fault states that requires PIP coverage as part of its financial responsibility law, but the only one of those states that does not also require BI coverage.²²

In Florida, personal injury protection must provide a minimum benefit of \$10,000 for bodily injury to any one person who sustains an emergency medical condition, which is reduced to a \$2,500 limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed.²³ PIP coverage provides reimbursement for 80 percent of reasonable medical expenses,²⁴ 60 percent of loss of income,²⁵ and 100 percent of replacement services,²⁶ for bodily injury sustained in a motor vehicle accident, without regard to fault. A \$5,000 death benefit is also provided.²⁷ The property damage liability coverage must provide a \$10,000 minimum benefit.

PIP Medical Benefits

The 2012 Legislature revised the provision of PIP medical benefits under the No-Fault Law, effective January 1, 2013.²⁸ To receive PIP medical benefits, insureds must receive initial services and care within 14 days after the motor vehicle accident.²⁹ Initial services and care are only reimbursable if lawfully provided, supervised, ordered or prescribed by a licensed physician, licensed osteopathic physician, licensed chiropractic physician, licensed dentist, or if rendered in a hospital or in a facility that owns or is owned by a hospital, or if provided by a licensed emergency transportation and treatment provider.³⁰ Follow-up services and care require a referral from such providers and must be consistent with the underlying medical diagnosis rendered when the individual received initial services and care.³¹

PIP medical benefits have two different coverage limits, based upon the severity of the medical condition of the individual. An insured may receive up to \$10,000 in medical benefits for services and care if a physician, osteopathic physician, dentist, physician’s assistant or advanced registered nurse practitioner has determined that the injured person had an emergency medical condition.³² An emergency medical condition is defined as a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to patient health, serious impairment to

²¹ Florida Senate Banking and Insurance Committee, Florida’s Motor Vehicle No-Fault Law, pg. 6, Report No. 2006-102 (Nov. 2005).

²² Insurance Information Institute, Background on: No-Fault Auto Insurance. <https://www.iii.org/article/background-on-no-fault-auto-insurance> (last accessed January 27, 2021).

²³ Section 627.736(1), F.S.

²⁴ Section 627.736(1)(a), F.S.

²⁵ Section 627.736(1)(b), F.S.

²⁶ *Id.*

²⁷ Section 627.736(1)(c), F.S.

²⁸ Chapter 2012-197, L.O.F. (CS/CS/HB 119).

²⁹ Section 627.736(1)(a), F.S.

³⁰ Section 627.736(1)(a)1., F.S.

³¹ Section 627.736(1)(a)2., F.S.

³² Section 627.736(1)(a)3., F.S.

bodily functions, or serious dysfunction of a body organ or part.³³ If a provider who rendered treatment or services does not determine that the insured had an emergency medical condition, the PIP medical benefit limit is \$2,500.³⁴ Massage and acupuncture are not reimbursable, regardless of the type of provider rendering such services.³⁵

The \$5,000 PIP death benefit is provided in addition to medical and disability benefits, effective January 1, 2013. Previously, the death benefit was the lesser of the unused PIP benefits, up to a limit of \$5,000.

Tort-Based Motor Vehicle Insurance Jurisdictions

In a tort-based liability system, auto injury claimants seek payment from the at-fault driver for both economic and non-economic damages, regardless of the dollar amount or severity of the injuries. A tort-based system represents a more traditional legal philosophy of holding persons responsible for injuries caused by their negligent operation of a vehicle. In theory, this encourages safer operation of automobiles and is generally viewed by the public as consistent with the concept of personal responsibility.

Bad Faith

Common Law and Statutory Bad Faith

Bad faith law was designed to protect insureds who have paid their premiums and who have fulfilled their contractual obligations by cooperating fully with their insurer in the resolution of claims. Bad faith jurisprudence holds insurers accountable for failing to fulfill their obligations.³⁶ There are two distinct but very similar types of bad faith causes of action that may be initiated against an insurer: first-party and third-party.

Florida courts have recognized common law third-party bad faith causes of action since 1938.³⁷ A third-party bad faith cause of action arises when an insurer fails in good faith to settle a third party's claim against the insured within policy limits and exposes the insured to liability in excess of his or her insurance coverage.³⁸ Third-party bad faith causes of actions arose in response to the argument that there was a practice in the insurance industry of rejecting without sufficient investigation or consideration claims presented by third parties against an insured, thereby exposing the insured individual to judgments exceeding the coverage limits of the policy while the insurer remained protected by a policy limit.³⁹ With no actionable remedy, insureds in this state and elsewhere were left personally responsible for the excess judgment amount.⁴⁰ Florida courts recognized common law third-party bad faith causes of action in part because the

³³ Section 627.732(16), F.S.

³⁴ Section 627.736(1)(a)4., F.S.

³⁵ Section 627.736(1)(a)5., F.S.

³⁶ *Harvey v. GEICO General Insurance Company*, 251 So.3d 1, 6, (Fla. 2018)(quoting *Berges v. Infinity Insurance Company*, 896 So.2d 665 at 682).

³⁷ *Auto Mut. Indem. Co. v. Shaw*, 184, So. 852 (Fla. 1938).

³⁸ *Opperman v. Nationwide Mutual Fire Insurance Company*, 515 So.2d 263, 265 (Fla. 5th DCA 1987).

³⁹ *Allstate Indem. Co. v. Ruiz*, 899 So.2d 1121, 1125 (Fla. 2005).

⁴⁰ *Id.*

insurers had the power and authority to litigate or settle any claim, and thus owed the insured a corresponding duty of good faith and fair dealing in handling these third-party claims.⁴¹

In contrast to common law third-party bad faith causes of action, Florida courts do not recognize a common law first-party bad faith cause of action by the insured against its own insurer.⁴² If an insurer acts in bad faith in settling a claim filed by its insured, the only common law remedy available to the insured is a breach of contract action against its own insurer with recoverable damages limited to those contemplated by the parties to the policy.⁴³

The 1982 Legislature's enactment of s. 624.155, F.S., created a statutory first-party bad faith cause of action,⁴⁴ codified Florida Supreme Court precedent authorizing a common-law third-party bad faith cause of action,⁴⁵ and eliminated the distinction between statutory first- and third-party bad faith causes of action.⁴⁶

Section 624.155, F.S., provides that any party may bring a bad faith action against an insurer, and defines bad faith on the part of the insurer as:

- Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests;
- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or
- Except as to liability coverages, failing to promptly settle claims, when the obligation to settle the claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.⁴⁷

Civil Remedy Notice

As a condition precedent to bringing a bad faith action under s. 624.155, F.S., the insured must have provided the insurer and the Department of Financial Services at least 60 days written notice of the alleged violation.⁴⁸ The notice must specify the following information:

- The statutory provision, including the specific language of the statute, which the authorized insurer allegedly violated;
- The facts and circumstance giving rise to the violation;
- The name of any individual involved in the violation;
- A reference to specific policy language that is relevant to the violation, if any. If the person bringing the civil action is a third-party claimant, she or he shall not be required to reference

⁴¹ *Id.*

⁴² *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 58-59 (Fla. 1995).

⁴³ *Talat Enterprises, Inc. v. Aetna Cas. and Sur. Co.*, 753 So.2d 1278, 1281 (Fla. 2000).

⁴⁴ Chapter 82-243, s. 9, L.O.F.

⁴⁵ *Macola v. Government Employees Ins. Co.*, 953 So.2d 451, 456 (Fla. 2006). *See also State Farm Fire & Cas. Co. v. Zebrowski*, 706 So.2d 275, 277 (Fla. 1997).

⁴⁶ *Id.*

⁴⁷ Section 624.155(1)(b)(1)-(3), F.S.

⁴⁸ Section 624.155(3), F.S.

the specific policy language if the authorized insurer has not provided a copy of the policy to the third party claimant pursuant to written request; and

- A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized under s. 624.155, F.S.⁴⁹

The 60-day window contemplated under s. 624.155, F.S., provides insurers with a final opportunity to comply with their claim-handling obligations when a good-faith decision by the insurer would indicate that contractual benefits are owed.⁵⁰ If the insurer in turn fails to respond to a civil remedy notice within the 60-day window, there is presumption of bad faith sufficient to shift the burden to the insurer to show why it did not respond.⁵¹

In *Talat Enterprises, Inc. v. Aetna Cas. and Sur. Co.*, the Florida Supreme Court addressed the question of whether an insurer that paid all contractual damages within the 60-day window, but none of the extra-contractual damages, satisfied the requirement for payment of damages under s. 624.155(3)(c), F.S., thereby precluding the claimant's bad faith action. The Florida Supreme Court answered in the affirmative, explaining:

Section 624.155 does not impose on an insurer the obligation to pay whatever the insured demands. The 60-day window is designed to be a cure period that will encourage payment of the underlying claim, and avoid unnecessary bad faith litigation. Surely an insurer need not immediately pay 100 percent of the damages claimed to flow from bad faith conduct in order to avoid the chance that the insured will succeed on a bad faith cause of action. If the insurer may avoid a bad faith action only by paying in advance every penny of the damages that it faces if it loses at trial, the insurer would have no reason to pay.⁵²

Legal Standard of Proof

Each bad faith case is determined on its own facts and ordinarily the question of failure to act in good faith with due regard for the interests of the insured is for the jury.⁵³ In Florida, the question of whether an insurer has acted in bad faith in handling claims against the insured is determined under a “totality of the circumstances” standard.⁵⁴ In *Harvey v. Geico General Insurance Company*, the Florida Supreme Court explained that the critical inquiry in a bad faith case is whether “the insurer diligently, and with the same haste and precision as if it were in the insured’s shoes, worked on the insured’s behalf to avoid an excess judgment.”⁵⁵ The claimant bringing the bad faith action has the burden of proving the insurer acted in bad faith by a preponderance of the evidence.⁵⁶

⁴⁹ Section 624.155(3)(b)(1)-(5), F.S.

⁵⁰ See *Talat Enterprises, Inc.*, 753 So.2d at 1284.

⁵¹ *Fridman v. Safeco Ins. Co. of Illinois*, 185 So.3d 1214, 1220, (Fla. 2016); *Imhof v. Nationwide Mut. Ins. Co.*, 643 So.2d 617, 619 (Fla 1994).

⁵² See *Talat Enterprises, Inc.*, 753 So.2d at 1282. (quoting *Talat Enterprises, Inc. v. Aetna Cas. & Sur. Co.*, 952 F.Supp. 773, 778 (M.D.Fla.1996)).

⁵³ *Boston Old Colony Insurance Company v. Gutierrez*, 386 So.2d 783, 785 (Fla. 1980).

⁵⁴ *Berges v. Infinity Insurance Company*, 896 So.2d 665, 680 (Fla. 2005).

⁵⁵ See *Harvey*, 259 So.3d at 7.

⁵⁶ *Cadle v. GEICO General Insurance Company*, 838 F.3d 1113, 1119 (11th Cir. 2016).

The Florida Supreme Court in *Boston Old Colony Ins. v. Gutierrez* explained why insurers have a duty of good faith to their insured:

An insurer, in handling the defense of claims against its insured, has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business. For when the insured has surrendered to the insurer all control over the handling of the claim, including all decisions with regard to litigation and settlement, then the insurer must assume a duty to exercise such control and make such decisions in good faith and with due regard for the interests of the insured.⁵⁷ (citations omitted)

The court further explained what constitutes good faith claims handling:

This good faith duty obligates the insurer to advise the insured of settlement opportunities, to advise as to the probable outcome of the litigation, to warn of the possibility of an excess judgment, and to advise the insured of any steps he might take to avoid same. The insurer must investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so. (citations omitted)

Windshield Coverage and Deductibles

Comprehensive coverage is insurance for a broad range of loss or damage to the insured's own motor vehicle. Comprehensive coverage is not required by law. Typically, a deductible applies to comprehensive claims. However, current law prohibits a deductible on a windshield claim.⁵⁸

III. Effect of Proposed Changes:

Repeal of the Florida Motor Vehicle No-Fault Law

Section 1 repeals ss. 627.730-627.7405, F.S., which constitute the Florida Motor Vehicle No-Fault Law.

The most significant provisions repealed are s. 627.733, F.S., which contains the requirement to maintain PIP coverage, s. 627.736, F.S., which sets forth the benefits that PIP coverage must provide, and the tort exemption in s. 627.737, F.S., which prohibits tort actions to recover pain and suffering damages from PIP insureds unless death or significant and permanent injury causes such damages, and coverage for disability and death benefits under PIP.

Section 2 repeals s. 627.7407, F.S., which provided for how the Florida Motor Vehicle No-Fault Law was to be applied after being reinstated by ch. 2007-324, Laws of Florida.

⁵⁷ *Boston Old Colony Ins. v. Gutierrez*, 386 So.2d 783 (Fla. 1980).

⁵⁸ Section 627.7288, F.S.

Mandatory Bodily Injury Liability Coverage Requirements

Chapter 324, F.S., requires the owners and operators of motor vehicles to demonstrate the ability to respond to damages for liability because of crashes arising out of the use of a motor vehicle.⁵⁹ This requirement is usually met through the purchase of motor vehicle insurance.

Sections 12 and 13 amend ss. 324.021 and 324.022, F.S., respectively, to require beginning January 1, 2022, that every owner or operator of a motor vehicle that is registered in this state maintains the ability to respond to damages for liability that results from accidents arising out of the ownership, maintenance, or use of a motor vehicle that is not a commercial motor vehicle, nonpublic sector bus, or for-hire passenger transportation vehicle as follows:

- For BI or death of one person in any one crash, \$25,000.
- Subject to that limit for one person, \$50,000 for BI or death of two or more people in any one crash.

The bill retains current law that requires drivers to maintain the ability to respond to damages of \$10,000 for damage to, or the destruction of, other's property in a crash.

An owner or operator may meet the financial responsibility requirement by obtaining motor vehicle insurance that provides BI and PD coverage in at least the minimum amounts required to meet responsibility, or through insurance that provides BI and PD with a combined single coverage limit that equals the BI requirement for more than one person plus the PD requirement. Beginning January 1, 2022, the minimum combined single limit will be \$60,000. An owner or operator may also meet financial responsibility requirements through alternate methods authorized under s. 324.031, F.S., such as furnishing a certificate of self-insurance under s. 324.161, F.S., or s. 324.171, F.S.

The financial responsibility requirements related to BI are lowered for certain insureds. The lower minimums apply if the household income of the insured is less than 200 percent of the federal poverty guidelines,⁶⁰ or if the insured is a full-time secondary or post-secondary student. The minimums applicable to these insureds are \$15,000 for any one person and \$30,000 for two or more injured persons. The \$10,000 property damage minimum still applies.

Other vehicle types are subject to financial responsibility requirements of different sections of statute:

- Commercial motor vehicles are subject to s. 627.7415, F.S.
- Nonpublic sector buses are subject to s. 627.742, F.S.
- For-hire passenger transportation vehicles are subject to s. 324.032, F.S.

Motorcycles are not required to meet the foregoing requirements established by the bill, as the bill retains current law in s. 324.022, F.S., which defines motor vehicles for purposes of that section as self-propelled vehicles with four or more wheels. However, as under current law, if a

⁵⁹ Owners and operators of motor vehicles may satisfy financial responsibility requirements by alternate means, such as depositing security with the Department of Highway Safety and Motor Vehicles pursuant to s. 324.161, F.S., or qualifying as a self-insurer pursuant to s. 324.171, F.S.

⁶⁰ The federal poverty guidelines are published annually by the U.S. Department of Health and Human Services. The current guidelines are available at: <https://aspe.hhs.gov/2021-poverty-guidelines>.

motorcycle is involved in a crash and caused bodily injury to another, the license of the operator and registration of the motorcycle is subject to suspension under s. 324.051, F.S., if the operator or owner did not have a motor vehicle liability policy in effect at the time of the crash.

Required Provisions in Motor Vehicle Liability Policies

Section 22 amends s. 324.151, F.S., which requires motor vehicle liability insurance policies that serve as proof of financial responsibility under s. 324.031(a), F.S. The bill requires policies issued to the owner of a motor vehicle that is required to be registered in this state to insure all named insureds, except for a named driver excluded pursuant to new s. 727.747, F.S., discussed below; and to also insure:

- Any resident relative⁶¹ of a named insured, and
- Any operator using the vehicle with the permission of the owner of the vehicle insured by the policy from liability resulting from the use of the motor vehicle referenced in the policy.

The bill authorizes an insurer to include provisions in its policy excluding coverage for a motor vehicle not designated as an insured vehicle on the policy if such motor vehicle does not qualify as a newly acquired vehicle,⁶² does not qualify as a temporary substitute vehicle,⁶³ and was owned by the insured or furnished for an insured's regular use for more than 30 consecutive days before an event giving rise to a claim.

A motor vehicle liability insurance policy issued to a person who does not own a motor vehicle must insure the named insureds against liability for damages arising out of the use of any motor vehicle not owned by the named insureds.

All motor vehicle liability policies providing coverage for accidents occurring within the United States or Canada must provide liability coverage having the minimum limits of \$25,000 for BI or death of one person in any one crash, \$50,000 for BI or death of two or more people in any one crash, and \$10,000 for PD.

Section 47 amends s. 627.7275, F.S., to require all motor vehicle insurance policies delivered or issued in Florida for a motor vehicle registered or principally garaged in this state to include the minimum limits of BI liability coverage and PD liability coverage as required by s. 324.022, F.S.

Motor vehicle insurance under policies made available to applicants seeking reinstatement of the applicant's driving privileges after such privileges were revoked or suspended for driving under the influence must provide coverage of at least the minimum limits of BI and PD liability

⁶¹ Defined in this section to mean "a person related to a named insured by any degree by blood, marriage, or adoption, including a ward or foster child, who usually makes his or her home in the same family unit or residence as the named insured, whether or not he or she temporarily lives elsewhere."

⁶² Defined in this section to mean "a vehicle owned by a named insured or resident relative of the named insured which was acquired within 30 days before an accident."

⁶³ Defined in this section to mean "any motor vehicle, as defined in s. 320.01(1), F.S., which is not owned by the named insured and which is temporarily used with the permission of the owner as a substitute for the owned motor vehicle designated on the policy when the owned vehicle is withdrawn from normal use because of breakdown, repair, servicing, loss, or destruction."

coverage under s. 324.021(7), F.S.,⁶⁴ or s. 324.023, F.S.⁶⁵ These sections require drivers who plead guilty or nolo contendere to a charge of driving under the influence to meet additional liability insurance requirements.

Meeting Financial Responsibility through a Certificate of Self-Insurance

Section 17 amends s. 324.031, F.S., which allows owners and operators of motor vehicles that are not for-hire vehicles to prove financial responsibility by providing evidence of holding a motor vehicle liability policy covering the motor vehicle being operated. Two alternatives are also available under the statute. Such persons may prove financial responsibility by furnishing a certificate of self-insurance that shows a deposit of cash with a financial institution, or furnishing a certificate of self-insurance issued by the DHSMV based on demonstrating sufficient net unencumbered worth.

Under the bill, a person furnishing a certificate of self-insurance showing a deposit of cash must, beginning January 1, 2022, furnish a certificate of deposit equal to the number of vehicles owned times \$60,000, to a maximum of \$240,000. Current law requires a deposit equal to the number of vehicles times \$30,000, to a maximum of \$120,000. All persons using this method must maintain insurance coverage having limits of at least \$125,000/\$250,000/\$50,000 BI/PD or a \$300,000 BI/PD combined single limit. Under current law, this coverage must be maintained as an excess coverage in excess of \$10,000/\$20,000/\$10,000 BI/PD or \$30,000 combined single limits. Under **Section 23** of the bill amending s. 324.161, F.S., the proof of a certificate of deposit must be provided annually, and must be from a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

The second alternative method is obtaining a certificate of self-insurance issued by the DHSMV. **Section 24** amends s. 324.171, F.S., effective January 1, 2022, to provide that a certificate of self-insurance from the DHSMV issued pursuant to this section may be obtained by a private individual with private passenger vehicles by demonstrating sufficient net unencumbered worth of at least \$100,000. Current law requires a net unencumbered worth of at least \$40,000. A person, other than a natural person, may obtain a certificate of self-insurance from the DHSMV by possessing a net unencumbered worth of at least \$100,000 for the first motor vehicle and \$50,000 for each additional vehicle. Current law requires a net unencumbered worth of \$40,000 for the first motor vehicle and \$20,000 for each additional motor vehicle. The bill retains current law that authorizes the DHSMV to promulgate by rule an alternative net worth requirement for persons other than natural persons.

Garage Liability Insurance Requirement

Section 7 amends s. 320.27, F.S., which requires the licensure of motor vehicle dealers. The bill defines “garage liability insurance” to mean, beginning January 1, 2022, combined single-limit liability coverage, including PD and BI liability coverage, of at least \$60,000.

Current law only requires at least \$25,000 in such coverage and requires \$10,000 of PIP coverage.

⁶⁴ \$25,000/\$50,000 for BI or death and \$10,000 for PD.

⁶⁵ \$100,000/\$300,000 for BI or death and \$50,000 for PD.

Section 8 amends s. 320.771, F.S., and applies the garage liability insurance requirement of s. 320.27, F.S., to recreational vehicle dealers.

Financial Responsibility Requirement for For-Hire Vehicles

Section 18 amends s. 324.032, F.S., which provides the financial responsibility requirements for for-hire passenger vehicles. The bill retains current law requiring the owner or lessee to meet the financial responsibility requirement and retains the minimum limits of coverage, which are \$125,000/\$250,000 of BI and \$50,000 of PD. The bill amends current law by specifying the coverage must be purchased by an insurer that is a member of the Florida Insurance Guaranty Association.

Commercial Motor Vehicle Coverage Requirements

Section 52 amends s. 627.7415, F.S., to increase the minimum levels of combined BI liability and PD liability coverage that commercial motor vehicles must have.

Beginning January 1, 2022, a commercial motor vehicle that weighs 26,000 pounds or more but less than 35,000 pounds must have coverage of no less than \$60,000. Current law requires \$50,000 of coverage.

A commercial motor vehicle that weighs 35,000 pounds or more but less than 44,000 pounds must have coverage of no less than \$120,000 per occurrence beginning January 1, 2022. Current law requires \$100,000 of coverage.

The bill retains current law that a commercial motor vehicle weighing 44,000 pounds or more must have coverage of no less than \$300,000 per occurrence.

Medical Payments Coverage Benefits

Section 45 creates s. 627.7265, F.S., which requires insurers to offer medical payments coverage having limits of \$5,000 and \$10,000 before issuing a motor vehicle liability insurance policy used to meet the financial responsibility requirements of s. 324.031, F.S. Medical payments coverage must be offered with no deductible, but insurers may also offer such coverage with a deductible of up to \$500. Insurers may also offer medical payments coverage with any policy limit greater than \$5,000.

Medical payments coverage must provide coverage of at least \$5,000 for medical expense incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of a motor vehicle. Medical payments coverage must pay for reasonable expenses for necessary medical, diagnostic, and rehabilitative services lawfully provided, supervised, ordered, or prescribed by licensed physicians, dentists, or chiropractic physicians, or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. The coverage also includes a death benefit of at least \$5,000. Medical payments coverage protects the named insured, resident relatives, all passengers and operators of the insured vehicle, and all persons struck by the motor vehicle while not occupying a self-propelled motor vehicle.

Upon receiving notice of an accident potentially covered by medical payments coverage benefits, the insurer must reserve \$5,000 for payment to licensed physicians and licensed dentists who provide emergency services and care or who provide hospital indigent care. The reserve amount may be used only to pay claims from such physicians or dentists until 30 days after the date the insurer receives notice of the accident. After the 30-day period, any amount of the reserve for which the insurer has not received notice may be used by the insurer to pay other claims.

An insurer providing medical payments coverage benefits may not:

- Seek a lien on any recovery in tort by judgment, settlement, or otherwise for medical payments coverage benefits, whether suit has been filed or settlement has been reached; or
- Bring a cause of action against a person to whom or for whom medical payments coverage benefits were paid, except when benefits are paid by reason of fraud by such person.

The bill authorizes an insurer providing medical payments coverage to include provisions in its policy allowing for subrogation⁶⁶ for payment of medical payments coverage benefits if the payments resulted from the wrongful act or omission of another who is not also insured under the policy paying the benefits. However, the bill makes this subrogation right inferior to the rights of the injured insured and available only after all of the insured's damages are recovered and the insured is made whole.⁶⁷

Under the bill, if an insured obtains a recovery from a third party of the full amount of the damages the insured has sustained, and delivers a release or satisfaction that impairs an insurer's subrogation right, the insured is liable to the insurer for repayment of the medical payments benefits, less any expenses of acquiring the recovery, including a prorated share of attorney fees and costs. The insured is also required to hold that net recovery in trust to be delivered to the medical payments insurer. The bill prohibits an insurer from including any provision in its policy allowing for subrogation for any death benefit paid.

Clinic Licensure and Reimbursement under Medical Payments Coverage

Section 26 amends s. 400.9905, F.S., to provide that an entity is deemed a "clinic" and must be licensed in order to receive medical payments coverage reimbursement under s. 627.7265, F.S., unless the entity is:

- Wholly owned by a licensed physician, a licensed dentist, or a licensed chiropractic physician; or by the physician, dentist, or chiropractic physician and the spouse, parent, child, or sibling of the physician, dentist, or chiropractic physician;
- A licensed hospital or ambulatory surgical center;

⁶⁶ Subrogation is the principle establishing that when an insurance company pays an insured's claim of loss caused by a third party's negligence, the insurance company stands in the place of the insured with respect to the insured's right to sue the negligent third party for damages.

⁶⁷ This appears to be a codification of the "made whole" doctrine acknowledged by the Florida Supreme Court in *Insurance Co. of North America v. Lexow*, 602 So.2d 528 (Fla. 1992). See also *Magsipock v. Larsen*, 639 So.2d 1038 (Fla. App. 1994). Generally, the principle is that an insurer does not have a common law right to subrogation, or reimbursement, against a third party causing the damages sustained by the insured unless the insured has been compensated for all of the insured's damages and been "made whole." However, the made whole doctrine may be overridden by contractual agreement under current case law. See *Florida Farm Bureau Ins. Co. v. Martin*, 377 So.2d 827 (Fla. 1979) and *Blue Cross & Blue Shield of Fla. v. Matthews*, 498 So.2d 421, 422 (Fla 1986).

- An entity that wholly owns or is wholly owned, directly or indirectly, by a licensed hospital or hospitals;
- A clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
- A clinic certified under federal law to provide outpatient physical therapy and speech pathology services; or
- Owned by a publicly traded corporation which has \$250 million or more in total annual sales of health care services provided by licensed health care practitioners, if one or more of the persons responsible for operations of the entity are licensed health care practitioners in this state and are responsible for supervising the business and the entity's compliance with state law.

The above language is currently in s. 627.736(5)(h), F.S., and requires clinic licensure to receive reimbursement under PIP. The bill moves the requirement to this section, requires clinic licensure to receive reimbursement under medical payments coverage, and retains the exemptions from the definition of clinic detailed above.

This section of the bill also revises the definition of a “clinic” contained in s. 400.9905, F.S., of the Health Care Clinic Act, to replace references to PIP coverage and the Florida Motor Vehicle No-Fault Law with references to medical payments coverage.

Uninsured and Underinsured Motor Vehicle Insurance Coverage

Section 46 amends s. 627.727, F.S., which governs uninsured motor vehicle insurance coverage. Uninsured motorist coverage provides the policyholder with benefits if the at-fault driver does not have sufficient bodily injury coverage to make the insured whole for damages related injuries caused by the at-fault driver. Under the bill, the legal liability of an insurer providing uninsured motorist coverage *includes* damages in tort for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of past and future capacity for the enjoyment of life. Under current law, an uninsured motorist insurer is not liable for such damages unless the injury or disease is sufficiently severe under s. 627.737(2)(a)-(d), F.S., of the No-Fault Law.

Under the No-Fault Law, a person cannot recover “pain and suffering” damages in tort from the at-fault driver’s bodily injury coverage unless the person’s injuries exceed a certain severity threshold,⁶⁸ in s. 627.737(2), F.S., commonly referred to as the “verbal threshold.” Personal injury protection is considered a no-fault coverage because the injured person trades a limitation on the ability to recover pain and suffering damages for the ability to get PIP benefits even if the injured person is at fault in the accident. The bill repeals the “verbal threshold” provisions contained in the No-Fault Law in s. 627.737, F.S., thus necessitating a revision to s. 627.727(7), F.S.

⁶⁸ The injury or disease must consist in whole or in part of significant and permanent loss of an important bodily function; permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement; significant and permanent scarring or disfigurement; or death. See s. 627.737(2), F.S.

Disclosure of Information Related to Liability Insurance Coverage

Section 43 amends s. 627.4137, F.S., to provide that if an insurer fails to timely comply with the requirements of the section, the claimant may file an action to enforce the section and is entitled to an award of reasonable attorney fees and costs to be paid by the insurer. Section 627.4137, F.S., requires liability insurers to provide, within 30 days after receiving a written request from a claimant, a sworn statement setting forth the name of the insurer, name of the insured, limits of liability coverage, a statement of any policy or coverage defense the insurer currently believes is reasonably available to it, and a copy of the insurance policy. Current law also requires an insured or an insured's insurance agent to disclose to the claimant and all affected insurers, upon written request of the claimant or claimant's attorney, the name and coverage of each known insurer.

Bad Faith Actions - Civil Remedy in Section 624.155, F.S.

Section 34 amends subsections (1) and (8) of s. 624.155, F.S. Section 624.155, F.S., authorizes any person to bring a civil action against an insurer when damaged by an insurer through specified bad faith acts or statutory violations. The bill specifies that the cause of action under s. 624.155, F.S., for an insurer's bad faith failure to settle a claim is not available with regard to a third-party bad faith failure to settle claim. Section 624.156, F.S., is created in Section 34 of the bill and applies to all bad faith failure to settle actions related to a motor vehicle insurance policy. The bill also clarifies the prohibition in subsection (8) against a person obtaining judgments under multiple bad faith remedies, whether under statute or common law.

Bad Faith Failure to Settle Action against a Motor Vehicle Insurer

Section 35 creates s. 624.156, F.S., the provisions of which apply to all third-party actions for bad faith failure to settle against motor vehicle insurers.

Scope - Subsection (1) specifies that s. 624.156, F.S., applies in all actions against any insurer by a third party for bad faith failure to settle related to a motor vehicle accident. Accordingly, it revises the common law cause of action for third-party bad faith failure to settle and does not allow bringing such actions outside the provisions of this section. Nor may a third-party action for bad faith failure to settle be brought under s. 624.155, F.S., pursuant to the bill's revision to s. 624.155(1), F.S.

Defining the Duty of Good Faith – Subsection (2) provides that in handling claims, an insurer stands as a fiduciary for its insured and must handle claims in good faith. The insurer must comply with the best practice standards of subsection (4) using the same degree of care and diligence as a person of ordinary care and prudence would exercise in the management of his or her own business. This is essentially the duty of good faith that the Florida Supreme Court established in a 1938 decision,⁶⁹ and since then has consistency maintained.⁷⁰

⁶⁹ *Auto Mut. Indem. Co. v. Shaw*, 184 So. 852 (Fla. 1938).

⁷⁰ See *Boston Old Colony Ins. v. Gutierrez*, 386 So.2d 783 (Fla. 1980), *Berges v. Infinity Ins. Co.*, 896 So.2d 665 at 672-673 (Fla. 2004), and *Harvey v. GEICO General Ins. Co.*, 259 So.3d 1, at 6-7 (Fla 2018).

Defining Bad Faith Failure to Settle – Subsection (3) defines “bad faith failure to settle” as an insurer’s failure to settle a claim when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for the insured’s interests. This definition reflects Florida common law and is taken directly from section 404.4 of the Florida Standard Jury Instructions in Civil Cases.⁷¹ This standard is used in both first and third party bad faith failure to settle claims.⁷²

Best Practice Standards for Insurance Claim Handling – Subsection (4) sets forth best practice claim handling standards that a motor vehicle insurer is subject to upon the earlier of receiving notice of a claim or a demand for settlement under subsection (6). An insurer must:

- Assign a licensed and appointed insurance adjuster to investigate the claim and resolve coverage questions.
- Evaluate every claim fairly, honestly, and with due regard for the insured’s interests. consider the full extent of the claimant’s recoverable damages; and consider the information in a reasonable and prudent manner.
- Request from an insured or claimant additional relevant information deemed necessary.
- Communicate with the utmost honesty and with complete candor.
- Make reasonable efforts to explain to nonattorneys matters requiring expertise beyond the level normally expected of a layperson with no training in insurance or claims handling.
- Save all written communications and note and save all verbal communications.
- Provide the insured, upon request, with all nonprivileged communications related to the insurer’s handling of the claim.
- Provide, at the insurer’s expense, reasonable accommodations necessary to communicate effectively with an insured covered under the Americans with Disabilities Act.
- In third-party claims, communicate to the insured:
 - The identity of any other person or entity the insurer knows may be liable;
 - The insurer’s activity on and evaluation of the claim;
 - The likelihood and possible extent of an excess judgment;
 - Steps the insured can take to avoid exposure to an excess judgment;
 - Requests for examinations under oath and an explanation of the consequences of an insured’s failure to submit to an examination under oath; and
 - Any demands for settlement under subsection (6) or settlement offers.

Conditions Precedent to Filing a Third-Party Action for Bad Faith Failure to Settle –

Subsection (5) requires the claimant, as a condition precedent to filing a third-party bad faith failure to settle action, to:

- Serve a demand for settlement under subsection (6) within the insurer’s limits of liability in exchange for a release of further liability against the insured; and
- Obtain a final judgment in excess of the policy limits against the insured.

Demand for Settlement – Subsection (6) provides that the claimant’s demand for settlement, which is a condition precedent to filing a third-party bad faith failure to settle action, must do all of the following:

⁷¹ <https://jury.flcourts.org/civil-jury-instructions-home/civil-instructions/#404>.

⁷² See *State Farm Mutual Automobile Insurance Co. v. LaForet*, 658 So.2d 55 (Fla. 1995).

- Identify the date and location of the loss; the name, address, and birthdate of the claimant; the name of each insured to whom the demand is directed; and the legal and factual basis of the claim.
- Provide a reasonably detailed description of the claimant's known injuries caused or aggravated by the incident on which the claim is based, the medical treatment causally related to the incident on which the claim is based, and the type and amount of known damages incurred and any future damages the claimant reasonably anticipates incurring.
- State the amount of the demand for settlement.
- State whether the demand is conditioned on the completion of the claimant examining the insured under oath as provided in subsection (8).
- Provide a physical address, e-mail address, and facsimile number for further communications.
- Release the insured from further liability if the settlement is completed.
- Be served upon the insurer by certified mail at a specified address.

Prohibition on Conditions for Accepting a Demand for Settlement; Exception – Subsection (7) generally prohibits a claimant from placing conditions on a demand for settlement. The claimant may, however, condition the demand on conducting an examination under oath (EUO) of the insured as provided in subsection (8). The EUO may be regarding whether:

- The insured can satisfy a claim for damages in excess of the insurance policy limits;
- Any other person may be liable for the insured's negligence; and
- Other insurance exists which may cover damages sustained by the claimant.

Examinations Under Oath – Subsection (8) provides a third-party claimant the right to examine under oath the insured one time for up to 2 hours. Only the issues detailed in subsection (7) may be addressed in the EUO; the claimant may not examine the insured regarding liability. The claimant may request that the insured bring to the EUO relevant documents in the insured's possession, custody or control. Examples of such documents are credit reports, insurance policies, bank statements, tax returns, deeds, titles, and other documents that prove assets and liabilities. The parties must cooperate when scheduling the EUO, which must occur within 30 days after an insurer accepts a settlement demand.

The claimant may withdraw a settlement demand within 7 days after an examination under oath. This is necessary because the demand must be within policy limits and made prior to conducting the EUO.

The claimant may also withdraw a settlement demand if the insured refuses to submit to an EUO. When the insured refuses to submit to an EUO, the insurer may accept a demand for settlement without requiring the claimant release the insured from liability. When an insurer accepts a demand for settlement under such a circumstance, the insurer is excused from its duty to defend the insured.

Safe Harbor – Subsection (9) provides that an insurer may not be held liable in any third-party action for bad faith failure to settle where there is a single claimant if the insurer tenders its policy limits within 60 days after receiving a demand for settlement under subsection (6).

Black’s Law Dictionary defines “tender” as “a valid and sufficient offer of performance”⁷³ thus the insurer obtains the safe harbor when it offers to accept a settlement demand within 30 days of receiving the demand. The safe harbor will also apply when the insurer tenders policy limits and the claimant withdraws a settlement demand within 7 days after conducting an EUO. Where there are multiple claimants, the safe harbor requires the insurer to initiate an interpleader action within 60 days of notice that there are multiple claimants.

Release – Subsection (10) provides that an insurer that accepts a settlement demand is entitled to a release of its insured, unless the insured refused to submit to an EUO under paragraph (8)(f).

Burden of Proof in Bad Faith Failure to Settle Actions – Subsection (11) provides that in all bad faith failure to settle actions the claimant must prove by the preponderance of the evidence that the insurer violated its duty of good faith as defined in subsection (2), and that the insurer in bad faith failed to settle as defined in subsection (3). This will be the burden of proof in any third-party failure to settle action against a motor vehicle insurer.

Matters the Trier of Fact Must Consider – Subsection (11) also requires the trier of fact, when determining whether the claimant has met its burden to prove both that the insurer violated the duty of good faith and in bad faith failed to settle, to consider all of the following:

- Whether the insurer complied with the best practice claim handling standards of subsection (4).
- Whether the insurer in bad faith failed to settle the claim.
- Whether the claimant or insured failed to timely provide relevant information to the insurer.
- Whether the claimant or insured misrepresented or omitted material facts to the insurer.
- Whether the insured denied liability or requested that the case be defended after the insurer fully advised the insured as to the facts and risks.
- Whether the insurer timely informed the insured of a demand to settle within the limits of coverage, the right to retain personal counsel, and the risk of litigation
- The insurer’s willingness to negotiate with the claimant in anticipation of settlement.
- The amount of damages the claimant incurred or was likely to incur in the future under the facts known or reasonably available at the time of the insurer’s response.
- If applicable, whether there were multiple third-party claimants seeking compensation that in the aggregate exceeded the insureds policy limits, and if so, whether the insurer breached its duty to attempt to minimize the magnitude of possible excess judgments against the insured and settle as many claims as possible within policy limits in exchange for a release of the insured from further liability.
- Additional factors the court determines to be relevant.

The bill allows the trier of fact to be informed that an excess judgment occurred, but prohibits informing the trier of fact of the amount of the excess judgment.

Damages – Subsection (12) provides that a motor vehicle insurer that is found to have violated its duty of good faith and to have in bad faith failed to settle is liable for the amount of the excess judgment. Other damages, including punitive damages, are not recoverable.

⁷³ Black’s Law Dictionary (11th ed. 2019).

Demand for Settlement by a Judgment Creditor – Subsection (13) provides that a judgment creditor that serves a demand for settlement must be subrogated to the rights of the insured against the insurer when the judgment exceeds the insured's limits of liability.

Limitation on Multiple Remedies – Subsection (14) specifies that a person is not entitled to judgment under multiple bad faith remedies.

Rate Filings

Section 39 amends s. 627.0651, F.S., providing that initial rate filings for motor vehicle liability policies submitted to the OIR on or after January 1, 2022, must reflect the financial responsibility requirements of the amended s. 324.022, F.S., and may be approved only through the file and use process for making rates for motor vehicle insurance set out in that section of law.

Named Driver Exclusion

Section 53 creates s. 627.747, F.S., authorizing a private passenger motor vehicle policy to exclude an identified individual from coverages. Currently, the OIR requires insurers to provide exceptions to named driver exclusions up to statutorily required minimum limits for PIP coverage, property damage liability coverage, BI liability coverage (if the policy is used to meet financial responsibility requirements), and UM coverage in certain circumstances.⁷⁴

Under the bill, if an identified individual is specifically excluded by name on the policy declarations page or by endorsement, and a policyholder consents to such exclusion in writing, a private passenger motor vehicle policy may exclude an identified individual from the following coverages:

- Property damage liability coverage.
- Bodily injury liability coverage.
- Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the policyholder has purchased such coverage.
- Any coverage the policyholder is not required by law to purchase.

However, a private passenger motor vehicle policy may not exclude coverage when:

- The identified excluded individual is injured while not operating a motor vehicle;
- The exclusion is unfairly discriminatory under the Florida Insurance Code, as determined by the Office of Insurance Regulation; or
- The exclusion is inconsistent with the underwriting rules filed by the insurer.

An individual excluded by name in an insurance policy would not be covered for damages that occur while operating a motor vehicle that is insured under the policy, unless the excluded driver has purchased a separate policy that provides motor vehicle insurance coverage.

⁷⁴ See Office of Insurance Regulation, *Senate Bill 518 Agency Analysis*, pg. 2 (Oct. 30, 2017) (on file with the Senate Committee on Banking and Insurance.)

Windshield Coverage, Deductibles and Repairs

Section 50 amends s. 627.7288, F.S., to allow an insurer writing comprehensive insurance on a motor vehicle the option to offer a windshield deductible of up to \$200, provided that the insurer gives the insured an actuarially reasonable credit or discount.

Section 33 amends s. 559.920, F.S., (a statute establishing consumer protections), to add that, related to windshield repair, a motor vehicle repair shop or employee thereof may not threaten, coerce, or intimidate an insured into selecting a particular motor vehicle glass repair facility or motor vehicle repair shop; waive or offer to waive the insured's deductible or offer a rebate, gift, gift card, cash, coupon, or anything of value to a third party in exchange for a referral of an insured to the motor vehicle glass repair facility or motor vehicle repair shop in connection with any claim under an insurance policy; or waive or offer to waive the insured's deductible or offer a rebate, gift, gift card, cash, coupon or anything of value to an insured in exchange for the insured filing a motor vehicle windshield claim under an insurance policy.

Application of Bill

Applicability and Construction of Bill and Notice to Policyholders of New Motor Vehicle Insurance Requirements

Section 48 creates s. 627.7278, F.S., applying financial responsibility requirements and optional medical payments coverage created by the bill as follows:

- Effective January 1, 2022:
 - All motor vehicle insurance policies issued or renewed may not include PIP.
 - All persons must maintain at least minimum security requirements, which is the ability to respond to damages for liability because of motor vehicle crashes in the amounts required in s. 324.021(7), F.S., for private use motor vehicles, for-hire passenger transportation vehicles, commercial motor vehicles, and nonpublic sector buses.
 - Any new or renewal motor vehicle insurance policy delivered or issued in this state must provide coverage that complies with minimum security requirements.
 - An existing motor vehicle insurance policy that provides PIP and property damage liability coverage, but does not meet the new bodily injury liability requirements, is deemed to meet the bodily injury requirements until the policy is renewed, non-renewed or cancelled on or after January 1, 2022, and the provisions of the No-Fault law and other related statutes remain in full force and effect for motor vehicle accidents covered under a policy issued under the No-Fault law before that date, until the policy is renewed, nonrenewed, or canceled.
- Insurers must allow each insured who has a policy providing PIP that is effective before January 1, 2022, and whose policy does not meet minimum security requirements, to eliminate PIP coverage and obtain coverage providing minimum security requirements effective on or after January 1, 2022. The insurer is also required to offer each insured the optional medical payments coverage required by the bill. Insurers may not impose additional fees solely to change coverage, but may charge an additional premium that is actuarially indicated.
- By September 1, 2021, each motor vehicle insurer shall provide notice that:
 - The Florida Motor Vehicle No-Fault Law is repealed effective January 1, 2022, and that PIP coverage is no longer required or available for purchase.

- Effective January 1, 2022, a person subject to the financial security requirements of s. 324.022, F.S., must maintain minimum security requirements for BI and PD liability in the following amounts:
 - \$25,000 for BI or death of one person in any one crash and, subject to such limits, \$50,000 for BI or death of two or more persons in any one crash; or
 - \$15,000 for BI or death of one person in any one crash, subject to such limits, \$30,000 for BI or death of two or more persons in any one crash, applicable only if the insured's household earns 200 percent or less of the federal poverty guidelines or the insured is a full-time student enrolled in a secondary or post-secondary school; and
 - \$10,000 for PD in any one crash, regardless of income or status as a student.
- BI liability coverage protects the insured, up to the coverage limits, against loss if the insured is legally responsible for the death of or bodily injury to others in a motor vehicle accident.
- Effective January 1, 2022, each holder of a motor vehicle liability insurance policy purchased as proof of financial responsibility must be offered the optional medical payments coverage benefits at limits of \$5,000 and \$10,000 without a deductible, may be offered such coverage at limits greater than \$5,000, and may be offered coverage with a deductible of up to \$500. Medical payments coverage pays covered medical expenses, up to the limits, for injuries sustained in a motor vehicle crash by the named insured, resident relatives, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons who are struck by the insured motor vehicle and suffer bodily injury while not an occupant of a self-propelled motor vehicle. Medical payments coverage pays for reasonable expenses for necessary medical, diagnostic, and rehabilitative services that are lawfully provided, supervised, ordered, or prescribed by a licensed physician, a licensed dentist, or a licensed chiropractic physician, or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Medical payments coverage also provides a death benefit of at least \$5,000.
- A policyholder may obtain uninsured and underinsured motorist coverage, which provides benefits to a policyholder entitled to recover bodily injury damages resulting from a motor vehicle accident with an uninsured or underinsured owner or operator of a motor vehicle.
- A policy effective before January 1, 2022, is deemed to meet minimum security requirements until it is renewed, non-renewed, or canceled on or after January 1, 2022.
- A policyholder may change coverages to eliminate PIP protection and obtain coverage providing minimum security requirements.
- If the policyholder has any questions, he or she should contact the person named at the telephone number provided in the notice.

This section is effective upon the act becoming a law.

Application of Suspensions for Failure to Maintain Security

Section 15 creates s. 324.0222, F.S., requiring all driver license and motor vehicle registration suspensions for failure to maintain security as required by law in effect before January 1, 2022, to remain in full force and effect after January 1, 2022. A driver may reinstate a suspended driver's license or registration as provided under s. 324.0221, F.S.

Technical and Conforming Changes

Section 3 amends s. 316.646, F.S., which requires drivers to maintain and be able to display proof of security demonstrating compliance with financial responsibility requirements. The bill makes conforming changes necessitated by the bill's amendment or repeal of other sections of law and inserts a cross-reference to the revised s. 324.021(7), F.S., which contains the minimum insurance requirements for purposes of proof of financial responsibility beginning January 1, 2022.

Section 4 amends s. 318.18(2), F.S., regarding nonmoving traffic violations, to remove a reference to PIP and conform cross references.

Section 5 amends s. 320.02, F.S., which contains the requirements to register a motor vehicle. The bill amends the section to require proof of motor vehicle insurance that meets the minimum limits of BI and PD liability, remove references to PIP, and make other conforming changes.

Section 6 amends s. 320.0609, F.S., to eliminate a reference to PIP in a provision specifying that transferring a license plate from a vehicle disposed of to a newly acquired vehicle does not constitute a new registration.

Section 9 amends s. 322.251, F.S., regarding notice of cancellation, suspension, or revocation of a driver's license to repeal references to the No-Fault Law.

Section 10 amends s. 322.34, F.S., regarding driving on a suspended, revoked, canceled, or disqualified driver's license, to delete a reference to the No-Fault Law.

Section 11 amends s. 324.011, F.S., which provides the purpose of ch. 324, F.S., to specify that under the chapter all owners or operators of a motor vehicle required to be registered in this state must establish, maintain and show proof of financial responsibility. Currently, financial responsibility requirements only apply after an operator is involved in a crash or convicted of certain traffic offenses.

Section 14 amends s. 324.0221, F.S., which requires insurers to report motor vehicle insurance cancellations to the DHSMV, to remove references to PIP and replace the reference to PD coverage with a reference to liability coverage, and conform cross references.

Section 16 corrects cross references in s. 324.023, F.S., which requires drivers who plead guilty or nolo contendere to a charge of driving under the influence to meet additional liability insurance requirements.

Section 19 amends s. 324.051, F.S., regarding crash reports, to refer to motor vehicle liability policies rather than automobile liability policies.

Section 20 amends s. 324.071, F.S., to provide stylistic changes to provisions governing the reinstatement of a suspended license.

Section 21 amends s. 324.091, F.S., which requires owners and operators involved in a crash or conviction case to furnish evidence of liability insurance, by deleting references to an automobile liability policy while retaining references to a motor vehicle liability policy.

Section 25 amends s. 324.251, F.S., to revise the short title of ch. 324, F.S., to the “Financial Responsibility Law of 2021” and state it will be effective at 12:01 a.m., on January 1, 2022. Currently the chapter is the “Financial Responsibility Law of 1955.”

Sections 27 and 28 amend s. 400.991, F.S., and s. 400.9935, F.S., respectively, of the Health Care Clinic Act to remove references to PIP and the No-Fault Law and insert references to medical payments coverage.

Section 29 revises the definition of a “third party benefit” in s. 409.901, F.S., for purposes of Medicaid to refer to medical payments coverage rather than PIP coverage.

Section 30 amends s. 409.910(11), F.S., to specify that the Agency for Health Care Administration may recoup the total amount of medical assistance provided by Medicaid from motor vehicle insurance coverage benefits provided to a Medicaid beneficiary. Current law refers to PIP.

Section 31 amends s. 456.057, F.S., regarding patient records, to correct a cross-reference.

Section 32 amends s. 456.072, F.S., to allow the Department of Health to discipline licensees for submitting claims for medical payments coverage reimbursement when treatment is not rendered or when treatment is intentionally upcoded. The department currently has such disciplinary authority with regard to false billing under PIP coverage. The bill relocates from the repealed s. 627.732, F.S., the existing definition of “upcoded,” and replaces references to PIP with references to medical payments coverage.

Section 36 amends s. 626.9541(1)(i) and (o), F.S., regarding unfair insurance trade practices related to motor vehicle insurance. The bill deletes the unfair trade practice in paragraph (i) for failing to pay claims within statutory time periods required under the No-Fault Law to conform to the repeal of those time frames by the bill. The section makes a technical amendment to paragraph (o) to reference BI liability coverage, PD liability coverage, and medical payments coverage, rather than PIP, in the prohibitions against the unfair insurance trade practice of increasing premium or cancelling a motor vehicle insurance policy solely because the insured was involved in a motor vehicle accident without having information the insured was substantially at fault.

Section 37 amends s. 626.989, F.S., to revise the “fraudulent insurance acts” detailed in the section to refer to medical payments coverage, rather than the No-Fault Law.

Section 38 amends s. 627.06501, F.S., regarding insurance discounts for completing a driver improvement course, to delete a reference to PIP and insert a reference to medical payments coverage.

Sections 40 and 41 amend s. 627.0652, F.S., and s. 627.0653, F.S., respectively, relating to insurance discounts for motor vehicle coverage, by replacing references to PIP with references to medical payments coverage.

Section 42 amends s. 627.4132, F.S., regarding the general prohibition against stacking of motor vehicle coverages, to refer to BI and PD instead of PIP or other coverage.

Section 44 amends s. 627.7263, F.S., which generally makes the rental and leasing driver's insurance primary, to delete references to PIP and insert references to medical payments coverage.

Section 49 amends s. 627.728, F.S., which governs cancellations of motor vehicle insurance policies, to delete a reference to PIP in the definition of "policy."

Section 51 amends s. 627.7295, F.S., to revise definitions relating to motor vehicle insurance contracts by deleting references to PIP and inserting references to BI liability coverage, and make other conforming and editorial changes.

Section 54 amends s. 627.748, F.S., relating to insurance requirements for transportation network companies, to remove references to PIP required under the repealed No-Fault law and inserts cross-references to the revised financial responsibility requirements applied to for-hire passenger transportation vehicles in Section 17 of the bill.

Section 55 amends s. 627.749, F.S., relating to insurance requirements for autonomous vehicles, to delete a reference to PIP in those insurance requirements.

Section 56 amends s. 627.8405, F.S., regarding prohibited acts of premium finance companies, to replace a reference to a PIP/PD only policy with a reference to a policy that only provides BI/PD.

Section 57 amends s. 627.915, F.S., which requires private passenger automobile insurers to report information annually to the office, to remove references to PIP.

Section 58 amends s. 628.909, F.S., which applies certain provisions of the Insurance Code to captive insurance companies, to delete references to the No-Fault Law.

Section 59 amends s. 705.184, F.S., which governs derelict or abandoned motor vehicles on the premises of public-use airports, to delete references to s. 627.736, F.S., which is repealed by the bill.

Section 60 amends s. 713.78, F.S., regarding liens for recovering, towing, or storing vehicles and vessels, to delete references to s. 627.736, F.S., which is repealed by the bill.

Section 61 amends s. 817.234, F.S., regarding false and fraudulent insurance claims, to delete references to PIP and replace them with references to medical payments coverage.

Appropriation

Section 62 appropriates for the 2021-2022 fiscal year \$83,651 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation for the purpose of implementing the act.

Effective Date

Section 63 provides that except as otherwise expressly provided in the act and this section, which take effect upon this act becoming a law, the act is effective January 1, 2022.

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:**

Bodily injury coverage is not a required coverage under Florida law unless a person is involved in certain accidents causing bodily injury, convicted of certain offenses, or is otherwise required to maintain BI liability coverage in statute. Failure to maintain BI coverage, when required, can result in the suspension of a license or registration. The reinstatement fee under s. 324.071, F.S., for such suspension under current law is \$15. CS/CS/SB 54 retains this reinstatement fee for a license suspension based upon a crash report under s. 324.051(2), F.S.; a registration suspension under s. 324.072, F.S., based on a license suspension pursuant to s. 322.26, F.S., or s. 322.27, F.S.; suspension of the operating privileges of a nonresident driver under s. 324.081, F.S.; or suspension of license and registration under s. 324.121, F.S., for failure to satisfy a judgment.

The bill retains the current reinstatement fees under s. 324.0221, F.S., for a suspended license or registration for failure to maintain required insurance based on a report by an insurer. The reinstatement fee for such suspensions under s. 324.0221, F.S., is \$150 for a first reinstatement, while second and subsequent reinstatements within 3 years of the first reinstatement require fees of \$250 and \$500, respectively.

B. Private Sector Impact:

The fiscal impact to policyholders, health insurers, health care providers, and injured claimants is indeterminate. However, in a 2016 report, *Florida Office of Insurance Regulation: Review of Personal Injury Protection Legislation*, provided, among other information, actuarial estimates of the savings expected from repealing the No-Fault Law.⁷⁵ The report concludes, based only on repeal of the No-Fault Law with financial responsibility limits of \$25,000/\$50,000, that a 5.6 percent savings would be realized in the statewide average premium charge.⁷⁶ The 2016 PIP Study estimated that health insurers would cover approximately \$469.7 million of current PIP loss if No-Fault were repealed.⁷⁷ Health care providers would cover approximately \$32.8 million of current PIP losses.⁷⁸ Injured claimants would cover approximately \$82.9 million of current PIP losses.⁷⁹ In an addendum to the study, Pinnacle evaluated the effect on premiums of enacting legislation⁸⁰ that provides that a motor vehicle insurer is not liable for a bad faith failure to settle when it offers to pay the claimant the lesser of the amount demanded or policy limits with 45 days of receiving written notice of the loss. Pinnacle estimated such a provision would reduce BI premiums by 0.9 percent.⁸¹

The actuarial consulting firm Milliman, Inc., estimated the impact of similar, but not identical, legislation in 2018, on behalf of the Property and Casualty Insurers Association of America. The Milliman report, dated January 25, 2018, estimated that repealing PIP and mandating BI coverage of at least \$25,000/\$50,000 would increase premiums on average by \$67 (5.3 percent), increase premiums on average for drivers that currently purchase full coverage by \$105 (7.2 percent), and increase premiums on average \$230 (50.1 percent) for drivers who currently purchase only PIP and PD at the minimum mandatory limits.⁸² The report estimates that mandating \$5,000 of MedPay in addition to mandating BI coverage of at least \$25,000/\$50,000 would increase premiums on average by \$115.85 (9.2 percent).⁸³ The report identifies as cost-drivers increasing premiums the

⁷⁵ Office of Insurance Regulation, *Review of Personal Injury Protection Legislation*, (Sept. 13, 2016), Appendix 3, p. 1. Available at <http://www.floir.com/siteDocuments/FLOIRReviewPIP20160913.pdf> (last accessed January 27, 2021).

⁷⁶ That is the average premium savings for a driver purchasing BI, UM, PD, Comprehensive, and Collision coverages.

⁷⁷ See Office of Insurance Regulation fn. 52 at pg. 68.

⁷⁸ See *id.*

⁷⁹ See *id.*

⁸⁰ Senate Bill 1088 (2015).

⁸¹ Office of Insurance Regulation, *Review of Personal Injury Protection Legislation – Addendum: Impact of Florida Third-Party Bad Faith Reform*, pg. 6 (Sept. 27, 2016). Available at <https://www.floir.com/siteDocuments/FloridaBadFaithAddendumFinal.pdf> (last accessed January 27, 2021).

⁸² Milliman, Inc., *Florida Personal Auto Insurance Impact of Repealing No-Fault Coverage – Prepared for Property Casualty Insurers Association of America*, pg. 4 (Jan. 25, 2018). Available at http://floridapolitics.com/wp-content/uploads/2018/02/Impact-of-Repealing-No-Fault_Final.pdf (last accessed January 27, 2021).

⁸³ See Milliman at pg. 6.

elimination of the No-Fault verbal threshold for noneconomic damages and the elimination of the PIP co-insurance provisions (20 percent for medical expenses and 40 percent for loss of income expenses).⁸⁴ The Milliman report estimated that the adoption of legislation creating a condition precedent to bringing a first-party or third-party bad faith claim requiring that time limited demands be in writing, specify relevant details of the claim, include required documentation, and remain open for 45 to 90 days, could decrease bad faith costs by up to 50 percent, or 6.7 percent of premium.⁸⁵

Policyholders who reside in the same household as a high-risk individual who is of driving age could see a decrease in their rates if they exclude such drivers from one or more of the specified coverages.

C. Government Sector Impact:

The bill appropriates \$83,651 in FY 2021-22 nonrecurring funds from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to implement the act.

The Florida Office of Insurance Regulation estimates that implementation of this bill requires salaries and benefits at a recurring cost of \$228,602 annually, commencing in FY 2021-22. They also estimate a need for nonrecurring computer programming costs of \$20,000 in FY 2021-22.

The fiscal impact to state and local governments is otherwise indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.646, 318.18, 320.02, 320.0609, 320.27, 320.771, 322.251, 322.34, 324.011, 324.021, 324.022, 324.0221, 324.023, 324.031, 324.032, 324.051, 324.071, 324.091, 324.151, 324.161, 324.171, 324.251, 400.9905, 400.991, 400.9935, 409.901, 409.910, 456.057, 456.072, 559.920, 624.155, 626.9541, 626.989, 627.06501, 627.0651, 627.0652, 627.0653, 627.4132, 627.4137, 627.7263, 627.727, 627.7275, 627.728, 627.7288, 627.7295, 627.7415, 627.748, 627.749, 627.8405, 627.915, 628.909, 705.184, 713.78, and 817.234.

This bill creates the following sections of the Florida Statutes: 324.0222, 624.156, 627.7265, 627.7278, and 627.747.

⁸⁴ See Milliman at pgs. 9-10.

⁸⁵ See Milliman at pgs. 15-16.

This bill repeals the following sections of the Florida Statutes: 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, 627.7405, and 627.7407.

IX. Additional Information:

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

CS/CS by Judiciary on January 15, 2021:

The committee substitute:

- Allows persons to purchase BI at limits of 15/30 if such person has a household income that does not exceed 200 percent of the federal poverty level, or is a full time secondary or post-secondary student.
- Clarifies that motorcycles need not meet financial responsibility unless they lack liability insurance and the owner or operator was in a crash, and is liable for unsatisfied bodily injury damages.
- Increases the bad faith safe harbor time-frame from 30 to 60 days when there is a single claimant and the insurer tenders limits, and creates a safe harbor in a multiple claimant situation that applies if an insurer files an interpleader within 60 days.
- Allows an insurer that sells windshield coverage to offer up to a \$200 deductible for windshields for an appropriate premium credit or discount, maintaining the current law requirement to offer windshield coverage with no deductible.

CS by Banking and Insurance on January 26, 2021:

The committee substitute provides that s. 624.156, F.S., created by the bill will apply to all third party bad faith failure to settle actions against motor vehicle insurers. The amendment also specifies that the failure to settle cause of action under the civil remedy provided in s. 624.155, F.S., does not apply to a third-party bad faith failure to settle action subject to the newly created s. 624.156, F.S. Thus, s. 624.156, F.S., will exclusively govern all third-party bad faith failure to settle actions against a motor vehicle insurer.

The committee substitute also creates within s. 624.155, F.S., a first-party bad faith cause of action for failure to settle when such failure is caused by a failure to communicate with the insured in accordance with specified best practices. In the filed bill, these best practices regarding communication with a first-party insured were part of s. 624.156, F.S.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senators Burgess and Rouson

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A bill to be entitled

An act relating to motor vehicle insurance; repealing ss. 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S., which comprise the Florida Motor Vehicle No-Fault Law; repealing s. 627.7407, F.S., relating to application of the Florida Motor Vehicle No-Fault Law; amending s. 316.646, F.S.; revising a requirement for proof of security on a motor vehicle and the applicability of the requirement; amending s. 318.18, F.S.; conforming a provision to changes made by the act; making technical changes; amending s. 320.02, F.S.; revising the motor vehicle insurance coverages that an applicant must show to register certain vehicles with the Department of Highway Safety and Motor Vehicles; conforming a provision to changes made by the act; revising construction; amending s. 320.0609, F.S.; conforming a provision to changes made by the act; making technical changes; amending s. 320.27, F.S.; defining the term "garage liability insurance"; revising garage liability insurance requirements for motor vehicle dealer applicants; conforming a provision to changes made by the act; amending s. 320.771, F.S.; revising garage liability insurance requirements for recreational vehicle dealer license applicants; amending ss. 322.251 and 322.34, F.S.; conforming provisions to changes made by the act; making technical changes; amending s. 324.011, F.S.; revising

597-01343-21

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legislative intent; amending s. 324.021, F.S.;
revising definitions of the terms "motor vehicle" and
"proof of financial responsibility"; revising minimum
coverage requirements for proof of financial
responsibility for specified motor vehicles; defining
the term "for-hire passenger transportation vehicle";
conforming provisions to changes made by the act;
amending s. 324.022, F.S.; revising minimum liability
coverage requirements for motor vehicle owners or
operators; revising authorized methods for meeting
such requirements; deleting a provision relating to an
insurer's duty to defend certain claims; revising the
vehicles that are excluded from the definition of the
term "motor vehicle"; providing security requirements
for certain excluded vehicles; conforming provisions
to changes made by the act; conforming cross-
references; amending s. 324.0221, F.S.; revising
coverages that subject a policy to certain insurer
reporting and notice requirements; conforming
provisions to changes made by the act; creating s.
324.0222, F.S.; providing that driver license or
registration suspensions for failure to maintain
required security which were in effect before a
specified date remain in full force and effect;
providing that such suspended licenses or
registrations may be reinstated as provided in a
specified section; amending s. 324.023, F.S.;
conforming cross-references; making technical changes;
amending s. 324.031, F.S.; specifying a method of

597-01343-21

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59 proving financial responsibility; revising the amount
60 of a certificate of deposit required to elect a
61 certain method of proof of financial responsibility;
62 revising excess liability coverage requirements for a
63 person electing to use such method; amending s.
64 324.032, F.S.; revising financial responsibility
65 requirements for owners or lessees of for-hire
66 passenger transportation vehicles; amending ss.
67 324.051, 324.071, and 324.091, F.S.; making technical
68 changes; amending s. 324.151, F.S.; revising
69 requirements for motor vehicle liability insurance
70 policies relating to coverage, and exclusion from
71 coverage, for certain drivers and vehicles; defining
72 terms; conforming provisions to changes made by the
73 act; making technical changes; amending s. 324.161,
74 F.S.; revising requirements for a certificate of
75 deposit that is required if a person elects a certain
76 method of proving financial responsibility; amending
77 s. 324.171, F.S.; revising the minimum net worth
78 requirements to qualify certain persons as self-
79 insurers; conforming provisions to changes made by the
80 act; amending s. 324.251, F.S.; revising the short
81 title and an effective date; amending s. 400.9905,
82 F.S.; revising the definition of the term "clinic";
83 amending ss. 400.991 and 400.9935, F.S.; conforming
84 provisions to changes made by the act; amending s.
85 409.901, F.S.; revising the definition of the term
86 "third-party benefit"; amending s. 409.910, F.S.;
87 revising the definition of the term "medical

597-01343-21

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coverage"; amending s. 456.057, F.S.; conforming a provision to changes made by the act; amending s. 456.072, F.S.; revising specified grounds for discipline for certain health professions; defining the term "upcoded"; amending s. 624.155, F.S.; providing an exception to the circumstances under which a person who is damaged may bring a civil action against an insurer; adding a cause of action against insurers in certain circumstances; providing that a person is not entitled to judgments under multiple bad faith remedies; creating s. 624.156, F.S.; providing that the section applies to bad faith failure to settle actions against any insurer brought by a third party for a loss arising out of the ownership, maintenance, or use of a motor vehicle under specified circumstances; providing that insurers have a duty of good faith; defining the term "bad faith failure to settle"; specifying best practice standards for insurers upon receiving notice of a claim or a demand for settlement; specifying certain requirements for insurer communications to an insured in handling third-party claims; specifying requirements for the insurer when a loss involves multiple claimants under certain conditions; specifying conditions precedent for claimants filing third-party bad faith failure to settle actions; specifying requirements for information that must be included in a demand for settlement; requiring a demand for settlement to release the insured from liability under certain

597-01343-21

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conditions; requiring the demand for settlement be served upon the insurer at the address designated with the Department of Financial Services; prohibiting claimants from placing conditions on acceptance of a demand for settlement other than electing the right to examine the insured under oath regarding certain information; authorizing claimants to examine insureds under oath under certain conditions; authorizing the claimant to request the insured bring relevant documents to the examination under oath; prohibiting the claimant from examining the insured under oath regarding liability; requiring the claimant, insurer, and insured to cooperate in scheduling the examination under oath; specifying the timeframe within which the examination must take place; authorizing the claimant to withdraw the demand for settlement if the insured refuses to submit to an examination under oath; authorizing an insurer to accept a demand for settlement if the insured refuses to submit to an examination under oath; absolving an insurer of a duty to defend and of liability under certain circumstances; specifying the timeframe within which a claimant may withdraw a demand for settlement; providing that insurers may not be held liable in a third-party bad faith failure to settle action if they tender policy limits within a certain timeframe; specifying that insurers that accept demands for settlement are entitled to releases of their insureds; providing an exception; requiring claimants to prove

597-01343-21

202154c1

in any third-party bad faith failure to settle action
by a preponderance of the evidence that the insurer
violated its duty of good faith and in bad faith
failed to settle; specifying factors for the trier of
fact to consider in determining whether an insurer
violated its duty of good faith and in bad faith
failed to settle; requiring the trier of fact to be
informed of an excess judgment; prohibiting disclosure
of certain judgment information to the trier of fact;
limiting damages in third-party bad faith failure to
settle actions; providing that judgment creditors must
be subrogated to the rights of the insured under
certain circumstances; prohibiting multiple bad faith
remedies; amending s. 626.9541, F.S.; conforming a
provision to changes made by the act; revising the
type of insurance coverage applicable to a certain
prohibited act; amending s. 626.989, F.S.; revising
the definition of the term "fraudulent insurance act";
amending s. 627.06501, F.S.; revising coverages that
may provide for a reduction in motor vehicle insurance
policy premium charges under certain circumstances;
amending s. 627.0651, F.S.; specifying requirements
for initial rate filings for motor vehicle liability
policies submitted to the Office of Insurance
Regulation beginning on a specified date; amending s.
627.0652, F.S.; revising coverages that must provide a
premium charge reduction under certain circumstances;
amending s. 627.0653, F.S.; revising coverages subject
to premium discounts for specified motor vehicle

597-01343-21

202154c1

equipment; amending s. 627.4132, F.S.; revising coverages that are subject to a stacking prohibition; amending s. 627.4137, F.S.; requiring that insurers disclose certain information at the request of a claimant's attorney; authorizing a claimant to file an action under certain circumstances; providing for the award of reasonable attorney fees and costs under certain circumstances; amending s. 627.7263, F.S.; revising coverages that are deemed primary, except under certain circumstances, for the lessor of a motor vehicle for lease or rent; revising a notice that is required if the lessee's coverage is to be primary; creating s. 627.7265, F.S.; specifying persons whom medical payments coverage must protect; requiring medical payments coverage to cover reasonable expenses for certain medical services provided by specified providers and facilities and to provide a death benefit; specifying the minimum medical expense and death benefit limits; specifying coverage options an insurer is required or authorized to offer; providing construction relating to limits on certain other coverages; requiring insurers, upon receiving certain notice of an accident, to hold a specified reserve for certain purposes for a certain timeframe; providing that the reserve requirement does not require insurers to establish a claim reserve for accounting purposes; specifying that an insurer providing medical payments coverage benefits may not seek a lien on a certain recovery and may not bring a certain cause of action;

597-01343-21

202154c1

authorizing insurers to include policy provisions
allowing for subrogation, under certain circumstances,
for medical payments benefits paid; providing
construction; specifying a requirement for an insured
for repayment of medical payments benefits under
certain circumstances; prohibiting insurers from
including policy provisions allowing for subrogation
for death benefits paid; amending s. 627.727, F.S.;
revising the legal liability of an uninsured motorist
coverage insurer; conforming provisions to changes
made by the act; amending s. 627.7275, F.S.; revising
required coverages for a motor vehicle insurance
policy; conforming provisions to changes made by the
act; creating s. 627.7278, F.S.; defining the term
"minimum security requirements"; providing
requirements, applicability, and construction relating
to motor vehicle insurance policies as of a certain
date; requiring insurers to allow certain insureds to
make certain coverage changes, subject to certain
conditions; requiring an insurer to provide, by a
specified date, a specified notice to policyholders
relating to requirements under the act; amending s.
627.728, F.S.; conforming a provision to changes made
by the act; making technical changes; amending s.
627.7295, F.S.; revising the definitions of the terms
"policy" and "binder"; revising the coverages of a
motor vehicle insurance policy for which a licensed
general lines agent may charge a specified fee;
conforming provisions to changes made by the act;

597-01343-21

202154c1

amending s. 627.7415, F.S.; revising additional liability insurance requirements for commercial motor vehicles; creating s. 627.747, F.S.; providing that private passenger motor vehicle policies may exclude certain identified individuals from specified coverages under certain circumstances; providing that such policies may not exclude coverage under certain circumstances; amending s. 627.748, F.S.; revising insurance requirements for transportation network company drivers; conforming provisions to changes made by the act; amending s. 627.749, F.S.; conforming a provision to changes made by the act; amending s. 627.8405, F.S.; revising coverages in a policy sold in combination with an accidental death and dismemberment policy which a premium finance company may not finance; revising rulemaking authority of the Financial Services Commission; amending ss. 627.915, 628.909, 705.184, and 713.78, F.S.; conforming provisions to changes made by the act; making technical changes; amending s. 817.234, F.S.; revising coverages that are the basis of specified prohibited false and fraudulent insurance claims; conforming provisions to changes made by the act; providing an appropriation; providing effective dates.

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

Section 1. Sections 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403,

597-01343-21

202154c1

and 627.7405, Florida Statutes, are repealed.

Section 2. Section 627.7407, Florida Statutes, is repealed.

Section 3. Subsection (1) of section 316.646, Florida Statutes, is amended to read:

316.646 Security required; proof of security and display thereof.—

(1) Any person required by s. 324.022 to maintain liability security for property damage, ~~liability security, required by s. 324.023 to maintain liability security for~~ bodily injury, or death, ~~or required by s. 627.733 to maintain personal injury protection security on a motor vehicle~~ shall have in his or her immediate possession at all times while operating such motor vehicle proper proof of maintenance of the ~~required~~ security required under s. 324.021(7).

(a) Such proof must ~~shall~~ be in a uniform paper or electronic format, as prescribed by the department, a valid insurance policy, an insurance policy binder, a certificate of insurance, or such other proof as may be prescribed by the department.

(b)1. The act of presenting to a law enforcement officer an electronic device displaying proof of insurance in an electronic format does not constitute consent for the officer to access any information on the device other than the displayed proof of insurance.

2. The person who presents the device to the officer assumes the liability for any resulting damage to the device.

Section 4. Paragraph (b) of subsection (2) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a

597-01343-21

202154c1

noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(2) Thirty dollars for all nonmoving traffic violations and:

(b) For all violations of ss. 320.0605, 320.07(1), 322.065, and 322.15(1). ~~A~~ Any person who is cited for a violation of s. 320.07(1) shall be charged a delinquent fee pursuant to s. 320.07(4).

1. If a person who is cited for a violation of s. 320.0605 or s. 320.07 can show proof of having a valid registration at the time of arrest, the clerk of the court may dismiss the case and may assess a dismissal fee of up to \$10, from which the clerk shall remit \$2.50 to the Department of Revenue for deposit into the General Revenue Fund. A person who finds it impossible or impractical to obtain a valid registration certificate must submit an affidavit detailing the reasons for the impossibility or impracticality. The reasons may include, but are not limited to, the fact that the vehicle was sold, stolen, or destroyed; that the state in which the vehicle is registered does not issue a certificate of registration; or that the vehicle is owned by another person.

2. If a person who is cited for a violation of s. 322.03, s. 322.065, or s. 322.15 can show a driver license issued to him or her and valid at the time of arrest, the clerk of the court may dismiss the case and may assess a dismissal fee of up to \$10, from which the clerk shall remit \$2.50 to the Department of Revenue for deposit into the General Revenue Fund.

3. If a person who is cited for a violation of s. 316.646 can show proof of security as required by s. 324.021(7) ~~or~~.

597-01343-21

202154c1

320 ~~627.733~~, issued to the person and valid at the time of arrest,
321 the clerk of the court may dismiss the case and may assess a
322 dismissal fee of up to \$10, from which the clerk shall remit
323 \$2.50 to the Department of Revenue for deposit into the General
324 Revenue Fund. A person who finds it impossible or impractical to
325 obtain proof of security must submit an affidavit detailing the
326 reasons for the impracticality. The reasons may include, but are
327 not limited to, the fact that the vehicle has since been sold,
328 stolen, or destroyed; ~~that the owner or registrant of the~~
329 ~~vehicle is not required by s. 627.733 to maintain personal~~
330 ~~injury protection insurance;~~ or that the vehicle is owned by
331 another person.

332 Section 5. Paragraphs (a) and (d) of subsection (5) of
333 section 320.02, Florida Statutes, are amended to read:

334 320.02 Registration required; application for registration;
335 forms.—

336 (5) (a) Proof that bodily injury liability coverage and
337 property damage liability coverage ~~personal injury protection~~
338 ~~benefits~~ have been purchased if required under s. 324.022, s.
339 324.032, or s. 627.742 ~~s. 627.733, that property damage~~
340 ~~liability coverage has been purchased as required under s.~~
341 ~~324.022, that bodily injury liability~~ or death coverage has been
342 purchased if required under s. 324.023, and that combined bodily
343 liability insurance and property damage liability insurance have
344 been purchased if required under s. 627.7415 must ~~shall~~ be
345 provided in the manner prescribed by law by the applicant at the
346 time of application for registration of any motor vehicle that
347 is subject to such requirements. The issuing agent may not ~~shall~~
348 ~~refuse to~~ issue registration if such proof of purchase is not

597-01343-21

202154c1

provided. Insurers shall furnish uniform proof-of-purchase cards in a paper or electronic format in a form prescribed by the department and include the name of the insured's insurance company, the coverage identification number, and the make, year, and vehicle identification number of the vehicle insured. The card must contain a statement notifying the applicant of the penalty specified under s. 316.646(4). The card or insurance policy, insurance policy binder, or certificate of insurance or a photocopy of any of these; an affidavit containing the name of the insured's insurance company, the insured's policy number, and the make and year of the vehicle insured; or such other proof as may be prescribed by the department constitutes ~~shall constitute~~ sufficient proof of purchase. If an affidavit is provided as proof, it must be in substantially the following form:

Under penalty of perjury, I ...(Name of insured)... do hereby certify that I have ...(bodily injury liability and ~~Personal Injury Protection~~, property damage liability, and, if required, ~~Bodily Injury Liability~~)... insurance currently in effect with ...(Name of insurance company)... under ...(policy number)... covering ...(make, year, and vehicle identification number of vehicle).... ...(Signature of Insured)...

Such affidavit must include the following warning:

WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS

597-01343-21

202154c1

SUBJECT TO PROSECUTION.

If an application is made through a licensed motor vehicle dealer as required under s. 319.23, the original or a photocopy ~~photostatic copy~~ of such card, insurance policy, insurance policy binder, or certificate of insurance or the original affidavit from the insured must ~~shall~~ be forwarded by the dealer to the tax collector of the county or the Department of Highway Safety and Motor Vehicles for processing. By executing the ~~aforsaid~~ affidavit, a ~~no~~ licensed motor vehicle dealer is not ~~will be~~ liable in damages for any inadequacy, insufficiency, or falsification of any statement contained therein. ~~A card must also indicate the existence of any bodily injury liability insurance voluntarily purchased.~~

(d) The verifying of ~~proof of personal injury protection insurance, proof of property damage liability insurance, proof of combined bodily liability insurance and property damage liability insurance, or~~ proof of financial responsibility insurance and the issuance or failure to issue the motor vehicle registration under ~~the provisions of~~ this chapter may not be construed in any court as a warranty of the reliability or accuracy of the evidence of such proof, or as meaning that the provisions of any insurance policy furnished as proof of financial responsibility comply with state law. Neither the department nor any tax collector is liable in damages for any inadequacy, insufficiency, falsification, or unauthorized modification of any item of ~~the proof of personal injury protection insurance, proof of property damage liability insurance, proof of combined bodily liability insurance and~~

597-01343-21

202154c1

~~property damage liability insurance, or~~ proof of financial responsibility before ~~insurance prior to~~, during, or subsequent to the verification of the proof. The issuance of a motor vehicle registration does not constitute prima facie evidence or a presumption of insurance coverage.

Section 6. Paragraph (b) of subsection (1) of section 320.0609, Florida Statutes, is amended to read:

320.0609 Transfer and exchange of registration license plates; transfer fee.—

(1)

(b) The transfer of a license plate from a vehicle disposed of to a newly acquired vehicle does not constitute a new registration. The application for transfer must ~~shall~~ be accepted without requiring proof of ~~personal injury protection or~~ liability insurance.

Section 7. Subsection (3) of section 320.27, Florida Statutes, is amended, and paragraph (g) is added to subsection (1) of that section, to read:

320.27 Motor vehicle dealers.—

(1) DEFINITIONS.—The following words, terms, and phrases when used in this section have the meanings respectively ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(g) "Garage liability insurance" means, beginning January 1, 2022, combined single-limit liability coverage, including property damage and bodily injury liability coverage, in the amount of at least \$60,000.

(3) APPLICATION AND FEE.—The ~~application for the~~ license application must ~~shall~~ be in such form as may be prescribed by

597-01343-21

202154c1

the department and is ~~shall be~~ subject to such rules with
respect thereto as may be so prescribed by the department ~~it~~.
Such application must ~~shall~~ be verified by oath or affirmation
and must ~~shall~~ contain a full statement of the name and birth
date of the person or persons applying for the license ~~therefor~~;
the name of the firm or copartnership, with the names and places
of residence of all members ~~thereof~~, if such applicant is a firm
or copartnership; the names and places of residence of the
principal officers, if the applicant is a body corporate or
other artificial body; the name of the state under whose laws
the corporation is organized; the present and former place or
places of residence of the applicant; and the prior business in
which the applicant has been engaged and its ~~the~~ location
~~thereof~~. The ~~Such~~ application must ~~shall~~ describe the exact
location of the place of business and must ~~shall~~ state whether
the place of business is owned by the applicant and when
acquired, or, if leased, a true copy of the lease must ~~shall~~ be
attached to the application. The applicant shall certify that
the location provides an adequately equipped office and is not a
residence; that the location affords sufficient unoccupied space
upon and within which adequately to store all motor vehicles
offered and displayed for sale; and that the location is a
suitable place where the applicant can in good faith carry on
such business and keep and maintain books, records, and files
necessary to conduct such business, which must ~~shall~~ be
available at all reasonable hours to inspection by the
department or any of its inspectors or other employees. The
applicant shall certify that the business of a motor vehicle
dealer is the principal business that will ~~which shall~~ be

597-01343-21

202154c1

465 conducted at that location. The application must ~~shall~~ contain a
466 statement that the applicant is either franchised by a
467 manufacturer of motor vehicles, in which case the name of each
468 motor vehicle that the applicant is franchised to sell must
469 ~~shall~~ be included, or an independent (nonfranchised) motor
470 vehicle dealer. The application must ~~shall~~ contain other
471 relevant information as may be required by the department. The
472 applicant shall furnish, including evidence, in a form approved
473 by the department, that the applicant is insured under a garage
474 liability insurance policy or a general liability insurance
475 policy coupled with a business automobile policy having the
476 coverages and limits of the garage liability insurance coverage
477 in accordance with paragraph (1)(g), which shall include, at a
478 minimum, \$25,000 combined single-limit liability coverage
479 including bodily injury and property damage protection and
480 \$10,000 personal injury protection. However, a salvage motor
481 vehicle dealer as defined in subparagraph (1)(c)5. is exempt
482 from the requirements for garage liability insurance ~~and~~
483 ~~personal injury protection insurance~~ on those vehicles that
484 cannot be legally operated on roads, highways, or streets in
485 this state. Franchise dealers must submit a garage liability
486 insurance policy, and all other dealers must submit a garage
487 liability insurance policy or a general liability insurance
488 policy coupled with a business automobile policy. Such policy
489 must ~~shall~~ be for the license period, and evidence of a new or
490 continued policy must ~~shall~~ be delivered to the department at
491 the beginning of each license period. Upon making an initial
492 application, the applicant shall pay to the department a fee of
493 \$300 in addition to any other fees required by law. Applicants

597-01343-21

202154c1

may choose to extend the licensure period for 1 additional year for a total of 2 years. An initial applicant shall pay to the department a fee of \$300 for the first year and \$75 for the second year, in addition to any other fees required by law. An applicant for renewal shall pay to the department \$75 for a 1-year renewal or \$150 for a 2-year renewal, in addition to any other fees required by law. Upon making an application for a change of location, the applicant ~~person~~ shall pay a fee of \$50 in addition to any other fees now required by law. The department shall, in the case of every application for initial licensure, verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant shall, ~~must~~ file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost of state and federal processing must ~~shall~~ be borne by the applicant and is in addition to the fee for licensure. The department may issue a license to an applicant pending the results of the fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

Section 8. Paragraph (j) of subsection (3) of section 320.771, Florida Statutes, is amended to read:

320.771 License required of recreational vehicle dealers.—

597-01343-21

202154c1

(3) APPLICATION.—The application for such license shall be in the form prescribed by the department and subject to such rules as may be prescribed by it. The application shall be verified by oath or affirmation and shall contain:

(j) A statement that the applicant is insured under a garage liability insurance policy in accordance with s. 320.27(1)(g), ~~which shall include, at a minimum, \$25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and \$10,000 personal injury protection,~~ if the applicant is to be licensed as a dealer in, or intends to sell, recreational vehicles. However, a garage liability policy is not required for the licensure of a mobile home dealer who sells only park trailers.

The department shall, if it deems necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and may ~~shall~~ not issue a license to the applicant until it is satisfied that the facts set forth in the application are true.

Section 9. Subsections (1) and (2) of section 322.251, Florida Statutes, are amended to read:

322.251 Notice of cancellation, suspension, revocation, or disqualification of license.—

(1) All orders of cancellation, suspension, revocation, or disqualification issued under ~~the provisions of this chapter, chapter 318, or chapter 324 must, or ss. 627.732-627.734 shall~~ be given either by personal delivery thereof to the licensee whose license is being canceled, suspended, revoked, or disqualified or by deposit in the United States mail in an

597-01343-21

202154c1

552 envelope, first class, postage prepaid, addressed to the
553 licensee at his or her last known mailing address furnished to
554 the department. Such mailing by the department constitutes
555 notification, and any failure by the person to receive the
556 mailed order will not affect or stay the effective date or term
557 of the cancellation, suspension, revocation, or disqualification
558 of the licensee's driving privilege.

559 (2) The giving of notice and an order of cancellation,
560 suspension, revocation, or disqualification by mail is complete
561 upon expiration of 20 days after deposit in the United States
562 mail for all notices except those issued under chapter 324 ~~or~~
563 ~~ss. 627.732-627.734~~, which are complete 15 days after deposit in
564 the United States mail. Proof of the giving of notice and an
565 order of cancellation, suspension, revocation, or
566 disqualification in either manner must ~~shall~~ be made by entry in
567 the records of the department that such notice was given. The
568 entry is admissible in the courts of this state and constitutes
569 sufficient proof that such notice was given.

570 Section 10. Paragraph (a) of subsection (8) of section
571 322.34, Florida Statutes, is amended to read:

572 322.34 Driving while license suspended, revoked, canceled,
573 or disqualified.—

574 (8) (a) Upon the arrest of a person for the offense of
575 driving while the person's driver license or driving privilege
576 is suspended or revoked, the arresting officer shall determine:

577 1. Whether the person's driver license is suspended or
578 revoked, or the person is under suspension or revocation
579 equivalent status.

580 2. Whether the person's driver license has remained

597-01343-21

202154c1

581 suspended or revoked, or the person has been under suspension or
582 revocation equivalent status, since a conviction for the offense
583 of driving with a suspended or revoked license.

584 3. Whether the suspension, revocation, or suspension or
585 revocation equivalent status was made under s. 316.646 ~~or s.~~
586 ~~627.733~~, relating to failure to maintain required security, or
587 under s. 322.264, relating to habitual traffic offenders.

588 4. Whether the driver is the registered owner or co-owner
589 of the vehicle.

590 Section 11. Section 324.011, Florida Statutes, is amended
591 to read:

592 324.011 Legislative intent; purpose of chapter.—It is the
593 intent of the Legislature that this chapter ensure that the
594 privilege of owning or operating a motor vehicle in this state
595 be exercised ~~to recognize the existing privilege to own or~~
596 ~~operate a motor vehicle on the public streets and highways of~~
597 ~~this state when such vehicles are used~~ with due consideration
598 for others' safety ~~others~~ and ~~their~~ property, promoting ~~and to~~
599 ~~promote~~ safety, and providing ~~provide~~ financial security
600 requirements for ~~such~~ owners and ~~or~~ operators whose
601 responsibility it is to recompense others for injury to person
602 or property caused by the operation of a motor vehicle.
603 Therefore, the purpose of this chapter is to require that every
604 owner or operator of a motor vehicle required to be registered
605 in this state establish, maintain, and it is required herein
606 ~~that the operator of a motor vehicle involved in a crash or~~
607 ~~convicted of certain traffic offenses meeting the operative~~
608 ~~provisions of s. 324.051(2) shall respond for such damages and~~
609 show proof of financial ability to respond for damages arising

597-01343-21

202154c1

610 out of the ownership, maintenance, or use of a motor vehicle in
611 future accidents as a requisite to owning or operating a motor
612 vehicle in this state ~~his or her future exercise of such~~
613 ~~privileges.~~

614 Section 12. Subsections (1) and (7) and paragraph (c) of
615 subsection (9) of section 324.021, Florida Statutes, are
616 amended, and subsection (12) is added to that section, to read:

617 324.021 Definitions; minimum insurance required.—The
618 following words and phrases when used in this chapter shall, for
619 the purpose of this chapter, have the meanings respectively
620 ascribed to them in this section, except in those instances
621 where the context clearly indicates a different meaning:

622 (1) MOTOR VEHICLE.—Every self-propelled vehicle that is
623 designed and required to be licensed for use upon a highway,
624 including trailers and semitrailers designed for use with such
625 vehicles, except traction engines, road rollers, farm tractors,
626 power shovels, and well drillers, and every vehicle that is
627 propelled by electric power obtained from overhead wires but not
628 operated upon rails, but not including any personal delivery
629 device or mobile carrier as defined in s. 316.003, bicycle,
630 electric bicycle, or moped. ~~However, the term "motor vehicle"~~
631 ~~does not include a motor vehicle as defined in s. 627.732(3)~~
632 ~~when the owner of such vehicle has complied with the~~
633 ~~requirements of ss. 627.730–627.7405, inclusive, unless the~~
634 ~~provisions of s. 324.051 apply; and, in such case, the~~
635 ~~applicable proof of insurance provisions of s. 320.02 apply.~~

636 (7) PROOF OF FINANCIAL RESPONSIBILITY.—Beginning January 1,
637 2022, That proof of ability to respond in damages for liability
638 on account of crashes arising out of the ownership, maintenance,

597-01343-21

202154c1

or use of a motor vehicle:

(a) With respect to a motor vehicle other than a commercial motor vehicle, nonpublic sector bus, or for-hire passenger transportation vehicle, in the amount of:

1. Twenty-five thousand dollars for ~~\$10,000 because of~~ bodily injury to, or the death of, one person in any one crash and,

~~(b)~~ subject to such limits for one person, in the amount of \$50,000 for ~~\$20,000 because of~~ bodily injury to, or the death of, two or more persons in any one crash; and

2. ~~(c)~~ Ten thousand dollars for damage ~~In the amount of~~ ~~\$10,000 because of injury~~ to, or destruction of, property of others in any one crash.

~~(b)(d)~~ With respect to commercial motor vehicles ~~and nonpublic sector buses,~~ in the amounts specified in s. 627.7415 ~~ss. 627.7415 and 627.742, respectively.~~

(c) With respect to nonpublic sector buses, in the amounts specified in s. 627.742.

(d) With respect to for-hire passenger transportation vehicles, in the amounts specified in s. 324.032.

(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

597-01343-21

202154c1

rents or leases a majority of its motor vehicles to persons with 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. 207.002 or s. 320.01 ~~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

597-01343-21

202154c1

697 vehicle has in effect insurance with limits of at least \$5
698 million ~~\$5,000,000~~ combined property damage and bodily injury
699 liability.

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

714 b. For purposes of this section, and notwithstanding any
715 other provision of general law, a motor vehicle dealer, or a
716 motor vehicle dealer's leasing or rental affiliate, that gives
717 possession, control, or use of a temporary replacement vehicle
718 to a motor vehicle dealer's service customer may not be adjudged
719 liable in a civil proceeding absent negligence or criminal
720 wrongdoing on the part of the motor vehicle dealer, or the motor
721 vehicle dealer's leasing or rental affiliate, if the motor
722 vehicle dealer or the motor vehicle dealer's leasing or rental
723 affiliate executes a written rental or use agreement and obtains
724 from the person receiving the temporary replacement vehicle a
725 copy of the person's driver license and insurance information

597-01343-21

202154c1

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 "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 their employment.

(12) FOR-HIRE PASSENGER TRANSPORTATION VEHICLE.—Every for-hire vehicle as defined in s. 320.01(15) which is offered or used to provide transportation for persons, including taxicabs, limousines, and jitneys.

Section 13. Section 324.022, Florida Statutes, is amended

597-01343-21

202154c1

to read:

324.022 Financial responsibility requirements ~~for property damage.~~

(1) (a) Beginning January 1, 2022, every owner or operator of a motor vehicle required to be registered in this state shall establish and continuously maintain the ability to respond in damages for liability on account of accidents arising out of the use of the motor vehicle in the amount of:

1. Twenty-five thousand dollars for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of \$50,000 for bodily injury to, or the death of, two or more persons in any one crash; and

2. Ten thousand dollars for ~~\$10,000 because of~~ damage to, or destruction of, property of others in any one crash.

(b) The requirements of paragraph (a) ~~this section~~ may be met by one of the methods established in s. 324.031; by self-insuring as authorized by s. 768.28(16); or by maintaining a motor vehicle liability insurance policy that ~~an insurance policy providing coverage for property damage liability in the amount of at least \$10,000 because of damage to, or destruction of, property of others in any one accident arising out of the use of the motor vehicle. The requirements of this section may also be met by having a policy which provides~~ combined property damage liability and bodily injury liability coverage for any one crash arising out of the ownership, maintenance, or use of a motor vehicle and that conforms to the requirements of s. 324.151 in the amount of at least \$60,000 for every owner or operator subject to the financial responsibility required in

597-01343-21

202154c1

paragraph (a) ~~\$30,000 for combined property damage liability and bodily injury liability for any one crash arising out of the use of the motor vehicle. The policy, with respect to coverage for property damage liability, must meet the applicable requirements of s. 324.151, subject to the usual policy exclusions that have been approved in policy forms by the Office of Insurance Regulation. No insurer shall have any duty to defend uncovered claims irrespective of their joinder with covered claims.~~

(2) As used in this section, the term:

(a) "Motor vehicle" means any self-propelled vehicle that has four or more wheels and that is of a type designed and required to be licensed for use on the highways of this state, and any trailer or semitrailer designed for use with such vehicle. The term does not include the following:

1. A mobile home as defined in s. 320.01.

2. A motor vehicle that is used in mass transit and designed to transport more than five passengers, exclusive of the operator of the motor vehicle, and that is owned by a municipality, transit authority, or political subdivision of the state.

3. A school bus as defined in s. 1006.25, which must maintain security as required under s. 316.615.

4. A commercial motor vehicle as defined in s. 207.002 or s. 320.01, which must maintain security as required under ss. 324.031 and 627.7415.

5. A nonpublic sector bus, which must maintain security as required under ss. 324.031 and 627.742.

~~6.4. A vehicle providing for-hire passenger transportation vehicle, which must that is subject to the provisions of s.~~

597-01343-21

202154c1

813 ~~324.031. A taxicab shall~~ maintain security as required under s.
814 324.032 ~~s. 324.032(1)~~.

815 7.5. A personal delivery device as defined in s. 316.003.

816 (b) "Owner" means the person who holds legal title to a
817 motor vehicle or the debtor or lessee who has the right to
818 possession of a motor vehicle that is the subject of a security
819 agreement or lease with an option to purchase.

820 (3) Each nonresident owner or registrant of a motor vehicle
821 that, whether operated or not, has been physically present
822 within this state for more than 90 days during the preceding 365
823 days shall maintain security as required by subsection (1). The
824 security must be ~~that is~~ in effect continuously throughout the
825 period the motor vehicle remains within this state.

826 (4) An ~~The~~ owner or registrant of a motor vehicle who is
827 ~~exempt from the requirements of this section if she or he is a~~
828 member of the United States Armed Forces and is called to or on
829 active duty outside the United States in an emergency situation
830 is exempt from this section while he or she. ~~The exemption~~
831 ~~provided by this subsection applies only as long as the member~~
832 ~~of the Armed Forces is on such active duty. This exemption~~
833 ~~outside the United States and applies only while the vehicle~~
834 covered by the security is not operated by any person. Upon
835 receipt of a written request by the insured to whom the
836 exemption provided in this subsection applies, the insurer shall
837 cancel the coverages and return any unearned premium or suspend
838 the security required by this section. Notwithstanding s.
839 324.0221(2) ~~s. 324.0221(3)~~, the department may not suspend the
840 registration or operator's license of an ~~any~~ owner or registrant
841 of a motor vehicle during the time she or he qualifies for the

597-01343-21

202154c1

an exemption under this subsection. An ~~Any~~ owner or registrant of a motor vehicle who qualifies for the ~~an~~ exemption under this subsection shall immediately notify the department before ~~prior~~ ~~to~~ and at the end of the expiration of the exemption.

Section 14. Subsections (1) and (2) of section 324.0221, Florida Statutes, are amended to read:

324.0221 Reports by insurers to the department; suspension of driver license and vehicle registrations; reinstatement.—

(1)(a) Each insurer that has issued a policy providing ~~personal injury protection coverage or property damage~~ liability coverage shall report the cancellation or nonrenewal thereof to the department within 10 days after the processing date or effective date of each cancellation or nonrenewal. Upon the issuance of a policy providing ~~personal injury protection coverage or property damage~~ liability coverage to a named insured not previously insured by the insurer during that calendar year, the insurer shall report the issuance of the new policy to the department within 10 days. The report must ~~shall~~ be in the form ~~and format~~ and contain any information required by the department and must be provided in a format that is compatible with the data processing capabilities of the department. Failure by an insurer to file proper reports with the department as required by this subsection constitutes a violation of the Florida Insurance Code. These records may ~~shall~~ be used by the department only for enforcement and regulatory purposes, including the generation by the department of data regarding compliance by owners of motor vehicles with the requirements for financial responsibility coverage.

(b) With respect to an insurance policy providing ~~personal~~

597-01343-21

202154c1

~~injury protection coverage or property damage~~ liability coverage, each insurer shall notify the named insured, or the first-named insured in the case of a commercial fleet policy, in writing that any cancellation or nonrenewal of the policy will be reported by the insurer to the department. The notice must also inform the named insured that failure to maintain bodily injury liability ~~personal injury protection~~ coverage and property damage liability coverage on a motor vehicle when required by law may result in the loss of registration and driving privileges in this state and inform the named insured of the amount of the reinstatement fees required by this section. This notice is for informational purposes only, and an insurer is not civilly liable for failing to provide this notice.

(2) The department shall suspend, after due notice and an opportunity to be heard, the registration and driver license of any owner or registrant of a motor vehicle for ~~with respect to~~ which security is required under s. 324.022, s. 324.032, s. 627.7415, or s. 627.742 ~~ss. 324.022 and 627.733~~ upon:

(a) The department's records showing that the owner or registrant of such motor vehicle did not have the ~~in full force and effect when~~ required security in full force and effect ~~that complies with the requirements of ss. 324.022 and 627.733; or~~

(b) Notification by the insurer to the department, in a form approved by the department, of cancellation or termination of the required security.

Section 15. Section 324.0222, Florida Statutes, is created to read:

324.0222 Application of suspensions for failure to maintain security; reinstatement.—All suspensions for failure to maintain

597-01343-21

202154c1

900 required security as required by law in effect before January 1,
901 2022, remain in full force and effect after January 1, 2022. A
902 driver may reinstate a suspended driver license or registration
903 as provided under s. 324.0221.

904 Section 16. Section 324.023, Florida Statutes, is amended
905 to read:

906 324.023 Financial responsibility for bodily injury or
907 death.—In addition to any other financial responsibility
908 required by law, every owner or operator of a motor vehicle that
909 is required to be registered in this state, or that is located
910 within this state, and who, regardless of adjudication of guilt,
911 has been found guilty of or entered a plea of guilty or nolo
912 contendere to a charge of driving under the influence under s.
913 316.193 after October 1, 2007, shall, by one of the methods
914 established in s. 324.031(1)(a) or (b) ~~s. 324.031(1) or (2)~~,
915 establish and maintain the ability to respond in damages for
916 liability on account of accidents arising out of the use of a
917 motor vehicle in the amount of \$100,000 because of bodily injury
918 to, or death of, one person in any one crash and, subject to
919 such limits for one person, in the amount of \$300,000 because of
920 bodily injury to, or death of, two or more persons in any one
921 crash and in the amount of \$50,000 because of property damage in
922 any one crash. If the owner or operator chooses to establish and
923 maintain such ability by furnishing a certificate of deposit
924 pursuant to s. 324.031(1)(b) ~~s. 324.031(2)~~, such certificate of
925 deposit must be at least \$350,000. Such higher limits must be
926 carried for a minimum period of 3 years. If the owner or
927 operator has not been convicted of driving under the influence
928 or a felony traffic offense for a period of 3 years from the

597-01343-21

202154c1

date of reinstatement of driving privileges for a violation of s. 316.193, the owner or operator is ~~shall be~~ exempt from this section.

Section 17. Section 324.031, Florida Statutes, is amended to read:

324.031 Manner of proving financial responsibility.—

(1) The owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.021(8) or s. 324.151, which policy is issued by an insurance carrier which is a member of the Florida Insurance Guaranty Association. The operator or owner of a motor vehicle other than a for-hire passenger transportation vehicle any other vehicle may prove his or her financial responsibility by:

(a) ~~(1)~~ Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in ss. 324.021(8) and 324.151 which provides liability coverage for the motor vehicle being operated;

(b) ~~(2)~~ Furnishing a certificate of self-insurance showing a deposit of cash in accordance with s. 324.161; or

(c) ~~(3)~~ Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171.

(2) Beginning January 1, 2022, any person, including any firm, partnership, association, corporation, or other person, other than a natural person, electing to use the method of proof specified in paragraph (1)(b) subsection ~~(2)~~ shall do both of the following:

(a) Furnish a certificate of deposit equal to the number of

597-01343-21

202154c1

vehicles owned times \$60,000 ~~\$30,000~~, up to a maximum of
\$240,000. ~~\$120,000~~;

(b) ~~In addition, any such person, other than a natural person, shall~~ Maintain insurance ~~providing~~ coverage that meets the requirements of s. 324.151 and has limits of:

1. At least \$125,000 for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of \$250,000 for bodily injury to, or the death of, two or more persons in any one crash, and \$50,000 for damage to, or destruction of, property of others in any one crash; or

2. At least \$300,000 for combined bodily injury liability and property damage liability for any one crash ~~in excess of limits of \$10,000/20,000/10,000 or \$30,000 combined single limits, and such excess insurance shall provide minimum limits of \$125,000/250,000/50,000 or \$300,000 combined single limits. These increased limits shall not affect the requirements for proving financial responsibility under s. 324.032(1).~~

Section 18. Section 324.032, Florida Statutes, is amended to read:

324.032 ~~Manner of proving~~ Financial responsibility ~~for~~ for-hire passenger transportation vehicles. ~~Notwithstanding the provisions of s. 324.031:~~

(1) An owner or a lessee of a for-hire passenger transportation vehicle that is required to be registered in this state shall establish and continuously maintain the ability to respond in damages for liability on account of accidents arising out of the ownership, maintenance, or use of the for-hire passenger transportation vehicle, in the amount of:

597-01343-21

202154c1

987 (a) One hundred twenty-five thousand dollars for bodily
988 injury to, or the death of, one person in any one crash and,
989 subject to such limits for one person, in the amount of \$250,000
990 for bodily injury to, or the death of, two or more persons in
991 any one crash; and ~~A person who is either the owner or a lessee~~
992 ~~required to maintain insurance under s. 627.733(1) (b) and who~~
993 ~~operates one or more taxicabs, limousines, jitneys, or any other~~
994 ~~for-hire passenger transportation vehicles may prove financial~~
995 ~~responsibility by furnishing satisfactory evidence of holding a~~
996 ~~motor vehicle liability policy, but with minimum limits of~~
997 ~~\$125,000/250,000/50,000.~~

998 (b) Fifty thousand dollars for damage to, or destruction
999 of, property of others in any one crash ~~A person who is either~~
1000 ~~the owner or a lessee required to maintain insurance under s.~~
1001 ~~324.021(9) (b) and who operates limousines, jitneys, or any other~~
1002 ~~for-hire passenger vehicles, other than taxicabs, may prove~~
1003 ~~financial responsibility by furnishing satisfactory evidence of~~
1004 ~~holding a motor vehicle liability policy as defined in s.~~
1005 ~~324.031.~~

1006 (2) Except as provided in subsection (3), the requirements
1007 of this section must be met by the owner or lessee providing
1008 satisfactory evidence of holding a motor vehicle liability
1009 policy conforming to the requirements of s. 324.151 which is
1010 issued by an insurance carrier that is a member of the Florida
1011 Insurance Guaranty Association.

1012 ~~(3)(2)~~ An owner or a lessee who is required to maintain
1013 insurance under s. 324.021(9) (b) and who operates at least 300
1014 taxicabs, limousines, jitneys, or any other for-hire passenger
1015 transportation vehicles may provide financial responsibility by

597-01343-21

202154c1

1016 complying with ~~the provisions of~~ s. 324.171, which must ~~such~~
1017 ~~compliance to~~ be demonstrated by maintaining at its principal
1018 place of business an audited financial statement, prepared in
1019 accordance with generally accepted accounting principles, and
1020 providing to the department a certification issued by a
1021 certified public accountant that the applicant's net worth is at
1022 least equal to the requirements of s. 324.171 as determined by
1023 the Office of Insurance Regulation of the Financial Services
1024 Commission, including claims liabilities in an amount certified
1025 as adequate by a Fellow of the Casualty Actuarial Society.

1026
1027 Upon request by the department, the applicant shall ~~must~~ provide
1028 the department at the applicant's principal place of business in
1029 this state access to the applicant's underlying financial
1030 information and financial statements that provide the basis of
1031 the certified public accountant's certification. The applicant
1032 shall reimburse the requesting department for all reasonable
1033 costs incurred by it in reviewing the supporting information.
1034 The maximum amount of self-insurance permissible under this
1035 subsection is \$300,000 and must be stated on a per-occurrence
1036 basis, and the applicant shall maintain adequate excess
1037 insurance issued by an authorized or eligible insurer licensed
1038 or approved by the Office of Insurance Regulation. All risks
1039 self-insured shall remain with the owner or lessee providing it,
1040 and the risks are not transferable to any other person, unless a
1041 policy complying with subsections (1) and (2) ~~subsection (1)~~ is
1042 obtained.

1043 Section 19. Paragraph (b) of subsection (2) of section
1044 324.051, Florida Statutes, is amended to read:

597-01343-21

202154c1

1045 324.051 Reports of crashes; suspensions of licenses and
1046 registrations.—

1047 (2)

1048 (b) This subsection does ~~shall~~ not apply:

1049 1. To such operator or owner if such operator or owner had
1050 in effect at the time of such crash or traffic conviction a
1051 motor vehicle ~~an automobile~~ liability policy with respect to all
1052 of the registered motor vehicles owned by such operator or
1053 owner.

1054 2. To such operator, if not the owner of such motor
1055 vehicle, if there was in effect at the time of such crash or
1056 traffic conviction a motor vehicle ~~an automobile~~ liability
1057 policy or bond with respect to his or her operation of motor
1058 vehicles not owned by him or her.

1059 3. To such operator or owner if the liability of such
1060 operator or owner for damages resulting from such crash is, in
1061 the judgment of the department, covered by any other form of
1062 liability insurance or bond.

1063 4. To any person who has obtained from the department a
1064 certificate of self-insurance, in accordance with s. 324.171, or
1065 to any person operating a motor vehicle for such self-insurer.

1066
1067 No such policy or bond shall be effective under this subsection
1068 unless it contains limits of not less than those specified in s.
1069 324.021(7).

1070 Section 20. Section 324.071, Florida Statutes, is amended
1071 to read:

1072 324.071 Reinstatement; renewal of license; reinstatement
1073 fee.—An ~~Any~~ operator or owner whose license or registration has

597-01343-21

202154c1

1074 been suspended pursuant to s. 324.051(2), s. 324.072, s.
1075 324.081, or s. 324.121 may effect its reinstatement upon
1076 compliance with ~~the provisions of~~ s. 324.051(2)(a)3. or 4., or
1077 s. 324.081(2) and (3), as the case may be, and with one of the
1078 provisions of s. 324.031 and upon payment to the department of a
1079 nonrefundable reinstatement fee of \$15. Only one such fee may
1080 ~~shall~~ be paid by any one person regardless ~~irrespective~~ of the
1081 number of licenses and registrations to be then reinstated or
1082 issued to such person. ~~All~~ Such fees must ~~shall~~ be deposited to
1083 a department trust fund. If ~~When~~ the reinstatement of any
1084 license or registration is effected by compliance with s.
1085 324.051(2)(a)3. or 4., the department may ~~shall~~ not renew the
1086 license or registration within ~~a period of~~ 3 years after ~~from~~
1087 such reinstatement, nor may ~~shall~~ any other license or
1088 registration be issued in the name of such person, unless the
1089 operator continues ~~is continuing~~ to comply with ~~one of the~~
1090 ~~provisions of~~ s. 324.031.

1091 Section 21. Subsection (1) of section 324.091, Florida
1092 Statutes, is amended to read:

1093 324.091 Notice to department; notice to insurer.—

1094 (1) Each owner and operator involved in a crash or
1095 conviction case within the purview of this chapter shall furnish
1096 evidence of ~~automobile liability insurance or~~ motor vehicle
1097 liability insurance within 14 days after the date of the mailing
1098 of notice of crash by the department in the form and manner as
1099 it may designate. Upon receipt of evidence that a ~~an automobile~~
1100 ~~liability policy or~~ motor vehicle liability policy was in effect
1101 at the time of the crash or conviction case, the department
1102 shall forward to the insurer such information for verification

597-01343-21

202154c1

1103 in a method as determined by the department. The insurer shall
1104 respond to the department within 20 days after the notice as to
1105 whether ~~or not~~ such information is valid. If the department
1106 determines that a ~~an automobile liability policy or~~ motor
1107 vehicle liability policy was not in effect and did not provide
1108 coverage for both the owner and the operator, it must ~~shall~~ take
1109 action as it is authorized to do under this chapter.

1110 Section 22. Section 324.151, Florida Statutes, is amended
1111 to read:

1112 324.151 Motor vehicle liability policies; required
1113 provisions.—

1114 (1) A motor vehicle liability policy that serves as ~~to be~~
1115 proof of financial responsibility under s. 324.031(1)(a) must ~~s.~~
1116 ~~324.031(1), shall~~ be issued to owners or operators of motor
1117 vehicles under the following provisions:

1118 (a) A motor vehicle ~~An owner's~~ liability insurance policy
1119 issued to an owner of a motor vehicle required to be registered
1120 in this state must ~~shall~~ designate by explicit description or by
1121 appropriate reference all motor vehicles for ~~with respect to~~
1122 which coverage is thereby granted. The policy must ~~and shall~~
1123 insure the person or persons ~~owner~~ named therein and, except for
1124 a named driver excluded pursuant to s. 627.747, must insure any
1125 resident relative of a named insured ~~other person as operator~~
1126 ~~using such motor vehicle or motor vehicles with the express or~~
1127 ~~implied permission of such owner against loss from the liability~~
1128 ~~imposed by law for damage arising out of the ownership,~~
1129 ~~maintenance, or use of~~ any ~~such motor vehicle or motor vehicles~~
1130 ~~within the United States or the Dominion of Canada, subject to~~
1131 ~~limits, exclusive of interest and costs with respect to each~~

597-01343-21

202154c1

1132 ~~such motor vehicle as is provided for under s. 324.021(7).~~
1133 Except for a named driver excluded pursuant to s. 627.747, the
1134 policy must also insure any person operating an insured motor
1135 vehicle with the express or implied permission of a named
1136 insured against loss from the liability imposed by law for
1137 damage arising out of the use of any vehicle. However, the
1138 insurer may include provisions in its policy excluding liability
1139 coverage for a motor vehicle not designated as an insured
1140 vehicle on the policy if such motor vehicle does not qualify as
1141 a newly acquired vehicle or as a temporary substitute vehicle
1142 and was owned by the insured or was furnished for an insured's
1143 regular use for more than 30 consecutive days before the event
1144 giving rise to the claim. Insurers may make available, with
1145 respect to property damage liability coverage, a deductible
1146 amount not to exceed \$500. In the event of a property damage
1147 loss covered by a policy containing a property damage deductible
1148 provision, the insurer shall pay to the third-party claimant the
1149 amount of any property damage liability settlement or judgment,
1150 subject to policy limits, as if no deductible existed.

1151 (b) A motor vehicle liability insurance policy issued to a
1152 person who does not own a motor vehicle must ~~An operator's motor~~
1153 ~~vehicle liability policy of insurance shall~~ insure the person or
1154 persons named therein against loss from the liability imposed
1155 ~~upon him or her~~ by law for damages arising out of the use ~~by the~~
1156 ~~person~~ of any motor vehicle not owned by him or her, ~~with the~~
1157 ~~same territorial limits and subject to the same limits of~~
1158 ~~liability as referred to above with respect to an owner's policy~~
1159 ~~of liability insurance.~~

1160 (c) All such motor vehicle liability policies must provide

597-01343-21

202154c1

liability coverage with limits, exclusive of interest and costs, as specified under s. 324.021(7) for accidents occurring within the United States or Canada. The policies must ~~shall~~ state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and must ~~shall~~ contain an agreement or be endorsed that insurance is provided in accordance with the coverage defined in this chapter ~~as respects bodily injury and death or property damage or both~~ and is subject to all ~~provisions of~~ this chapter. ~~The said~~ policies must ~~shall~~ also contain a provision that the satisfaction by an insured of a judgment for such injury or damage may ~~shall~~ not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage, and must ~~shall~~ also contain a provision that bankruptcy or insolvency of the insured or of the insured's estate does ~~shall~~ not relieve the insurance carrier of any of its obligations under the ~~said~~ policy.

(2) ~~The provisions of~~ This section is ~~shall~~ not be applicable to any motor vehicle ~~automobile~~ liability policy unless and until it is furnished as proof of financial responsibility for the future pursuant to s. 324.031, and then applies only from ~~and after~~ the date the ~~said~~ policy is ~~so~~ furnished.

(3) As used in this section, the term:

(a) "Newly acquired vehicle" means a vehicle owned by a named insured or resident relative of the named insured which was acquired no more than 30 days before an accident.

(b) "Resident relative" means a person related to a named insured by any degree by blood, marriage, or adoption, including

597-01343-21

202154c1

1190 a ward or foster child, who usually makes his or her home in the
1191 same family unit or residence as the named insured, regardless
1192 of whether he or she temporarily lives elsewhere.

1193 (c) "Temporary substitute vehicle" means any motor vehicle
1194 as defined in s. 320.01(1) which is not owned by the named
1195 insured and which is temporarily used with the permission of the
1196 owner as a substitute for the owned motor vehicle designated on
1197 the policy when the owned vehicle is withdrawn from normal use
1198 because of breakdown, repair, servicing, loss, or destruction.

1199 Section 23. Section 324.161, Florida Statutes, is amended
1200 to read:

1201 324.161 Proof of financial responsibility; deposit.—If a
1202 person elects to prove his or her financial responsibility under
1203 the method of proof specified in s. 324.031(1)(b), he or she
1204 annually must obtain and submit to the department proof of a
1205 certificate of deposit in the amount required under s.
1206 324.031(2) from a financial institution insured by the Federal
1207 Deposit Insurance Corporation or the National Credit Union
1208 Administration ~~Annually, before any certificate of insurance may~~
1209 ~~be issued to a person, including any firm, partnership,~~
1210 ~~association, corporation, or other person, other than a natural~~
1211 ~~person, proof of a certificate of deposit of \$30,000 issued and~~
1212 ~~held by a financial institution must be submitted to the~~
1213 ~~department.~~ A power of attorney will be issued to and held by
1214 the department and may be executed upon a judgment issued
1215 against such person making the deposit, for damages for ~~because~~
1216 ~~of~~ bodily injury to or death of any person or for damages for
1217 ~~because of~~ injury to or destruction of property resulting from
1218 the use or operation of any motor vehicle occurring after such

597-01343-21

202154c1

1219 deposit was made. Money so deposited is ~~shall~~ not ~~be~~ subject to
1220 attachment or execution unless such attachment or execution
1221 arises ~~shall arise~~ out of a lawsuit ~~suit~~ for such damages as
1222 ~~aforsaid~~.

1223 Section 24. Subsections (1) and (2) of section 324.171,
1224 Florida Statutes, are amended to read:

1225 324.171 Self-insurer.—

1226 (1) A ~~Any~~ person may qualify as a self-insurer by obtaining
1227 a certificate of self-insurance from the department. ~~which may,~~
1228 ~~in its discretion and~~ Upon application of such a person, the
1229 department may issue a said ~~said~~ certificate of self-insurance to an
1230 applicant who satisfies ~~when such person has satisfied~~ the
1231 requirements of this section. Effective January 1, 2022 ~~to~~
1232 ~~qualify as a self-insurer under this section:~~

1233 (a) A private individual with private passenger vehicles
1234 shall possess a net unencumbered worth of at least \$100,000
1235 ~~\$40,000~~.

1236 (b) A person, including any firm, partnership, association,
1237 corporation, or other person, other than a natural person,
1238 shall:

1239 1. Possess a net unencumbered worth of at least \$100,000
1240 ~~\$40,000~~ for the first motor vehicle and \$50,000 ~~\$20,000~~ for each
1241 additional motor vehicle; or

1242 2. Maintain sufficient net worth, in an amount determined
1243 by the department, to be financially responsible for potential
1244 losses. The department annually shall determine the minimum net
1245 worth sufficient to satisfy this subparagraph ~~as determined~~
1246 ~~annually by the department,~~ pursuant to rules adopted
1247 ~~promulgated~~ by the department, with the assistance of the Office

597-01343-21

202154c1

of Insurance Regulation of the Financial Services Commission, ~~to be financially responsible for potential losses.~~ The rules must consider any ~~shall take into consideration~~ excess insurance carried by the applicant. The department's determination must ~~shall~~ be based upon reasonable actuarial principles considering the frequency, severity, and loss development of claims incurred by casualty insurers writing coverage on the type of motor vehicles for which a certificate of self-insurance is desired.

(c) The owner of a commercial motor vehicle, as defined in s. 207.002 or s. 320.01, may qualify as a self-insurer subject to the standards provided ~~for~~ in subparagraph (b)2.

(2) The self-insurance certificate must ~~shall~~ provide limits of liability insurance in the amounts specified under s. 324.021(7) ~~or s. 627.7415 and shall provide personal injury protection coverage under s. 627.733(3)(b).~~

Section 25. Section 324.251, Florida Statutes, is amended to read:

324.251 Short title.—This chapter may be cited as the "Financial Responsibility Law of 2021 1955" and is ~~shall become~~ effective at 12:01 a.m., January 1, 2022 ~~October 1, 1955~~.

Section 26. Subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

(4) (a) "Clinic" means an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. As used in this part, the term does not include and the licensure requirements of this part do not apply to:

597-01343-21

202154c1

1277 1.~~(a)~~ Entities licensed or registered by the state under
1278 chapter 395; entities licensed or registered by the state and
1279 providing only health care services within the scope of services
1280 authorized under their respective licenses under ss. 383.30-
1281 383.332, chapter 390, chapter 394, chapter 397, this chapter
1282 except part X, chapter 429, chapter 463, chapter 465, chapter
1283 466, chapter 478, chapter 484, or chapter 651; end-stage renal
1284 disease providers authorized under 42 C.F.R. part 494; providers
1285 certified and providing only health care services within the
1286 scope of services authorized under their respective
1287 certifications under 42 C.F.R. part 485, subpart B, subpart H,
1288 or subpart J; providers certified and providing only health care
1289 services within the scope of services authorized under their
1290 respective certifications under 42 C.F.R. part 486, subpart C;
1291 providers certified and providing only health care services
1292 within the scope of services authorized under their respective
1293 certifications under 42 C.F.R. part 491, subpart A; providers
1294 certified by the Centers for Medicare and Medicaid Services
1295 under the federal Clinical Laboratory Improvement Amendments and
1296 the federal rules adopted thereunder; or any entity that
1297 provides neonatal or pediatric hospital-based health care
1298 services or other health care services by licensed practitioners
1299 solely within a hospital licensed under chapter 395.

1300 2.~~(b)~~ Entities that own, directly or indirectly, entities
1301 licensed or registered by the state pursuant to chapter 395;
1302 entities that own, directly or indirectly, entities licensed or
1303 registered by the state and providing only health care services
1304 within the scope of services authorized pursuant to their
1305 respective licenses under ss. 383.30-383.332, chapter 390,

597-01343-21

202154c1

chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 494; providers certified and providing only health care services within the scope of services authorized under their respective certifications under 42 C.F.R. part 485, subpart B, subpart H, or subpart J; providers certified and providing only health care services within the scope of services authorized under their respective certifications under 42 C.F.R. part 486, subpart C; providers certified and providing only health care services within the scope of services authorized under their respective certifications under 42 C.F.R. part 491, subpart A; providers certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

3.(e) Entities that are owned, directly or indirectly, by an entity licensed or registered by the state pursuant to chapter 395; entities that are owned, directly or indirectly, by an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.332, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 494; providers

597-01343-21

202154c1

certified and providing only health care services within the scope of services authorized under their respective certifications under 42 C.F.R. part 485, subpart B, subpart H, or subpart J; providers certified and providing only health care services within the scope of services authorized under their respective certifications under 42 C.F.R. part 486, subpart C; providers certified and providing only health care services within the scope of services authorized under their respective certifications under 42 C.F.R. part 491, subpart A; providers certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital under chapter 395.

4.~~(d)~~ Entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state pursuant to chapter 395; entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.332, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 494; providers certified and providing only health care services within the scope of services authorized under their respective certifications under 42 C.F.R. part 485, subpart B, subpart H, or subpart J; providers

597-01343-21

202154c1

certified and providing only health care services within the scope of services authorized under their respective certifications under 42 C.F.R. part 486, subpart C; providers certified and providing only health care services within the scope of services authorized under their respective certifications under 42 C.F.R. part 491, subpart A; providers certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

5.~~(e)~~ An entity that is exempt from federal taxation under 26 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan under 26 U.S.C. s. 409 that has a board of trustees at least two-thirds of which are Florida-licensed health care practitioners and provides only physical therapy services under physician orders, any community college or university clinic, and any entity owned or operated by the federal or state government, including agencies, subdivisions, or municipalities thereof.

6.~~(f)~~ A sole proprietorship, group practice, partnership, or corporation that provides health care services by physicians covered by s. 627.419, that is directly supervised by one or more of such physicians, and that is wholly owned by one or more of those physicians or by a physician and the spouse, parent, child, or sibling of that physician.

7.~~(g)~~ A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed

597-01343-21

202154c1

health care practitioners under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 480, chapter 484, chapter 486, chapter 490, chapter 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, and that is wholly owned by one or more licensed health care practitioners, or the licensed health care practitioners set forth in this subparagraph ~~paragraph~~ and the spouse, parent, child, or sibling of a licensed health care practitioner if one of the owners who is a licensed health care practitioner is supervising the business activities and is legally responsible for the entity's compliance with all federal and state laws. However, a health care practitioner may not supervise services beyond the scope of the practitioner's license, except that, for the purposes of this part, a clinic owned by a licensee in s. 456.053(3)(b) which provides only services authorized pursuant to s. 456.053(3)(b) may be supervised by a licensee specified in s. 456.053(3)(b).

8.~~(h)~~ Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

9.~~(i)~~ Entities that provide only oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459 or entities that provide oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459 which are owned by a corporation whose shares are publicly traded on a recognized stock exchange.

10.~~(j)~~ Clinical facilities affiliated with a college of chiropractic accredited by the Council on Chiropractic Education

597-01343-21

202154c1

at which training is provided for chiropractic students.

11.~~(k)~~ Entities that provide licensed practitioners to staff emergency departments or to deliver anesthesia services in facilities licensed under chapter 395 and that derive at least 90 percent of their gross annual revenues from the provision of such services. Entities claiming an exemption from licensure under this subparagraph ~~paragraph~~ must provide documentation demonstrating compliance.

12.~~(l)~~ Orthotic, prosthetic, pediatric cardiology, or perinatology clinical facilities or anesthesia clinical facilities that are not otherwise exempt under subparagraph 1. or subparagraph 11. ~~paragraph (a) or paragraph (k)~~ and that are a publicly traded corporation or are wholly owned, directly or indirectly, by a publicly traded corporation. As used in this subparagraph ~~paragraph~~, a publicly traded corporation is a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

13.~~(m)~~ Entities that are owned by a corporation that has \$250 million or more in total annual sales of health care services provided by licensed health care practitioners where one or more of the persons responsible for the operations of the entity is a health care practitioner who is licensed in this state and who is responsible for supervising the business activities of the entity and is responsible for the entity's compliance with state law for purposes of this part.

14.~~(n)~~ Entities that employ 50 or more licensed health care practitioners licensed under chapter 458 or chapter 459 where the billing for medical services is under a single tax

597-01343-21

202154c1

1451 identification number. The application for exemption under this
1452 subsection must include ~~shall contain information that includes:~~
1453 the name, residence, and business address and telephone ~~phone~~
1454 number of the entity that owns the practice; a complete list of
1455 the names and contact information of all the officers and
1456 directors of the corporation; the name, residence address,
1457 business address, and medical license number of each licensed
1458 Florida health care practitioner employed by the entity; the
1459 corporate tax identification number of the entity seeking an
1460 exemption; a listing of health care services to be provided by
1461 the entity at the health care clinics owned or operated by the
1462 entity; and a certified statement prepared by an independent
1463 certified public accountant which states that the entity and the
1464 health care clinics owned or operated by the entity have not
1465 received payment for health care services under medical payments
1466 ~~personal injury protection insurance~~ coverage for the preceding
1467 year. If the agency determines that an entity that ~~which~~ is
1468 exempt under this subsection has received payments for medical
1469 services under medical payments ~~personal injury protection~~
1470 ~~insurance~~ coverage, the agency may deny or revoke the exemption
1471 from licensure under this subsection.

1472 15.(e) Entities that are, directly or indirectly, under the
1473 common ownership of or that are subject to common control by a
1474 mutual insurance holding company, as defined in s. 628.703, with
1475 an entity issued a certificate of authority under chapter 624 or
1476 chapter 641 which has \$1 billion or more in total annual sales
1477 in this state.

1478 16.(p) Entities that are owned by an entity that is a
1479 behavioral health care service provider in at least five other

597-01343-21

202154c1

states; that, together with its affiliates, have \$90 million or more in total annual revenues associated with the provision of behavioral health care services; and wherein one or more of the persons responsible for the operations of the entity is a health care practitioner who is licensed in this state, who is responsible for supervising the business activities of the entity, and who is responsible for the entity's compliance with state law for purposes of this part.

17. ~~(a)~~ Medicaid providers.

(b) Notwithstanding paragraph (a) ~~this subsection~~, an entity ~~is shall be~~ deemed a clinic and must be licensed under this part in order to receive medical payments coverage reimbursement under s. 627.7265 unless the entity is:

1. Wholly owned by a physician licensed under chapter 458 or chapter 459, or by the physician and the spouse, parent, child, or sibling of the physician;

2. Wholly owned by a dentist licensed under chapter 466, or by the dentist and the spouse, parent, child, or sibling of the dentist;

3. Wholly owned by a chiropractic physician licensed under chapter 460, or by the chiropractic physician and the spouse, parent, child, or sibling of the chiropractic physician;

4. A hospital or ambulatory surgical center licensed under chapter 395;

5. An entity that wholly owns or is wholly owned, directly or indirectly, by a hospital or hospitals licensed under chapter 395;

6. A clinical facility affiliated with an accredited medical school at which training is provided for medical

597-01343-21

202154c1

students, residents, or fellows;

7. Certified under 42 C.F.R. part 485, subpart H; or

8. Owned by a publicly traded corporation, either directly or indirectly through its subsidiaries, which has \$250 million or more in total annual sales of health care services provided by licensed health care practitioners, if one or more of the persons responsible for the operations of the entity are health care practitioners who are licensed in this state and are responsible for supervising the business activities of the entity and the entity's compliance with state law for purposes of this subsection ~~the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h).~~

Section 27. Subsection (5) of section 400.991, Florida Statutes, is amended to read:

400.991 License requirements; background screenings; prohibitions.—

(5) All agency forms for licensure application or exemption from licensure under this part must contain the following statement:

INSURANCE FRAUD NOTICE.—A person commits a fraudulent insurance act, as defined in s. 626.989, Florida Statutes, if the person ~~who~~ knowingly submits a false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of chapter 400, Florida Statutes, with the intent to use the license, exemption from licensure,

597-01343-21

202154c1

or demonstration of compliance to provide services or
seek reimbursement under a motor vehicle liability
insurance policy's medical payments coverage ~~the~~
~~Florida Motor Vehicle No-Fault Law, commits a~~
~~fraudulent insurance act, as defined in s. 626.989,~~
~~Florida Statutes.~~ A person who presents a claim for
benefits under medical payments coverage ~~personal~~
~~injury protection benefits~~ knowing that the payee
knowingly submitted such health care clinic
application or document, commits insurance fraud, as
defined in s. 817.234, Florida Statutes.

Section 28. Paragraph (g) of subsection (1) of section
400.9935, Florida Statutes, is amended to read:

400.9935 Clinic responsibilities.—

(1) Each clinic shall appoint a medical director or clinic
director who shall agree in writing to accept legal
responsibility for the following activities on behalf of the
clinic. The medical director or the clinic director shall:

(g) Conduct systematic reviews of clinic billings to ensure
that the billings are not fraudulent or unlawful. Upon discovery
of an unlawful charge, the medical director or clinic director
shall take immediate corrective action. If the clinic performs
only the technical component of magnetic resonance imaging,
static radiographs, computed tomography, or positron emission
tomography, and provides the professional interpretation of such
services, in a fixed facility that is accredited by a national
accrediting organization that is approved by the Centers for
Medicare and Medicaid Services for magnetic resonance imaging
and advanced diagnostic imaging services and if, in the

597-01343-21

202154c1

preceding quarter, the percentage of scans performed by that clinic which was billed to motor vehicle ~~all personal injury protection~~ insurance carriers under medical payments coverage was less than 15 percent, the chief financial officer of the clinic may, in a written acknowledgment provided to the agency, assume the responsibility for the conduct of the systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful.

Section 29. Subsection (28) of section 409.901, Florida Statutes, is amended to read:

409.901 Definitions; ss. 409.901-409.920.—As used in ss. 409.901-409.920, except as otherwise specifically provided, the term:

(28) "Third-party benefit" means any benefit that is or may be available at any time through contract, court award, judgment, settlement, agreement, or any arrangement between a third party and any person or entity, including, without limitation, a Medicaid recipient, a provider, another third party, an insurer, or the agency, for any Medicaid-covered injury, illness, goods, or services, including costs of medical services related thereto, for bodily ~~personal~~ injury or for death of the recipient, but specifically excluding ~~policies of~~ life insurance policies on the recipient, unless available under terms of the policy to pay medical expenses before ~~prior to~~ death. The term includes, without limitation, collateral, as defined in this section; health insurance; any benefit under a health maintenance organization, a preferred provider arrangement, a prepaid health clinic, liability insurance, uninsured motorist insurance, or medical payments coverage; or

597-01343-21

202154c1

1596 ~~personal injury protection coverage,~~ medical benefits under
1597 workers' compensation, and any obligation under law or equity to
1598 provide medical support.

1599 Section 30. Paragraph (f) of subsection (11) of section
1600 409.910, Florida Statutes, is amended to read:

1601 409.910 Responsibility for payments on behalf of Medicaid-
1602 eligible persons when other parties are liable.—

1603 (11) The agency may, as a matter of right, in order to
1604 enforce its rights under this section, institute, intervene in,
1605 or join any legal or administrative proceeding in its own name
1606 in one or more of the following capacities: individually, as
1607 subrogee of the recipient, as assignee of the recipient, or as
1608 lienholder of the collateral.

1609 (f) Notwithstanding any provision in this section to the
1610 contrary, in the event of an action in tort against a third
1611 party in which the recipient or his or her legal representative
1612 is a party which results in a judgment, award, or settlement
1613 from a third party, the amount recovered shall be distributed as
1614 follows:

1615 1. After attorney ~~attorney's~~ fees and taxable costs as
1616 defined by the Florida Rules of Civil Procedure, one-half of the
1617 remaining recovery shall be paid to the agency up to the total
1618 amount of medical assistance provided by Medicaid.

1619 2. The remaining amount of the recovery shall be paid to
1620 the recipient.

1621 3. For purposes of calculating the agency's recovery of
1622 medical assistance benefits paid, the fee for services of an
1623 attorney retained by the recipient or his or her legal
1624 representative shall be calculated at 25 percent of the

597-01343-21

202154c1

judgment, award, or settlement.

4. Notwithstanding any other provision of this section to the contrary, the agency shall be entitled to all medical coverage benefits up to the total amount of medical assistance provided by Medicaid. For purposes of this paragraph, the term "medical coverage" means any benefits under health insurance, a health maintenance organization, a preferred provider arrangement, or a prepaid health clinic, and the portion of benefits designated for medical payments under ~~coverage for~~ workers' compensation coverage, motor vehicle insurance coverage, personal injury protection, and casualty coverage.

Section 31. Paragraph (k) of subsection (2) of section 456.057, Florida Statutes, is amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished; disclosure of information.—

(2) As used in this section, the terms "records owner," "health care practitioner," and "health care practitioner's employer" do not include any of the following persons or entities; furthermore, the following persons or entities are not authorized to acquire or own medical records, but are authorized under the confidentiality and disclosure requirements of this section to maintain those documents required by the part or chapter under which they are licensed or regulated:

(k) Persons or entities practicing under s. 627.7265 ~~s. 627.736(7)~~.

Section 32. Paragraphs (ee) and (ff) of subsection (1) of section 456.072, Florida Statutes, are amended to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which

597-01343-21

202154c1

the disciplinary actions specified in subsection (2) may be taken:

(ee) With respect to making a medical payments coverage ~~personal injury protection~~ claim under s. 627.7265 as required ~~by s. 627.736~~, intentionally submitting a claim, statement, or bill that has been upcoded. As used in this paragraph, the term "upcoded" means an action that submits a billing code that would result in a greater payment amount than would be paid using a billing code that accurately describes the services performed. The term does not include an otherwise lawful bill by a magnetic resonance imaging facility which globally combines both technical and professional components, if the amount of the global bill is not more than the components if billed separately; however, payment of such a bill constitutes payment in full for all components of such service ~~"upcoded" as defined in s. 627.732~~.

(ff) With respect to making a medical payments coverage ~~personal injury protection~~ claim pursuant to s. 627.7265 as ~~required by s. 627.736~~, intentionally submitting a claim, statement, or bill for payment of services that were not rendered.

Section 33. Paragraph (b) of subsection (1) and subsection (8) of section 624.155, Florida Statutes, are amended to read:

624.155 Civil remedy.—

(1) Any person may bring a civil action against an insurer when such person is damaged:

(b) By the commission of any of the following acts by the insurer:

1. Except for a third-party bad faith failure to settle a

597-01343-21

202154c1

claim subject to s. 624.156, not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests;

2. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; ~~or~~

3. Except as to liability coverages, failing to promptly settle claims, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

4. When handling a first-party claim under a motor vehicle insurance policy, not attempting in good faith to settle such claim pursuant to subparagraph 1. when such failure is caused by a failure to communicate to an insured:

a. Information on who is adjusting the claim;

b. Any issues that may impair the insured's coverage;

c. Information that might resolve the issue in a prompt manner;

d. Any basis for the insurer's rejection or nonacceptance of any settlement offer; or

e. Any needed extensions to respond to a time-limited settlement offer.

Notwithstanding the provisions of the above to the contrary, a person pursuing a remedy under this section need not prove that such act was committed or performed with such frequency as to indicate a general business practice.

597-01343-21

202154c1

1712 (8) The civil remedy specified in this section does not
1713 preempt any other remedy or cause of action provided for
1714 pursuant to any other statute or pursuant to the common law of
1715 this state. ~~A Any person is may obtain a judgment under either~~
1716 ~~the common law remedy of bad faith or this statutory remedy, but~~
1717 ~~shall not be~~ entitled to a judgment under multiple bad faith
1718 ~~both~~ remedies, whether under statute or common law. This section
1719 shall not be construed to create a common-law cause of action.
1720 The damages recoverable pursuant to this section shall include
1721 those damages which are a reasonably foreseeable result of a
1722 specified violation of this section by the authorized insurer
1723 and may include an award or judgment in an amount that exceeds
1724 the policy limits.

1725 Section 34. Section 624.156, Florida Statutes, is created
1726 to read:

1727 624.156 Bad faith failure to settle actions against motor
1728 vehicle insurers by third-party claimants.-

1729 (1) SCOPE.-This section applies in all actions against any
1730 insurer by a third party for bad faith failure to settle,
1731 whether under statute or common law, for a loss arising out of
1732 the ownership, maintenance, or use of a motor vehicle operated
1733 or principally garaged in this state at the time of an accident,
1734 regardless of whether the insurer is authorized to do business
1735 in this state or issued a policy in this state.

1736 (2) DUTY OF GOOD FAITH.-In handling claims, an insurer
1737 stands as a fiduciary for its insured and must handle claims in
1738 good faith. The insurer shall comply with the best practice
1739 standards of subsection (4) using the same degree of care and
1740 diligence as a person of ordinary care and prudence would

597-01343-21

202154c1

1741 exercise in the management of his or her own business.

1742 (3) BAD FAITH FAILURE TO SETTLE.—“Bad faith failure to
1743 settle” means an insurer’s failure to settle a claim when, under
1744 all the circumstances, it could and should have done so, had it
1745 acted fairly and honestly toward its insured and with due regard
1746 for the insured’s interests.

1747 (4) BEST PRACTICE STANDARDS.—Upon the earlier of receiving
1748 notice of a claim or, under subsection (6), a demand for
1749 settlement, an insurer must do all of the following:

1750 (a) Assign a duly licensed and appointed insurance adjuster
1751 to investigate the claim and resolve any questions concerning
1752 the existence or extent of the insured’s coverage.

1753 (b) Evaluate every claim fairly, honestly, and with due
1754 regard for the interests of its insured, consider the full
1755 extent of the claimant’s recoverable damages, and consider the
1756 information in a reasonable and prudent manner.

1757 (c) Request from the insured or claimant additional
1758 relevant information deemed necessary.

1759 (d) Conduct all verbal and written communications with the
1760 utmost honesty and complete candor.

1761 (e) Make reasonable efforts to explain to nonattorneys
1762 matters requiring expertise beyond the level normally expected
1763 of a layperson with no training in insurance or claims-handling
1764 issues.

1765 (f) Save all written communications and note and save all
1766 verbal communications in a reasonable manner.

1767 (g) Provide the insured, upon request, with all
1768 nonprivileged communications related to the insurer’s handling
1769 of the claim.

597-01343-21

202154c1

1770 (h) Provide, at the insurer's expense, reasonable
1771 accommodations necessary to communicate effectively with an
1772 insured covered under the Americans with Disabilities Act.

1773 (i) In handling third-party claims, communicate to an
1774 insured:

1775 1. The identity of any other person or entity the insurer
1776 knows may be liable;

1777 2. The insurer's activity on and evaluation of the claim;

1778 3. The likelihood and possible extent of an excess
1779 judgment;

1780 4. Steps the insured can take to avoid exposure to an
1781 excess judgment;

1782 5. Requests for examinations under oath and an explanation
1783 of the consequences of an insured's failure to submit to an
1784 examination under oath; and

1785 6. Any demands for settlement under subsection (6) or
1786 settlement offers.

1787 (j) When a loss involves multiple claimants and the
1788 claimants are unwilling to settle cumulatively within the policy
1789 limits and release the insured from further liability, in
1790 addition to fulfilling the requirements of paragraphs (a)-(i),
1791 attempt to minimize the risk of excess judgments against the
1792 insured and settle as many claims as possible within the policy
1793 limits in exchange for a release of the insured from further
1794 liability.

1795 (5) CONDITIONS PRECEDENT.—It is a condition precedent to
1796 filing a third-party action for bad faith failure to settle
1797 against an insurer that the claimant must:

1798 (a) Serve a demand for settlement, as provided in

597-01343-21

202154c1

subsection (6), within the insurer's limits of liability in
exchange for a release of further liability against the insured;
and

(b) Obtain a final judgment in excess of the policy limits
against the insured.

(6) DEMAND FOR SETTLEMENT.—A demand for settlement must do
all of the following:

(a) Identify the:

1. Date and location of loss;

2. Name, address, and date of birth of the claimant;

3. Name of each insured to whom the demand for settlement
is directed; and

4. Legal and factual basis of the claim.

(b) Provide a reasonably detailed description of the
claimant's:

1. Known injuries caused or aggravated by the incident on
which the claim is based;

2. Medical treatment causally related to the incident on
which the claim is based; and

3. Type and amount of known damages incurred and, if any,
the damages the claimant reasonably anticipates incurring in the
future.

(c) State the amount of the demand for settlement.

(d) State whether the demand for settlement is conditioned
on the completion of an examination under oath, as authorized by
subsection (8).

(e) Provide a physical address, an e-mail address, and a
facsimile number for further communications, including, but not
limited to, responses to the demand for settlement.

597-01343-21

202154c1

1828 (f) Release the insured from any further liability upon the
1829 insurer's acceptance of a demand for settlement which is not
1830 withdrawn pursuant to paragraph (8) (e) or paragraph (8) (g), or
1831 accepted pursuant to paragraph (8) (f).

1832 (g) Be served upon the insurer by certified mail at the
1833 address designated by the insurer with the Department of
1834 Financial Services under s. 624.422(2).

1835 (7) LIMITATIONS ON CONDITIONS OF ACCEPTANCE OF A DEMAND.—A
1836 claimant may not place any conditions on acceptance of a demand
1837 for settlement other than electing the right to examine the
1838 insured under oath regarding any of the following:

1839 (a) Whether the insured has the ability to satisfy a claim
1840 for damages in excess of the insurer's limits of liability.

1841 (b) Whether any other person or entity may have actual or
1842 potential direct or vicarious liability for the insured's
1843 negligence.

1844 (c) Whether any other insurance exists which may cover some
1845 or all of the damages sustained by the claimant.

1846 (8) EXAMINATION UNDER OATH.—After serving a demand for
1847 settlement, a claimant may examine the insured under oath, on
1848 one occasion for a period of time not to exceed 2 hours,
1849 regarding only the issues in subsection (7).

1850 (a) The claimant may request that the insured bring to the
1851 examination relevant documents in the insured's possession,
1852 custody, or control, including, but not limited to, credit
1853 reports, insurance policies, bank statements, tax returns,
1854 deeds, titles, and other proof of assets or liabilities.

1855 (b) The claimant may not examine the insured regarding
1856 liability.

597-01343-21

202154c1

1857 (c) The claimant, the insurer, and the insured shall
1858 cooperate in scheduling the examination under oath. The insurer
1859 shall notify the insured of the date, time, and location of the
1860 examination under oath.

1861 (d) The examination under oath must occur within 30 days
1862 after the insurer's acceptance of the settlement demand.

1863 (e) The claimant may withdraw the demand for settlement if
1864 the insured refuses to submit to an examination under oath.

1865 (f) If the insured refuses to submit to an examination
1866 under oath, the insurer may accept the demand for settlement
1867 without requiring a release of the insured. An insurer that
1868 accepts the demand for settlement pursuant to this paragraph
1869 does not have any further duty to defend the insured and may not
1870 be held liable for damages to the insured if the claimant
1871 thereafter obtains an excess judgment against the insured.

1872 (g) Within 7 days after the examination under oath, the
1873 claimant may withdraw the demand for settlement.

1874 (9) SAFE HARBOR.—In any third-party action for bad faith
1875 failure to settle, an insurer may not be held liable if it
1876 tenders its policy limits within 30 days of receiving a demand
1877 for settlement under subsection (6).

1878 (10) RELEASE.—An insurer that accepts a demand for
1879 settlement under subsection (6) shall be entitled to a release
1880 of its insured, except as provided in paragraph (8) (f).

1881 (11) BURDEN OF PROOF.—In any third-party action for bad
1882 faith failure to settle, the claimant must prove by the
1883 preponderance of the evidence that the insurer violated its duty
1884 of good faith under subsection (2) and that the insurer in bad
1885 faith failed to settle, as defined in subsection (3).

597-01343-21

202154c1

1886 (a) In determining whether an insurer violated its duty of
1887 good faith under subsection (2) and in bad faith failed to
1888 settle, as defined in subsection (3), the trier of fact shall
1889 consider all of the following:

1890 1. Whether the insurer complied with the best practice
1891 standards of subsection (4) using the same degree of care and
1892 diligence as a person of ordinary care and prudence would
1893 exercise in the management of his or her own business.

1894 2. Whether the insurer failed to settle a claim when, under
1895 all the circumstances, it could and should have done so, had it
1896 acted fairly and honestly toward its insured and with due regard
1897 for the insured's interests.

1898 3. Whether the claimant or insured failed to provide
1899 relevant information to the insurer on a timely basis.

1900 4. Whether the claimant or insured misrepresented material
1901 facts to the insurer or made material omissions of fact to the
1902 insurer.

1903 5. Whether the insured denied liability or requested that
1904 the case be defended after the insurer fully advised the insured
1905 as to the facts and risks.

1906 6. Whether the insurer timely informed the insured of a
1907 demand to settle within the limits of coverage, the right to
1908 retain personal counsel, and the risk of litigation.

1909 7. The insurer's willingness to negotiate with the claimant
1910 in anticipation of settlement.

1911 8. The amount of damages the claimant incurred or was
1912 likely to incur in the future under the facts known or
1913 reasonably available at the time of the insurer's response.

1914 9. If applicable, whether there were multiple third-party

597-01343-21

202154c1

claimants seeking, in the aggregate, compensation in excess of the policy limits from the insured; and, if so, whether the insurer breached its duty to attempt to minimize the magnitude of possible excess judgments against the insured and to attempt to settle as many claims as possible within the policy limits in exchange for a release of the insured from further liability.

10. Additional factors that the court determines to be relevant.

(b) The trier of fact, in determining whether an insurer in bad faith failed to settle, must be informed that an excess judgment occurred but may not be informed of the amount of the excess judgment.

(12) DAMAGES.—An insurer that is found to have violated its duty of good faith under subsection (2) and in bad faith failed to settle, as defined in subsection (3), is liable for the amount of any excess judgment. No other damages, including but not limited to punitive damages, may be awarded in a third-party bad faith failure to settle action.

(13) ENFORCEMENT.—If a judgment creditor has served a demand for settlement under subsection (6), and the judgment exceeds the insured's limits of liability, the judgment creditor must be subrogated to the rights of the insured against the insurer for common law bad faith.

(14) LIMITATION ON MULTIPLE REMEDIES.—A person is not entitled to a judgment under multiple bad faith remedies, whether under statute or common law.

Section 35. Paragraphs (i) and (o) of subsection (1) of section 626.9541, Florida Statutes, are amended to read:

626.9541 Unfair methods of competition and unfair or

597-01343-21

202154c1

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:

(i) *Unfair claim settlement practices.*—

1. Attempting to settle claims on the basis of an application, when serving as a binder or intended to become a part of the policy, or any other material document which was altered without notice to, or knowledge or consent of, the insured;

2. Making a material misrepresentation ~~made~~ to an insured or any other person having an interest in the proceeds payable under such contract or policy, for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract or policy on less favorable terms than those provided in, and contemplated by, such contract or policy; ~~or~~

3. Committing or performing with such frequency as to indicate a general business practice any of the following:

a. Failing to adopt and implement standards for the proper investigation of claims;

b. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

c. Failing to acknowledge and act promptly upon communications with respect to claims;

d. Denying claims without conducting reasonable investigations based upon available information;

e. Failing to affirm or deny full or partial coverage of claims, and, as to partial coverage, the dollar amount or extent of coverage, or failing to provide a written statement that the

597-01343-21

202154c1

claim is being investigated, upon the written request of the insured within 30 days after proof-of-loss statements have been completed;

f. Failing to promptly provide a reasonable explanation in writing to the insured of the basis in the insurance policy, in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement;

g. Failing to promptly notify the insured of any additional information necessary for the processing of a claim; or

h. Failing to clearly explain the nature of the requested information and the reasons why such information is necessary.

~~i. Failing to pay personal injury protection insurance claims within the time periods required by s. 627.736(4)(b). The office may order the insurer to pay restitution to a policyholder, medical provider, or other claimant, including interest at a rate consistent with the amount set forth in s. 55.03(1), for the time period within which an insurer fails to pay claims as required by law. Restitution is in addition to any other penalties allowed by law, including, but not limited to, the suspension of the insurer's certificate of authority.~~

4. Failing to pay undisputed amounts of partial or full benefits owed under first-party property insurance policies within 90 days after an insurer receives notice of a residential property insurance claim, determines the amounts of partial or full benefits, and agrees to coverage, unless payment of the undisputed benefits is prevented by an act of God, prevented by the impossibility of performance, or due to actions by the insured or claimant that constitute fraud, lack of cooperation, or intentional misrepresentation regarding the claim for which

597-01343-21

202154c1

benefits are owed.

(o) *Illegal dealings in premiums; excess or reduced charges for insurance.*—

1. Knowingly collecting any sum as a premium or charge for insurance, which is not then provided, or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as permitted by this code.

2. Knowingly collecting as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, in accordance with the applicable classifications and rates as filed with and approved by the office, and as specified in the policy; or, in cases when classifications, premiums, or rates are not required by this code to be so filed and approved, premiums and charges collected from a Florida resident in excess of or less than those specified in the policy and as fixed by the insurer.

Notwithstanding any other provision of law, this provision shall not be deemed to prohibit the charging and collection, by surplus lines agents licensed under part VIII of this chapter, of the amount of applicable state and federal taxes, or fees as authorized by s. 626.916(4), in addition to the premium required by the insurer or the charging and collection, by licensed agents, of the exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card, as authorized by subparagraph (q)3., in addition to the premium required by the insurer. This subparagraph shall not be construed to prohibit collection of a premium for a universal life or a variable or indeterminate value insurance

597-01343-21

202154c1

policy made in accordance with the terms of the contract.

3.a. Imposing or requesting an additional premium for bodily injury liability coverage, property damage liability coverage ~~a policy of motor vehicle liability, personal injury protection,~~ medical payments coverage payment, or collision coverage in a motor vehicle liability insurance policy ~~insurance or any combination thereof~~ or refusing to renew the policy solely because the insured was involved in a motor vehicle accident unless the insurer's file contains information from which the insurer in good faith determines that the insured was substantially at fault in the accident.

b. An insurer which imposes and collects such a surcharge or which refuses to renew such policy shall, in conjunction with the notice of premium due or notice of nonrenewal, notify the named insured that he or she is entitled to reimbursement of such amount or renewal of the policy under the conditions listed below and will subsequently reimburse him or her or renew the policy, if the named insured demonstrates that the operator involved in the accident was:

(I) Lawfully parked;

(II) Reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such person;

(III) Struck in the rear by another vehicle headed in the same direction and was not convicted of a moving traffic violation in connection with the accident;

(IV) Hit by a "hit-and-run" driver, if the accident was reported to the proper authorities within 24 hours after discovering the accident;

(V) Not convicted of a moving traffic violation in

597-01343-21

202154c1

connection with the accident, but the operator of the other automobile involved in such accident was convicted of a moving traffic violation;

(VI) Finally adjudicated not to be liable by a court of competent jurisdiction;

(VII) In receipt of a traffic citation which was dismissed or nolle prossed; or

(VIII) Not at fault as evidenced by a written statement from the insured establishing facts demonstrating lack of fault which are not rebutted by information in the insurer's file from which the insurer in good faith determines that the insured was substantially at fault.

c. In addition to the other provisions of this subparagraph, an insurer may not fail to renew a policy if the insured has had only one accident in which he or she was at fault within the current 3-year period. However, an insurer may nonrenew a policy for reasons other than accidents in accordance with s. 627.728. This subparagraph does not prohibit nonrenewal of a policy under which the insured has had three or more accidents, regardless of fault, during the most recent 3-year period.

4. Imposing or requesting an additional premium for, or refusing to renew, a policy for motor vehicle insurance solely because the insured committed a noncriminal traffic infraction as described in s. 318.14 unless the infraction is:

a. A second infraction committed within an 18-month period, or a third or subsequent infraction committed within a 36-month period.

b. A violation of s. 316.183, when such violation is a

597-01343-21

202154c1

2089 result of exceeding the lawful speed limit by more than 15 miles
2090 per hour.

2091 5. Upon the request of the insured, the insurer and
2092 licensed agent shall supply to the insured the complete proof of
2093 fault or other criteria which justifies the additional charge or
2094 cancellation.

2095 6. No insurer shall impose or request an additional premium
2096 for motor vehicle insurance, cancel or refuse to issue a policy,
2097 or refuse to renew a policy because the insured or the applicant
2098 is a handicapped or physically disabled person, so long as such
2099 handicap or physical disability does not substantially impair
2100 such person's mechanically assisted driving ability.

2101 7. No insurer may cancel or otherwise terminate any
2102 insurance contract or coverage, or require execution of a
2103 consent to rate endorsement, during the stated policy term for
2104 the purpose of offering to issue, or issuing, a similar or
2105 identical contract or coverage to the same insured with the same
2106 exposure at a higher premium rate or continuing an existing
2107 contract or coverage with the same exposure at an increased
2108 premium.

2109 8. No insurer may issue a nonrenewal notice on any
2110 insurance contract or coverage, or require execution of a
2111 consent to rate endorsement, for the purpose of offering to
2112 issue, or issuing, a similar or identical contract or coverage
2113 to the same insured at a higher premium rate or continuing an
2114 existing contract or coverage at an increased premium without
2115 meeting any applicable notice requirements.

2116 9. No insurer shall, with respect to premiums charged for
2117 motor vehicle insurance, unfairly discriminate solely on the

597-01343-21

202154c1

basis of age, sex, marital status, or scholastic achievement.

10. Imposing or requesting an additional premium for motor vehicle comprehensive or uninsured motorist coverage solely because the insured was involved in a motor vehicle accident or was convicted of a moving traffic violation.

11. No insurer shall cancel or issue a nonrenewal notice on any insurance policy or contract without complying with any applicable cancellation or nonrenewal provision required under the Florida Insurance Code.

12. No insurer shall impose or request an additional premium, cancel a policy, or issue a nonrenewal notice on any insurance policy or contract because of any traffic infraction when adjudication has been withheld and no points have been assessed pursuant to s. 318.14(9) and (10). However, this subparagraph does not apply to traffic infractions involving accidents in which the insurer has incurred a loss due to the fault of the insured.

Section 36. Paragraph (a) of subsection (1) of section 626.989, Florida Statutes, is amended to read:

626.989 Investigation by department or Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.—

(1) For the purposes of this section:

(a) A person commits a "fraudulent insurance act" if the person:

1. Knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, self-insurer, self-insurance

597-01343-21

202154c1

fund, servicing corporation, purported insurer, broker, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a claim for payment or other benefit pursuant to any insurance policy, which the person knows to contain materially false information concerning any fact material thereto or if the person conceals, for the purpose of misleading another, information concerning any fact material thereto.

2. Knowingly submits:

a. A false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of chapter 400 with an intent to use the license, exemption from licensure, or demonstration of compliance to provide services or seek reimbursement under a motor vehicle liability insurance policy's medical payments coverage ~~the Florida Motor Vehicle No-Fault Law~~.

b. A claim for payment or other benefit under medical payments coverage, ~~pursuant to a personal injury protection insurance policy under the Florida Motor Vehicle No-Fault Law~~ if the person knows that the payee knowingly submitted a false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of chapter 400.

Section 37. Subsection (1) of section 627.06501, Florida Statutes, is amended to read:

597-01343-21

202154c1

2176 627.06501 Insurance discounts for certain persons
2177 completing driver improvement course.—

2178 (1) Any rate, rating schedule, or rating manual for the
2179 liability, medical payments ~~personal injury protection~~, and
2180 collision coverages of a motor vehicle insurance policy filed
2181 with the office may provide for an appropriate reduction in
2182 premium charges as to such coverages if ~~when~~ the principal
2183 operator on the covered vehicle has successfully completed a
2184 driver improvement course approved and certified by the
2185 Department of Highway Safety and Motor Vehicles which is
2186 effective in reducing crash or violation rates, or both, as
2187 determined pursuant to s. 318.1451(5). Any discount, not to
2188 exceed 10 percent, used by an insurer is presumed to be
2189 appropriate unless credible data demonstrates otherwise.

2190 Section 38. Subsection (15) is added to section 627.0651,
2191 Florida Statutes, to read:

2192 627.0651 Making and use of rates for motor vehicle
2193 insurance.—

2194 (15) Initial rate filings for motor vehicle liability
2195 policies which are submitted to the office on or after January
2196 1, 2022, must reflect the financial responsibility requirements
2197 in s. 324.022 then in effect and may be approved only through
2198 the file and use process under s. 627.0651(1) (a).

2199 Section 39. Subsection (1) of section 627.0652, Florida
2200 Statutes, is amended to read:

2201 627.0652 Insurance discounts for certain persons completing
2202 safety course.—

2203 (1) Any rates, rating schedules, or rating manuals for the
2204 liability, medical payments ~~personal injury protection~~, and

597-01343-21

202154c1

collision coverages of a motor vehicle insurance policy filed with the office must ~~shall~~ provide for an appropriate reduction in premium charges as to such coverages if ~~when~~ the principal operator on the covered vehicle is an insured 55 years of age or older who has successfully completed a motor vehicle accident prevention course approved by the Department of Highway Safety and Motor Vehicles. Any discount used by an insurer is presumed to be appropriate unless credible data demonstrates otherwise.

Section 40. Subsections (1), (3), and (6) of section 627.0653, Florida Statutes, are amended to read:

627.0653 Insurance discounts for specified motor vehicle equipment.—

(1) Any rates, rating schedules, or rating manuals for the liability, medical payments ~~personal injury protection~~, and collision coverages of a motor vehicle insurance policy filed with the office must ~~shall~~ provide a premium discount if the insured vehicle is equipped with factory-installed, four-wheel antilock brakes.

(3) Any rates, rating schedules, or rating manuals for ~~personal injury protection coverage and~~ medical payments coverage, ~~if offered~~, of a motor vehicle insurance policy filed with the office must ~~shall~~ provide a premium discount if the insured vehicle is equipped with one or more air bags that ~~which~~ are factory installed.

(6) The Office of Insurance Regulation may approve a premium discount to any rates, rating schedules, or rating manuals for the liability, medical payments ~~personal injury protection~~, and collision coverages of a motor vehicle insurance policy filed with the office if the insured vehicle is equipped

597-01343-21

202154c1

with an automated driving system or electronic vehicle collision avoidance technology that is factory installed or a retrofitted system and that complies with National Highway Traffic Safety Administration standards.

Section 41. Section 627.4132, Florida Statutes, is amended to read:

627.4132 Stacking of coverages prohibited.—If an insured or named insured is protected by any type of motor vehicle insurance policy for bodily injury and property damage liability, ~~personal injury protection, or other coverage~~, the policy must ~~shall~~ provide that the insured or named insured is protected only to the extent of the coverage she or he has on the vehicle involved in the accident. However, if none of the insured's or named insured's vehicles are ~~is~~ involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with applicable coverage. Coverage on any other vehicles may ~~shall~~ not be added to or stacked upon that coverage. This section does not ~~apply~~:

(1) Apply to uninsured motorist coverage that ~~which~~ is separately governed by s. 627.727.

(2) ~~To~~ Reduce the coverage available by reason of insurance policies insuring different named insureds.

Section 42. Subsection (1) of section 627.4137, Florida Statutes, is amended to read:

627.4137 Disclosure of certain information required.—

(1) Each insurer which does or may provide liability insurance coverage to pay all or a portion of any claim which might be made shall provide, within 30 days of the written request of the claimant or the claimant's attorney, a statement,

597-01343-21

202154c1

under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of the liability coverage.

(d) A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.

(e) A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request. If an insurer fails to timely comply with this section, the claimant may file an action in a court of competent jurisdiction to enforce this section. If the court determines that the insurer violated this section, the claimant is entitled to an award of reasonable attorney fees and costs to be paid by the insurer.

Section 43. Section 627.7263, Florida Statutes, is amended to read:

627.7263 Rental and leasing driver's insurance to be primary; exception.—

597-01343-21

202154c1

(1) The valid and collectible liability insurance and
medical payments coverage ~~or personal injury protection~~
~~insurance providing coverage~~ for the lessor of a motor vehicle
for rent or lease is primary unless otherwise stated in at least
10-point type on the face of the rental or lease agreement. Such
insurance is primary for the limits of liability ~~and personal~~
~~injury protection~~ coverage as required by s. 324.021(7) and the
medical payments coverage limit specified under s. 627.7265 ~~ss.~~
~~324.021(7) and 627.736.~~

(2) If the lessee's coverage is to be primary, the rental
or lease agreement must contain the following language, in at
least 10-point type:

"The valid and collectible liability insurance and
medical payments coverage ~~personal injury protection~~
~~insurance~~ of an ~~any~~ authorized rental or leasing
driver is primary for the limits of liability ~~and~~
~~personal injury protection~~ coverage required under
section 324.021(7), Florida Statutes, and the medical
payments coverage limit specified under section
627.7265 ~~by ss. 324.021(7) and 627.736,~~ Florida
Statutes."

Section 44. Section 627.7265, Florida Statutes, is created
to read:

627.7265 Motor vehicle insurance; medical payments
coverage.—

(1) Medical payments coverage must protect the named
insured, resident relatives, persons operating the insured motor
vehicle, passengers in the insured motor vehicle, and persons

597-01343-21

202154c1

2321 who are struck by the insured motor vehicle and suffer bodily
2322 injury while not an occupant of a self-propelled motor vehicle
2323 at a limit of at least \$5,000 for medical expense incurred due
2324 to bodily injury, sickness, or disease arising out of the
2325 ownership, maintenance, or use of a motor vehicle. Medical
2326 payments coverage must pay for reasonable expenses for necessary
2327 medical, diagnostic, and rehabilitative services that are
2328 lawfully provided, supervised, ordered, or prescribed by a
2329 physician licensed under chapter 458 or chapter 459, by a
2330 dentist licensed under chapter 466, or by a chiropractic
2331 physician licensed under chapter 460 or that are provided in a
2332 hospital or in a facility that owns, or is wholly owned by, a
2333 hospital. The coverage must provide an additional death benefit
2334 of at least \$5,000.

2335 (a) Before issuing a motor vehicle liability insurance
2336 policy that is furnished as proof of financial responsibility
2337 under s. 324.031, the insurer must offer medical payments
2338 coverage at limits of \$5,000 and \$10,000. The insurer may also
2339 offer medical payments coverage at any limit greater than
2340 \$5,000.

2341 (b) The medical payments coverage must be offered with an
2342 option with no deductible. The insurer may also offer medical
2343 payments coverage with a deductible not to exceed \$500.

2344 (c) This section may not be construed to limit any other
2345 coverage made available by an insurer.

2346 (2) Upon receiving notice of an accident that is
2347 potentially covered by medical payments coverage benefits, the
2348 insurer must reserve \$5,000 of medical payments coverage
2349 benefits for payment to physicians licensed under chapter 458 or

597-01343-21

202154c1

chapter 459 or dentists licensed under chapter 466 who provide emergency services and care, as defined in s. 395.002, or who provide hospital inpatient care. The amount required to be held in reserve may be used only to pay claims from such physicians or dentists until 30 days after the date the insurer receives notice of the accident. After the 30-day period, any amount of the reserve for which the insurer has not received notice of such claims may be used by the insurer to pay other claims. This subsection does not require an insurer to establish a claim reserve for insurance accounting purposes.

(3) An insurer providing medical payments coverage benefits may not:

(a) Seek a lien on any recovery in tort by judgment, settlement, or otherwise for medical payments coverage benefits, regardless of whether suit has been filed or settlement has been reached without suit; or

(b) Bring a cause of action against a person to whom or for whom medical payments coverage benefits were paid, except when medical payments coverage benefits were paid by reason of fraud committed by that person.

(4) An insurer providing medical payments coverage may include provisions in its policy allowing for subrogation for medical payments coverage benefits paid if the expenses giving rise to the payments were caused by the wrongful act or omission of another who is not also an insured under the policy paying the medical payments coverage benefits. However, this subrogation right is inferior to the rights of the injured insured and is available only after all the insured's damages are recovered and the insured is made whole. An insured who

597-01343-21

202154c1

obtains a recovery from a third party of the full amount of the damages sustained and delivers a release or satisfaction that impairs a medical payments insurer's subrogation right is liable to the insurer for repayment of medical payments coverage benefits less any expenses of acquiring the recovery, including a prorated share of attorney fees and costs, and shall hold that net recovery in trust to be delivered to the medical payments insurer. The insurer may not include any provision in its policy allowing for subrogation for any death benefit paid.

Section 45. Subsections (1) and (7) of section 627.727, Florida Statutes, are amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.—

(1) A ~~No~~ motor vehicle liability insurance policy that ~~which~~ provides bodily injury liability coverage may not ~~shall~~ be delivered or issued for delivery in this state with respect to any specifically insured or identified motor vehicle registered or principally garaged in this state, unless uninsured motor vehicle coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. However, the coverage required under this section is not applicable if ~~when~~, or to the extent that, an insured named in the policy makes a written rejection of the coverage on behalf of all insureds under the policy. If ~~When~~ a motor vehicle is leased for ~~a period~~ of 1 year or longer and the lessor of such vehicle, by the terms of the lease contract, provides liability coverage on the leased

597-01343-21

202154c1

2408 vehicle, the lessee of such vehicle has ~~shall have~~ the sole
2409 privilege to reject uninsured motorist coverage or to select
2410 lower limits than the bodily injury liability limits, regardless
2411 of whether the lessor is qualified as a self-insurer pursuant to
2412 s. 324.171. Unless an insured, or a lessee having the privilege
2413 of rejecting uninsured motorist coverage, requests such coverage
2414 or requests higher uninsured motorist limits in writing, the
2415 coverage or such higher uninsured motorist limits need not be
2416 provided in or supplemental to any other policy that ~~which~~
2417 renews, extends, changes, supersedes, or replaces an existing
2418 policy with the same bodily injury liability limits when an
2419 insured or lessee had rejected the coverage. When an insured or
2420 lessee has initially selected limits of uninsured motorist
2421 coverage lower than her or his bodily injury liability limits,
2422 higher limits of uninsured motorist coverage need not be
2423 provided in or supplemental to any other policy that ~~which~~
2424 renews, extends, changes, supersedes, or replaces an existing
2425 policy with the same bodily injury liability limits unless an
2426 insured requests higher uninsured motorist coverage in writing.
2427 The rejection or selection of lower limits must ~~shall~~ be made on
2428 a form approved by the office. The form must ~~shall~~ fully advise
2429 the applicant of the nature of the coverage and must ~~shall~~ state
2430 that the coverage is equal to bodily injury liability limits
2431 unless lower limits are requested or the coverage is rejected.
2432 The heading of the form must ~~shall~~ be in 12-point bold type and
2433 must ~~shall~~ state: "You are electing not to purchase certain
2434 valuable coverage that ~~which~~ protects you and your family or you
2435 are purchasing uninsured motorist limits less than your bodily
2436 injury liability limits when you sign this form. Please read

597-01343-21

202154c1

carefully." If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of coverage or election of lower limits on behalf of all insureds. The insurer shall notify the named insured at least annually of her or his options as to the coverage required by this section. Such notice must ~~shall~~ be part of, and attached to, the notice of premium, must ~~shall~~ provide for a means to allow the insured to request such coverage, and must ~~shall~~ be given in a manner approved by the office. Receipt of this notice does not constitute an affirmative waiver of the insured's right to uninsured motorist coverage ~~if where~~ the insured has not signed a selection or rejection form. The coverage described under this section must ~~shall~~ be over and above, but may ~~shall~~ not duplicate, the benefits available to an insured under any workers' compensation law, ~~personal injury protection benefits,~~ disability benefits law, or similar law; under any automobile medical payments ~~expense~~ coverage; under any motor vehicle liability insurance coverage; or from the owner or operator of the uninsured motor vehicle or any other person or organization jointly or severally liable together with such owner or operator for the accident, ~~+~~ and such coverage must ~~shall~~ cover the difference, if any, between the sum of such benefits and the damages sustained, up to the maximum amount of such coverage provided under this section. The amount of coverage available under this section may ~~shall~~ not be reduced by a setoff against any coverage, including liability insurance. Such coverage does ~~shall~~ not inure directly or indirectly to the benefit of any workers' compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any

597-01343-21

202154c1

workers' compensation or disability benefits law or similar law.

(7) The legal liability of an uninsured motorist coverage insurer includes ~~does not include~~ damages in tort for pain, suffering, disability or physical impairment, disfigurement, mental anguish, and inconvenience, and the loss of capacity for the enjoyment of life experienced in the past and to be experienced in the future ~~unless the injury or disease is described in one or more of paragraphs (a)-(d) of s. 627.737(2).~~

Section 46. Subsection (1) and paragraphs (a) and (b) of subsection (2) of section 627.7275, Florida Statutes, are amended to read:

627.7275 Motor vehicle liability.—

(1) A motor vehicle insurance policy ~~providing personal injury protection as set forth in s. 627.736~~ may not be delivered or issued for delivery in this state for a ~~with respect to any~~ specifically insured or identified motor vehicle registered or principally garaged in this state must provide bodily injury liability coverage and ~~unless the policy also provides coverage for~~ property damage liability coverage as required under ~~by~~ s. 324.022.

(2) (a) Insurers writing motor vehicle insurance in this state shall make available, subject to the insurers' usual underwriting restrictions:

1. Coverage under policies as described in subsection (1) to an applicant for private passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state if the driving privileges were revoked or suspended pursuant to s. 316.646 or s. 324.0221 due to the failure of the applicant to maintain

597-01343-21

202154c1

required security.

2. Coverage under policies as described in subsection (1), which includes bodily injury ~~also provides~~ liability coverage and property damage liability coverage, ~~for bodily injury, death, and property damage arising out of the ownership, maintenance, or use of the motor vehicle~~ in an amount not less than the minimum limits required under ~~described in~~ s. 324.021(7) or s. 324.023 and which conforms to the requirements of s. 324.151, to an applicant for private passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state after such privileges were revoked or suspended under s. 316.193 or s. 322.26(2) for driving under the influence.

(b) The policies described in paragraph (a) must ~~shall~~ be issued for at least 6 months and, as to the minimum coverages required under this section, may not be canceled by the insured for any reason or by the insurer after 60 days, during which period the insurer is completing the underwriting of the policy. After the insurer has completed underwriting the policy, the insurer shall notify the Department of Highway Safety and Motor Vehicles that the policy is in full force and effect and is not cancelable for the remainder of the policy period. A premium must ~~shall~~ be collected and the coverage is in effect for the 60-day period during which the insurer is completing the underwriting of the policy, whether or not the person's driver license, motor vehicle tag, and motor vehicle registration are in effect. Once the noncancelable provisions of the policy become effective, the bodily injury liability and property damage liability coverages ~~for bodily injury, property damage,~~

597-01343-21

202154c1

and ~~personal injury protection~~ may not be reduced below the minimum limits required under s. 324.021 or s. 324.023 during the policy period.

Section 47. Effective upon this act becoming a law, section 627.7278, Florida Statutes, is created to read:

627.7278 Applicability and construction; notice to policyholders.—

(1) As used in this section, the term "minimum security requirements" means security that enables a person to respond in damages for liability on account of crashes arising out of the ownership, maintenance, or use of a motor vehicle, in the amounts required by s. 324.021(7).

(2) Effective January 1, 2022:

(a) Motor vehicle insurance policies issued or renewed on or after that date may not include personal injury protection.

(b) All persons subject to s. 324.022, s. 324.032, s. 627.7415, or s. 627.742 must maintain at least minimum security requirements.

(c) Any new or renewal motor vehicle insurance policy delivered or issued for delivery in this state must provide coverage that complies with minimum security requirements.

(d) An existing motor vehicle insurance policy issued before that date which provides personal injury protection and property damage liability coverage that meets the requirements of s. 324.022 on December 31, 2021, but which does not meet minimum security requirements on or after January 1, 2022, is deemed to meet the security requirements of s. 324.022 until such policy is renewed, nonrenewed, or canceled on or after January 1, 2022. Sections 627.730-627.7405, 400.9905, 400.991,

597-01343-21

202154c1

456.057, 456.072, 627.7263, 627.727, 627.748, 627.9541(1)(i),
and 817.234, Florida Statutes 2020, remain in full force and
effect for motor vehicle accidents covered under a policy issued
under the Florida Motor Vehicle No-Fault Law before January 1,
2022, until the policy is renewed, nonrenewed, or canceled.

(3) Each insurer shall allow each insured who has a new or
renewal policy providing personal injury protection which
becomes effective before January 1, 2022, and whose policy does
not meet minimum security requirements on or after January 1,
2022, to change coverages so as to eliminate personal injury
protection and obtain coverage providing minimum security
requirements, which shall be effective on or after January 1,
2022. The insurer is not required to provide coverage complying
with minimum security requirements in such policies if the
insured does not pay the required premium, if any, by January 1,
2022, or such later date as the insurer may allow. The insurer
also shall offer each insured medical payments coverage pursuant
to s. 627.7265. Any reduction in the premium must be refunded by
the insurer. The insurer may not impose on the insured an
additional fee or charge that applies solely to a change in
coverage; however, the insurer may charge an additional required
premium that is actuarially indicated.

(4) By September 1, 2021, each motor vehicle insurer shall
provide notice of this section to each motor vehicle
policyholder who is subject to this section. The notice is
subject to approval by the office and must clearly inform the
policyholder that:

(a) The Florida Motor Vehicle No-Fault Law is repealed
effective January 1, 2022, and that on or after that date, the

597-01343-21

202154c1

insured is no longer required to maintain personal injury protection insurance coverage, that personal injury protection coverage is no longer available for purchase in this state, and that all new or renewal policies issued on or after that date will not contain that coverage.

(b) Effective January 1, 2022, a person subject to the financial responsibility requirements of s. 324.022 must maintain minimum security requirements that enable the person to respond to damages for liability on account of accidents arising out of the use of a motor vehicle in the following amounts:

1. Twenty-five thousand dollars for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of \$50,000 for bodily injury to, or the death of, two or more persons in any one crash; and

2. Ten thousand dollars for damage to, or destruction of, the property of others in any one crash.

(c) Bodily injury liability coverage protects the insured, up to the coverage limits, against loss if the insured is legally responsible for the death of or bodily injury to others in a motor vehicle accident.

(d) Effective January 1, 2022, each policyholder of motor vehicle liability insurance purchased as proof of financial responsibility must be offered medical payments coverage benefits that comply with s. 627.7265. The insurer must offer medical payments coverage at limits of \$5,000 and \$10,000 without a deductible. The insurer may also offer medical payments coverage at other limits greater than \$5,000, and may offer coverage with a deductible of up to \$500. Medical payments

597-01343-21

202154c1

coverage pays covered medical expenses, up to the limits of such coverage, for injuries sustained in a motor vehicle crash by the named insured, resident relatives, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons who are struck by the insured motor vehicle and suffer bodily injury while not an occupant of a self-propelled motor vehicle as provided in s. 627.7265. Medical payments coverage pays for reasonable expenses for necessary medical, diagnostic, and rehabilitative services that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, by a dentist licensed under chapter 466, or by a chiropractic physician licensed under chapter 460 or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Medical payments coverage also provides a death benefit of at least \$5,000.

(e) The policyholder may obtain uninsured and underinsured motorist coverage, which provides benefits, up to the limits of such coverage, to a policyholder or other insured entitled to recover damages for bodily injury, sickness, disease, or death resulting from a motor vehicle accident with an uninsured or underinsured owner or operator of a motor vehicle.

(f) If the policyholder's new or renewal motor vehicle insurance policy is effective before January 1, 2022, and contains personal injury protection and property damage liability coverage as required by state law before January 1, 2022, but does not meet minimum security requirements on or after January 1, 2022, the policy is deemed to meet minimum security requirements until it is renewed, nonrenewed, or canceled on or after January 1, 2022.

597-01343-21

202154c1

(g) A policyholder whose new or renewal policy becomes effective before January 1, 2022, but does not meet minimum security requirements on or after January 1, 2022, may change coverages under the policy so as to eliminate personal injury protection and to obtain coverage providing minimum security requirements, including bodily injury liability coverage, which are effective on or after January 1, 2022.

(h) If the policyholder has any questions, he or she should contact the person named at the telephone number provided in the notice.

Section 48. Paragraph (a) of subsection (1) of section 627.728, Florida Statutes, is amended to read:

627.728 Cancellations; nonrenewals.—

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

(a) "Policy" means the bodily injury and property damage liability, ~~personal injury protection~~, medical payments, comprehensive, collision, and uninsured motorist coverage portions of a policy of motor vehicle insurance delivered or issued for delivery in this state:

1. Insuring a natural person as named insured or one or more related individuals who are residents ~~resident~~ of the same household; and

2. Insuring only a motor vehicle of the private passenger type or station wagon type which is not used as a public or livery conveyance for passengers or rented to others; or insuring any other four-wheel motor vehicle having a load capacity of 1,500 pounds or less which is not used in the occupation, profession, or business of the insured other than farming; other than any policy issued under an automobile

597-01343-21

202154c1

insurance assigned risk plan or covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

The term "policy" does not include a binder as defined in s. 627.420 unless the duration of the binder period exceeds 60 days.

Section 49. Subsection (1), paragraph (a) of subsection (5), and subsections (6) and (7) of section 627.7295, Florida Statutes, are amended to read:

627.7295 Motor vehicle insurance contracts.—

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

(a) "Policy" means a motor vehicle insurance policy that provides bodily injury liability ~~personal injury protection~~ coverage and, ~~property damage liability coverage, or both.~~

(b) "Binder" means a binder that provides motor vehicle bodily injury liability coverage ~~personal injury protection~~ and property damage liability coverage.

(5)(a) A licensed general lines agent may charge a per-policy fee of up to ~~not to exceed~~ \$10 to cover the administrative costs of the agent associated with selling the motor vehicle insurance policy if the policy covers only bodily injury liability coverage ~~personal injury protection coverage as provided by s. 627.736~~ and property damage liability coverage as provided by s. 627.7275 and if no other insurance is sold or issued in conjunction with or collateral to the policy. The fee is not ~~considered~~ part of the premium.

(6) If a motor vehicle owner's driver license, license plate, and registration have previously been suspended pursuant

597-01343-21

202154c1

to s. 316.646 ~~or s. 627.733~~, an insurer may cancel a new policy only as provided in s. 627.7275.

(7) A policy of private passenger motor vehicle insurance or a binder for such a policy may be initially issued in this state only if, before the effective date of such binder or policy, the insurer or agent has collected from the insured an amount equal to at least 1 month's premium. An insurer, agent, or premium finance company may not, directly or indirectly, take any action that results ~~resulting~~ in the insured paying ~~having paid~~ from the insured's own funds an amount less than the 1 month's premium required by this subsection. This subsection applies without regard to whether the premium is financed by a premium finance company or is paid pursuant to a periodic payment plan of an insurer or an insurance agent.

(a) This subsection does not apply:

1. If an insured or member of the insured's family is renewing or replacing a policy or a binder for such policy written by the same insurer or a member of the same insurer group. ~~This subsection does not apply~~

2. To an insurer that issues private passenger motor vehicle coverage primarily to active duty or former military personnel or their dependents. ~~This subsection does not apply~~

3. If all policy payments are paid pursuant to a payroll deduction plan, an automatic electronic funds transfer payment plan from the policyholder, or a recurring credit card or debit card agreement with the insurer.

(b) This subsection and subsection (4) do not apply if:

1. All policy payments to an insurer are paid pursuant to an automatic electronic funds transfer payment plan from an

597-01343-21

202154c1

agent, a managing general agent, or a premium finance company and if the policy includes, at a minimum, bodily injury liability coverage and ~~personal injury protection pursuant to ss. 627.730-627.7405; motor vehicle property damage liability coverage pursuant to s. 627.7275; or and bodily injury liability in at least the amount of \$10,000 because of bodily injury to, or death of, one person in any one accident and in the amount of \$20,000 because of bodily injury to, or death of, two or more persons in any one accident. This subsection and subsection (4) do not apply if~~

2. An insured has had a policy in effect for at least 6 months, the insured's agent is terminated by the insurer that issued the policy, and the insured obtains coverage on the policy's renewal date with a new company through the terminated agent.

Section 50. Section 627.7415, Florida Statutes, is amended to read:

627.7415 Commercial motor vehicles; additional liability insurance coverage.—Beginning January 1, 2022, commercial motor vehicles, as defined in s. 207.002 or s. 320.01, operated upon the roads and highways of this state must ~~shall~~ be insured with the following minimum levels of combined bodily liability insurance and property damage liability insurance in addition to any other insurance requirements:

(1) Sixty ~~Fifty~~ thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds.

(2) One hundred twenty thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 35,000

597-01343-21

202154c1

pounds or more, but less than 44,000 pounds.

(3) Three hundred thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 44,000 pounds or more.

(4) All commercial motor vehicles subject to regulations of the United States Department of Transportation, 49 C.F.R. part 387, subpart A, and as may be hereinafter amended, shall be insured in an amount equivalent to the minimum levels of financial responsibility as set forth in such regulations.

A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 51. Section 627.747, Florida Statutes, is created to read:

627.747 Named driver exclusion.—

(1) A private passenger motor vehicle policy may exclude an identified individual from the following coverages while the identified individual is operating a motor vehicle, provided that the identified individual is specifically excluded by name on the declarations page or by endorsement, and the policyholder consents in writing to the exclusion:

(a) Property damage liability coverage.

(b) Bodily injury liability coverage.

(c) Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the policyholder has purchased such coverage.

(d) Any coverage the policyholder is not required by law to purchase.

(2) A private passenger motor vehicle policy may not

597-01343-21

202154c1

2785 exclude coverage when:

2786 (a) The identified excluded individual is injured while not
2787 operating a motor vehicle;

2788 (b) The exclusion is unfairly discriminatory under the
2789 Florida Insurance Code, as determined by the office; or

2790 (c) The exclusion is inconsistent with the underwriting
2791 rules filed by the insurer pursuant to s. 627.0651(13)(a).

2792 Section 52. Paragraphs (b), (c), and (g) of subsection (7),
2793 paragraphs (a) and (b) of subsection (8), and paragraph (b) of
2794 subsection (16) of section 627.748, Florida Statutes, are
2795 amended to read:

2796 627.748 Transportation network companies.—

2797 (7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE
2798 REQUIREMENTS.—

2799 (b) The following automobile insurance requirements apply
2800 while a participating TNC driver is logged on to the digital
2801 network but is not engaged in a prearranged ride:

2802 1. Automobile insurance that provides:

2803 a. A primary automobile liability coverage of at least
2804 \$50,000 for death and bodily injury per person, \$100,000 for
2805 death and bodily injury per incident, and \$25,000 for property
2806 damage; and

2807 ~~b. Personal injury protection benefits that meet the~~
2808 ~~minimum coverage amounts required under ss. 627.730-627.7405;~~
2809 ~~and~~

2810 ~~e.~~ Uninsured and underinsured vehicle coverage as required
2811 by s. 627.727.

2812 2. The coverage requirements of this paragraph may be
2813 satisfied by any of the following:

597-01343-21

202154c1

2814 a. Automobile insurance maintained by the TNC driver or the
2815 TNC vehicle owner;

2816 b. Automobile insurance maintained by the TNC; or

2817 c. A combination of sub-subparagraphs a. and b.

2818 (c) The following automobile insurance requirements apply
2819 while a TNC driver is engaged in a prearranged ride:

2820 1. Automobile insurance that provides:

2821 a. A primary automobile liability coverage of at least \$1
2822 million for death, bodily injury, and property damage; and

2823 ~~b. Personal injury protection benefits that meet the~~
2824 ~~minimum coverage amounts required of a limousine under ss.~~
2825 ~~627.730-627.7405; and~~

2826 ~~e.~~ Uninsured and underinsured vehicle coverage as required
2827 by s. 627.727.

2828 2. The coverage requirements of this paragraph may be
2829 satisfied by any of the following:

2830 a. Automobile insurance maintained by the TNC driver or the
2831 TNC vehicle owner;

2832 b. Automobile insurance maintained by the TNC; or

2833 c. A combination of sub-subparagraphs a. and b.

2834 (g) Insurance satisfying the requirements under this
2835 subsection is deemed to satisfy the financial responsibility
2836 requirement for a motor vehicle under chapter 324 ~~and the~~
2837 ~~security required under s. 627.733~~ for any period when the TNC
2838 driver is logged onto the digital network or engaged in a
2839 prearranged ride.

2840 (8) TRANSPORTATION NETWORK COMPANY AND INSURER; DISCLOSURE;
2841 EXCLUSIONS.—

2842 (a) Before a TNC driver is allowed to accept a request for

597-01343-21

202154c1

a prearranged ride on the digital network, the TNC must disclose in writing to the TNC driver:

1. The insurance coverage, including the types of coverage and the limits for each coverage, which the TNC provides while the TNC driver uses a TNC vehicle in connection with the TNC's digital network.

2. That the TNC driver's own automobile insurance policy might not provide any coverage while the TNC driver is logged on to the digital network or is engaged in a prearranged ride, depending on the terms of the TNC driver's own automobile insurance policy.

3. That the provision of rides for compensation which are not prearranged rides subjects the driver to the coverage requirements imposed under s. 324.032(1) and (2) and that failure to meet such coverage requirements subjects the TNC driver to penalties provided in s. 324.221, up to and including a misdemeanor of the second degree.

(b)1. An insurer that provides an automobile liability insurance policy under this part may exclude any and all coverage afforded under the policy issued to an owner or operator of a TNC vehicle while driving that vehicle for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. Exclusions imposed under this subsection are limited to coverage while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy, including, but not limited to:

a. Liability coverage for bodily injury and property

597-01343-21

202154c1

2872 damage;

2873 b. Uninsured and underinsured motorist coverage;

2874 c. Medical payments coverage;

2875 d. Comprehensive physical damage coverage; and

2876 e. Collision physical damage coverage; ~~and~~

2877 ~~f. Personal injury protection.~~

2878 2. The exclusions described in subparagraph 1. apply
2879 notwithstanding any requirement under chapter 324. These
2880 exclusions do not affect or diminish coverage otherwise
2881 available for permissive drivers or resident relatives under the
2882 personal automobile insurance policy of the TNC driver or owner
2883 of the TNC vehicle who are not occupying the TNC vehicle at the
2884 time of loss. This section does not require that a personal
2885 automobile insurance policy provide coverage while the TNC
2886 driver is logged on to a digital network, while the TNC driver
2887 is engaged in a prearranged ride, or while the TNC driver
2888 otherwise uses a vehicle to transport riders for compensation.

2889 3. This section must not be construed to require an insurer
2890 to use any particular policy language or reference to this
2891 section in order to exclude any and all coverage for any loss or
2892 injury that occurs while a TNC driver is logged on to a digital
2893 network or while a TNC driver provides a prearranged ride.

2894 4. This section does not preclude an insurer from providing
2895 primary or excess coverage for the TNC driver's vehicle by
2896 contract or endorsement.

2897 (16) LUXURY GROUND TRANSPORTATION NETWORK COMPANIES.—

2898 (b) An entity may elect, upon written notification to the
2899 department, to be regulated as a luxury ground TNC. A luxury
2900 ground TNC must:

597-01343-21

202154c1

1. Comply with all of the requirements of this section applicable to a TNC, including subsection (17), which do not conflict with subparagraph 2. or which do not prohibit the company from connecting riders to drivers who operate for-hire vehicles as defined in s. 320.01(15), including limousines and luxury sedans and excluding taxicabs.

2. Maintain insurance coverage as required by subsection (7). However, if a prospective luxury ground TNC satisfies minimum financial responsibility through compliance with s. 324.032(3) ~~s. 324.032(2)~~ by using self-insurance when it gives the department written notification of its election to be regulated as a luxury ground TNC, the luxury ground TNC may use self-insurance to meet the insurance requirements of subsection (7), so long as such self-insurance complies with s. 324.032(3) ~~s. 324.032(2)~~ and provides the limits of liability required by subsection (7).

Section 53. Paragraph (a) of subsection (2) of section 627.749, Florida Statutes, is amended to read:

627.749 Autonomous vehicles; insurance requirements.—

(2) INSURANCE REQUIREMENTS.—

(a) A fully autonomous vehicle with the automated driving system engaged while logged on to an on-demand autonomous vehicle network or engaged in a prearranged ride must be covered by a policy of automobile insurance which provides:

1. Primary liability coverage of at least \$1 million for death, bodily injury, and property damage.

~~2. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405.~~

~~3.~~ Uninsured and underinsured vehicle coverage as required

597-01343-21

202154c1

by s. 627.727.

Section 54. Section 627.8405, Florida Statutes, is amended to read:

627.8405 Prohibited acts; financing companies.—~~A~~ No premium finance company ~~shall~~, in a premium finance agreement or other agreement, may not finance the cost of or otherwise provide for the collection or remittance of dues, assessments, fees, or other periodic payments of money for the cost of:

(1) A membership in an automobile club. The term "automobile club" means a legal entity that ~~which~~, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to the ownership, operation, use, or maintenance of a motor vehicle; however, the term ~~this definition of "automobile club"~~ does not include persons, associations, or corporations ~~which are~~ organized and operated solely for the purpose of conducting, sponsoring, or sanctioning motor vehicle races, exhibitions, or contests upon racetracks, or upon racecourses established and marked as such for the duration of such particular events. As used in this subsection, the term ~~words~~ "motor vehicle" has ~~used herein have~~ the same meaning as ~~defined~~ in chapter 320.

(2) An accidental death and dismemberment policy sold in combination with a policy providing only bodily injury liability coverage ~~personal injury protection~~ and property damage liability coverage ~~only policy~~.

(3) Any product not regulated under ~~the provisions of~~ this insurance code.

597-01343-21

202154c1

This section also applies to premium financing by any insurance agent or insurance company under part XVI. The commission shall adopt rules to assure disclosure, at the time of sale, of coverages financed ~~with personal injury protection~~ and shall prescribe the form of such disclosure.

Section 55. Subsection (1) of section 627.915, Florida Statutes, is amended to read:

627.915 Insurer experience reporting.—

(1) Each insurer transacting private passenger automobile insurance in this state shall report certain information annually to the office. The information will be due on or before July 1 of each year. The information must ~~shall~~ be divided into the following categories: bodily injury liability; property damage liability; uninsured motorist; ~~personal injury protection benefits~~; medical payments; and comprehensive and collision. The information given must ~~shall~~ be on direct insurance writings in the state alone and ~~shall~~ represent total limits data. The information set forth in paragraphs (a)-(f) is applicable to voluntary private passenger and Joint Underwriting Association private passenger writings and must ~~shall~~ be reported for each of the latest 3 calendar-accident years, with an evaluation date of March 31 of the current year. The information set forth in paragraphs (g)-(j) is applicable to voluntary private passenger writings and must ~~shall~~ be reported on a calendar-accident year basis ultimately seven times at seven different stages of development.

(a) Premiums earned for the latest 3 calendar-accident years.

(b) Loss development factors and the historic development

597-01343-21

202154c1

of those factors.

(c) Policyholder dividends incurred.

(d) Expenses for other acquisition and general expense.

(e) Expenses for agents' commissions and taxes, licenses, and fees.

(f) Profit and contingency factors as utilized in the insurer's automobile rate filings for the applicable years.

(g) Losses paid.

(h) Losses unpaid.

(i) Loss adjustment expenses paid.

(j) Loss adjustment expenses unpaid.

Section 56. Subsections (2) and (3) of section 628.909, Florida Statutes, are amended to read:

628.909 Applicability of other laws.—

(2) The following provisions of the Florida Insurance Code apply to captive insurance companies that ~~who~~ are not industrial insured captive insurance companies to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, and 624.426.

(b) Chapter 625, part II.

(c) Chapter 626, part IX.

(d) ~~Sections 627.730-627.7405, when no fault coverage is provided.~~

~~(e)~~ Chapter 628.

(3) The following provisions of the Florida Insurance Code ~~shall~~ apply to industrial insured captive insurance companies to the extent that such provisions are not inconsistent with this part:

597-01343-21

202154c1

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, 624.426, and 624.609(1).

(b) Chapter 625, part II, if the industrial insured captive insurance company is incorporated in this state.

(c) Chapter 626, part IX.

(d) ~~Sections 627.730-627.7405 when no-fault coverage is provided.~~

~~(e)~~ Chapter 628, except for ss. 628.341, 628.351, and 628.6018.

Section 57. Subsections (2), (6), and (7) of section 705.184, Florida Statutes, are amended to read:

705.184 Derelict or abandoned motor vehicles on the premises of public-use airports.—

(2) The airport director or the director's designee shall contact the Department of Highway Safety and Motor Vehicles to notify that department that the airport has possession of the abandoned or derelict motor vehicle and to determine the name and address of the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and any person who has filed a lien on the motor vehicle. Within 7 business days after receipt of the information, the director or the director's designee shall send notice by certified mail, return receipt requested, to the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle. The notice must ~~shall~~ state the fact of possession of the motor vehicle, that charges for reasonable towing, storage, and parking fees, if any, have accrued and the amount thereof, that

597-01343-21

202154c1

a lien as provided in subsection (6) will be claimed, that the lien is subject to enforcement pursuant to law, that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (4), and that any motor vehicle which, at the end of 30 calendar days after receipt of the notice, has not been removed from the airport upon payment in full of all accrued charges for reasonable towing, storage, and parking fees, if any, may be disposed of as provided in s. 705.182(2)(a), (b), (d), or (e), including, but not limited to, the motor vehicle being sold free of all prior liens after 35 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are more than 5 years of age or after 50 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are 5 years of age or less.

(6) The airport pursuant to this section or, if used, a licensed independent wrecker company pursuant to s. 713.78 shall have a lien on an abandoned or derelict motor vehicle for all reasonable towing, storage, and accrued parking fees, if any, except that no storage fee may ~~shall~~ be charged if the motor vehicle is stored less than 6 hours. As a prerequisite to perfecting a lien under this section, the airport director or the director's designee must serve a notice in accordance with subsection (2) on the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle. If attempts to notify the owner, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ or lienholders are not successful, the requirement of notice by mail shall be

597-01343-21

202154c1

considered met. Serving of the notice does not dispense with recording the claim of lien.

(7) (a) For the purpose of perfecting its lien under this section, the airport shall record a claim of lien which states ~~shall state~~:

1. The name and address of the airport.

2. The name of the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle.

3. The costs incurred from reasonable towing, storage, and parking fees, if any.

4. A description of the motor vehicle sufficient for identification.

(b) The claim of lien must ~~shall~~ be signed and sworn to or affirmed by the airport director or the director's designee.

(c) The claim of lien is ~~shall be~~ sufficient if it is in substantially the following form:

CLAIM OF LIEN

State of

County of

Before me, the undersigned notary public, personally appeared, who was duly sworn and says that he/she is the of, whose address is.....; and that the following described motor vehicle:

...(Description of motor vehicle)...

owned by, whose address is, has accrued \$..... in fees for a reasonable tow, for storage, and for

597-01343-21

202154c1

parking, if applicable; that the lienor served its notice to the owner, the insurance company insuring the motor vehicle ~~notwithstanding the provisions of s. 627.736, Florida Statutes,~~ and all persons of record claiming a lien against the motor vehicle on, ...(year)...., by.....

...(Signature)...

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

...(Signature of Notary Public).....(Print, Type, or Stamp
Commissioned name of Notary Public)...

Personally Known....OR Produced....as identification.

However, the negligent inclusion or omission of any information in this claim of lien which does not prejudice the owner does not constitute a default that operates to defeat an otherwise valid lien.

(d) The claim of lien must ~~shall~~ be served on the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle. If attempts to notify the owner, the insurance company insuring the motor vehicle ~~notwithstanding the provisions of s. 627.736,~~ or lienholders are not successful, the requirement of notice by mail shall be considered met. The claim of lien must ~~shall~~ be so served before recordation.

(e) The claim of lien must ~~shall~~ be recorded with the clerk of court in the county where the airport is located. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The lien

597-01343-21

202154c1

3133 attaches ~~shall attach~~ at the time of recordation and takes ~~shall~~
3134 ~~take~~ priority as of that time.

3135 Section 58. Subsection (4) of section 713.78, Florida
3136 Statutes, is amended to read:

3137 713.78 Liens for recovering, towing, or storing vehicles
3138 and vessels.—

3139 (4) (a) A person regularly engaged in the business of
3140 recovering, towing, or storing vehicles or vessels who comes
3141 into possession of a vehicle or vessel pursuant to subsection
3142 (2), and who claims a lien for recovery, towing, or storage
3143 services, shall give notice, by certified mail, to the
3144 registered owner, the insurance company insuring the vehicle
3145 ~~notwithstanding s. 627.736~~, and all persons claiming a lien
3146 thereon, as disclosed by the records in the Department of
3147 Highway Safety and Motor Vehicles or as disclosed by the records
3148 of any corresponding agency in any other state in which the
3149 vehicle is identified through a records check of the National
3150 Motor Vehicle Title Information System or an equivalent
3151 commercially available system as being titled or registered.

3152 (b) Whenever a law enforcement agency authorizes the
3153 removal of a vehicle or vessel or whenever a towing service,
3154 garage, repair shop, or automotive service, storage, or parking
3155 place notifies the law enforcement agency of possession of a
3156 vehicle or vessel pursuant to s. 715.07(2)(a)2., the law
3157 enforcement agency of the jurisdiction where the vehicle or
3158 vessel is stored shall contact the Department of Highway Safety
3159 and Motor Vehicles, or the appropriate agency of the state of
3160 registration, if known, within 24 hours through the medium of
3161 electronic communications, giving the full description of the

597-01343-21

202154c1

vehicle or vessel. Upon receipt of the full description of the vehicle or vessel, the department shall search its files to determine the owner's name, the insurance company insuring the vehicle or vessel, and whether any person has filed a lien upon the vehicle or vessel as provided in s. 319.27(2) and (3) and notify the applicable law enforcement agency within 72 hours. The person in charge of the towing service, garage, repair shop, or automotive service, storage, or parking place shall obtain such information from the applicable law enforcement agency within 5 days after the date of storage and shall give notice pursuant to paragraph (a). The department may release the insurance company information to the requestor ~~notwithstanding~~ ~~s. 627.736.~~

(c) The notice of lien must be sent by certified mail to the registered owner, the insurance company insuring the vehicle ~~notwithstanding s. 627.736,~~ and all other persons claiming a lien thereon within 7 business days, excluding Saturday and Sunday, after the date of storage of the vehicle or vessel. However, in no event shall the notice of lien be sent less than 30 days before the sale of the vehicle or vessel. The notice must state:

1. If the claim of lien is for a vehicle, the last 8 digits of the vehicle identification number of the vehicle subject to the lien, or, if the claim of lien is for a vessel, the hull identification number of the vessel subject to the lien, clearly printed in the delivery address box and on the outside of the envelope sent to the registered owner and all other persons claiming an interest therein or lien thereon.

2. The name, physical address, and telephone number of the

597-01343-21

202154c1

lienor, and the entity name, as registered with the Division of Corporations, of the business where the towing and storage occurred, which must also appear on the outside of the envelope sent to the registered owner and all other persons claiming an interest in or lien on the vehicle or vessel.

3. The fact of possession of the vehicle or vessel.

4. The name of the person or entity that authorized the lienor to take possession of the vehicle or vessel.

5. That a lien as provided in subsection (2) is claimed.

6. That charges have accrued and include an itemized statement of the amount thereof.

7. That the lien is subject to enforcement under law and that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (5).

8. That any vehicle or vessel that remains unclaimed, or for which the charges for recovery, towing, or storage services remain unpaid, may be sold free of all prior liens 35 days after the vehicle or vessel is stored by the lienor if the vehicle or vessel is more than 3 years of age or 50 days after the vehicle or vessel is stored by the lienor if the vehicle or vessel is 3 years of age or less.

9. The address at which the vehicle or vessel is physically located.

(d) The notice of lien may not be sent to the registered owner, the insurance company insuring the vehicle or vessel, and all other persons claiming a lien thereon less than 30 days before the sale of the vehicle or vessel.

(e) If attempts to locate the name and address of the owner or lienholder prove unsuccessful, the towing-storage operator

597-01343-21

202154c1

shall, after 7 business days, excluding Saturday and Sunday, after the initial tow or storage, notify the public agency of jurisdiction where the vehicle or vessel is stored in writing by certified mail or acknowledged hand delivery that the towing-storage company has been unable to locate the name and address of the owner or lienholder and a physical search of the vehicle or vessel has disclosed no ownership information and a good faith effort has been made, including records checks of the Department of Highway Safety and Motor Vehicles database and the National Motor Vehicle Title Information System or an equivalent commercially available system. For purposes of this paragraph and subsection (9), the term "good faith effort" means that the following checks have been performed by the company to establish the prior state of registration and for title:

1. A check of the department's database for the owner and any lienholder.

2. A check of the electronic National Motor Vehicle Title Information System or an equivalent commercially available system to determine the state of registration when there is not a current registration record for the vehicle or vessel on file with the department.

3. A check of the vehicle or vessel for any type of tag, tag record, temporary tag, or regular tag.

4. A check of the law enforcement report for a tag number or other information identifying the vehicle or vessel, if the vehicle or vessel was towed at the request of a law enforcement officer.

5. A check of the trip sheet or tow ticket of the tow truck operator to determine whether a tag was on the vehicle or vessel

597-01343-21

202154c1

at the beginning of the tow, if a private tow.

6. If there is no address of the owner on the impound report, a check of the law enforcement report to determine whether an out-of-state address is indicated from driver license information.

7. A check of the vehicle or vessel for an inspection sticker or other stickers and decals that may indicate a state of possible registration.

8. A check of the interior of the vehicle or vessel for any papers that may be in the glove box, trunk, or other areas for a state of registration.

9. A check of the vehicle for a vehicle identification number.

10. A check of the vessel for a vessel registration number.

11. A check of the vessel hull for a hull identification number which should be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outmost seaboard side at the end of the hull that bears the rudder or other steering mechanism.

Section 59. Paragraph (a) of subsection (1), paragraph (c) of subsection (7), paragraphs (a), (b), and (c) of subsection (8), and subsections (9) and (10) of section 817.234, Florida Statutes, are amended to read:

817.234 False and fraudulent insurance claims.—

(1)(a) A person commits insurance fraud punishable as provided in subsection (11) if that person, with the intent to injure, defraud, or deceive any insurer:

1. Presents or causes to be presented any written or oral

597-01343-21

202154c1

statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains ~~any~~ false, incomplete, or misleading information concerning any fact or thing material to such claim;

2. Prepares or makes any written or oral statement that is intended to be presented to an ~~any~~ insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains ~~any~~ false, incomplete, or misleading information concerning any fact or thing material to such claim;

3.a. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to an ~~any~~ insurer, purported insurer, servicing corporation, insurance broker, or insurance agent, or any employee or agent thereof, ~~any~~ false, incomplete, or misleading information or a written or oral statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a health maintenance organization subscriber or provider contract; or

b. Knowingly conceals information concerning any fact material to such application; or

4. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer a claim for payment or other benefit under medical payments coverage in a motor vehicle ~~a personal injury protection~~ insurance policy if the person knows that the payee

597-01343-21

202154c1

3307 knowingly submitted a false, misleading, or fraudulent
3308 application or other document when applying for licensure as a
3309 health care clinic, seeking an exemption from licensure as a
3310 health care clinic, or demonstrating compliance with part X of
3311 chapter 400.

3312 (7)

3313 ~~(c) An insurer, or any person acting at the direction of or~~
3314 ~~on behalf of an insurer, may not change an opinion in a mental~~
3315 ~~or physical report prepared under s. 627.736(7) or direct the~~
3316 ~~physician preparing the report to change such opinion; however,~~
3317 ~~this provision does not preclude the insurer from calling to the~~
3318 ~~attention of the physician errors of fact in the report based~~
3319 ~~upon information in the claim file. Any person who violates this~~
3320 ~~paragraph commits a felony of the third degree, punishable as~~
3321 ~~provided in s. 775.082, s. 775.083, or s. 775.084.~~

3322 (8)(a) It is unlawful for any person intending to defraud
3323 any other person to solicit or cause to be solicited any
3324 business from a person involved in a motor vehicle accident for
3325 the purpose of making, adjusting, or settling motor vehicle tort
3326 claims or claims for benefits under medical payments coverage in
3327 a motor vehicle insurance policy ~~personal injury protection~~
3328 ~~benefits required by s. 627.736.~~ Any person who violates ~~the~~
3329 ~~provisions of~~ this paragraph commits a felony of the second
3330 degree, punishable as provided in s. 775.082, s. 775.083, or s.
3331 775.084. A person who is convicted of a violation of this
3332 subsection shall be sentenced to a minimum term of imprisonment
3333 of 2 years.

3334 (b) A person may not solicit or cause to be solicited any
3335 business from a person involved in a motor vehicle accident by

597-01343-21

202154c1

any means of communication other than advertising directed to the public for the purpose of making motor vehicle tort claims or claims for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection benefits required by s. 627.736~~, within 60 days after the occurrence of the motor vehicle accident. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A lawyer, health care practitioner as defined in s. 456.001, or owner or medical director of a clinic required to be licensed pursuant to s. 400.9905 may not, at any time after 60 days have elapsed from the occurrence of a motor vehicle accident, solicit or cause to be solicited any business from a person involved in a motor vehicle accident by means of in person or telephone contact at the person's residence, for the purpose of making motor vehicle tort claims or claims for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection benefits required by s. 627.736~~. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) A person may not organize, plan, or knowingly participate in an intentional motor vehicle crash or a scheme to create documentation of a motor vehicle crash that did not occur for the purpose of making motor vehicle tort claims or claims for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection benefits as required by s. 627.736~~. Any person who violates this subsection commits a felony of the second degree, punishable as provided in s.

597-01343-21

202154c1

3365 775.082, s. 775.083, or s. 775.084. A person who is convicted of
3366 a violation of this subsection shall be sentenced to a minimum
3367 term of imprisonment of 2 years.

3368 (10) A licensed health care practitioner who is found
3369 guilty of insurance fraud under this section for an act relating
3370 to a motor vehicle ~~personal injury protection~~ insurance policy
3371 loses his or her license to practice for 5 years and may not
3372 receive reimbursement under medical payments coverage in a motor
3373 vehicle insurance policy ~~for personal injury protection benefits~~
3374 for 10 years.

3375 Section 60. For the 2021-2022 fiscal year, the sum of
3376 \$83,651 in nonrecurring funds is appropriated from the Insurance
3377 Regulatory Trust Fund to the Office of Insurance Regulation for
3378 the purpose of implementing this act.

3379 Section 61. Except as otherwise expressly provided in this
3380 act and except for this section, which shall take effect upon
3381 this act becoming a law, this act shall take effect January 1,
3382 2022.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/15/21
Meeting Date

54
Bill Number (if applicable)

Topic PIP → BI

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 119 S. Monroe
Street

Phone 510 7146

FLA
City State Zip

Email doug.bell@unhdfirm

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Progressive Insurance

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)

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2/15/2021
2/11/2021
Meeting Date

THE FLORIDA SENATE
APPEARANCE RECORD

CS/SB 54
Bill Number (if applicable)

Topic Motor Vehicle Insurance/Bad Faith

Amendment Barcode (if applicable)

Name Matthew Posgay

Job Title Attorney

Address PO Box 1860

Phone 904-356-6071

Street

Jacksonville

FL

32201

City

State

Zip

Email mnp@cokerlaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Insurance consumers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

02.15.21

Meeting Date

54

Bill Number (if applicable)

Topic Motor Vehicle Insurance

Amendment Barcode (if applicable)

Name Kathy Maus

Job Title _____

Address 3600 Maclay Boulevard - Ste 101

Phone (850) 894-4111

Street

Tallahassee

FL

32312

Email kmaus@butler.legal

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

CS/SB 54

Bill Number (if applicable)

Topic Motor Vehicle Insurance

Amendment Barcode (if applicable)

Name Eric Romano

Job Title Attorney

Address 801 Spencer Drive

Street

Phone 561-533-6700

West Palm Beach

FL

33409

City

State

Zip

Email eric@romanolawgroup.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/15/21

Meeting Date

54

Bill Number (if applicable)

Topic

BI/PIP Repeal

Name

Toni Large

Amendment Barcode (if applicable)

Job Title

Address

1100 Brookwood Dr

Street

Tallahassee, FL

City

State

32308

Zip

Phone

850 556-1411

Email

tonielargestrategies.com

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida College of Emergency Physicians

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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THE FLORIDA SENATE
APPEARANCE RECORD

2-15-2021

Meeting Date

54

Bill Number (if applicable)

Topic Motor Vehicle Insurance

Name Michael Carlson

Job Title President

Address 215 S. Monroe St. Ste. 835

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-597-7425

Email michael.carlson@pi

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Personal Insurance Federation of Florida, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

CS/SB 54

Bill Number (if applicable)

406904

Amendment Barcode (if applicable)

Topic Motor Vehicle Insurance

Name Eric Romano

Job Title Attorney

Address 801 Spencer Drive

Street

West Palm Beach

City

FL

State

33409

Zip

Phone 561-533-6700

Email eric@romanolawgroup.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

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2/15/2021
2/11/2021
Meeting Date

THE FLORIDA SENATE
APPEARANCE RECORD

CS/SB 54
Bill Number (if applicable)
406904
Amendment Barcode (if applicable)

Topic Motor Vehicle Insurance/Bad Faith

Name Matthew Posgay

Job Title Attorney

Address PO Box 1860

Street

Jacksonville

City

FL

State

32201

Zip

Phone 904-356-6071

Email mnp@cokerlaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Insurance consumers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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Duplicate

THE FLORIDA SENATE
APPEARANCE RECORD

2/1/2021

Meeting Date

CS/SB 54

Bill Number (if applicable)

406904

Amendment Barcode (if applicable)

Topic Motor Vehicle Insurance/Bad Faith

Name Matthew Posgay

Job Title Attorney

Address PO Box 1860

Street

Jacksonville

City

FL

State

32201

Zip

Phone 904-356-6071

Email mnp@cokerlaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Insurance consumers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

02.15.21

Meeting Date

54

Bill Number (if applicable)

406904

Amendment Barcode (if applicable)

Topic Motor Vehicle Insurance

Name Kathy Maus

Job Title

Address 3600 Maclay Boulevard - Ste 101

Street

Tallahassee

FL

32312

City

State

Zip

Phone (850) 894-4111

Email kmaus@butler.legal

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

2/1/2021

Meeting Date

CS/SB 54

Bill Number (if applicable)

501698

Amendment Barcode (if applicable)

Topic Motor Vehicle Insurance/Bad Faith

Name Matthew Posgay

Job Title Attorney

Address PO Box 1860

Street

Jacksonville

City

FL

State

32201

Zip

Phone 904-356-6071

Email mnp@cokerlaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Insurance consumers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

02.15.21

Meeting Date

54

Bill Number (if applicable)

501698

Amendment Barcode (if applicable)

Topic Motor Vehicle Insurance

Name Kathy Maus

Job Title _____

Address 3600 Maclay Boulevard - Ste 101

Street

Tallahassee

City

FL

State

32312

Zip

Phone (850) 894-4111

Email kmaus@butler.legal

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

02.15.21

Meeting Date

54

Bill Number (if applicable)

731524

Amendment Barcode (if applicable)

Topic Motor Vehicle Insurance

Name Kathy Maus

Job Title

Address 3600 Maclay Boulevard - Ste 101

Street

Tallahassee

City

FL

State

32312

Zip

Phone (850) 894-4111

Email kmaus@butler.legal

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

2/1/2021

Meeting Date

CS/SB 54

Bill Number (if applicable)

731524

Amendment Barcode (if applicable)

Topic Motor Vehicle Insurance/Bad Faith

Name Matthew Posgay

Job Title Attorney

Address PO Box 1860

Street

Jacksonville

City

FL

State

32201

Zip

Phone 904-356-6071

Email mnp@cokerlaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Insurance consumers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

2/15/2021
2/1/2021

Meeting Date

THE FLORIDA SENATE
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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 228

INTRODUCER: Judiciary Committee, Commerce and Tourism Committee, and Senator Bradley

SUBJECT: Notaries Public

DATE: February 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 228 provides updates to the recently created process for online notarizations in ch. 117, F.S. In part, the bill:

- Institutes a self-certification requirement for remote online notarization service providers to ensure their eligibility to assist with the provision of notary services;
- Transfers specific duties from online notaries public to their remote online notarization service providers;
- Requires the Department of State to publish information about active and inactive online notaries public and remote online notarization service providers;
- Permits online notaries to rely on a foreign passport of an individual who is currently outside of the borders of the United States to perform an online notarization;
- Implements privacy requirements for personally identifying information given during an online notarization;
- Provides several clarifications and technical updates to the process of online notarizations provided for in ch. 117, F.S.; and
- Allows for remote swearing in of witnesses for court proceedings and attorney admission to The Florida Bar.

The bill takes effect on January 1, 2022.

II. Present Situation:

In 2019, the Legislature substantially amended ch. 117, F.S., to authorize notaries public, civil-law notaries, and commissioners of deeds to register as online notaries to provide online notary services through two-way, remote audio-visual communication technology, similar to skype and zoom.¹

Florida is one of 29 states that permits remote online notarization (RON).² Virginia was the first to enact a RON law in 2012,³ and the proposed SECURE Act in Congress would permit all current notaries public appointed in the U.S. to perform RON in connection with interstate transactions.⁴ Additionally, RON has been expanded through federal agency guidance, state emergency powers, and specific court administrative orders to allow necessary business to continue during the COVID-19 pandemic.⁵ The Florida Supreme Court issued an administrative order that permits notaries and all other parties qualified to administer oaths in Florida to swear a witness remotely by audio-video communication technology from a location within the State of Florida.⁶

Online Notaries Public in Florida

The Department of State (department) governs the registration of online notaries public (online notaries), and as a prerequisite, requires registrants to:⁷

- Be commissioned or appointed as a notary public pursuant to ch. 117, F.S., a civil-law notary under ch. 118, F.S., or a commissioner of deeds under part IV of ch. 721, F.S.;
- Complete training that covers the duties, obligations, and technology requirements for serving as an online notary;
- Pay a \$10 notary public registration fee;
- Have a current contract with a RON service provider whose technologies and credentialing processes satisfy the statutory minimum requirements; and

¹ Chapter 2019-71, L.O.F. CS/CS/HB 409 (2019) was signed into law on June 7, 2019, and took effect on January 1, 2020.

² M.H.K. Tank, D. Whitaker, E.S.M. Caires, A. Grant, *Coronavirus: Federal and State Governments Work Quickly to Enable Remote Online Notarization to Meet Global Crisis*, Dlapiper Publications (Jan. 4, 2021), available at https://www.dlapiper.com/en/us/insights/publications/2020/03/coronavirus-federal-and-state-governments-work-quickly-to-enable-remote-online-notarization/#:~:text=Currently%2C%20there%20are%2028%20states,Dakota*%2C%20Tennessee%2C%20Texas%2C (last visited Jan. 25, 2021).

³ Lauren Silverman, *Notaries are Starting to Put Down the Stamp and Pick Up a Webcam*, National Public Radio, All Tech Considered (June 12, 2017), <https://www.npr.org/sections/alltechconsidered/2017/06/12/532586426/notaries-are-starting-to-put-down-the-stamp-and-pick-up-a-webcam> (last visited Jan. 25, 2021). See Office of the Secretary of the Commonwealth of Virginia, Notary Public Division, *A Handbook for Virginia Notary Publics*, <https://www.governor.virginia.gov/media/governorvirginiagov/secretary-of-administration/Virginia-Remote-Online-Notarization-Guidance.pdf> (last visited Jan. 25, 2021).

⁴ Tank, et al. *supra* note 2. Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020, S.B. 3533, 116th Cong. (2020), available at <https://www.congress.gov/bill/116th-congress/senate-bill/3533/text?q=%7B%22search%22%3A%5B%223533%22%5D%7D&r=4&s=2> (last visited Jan. 25, 2021).

⁵ Tank, et al. *supra* note 2.

⁶ Florida Supreme Court, *In Re: COVID-19 Emergency Procedures for the Administering of Oaths via Remote Audio-Video Communication Equipment*, Fla. Admin. Order No. AOSC20-16, (Mar. 18, 2020) available at <https://www.floridasupremecourt.org/content/download/632105/file/AOSC20-16.pdf> (last visited Jan. 25, 2021).

⁷ Section 117.225, F.S.; Fla. Admin. Code, R. 1N-7.001 (2020). See also, Department of State, *Remote Online Notary Public*, <https://dos.myflorida.com/sunbiz/other-services/notaries/remote-online-notary-public/> (last visited Jan. 25, 2021).

- Maintain a \$25,000 bond and a current errors and omissions insurance policy.

As of January 2021, 6,278 online notaries have registered with the department.⁸

An online notary can administer oaths or affirmations, take acknowledgements, attest to photocopies, verify vehicle identification numbers, and certify the contents of a safe-deposit box. The online notary must perform the notarial service from Florida, but the individual who seeks the notarial service (principal) and any witnesses can login to the RON platform from anywhere in the world. An online notary may charge a fee of no more than \$25 for performing a notarial service.⁹

Online notaries differ from notaries public in that they may use audio-visual technology to notarize a document for a principal who is in a different physical location; a notary public must be physically present with the principal to notarize a document. Additionally, although notaries public can solemnize marriages, an online notary cannot.¹⁰

Remote Online Notarization (RON) Service Providers

A RON service provider is a person that provides audio-video communication technology and related processes, services, software, data storage, or other services to online notaries to facilitate their performance of online notarizations.¹¹ More concretely, a RON service provider hosts a platform that provides the audiovisual technology that allows the notary and signer to see, hear and communicate with each other over the internet.¹²

Online Notarization

To perform an online notarization service, an online notary must first determine whether the principal is located outside of Florida at the time of notarization. If so, the online notary must confirm that the principal understands that the notarization will occur according to Florida law.

Next, the online notary must confirm the principal's identity.¹³ An online notary may do so by documenting that he or she personally knows the principal, or, if the notary does not know the principal, by documenting all of the following:

- The principal's remote presentation of a government-issued identification;¹⁴

⁸ E-mail from Department of State staff (Jan. 13, 2021) (on file with the Senate Committee on Commerce and Tourism).

⁹ Section 117.275, F.S.

¹⁰ Section 117.209(1), F.S.

¹¹ Section 117.201(14), F.S.

¹² David Thun, The National Notary Magazine, *The State of Remote Online Notarization* (Nov. 19, 2019), available at <https://www.nationalnotary.org/notary-bulletin/blog/2019/11/the-state-of-remote-online-notarization> (last visited Jan. 25, 2021).

¹³ Section 117.265(4), F.S.

¹⁴ Section 117.05(5)(b)2 lists acceptable identification as: Florida identification card or driver license; a U.S. passport; a passport issued by a foreign government if it is stamped by the U.S. Bureau of Citizenship and Immigration Services; a driver license of id card issued by a state other than Florida, or a territory in the U.S., Canada, or Mexico; an id card issued by the U.S. armed forces; a veteran health id card; an inmate id card issued by if the principal is still in the Florida Department of Correction's or U.S. Department of Justice's custody; an id card issued by the U.S. Bureau of Citizenship and Immigration Services; or, where all of the inmate's identifications were confiscated upon his or her confinement—a sworn, written statement from a law enforcement officer that states that the inmate is the person whose signature is to be notarized.

- The notary's credential analysis¹⁵ of the identification to ensure its validity; and
- The notary's identity proofing¹⁶ of the principal, wherein a third-party provides knowledge-based authentication questions that must be correctly answered by the principal in a limited amount of time.

If the notary cannot document these steps, then he or she is not permitted to perform the online notarization.

Should the online notarization also require a witness, the online notary must confirm the witness' identity.¹⁷ If the witness is physically present with the principal, he or she can confirm his or her identity by stating his or her name and current address on the recording. If the witness is connected via audio-visual communication technology (outside of the principal's presence), the online notary must confirm the witness' identity by presentation of government-issued identification and performance of a credential analysis and identity proofing, as required for the principal.

After the notary succeeds in confirming the pertinent identities, the notary may witness the principal electronically sign the document. Then the notary adds his or her unique electronic signature and digital notary seal using tamper-evident technology that would document any subsequent change to the document.¹⁸

For all online notarizations, an online notary must:

- Make and maintain a recording of the audio-visual component (video) of the notarization, including the credential analysis and identity proofing he or she performed, if any;¹⁹ and
- Create an entry in his or her electronic journal of notarizations that notes specific information about the notarization, including types of identification used and the names and addresses of all parties involved.²⁰

The online notary must maintain both the electronic journal and the recordings for at least 10 years after the notarization. An online notary, his or her estate, or guardian may transfer these documents to a secure repository should he or she become incapable of maintaining them before the 10 years have elapsed.²¹

III. Effect of Proposed Changes:

Section 117.021, F.S., currently grants a notary public the right to perform notarial acts, with respect to an electronic record, with whatever form of technology he or she chooses. **Section 1** amends s. 117.021, F.S., to accommodate an employer's requirement that a notary public who performs notarial acts as a part of his or her job use technology chosen by the employer within the scope of employment or as provided by a contract. This allows a business to standardize its

¹⁵ Section 117.201(3), F.S. *See also*, s. 117.295(3)(b), F.S.

¹⁶ Section 117.201(7), F.S. *See also*, s. 117.295(3)(a), F.S.

¹⁷ Section 117.285, F.S.

¹⁸ Section 117.255, F.S. *See also*, Silverman *supra* note 3.

¹⁹ Section 117.245(2), F.S.

²⁰ Section 117.245(1), F.S.

²¹ Section 117.245(4), F.S.

services and contracts. The notary public's right to use his or her preferred technology outside of the scope of any contract or employment is not changed by this amendment.

Section 2 amends s. 117.05, F.S., to make the language of the fee ceiling for a single notarial act consistent with the language regarding the fee ceiling for an online notarial act in s. 117.275, F.S. This is a technical amendment.

Section 3 amends s. 117.201, F.S., to permit an online notary to use a passport issued by a foreign government that *does not* include an immigration stamp from the U.S. Bureau of Citizenship and Immigration services to validate a principal's identity. This accommodates online notarizations where the principal has not entered the United States, and appears via audio-visual technology for the notarization.

Section 4 amends s. 117.225, F.S., regarding requirements for a notary public, civil-law notary, or commissioner of deeds to register as an online notary public. The bill requires these registrants to provide the Department of State with their notary commission or appointment number as opposed to the current broad standard of "proof" of their commission. This change eliminates the possible need for rule-making regarding this section.

Section 5 amends s. 117.231, F.S., to allow for a notary public to use audio-visual technology to swear in individuals who are testifying during any court proceeding, deposition, arbitration, or public hearing when they are outside the physical presence of the notary. When the individual is located outside of the state, consent must be obtained to take his or her oath using audio-visual technology.

The bill also allows for a notary to administer the oath of admission for The Florida Bar using audio-visual communication for an individual outside the physical presence of the notary.

A notary is not required to be an online notary or use an RON service provider when performing notarial acts under this section.

Sections 6 and 7 amend ss. 117.245 and 117.255, F.S., to transfer the duty to maintain a recording of the audio-video communication in which an online notarization was performed from the online notary to the RON service provider used for the services. The online notary, however, is still required to ensure that that recording includes:

- The appearance of the principal and any witness before the online notary public;
- Confirmation of the identity of the principle and any witness;
- A general description or identification of the records to be signed;
- Recitation by the online notary public of information sufficient to identify the notarial act;
- A declaration by the principal that his or her signature on the record is knowingly and voluntarily made; and
- Any of the actions and spoken words of the principle, notary public, and any required witnesses during the entire online notarization.

The RON service provider must keep a copy of the recording for at least 10 years, but may delegate this duty by contract to a secure repository provided that the Department of State is

notified of such delegation of retention duties within 30 days. The effective date of such a delegation must be reported to the Department of State.

The bill also extends the duty to provide access to the RON service provider's stored recordings, or a copy thereof, to specific parties upon their request. The bill permits the RON service provider to charge a fee of no more than \$20 for producing a copy of the recording, and requires disclosure of the fee in a timely manner. The bill clarifies that certain parties are exempt from the \$20 production fee during the 10 year period that the audio-video recording is retained by the RON service provider.

Section 6 is also reorganized to clarify an online notary's duty to note in his or her electronic journal that a principal's government-issued identification satisfied the credential analysis only when the online notary relied on a principal's identification to prove his or her identity, not in cases where the online notary personally knew the principal.

Section 8 amends s. 117.265, F.S., to offer an accommodation to employers of online notaries to allow them to specify which RON service provider the online notary may use in his or her capacity as an employee, similar to the change made for notary public employers in section 1 of the bill. This amendment also reiterates that an online notary public may choose to use any RON service provider outside of his or her employment relationship.

Section 9 amends s. 117.275, F.S., to specify that the \$25 fee ceiling for an online notarial act does not govern fees charged by a RON service provider, and clarifies that online notarization services are not considered closing services, as defined in s. 627.7711, F.S., regarding title insurance.

Section 10 amends s. 117.295, F.S., to create a process whereby RON service providers must certify with the department that they are eligible, pursuant to statute and rule, to provide audio-visual communication and related processes for assistance in the provision of online notarization services. These self-certifications remain active for a period of one year from the date of filing.

While these eligibility requirements exist in current statute, the duty to confirm the RON service provider's eligibility rests with the online notary at the time of his or her registration. **Section 4** deletes the online notary's duty to confirm a RON service provider's eligibility in s. 117.225(5), F.S., thereby completing the transfer of RON service provider eligibility certification from online notary to RON service provider.

Section 10 further amends s. 117.295, F.S., to require that the department publish on its website both a list of each online notary public, his or her past and present RON service providers, and the effective dates during which the online notary used the RON service provider; and a list of all RON service providers who have an active self-certification with the department. The bill requires the department to have the above information from January 1, 2022, and thereafter, and does not apply retroactively. Thus, any RON service providers used in the past by an online notary public, for example, would not need to be published on the website unless it is used again by the online notary public on or after January 1, 2022.

The bill deletes the department's emergency rulemaking, but retains the department's rulemaking authority intact to permit further rulemaking to implement remote online notarizations in Florida.

Lastly, section 10 implements privacy standards that prohibit a RON service provider from using, selling, or offering to sell or transfer for use or sale any personally identifying information that it obtained under part II of ch. 117, F.S., from a principal, witness, or person named in a record that was presented for notarization, except in cases where provision of the information is necessary to:

- Facilitate the notarial act;
- Administer or process a record provided by or on behalf of a principal or the transaction for which the record was provided;
- Comply with federal, state, or local law, or to comply with a lawful subpoena or court order;
- To monitor and improve the audio-video communication technology and related processes, services, software, data storage, or other services offered by the RON service provide to the online notaries public for the purpose of directly facilitating their performance of online notarizations; or
- Engage in the sale, merger, transfer, or exchange of all or a portion of the RON service provider's business—if the transferee agrees to comply with the statutory privacy restrictions in this same provision of law.

Section 11 provides that the bill takes effect on January 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill appears to codify language from a recent Florida Supreme Court Administrative Order which was executed in relation to the COVID-19 pandemic to allow for remote

administrations of oaths and swearing in of witnesses.²² The bill also allows a notary to issue the oath of admission to The Florida Bar remotely.

The Supreme Court has exclusive jurisdiction over the procedural rules of the Florida courts.²³ The Florida Evidence Code, for example, contains both procedural and substantive laws for the courts to apply. However, rules of that are procedural in nature, even if passed by the Legislature, must be approved by the Supreme Court. Occasionally, the Court has rejected legislative changes. In 2000, for example, the Court refused to adopt a recently enacted hearsay exception, noting that the application of the statute would go against long standing rules of evidence.²⁴ A concurring opinion by Justice Lewis also found that the statute was an unacceptable rule of procedure, and therefore infringed on the Court's ability to adopt rules.

The Court likewise has exclusive jurisdiction over attorney regulations and admission to the Florida Bar.²⁵ Thus, the Court may have the power to reject any oath of admission conducted remotely if it repeals or changes its Administrative Order.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

RON service providers may have to update terms and processes to implement the privacy restrictions in this bill.

C. Government Sector Impact:

The Department of State will be required to implement processes to publish and maintain lists of RON service providers and online notaries. It currently maintains a list of notaries public, their commission number, and their commission's expiration date—but does not currently indicate whether a notary public is registered as an online notary public.²⁶ The department states that this duty to publish additional information regarding online notaries public and RON service providers will “have a significant impact on its current technology systems. ... [and] will require additional funding and may require additional deliverables and/or timeframe be added to the COTS [commercial-off-the-shelf business registry system] contract in progress.” The department therefore “request[s] additional

²² Florida Supreme Court, *Supra* note 6.

²³ Art V, s. 15, Fla. Const.

²⁴ *In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339, 341 (Fla. 2000). The statute in question stripped the former testimony of witnesses' hearsay exception of the requirement that the witness be unavailable.

²⁵ Art V, s. 2(a), Fla. Const.

²⁶ Department of State, *Approved Notaries*, <https://dos.myflorida.com/sunbiz/other-services/notaries/remote-online-notary-public/approved-notaries/> (last visited Jan. 25, 2021).

funding and FTE positions in order to perform the additional processing duties, responsibilities and services specified in the bill.”²⁷

The department also “suggests a fee for the RON service provider to file the self-certification.”²⁸ It is unclear if the department suggests this fee to defray costs related to the publication of information required under the bill. Additionally, the department may have to adopt forms or rules to implement the certification of RON service providers.

The bill codifies language from a recent Florida Supreme Court Administrative Order which was adopted in relation to the COVID-19 pandemic to allow for remote swearing in of witnesses and newly admitted attorneys.²⁹ The Administrative Order may be rescinded by the Court at any time, possibly as soon as health guidelines make it feasible to allow daily in person court to resume. By codifying this language in statute, the bill may have a positive impact on courtroom efficiency by allowing remote swearing in to continue after the COVID-19 pandemic.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 117.021, 117.05, 117.201, 117.215, 117.225, 117.245, 117.255, 117.265, 117.275, and 117.295.

IX. Additional Information:

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

CS/CS by Judiciary on February 15, 2021:

- Revises the notary and online notary fee ceilings to be applicable “per notarial act” as opposed to “per signature”;
- Allows a notary to swear in witnesses and newly admitted attorneys via audio-video technology;
- Allows a remote online notary to delegate his or her duty to maintain records of online notarization sessions to a secure repository in a similar method as an online notary currently can with their electronic journal;

²⁷ Department of State, *Senate Bill 228 Agency Analysis*, p. 5 (Jan. 7, 2021) (on file with the Senate Committee on Commerce and Tourism).

²⁸ *Id.*

²⁹ Florida Supreme Court, *Supra* note 6.

- Clarifies that while a remote online notary service provider is responsible for maintaining the records of the notarization session, the notary himself or herself are actually responsible for ensuring that the notarization is compliant;
- Clarifies when a remote online service provider may use, sell, or transfer the personal information obtained as part of a notarial act; and
- Delays the effective to January 1, 2022 from October 1, 2021.

CS by Commerce and Tourism on January 25, 2021:

- Deletes “interim and emergency” rulemaking to implement provisions of the bill, but leaves the department’s general rulemaking authority intact;
- Requires RON service providers to self-certify each year instead of every two years; and
- Deletes the requirement that a RON service provider submit a new self-certification after each amendment to ch. 117, F.S., and any rules adopted pursuant thereto.

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senators Bradley and Burgess

577-01231-21

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A bill to be entitled

An act relating to notaries public; amending s. 117.021, F.S.; authorizing an employer of a notary public to require the use of a particular technology and provider in performing a notarial act with respect to an electronic record; amending s. 117.05, F.S.; revising limitations on notary public fees; amending s. 117.201, F.S.; revising definitions; amending s. 117.215, F.S.; clarifying application of online electronic witnessing standards when a witness is not in the physical presence of the principal; amending s. 117.225, F.S.; revising certain registration requirements for online notaries public; amending s. 117.245, F.S.; modifying requirements for entries in the electronic journal maintained by an online notary public; requiring a remote online notarization service provider, rather than an online notary public, to maintain audio-video communication recordings of online notarizations; conforming provisions to changes made by the act; amending s. 117.255, F.S.; revising provisions governing access to audio-video communication recordings to conform to changes made by the act; authorizing a remote online notarization service provider to charge a fee for access to such recordings, subject to specified limitations; amending s. 117.265, F.S.; clarifying that an online notary public is entitled to select his or her remote online notarization service provider; authorizing an employer of an online notary public to require the use of a

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particular remote online notarization service provider in performing online notarizations; requiring an online notary public to notify the Department of State of the effective date of a change in the remote online notarization service provider used; amending s. 117.275, F.S.; clarifying limitations on fees charged for online notarizations; amending s. 117.295, F.S.; requiring the department to publish on its website a list containing certain information on online notaries public; requiring a remote online notarization service provider to file a self-certification with the department; specifying the duration of a self-certification; requiring the department to publish on its website a list of self-certified remote online notarization service providers; prohibiting a remote online notarization service provider from using, selling, or offering to sell or transfer personal information obtained in the course of performing online notarizations; providing exceptions; providing an effective date.

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

Section 1. Subsection (4) of section 117.021, Florida Statutes, is amended to read:

117.021 Electronic notarization.—

(4) A notary public performing a notarial act with respect to an electronic record shall select the technology and provider to be used for such notarial act. A person may not require the a

577-01231-21

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notary public to use a particular ~~perform a notarial act with~~
~~respect to an electronic record with a form of technology or~~
~~provider; however, if the notary public is required by his or~~
~~her employer to perform notarial acts with respect to electronic~~
~~records, the employer may require the use of a particular~~
~~technology and provider for those notarial acts that the notary~~
~~public has not selected to use.~~

Section 2. Paragraph (a) of subsection (2) of section
117.05, Florida Statutes, is amended to read:

117.05 Use of notary commission; unlawful use; notary fee;
seal; duties; employer liability; name change; advertising;
photocopies; penalties.—

(2)(a) The fee of a notary public may not exceed \$10 per
signature per document ~~for any one notarial act~~, except as
provided in s. 117.045 or s. 117.275, for performing a
notarization under this part.

Section 3. Subsections (6) and (14) of section 117.201,
Florida Statutes, are amended to read:

117.201 Definitions.—As used in this part, the term:

(6) "Government-issued identification credential" means any
approved credential for verifying identity under s.
117.05(5)(b)2. However, for an online notarization of a
principal not located within the United States, a passport
issued by a foreign government not including the stamp of the
United States Bureau of Citizenship and Immigration Services may
be used as a government-issued identification credential to
verify the principal's identity.

(14) "Remote Online Notarization service provider" or "RON
service provider" means a person that provides audio-video

577-01231-21

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88 communication technology and related processes, services,
89 software, data storage, or other services to online notaries
90 public for the purpose of directly facilitating their
91 performance of online notarizations, in compliance with the
92 requirements of this chapter and any rules adopted by the
93 Department of State pursuant to s. 117.295.

94 Section 4. Subsection (2) of section 117.215, Florida
95 Statutes, is amended to read:

96 117.215 Relation to other laws.—

97 (2) If a provision of law requires a signature or an act of
98 a principal to be witnessed and the witness is not in the
99 physical presence of the principal at the time of the signature
100 or act, compliance with the online electronic witnessing
101 standards prescribed in s. 117.285 and any rules adopted
102 thereunder must be complied with in order to satisfy ~~satisfies~~
103 that requirement.

104 Section 5. Subsections (1) and (5) of section 117.225,
105 Florida Statutes, are amended to read:

106 117.225 Registration; qualifications.—A notary public, a
107 civil-law notary appointed under chapter 118, or a commissioner
108 of deeds appointed under part IV of chapter 721 may complete
109 registration as an online notary public with the Department of
110 State by:

111 (1) Holding a current commission as a notary public under
112 part I of this chapter, an appointment as a civil-law notary
113 under chapter 118, or an appointment as a commissioner of deeds
114 under part IV of chapter 721, and submitting ~~a copy of such~~
115 ~~commission or~~ proof of such commission or appointment with his
116 or her registration.

577-01231-21

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117 (5) Identifying the RON service provider or providers whose
118 audio-video communication technology and processes for
119 credential analysis and identity-proofing technologies the
120 registrant intends to use for online notarizations, ~~and~~
121 ~~confirming that such technology and processes satisfy the~~
122 ~~requirements of this chapter and any rules adopted by the~~
123 ~~Department of State pursuant to s. 117.295.~~

124 Section 6. Subsections (1), (2), (4), and (5) of section
125 117.245, Florida Statutes, are amended to read:

126 117.245 Electronic journal of online notarizations.—

127 (1) An online notary public shall keep one or more secure
128 electronic journals of online notarizations performed by the
129 online notary public. For each online notarization, the
130 electronic journal entry must contain all of the following:

131 (a) The date and time of the notarization.

132 (b) The type of notarial act performed, whether an oath or
133 an acknowledgment.

134 (c) The type, the title, or a description of the electronic
135 record or proceeding.

136 (d) The name and address of each principal involved in the
137 transaction or proceeding.

138 (e) Evidence of identity of each principal involved in the
139 transaction or proceeding in either ~~any~~ of the following forms:

140 1. A statement that the person is personally known to the
141 online notary public; or—

142 2.a. A notation of the type of government-issued
143 identification credential provided to the online notary public;

144 b. An indication that the government-issued identification
145 credential satisfied the credential analysis; and—

577-01231-21

2021228c1

146 ~~c.~~(f) An indication that the principal satisfactorily
147 passed the identity proofing.

148 ~~(g) An indication that the government-issued identification~~
149 ~~credential satisfied the credential analysis.~~

150 ~~(f)~~(h) The fee, if any, charged for the notarization.

151 (2) The RON service provider ~~online notary public~~ shall
152 retain an uninterrupted and unedited copy of the recording of
153 the audio-video communication in which an online notarization is
154 performed. The recording must include all of the following:

155 (a) Appearance by the principal and any witness before the
156 online notary public.

157 (b) Confirmation of the identity of the principal and any
158 witness.

159 (c) A general description or identification of the records
160 to be signed.

161 (d) At the commencement of the recording, recitation by the
162 online notary public of information sufficient to identify the
163 notarial act.

164 (e) A declaration by the principal that his or her
165 signature on the record is knowingly and voluntarily made.

166 (f) All of the actions and spoken words of the principal,
167 notary public, and any required witness during the entire online
168 notarization, including the signing of any records before the
169 online notary public.

170 (4) The electronic journal required under subsection (1)
171 and the recordings of audio-video communications required under
172 subsection (2) shall be maintained for at least 10 years after
173 the date of the notarial act. However, a full copy of the
174 recording of the audio-video communication required under

577-01231-21

2021228c1

subsection (2) relating to an online notarization session that involves the signing of an electronic will must be maintained by a qualified custodian in accordance with chapters 731 and 732. The Department of State maintains jurisdiction over the electronic journal and audio-video communication recordings to investigate notarial misconduct for a period of 10 years after the date of the notarial act. The online notary public, a guardian of an incapacitated online notary public, or the personal representative of a deceased online notary public may, by contract with a secure repository in accordance with any rules established under this chapter, delegate to the repository the online notary public's duty to retain the electronic journal ~~and the required recordings of audio-video communications,~~ provided that the Department of State is notified of such delegation of retention duties to the repository within 30 days thereafter, including the address and contact information for the repository. If an online notary public delegates to a secure repository under this section, the online notary public shall make an entry in his or her electronic journal identifying such repository, and provide notice to the Department of State as required in this subsection.

(5) An omitted or incomplete entry in the electronic journal does not impair the validity of the notarial act or of the electronic record which was notarized, but may be introduced as evidence to establish violations of this chapter; as evidence of possible fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, or unconscionability; or for other evidentiary purposes. However, if the recording of the audio-video communication required under subsection (2) relating

577-01231-21

2021228c1

to the online notarization of the execution of an electronic will cannot be produced by the RON service provider, the online notary public, or the qualified custodian, the electronic will shall be treated as a lost or destroyed will subject to s. 733.207.

Section 7. Section 117.255, Florida Statutes, is amended to read:

117.255 Use of electronic journal, signature, and seal.—

(1) An online notary public shall:

(a)~~(1)~~ Take reasonable steps to ensure that any registered device used to create an electronic seal is current and has not been revoked or terminated by the issuing or registering authority of the device.

(b)~~(2)~~ Keep the electronic journal and electronic seal secure and under his or her sole control, which includes access protection using passwords or codes under control of the online notary public. The online notary public may not allow another person to use the online notary public's electronic journal, electronic signature, or electronic seal, other than a RON service provider or other authorized person providing services to an online notary public to facilitate performance of online notarizations.

(c)~~(3)~~ Attach or logically associate the electronic signature and seal to the electronic notarial certificate of an electronic record in a manner that is capable of independent verification using tamper-evident technology that renders any subsequent change or modification to the electronic record evident.

(d)~~(4)~~ Notify an appropriate law enforcement agency and the

577-01231-21

2021228c1

Department of State of any unauthorized use of or compromise to the security of the electronic journal, official electronic signature, or electronic seal within 7 days after discovery of such unauthorized use or compromise to security.

(2) ~~(5)~~ An online notary public shall provide ~~make~~ electronic copies, ~~upon request,~~ of the pertinent entries in the electronic journal, and a RON service provider shall provide access to the related audio-video communication recordings, or a copy thereof, to the following persons upon request:

(a) The parties to an electronic record notarized by the online notary public;

(b) The qualified custodian of an electronic will notarized by the online notary public;

(c) The title agent, settlement agent, or title insurer who insured the electronic record or engaged the online notary public with regard to a real estate transaction;

~~(d) The online notary public's RON service provider whose services were used by the online notary public to notarize the electronic record;~~

~~(e)~~ Any person who is asked to accept a power of attorney that was notarized by the online notary public;

(e) ~~(f)~~ The Department of State pursuant to a notary misconduct investigation; ~~and~~

(f) ~~(g)~~ Any other persons pursuant to a subpoena, court order, law enforcement investigation, or other lawful inspection demand;

(g) With respect to audio-video communication recordings of an online notarization, the online notary public performing that notarization; and

577-01231-21

2021228c1

262 (h) With respect to electronic copies of pertinent entries
263 in the electronic journal, the RON service provider used for the
264 online notarizations associated with those entries.

265 (3)(6) The online notary public may charge a fee not to
266 exceed \$20 per transaction record for making and delivering
267 electronic copies of a given series of related electronic
268 records, and a RON service provider may charge a fee not to
269 exceed \$20 for providing access to, or a copy of, the related
270 audio-video communication recordings, except if requested by:

271 (a) A party to the electronic record;

272 (b) In a real estate transaction, the title agent,
273 settlement agent, or title insurer who insured the electronic
274 record or engaged the online notary public with regard to such
275 transaction; ~~or~~

276 (c) The Department of State pursuant to an investigation
277 relating to the official misconduct of an online notary public;

278 (d) With respect to audio-video communication recordings of
279 an online notarization, the online notary public performing that
280 notarization; or

281 (e) With respect to electronic copies of a given series of
282 related electronic records, the RON service provider used for
283 the online notarization of those records.

284
285 If the online notary public or RON service provider charges ~~does~~
286 ~~charge~~ a fee, the online notary public or RON service provider
287 must ~~shall~~ disclose the amount of such fee to the requester
288 before making the electronic copies or providing access to, or
289 making a copy of, the requested audio-video communication
290 recordings.

577-01231-21

2021228c1

291 Section 8. Subsection (5) of section 117.265, Florida
292 Statutes, is amended to read:

293 117.265 Online notarization procedures.—

294 (5) (a) An online notary public shall select the RON service
295 provider to be used to perform an online notarization, and a
296 person may not require the online notary public to use a
297 particular RON service provider; however, if the online notary
298 public is required by his or her employer to perform online
299 notarizations, the employer may require the use of a particular
300 RON service provider for those online notarizations.

301 (b) An online notary public may change his or her RON
302 service provider or providers from time to time, but shall
303 notify the Department of State of such change, and its effective
304 date, within 30 days thereafter.

305 Section 9. Section 117.275, Florida Statutes, is amended to
306 read:

307 117.275 Fees for online notarization.—An online notary
308 public or the employer of such online notary public may charge a
309 fee, not to exceed \$25 per signature per document, for
310 performing an online notarization under this part. Fees for
311 services other than notarial acts, including any fees charged by
312 a RON service provider, are not governed by this section, and
313 such services are not considered closing services, as defined in
314 s. 627.7711.

315 Section 10. Subsections (2) and (4) of section 117.295,
316 Florida Statutes, are amended, and subsection (8) is added to
317 that section, to read:

318 117.295 Standards for electronic and online notarization;
319 rulemaking authority.—

577-01231-21

2021228c1

320 (2) ~~By January 1, 2020,~~ The Department of State shall:

321 (a) Adopt forms, processes, and ~~interim or emergency~~ rules
322 necessary to accept applications from and register online
323 notaries public pursuant to s. 117.225.

324 (b) Publish on its website a list containing each online
325 notary public, the online notary public's past and present RON
326 service providers, and the effective dates during which the
327 online notary public used each RON service provider, as
328 identified pursuant to ss. 117.225(5) and 117.265(5)(b).

329 (4)(a) A RON service provider must file a self-
330 certification with the Department of State on a form adopted by
331 department rule confirming that its audio-video communication
332 technology and related processes, services, software, data
333 storage, or other services provided to online notaries public
334 for the purpose of directly facilitating their performance of
335 online notarizations satisfy the requirements of this chapter
336 and any rules adopted by the Department of State pursuant to
337 this section. Each certification shall remain active for a
338 period of 1 year from the date of filing. The Department of
339 State must publish on its website a list of all RON service
340 providers that are the subject of an active self-certification.

341 (b) A RON service provider is deemed to have satisfied
342 tamper-evident technology requirements by use of technology that
343 renders any subsequent change or modification to the electronic
344 record evident.

345 (8) A RON service provider may not use, sell, or offer to
346 sell or transfer to another person for use or sale any personal
347 information obtained under this part which identifies a
348 principal, a witness, or a person named in a record presented

577-01231-21

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for online notarization, except:

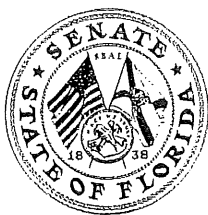
(a) As necessary to facilitate performance of a notarial act;

(b) To effect, administer, enforce, service, or process a record provided by or on behalf of a principal or the transaction of which the record is a part;

(c) In accordance with this part and the rules adopted pursuant to this part or any other applicable federal, state, or local law, or to comply with a lawful subpoena or court order; or

(d) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit of the RON service provider, if the personal information concerns only customers of the business or unit and the transferee agrees to comply with the restrictions set forth in this subsection.

Section 11. This act shall take effect October 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY
5th District

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic
Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

January 27, 2021

Senator Jeff Brandes, Chairman
Senate Judiciary Committee
515 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Mr. Chairman:

I respectfully request that CS/SB 228 be placed on the Judiciary Committee agenda at your earliest convenience. The bill relates to public notaries and electronic notarization.

Thank you for your consideration and please let me know if I can provide additional information.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Bradley". The signature is fluid and cursive.

Jennifer Bradley

cc: Tom Cibula
Joyce Butler

ENTERED

REPLY TO:

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

2-15-21

Meeting Date

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

SB 228

Bill Number (if applicable)

Topic

Notaries

Amendment Barcode (if applicable)

Name

KARI HEBRANK

Job Title

Address

215 S. Monroe St., Suite 500

Phone

850-566-7824

Street

TALLAHASSEE

State

FL

Zip

32301

Email

Khebrank@carltonfields.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Southern Title

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

228

Bill Number (if applicable)

2407000

Amendment Barcode (if applicable)

Topic Notaries Public

Name Corinne Mixon

Job Title Lobbyist

Address 119 S. Monroe St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 8507665795

Email corinne@rutledge-ecenia.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Court Reporters Association

Appearing at request of Chair: ☒ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/21

Meeting Date

228

Bill Number (if applicable)

240700

Amendment Barcode (if applicable)

Topic Notaries Public

Name French Brown

Job Title Lobbyist

Address 106 E. College Ave., Suite 1200

Phone 850-459-0992

Street

Tallahassee

FL

32301

Email fbrown@deanmead.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

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

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 234

INTRODUCER: Criminal Justice Committee and Senators Book and Bradley

SUBJECT: Registration of Sexual Predators and Sexual Offenders

DATE: February 12, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 234 clarifies release from conviction sanctions for sexual offender reporting and registration purposes. Currently, a person convicted of a qualifying sexual offense must register as a sex offender upon release from a court imposed sanction. A Florida appellate court recently interpreted the word “sanction” to include any court imposed fines. As a result, the opinion allows a person, otherwise required to register as a sex offender, to forgo registration by refusing to pay any court imposed fine.

The bill provides that an offender who has been released on or after October 1, 1997, from a sanction imposed for any conviction for a qualifying sexual offense and who does not otherwise meet the criteria for registration as a sexual offender under ch. 944, F.S., or ch. 985, F.S., must register as a sexual offender. The bill also amends the definition of “sanction” to exclude fines, and provides that if no sanction is imposed, the person is deemed to be released upon conviction. The effect of these changes is that an outstanding fine cannot serve as the basis for barring sexual offender registration.

Additionally, the bill:

- Amends the definitions of “permanent residence,” “temporary residence,” and “transient residence” to clarify how days are calculated for purpose of any change of residence status.
- Authorizes sexual predators and sexual offenders to report vehicle information changes to the Florida Department of Law Enforcement’s (FDLE’s) online system.

- Authorizes sexual predators and sexual offenders to report specified registration information through an authorized alternate method as provided by the Department of Highway Safety and Motor Vehicles (DHSMV).
- Clarifies a registration requirement relating to the timing of reporting of a change of residence to another state or jurisdiction or international travel.
- Specifies that failure to report intended travel is punishable as provided.
- Creates a process for a person to petition for relief from registration if the person's requirement to register is based solely upon a requirement to register in another state for an offense that is not similar to an offense requiring registration in this state and whose registration in that other state is held confidential, not for public release, and for criminal justice purposes only.

According to the FDLE, the bill should not have a fiscal impact on the department. Although the bill authorizes sexual predators and sexual offenders to report specified registration information through an authorized alternate method as provided by the DHSMV, it does not require the DHSMV to create this alternate method. See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2021.

II. Present Situation:

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.¹ The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes² and are implemented through the combined efforts of the FDLE, all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the DHSMV, and the Department of Children and Families.

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;³
- Has been convicted of a qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.⁴

¹ Sections 775.21 and 943.0435, F.S.

² Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

³ Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

⁴ Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the juvenile was 14 years of age or older.⁵

Requirements for registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.⁶ Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under the DOC's or the DJJ's supervision, or in a residential commitment program under the DJJ.

Sexual predators and sexual offenders are required to report at registration and reregistration certain information, including but not limited to, physical characteristics, relevant sex offense history, and information on residence, vehicles/vessels owned, and travel. The FDLE, through its agency website, provides a searchable database that includes some of this information.⁷ Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

State v. James: Interpreting Release from Conviction Sanctions for Sexual Offender Reporting and Registration Purposes

Recently, in *State v. James*,⁸ the Florida Second District Court of Appeal upheld and affirmed a trial court order granting dismissal of charges against offender Ray La Vel James for failing to report quarterly as a sexual offender. James was sentenced to 15 years in state prison and a \$10,000 fine for a conviction for attempted lewd molestation. After James was released from prison, the State filed a two-count information charging James with failing to report in person quarterly to register as a sexual offender. James moved to dismiss the information, arguing that he was not required to register and report, notwithstanding his release from prison, because his

⁵ Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

⁶ All sexual predators, sexual offenders convicted for offenses specified in s. 943.0435(14)(b), F.S., and juvenile sexual offenders required to register per s. 943.0435(1)(h)1.d., F.S., for certain offenses must reregister four times per year (on the birth month of the sexual predator or qualifying sexual offender and every third month thereafter). Sections 775.21(8)(a), 943.0435(14)(b), 944.607(13)(a), and 985.4815(13)(a), F.S. All other sexual offenders are required to reregister two times per year (on the birth month of the qualifying sexual offender and during the sixth month following the sexual offender's birth month). Section 943.0435(14)(a), F.S.

⁷ The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. See <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on Jan. 26, 2021).

⁸ *State v. James*, 298 So.3d 90 (Fla. 2d DCA 2020).

\$10,000 fine had not yet been released or discharged. The trial court agreed and dismissed the charges. The State appealed this dismissal.

Currently, s. 943.0435(1)(h)1.a.(II), F.S., provides that a sexual offender who has been released on or after a specified date from the sanction imposed for any conviction of an offense described in s. 943.0435(1)(h)1.a.(I), F.S., is required to register as a sexual offender in Florida. Section 943.0435(1)(h)1.a.(II), F.S., also defines a sanction as including, but not limited to, "... a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility."

The appellate court found that James was not released from his \$10,000 fine and the fine remained outstanding. While the State argued that the statute did not require James to be released from both incarceration *and* the fine to qualify as a sexual offender, the appellate court rejected this argument, finding that the plain language of the statute did not accord with the State's interpretation of the language. The court held that since James had not completed his \$10,000 fine, "his sanction, as a whole, has not been released and he does not qualify as a 'sexual offender' for purposes of reporting and registration under section 943.0435."⁹

As of January 10, 2021, the FDLE has received inquiries from seven separate individuals requesting removal from the registry pursuant to the decision in *State v. James*. Six of these individuals did not meet the standard specified in the case and remain registered. One offender was removed after having met the standard in the case due to having an unpaid fine in relation to a qualifying offense.¹⁰

Residence Definitions

Section 775.21, F.S., defines the terms "permanent residence," "temporary residence," and "transient residence" for the purpose of reporting residence information. Section 943.0435, F.S., also uses these definitions.¹¹

"Permanent residence" means a place where the person abides, lodges, or resides for 3 or more consecutive days.¹²

"Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 3 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.¹³

⁹ *State v. James*, *supra*, at p.3.

¹⁰ E-mail from Mary Coffee, Planning and Policy Administrator, Florida Department of Law Enforcement, (Feb. 10, 2021) (on file with the Senate Committee on Judiciary).

¹¹ Sections 775.21(2)(k), (n), and (o) and 943.0435(1)(f), F.S.

¹² Section 775.21(2)(k), F.S.

¹³ Section 775.21(2)(n), F.S.

“Transient residence” means a county where a person lives, remains, or is located for a period of 3 or more days in the aggregate during a calendar year and which is not the person’s permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.¹⁴

FDLE’s Online System

The FDLE is required to establish an online system through which sexual predators and sexual offenders may securely access, submit, and update all electronic mail addresses; Internet identifiers and each Internet identifier’s corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and institution of higher education information.¹⁵

A sexual predator or sexual offender must register all electronic mail addresses and Internet identifiers, and each Internet identifier’s corresponding website homepage or application software name, with the FDLE through the FDLE’s online system or in person at the sheriff’s office within 48 hours after using such electronic mail addresses and Internet identifiers. If the sexual predator or sexual offender is in the custody or control, or under the supervision, of the DOC, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier’s corresponding website homepage or application software name, to the DOC before using such electronic mail addresses or Internet identifiers. If the sexual predator or sexual offender is in the custody or control, or under the supervision, of the DJJ, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier’s corresponding website homepage or application software name, to the DJJ before using such electronic mail addresses or Internet identifiers.¹⁶

A sexual predator or sexual offender must register all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education in the same manner previously described.¹⁷

Currently, the law does not specify that a sexual predator and sexual offender may report changes to vehicles owned through FDLE’s online system. The FDLE notes that “[c]urrent law requires sexual offenders and predators to report in-person to the sheriff’s office within 48 hours after any change in vehicle owned. While vehicle information is incredibly important to law enforcement, the mandate to have every change to this information reported in-person to the sheriff’s office has created a significant burden.”¹⁸ Further, according to the FDLE, “[a]llowing registrants the option to report their vehicle information and address changes online will facilitate faster access to this critical information and reduce the impact on sheriff’s offices.”¹⁹

¹⁴ Section 775.21(2)(o), F.S.

¹⁵ Sections 775.21(6)(g)5.c. and 943.0435(4)(e)3., F.S.

¹⁶ Sections 775.21(6)(g)5.a. and 943.0435(4)(e)1., F.S.

¹⁷ Sections 775.21(6)(g)5.b. and 943.0435(4)(e)2., F.S.

¹⁸ *Registry Amendments – Talking Points*, Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

¹⁹ *Id.*

Reporting when Driver License or State Identification is Renewed and Reporting Change of Residence or Name

Within 48 hours after initial registration with the sheriff's office, a sexual predator or sexual offender who is not incarcerated and who resides in the community, including a sexual predator under the supervision of the DOC, must register in person at a driver license office of the DHSMV and present proof of registration unless a driver license or an identification card that complies with the requirements of s. 322.141(3), F.S., was previously secured or updated under s. 944.607, F.S.²⁰

At the driver license office the sexual predator or sexual offender must do all of the following:

- If otherwise qualified, secure a Florida driver license, renew a Florida driver license, or secure an identification card.
- Identify himself or herself as a sexual predator or sexual offender who is required to register, provide his or her place of permanent, temporary, or transient residence, including a rural route address and a post office box, and submit to the taking of a photograph for use in issuing a driver license, a renewed license, or an identification card, and for use by the FDLE in maintaining current records of sexual predators. (There are registration requirements for other places of residence such as mobile homes and vessels.)
- Pay the costs assessed by the DHSMV for issuing or renewing a driver license or an identification card.
- Provide, upon request, any additional information necessary to confirm the identity of the sexual predator, including a set of fingerprints.²¹

Each time a sexual predator's or sexual offender's driver license or identification card is subject to renewal, and, without regard to the status of the predator's or offender's driver license or identification card, within 48 hours after any change of the predator's or offender's residence or change in the predator's or offender's name by reason of marriage or other legal process, the predator or offender must report in person to a driver license office and is subject to the requirements previously described. The DHSMV must forward to the FDLE and the DOC all photographs and information provided by sexual predators or sexual offenders.²²

A sexual predator or sexual offender who is unable to secure or update a driver license or an identification card with the DHSMV as previously described must also report any change of the predator's or offender's residence or change in the predator's or offender's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to the DHSMV. These reporting requirements do not negate the requirement for a sexual predator or sexual offender to obtain a Florida driver license or identification card.²³

²⁰ Section 775.021(6)(f) and 943.0435(3), F.S.

²¹ *Id.*

²² Sections 775.021(6)(g)1. and 943.0435(4), F.S.

²³ *Id.*

Reporting Residence in Another State or Jurisdiction and Travel

A sexual predator or sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than Florida must report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual predator or sexual offender 21 days before the departure date must be reported to the sheriff's office as soon as possible before departure.²⁴

The sexual predator or sexual offender must provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual predator or sexual offender must also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel.²⁵

The sheriff must promptly provide to the FDLE the information received from the sexual predator or sexual offender. The FDLE must notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual predator's or sexual offender's intended residence. The failure of a sexual predator or sexual offender to provide his or her intended place of residence is a third degree felony.²⁶

A sexual predator or sexual offender who indicates his or her intent to establish a permanent, temporary, or transient residence in another state, a jurisdiction other than Florida, or another country and later decides to remain in this state must, within 48 hours after the date upon which the sexual predator or sexual offender indicated he or she would leave this state, report in person to the sheriff to which the sexual predator or sexual offender reported the intended change of residence, and report his or her intent to remain in this state. If the sheriff is notified by the sexual predator or sexual offender that he or she intends to remain in this state, the sheriff must promptly report this information to the FDLE. A sexual predator or sexual offender who reports his or her intent to establish a permanent, temporary, or transient residence in another state, a jurisdiction other than Florida, or another country, but who remains in this state without reporting to the sheriff as previously described commits a second degree felony.²⁷

Sexual Offender Registration Based on Out-of-State Conviction for Offense Not Similar to Florida Offense Requiring Registration and Not Public in Other State

As previously noted, for purposes of sexual offender registration, the definition of "sexual offender" includes, but is not limited to, a person who establishes or maintains a residence in Florida and who has not been designated as a sexual predator by a court of this state but who has

²⁴ Sections 775.21(6)(i) and 943.0435(7), F.S.

²⁵ *Id.*

²⁶ *Id.* A third degree felony is punishable by up to 5 years in state prison and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

²⁷ Sections 775.21(6)(j) and (10) and 943.0435(8), F.S. A second degree felony is punishable by up to 15 years in state prison and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender.²⁸

According to the FDLE, the criteria previously described apply to a person “based solely upon a requirement to register in another state for an offense that is *not* similar to a conviction offense requiring registration in Florida and whose registration in that other state is held confidential, not for public release, and for criminal justice purposes only.”²⁹

The FDLE has indicated concerns about the application of these criteria to such person. “As Florida does not have a non-public registry, such an individual’s registration information would be publicly available. From an equal protection standpoint, these circumstances may be found objectionable by the courts as the current laws treat similarly situated persons convicted in Florida differently than those convicted in other states. Not correcting this issue increases the risk that a court’s decision could impact the entire registry.”³⁰

III. Effect of Proposed Changes:

The bill, *which takes effect on October 1, 2021*, amends s. 775.21, F.S. (sexual predator registration) and s. 943.0435, F.S. (sexual offender registration). The bill also reenacts numerous laws that reference these two statutes.³¹

Clarifying Release from Conviction Sanctions for Sexual Offender Reporting and Registration Purposes

The bill amends s. 943.0435, F.S., to clarify release from conviction sanctions for sexual offender reporting and registration purposes. Currently, an offender who has been released on or after October 1, 1997, from the sanction imposed for any conviction for a qualifying sexual offense must register as a sexual offender. The law specifies that a “sanction” includes a fine.³² A Florida appellate court recently affirmed a trial court order granting dismissal of charges against an offender for failing to report quarterly as a sexual offender because the offender’s sentence included a fine which had not been paid.³³

The bill provides that an offender who has been released on or after October 1, 1997, from a sanction imposed for any conviction for a qualifying sexual offense and who does not otherwise meet the criteria for registration under ch. 944, F.S., or ch. 985, F.S., must register as a sexual offender.³⁴ The bill also amends the definition of “sanction” to remove fines and include only

²⁸ Section 943.0435(1)(h)1.b., F.S.

²⁹ *Registry Amendments – Talking Points*, Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

³⁰ *Id.*

³¹ See “Statutes Affected” section of this analysis for a list of the reenacted statutes.

³² Section 943.0435(1)(h)1.a.(II), F.S.

³³ See “Present Situation” section of this analysis for a discussion of the case.

³⁴ Chapter 944, F.S., in part, deals with registration of sexual offenders in DOC custody or control, under DOC supervision, or in the custody of a private correctional facility. See ss. 944.606 and 944.607, F.S. Chapter 985, F.S., in part, deals with

probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. If no sanction is imposed the person is deemed to be released upon conviction. The effect of these changes is that an outstanding fine cannot serve as the basis for barring sexual offender registration.

Currently, the statute has been interpreted by one appellate court³⁵ to not require an offender to report and register as a sexual offender for a qualifying offense if the offender has an outstanding fine, even if the offender has been released from the incarcerative portion of his or her sentence.³⁶ Under the bill, an offender with an outstanding financial obligation is required to report and register as a sexual offender for a qualifying offense.

Amending Residence Definitions to Clarify Calculation of Days

The bill amends s. 775.21, F.S., to clarify the calculation of days in regard to definitions of the terms “permanent residence,” “temporary residence,” and “transient residence” for the purpose of reporting residence information. Section 943.0435, F.S., also uses these definitions. The following language is added to the definitions of “permanent residence” and “temporary residence”:

In calculating days for [“permanent residence” and “temporary residence”], the first day a person abides, lodges, or resides at a place is excluded. Each day following the first day is counted. A day includes any part of a calendar day.

The following language is added to the definition of “temporary residence”:

In calculating days for “transient residence,” the first day a person lives, remains, or is located in a county is excluded. Each day following the first day is counted. A day includes any part of a calendar day.

Authorizing Sexual Predators and Sexual Offenders to Report Vehicle Information Changes to the FDLE’s Online System

The bill amends ss. 775.21 and 943.0435, F.S., to authorize sexual predators and sexual offenders to report vehicle information changes to the FDLE’s online system. Currently, this information is reported to sheriff’s offices, so the addition of another reporting mechanism will reduce the impact on sheriff’s offices to process this information.³⁷

Authorizing Sexual Predators and Sexual Offenders to Report Specified Registration Information through a DHSMV-Authorized Alternate Method

The bill amends ss. 775.21 and 943.0435, F.S., to authorize sexual predators and sexual offenders to report specified registration information through an authorized alternate method as

registration of sexual offenders in DJJ care or custody, under DJJ jurisdiction or supervision, or in the custody of a private correctional facility. See ss. 985.481 and 985.4815, F.S.

³⁵ See footnote 8, *supra*.

³⁶ See “Present Situation” section of this analysis for a discussion of the case.

³⁷ See “Present Situation” section of this analysis.

provided by the DHSMV. Currently, this information is reported at a driver license office each time a sexual predator's or sexual offender's driver license or identification card is subject to renewal, and within 48 hours after any change of the predator's or offender's residence or change in the predator's or offender's name by reason of marriage or other legal process.³⁸

Clarifying a Registration Requirement Relating to the Timing of Reporting of a Change of Residence to Another State or Jurisdiction or International Travel

The bill amends ss. 775.21 and 943.0435, F.S., to clarify a registration requirement relating to the timing of reporting of a change of residence to another state or international travel. The bill specifies that the registrant must report in person to the sheriff of the county of current residence *at least 48 hours before the date he or she intends to leave Florida to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel outside of the United States*. Any travel that is not known by a registrant *at least 48 hours before he or she intends to establish a residence in another state or jurisdiction* or 21 days before the departure date *for travel outside of the United States* must be reported to the sheriff's office as soon as possible before departure.

Currently, the registrant must report in person to the sheriff of the county of current residence *within 48 hours before the date he or she intends to leave Florida to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States*. Any travel that is not known by a registrant 21 days before the departure date must be reported to the sheriff's office as soon as possible before departure.³⁹

The bill also specifies that the FDLE must report intended travel to law enforcement in the destination jurisdiction. Currently, the law only requires the FDLE to report intended residence to such law enforcement.⁴⁰

Specifying that Failure to Report Intended Travel is Punishable as Provided

The bill amends ss. 775.21 and 943.0435, F.S., to specify that failure to report intended travel is punishable as a third degree felony. Currently, such failure would be covered under language that punishes a sexual predator or sexual offender who doesn't comply with the requirements of s. 775.21, F.S., or s. 943.0435, F.S., as applicable.⁴¹

Creating a Process for Removing Registration Requirements for Certain Sexual Offenders with Out-of-State Convictions

The bill amends s. 943.0435, F.S., to create a process for a person to petition for relief from registration if the person's requirement to register is based solely upon a requirement to register in another state for an offense that is not similar to an offense requiring registration in this state

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See ss. 775.21(10) and 943.0435(9)(a), F.S.

and whose registration in that other state is held confidential, not for public release, and for criminal justice purposes only.

As previously noted, the FDLE has indicated concerns about the application of these criteria to such person. “As Florida does not have a non-public registry, such an individual’s registration information would be publicly available. From an equal protection standpoint, these circumstances may be found objectionable by the courts as the current laws treat similarly situated persons convicted in Florida differently than those convicted in other states. Not correcting this issue increases the risk that a court’s decision could impact the entire registry.”⁴²

The person previously described must file a petition in the circuit court in the jurisdiction in which the person resides or, for a person who no longer resides in this state, the court in the jurisdiction in which the person last resided in Florida. The petition must assert that his or her designation as a sexual predator or sexually violent predator or any other sexual offender designation in the state or jurisdiction in which the designation was made is confidential from public disclosure or that such designation, if not imposed by a court, is considered confidential from public disclosure by operation of law or court order in the state or jurisdiction requiring registration, provided that such person does not meet the criteria for registration as a sexual offender under Florida law. If the person meets the criteria previously described, the court may grant the petition and remove the requirement to register as a sexual offender.

The petition must document the person’s conviction and include a copy of the order issued by the court in the state or jurisdiction which made the designation confidential from public disclosure. If the confidential status was not granted by court order, the person must demonstrate to the court that his or her registration requirement has been made confidential by operation of law in the state or jurisdiction requiring registration. The state attorney and the FDLE must be given notice at least 21 days before the date of the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise demonstrate why it should be denied.

If a person provides to the FDLE a certified copy of the circuit court’s order granting the person’s removal of the requirement to register as a sexual offender in Florida in accordance with the requirements previously described, the registration requirement does not apply to the person and the FDLE must remove all information about the person from the public registry of sexual offenders and sexual predators maintained by the FDLE.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by article VII, section 18 of the State Constitution.

⁴² *Registry Amendments – Talking Points*, Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill will apply retroactively to any sexual offenders who meet the new definition included in the bill. Courts have generally found that sexual offender and predator registration laws are non-punitive civil actions that do not violate the *ex post facto* clause.⁴³ However, in a situation such as the previously referenced defendant in *State v. James*, a defendant who previously did not meet the definition of a sexual offender cannot be convicted for failure to register unless the defendant knew of the obligation to register.⁴⁴

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the FDLE, the bill should not have a fiscal impact on the department.⁴⁵ Although the bill authorizes sexual predators and sexual offenders to report specified registration information through an authorized alternate method as provided by the DHSMV, it does not require the DHSMV to create this alternate method.

VI. Technical Deficiencies:

None.

⁴³ *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003).

⁴⁴ *State v. Giorgetti*, 868 So. 2d 512, 520 (Fla. 2004) (Finding that Florida sexual offender registration statutes include a requirement that the alleged offender must know of the obligation to register and maintain current addresses.)

⁴⁵ See *supra* note 41.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.21 and 943.0435.

This bill reenacts the following sections of the Florida Statutes: 61.13, 68.07, 98.0751, 320.02, 322.141, 322.19, 394.9125, 397.487, 435.07, 775.0862, 775.13, 775.21, 775.24, 775.25, 775.261, 794.056, 900.05, 903.046, 903.133, 907.043, 921.0022, 938.085, 938.10, 943.0435, 943.0436, 943.0584, 944.606, 944.607, 944.609, 948.06, 948.063, 948.31, 985.04, 985.481, 985.4815, 1012.467.

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

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

CS by Criminal Justice on January 26, 2021:

The Committee Substitute:

- Substantially rewords a provision that clarifies release from conviction sanctions for sexual offender reporting and registration purposes so that an offender with an outstanding financial obligation is required to report and register as a sexual offender for a qualifying offense.
- Amends the definitions of “permanent residence,” “temporary residence,” and “transient residence” to clarify how days are calculated for purposes of those definitions.
- Authorizes sexual predators and sexual offenders to report vehicle information changes to the FDLE’s online system.
- Authorizes sexual predators and sexual offenders to report specified registration information through an authorized alternate method as provided by the DHSMV.
- Clarifies a registration requirement relating to the timing of reporting of a change of residence to another state or jurisdiction or international travel.
- Specifies that failure to report intended travel is punishable as provided.
- Creates a process for a person to petition for relief from registration if the person’s requirement to register is based solely upon a requirement to register in another state for an offense that is not similar to an offense requiring registration in this state and whose registration in that other state is held confidential, not for public release, and for criminal justice purposes only.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senators Book and Bradley

591-01266A-21

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A bill to be entitled

An act relating to registration of sexual predators and sexual offenders; amending s. 775.21, F.S.; specifying how days are calculated for the purposes of determining permanent residence, temporary residence, and transient residence; authorizing reporting of certain registration information through the Department of Law Enforcement's online system; authorizing reporting of certain registration information through an authorized alternate method provided by the Department of Highway Safety and Motor Vehicles; requiring the reporting of certain vehicle information; clarifying a requirement relating to the timing of reporting of international travel or a change of residence to another state or jurisdiction; specifying that failure to report intended travel is punishable under certain provisions; amending s. 943.0435, F.S.; redefining the term "sexual offender" to clarify a provision related to release from sanction; authorizing reporting of certain registration information through the Department of Law Enforcement's online system; authorizing reporting of certain registration information through an authorized alternate method provided by the Department of Highway Safety and Motor Vehicles; requiring the reporting of certain additional vehicle information; clarifying a requirement relating to the timing of reporting of international travel or a change of residence to another state or jurisdiction; specifying that failure

591-01266A-21

2021234c1

to report intended travel is punishable under certain provisions; creating a process for a person to petition for relief from registration if the person's requirement to register is based solely upon a requirement to register in another state for an offense that is not similar to an offense requiring registration in this state and whose registration in that other state is held confidential, not for public release, and for criminal justice purposes only; reenacting ss. 943.0435(1)(f), 944.606(1)(d), 944.609(4), 985.481(1)(d), and 985.4815(1)(f), F.S., relating to sexual offenders required to register with the Department of Law Enforcement and penalties; sexual offenders and notification upon release; career offenders and notification upon release; sexual offenders adjudicated delinquent and notification upon release; and notification to the department of information on juvenile sexual offenders, respectively, to incorporate the amendment made to s. 775.21, F.S., in references thereto; reenacting ss. 61.13(9)(c), 68.07(3)(i), 98.0751(2)(b), 322.141(3), 394.9125(2), 397.487(10)(b), 435.07(4)(b), 775.0862(2), 775.13(4), 775.21(5)(d) and (10)(d), 775.24(2), 775.261(3)(b), 900.05(2)(cc), 903.046(2)(m), 903.133, 907.043(4)(b), 943.0436(2), 943.0584(2), 944.607(4)(a) and (10)(c), 948.06(4), 948.063, 948.31, 985.4815(9) and (10)(c), and 1012.467(2)(g), F.S., relating to support of children, parenting and time-sharing, and powers of court;

591-01266A-21

2021234c1

change of name; restoration of voting rights and
termination of ineligibility subsequent to a felony
conviction; color or markings of certain licenses or
identification cards; state attorneys and the
authority to refer a person for civil commitment;
voluntary certification of recovery residences;
exemptions from disqualification; sexual offenses
against students by authority figures and
reclassification; registration of convicted felons,
exemptions, and penalties; the Florida Sexual
Predators Act; the duty of the court to uphold laws
governing sexual predators and sexual offenders; the
Florida Career Offender Registration Act; criminal
justice data collection; the purpose of and criteria
for bail determination; bail on appeal and it being
prohibited for certain felony convictions; pretrial
release and citizens' right to know; the duty of the
court to uphold laws governing sexual predators and
sexual offenders; criminal history records ineligible
for court-ordered expunction or court-ordered sealing;
notification to the department of information on
sexual offenders; violation of probation or community
control, revocation, modification, continuance, and
failure to pay restitution or cost of supervision;
violations of probation or community control by
designated sexual offenders and sexual predators;
evaluation and treatment of sexual predators and
offenders on probation or community control;
notification to the department of information on

591-01266A-21

2021234c1

juvenile sexual offenders; and noninstructional contractors who are permitted access to school grounds when students are present and background screening requirements, respectively, to incorporate the amendment made to s. 943.0435, F.S., in references thereto; reenacting ss. 68.07(6), 320.02(4), 322.19(1) and (2), 775.25, 794.056(1), 938.085, 938.10(1), 944.607(4) (a) and (9), and 985.04(6) (b), F.S., relating to change of name; registration required, application for registration, and forms; change of address or name; prosecutions for acts or omissions; the Rape Crisis Program Trust Fund; additional cost to fund rape crisis centers; additional court cost imposed in cases of certain crimes; notification to Department of Law Enforcement of information on sexual offenders; and oaths, records, and confidential information, respectively, to incorporate the amendments made to ss. 775.21 and 943.0435, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraphs (k), (n), and (o) of subsection (2) and paragraphs (a), (g), and (i) of subsection (6) of section 775.21, Florida Statutes, are amended to read:

775.21 The Florida Sexual Predators Act.—

(2) DEFINITIONS.—As used in this section, the term:

(k) "Permanent residence" means a place where the person abides, lodges, or resides for 3 or more consecutive days. In

591-01266A-21

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117 calculating days for "permanent residence," the first day a
118 person abides, lodges, or resides at a place is excluded. Each
119 day following the first day is counted. A day includes any part
120 of a calendar day.

121 (n) "Temporary residence" means a place where the person
122 abides, lodges, or resides, including, but not limited to,
123 vacation, business, or personal travel destinations in or out of
124 this state, for a period of 3 or more days in the aggregate
125 during any calendar year and which is not the person's permanent
126 address or, for a person whose permanent residence is not in
127 this state, a place where the person is employed, practices a
128 vocation, or is enrolled as a student for any period of time in
129 this state. In calculating days for "temporary residence," the
130 first day a person abides, lodges, or resides at a place is
131 excluded. Each day following the first day is counted. A day
132 includes any part of a calendar day.

133 (o) "Transient residence" means a county where a person
134 lives, remains, or is located for a period of 3 or more days in
135 the aggregate during a calendar year and which is not the
136 person's permanent or temporary address. The term includes, but
137 is not limited to, a place where the person sleeps or seeks
138 shelter and a location that has no specific street address. In
139 calculating days for "transient residence," the first day a
140 person lives, remains, or is located in a county is excluded.
141 Each day following the first day is counted. A day includes any
142 part of a calendar day.

143 (6) REGISTRATION.—

144 (a) A sexual predator shall register with the department
145 through the sheriff's office by providing the following

591-01266A-21

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information to the department:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; photograph; address of legal residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; date and place of each conviction; fingerprints; palm prints; and a brief description of the crime or crimes committed by the offender. A post office box may not be provided in lieu of a physical residential address. The sexual predator shall produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual predator shall also provide information about any professional licenses he or she has.

a. Any change that occurs after the sexual predator registers in person at the sheriff's office as provided in this subparagraph in any of the following information related to the sexual predator must be reported as provided in paragraphs (g), (i), and (j): permanent, temporary, or transient residence;

591-01266A-21

2021234c1

175 name; electronic mail addresses; Internet identifiers and each
176 Internet identifier's corresponding website homepage or
177 application software name; home and cellular telephone numbers;
178 employment information; and status at an institution of higher
179 education.

180 b. If the sexual predator's place of residence is a motor
181 vehicle, trailer, mobile home, or manufactured home, as defined
182 in chapter 320, the sexual predator shall also provide to the
183 department written notice of the vehicle identification number;
184 the license tag number; the registration number; and a
185 description, including color scheme, of the motor vehicle,
186 trailer, mobile home, or manufactured home. If a sexual
187 predator's place of residence is a vessel, live-aboard vessel,
188 or houseboat, as defined in chapter 327, the sexual predator
189 shall also provide to the department written notice of the hull
190 identification number; the manufacturer's serial number; the
191 name of the vessel, live-aboard vessel, or houseboat; the
192 registration number; and a description, including color scheme,
193 of the vessel, live-aboard vessel, or houseboat.

194 c. If the sexual predator is enrolled or employed, whether
195 for compensation or as a volunteer, at an institution of higher
196 education in this state, the sexual predator shall also provide
197 to the department the name, address, and county of each
198 institution, including each campus attended, and the sexual
199 predator's enrollment, volunteer, or employment status. The
200 sheriff, the Department of Corrections, or the Department of
201 Juvenile Justice shall promptly notify each institution of
202 higher education of the sexual predator's presence and any
203 change in the sexual predator's enrollment, volunteer, or

591-01266A-21

2021234c1

employment status.

d. A sexual predator shall report to the department through the department's online system or in person to the sheriff's office within 48 hours after any change in vehicles owned to report those vehicle information changes.

2. Any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers when available.

(g)1. Each time a sexual predator's driver license or identification card is subject to renewal, and, without regard to the status of the predator's driver license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver license office, or through an authorized alternate method as provided by the Department of Highway Safety and Motor Vehicles, and is subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section. A sexual predator who is unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles as provided in paragraph (f)

591-01266A-21

2021234c1

and this paragraph shall also report any change of the predator's residence or change in the predator's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to the Department of Highway Safety and Motor Vehicles. The reporting requirements under this subparagraph do not negate the requirement for a sexual predator to obtain a Florida driver license or identification card as required by this section.

2.a. A sexual predator who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator shall provide or update all of the registration information required under paragraph (a). The sexual predator shall provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

b. A sexual predator shall report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The sexual predator must

591-01266A-21

2021234c1

262 provide the addresses and locations where he or she maintains a
263 transient residence. Each sheriff's office shall establish
264 procedures for reporting transient residence information and
265 provide notice to transient registrants to report transient
266 residence information as required in this sub-subparagraph.
267 Reporting to the sheriff's office as required by this sub-
268 subparagraph does not exempt registrants from any reregistration
269 requirement. The sheriff may coordinate and enter into
270 agreements with police departments and other governmental
271 entities to facilitate additional reporting sites for transient
272 residence registration required in this sub-subparagraph. The
273 sheriff's office shall, within 2 business days, electronically
274 submit and update all information provided by the sexual
275 predator to the department.

276 3. A sexual predator who remains at a permanent, temporary,
277 or transient residence after reporting his or her intent to
278 vacate such residence shall, within 48 hours after the date upon
279 which the predator indicated he or she would or did vacate such
280 residence, report in person to the sheriff's office to which he
281 or she reported pursuant to subparagraph 2. for the purpose of
282 reporting his or her address at such residence. When the sheriff
283 receives the report, the sheriff shall promptly convey the
284 information to the department. An offender who makes a report as
285 required under subparagraph 2. but fails to make a report as
286 required under this subparagraph commits a felony of the second
287 degree, punishable as provided in s. 775.082, s. 775.083, or s.
288 775.084.

289 4. The failure of a sexual predator who maintains a
290 transient residence to report in person to the sheriff's office

591-01266A-21

2021234c1

every 30 days as required by sub-subparagraph 2.b. is punishable as provided in subsection (10).

5.a. A sexual predator shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, with the department through the department's online system or in person at the sheriff's office within 48 hours after using such electronic mail addresses and Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

b. A sexual predator shall register all changes to vehicles owned, all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at

591-01266A-21

2021234c1

the Department of Corrections if the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported in this sub-subparagraph shall be reported within 48 hours after the change.

c. The department shall establish an online system through which sexual predators may securely access, submit, and update all vehicles owned; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and institution of higher education information.

(i) A sexual predator who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence at least ~~within~~ 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel ~~if the intended residence of 5 days or more is~~ outside of the United States. Any travel that is not known by the sexual predator at least 48 hours before he or she intends to establish a residence in another state or jurisdiction or 21 days before the departure date for travel outside of the United States must be reported to the sheriff's office as soon as possible before departure. The sexual predator shall provide to the sheriff the address, municipality, county, state, and

591-01266A-21

2021234c1

country of intended residence. For international travel, the sexual predator shall also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel. The sheriff shall promptly provide to the department the information received from the sexual predator. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence, or the intended country of travel, of the sexual predator's intended residence or intended travel. The failure of a sexual predator to provide his or her intended place of residence or intended travel is punishable as provided in subsection (10).

Section 2. Paragraph (h) of subsection (1), paragraph (b) of subsection (2), paragraphs (a) and (e) of subsection (4), and subsections (7) and (11) of section 943.0435, Florida Statutes, are amended to read:

943.0435 Sexual offenders required to register with the department; penalty.—

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

(h)1. "Sexual offender" means a person who meets the criteria in sub-subparagraph a., sub-subparagraph b., sub-subparagraph c., or sub-subparagraph d., as follows:

a.(I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b), (d), (f), or (g); former

591-01266A-21

2021234c1

s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-sub-subparagraph or at least one offense listed in this sub-sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-sub-subparagraph; and

(II) Has been released on or after October 1, 1997, from a ~~the~~ sanction imposed for any conviction of an offense described in sub-sub-subparagraph (I) and does not otherwise meet the criteria for registration as a sexual offender under chapter 944 or chapter 985. For purposes of sub-sub-subparagraph (I), a sanction imposed in this state or in any other jurisdiction includes, ~~but is not limited to, a fine,~~ probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. If no sanction is imposed the person is deemed to be released upon conviction;

b. Establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a

591-01266A-21

2021234c1

407 result of such designation, subjected to registration or
408 community or public notification, or both, or would be if the
409 person were a resident of that state or jurisdiction, without
410 regard to whether the person otherwise meets the criteria for
411 registration as a sexual offender;

412 c. Establishes or maintains a residence in this state who
413 is in the custody or control of, or under the supervision of,
414 any other state or jurisdiction as a result of a conviction for
415 committing, or attempting, soliciting, or conspiring to commit,
416 any of the criminal offenses proscribed in the following
417 statutes or similar offense in another jurisdiction: s.
418 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
419 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b),
420 (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding
421 s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035;
422 s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133;
423 s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138;
424 s. 847.0145; s. 895.03, if the court makes a written finding
425 that the racketeering activity involved at least one sexual
426 offense listed in this sub-subparagraph or at least one offense
427 listed in this sub-subparagraph with sexual intent or motive; s.
428 916.1075(2); or s. 985.701(1); or any similar offense committed
429 in this state which has been redesignated from a former statute
430 number to one of those listed in this sub-subparagraph; or

431 d. On or after July 1, 2007, has been adjudicated
432 delinquent for committing, or attempting, soliciting, or
433 conspiring to commit, any of the criminal offenses proscribed in
434 the following statutes in this state or similar offenses in
435 another jurisdiction when the juvenile was 14 years of age or

591-01266A-21

2021234c1

older at the time of the offense:

(I) Section 794.011, excluding s. 794.011(10);

(II) Section 800.04(4)(a)2. where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;

(III) Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals;

(IV) Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals; or

(V) Any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph.

2. For all qualifying offenses listed in sub-subparagraph 1.d., the court shall make a written finding of the age of the offender at the time of the offense.

For each violation of a qualifying offense listed in this subsection, except for a violation of s. 794.011, the court shall make a written finding of the age of the victim at the time of the offense. For a violation of s. 800.04(4), the court shall also make a written finding indicating whether the offense involved sexual activity and indicating whether the offense involved force or coercion. For a violation of s. 800.04(5), the court shall also make a written finding that the offense did or did not involve unclothed genitals or genital area and that the offense did or did not involve the use of force or coercion.

(2) Upon initial registration, a sexual offender shall:

(b) Provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos

591-01266A-21

2021234c1

or other identifying marks; fingerprints; palm prints; photograph; employment information; address of permanent or legal residence or address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state, address, location or description, and dates of any current or known future temporary residence within the state or out of state; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; home telephone numbers and cellular telephone numbers; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; date and place of each conviction; and a brief description of the crime or crimes committed by the offender. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.

1. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide to the department through the sheriff's office written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured

591-01266A-21

2021234c1

home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status. The sheriff, the Department of Corrections, or the Department of Juvenile Justice shall promptly notify each institution of higher education of the sexual offender's presence and any change in the sexual offender's enrollment, volunteer, or employment status.

3. A sexual offender shall report to the department through the department's online system or in person to the sheriff's office within 48 hours after any change in vehicles owned to report those vehicle information changes.

When a sexual offender reports at the sheriff's office, the sheriff shall take a photograph, a set of fingerprints, and palm prints of the offender and forward the photographs, palm prints, and fingerprints to the department, along with the information provided by the sexual offender. The sheriff shall promptly provide to the department the information received from the

591-01266A-21

2021234c1

sexual offender.

(4)(a) Each time a sexual offender's driver license or identification card is subject to renewal, and, without regard to the status of the offender's driver license or identification card, within 48 hours after any change in the offender's permanent, temporary, or transient residence or change in the offender's name by reason of marriage or other legal process, the offender shall report in person to a driver license office, or through an authorized alternate method as provided by the Department of Highway Safety and Motor Vehicles, and is subject to the requirements specified in subsection (3). The Department of Highway Safety and Motor Vehicles shall forward to the department all photographs and information provided by sexual offenders. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual offenders as provided in this section and ss. 943.043 and 944.606. A sexual offender who is unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles as provided in subsection (3) and this subsection shall also report any change in the sexual offender's permanent, temporary, or transient residence or change in the offender's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the offender resides or is located and provide confirmation that he or she reported such information to the Department of Highway Safety and Motor Vehicles. The reporting requirements under this

591-01266A-21

2021234c1

paragraph do not negate the requirement for a sexual offender to obtain a Florida driver license or an identification card as required in this section.

(e)1. A sexual offender shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, with the department through the department's online system or in person at the sheriff's office within 48 hours after using such electronic mail addresses and Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

2. A sexual offender shall register all changes to vehicles owned, all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's

591-01266A-21

2021234c1

581 online system; in person at the sheriff's office; in person at
582 the Department of Corrections if the sexual offender is in the
583 custody or control, or under the supervision, of the Department
584 of Corrections; or in person at the Department of Juvenile
585 Justice if the sexual offender is in the custody or control, or
586 under the supervision, of the Department of Juvenile Justice.
587 All changes required to be reported under this subparagraph must
588 be reported within 48 hours after the change.

589 3. The department shall establish an online system through
590 which sexual offenders may securely access, submit, and update
591 all changes in status to vehicles owned; electronic mail
592 addresses; Internet identifiers and each Internet identifier's
593 corresponding website homepage or application software name;
594 home telephone numbers and cellular telephone numbers;
595 employment information; and institution of higher education
596 information.

597 (7) A sexual offender who intends to establish a permanent,
598 temporary, or transient residence in another state or
599 jurisdiction other than the State of Florida shall report in
600 person to the sheriff of the county of current residence at
601 least ~~within~~ 48 hours before the date he or she intends to leave
602 this state to establish residence in another state or
603 jurisdiction or at least 21 days before the date he or she
604 intends to travel ~~if the intended residence of 5 days or more is~~
605 outside of the United States. Any travel that is not known by
606 the sexual offender at least 48 hours before he or she intends
607 to establish a residence in another state or jurisdiction, or 21
608 days before the departure date for travel outside of the United
609 States, must be reported in person to the sheriff's office as

591-01266A-21

2021234c1

610 soon as possible before departure. The sexual offender shall
611 provide to the sheriff the address, municipality, county, state,
612 and country of intended residence. For international travel, the
613 sexual offender shall also provide travel information,
614 including, but not limited to, expected departure and return
615 dates, flight number, airport of departure, cruise port of
616 departure, or any other means of intended travel. The sheriff
617 shall promptly provide to the department the information
618 received from the sexual offender. The department shall notify
619 the statewide law enforcement agency, or a comparable agency, in
620 the intended state, jurisdiction, or country of residence, or
621 the intended country of travel, of the sexual offender's
622 intended residence or intended travel. The failure of a sexual
623 offender to provide his or her intended place of residence or
624 intended travel is punishable as provided in subsection (9).

625 (11) Except as provided in s. 943.04354, a sexual offender
626 shall maintain registration with the department for the duration
627 of his or her life unless the sexual offender has received a
628 full pardon or has had a conviction set aside in a
629 postconviction proceeding for any offense that meets the
630 criteria for classifying the person as a sexual offender for
631 purposes of registration. However, a sexual offender shall be
632 considered for removal of the requirement to register as a
633 sexual offender only if the person:

634 (a)1. Has been lawfully released from confinement,
635 supervision, or sanction, whichever is later, for at least 25
636 years and has not been arrested for any felony or misdemeanor
637 offense since release, provided that the sexual offender's
638 requirement to register was not based upon an adult conviction:

591-01266A-21

2021234c1

- 639 a. For a violation of s. 787.01 or s. 787.02;
- 640 b. For a violation of s. 794.011, excluding s. 794.011(10);
- 641 c. For a violation of s. 800.04(4)(a)2. where the court
- 642 finds the offense involved a victim under 12 years of age or
- 643 sexual activity by the use of force or coercion;
- 644 d. For a violation of s. 800.04(5)(b);
- 645 e. For a violation of s. 800.04(5)(c)2. where the court
- 646 finds the offense involved the use of force or coercion and
- 647 unclothed genitals or genital area;
- 648 f. For a violation of s. 825.1025(2)(a);
- 649 g. For any attempt or conspiracy to commit any such
- 650 offense;
- 651 h. For a violation of similar law of another jurisdiction;
- 652 or
- 653 i. For a violation of a similar offense committed in this
- 654 state which has been redesignated from a former statute number
- 655 to one of those listed in this subparagraph.
- 656 2. If the sexual offender meets the criteria in
- 657 subparagraph 1., the sexual offender may, for the purpose of
- 658 removing the requirement for registration as a sexual offender,
- 659 petition the criminal division of the circuit court of the
- 660 circuit:
- 661 a. Where the conviction or adjudication occurred, for a
- 662 conviction in this state;
- 663 b. Where the sexual offender resides, for a conviction of a
- 664 violation of similar law of another jurisdiction; or
- 665 c. Where the sexual offender last resided, for a sexual
- 666 offender with a conviction of a violation of similar law of
- 667 another jurisdiction who no longer resides in this state.

591-01266A-21

2021234c1

3. The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief, subject to the standards for relief provided in this subsection.

4. The department shall remove an offender from classification as a sexual offender for purposes of registration if the offender provides to the department a certified copy of the court's written findings or order that indicates that the offender is no longer required to comply with the requirements for registration as a sexual offender.

(b) Maintains ~~As defined in sub-subparagraph (1)(h)1.b.~~ ~~must maintain~~ registration with the department as described in sub-subparagraph (1)(h)1.b. for the duration of his or her life until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or as any other ~~by another~~ sexual

591-01266A-21

2021234c1

offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, ~~and~~ provided that such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(c)1. Is required to register as a sexual offender solely under the requirements of sub-subparagraph (1)(h)1.b. and files a petition in the circuit court in the jurisdiction in which the person resides or, for a person who no longer resides in this state, the court in the jurisdiction in which the person last resided in this state. The petition must assert that his or her designation as a sexual predator or sexually violent predator or any other sexual offender designation in the state or jurisdiction in which the designation was made is confidential from public disclosure or that such designation, if not imposed by a court, is considered confidential from public disclosure by operation of law or court order in the state or jurisdiction requiring registration, provided that such person does not meet the criteria for registration as a sexual offender under the laws of this state.

2. If the person meets the criteria in subparagraph 1., the court may grant the petition and remove the requirement to register as a sexual offender.

3. A petition filed under this paragraph must document the person's conviction and include a copy of the order issued by the court in the state or jurisdiction which made the

591-01266A-21

2021234c1

726 designation confidential from public disclosure. If the
727 confidential status was not granted by court order, the person
728 must demonstrate to the court that his or her registration
729 requirement has been made confidential by operation of law in
730 the state or jurisdiction requiring registration. The state
731 attorney and the department must be given notice at least 21
732 days before the date of the hearing on the petition and may
733 present evidence in opposition to the requested relief or may
734 otherwise demonstrate why it should be denied.

735 4. If a person provides to the department a certified copy
736 of the circuit court's order granting the person's removal of
737 the requirement to register as a sexual offender in this state
738 in accordance with this paragraph, the registration requirement
739 does not apply to the person and the department must remove all
740 information about the person from the public registry of sexual
741 offenders and sexual predators maintained by the department.

742 Section 3. For the purpose of incorporating the amendment
743 made by this act to section 775.21, Florida Statutes, in a
744 reference thereto, paragraph (f) of subsection (1) of section
745 943.0435, Florida Statutes, is reenacted to read:

746 943.0435 Sexual offenders required to register with the
747 department; penalty.—

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

749 (f) "Permanent residence," "temporary residence," and
750 "transient residence" have the same meaning as provided in s.
751 775.21.

752 Section 4. For the purpose of incorporating the amendment
753 made by this act to section 775.21, Florida Statutes, in a
754 reference thereto, paragraph (d) of subsection (1) of section

591-01266A-21

2021234c1

944.606, Florida Statutes, is reenacted to read:

944.606 Sexual offenders; notification upon release.—

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

(d) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

Section 5. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, subsection (4) of section 944.609, Florida Statutes, is reenacted to read:

944.609 Career offenders; notification upon release.—

(4) The department or any law enforcement agency may notify the community and the public of a career offender's presence in the community. However, with respect to a career offender who has been found to be a sexual predator under s. 775.21, the Department of Law Enforcement or any other law enforcement agency must inform the community and the public of the career offender's presence in the community, as provided in s. 775.21.

Section 6. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 985.481, Florida Statutes, is reenacted to read:

985.481 Sexual offenders adjudicated delinquent; notification upon release.—

(1) As used in this section:

(d) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

Section 7. For the purpose of incorporating the amendment

591-01266A-21

2021234c1

made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (f) of subsection (1) of section 985.4815, Florida Statutes, is reenacted to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

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

(f) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

Section 8. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (c) of subsection (9) of section 61.13, Florida Statutes, is reenacted to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(9)

(c) A court may not order visitation at a recovery residence if any resident of the recovery residence is currently required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435.

Section 9. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (i) of subsection (3) of section 68.07, Florida Statutes, is reenacted to read:

68.07 Change of name.—

(3) Each petition shall be verified and show:

(i) Whether the petitioner has ever been required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435.

591-01266A-21

2021234c1

Section 10. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 98.0751, Florida Statutes, is reenacted to read:

98.0751 Restoration of voting rights; termination of ineligibility subsequent to a felony conviction.—

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

(b) "Felony sexual offense" means any of the following:

1. Any felony offense that serves as a predicate to registration as a sexual offender in accordance with s. 943.0435;

2. Section 491.0112;

3. Section 784.049(3)(b);

4. Section 794.08;

5. Section 796.08;

6. Section 800.101;

7. Section 826.04;

8. Section 847.012;

9. Section 872.06(2);

10. Section 944.35(3)(b)2.;

11. Section 951.221(1); or

12. Any similar offense committed in another jurisdiction which would be an offense listed in this paragraph if it had been committed in violation of the laws of this state.

Section 11. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, subsection (3) of section 322.141, Florida Statutes, is reenacted to read:

322.141 Color or markings of certain licenses or

591-01266A-21

2021234c1

identification cards.—

(3) All licenses for the operation of motor vehicles or identification cards originally issued or reissued by the department to persons who are designated as sexual predators under s. 775.21 or subject to registration as sexual offenders under s. 943.0435 or s. 944.607, or who have a similar designation or are subject to a similar registration under the laws of another jurisdiction, shall have on the front of the license or identification card the following:

(a) For a person designated as a sexual predator under s. 775.21 or who has a similar designation under the laws of another jurisdiction, the marking "SEXUAL PREDATOR."

(b) For a person subject to registration as a sexual offender under s. 943.0435 or s. 944.607, or subject to a similar registration under the laws of another jurisdiction, the marking "943.0435, F.S."

Section 12. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, subsection (2) of section 394.9125, Florida Statutes, is reenacted to read:

394.9125 State attorney; authority to refer a person for civil commitment.—

(2) A state attorney may refer a person to the department for civil commitment proceedings if the person:

(a) Is required to register as a sexual offender pursuant to s. 943.0435;

(b) Has previously been convicted of a sexually violent offense as defined in s. 394.912(9)(a)-(h); and

(c) Has been sentenced to a term of imprisonment in a

591-01266A-21

2021234c1

county or municipal jail for any criminal offense.

Section 13. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (b) of subsection (10) of section 397.487, Florida Statutes, is reenacted to read:

397.487 Voluntary certification of recovery residences.—
(10)

(b) A certified recovery residence may not allow a minor child to visit a parent who is a resident of the recovery residence at any time if any resident of the recovery residence is currently required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435.

Section 14. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 435.07, Florida Statutes, is reenacted to read:

435.07 Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(4)

(b) Disqualification from employment under this chapter may not be removed from, nor may an exemption be granted to, any person who is a:

1. Sexual predator as designated pursuant to s. 775.21;
2. Career offender pursuant to s. 775.261; or
3. Sexual offender pursuant to s. 943.0435, unless the

591-01266A-21

2021234c1

requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

Section 15. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, subsection (2) of section 775.0862, Florida Statutes, is reenacted to read:

775.0862 Sexual offenses against students by authority figures; reclassification.—

(2) The felony degree of a violation of an offense listed in s. 943.0435(1)(h)1.a., unless the offense is a violation of s. 794.011(4)(e)7. or s. 810.145(8)(a)2., shall be reclassified as provided in this section if the offense is committed by an authority figure of a school against a student of the school.

Section 16. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, subsection (4) of section 775.13, Florida Statutes, is reenacted to read:

775.13 Registration of convicted felons, exemptions; penalties.—

(4) This section does not apply to an offender:

(a) Who has had his or her civil rights restored;

(b) Who has received a full pardon for the offense for which convicted;

(c) Who has been lawfully released from incarceration or other sentence or supervision for a felony conviction for more than 5 years prior to such time for registration, unless the offender is a fugitive from justice on a felony charge or has been convicted of any offense since release from such incarceration or other sentence or supervision;

591-01266A-21

2021234c1

(d) Who is a parolee or probationer under the supervision of the United States Parole Commission if the commission knows of and consents to the presence of the offender in Florida or is a probationer under the supervision of any federal probation officer in the state or who has been lawfully discharged from such parole or probation;

(e) Who is a sexual predator and has registered as required under s. 775.21;

(f) Who is a sexual offender and has registered as required in s. 943.0435 or s. 944.607; or

(g) Who is a career offender who has registered as required in s. 775.261 or s. 944.609.

Section 17. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in references thereto, paragraph (d) of subsection (5) and paragraph (d) of subsection (10) of section 775.21, Florida Statutes, are reenacted to read:

775.21 The Florida Sexual Predators Act.—

(5) SEXUAL PREDATOR DESIGNATION.—An offender is designated as a sexual predator as follows:

(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for

591-01266A-21

2021234c1

958 registration as a sexual offender, shall register in the manner
959 provided in s. 943.0435 or s. 944.607 and shall be subject to
960 community and public notification as provided in s. 943.0435 or
961 s. 944.607. A person who meets the criteria of this section is
962 subject to the requirements and penalty provisions of s.
963 943.0435 or s. 944.607 until the person provides the department
964 with an order issued by the court that designated the person as
965 a sexual predator, as a sexually violent predator, or by another
966 sexual offender designation in the state or jurisdiction in
967 which the order was issued which states that such designation
968 has been removed or demonstrates to the department that such
969 designation, if not imposed by a court, has been removed by
970 operation of law or court order in the state or jurisdiction in
971 which the designation was made, and provided such person no
972 longer meets the criteria for registration as a sexual offender
973 under the laws of this state.

974 (10) PENALTIES.—

975 (d) Any person who misuses public records information
976 relating to a sexual predator, as defined in this section, or a
977 sexual offender, as defined in s. 943.0435 or s. 944.607, to
978 secure a payment from such a predator or offender; who knowingly
979 distributes or publishes false information relating to such a
980 predator or offender which the person misrepresents as being
981 public records information; or who materially alters public
982 records information with the intent to misrepresent the
983 information, including documents, summaries of public records
984 information provided by law enforcement agencies, or public
985 records information displayed by law enforcement agencies on
986 websites or provided through other means of communication,

591-01266A-21

2021234c1

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 18. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, subsection (2) of section 775.24, Florida Statutes, is reenacted to read:

775.24 Duty of the court to uphold laws governing sexual predators and sexual offenders.—

(2) If a person meets the criteria in this chapter for designation as a sexual predator or meets the criteria in s. 943.0435, s. 944.606, s. 944.607, or any other law for classification as a sexual offender, the court may not enter an order, for the purpose of approving a plea agreement or for any other reason, which:

(a) Exempts a person who meets the criteria for designation as a sexual predator or classification as a sexual offender from such designation or classification, or exempts such person from the requirements for registration or community and public notification imposed upon sexual predators and sexual offenders;

(b) Restricts the compiling, reporting, or release of public records information that relates to sexual predators or sexual offenders; or

(c) Prevents any person or entity from performing its duties or operating within its statutorily conferred authority as such duty or authority relates to sexual predators or sexual offenders.

Section 19. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section

591-01266A-21

2021234c1

775.261, Florida Statutes, is reenacted to read:

775.261 The Florida Career Offender Registration Act.—

(3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.—

(b) This section does not apply to any person who has been designated as a sexual predator and required to register under s. 775.21 or who is required to register as a sexual offender under s. 943.0435 or s. 944.607. However, if a person is no longer required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435 or s. 944.607, the person must register as a career offender under this section if the person is otherwise designated as a career offender as provided in this section.

Section 20. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (cc) of subsection (2) of section 900.05, Florida Statutes, is reenacted to read:

900.05 Criminal justice data collection.—

(2) DEFINITIONS.—As used in this section, the term:

(cc) "Sexual offender flag" means an indication that a defendant was required to register as a sexual predator as defined in s. 775.21 or as a sexual offender as defined in s. 943.0435.

Section 21. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (m) of subsection (2) of section 903.046, Florida Statutes, is reenacted to read:

903.046 Purpose of and criteria for bail determination.—

(2) When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may

591-01266A-21

2021234c1

be, the court shall consider:

(m) Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under chapter 316, is required to register as a sexual offender under s. 943.0435 or a sexual predator under s. 775.21; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

Section 22. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, section 903.133, Florida Statutes, is reenacted to read:

903.133 Bail on appeal; prohibited for certain felony convictions.—Notwithstanding s. 903.132, no person shall be admitted to bail pending review either by posttrial motion or appeal if he or she was adjudged guilty of:

(1) A felony of the first degree for a violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s. 806.01, s. 893.13, or s. 893.135;

(2) A violation of s. 794.011(2) or (3); or

(3) Any other offense requiring sexual offender registration under s. 943.0435(1)(h) or sexual predator registration under s. 775.21(4) when, at the time of the offense, the offender was 18 years of age or older and the victim was a minor.

Section 23. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 907.043, Florida Statutes, is reenacted to read:

591-01266A-21

2021234c1

1074 907.043 Pretrial release; citizens' right to know.—

1075 (4)

1076 (b) The annual report must contain, but need not be limited
1077 to:

1078 1. The name, location, and funding sources of the pretrial
1079 release program, including the amount of public funds, if any,
1080 received by the pretrial release program.

1081 2. The operating and capital budget of each pretrial
1082 release program receiving public funds.

1083 3.a. The percentage of the pretrial release program's total
1084 budget representing receipt of public funds.

1085 b. The percentage of the total budget which is allocated to
1086 assisting defendants obtain release through a nonpublicly funded
1087 program.

1088 c. The amount of fees paid by defendants to the pretrial
1089 release program.

1090 4. The number of persons employed by the pretrial release
1091 program.

1092 5. The number of defendants assessed and interviewed for
1093 pretrial release.

1094 6. The number of defendants recommended for pretrial
1095 release.

1096 7. The number of defendants for whom the pretrial release
1097 program recommended against nonsecured release.

1098 8. The number of defendants granted nonsecured release
1099 after the pretrial release program recommended nonsecured
1100 release.

1101 9. The number of defendants assessed and interviewed for
1102 pretrial release who were declared indigent by the court.

591-01266A-21

2021234c1

10. The number of defendants accepted into a pretrial release program who paid a surety or cash bail or bond.

11. The number of defendants for whom a risk assessment tool was used in determining whether the defendant should be released pending the disposition of the case and the number of defendants for whom a risk assessment tool was not used.

12. The specific statutory citation for each criminal charge related to a defendant whose case is accepted into a pretrial release program, including, at a minimum, the number of defendants charged with dangerous crimes as defined in s. 907.041; nonviolent felonies; or misdemeanors only. A "nonviolent felony" for purposes of this subparagraph excludes the commission of, an attempt to commit, or a conspiracy to commit any of the following:

a. An offense enumerated in s. 775.084(1)(c);

b. An offense that requires a person to register as a sexual predator in accordance with s. 775.21 or as a sexual offender in accordance with s. 943.0435;

c. Failure to register as a sexual predator in violation of s. 775.21 or as a sexual offender in violation of s. 943.0435;

d. Facilitating or furthering terrorism in violation of s. 775.31;

e. A forcible felony as described in s. 776.08;

f. False imprisonment in violation of s. 787.02;

g. Burglary of a dwelling or residence in violation of s. 810.02(3);

h. Abuse, aggravated abuse, and neglect of an elderly person or disabled adult in violation of s. 825.102;

i. Abuse, aggravated abuse, and neglect of a child in

591-01266A-21

2021234c1

violation of s. 827.03;

j. Poisoning of food or water in violation of s. 859.01;

k. Abuse of a dead human body in violation of s. 872.06;

l. A capital offense in violation of chapter 893;

m. An offense that results in serious bodily injury or death to another human; or

n. A felony offense in which the defendant used a weapon or firearm in the commission of the offense.

13. The number of defendants accepted into a pretrial release program with no prior criminal conviction.

14. The name and case number of each person granted nonsecured release who:

a. Failed to attend a scheduled court appearance.

b. Was issued a warrant for failing to appear.

c. Was arrested for any offense while on release through the pretrial release program.

15. Any additional information deemed necessary by the governing body to assess the performance and cost efficiency of the pretrial release program.

Section 24. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, subsection (2) of section 943.0436, Florida Statutes, is reenacted to read:

943.0436 Duty of the court to uphold laws governing sexual predators and sexual offenders.—

(2) If a person meets the criteria in chapter 775 for designation as a sexual predator or meets the criteria in s. 943.0435, s. 944.606, s. 944.607, or any other law for classification as a sexual offender, the court may not enter an

591-01266A-21

2021234c1

order, for the purpose of approving a plea agreement or for any other reason, which:

(a) Exempts a person who meets the criteria for designation as a sexual predator or classification as a sexual offender from such designation or classification, or exempts such person from the requirements for registration or community and public notification imposed upon sexual predators and sexual offenders;

(b) Restricts the compiling, reporting, or release of public records information that relates to sexual predators or sexual offenders; or

(c) Prevents any person or entity from performing its duties or operating within its statutorily conferred authority as such duty or authority relates to sexual predators or sexual offenders.

Section 25. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, subsection (2) of section 943.0584, Florida Statutes, is reenacted to read:

943.0584 Criminal history records ineligible for court-ordered expunction or court-ordered sealing.—

(2) A criminal history record is ineligible for a certificate of eligibility for expunction or a court-ordered expunction pursuant to s. 943.0585 or a certificate of eligibility for sealing or a court-ordered sealing pursuant to s. 943.059 if the record is a conviction for any of the following offenses:

(a) Sexual misconduct, as defined in s. 393.135, s. 394.4593, or s. 916.1075;

(b) Illegal use of explosives, as defined in chapter 552;

591-01266A-21

2021234c1

(c) Terrorism, as defined in s. 775.30;

(d) Murder, as defined in s. 782.04, s. 782.065, or s. 782.09;

(e) Manslaughter or homicide, as defined in s. 782.07, s. 782.071, or s. 782.072;

(f) Assault or battery, as defined in ss. 784.011 and 784.03, respectively, of one family or household member by another family or household member, as defined in s. 741.28(3);

(g) Aggravated assault, as defined in s. 784.021;

(h) Felony battery, domestic battery by strangulation, or aggravated battery, as defined in ss. 784.03, 784.041, and 784.045, respectively;

(i) Stalking or aggravated stalking, as defined in s. 784.048;

(j) Luring or enticing a child, as defined in s. 787.025;

(k) Human trafficking, as defined in s. 787.06;

(l) Kidnapping or false imprisonment, as defined in s. 787.01 or s. 787.02;

(m) Any offense defined in chapter 794;

(n) Procuring a person less than 18 years of age for prostitution, as defined in former s. 796.03;

(o) Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age, as defined in s. 800.04;

(p) Arson, as defined in s. 806.01;

(q) Burglary of a dwelling, as defined in s. 810.02;

(r) Voyeurism or video voyeurism, as defined in ss. 810.14 and 810.145, respectively;

(s) Robbery or robbery by sudden snatching, as defined in

591-01266A-21

2021234c1

ss. 812.13 and 812.131, respectively;

(t) Carjacking, as defined in s. 812.133;

(u) Home-invasion robbery, as defined in s. 812.135;

(v) A violation of the Florida Communications Fraud Act, as provided in s. 817.034;

(w) Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult, as defined in s. 825.102;

(x) Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person, as defined in s. 825.1025;

(y) Child abuse or aggravated child abuse, as defined in s. 827.03;

(z) Sexual performance by a child, as defined in s. 827.071;

(aa) Any offense defined in chapter 839;

(bb) Certain acts in connection with obscenity, as defined in s. 847.0133;

(cc) Any offense defined in s. 847.0135;

(dd) Selling or buying of minors, as defined in s. 847.0145;

(ee) Aircraft piracy, as defined in s. 860.16;

(ff) Manufacturing a controlled substance in violation of chapter 893;

(gg) Drug trafficking, as defined in s. 893.135; or

(hh) Any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, or sexual offender pursuant to s. 943.0435, without regard to whether that offense alone is sufficient to require such

591-01266A-21

2021234c1

1248 registration.

1249 Section 26. For the purpose of incorporating the amendment
1250 made by this act to section 943.0435, Florida Statutes, in
1251 references thereto, paragraph (a) of subsection (4) and
1252 paragraph (c) of subsection (10) of section 944.607, Florida
1253 Statutes, are reenacted to read:

1254 944.607 Notification to Department of Law Enforcement of
1255 information on sexual offenders.—

1256 (4) A sexual offender, as described in this section, who is
1257 under the supervision of the Department of Corrections but is
1258 not incarcerated shall register with the Department of
1259 Corrections within 3 business days after sentencing for a
1260 registrable offense and otherwise provide information as
1261 required by this subsection.

1262 (a) The sexual offender shall provide his or her name; date
1263 of birth; social security number; race; sex; height; weight;
1264 hair and eye color; tattoos or other identifying marks; all
1265 electronic mail addresses and Internet identifiers required to
1266 be provided pursuant to s. 943.0435(4)(e); employment
1267 information required to be provided pursuant to s.
1268 943.0435(4)(e); all home telephone numbers and cellular
1269 telephone numbers required to be provided pursuant to s.
1270 943.0435(4)(e); the make, model, color, vehicle identification
1271 number (VIN), and license tag number of all vehicles owned;
1272 permanent or legal residence and address of temporary residence
1273 within the state or out of state while the sexual offender is
1274 under supervision in this state, including any rural route
1275 address or post office box; if no permanent or temporary
1276 address, any transient residence within the state; and address,

591-01266A-21

2021234c1

location or description, and dates of any current or known future temporary residence within the state or out of state. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has. The Department of Corrections shall verify the address of each sexual offender in the manner described in ss. 775.21 and 943.0435. The department shall report to the Department of Law Enforcement any failure by a sexual predator or sexual offender to comply with registration requirements.

(10)

(c) An arrest on charges of failure to register when the offender has been provided and advised of his or her statutory obligations to register under s. 943.0435(2), the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register. A sexual offender's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

591-01266A-21

2021234c1

Section 27. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, subsection (4) of section 948.06, Florida Statutes, is reenacted to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(4) Notwithstanding any other provision of this section, a felony probationer or an offender in community control who is arrested for violating his or her probation or community control in a material respect may be taken before the court in the county or circuit in which the probationer or offender was arrested. That court shall advise him or her of the charge of a violation and, if such charge is admitted, shall cause him or her to be brought before the court that granted the probation or community control. If the violation is not admitted by the probationer or offender, the court may commit him or her or release him or her with or without bail to await further hearing. However, if the probationer or offender is under supervision for any criminal offense proscribed in chapter 794, s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a registered sexual predator or a registered sexual offender, or is under supervision for a criminal offense for which he or she would meet the registration criteria in s. 775.21, s. 943.0435, or s. 944.607 but for the effective date of those sections, the court must make a finding that the probationer or offender is not a danger to the public prior to release with or without bail. In determining the danger posed by the offender's or probationer's release, the court may consider the nature and

591-01266A-21

2021234c1

1335 circumstances of the violation and any new offenses charged; the
1336 offender's or probationer's past and present conduct, including
1337 convictions of crimes; any record of arrests without conviction
1338 for crimes involving violence or sexual crimes; any other
1339 evidence of allegations of unlawful sexual conduct or the use of
1340 violence by the offender or probationer; the offender's or
1341 probationer's family ties, length of residence in the community,
1342 employment history, and mental condition; his or her history and
1343 conduct during the probation or community control supervision
1344 from which the violation arises and any other previous
1345 supervisions, including disciplinary records of previous
1346 incarcerations; the likelihood that the offender or probationer
1347 will engage again in a criminal course of conduct; the weight of
1348 the evidence against the offender or probationer; and any other
1349 facts the court considers relevant. The court, as soon as is
1350 practicable, shall give the probationer or offender an
1351 opportunity to be fully heard on his or her behalf in person or
1352 by counsel. After the hearing, the court shall make findings of
1353 fact and forward the findings to the court that granted the
1354 probation or community control and to the probationer or
1355 offender or his or her attorney. The findings of fact by the
1356 hearing court are binding on the court that granted the
1357 probation or community control. Upon the probationer or offender
1358 being brought before it, the court that granted the probation or
1359 community control may revoke, modify, or continue the probation
1360 or community control or may place the probationer into community
1361 control as provided in this section. However, the probationer or
1362 offender shall not be released and shall not be admitted to
1363 bail, but shall be brought before the court that granted the

591-01266A-21

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probation or community control if any violation of felony probation or community control other than a failure to pay costs or fines or make restitution payments is alleged to have been committed by:

(a) A violent felony offender of special concern, as defined in this section;

(b) A person who is on felony probation or community control for any offense committed on or after the effective date of this act and who is arrested for a qualifying offense as defined in this section; or

(c) A person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), a three-time violent felony offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense as defined in this section on or after the effective date of this act.

Section 28. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, section 948.063, Florida Statutes, is reenacted to read:

948.063 Violations of probation or community control by designated sexual offenders and sexual predators.—

(1) If probation or community control for any felony offense is revoked by the court pursuant to s. 948.06(2)(e) and the offender is designated as a sexual offender pursuant to s. 943.0435 or s. 944.607 or as a sexual predator pursuant to s. 775.21 for unlawful sexual activity involving a victim 15 years of age or younger and the offender is 18 years of age or older,

591-01266A-21

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and if the court imposes a subsequent term of supervision following the revocation of probation or community control, the court must order electronic monitoring as a condition of the subsequent term of probation or community control.

(2) If the probationer or offender is required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435 or s. 944.607 for unlawful sexual activity involving a victim 15 years of age or younger and the probationer or offender is 18 years of age or older and has violated the conditions of his or her probation or community control, but the court does not revoke the probation or community control, the court shall nevertheless modify the probation or community control to include electronic monitoring for any probationer or offender not then subject to electronic monitoring.

Section 29. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, section 948.31, Florida Statutes, is reenacted to read:

948.31 Evaluation and treatment of sexual predators and offenders on probation or community control.—The court may require any probationer or community controllee who is required to register as a sexual predator under s. 775.21 or sexual offender under s. 943.0435, s. 944.606, or s. 944.607 to undergo an evaluation, at the probationer or community controllee's expense, by a qualified practitioner to determine whether such probationer or community controllee needs sexual offender treatment. If the qualified practitioner determines that sexual offender treatment is needed and recommends treatment, the

591-01266A-21

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1422 probationer or community controllee must successfully complete
1423 and pay for the treatment. Such treatment must be obtained from
1424 a qualified practitioner as defined in s. 948.001. Treatment may
1425 not be administered by a qualified practitioner who has been
1426 convicted or adjudicated delinquent of committing, or
1427 attempting, soliciting, or conspiring to commit, any offense
1428 that is listed in s. 943.0435(1)(h)1.a.(I).

1429 Section 30. For the purpose of incorporating the amendment
1430 made by this act to section 943.0435, Florida Statutes, in
1431 references thereto, subsection (9) and paragraph (c) of
1432 subsection (10) of section 985.4815, Florida Statutes, are
1433 reenacted to read:

1434 985.4815 Notification to Department of Law Enforcement of
1435 information on juvenile sexual offenders.—

1436 (9) A sexual offender, as described in this section, who is
1437 under the care, jurisdiction, or supervision of the department
1438 but who is not incarcerated shall, in addition to the
1439 registration requirements provided in subsection (4), register
1440 in the manner provided in s. 943.0435(3), (4), and (5), unless
1441 the sexual offender is a sexual predator, in which case he or
1442 she shall register as required under s. 775.21. A sexual
1443 offender who fails to comply with the requirements of s.
1444 943.0435 is subject to the penalties provided in s. 943.0435(9).

1445 (10)

1446 (c) An arrest on charges of failure to register when the
1447 offender has been provided and advised of his or her statutory
1448 obligations to register under s. 943.0435(2), the service of an
1449 information or a complaint for a violation of this section, or
1450 an arraignment on charges for a violation of this section

591-01266A-21

2021234c1

constitutes actual notice of the duty to register. A sexual offender's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

Section 31. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (g) of subsection (2) of section 1012.467, Florida Statutes, is reenacted to read:

1012.467 Noninstructional contractors who are permitted access to school grounds when students are present; background screening requirements.—

(2)

(g) A noninstructional contractor for whom a criminal history check is required under this section may not have been convicted of any of the following offenses designated in the Florida Statutes, any similar offense in another jurisdiction, or any similar offense committed in this state which has been redesignated from a former provision of the Florida Statutes to one of the following offenses:

1. Any offense listed in s. 943.0435(1)(h)1., relating to the registration of an individual as a sexual offender.

2. Section 393.135, relating to sexual misconduct with

591-01266A-21

2021234c1

certain developmentally disabled clients and the reporting of such sexual misconduct.

3. Section 394.4593, relating to sexual misconduct with certain mental health patients and the reporting of such sexual misconduct.

4. Section 775.30, relating to terrorism.

5. Section 782.04, relating to murder.

6. Section 787.01, relating to kidnapping.

7. Any offense under chapter 800, relating to lewdness and indecent exposure.

8. Section 826.04, relating to incest.

9. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

Section 32. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, subsection (6) of section 68.07, Florida Statutes, is reenacted to read:

68.07 Change of name.—

(6) The clerk of the court must, within 5 business days after the filing of the final judgment, send a report of the judgment to the Department of Law Enforcement on a form to be furnished by that department. If the petitioner is required to register as a sexual predator or a sexual offender pursuant to s. 775.21 or s. 943.0435, the clerk of court shall electronically notify the Department of Law Enforcement of the name change, in a manner prescribed by that department, within 2 business days after the filing of the final judgment. The Department of Law Enforcement must send a copy of the report to the Department of Highway Safety and Motor Vehicles, which may

591-01266A-21

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be delivered by electronic transmission. The report must contain sufficient information to identify the petitioner, including the results of the criminal history records check if applicable, the new name of the petitioner, and the file number of the judgment. The Department of Highway Safety and Motor Vehicles shall monitor the records of any sexual predator or sexual offender whose name has been provided to it by the Department of Law Enforcement. If the sexual predator or sexual offender does not obtain a replacement driver license or identification card within the required time as specified in s. 775.21 or s. 943.0435, the Department of Highway Safety and Motor Vehicles shall notify the Department of Law Enforcement. The Department of Law Enforcement shall notify applicable law enforcement agencies of the predator's or offender's failure to comply with registration requirements. Any information retained by the Department of Law Enforcement and the Department of Highway Safety and Motor Vehicles may be revised or supplemented by said departments to reflect changes made by the final judgment. With respect to a person convicted of a felony in another state or of a federal offense, the Department of Law Enforcement must send the report to the respective state's office of law enforcement records or to the office of the Federal Bureau of Investigation. The Department of Law Enforcement may forward the report to any other law enforcement agency it believes may retain information related to the petitioner.

Section 33. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, subsection (4) of section 320.02, Florida Statutes, is reenacted to read:

591-01266A-21

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1538 320.02 Registration required; application for registration;
1539 forms.—

1540 (4) Except as provided in ss. 775.21, 775.261, 943.0435,
1541 944.607, and 985.4815, the owner of any motor vehicle registered
1542 in the state shall notify the department in writing of any
1543 change of address within 30 days of such change. The
1544 notification shall include the registration license plate
1545 number, the vehicle identification number (VIN) or title
1546 certificate number, year of vehicle make, and the owner's full
1547 name.

1548 Section 34. For the purpose of incorporating the amendments
1549 made by this act to sections 775.21 and 943.0435, Florida
1550 Statutes, in references thereto, subsections (1) and (2) of
1551 section 322.19, Florida Statutes, are reenacted to read:

1552 322.19 Change of address or name.—

1553 (1) Except as provided in ss. 775.21, 775.261, 943.0435,
1554 944.607, and 985.4815, whenever any person, after applying for
1555 or receiving a driver license or identification card, changes
1556 his or her legal name, that person must within 30 days
1557 thereafter obtain a replacement license or card that reflects
1558 the change.

1559 (2) If a person, after applying for or receiving a driver
1560 license or identification card, changes the legal residence or
1561 mailing address in the application, license, or card, the person
1562 must, within 30 calendar days after making the change, obtain a
1563 replacement license or card that reflects the change. A written
1564 request to the department must include the old and new addresses
1565 and the driver license or identification card number. Any person
1566 who has a valid, current student identification card issued by

591-01266A-21

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an educational institution in this state is presumed not to have changed his or her legal residence or mailing address. This subsection does not affect any person required to register a permanent or temporary address change pursuant to s. 775.13, s. 775.21, s. 775.25, or s. 943.0435.

Section 35. For the purpose of incorporating the amendments made by this act to section 775.21 and 943.0435, Florida Statutes, in references thereto, section 775.25, Florida Statutes, is reenacted to read:

775.25 Prosecutions for acts or omissions.—A sexual predator or sexual offender who commits any act or omission in violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s. 944.607, or former s. 947.177 may be prosecuted for the act or omission in the county in which the act or omission was committed, in the county of the last registered address of the sexual predator or sexual offender, in the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator or sexual offender, in the county where the sexual predator or sexual offender was released from incarceration, or in the county of the intended address of the sexual predator or sexual offender as reported by the predator or offender prior to his or her release from incarceration. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

Section 36. For the purpose of incorporating the amendments made by this act to section 775.21 and 943.0435, Florida Statutes, in references thereto, subsection (1) of section 794.056, Florida Statutes, is reenacted to read:

591-01266A-21

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794.056 Rape Crisis Program Trust Fund.—

(1) The Rape Crisis Program Trust Fund is created within the Department of Health for the purpose of providing funds for rape crisis centers in this state. Trust fund moneys shall be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided in s. 775.21(6) and (10)(a), (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s. 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1). Funds credited to the trust fund also shall include revenues provided by law, moneys appropriated by the Legislature, and grants from public or private entities.

Section 37. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, section 938.085, Florida Statutes, is reenacted to read:

938.085 Additional cost to fund rape crisis centers.—In addition to any sanction imposed when a person pleads guilty or

591-01266A-21

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nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 775.21(6) and (10)(a), (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1), the court shall impose a surcharge of \$151. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The sum of \$150 of the surcharge shall be deposited into the Rape Crisis Program Trust Fund established within the Department of Health by chapter 2003-140, Laws of Florida. The clerk of the court shall retain \$1 of each surcharge that the clerk of the court collects as a service charge of the clerk's office.

Section 38. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, subsection (1) of section 938.10, Florida Statutes, is reenacted to read:

938.10 Additional court cost imposed in cases of certain crimes.—

(1) If a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, any offense against a minor in violation of s. 784.085, chapter 787, chapter 794,

591-01266A-21

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former s. 796.03, former s. 796.035, s. 800.04, chapter 827, s. 847.012, s. 847.0133, s. 847.0135(5), s. 847.0138, s. 847.0145, s. 893.147(3), or s. 985.701, or any offense in violation of s. 775.21, s. 823.07, s. 847.0125, s. 847.0134, or s. 943.0435, the court shall impose a court cost of \$151 against the offender in addition to any other cost or penalty required by law.

Section 39. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (a) of subsection (4) and subsection (9) of section 944.607, Florida Statutes, are reenacted to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

(4) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but is not incarcerated shall register with the Department of Corrections within 3 business days after sentencing for a registrable offense and otherwise provide information as required by this subsection.

(a) The sexual offender shall provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); employment information required to be provided pursuant to s. 943.0435(4)(e); all home telephone numbers and cellular telephone numbers required to be provided pursuant to s. 943.0435(4)(e); the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned;

591-01266A-21

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permanent or legal residence and address of temporary residence within the state or out of state while the sexual offender is under supervision in this state, including any rural route address or post office box; if no permanent or temporary address, any transient residence within the state; and address, location or description, and dates of any current or known future temporary residence within the state or out of state. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has. The Department of Corrections shall verify the address of each sexual offender in the manner described in ss. 775.21 and 943.0435. The department shall report to the Department of Law Enforcement any failure by a sexual predator or sexual offender to comply with registration requirements.

(9) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register and obtain a distinctive driver license or identification card in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register and obtain a distinctive driver license or identification card as required under s. 775.21. A sexual offender who fails to comply with the requirements of s. 943.0435 is subject to the penalties provided in s. 943.0435(9).

Section 40. For the purpose of incorporating the amendments

591-01266A-21

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made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (b) of subsection (6) of section 985.04, Florida Statutes, is reenacted to read:

985.04 Oaths; records; confidential information.—

(6)

(b) Sexual offender and predator registration information as required in ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815 is a public record pursuant to s. 119.07(1) and as otherwise provided by law.

Section 41. This act shall take effect October 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 26, 2021

I respectfully request that **Senate Bill 234**, relating to Sexual Offender Registration, be placed on the:

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

Thank you for your consideration.

A handwritten signature in cursive script that reads "Lauren Book".

Senator Lauren Book
Florida Senate, District 32

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.15.21

Meeting Date

234

Bill Number (if applicable)

Topic Sexual Offender Registration

Amendment Barcode (if applicable)

Name Ron Draa

Job Title Chief of Staff

Address 2331 Phillips Road

Phone 850.410.7020

Street

Tallahassee

FL

32308

Email ronalddraa@fdle.state.fl.us

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Law Enforcement

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/15/2011
Meeting Date

SB 234
Bill Number (if applicable)

Topic Registration of Sexual Predators

Name Brandon Ragan

Job Title Lieutenant

Address 2500 W. Colonial Dr.
Street

Phone 407-230-4297

Orlando, FL 32804
City State Zip

Email Brandon.Ragan@fla.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Orange County Sheriff's Office

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

February 15, 2021

Meeting Date

234

Bill Number (if applicable)

Topic Registration of Sexual Predators & Sexual Offenders

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.99

Street

Tallahassee

FL

32308

City

State

Zip

Email Barney@BarneyBishop.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/21

Meeting Date

234

Bill Number (if applicable)

Topic Registration of Sexual Predators and Offenders

Amendment Barcode (if applicable)

Name Amy Mercer, Florida Police Chiefs Association

Job Title Executive Director

Address P.O. Box 14038

Phone 850-219-3631

Street

Tallahassee

fl

32317

City

State

Zip

Email amercer@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

§-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 270

INTRODUCER: Senator Perry

SUBJECT: Construction Defects

DATE: February 12, 2021

REVISED: _____

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

I. Summary:

SB 270 revises and expands the mandatory procedures that govern how construction defect disputes are resolved. In broad terms, the bill amends three areas of the dispute resolution process:

- The preliminary notice of claim and corresponding requirements that allege building defects;
- The pre-litigation requirements that allege building code violations; and
- The notice a prevailing claimant must provide to someone who possesses a security interest in a property when a construction defect settlement or judgment is obtained.

A “notice of claim” is the written notice that a property owner must serve on a contractor or similar person to alert him or her to an impending dispute alleging construction defects. The notice requirements are expanded to incorporate more details including an acknowledgement that willfully including a false statement amounts to perjury. A person served with a notice of claim no longer has the discretion, but is required, to serve a copy on others who might be responsible for a construction defect. The bill expands the scope of people authorized to inspect for construction defects and requires the sharing of additional photographs and expert reports.

The bill requires a property owner who alleges a “material” violation of the building code to exhaust all claims that may be covered by a warranty with the warranty provider before serving a written notice of claim to a contractor, subcontractor, supplier, or design professional. The current phrase “violation” is replaced with “material violation” and a definition is provided for what constitutes a material violation.

If a property owner prevails in a construction defect claim and receives a monetary settlement or judgment and a mortgagee or assignee has a security interest in the property at issue, the property owner must notify the holder of the security interest of the result within 90 days. The bill specifies the details that must be included in the notice.

The bill takes effect July 1, 2021.

II. Present Situation:

Construction Defect Disputes (Section 2)

Background

Chapter 558, F.S., provides an alternative dispute resolution procedure that a property owner must follow before initiating a construction defect action against a contractor, subcontractor, supplier, or design professional.¹ An action under ch. 558, F.S., includes a lawsuit or arbitration proceeding. According to the stated purpose of the chapter, this procedure is necessary to reduce the need for litigation and protect the rights of property owners.^{2,3} Before a property owner may file an action, he or she is required to first provide to the contractor or other responsible person a notice and an opportunity to repair the alleged defect, thereby often resolving the matter before substantial legal costs are incurred. The pre-suit notice requirement is a mandatory procedure that must be complied with before a suit is filed.⁴

Written Notice Requirement

Before a claimant may file a civil action or arbitration proceeding for a construction defect, he or she must serve a written notice of claim on the contractor, subcontractor, supplier, or design professional.⁵ The notice of claim must be served at least 60 days before filing the action, but if the claim involves an association that represents more than 20 parcels, the notice must be served at least 120 days before the action is filed. If the claim in question arises from work that is performed under a contract, the written notice must be served on the person with whom the claimant contracted.⁶

Contents and Service of the Notice of Claim

The notice of claim must describe in reasonable detail the nature of each alleged construction defect and the damage or loss that results from the defect, if it is known. The notice must also

¹ Chapter 2003-49, Laws of Fla.

² Section 558.001, F.S.

³ A construction defect is defined as a deficiency in, or a deficiency arising out of, the design, specifications, surveying, planning, supervision, observation of construction, or construction, repair, alteration, or remodeling of real property resulting from:

(a) Defective material, products, or components used in the construction or remodeling;

(b) A violation of the applicable codes in effect at the time of construction or remodeling which gives rise to a cause of action pursuant to s. 553.84, F.S.;

(c) A failure of the design of real property to meet the applicable professional standards of care at the time of governmental approval; or

(d) A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction at the time of construction. Section 558.002(5), F.S.

⁴ *Gindel v. Centex Homes*, 267 So. 3d 403 (Fla. 4th DCA 2018).

⁵ If a claimant files a construction defect action without first complying with the written notice requirement of the chapter, a party named in the action may make a motion to stay the action, and the court must stay the action, without prejudice. The action may not proceed until the claimant complies with the requirements of the chapter. Section 558.003, F.S.

⁶ Section 558.004(1)(a), F.S.

identify the location of each alleged defect with sufficient detail to allow the responding party to locate the alleged defect without an undue burden.⁷

The claimant must try to serve the notice of claim within 15 days after discovering the alleged defect, but failing to do so does not prevent the claimant from filing an action.⁸

Reasonable Inspection and Access

The person served with a notice of claim or the person's contractors or agents may perform a reasonable inspection of the property or of each unit subject to a claim to assess the alleged construction defect. The person who is served with the notice must reasonably coordinate the timing and manner of the inspections with the claimant in an effort to minimize the number of inspections.⁹

A person served with a notice of claim as described above *may* serve a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional whom he or she reasonably believes is responsible for the defect specified in the notice of claim. The service of the notice on the potentially responsible party may not be construed as an admission of any kind. Each contractor, subcontractor, supplier, and design professional may also inspect the property as described above.¹⁰

Response Required

The contractor, subcontractor, supplier, or design professional who has been served with a notice of claim must serve a written response to the person who served a copy of the notice within the time frames specified in statute. The response must include a report, if any, of the scope of any inspection of the property and the findings and results of the inspection.¹¹

Sharing of Information

A claimant and each person served with a notice of claim are required to exchange¹² any design plans, specifications, and as-built plans, photographs of the alleged defect, expert reports, subcontracts, purchase orders, maintenance records, and other documents related to discovery, investigation, causation, and the extent of the alleged defect.

Building Construction Standards (Section 1)

Chapter 553, F.S., which establishes the state's building construction standards, is divided into eight parts. Part IV is devoted to the Florida Building Code and contains the statute that governs statutory civil actions.

⁷ Section 558.004(1)(b), F.S.

⁸ Section 558.004(1)(c), F.S.

⁹ Section 558.004(2), F.S.

¹⁰ Section 558.004(3), F.S.

¹¹ Section 558.004(4), F.S. Section 558.004(5), F.S., specifies the information that must be contained in a response.

¹² Section 558.004(15), F.S. Although parties must exchange information, a party may assert a claim of privilege with respect to any disclosure obligations specified in ch. 558, F.S.

The section provides that, notwithstanding any other available remedies, a person or party damaged as a result of a violation of the Florida Building Code has a cause of action against the person or party who committed the violation. However, if the person alleged to have violated the code obtained the required building permits and:

- The plans were approved by a local government or public agency having authority to enforce the Florida Building Code;
- The construction project passed all of the required inspections under the code; and
- If there is no personal injury or damage to property other than the property that is the subject of the permits, plans, and inspection;

Then the right to bring an action does not apply *unless* the person or party who allegedly committed the code violation knew or should have known that the violation existed.¹³

Implied Warranties of Fitness and Merchantability (Section 3)

The ancient doctrine of caveat emptor or “let the buyer beware” stood as the rule of law for centuries and governed disputes that arose from the sale of real property. The doctrine held that, unless there was a stated agreement to the contrary, the person who sold real property was not responsible to the purchaser for a defective condition that existed when the seller transferred possession of the property to the purchaser. In other words, purchasers bought real property at their own risk. Under the doctrine, the seller had no duty to communicate to the purchaser the existence of latent, or unseen, defects in the property unless the seller represented by act or implication, that the defects did not exist. The only protections that the buyer received were the ones for which the buyer specifically contracted.¹⁴

American courts have regularly enforced express warranties and, with time, have receded from an absolute doctrine of caveat emptor. As goods were mass produced, courts recognized that sellers were in a better position than buyers to discover and prevent defective goods. As such, courts recognized that fairness required them to place more responsibility on the seller for identifying defective goods by imposing the concept of implied warranties. This became especially apparent in the context of complicated real property development, sale, and construction.¹⁵

In 1972, the Florida Supreme Court determined that the implied warranties of fitness and merchantability applied to the purchase of new homes and condominiums.¹⁶ The Court later stated that a warranty is breached if the home “is rendered not reasonably fit for the ordinary or general purpose intended.”^{17,18}

¹³ Section 553.84, F.S.

¹⁴ *Maronda Homes, Inc. of Florida v. Lakeview Reserve Homeowners Association, Inc.*, 127 So. 3d 1258, 1263-1264 (Fla. 2013).

¹⁵ *Id.*

¹⁶ *Gable v. Silver*, 258 So. 2d 11 (Fla. 4th DCA) adopted, 264 So. 2d 418 (Fla. 1972).

¹⁷ *Maronda*, 127 So. 3d at 1268 (citing *Putnam v. Roudebush*, 352 So. 2d 908, 910 (Fla. 2d DCA 1977)).

¹⁸ There are time limitations, called statutes of repose, that limit how long a claimant has to bring an action. When a civil action is founded on the design, planning, or construction of an improvement to real property, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. Under Florida construction law, the action must be commenced within 10 years after the date of: actual possession by the owner; issuance of a certificate of occupancy, abandonment of construction if not completed, or completion of the contract or termination of the contract

III. Effect of Proposed Changes:

Construction Defect Disputes (Section 2)

Preliminary Requirement to Exhaust Warranty Claims

The statute requiring a property owner to first serve notice and provide an opportunity to repair before filing suit is amended to require the property owner to first exhaust any warranty claims before serving a notice of claim. Specifically, a claimant must first submit a claim to the warranty provider to determine whether the alleged defect might be covered under a warranty provision. If the warranty provider either denies the claim or does not offer a remedy satisfactory to the claimant within the time limits set forth in the warranty, the claimant may proceed with a notice of claim.

Contents of the Notice of Claim Provision

The content of a notice of claim is amended to require additional information. The claimant must:

- Describe in specific, not reasonable, detail each alleged construction defect;
- Include at least one photograph of the alleged defect or evidence of the defect if it is visible, any repair estimates or expert reports relating to the alleged defect, and a description of the damage or loss that results from the alleged defect if that information is known;
- Identify the specific location of each alleged construction defect;
- Affirm that he or she has personal knowledge of the alleged construction defect;
- Acknowledge that he or she is aware of the penalties of perjury as imposed under ch. 837, F.S.; and
- Sign the notice and include the following statement directly above the claimant's signature line in 18-point uppercase and boldfaced type: "Under penalty of perjury, I declare that I have read the foregoing statement and the facts alleged are true to the best of my knowledge and belief."

If anyone willfully includes a false statement in the notice of claim, he or she commits perjury. However, a cross-reference to a specific perjury statute is not included. Chapter 837, F.S., contains several perjury provisions and accompanying penalties. Perjury that does not occur in an official proceeding,¹⁹ which seems to fit this situation, is a misdemeanor of the first degree, punishable by a fine not to exceed \$1,000²⁰ and incarceration not to exceed 1 year.²¹

between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. Section 95.11(3)(c), F.S.

¹⁹ Section 837.012, F.S. An "official proceeding" means a proceeding heard, or which may be or is required to be heard, before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, general or special magistrate, administrative law judge, hearing officer, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding. Section 837.011(1), F.S.

²⁰ Section 775.083, F.S.

²¹ Section 775.082(4)(a), F.S.

Duty to Serve a Notice of Claim on Others

Section 558.004(3), F. S., as currently written, *permits* a person served with a notice of claim to serve a copy of the notice to each contractor, subcontractor, supplier, or design professional that he or she believes is responsible for the construction defect. According to changes made in the bill, the person who is served with the notice is now *required* to serve a copy of the notice of claim on others who might be responsible for the defect.

Additional Persons Authorized to Inspect for Defects

Additionally, s. 558.004(2), F.S., is amended to permit a contractor, subcontractor, supplier, or design professional who is served with a copy of the notice the right to reasonably inspect the property or unit subject to the claim for purposes of assessing each alleged defect.

Sharing of Information

The bill adds “additional photographs” and expert reports “not already provided” to the list of information that must be shared between a claimant and a person served with a notice of claim.

Building Construction Standards (Section 1)***“Material” Violations***

The statutory civil cause of action for building code violations is amended to limit lawsuits to those alleging a “material” violation of the code. A claimant must now experience a “material” violation in order to have a cause of action against a violator. A material violation is defined as a violation that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to someone or significant damage to the performance of a building or its systems.

Warranties

A provision is also added to this section which requires a person, before bringing a cause of action for damages resulting from a building code violation, to first properly submit a claim for the alleged construction defect under any existing applicable warranties. If the warranty provider denies the claim or has not offered a remedy that is satisfactory to the claimant within the time limitations provided in the warranty, the claimant may proceed with a cause of action.²²

In addition to implied warranties that flow between a builder and a buyer, there are also third-party warranties that may be purchased by builders that protect them in the event of a property owner’s claim. These third party-party warranties often provide protection against structural defects and defects in workmanship.

²² Builder warranties and home warranties are often confused. While the builder’s warranty covers new construction or modifications to an existing property, a home warranty, which is purchased by the buyer, generally covers appliances and household systems.

Notice to Mortgagee or Assignee (Section 3)

A new section is created in ch. 558, F.S., which requires a prevailing claimant to notify the holder of a security interest in a property of a favorable settlement or judgment in the resolution of a construction defect claim. If a claimant prevails and receives a monetary settlement or judgment and a mortgagee or assignee has a security interest in the real property that is the subject of the claim, a claimant has 90 days after the resolution of the claim to notify the mortgagee or assignee in writing of:

- The specific nature of the defect.
- The outcome of the claim, specifying the amount of any monetary settlement reached or any judgment that is awarded.
- Any repairs made or plans to repair the property.

If the repairs are completed after the claimant notifies the mortgagee or assignee, the claimant must update the notice within 30 days after the repairs are completed.

The bill takes effect July 1, 2021.

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:

The expanded information-sharing requirements in the bill may aid contractors and property owners in resolving construction defect claims.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 3 of the bill requires a prevailing claimant to notify a mortgagee or assignee who has a security interest in the claimant's property within 90 days after a favorable monetary settlement or judgment. This lengthy time period might be in conflict with provisions in mortgages that require the property owner to notify a security interest holder in a shorter time period.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 553.84; 558.004. This bill creates section 558.006, Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Perry

8-00205A-21

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1 A bill to be entitled
2 An act relating to construction defects; amending s.
3 553.84, F.S.; defining the term "material violation";
4 revising cause of action requirements for statutory
5 civil actions relating to certain violations;
6 requiring that a person submit a construction defect
7 claim to the warranty provider before bringing a cause
8 of action; amending s. 558.004, F.S.; requiring that a
9 claimant submit a construction defect claim to the
10 warranty provider before serving a notice of claim;
11 providing applicability; revising requirements for
12 notices of claims; providing that a person who
13 willfully includes a false statement in a notice of
14 claim commits perjury; authorizing a person served
15 with a copy of a notice of claim to perform a
16 reasonable inspection of the property subject to the
17 claim; providing inspection requirements for claimants
18 and persons served with a copy of a notice; requiring,
19 instead of authorizing, a person served with a notice
20 to serve a copy of the notice to specified persons
21 under certain circumstances; making technical changes;
22 creating s. 558.006, F.S.; requiring a claimant to
23 notify a mortgagee or an assignee in writing within a
24 specified timeframe after a settlement or judgment of
25 a construction defect claim under certain
26 circumstances; requiring a claimant to update the
27 notice within a specified timeframe under certain
28 circumstances; providing an effective date.
29

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

Section 1. Section 553.84, Florida Statutes, is amended to read:

553.84 Statutory civil action.—

(1) For purposes of this section, the term "material violation" means a violation that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems.

(2) Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a material violation of this part or the Florida Building Code, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation; however, if the person or party obtains the required building permits and any local government or public agency with authority to enforce the Florida Building Code approves the plans, if the construction project passes all required inspections under the code, and if there is no personal injury or damage to property other than the property that is the subject of the permits, plans, and inspections, this section does not apply unless the person or party knew or should have known that the violation existed.

(3) A person may not bring a cause of action under this section unless the person has first properly submitted a claim for the alleged construction defect under any applicable warranty and the warranty provider has denied the claim or has not offered a remedy satisfactory to the person within the time

8-00205A-21

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limits provided in the warranty.

Section 2. Subsections (1) through (4) and subsection (15) of section 558.004, Florida Statutes, are amended to read:

558.004 Notice and opportunity to repair.—

(1)(a) In actions brought alleging a construction defect, the claimant shall, at least 60 days before filing any action, or at least 120 days before filing an action involving an association representing more than 20 parcels, serve written notice of claim on the contractor, subcontractor, supplier, or design professional, as applicable, which notice shall refer to this chapter. If the construction defect claim arises from work performed under a contract, the written notice of claim must be served on the person with whom the claimant contracted. However, a notice of claim may not be served under this chapter unless the claimant has first properly submitted a claim for the alleged construction defect under any applicable warranty and the warranty provider has denied the claim or has not offered a remedy satisfactory to the claimant within the time limits provided in the warranty. This chapter provides a notice process for a construction defect claim that has been denied or not otherwise satisfied under any applicable warranty.

(b) The notice of claim must:

1. Describe in specific ~~reasonable~~ detail the nature of each alleged construction defect; and
2. If the alleged construction defect or evidence thereof is visible, include at least one photograph of the alleged defect or evidence thereof, any repair estimates or expert reports obtained relating to the alleged defect, and a description of, if known, the damage or loss resulting from the

8-00205A-21

2021270__

88 alleged defect, if known;~~;~~

89 3. Based upon at least a visual inspection by the claimant
90 or its agents, ~~the notice of claim must~~ identify the specific
91 location of each alleged construction defect sufficiently to
92 enable the responding parties to locate the alleged defect
93 without undue burden. The claimant has no obligation to perform
94 destructive or other testing for purposes of this notice;~~;~~

95 4. Affirm that the claimant has personal knowledge of the
96 alleged construction defect;

97 5. Acknowledge that the claimant is aware of the penalties
98 for perjury imposed under chapter 837; and

99 6. Be signed by the claimant and include the following
100 statement directly above the claimant's signature line in 18-
101 point uppercase and boldfaced type:

102
103 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE
104 FOREGOING STATEMENT AND THE FACTS ALLEGED ARE TRUE TO THE BEST
105 OF MY KNOWLEDGE AND BELIEF.

106
107 (c) Any person who willfully includes a false statement in
108 the notice of claim required by this section commits perjury.

109 (d)~~(e)~~ The claimant shall endeavor to serve the notice of
110 claim within 15 days after discovery of an alleged defect, but
111 the failure to serve notice of claim within 15 days does not bar
112 the filing of an action, subject to s. 558.003. This subsection
113 does not preclude a claimant from filing an action sooner than
114 60 days, or 120 days as applicable, after service of written
115 notice as expressly provided in subsection (6), subsection (7),
116 or subsection (8).

8-00205A-21

2021270__

117 (e) ~~(d)~~ A notice of claim served pursuant to this chapter
118 shall not toll any statute of repose period under chapter 95.

119 (2) Within 30 days after service of the notice of claim, or
120 within 50 days after service of the notice of claim involving an
121 association representing more than 20 parcels, any ~~the~~ person
122 served with the notice of claim under subsection (1), or a copy
123 thereof under subsection (3), may ~~is entitled to~~ perform a
124 reasonable inspection of the property or of each unit subject to
125 the claim to assess each alleged construction defect. An
126 association's right to access property for either maintenance or
127 repair includes the authority to grant access for the
128 inspection. The claimant shall provide the person served with
129 notice under subsection (1), or a copy thereof under subsection
130 (3), and such person's contractors or agents reasonable access
131 to the property during normal working hours to inspect the
132 property to determine the nature and cause of each alleged
133 construction defect and the nature and extent of any repairs or
134 replacements necessary to remedy each defect. The person served
135 with notice under subsection (1), or a copy thereof under
136 subsection (3), shall reasonably coordinate the timing and
137 manner of any and all inspections with the claimant to minimize
138 the number of inspections. The inspection may include
139 destructive testing by mutual agreement under the following
140 reasonable terms and conditions:

141 (a) If the person served with notice under subsection (1)
142 determines that destructive testing is necessary to determine
143 the nature and cause of the alleged defects, such person must
144 ~~shall~~ notify the claimant in writing.

145 (b) The notice must ~~shall~~ describe the destructive testing

8-00205A-21

2021270__

to be performed, the person selected to do the testing, the estimated anticipated damage and repairs to or restoration of the property resulting from the testing, the estimated amount of time necessary for the testing and to complete the repairs or restoration, and the financial responsibility offered for covering the costs of repairs or restoration.

(c) If the claimant promptly objects to the person selected to perform the destructive testing, the person served with notice under subsection (1) must ~~shall~~ provide the claimant with a list of three qualified persons from which the claimant may select one such person to perform the testing. The person selected to perform the testing shall operate as an agent or subcontractor of the person served with notice under subsection (1) and shall communicate with, submit any reports to, and be solely responsible to the person served with notice.

(d) The testing must ~~shall~~ be done at a mutually agreeable time.

(e) The claimant or a representative of the claimant may be present to observe the destructive testing.

(f) The destructive testing may ~~shall~~ not render the property uninhabitable.

(g) There are ~~shall be~~ no construction lien rights under part I of chapter 713 for the destructive testing caused by a person served with notice under subsection (1) or for restoring the area destructively tested to the condition existing before ~~prior to~~ testing, except to the extent the owner contracts for the destructive testing or restoration.

If the claimant refuses to agree and thereafter permit

8-00205A-21

2021270__

reasonable destructive testing, the claimant has ~~shall have~~ no claim for damages which could have been avoided or mitigated had destructive testing been allowed when requested and had a feasible remedy been promptly implemented.

(3) Within 10 days after service of the notice of claim, or within 30 days after service of the notice of claim involving an association representing more than 20 parcels, the person served with notice under subsection (1) shall ~~may~~ serve a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional whom it reasonably believes is responsible for each defect specified in the notice of claim and shall note the specific defect for which it believes the particular contractor, subcontractor, supplier, or design professional is responsible. The notice described in this subsection may not be construed as an admission of any kind. Each such contractor, subcontractor, supplier, and design professional may inspect the property as provided in subsection (2).

(4) Within 15 days after service of a copy of the notice of claim under ~~pursuant to~~ subsection (3), or within 30 days after service of the copy of the notice of claim involving an association representing more than 20 parcels, the contractor, subcontractor, supplier, or design professional must serve a written response to the person who served a copy of the notice of claim. The written response must include a report, if any, of the scope of any inspection of the property and the findings and results of the inspection. The written response must include one or more of the offers or statements specified in paragraphs (5) (a)-(e), as chosen by the responding contractor, subcontractor, supplier, or design professional, with all of the

8-00205A-21

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information required for that offer or statement.

(15) Upon request, the claimant and any person served with notice under ~~pursuant to~~ subsection (1) shall exchange, within 30 days after service of a written request, which request must cite this subsection and include an offer to pay the reasonable costs of reproduction, any design plans, specifications, and as-built plans; videos and additional photographs ~~and videos~~ of the alleged construction defect identified in the notice of claim; expert reports not already provided which ~~that~~ describe any defect upon which the claim is made; subcontracts; purchase orders for the work that is claimed defective or any part of such materials; and maintenance records and other documents related to the discovery, investigation, causation, and extent of the alleged defect identified in the notice of claim and any resulting damages. A party may assert any claim of privilege recognized under the laws of this state with respect to any of the disclosure obligations specified in this chapter. In the event of subsequent litigation, any party who fails ~~failed~~ to provide the requested materials is ~~shall be~~ subject to such sanctions as the court may impose for a discovery violation. Expert reports exchanged between the parties may not be used in any subsequent litigation for any purpose, unless the expert, or a person affiliated with the expert, testifies as a witness or the report is used or relied upon by an expert who testifies on behalf of the party for whom the report was prepared.

Section 3. Section 558.006, Florida Statutes, is created to read:

558.006 Notice to mortgagee or assignee.—

(1) If a notice of claim alleging a construction defect

8-00205A-21

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233 under this chapter results in a monetary settlement or judgment
234 in favor of the claimant, and a mortgagee or an assignee has a
235 security interest in the real property subject to the claim, the
236 claimant must, within 90 days after the resolution of the claim,
237 notify the mortgagee or assignee, in writing, of all of the
238 following:

239 (a) The specific nature of the defect.

240 (b) The outcome of the claim, including the amount of any
241 monetary settlement reached or judgment awarded.

242 (c) Whether the defect has been repaired and a description
243 of any repairs made or, if repairs have not yet begun, the
244 anticipated date on which the repairs will begin.

245 (2) If repairs relating to the defect are completed after
246 the claimant notifies the mortgagee or assignee as required
247 under subsection (1), the claimant must update the notice within
248 30 days after completion of the repairs.

249 Section 4. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 4, 2021

I respectfully request that **Senate Bill #270**, relating to Construction Defects, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style.

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/15/2021

Meeting Date

SB 270

Bill Number (if applicable)

Topic Construction Defects

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 S. Monroe St.

Phone 850-509-0756

Street

Tallahassee, FL.

32300

Email william@fljustice.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-15-21

Meeting Date

SB 270

Bill Number (if applicable)

Topic CONSTRUCTION DEFECTS

Amendment Barcode (if applicable)

Name DANE BENNETT, FHBA

Job Title DIRECTOR OF GOVERNMENT AFFAIRS

Address 2600 CENTENNIAL PL

Phone 941-468-8479

Street

TALLAHASSEE

FL

32308

Email DBENNETT@FHBA.COM

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL HOME BUILDERS ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Reset Form

THE FLORIDA SENATE
APPEARANCE RECORD

2/15
Meeting Date

270
Bill Number (if applicable)

Topic Construction Defects

Amendment Barcode (if applicable)

Name Andrew Ketchel

Job Title Consultant

Address 124 West Jefferson Street

Phone 850-222-9075

Street

Tallahassee

FL

32303

Email Andrew@cccfla.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Lennar Ventures

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/21

Meeting Date

270

Bill Number (if applicable)

Topic Construction Defects

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title Director of Government and Community Affairs

Address 235 W. Brandon Blvd. Ste. 640

Phone 850-933-5994

Street

Brandon

FL

33511

Email edward@rsaconsultingllc.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Highland Homes

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/21

Meeting Date

270

Bill Number (if applicable)

Topic Construction Defects

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title Director of Government and Community Affairs

Address 235 W. Brandon Blvd. Ste. 640

Phone 850-933-5994

Street

Brandon

FL

33511

Email edward@rsaconsultingllc.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Fire Sprinklers Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2-15-21

Meeting Date

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

26 270

Bill Number (if applicable)

Topic

Construction Defects

Amendment Barcode (if applicable)

Name

KARI HEBRANK

Job Title

Address

215 S. Monroe Street, Suite 500

Phone

850-566-7824

Street

TALLAHASSEE

FL

32301

Email

Khebrank@calfon
fields.com

City

State

Zip

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Representing

FLORIDA HOME BUILDERS ASSOCIATION

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

02/15/2021

Meeting Date

270

Bill Number (if applicable)

Topic Construction Defects

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

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Phone (850) 205-9000

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Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla. Associated General Contractors Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

SB 270

Bill Number (if applicable)

Topic Construction Defects

Amendment Barcode (if applicable)

Name William Cotterall

Job Title General Counsel

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32301

Email wcotterall@myfja.org

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

SB 270

Bill Number (if applicable)

676720- WIP

Amendment Barcode (if applicable)

Topic Construction Defects

Name Timothy J. Meenan

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State

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Zip

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Email tim@meenanlawfirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Sprinkler Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/21

Meeting Date

270

Bill Number (if applicable)

Topic Construction Defects

Amendment Barcode (if applicable)

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State

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Zip

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Roofing and Sheet Metal Contractors Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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12/15/21
Meeting Date

270
Bill Number (if applicable)

Topic Construction Defects

Amendment Barcode (if applicable)

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Job Title Chief Lobbyist

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Associated Builders + Contractors

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

SB 270

Bill Number (if applicable)

676720

Amendment Barcode (if applicable)

Topic Construction Defects

Name William Cotterall

Job Title General Counsel

Address 218 S. Monroe Street

Phone 850-224-9403

Street

Tallahassee

FL

32301

Email wcotterall@myfja.org

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☒ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 354

INTRODUCER: Judiciary Committee and Senator Harrell

SUBJECT: Restitution

DATE: February 17, 2021

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 354 provides that fair market value is the default valuation standard when determining the appropriate amount of restitution in a criminal or delinquency case. The court may use another standard where equitable. The bill allows admission of hearsay testimony in restitution hearings to aid in determining the value of the victim's loss.

The bill is effective July 1, 2021.

II. Present Situation:

Restitution - In General

Restitution is “full or partial compensation paid by a criminal to a victim, not awarded in a civil trial for tort, but ordered as part of a criminal sentence or as a condition of probation.”¹ “Unlike civil damages, restitution is a criminal sanction. The purpose of restitution is not only to compensate the victim, but also to serve the rehabilitative, deterrent, and retributive goals of the criminal justice system.”²

¹ BLACK’S L. DICTIONARY (11th ed. 2019).

² *Spivey v. State*, 531 So. 2d 965, 967 (Fla. 1988). See also, *Victim Restitution in the Criminal Process: A Procedural Analysis*, 97 HARV. L. REV. 931 (Feb. 1984).

A crime victim has a state constitutional right to restitution. The State Constitution provides that a victim has the “right to full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct.”³ This language was adopted by the voters in 2018.⁴

A sentencing court must order the defendant to make restitution to the victim for damage or loss caused directly or indirectly by the defendant’s offense; and damage or loss related to the defendant’s criminal episode, unless the court finds clear and compelling reasons not to order restitution. If ordered, restitution is a mandatory condition of probation.⁵

How Restitution is Proved and Calculated

In general, the fair market value at the time of the offense is the appropriate value for purposes of restitution. However, the Florida Supreme Court in *Hawthorne*⁶ ruled that “a court is not tied to fair market value as the sole standard for determining restitution amounts, but rather may exercise such discretion as required to further the purposes of restitution.”⁷ The court found that fair market value can be established either through direct testimony of the victim or through evidence of the following four factors:

- Original market cost;
- Manner in which the item was used;
- The general condition and quality of the item; and
- The percentage of depreciation.⁸

A criminal trial and conviction must (unless waived) be heard before a jury and guilt must be proved beyond a reasonable doubt. Restitution, however, is a part of the sentencing process. A sentencing hearing is tried before the judge alone, and the essential facts need only be proved by a preponderance of the evidence.⁹ Contested restitution hearings are uncommon, in most cases where restitution is ordered the amount of restitution is agreed between the parties.

Evidence Code and Hearsay

The Florida Evidence Code applies equally to all civil and criminal actions, at hearings and at trial.¹⁰ The code prohibits admission of hearsay evidence, unless one of the exceptions apply.¹¹ “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.¹² The common reasons cited for the hearsay rule include:

³ Art. I, s. 16(b)(9), FLA. CONST.

⁴ The language was presented to the voters as Revision 6 on the 2018 General Election ballot, and it is commonly referred to as “Marcy’s Law.”

⁵ Section 775.089(1)(a), F.S.

⁶ *State v. Hawthorne*, 573 So. 2d 330 (Fla. 1991).

⁷ *Id.* at 333.

⁸ *Id.* at 332-33.

⁹ Section 775.089(7), F.S.

¹⁰ Section 90.103, F.S.

¹¹ Section 90.802, F.S.

¹² Section 90.801(1)(c), F.S.

- Because the underlying hearsay statement is not made under oath, it is less reliable than in-court testimony given under oath.
- A jury cannot determine the reliability of the hearsay testimony.
- An opposing party cannot cross-examine the person who made the out-of-court statement.¹³

Not all hearsay is inadmissible. The Evidence Code contains 30 exceptions to the hearsay rule.¹⁴ Hearsay evidence that is admitted into evidence may be attacked by an opposing party.¹⁵ Hearsay testimony is admissible in a sentencing hearing, provided the defendant has a fair opportunity to rebut it.¹⁶

All evidence allowed at a hearing or trial, including hearsay, must be weighed for its reliability. The standard jury instructions in a criminal case explain, in relevant part:

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence You may rely upon your own conclusion about the credibility of any witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.¹⁷ The direction to weigh the reliability of the evidence applies equally to a hearing decided by a judge without a jury.

Where hearsay evidence is allowed, such evidence is still subject to other rules of evidence. For instance, the evidence must be relevant,¹⁸ must not be unduly prejudicial or confusing,¹⁹ and the witness must have personal knowledge of the matter.²⁰

Courts have Suggested Change

In 2012, Katrina R. Phillips stole jewelry and sold it. She was convicted for various crimes involving the victim's stolen jewelry. In a 2013, restitution hearing the victim testified as to her opinion of the value of the stolen family heirloom jewelry. In her testimony, the victim described how she had reviewed six websites looking for values of similar jewelry. The trial court found victim's testimony credible and reliable, and awarded the victim restitution of \$20,511. The District Court of Appeal found in 2014 that the victim's testimony violated the hearsay rule because it was based on internet research.²¹ The DCA reluctantly reversed the restitution award, saying:

¹³ EHRHARTDT'S FLORIDA EVIDENCE, 2018 Ed., § 801.1.

¹⁴ Sections 90.803 and 90.804, F.S.

¹⁵ Section 90.806, F.S.

¹⁶ *Hudson v. State*, 708 So. 2d 256, 261 (Fla. 1998)(capital cases); *McInerney v. State*, 213 So. 3d 933 (Fla. 4th DCA 2017)(non-capital cases, except hearsay not admissible related to a request for sentence enhancement).

¹⁷ Fla. Std. Jury Instruction 3.9

¹⁸ Section 90.402, F.S.

¹⁹ Section 90.403, F.S.

²⁰ Sections 90.604, F.S.

²¹ *Phillips v. State*, 141 So. 3d 702 (Fla. 4th DCA 2014).

In reaching our conclusion, we recognize that it was practically impossible for the victim to establish the restitution amount without relying on hearsay evidence.

...

The fact that it was practically impossible for the victim to establish the restitution amount without relying on hearsay evidence appears to have caused an unjust result for the victim, because she and the state appear to have no other means by which to prove the restitution amount.

...

[A]lthough we are obligated to remand for a new restitution hearing, we are doubtful that the new hearing will provide the victim with any relief.

We surmise that the victim here is not alone. This court and our sister courts recently have issued multiple opinions reversing restitution awards where the victim and the state have not presented competent, substantial evidence supporting the amount awarded. See, e.g., T.D.C., 117 So.3d at 811 (“[A]bsent circumstances tending to show that [fair market value] does not adequately compensate the victim or otherwise serve the purpose of restitution ... the amount of restitution should be established through evidence of [fair market value] at the time of the theft.”) (citation and quotation marks omitted). In each case, a wholly innocent person has been left with a more difficult, if not impossible, path to recover their stolen items’ value. The circuit court in this case recognized this unjust result in honorably attempting to justify its determination of the restitution amount here.²²

The appellate court suggested adding the following language to s. 775.089(7), F.S.:

The court is not bound by fair market value as the sole standard for determining restitution amounts, but rather may exercise such discretion as required to further the purposes of restitution, including consideration of hearsay.²³

On remand, the restitution award was reduced to \$12,046.²⁴

In 2015, Cricket Kathleen Toole stole various goods. She was convicted of dealing in stolen property and false verification of ownership to a pawnbroker. At the restitution hearing, the victim testified to the items’ value by providing their original price, and guesstimating their replacement value. The trial court ordered restitution of \$ 9,984.12.²⁵

²² *Id.* at 705-06.

²³ *Id.* at 706.

²⁴ Indian River County, OR Book 2653, Page 1090; and OR Book 2815, Page 2401.

²⁵ *Toole v. State*, 270 So. 3d 371, 373 (Fla. Dist. Ct. App. 2019), *review dismissed*, No. SC19-456, 2019 WL 2275025 (Fla. May 29, 2019).

The DCA reversed in 2019, finding that the state had failed to prove all four elements of valuation of restitution. The court then went further, lamenting the continued problems with restitution awards:

Despite the statute, the rules, the case law, and the constitutional amendment, proving restitution continues to be difficult for victims, and receiving compensation for their loss continues to be elusive We have previously suggested a legislative fix . . . yet, the statute remains the same as does the problem--proving restitution.²⁶

The DCA took the further step of certifying the issue for review as a matter of great public importance by the Florida Supreme Court:

Is *Hawthorne*'s formula for determining restitution based on the fair market value of the victim's property still viable after the passage of Amendment 6 (Marsy's Law), or should a trial court no longer be bound by fair market value as the sole standard for determining restitution amounts, and instead exercise such discretion as required to further the purposes of restitution, including consideration of hearsay?²⁷

The case was appealed to the Florida Supreme Court, but was dismissed without opinion after the defendant died.

III. Effect of Proposed Changes:

CS/SB 354 provides that the primary purpose of restitution is to compensate the victim, but restitution also serves the rehabilitative and deterrent goals of the justice system. The bill adopts the fair market standard of valuation as the default, giving the trial court latitude to use a valuation standard other than fair market value, if equitable and if such standard better furthers the purposes of restitution. The bill also allows the court to consider hearsay evidence when determining restitution, subject to the other rules of evidence. The bill applies the same standards for restitution in the criminal court and juvenile delinquency court. The bill applies equally to the state, victims, defendants, and delinquents.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁶ *Id.* at 374.

²⁷ *Id.* at 375.

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: 775.089 and 985.437.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on February 15, 2020:

The committee substitute adds the purposes of restitution and adds that fair market value is the default valuation standard. The committee substitute applies to juvenile delinquency cases in addition to criminal cases.

B. Amendments:

None.

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

By Senator Harrell

25-00662-21

2021354__

A bill to be entitled
An act relating to restitution; amending s. 775.089,
F.S.; specifying that courts are not bound by fair
market value in determining restitution amounts;
authorizing courts to exercise discretion in
furthering the purposes of restitution; providing an
effective date.

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

Section 1. Subsection (7) of section 775.089, Florida
Statutes, is amended to read:

775.089 Restitution.—

(7) Any dispute as to the proper amount or type of
restitution shall be resolved by the court by the preponderance
of the evidence. The court is not bound by fair market value as
the sole standard in determining restitution amounts, but rather
may exercise such discretion as required to further the purposes
of restitution, including consideration of hearsay. The burden
of demonstrating the amount of the loss sustained by a victim as
a result of the offense is on the state attorney. The burden of
demonstrating the present financial resources and the absence of
potential future financial resources of the defendant and the
financial needs of the defendant and his or her dependents is on
the defendant. The burden of demonstrating such other matters as
the court deems appropriate is upon the party designated by the
court as justice requires.

Section 2. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GAYLE HARRELL
25th District

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Health
and Human Services, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Children, Families, and Elder Affairs
Military and Veterans Affairs and Space

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

January 12, 2021

Senator Jeff Brandes
414 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Brandes,

I respectfully request that **SB 354 – Restitution** be placed on the next available agenda for the Judiciary Committee Meeting. Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell
Senate District 25

Cc: Tom Cibula, Staff Director
Joyce Butler, Committee Administrative Assistant

REPLY TO:

- ☐ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- ☐ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

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THE FLORIDA SENATE

APPEARANCE RECORD

February 15, 2021

Meeting Date

354

Bill Number (if applicable)

Topic Restitution

Amendment Barcode (if applicable)

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Allaince

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/15/2021

Meeting Date

354

Bill Number (if applicable)

Topic Restitution

Amendment Barcode (if applicable)

Name Trish Neely

Job Title Director

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32303

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/21

Meeting Date

SB 354

Bill Number (if applicable)

Topic Restitution - Increasing Restitution Amounts

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director & Senior Policy Counsel

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33134

Email kgross@aclufl.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 474

INTRODUCER: Senator Bracy

SUBJECT: Prosecuting Children as Adults

DATE: February 15, 2021

REVISED: _____

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

I. Summary:

SB 474 increases the minimum age at which certain juvenile offenders can be transferred or directly referred to the criminal court.

Judicial waiver refers to the process where a state attorney may request the juvenile court to waive juvenile court jurisdiction and thereby allow a case to transfer to criminal court. The bill changes the allowable ages for judicial waiver from 14-17 years of age to 15-17 years of age.

Direct file refers to where a state attorney has the discretion to bypass the juvenile court and directly file charges against a juvenile in criminal court. The bill changes direct file of enumerated serious felony offenses from 14-15 year of age to 15-16 years of age; and changes direct file of felonies, and direct file of misdemeanors with a prior felony offense, from 16-17 years of age to only apply to juveniles 17 years of age.

The fiscal impact of the bill to the state is indeterminate. There is minimal to no estimated fiscal impact on counties.

The bill is effective July 1, 2021.

II. Present Situation:

Delinquency - In General

The state constitution allows creation of a separate juvenile justice system:

When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. Any child so charged shall,

upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. A child found delinquent shall be disciplined as provided by law.¹

A child for purposes of delinquency court is defined as any individual whose offense occurred before the offender's 18th birthday.² Juvenile justice policy and procedure is governed by ch. 985, F.S. Legislative findings governing that chapter say, in relevant part, that:

The purposes of this chapter are . . . to assure that the sentencing and placement of a child tried as an adult be appropriate and in keeping with the seriousness of the offense and the child's need for rehabilitative services, and that the proceedings and procedures applicable to such sentencing and placement be applied within the full framework of constitutional standards of fundamental fairness and due process.³

The Legislature also finds that certain juveniles have committed a sufficient number of criminal acts, including acts involving violence to persons, to represent sufficient danger to the community to warrant sentencing and placement within the adult system. It is the intent of the Legislature to establish clear criteria in order to identify these juveniles and remove them from the juvenile justice system.⁴

Juvenile Sanctions and Procedures vs. Criminal Court

There are significant differences between delinquency court and the criminal court:

- An adjudication of delinquency is not a conviction. A delinquent is not a criminal. Adjudication by the delinquency court does impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction, or to disqualify or prejudice the child in any civil service application or appointment, with limited exceptions.⁵
- Where most criminal court records are mostly open to public inspection and copying, most delinquency court records are exempt from public disclosure.⁶
- There is no bail in the delinquency system. Accused offenders are released unless detention is warranted.⁷
- Delinquency cases are tried before a circuit judge. There is no right to a jury trial.
- Criminal court sentences may sentence an offender to jail or prison for a term up to that allowed by statute. Delinquency court, where allowed, may order an offender to a treatment program which may include confinement in the treatment facility.

¹ FLA. CONST. art. I, s. 15(b).

² Section 985.03(7), F.S.

³ Section 985.01(1)(f)2., F.S.

⁴ Section 985.02(4)(b), F.S.

⁵ Section 985.35(6), F.S. Limited exceptions include: A finding of delinquency qualifies as a "conviction" for purposes of issuance, suspension or revocation of a driver license. A finding of delinquency is a conviction for purposes of examining that child's past record in future delinquency cases. A delinquent found to have committed a felony is disqualified from lawfully possessing a firearm until age 24 unless the record is expunged. Section 985.35(7), F.S.

⁶ Section 985.045(2), F.S.

⁷ Sections 985.115, 985.255, and 985.26, F.S.

- Criminal sentences may extend for decades, even for life. Juvenile sanctions and treatment programs end no later than the offender reaching age 21.⁸

Juvenile Offenders Who Must be Tried in Criminal Court

A child of any age indicted by a grand jury for an offense is subject to criminal court. A child of any age may voluntarily waive juvenile court jurisdiction in favor of the criminal court. Both are uncommon, there were four of each in the most recent fiscal year.⁹ The bill does not affect these laws.

The term “mandatory direct file” refers to laws that require the state attorney to file an information¹⁰ in criminal court, thereby bypassing juvenile court. In 2019, Florida repealed laws on mandatory direct file.¹¹

Judicial Waiver

The term “judicial waiver” refers to the process by which the juvenile court may waive its jurisdiction over an offense committed by a child. Judicial waiver applies to certain offenders who were between 14 and 17 years of age at the time of the offense. Upon waiver, the state attorney may file an information in criminal court. A juvenile court hearing a judicial waiver matter must consider a number of factors, including the seriousness of the offense, age, maturity, and prior record.¹² In the most recent fiscal year, courts approved five waiver motions.¹³

There are two forms of judicial waiver: discretionary and mandatory. In discretionary waiver, the state attorney may file the motion regarding any offense. In mandatory waiver, the state attorney must either file a motion requesting waiver, direct file the offender (if allowed), or must file a notice of reasons why the state attorney elects not to file for waiver or direct file.¹⁴ Mandatory waiver is triggered if:

- The child has been previously adjudicated delinquent for an act classified as a felony, which adjudication was for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery, and the child is currently charged with a second or subsequent violent crime against a person; or
- The child commits a fourth or subsequent alleged felony offense and the child was previously adjudicated delinquent or had adjudication withheld for or was found to have committed, or to have attempted or conspired to commit, three offenses that are felony offenses if committed by an adult, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person;

⁸ Sections 985.0301(5)(b) and (5)(c), F.S. Restitution is not a sanction, and the delinquency court retains jurisdiction until paid. Section 985.0301(5)(d), F.S.

⁹ Fla. Dept. of Juvenile Justice, *Senate Bill 474 Agency Analysis* (February 11, 2021).

¹⁰ In criminal law, the term “information” refers to the initial charging document that opens a criminal court file. It is analogous to the civil complaint that opens a civil action.

¹¹ Chapter 2019-167, s. 76, Laws of Fla.

¹² Section 985.556(4)(c), F.S.; *Kent v. U.S.*, 383 U.S. 541 (1966).

¹³ Fla. Dept. of Juvenile Justice, *Senate Bill 474 Agency Analysis* (February 11, 2021).

¹⁴ Section 985.556(3)(a), F.S.

Direct File in Criminal Court

The term “direct file” refers to the authority of a state attorney to file an information in criminal court, thereby bypassing juvenile court and allowing for adult sanctions. The state attorney may only exercise such discretion where “in the state attorney’s judgment and discretion the public interest requires that adult sanctions be considered or imposed.”¹⁵ A criminal court considering sentencing in a direct file case has some discretionary leniency in sentencing that is unavailable to adult offenders.¹⁶ Direct file is the most common reason that juveniles are tried in criminal court, accounting for 98 percent (788) of all transfers in the most recent fiscal year.¹⁷ In that fiscal year, there were 45,336 arrests, thus, direct file occurred in approximately 1.7 percent of all juvenile arrests.¹⁸

As to children who are 14 or 15 years of age at the time of the offense, direct file is only applicable to a juvenile charged with the commission of, attempt to commit, or conspiracy to commit, one of the following felony offenses:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated assault;
- Aggravated stalking;
- Murder;
- Manslaughter;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary in violation of s. 810.02(2)(b), F.S.;
- Burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.;
- Burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.;
- Aggravated battery;
- Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;
- Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
- Grand theft in violation of s. 812.014(2)(a), F.S.;
- Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
- Home invasion robbery;
- Carjacking;
- Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or

¹⁵ Sections 985.557(1)(a) and (1)(b), F.S.

¹⁶ See s. 985.565, F.S.

¹⁷ Fla. Dept. of Juvenile Justice, *Senate Bill 474 Agency Analysis* (February 11, 2021).

¹⁸ “Approximately” because there is a natural delay between arrest and the decision to direct file. Some of the FY 2019-20 direct file cases were arrested in the previous year, and some arrested in that FY were later subject to direct file. Comparisons were not made to prior years because mandatory direct file was in law.

- Grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S.¹⁹

As to children aged 16 or 17, direct file is applicable to any juvenile accused of any felony; or any juvenile accused of a misdemeanor if the juvenile has committed two or more prior offenses, at least one of which was a felony.

Trends in Florida

Juvenile crime, and the number of juveniles tried in the criminal court, have been trending down in the recent past.

Florida Delinquency Statistics from State Courts		
	FY 2008-09 ²⁰	FY 2018-19 ²¹
Delinquency Complaints	111,425	45,263
Complaints Disposed of Prior to Petition	53,873	16,494
Petitions Filed	64,585	30,076
Judicial Waiver Requests Filed	102	146
Direct File	2,857	1,095 ²²
Florida Population	18,687,425 ²³	21,100,003

Note that these numbers were from times when mandatory direct file was in effect. Mandatory direct file was repealed in 2019.

Florida Delinquency Statistics from Dept. of Juvenile Justice ²⁴		
	FY 2015-16	FY 2019-20
Delinquency Arrests	69,864	45,366
Transfer to Criminal Court (all methods)	1,663	1,011
Florida Population of Minors	1,840,134	1,947,292

¹⁹ Section 985.557(1)(a)1.-19., F.S.

²⁰ Florida's Trial Court Statistical Reference Guide for FY 2008-09 (entire column other than population).

²¹ Florida's Trial Court Statistical Reference Guide for FY 2018-19 (entire column).

²² Note that for the same time DJJ reports 1,127 direct files. It is unclear why there is a disparity.

²³ Office of Economic and Demographic Research, Florida Legislature.

²⁴ Fla. Dept. of Juvenile Justice, *Delinquency Profile 2020*, <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last visited Feb. 9, 2021).

Transfers to Criminal Court by Age, from Dept. of Juvenile Justice²⁵		
Age	FY 2015-16	FY 2019-20
17+	825	524
15-16	423	254
13-14	21	23

Florida Compared to Other States

Florida is one of 46 states that uses age 18 as the general line to define delinquency. One state will be higher than age 18 starting next year, and the remaining three use age 17.²⁶

It is claimed that Florida has the highest rate of transfers of juveniles to criminal court,²⁷ but a leading researcher has cautioned that “[c]ross-state comparisons should be made with caution as state-reported trends represent different data sources and units of count.”²⁸ The three states that treat all 17 year olds as adults for criminal purposes are likely to have significantly more minors treated as adults in the criminal justice system than Florida.

III. Effect of Proposed Changes:

SB 474 increases the ages related to judicial waiver and direct file. This will likely result in fewer juvenile offenders will be tried as an adult in the criminal court.

The bill changes the ages for all grounds for judicial waiver from 14-17 years of age to 15-17 years of age.

The bill changes direct file of enumerated serious felony offenses from 14-15 years of age to 15-16 years of age; and changes direct file of felonies, and direct file of misdemeanors with a prior felony offense, from 16-17 years of age to only 17 years of age.

The future actual impact can be estimated by reference to the immediate past. The Department of Juvenile Justice provided this historical analysis:

In FY 2019-2020, there were 20 youth who were 14 years of age who were direct filed and 249 who were 16 years of age. The bill would remove the ability for the 14-year-olds to be direct filed. Of the 249 youth who were 16 years of age at the time of their direct filing, only 164 of them would be eligible for direct file with this new change. This [bill] would remove 20 youth who were 14 years of age and 85 youth who were 16 years of age from being eligible for direct file.²⁹

²⁵ Fla. Dept. of Juvenile Justice, *Delinquency Profile 2020*, <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last visited Feb. 9, 2021).

²⁶ Nat’l Center for Juvenile Justice, *Jurisdictional Boundaries*, www.jjgps.org/jurisdictional-boundaries#delinquency-age-boundaries (last visited Feb. 8, 2021). The three states at age 17 are Georgia, Texas and Wisconsin. Vermont will be age 19 in mid-2022 with some provisions to age 21.

²⁷ *Issue Commentary - Children Tried as Adults in Florida*, the James Madison Institute (February 2015).

²⁸ *Jurisdictional Boundaries*, *supra*.

²⁹ Fla. Dept. of Juvenile Justice, *Senate Bill 474 Agency Analysis* (February 11, 2021).

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:

Juvenile offenders not transferred to the criminal court must be dealt with by the Department of Juvenile Justice. The estimated 105 juveniles annually who would not be eligible for transfer represent more difficult, and thus more expensive, cases. The department estimates the following detention costs:

Pre-Adjudicatory Detention (partially reimbursed by counties)	\$95,335 annually
Post-Adjudicatory Detention (fully paid by state)	\$190,680 annually

It is likely that all of the estimated 105 juveniles annually affected by this bill would be referred by the delinquency court to some form of treatment program. The department has insufficient data to be able to estimate what levels of treatment those 105 would be assigned. The current estimated cost per juvenile of treatment programs is:

Maximum Risk Residential	\$159,315
High Risk Residential	\$ 85,709
Nonsecure Residential	\$ 51,067
Day Treatment Probation	\$ 17,751

Additionally, each juvenile referred to residential treatment requires an evaluation at a cost of \$541.

These estimates do not include costs of post-commitment probation or transition services.

Counties are liable to the state for the cost of pre-adjudication detention of juveniles, unless the county is fiscally-constrained. The bill increases the number of juveniles who will be in juvenile detention and thus will increase annual costs to non-fiscally constrained counties by an indeterminate amount estimated at \$47,668 annually statewide.³⁰ This cost will likely be offset by reduced county jail expenditures.

The state will likely see a relatively small decrease in costs to the Department of Corrections as there will be fewer prison admissions. The Criminal Justice Estimating Conference has not reviewed this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.556 and 985.557, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

³⁰ Fla. Dept. of Juvenile Justice, *Senate Bill 474 Agency Analysis* (February 11, 2021).

By Senator Bracy

11-00274-21

2021474__

A bill to be entitled

An act relating to prosecuting children as adults;
amending s. 985.556, F.S.; increasing the age of a
child at which a state attorney may, or is required
to, request a court to transfer the child to adult
court for criminal prosecution; amending s. 985.557,
F.S.; increasing the age of a child at which a state
attorney may file an information against the child for
criminal prosecution as an adult; providing an
effective date.

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

Section 1. Subsections (2) and (3) of section 985.556,
Florida Statutes, are amended to read:

985.556 Waiver of juvenile court jurisdiction; hearing.—

(2) INVOLUNTARY DISCRETIONARY WAIVER.—Except as provided in
subsection (3), the state attorney may file a motion requesting
the court to transfer the child for criminal prosecution if the
child was 15 ~~14~~ years of age or older at the time the alleged
delinquent act or violation of law was committed.

(3) INVOLUNTARY MANDATORY WAIVER.—

(a) If the child was 15 ~~14~~ years of age or older, and if
the child has been previously adjudicated delinquent for an act
classified as a felony, which adjudication was for the
commission of, attempt to commit, or conspiracy to commit
murder, sexual battery, armed or strong-armed robbery,
carjacking, home-invasion robbery, aggravated battery,
aggravated assault, or burglary with an assault or battery, and

11-00274-21

2021474__

the child is currently charged with a second or subsequent violent crime against a person; or

(b) If the child was 15 ~~14~~ years of age or older at the time of commission of a fourth or subsequent alleged felony offense and the child was previously adjudicated delinquent or had adjudication withheld for or was found to have committed, or to have attempted or conspired to commit, three offenses that are felony offenses if committed by an adult, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person;

the state attorney shall request the court to transfer and certify the child for prosecution as an adult or shall provide written reasons to the court for not making such request, or proceed under s. 985.557(1). Upon the state attorney's request, the court shall either enter an order transferring the case and certifying the case for trial as if the child were an adult or provide written reasons for not issuing such an order.

Section 2. Subsection (1) of section 985.557, Florida Statutes, is amended to read:

985.557 Direct filing of an information; discretionary criteria.—

(1) DISCRETIONARY DIRECT FILE.—

(a) With respect to any child who was ~~14 or~~ 15 or 16 years of age at the time the alleged offense was committed, the state attorney may file an information when in the state attorney's judgment and discretion the public interest requires that adult sanctions be considered or imposed and when the offense charged is for the commission of, attempt to commit, or conspiracy to

11-00274-21

2021474__

commit:

1. Arson;
2. Sexual battery;
3. Robbery;
4. Kidnapping;
5. Aggravated child abuse;
6. Aggravated assault;
7. Aggravated stalking;
8. Murder;
9. Manslaughter;
10. Unlawful throwing, placing, or discharging of a destructive device or bomb;
11. Armed burglary in violation of s. 810.02(2)(b) or specified burglary of a dwelling or structure in violation of s. 810.02(2)(c), or burglary with an assault or battery in violation of s. 810.02(2)(a);
12. Aggravated battery;
13. Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;
14. Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
15. Grand theft in violation of s. 812.014(2)(a);
16. Possessing or discharging any weapon or firearm on school property in violation of s. 790.115;
17. Home invasion robbery;
18. Carjacking; or
19. Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b) if the child

11-00274-21

2021474__

88 has a previous adjudication for grand theft of a motor vehicle
89 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

90 (b) With respect to any child who was ~~16~~^{or} 17 years of age
91 at the time the alleged offense was committed, the state
92 attorney may file an information when in the state attorney's
93 judgment and discretion the public interest requires that adult
94 sanctions be considered or imposed. However, the state attorney
95 may not file an information on a child charged with a
96 misdemeanor, unless the child has had at least two previous
97 adjudications or adjudications withheld for delinquent acts, one
98 of which involved an offense classified as a felony under state
99 law.

100 Section 3. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Ethics and Elections
Rules
Transportation

SELECT COMMITTEE:

Select Committee on Pandemic
Preparedness and Response, *Vice Chair*

SENATOR RANDOLPH BRACY

11th District

February 3, 2021

The Honorable Jeff Brandes
Chairman, Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Brandes:

I write to respectfully request that the following bill be placed on the agenda of the Senate Judiciary Committee.

- SB 474, Prosecuting Children as Adults (2021): The bill increases the age at which a state attorney is required to request a court to transfer the child to adult court for criminal prosecution. Similarly, it also increases the age of a child at which a state attorney may file an information against the child for criminal prosecution as an adult.

Your attention and consideration are greatly appreciated. Please do not hesitate to let me know if you have any questions or concerns regarding the agenda request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randolph Bracy".

Senator Randolph Bracy

REPLY TO:

- 6965 Piazza Grande Avenue, Suite 211, Orlando, Florida 32835 (407) 297-2045 FAX: (888) 263-3814
- 213 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

8/15/21

Meeting Date

474

Bill Number (if applicable)

Topic Prosecuting Children as Adults

Amendment Barcode (if applicable)

Name Carrie Boyd

Job Title Policy Counsel

Address P.O. Box 10788

Phone 850-570-9560

Street

Tallahassee

City

FL

State

32309

Zip

Email carrie.boyd@splc.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/15/21

Meeting Date

474

Bill Number (if applicable)

Topic

Protecting Kids

Amendment Barcode (if applicable)

Name

Ida V. Eskamani

Job Title

Address

Street

Phone

City

State

Zip

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida Rising

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/21

Meeting Date

SB 474

Bill Number (if applicable)

Topic Protections for Children Being Prosecuted as Adults

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director & Senior Policy Counsel

Address 4343 West Flagler St.

Phone 786-363-4436

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Miami

FL

33134

City

State

Zip

Email kgross@aclufl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

02/15/2021

Meeting Date

474

Bill Number (if applicable)

Topic Prosecuting Children as Adults

Amendment Barcode (if applicable)

Name Ingrid Delgado

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Address 201 W Park Ave

Street

Phone 850-339-0075

Tallahassee

FL

32301

City

State

Zip

Email idelgado@flaccb.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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February 15, 2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

474

Bill Number (if applicable)

Topic Prosecuting Children as Adults

Name Pamela Burch Fort

Amendment Barcode (if applicable)

Job Title

Address 104 S. Monroe Street

Street

Tallahassee

FL

32301

City

State

Zip

Phone 850-425-1344

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NAACP Florida State Conference

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

SB 474

Bill Number (if applicable)

Topic Prosecuting Children as Adults

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Executive Director

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Tallahassee

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32301

Email fcfep@yahoo.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/2021

Meeting Date

474

Bill Number (if applicable)

Topic Prosecuting Kids as Adults

Amendment Barcode (if applicable)

Name Trish Neely

Job Title Director

Address 2024 Shangri La Lane

Phone 850 322 3317

Street Tally City State Zip 32303

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/15/2021

Meeting Date

474

Bill Number (if applicable)

Topic Prosecuting Children as Adults

Amendment Barcode (if applicable)

Name Dr. Nancy Lawther

Job Title Legislation Committee Member

Address 1747 Orlando Central Parkway Phone 407 855-7604

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32809

Zip

Email legislation@floridaptar.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/21

Meeting Date

474

Bill Number (if applicable)

Topic Treating Children as Adults

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Executive Director, Florida Public Defender Association

Address 103 N. Gadsden St

Street

Phone 850 488 6850

Tallahassee FL

City

State

Zip

Email ndaniels@fpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 15, 21

Meeting Date

474

Bill Number (if applicable)

Topic Prosecuting Children as Adults

Amendment Barcode (if applicable)

Name Barney Bishop III

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
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 622

INTRODUCER: Judiciary Committee and Senator Perry

SUBJECT: Liens and Bonds

DATE: February 16, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cibula	Cibula	JU	Fav/CS
2. _____	_____	GO	_____
3. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 622 revises several provisions of the Construction Lien Law, which is codified in part I of chapter 713, F.S. The most significant of these changes are summarized below.

The Construction Lien Law provides several statutory forms for use by parties to a construction contract to waive or release their rights to record a lien or make a claim against a payment bond in exchange for payment for their work. The bill provides that provisions included in a waiver or release that are not related to the provisions of the statutory forms are unenforceable.

If a person or subcontractor is not paid for work on a construction project, the construction lien laws allow the person to record a lien against the improved property. If multiple contracts are involved, then multiple liens must be recorded. The bill under these circumstances allows a person or subcontractor to record a single consolidated lien for amounts owed under multiple contracts for the same construction project.

A notice of commencement form is a form prescribed by the construction lien laws. The form identifies those responsible for a construction project. The bill revises the form to more clearly identify the owner or lessee who is responsible for a construction project.

The bill also revises procedures relating to notices of termination, another statutory form used in connection with the Construction Lien Law. The changes will provide more time for a person to serve a notice to owner or a notice to contractor to preserve rights to record a lien or pursue a

claim against a payment bond. Currently, a person who begins work on a construction project in the 15 days before a notice of termination is recorded may have the time reduced for serving the documents without notice.

II. Present Situation:

In a construction project, the owner of the property to be improved has an interest in ensuring that the contractor performs the construction work in the time and manner described in the construction contract. Contractors and subcontractors, sub-subcontractors, laborers, and materialmen have an interest in receiving payment for their work. Those individuals have a lien or prospective lien on the property improved, and are known as lienors. Mechanisms that address these interests of property owners and lienors are set forth in the Construction Lien Law, codified in part I of chapter 713, F.S., for private construction contracts, s. 255.05, F.S., for public construction contracts, and s. 337.18, F.S., for construction or maintenance contracts with the Department of Transportation.

These mechanisms to ensure payment are especially important where many lienors who are not in privity with the owner perform work on a construction project. A lienor not in privity with the owner has a contract with the contractor or a subcontractor, but no direct contractual relationship with the owner. As a result, a lienor's identity, work, and charges for services might be unknown to the owner or contractor unless the lienor complies with the notice requirements of the construction lien laws. Additionally, compliance with the notice requirements by the various deadlines is a prerequisite to enforcing a lien or pursuing a claim against a payment bond.

A property owner who contracts for the construction of an improvement must carefully follow the requirements of the Construction Lien Law or the owner may become liable for a contractor's failure to pay subcontractors and others.

Building Permit Warning to Owner

When a property owner obtains a building permit for an improvement, the permit includes a large, capitalized, boldface warning about the Construction Lien Law and how a person's failure to comply with the law may result in the person paying twice for the same improvement. The warning states:

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT¹

A person may pay twice for an improvement if a payment is an "improper payment." The distinction between a proper and an improper payment may be described as follows:

¹ Section 713.135(1)(a), F.S.

If an owner fulfills all the duties the [Construction] Lien Law places upon him, his liability for all mechanics' lien claims cannot exceed the contract price. However, if the owner makes improper payments, then he has failed to comply with the [Construction] Lien Law, and his liability for mechanics' lien claims may exceed the contract price.²

Notice of Commencement

Construction work generally begins once a “notice of commencement” is posted on the job site and recorded in the court clerk’s office.³ This notice identifies who owns the property to be improved or who is responsible for the construction project. Accordingly, the notice of commencement will list the name and address of the owner of the property, the fee simple titleholder if different than the owner, the contractor, any lessees, the lender, and the surety.⁴ Lienors use the contact information in the notice of commencement to keep the property owner or lessee informed of their identity, work on the construction project, and need to be paid.

A notice of commencement generally has a duration of 1 year after it is recorded.⁵ Any construction liens recorded while the notice of commencement is in effect generally attach and take effect on the date that notice of commencement is recorded.⁶ Additionally, a payment made by the owner after the notice of commencement expires is considered an improper payment.^{7,8}

Notice to Owner/Notice to Contractor

After a notice of commencement is posted and recorded, lienors must serve the property owner and the contractor with a notice to owner or notice to contractor.⁹ Serving these documents within the statutory timeframes is a prerequisite to enforcing a lien on the improved property or a claim against a payment bond.¹⁰

A notice to owner informs the owner of a lienor’s identity and work performed.¹¹ Upon receipt of the notice, the owner becomes responsible for ensuring that the lienor is paid for its work even if the contractor is paid in full. To protect against a lien by the lienor or having to pay twice for the same work, the notice warns:

² *Tamarac Village, Inc., v. Bates & Daly Co.*, 348 So. 2d 23, 24 (Fla. 4th DCA 1977) (citations omitted).

³ Section 713.13(1)(a), F.S.

⁴ Section 713.13(1)(a) and (d), F.S.

⁵ Section 713.13(1)(c), F.S.

⁶ Section 713.07(2), F.S.

⁷ Section 713.13(1)(c), F.S.

⁸ In *Tamarac Village, Inc., v. Bates & Daly Co.*, 348 So. 2d 23, 24 (Fla. 4th DCA 1977), the appellate court held that a payment made by the property owner to a contractor is an improper payment if the payment is made before the notice of commencement is recorded. The decision was based on s. 713.06(3)(a), F.S. (1973), which stated, “The owner shall not pay any money on account of a direct contract prior to recording of the notice provided in §713.13, and any amount so paid shall be held improperly paid.” For reasons unknown, the provision has since been repealed.

⁹ Sections 255.05(2)(a)2., 337.18(1)(c), 713.06(2), and 713.23(1)(c), F.S.

¹⁰ *Id.*

¹¹ Section 713.06(2)(c), F.S.

**TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN
RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.¹²**

A notice to contractor is similar to a notice to owner, but it is required when the contractor furnishes a payment bond that exempts the owner's property from liens or when the contract is for a public improvement.¹³ A notice to contractor advises the contractor of the identity of the lienor and the lienor's work, and informs the contractor that the lienor intends to look to the contractor's bond if the lienor is not paid.

Notice of Nonpayment

A notice to owner or a notice to contractor makes an owner aware of the lienor's identity to ensure that the lienor is paid for its work. If a lienor is not paid immediately upon commencing to furnish labor, services, or materials on a construction project, however, the lienor may serve a notice of nonpayment on the property owner or, for contracts having a payment and performance bond, on the contractor and surety.¹⁴ A notice of nonpayment "must be under oath and served during the progress of the work or thereafter, but may not be served later than 90 days after the final furnishing of labor, services, or materials by the lienor."¹⁵

Final Furnishing of Labor, Services, and Materials and Lien Law Deadlines

The last date that a lienor furnishes labor, services, or materials is known as the "final furnishing."¹⁶ This date is used to establish the deadline by which a lienor must record a claim of lien or the deadline for the service of a notice to contractor. "[A] claim of lien may be recorded at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor."¹⁷

Waiver and Release of Lien/Waiver of Claim Against Payment Bond

The Construction Lien Law requires lienors to use forms that "substantially" follow a statutory form when executing a waiver or release of lien or a waiver of a right to make a claim against a payment bond in exchange for payments.¹⁸ The forms to waive or release a lien are shown below, but forms for payment bonds are essentially identical:

¹² Section 713.06(2)(c), F.S.

¹³ Sections 713.23(1)(a), 337.18(1)(c), and 255.05(2)(a)2., F.S.

¹⁴ Sections 713.23(1)(d), 255.05(2)(a), and 337.18(1)(c), F.S.

¹⁵ Section 713.23(1)(d), F.S. With respect to notices of nonpayment for public construction projects and construction maintenance projects, ss. 255.05(2)(a)2. and 337.18(2)(c), F.S., provide the same deadline.

¹⁶ Section 713.01(12), F.S.

¹⁷ Section 713.08(5), F.S.

¹⁸ Sections 713.20(4) and (5) and 713.235(1) and (2), F.S.

WAIVER AND RELEASE OF LIEN UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of \$____, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(description of property)

This waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

DATED on ____, (year). (Lienor)

By: _____

WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of \$_____, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) to the following described property:

(description of property)

DATED on ____, (year). (Lienor)

By: _____

Although the Construction Lien Law requires waivers and releases of liens to be executed on forms that substantially follow the statutory forms, the law also provides that noncompliant forms are enforceable. Specifically, the law states that “[a] lien waiver or lien release that is not substantially similar to the forms [above] is enforceable in accordance with the terms of the lien waiver or lien release.”¹⁹

¹⁹ Section 713.20(8), F.S. Section 713.235(5), F.S., relating to waivers of claims against payment bonds, is effectively identical: “A waiver that is not substantially similar to the forms in this section is enforceable in accordance with its terms.”

Priority of Liens

Once a lienor satisfies all the statutory prerequisites and remains unpaid, the lienor may record a lien on the improved property, which is a prerequisite to foreclosing on the property. Normally, the priority of liens, which establishes the order in which claims are paid from the proceeds of a foreclosure sale, is determined by the order in which the liens are recorded.²⁰ Under the Construction Lien Law, however, all construction liens are treated as if they were recorded on the date that the notice of commencement was recorded.²¹

Once recorded, the priority of a construction lien in relation to other types of liens or mortgages is set forth in s. 713.07(3), F.S., which states:

All [construction] liens shall have priority over any conveyance, encumbrance or demand not recorded against the real property prior to the time such lien attached as provided herein, but any conveyance, encumbrance or demand recorded prior to the time such lien attaches and any proceeds thereof, regardless of when disbursed, shall have priority over such liens.²²

As a result, a construction lien will generally take priority over other liens or mortgages recorded after the recording of the notice of commencement, and a construction lien is inferior to other liens or mortgages recorded before the recording of the notice of commencement.

Serving Notices

The proper functioning of the Construction Lien Law is substantially based on the delivery and receipt of notices among property owners, lienors, contractors, and sureties. With respect to public construction contracts, the law provides that a lienor, as a prerequisite to making a claim against a payment bond, must “serve a written notice of nonpayment on the contractor and on the surety.”²³ Thus, the law appears to require a claimant to serve two original documents when providing a notice of nonpayment.

When instruments including notices are served, the Construction Lien Law allows service to be accomplished through by “actual delivery to the person to be served” and by “common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery.”²⁴ The law further provides that service of an instrument is generally effective on the “date of mailing.”²⁵ Because the law allows an instrument to be shipped or mailed, the law may imply that a different effective date applies if an instrument is delivered by a delivery service other than U.S. mail.

²⁰ The rule “governing priority of lien interests is ‘first in time is first in right.’” *Holly Lake Ass’n v. Fed. Nat’l Mortg. Ass’n*, 660 So. 2d 266, 268 (Fla.1995) (citing *Walter E. Heller & Co. Southeast, Inc. v. Williams*, 450 So. 2d 521, 532 (Fla. 3d DCA 1984), review denied, 462 So. 2d 1108 (Fla.1985)).

²¹ Section 713.07(2), F.S. Similar provisions exist with respect to public contracting in s. 255.05(5)(d) and (f), F.S.

²² Section 713.07(3), F.S.

²³ Sections 255.05(2)(a)2., F.S. Section 713.23(1)(d), F.S., with respect to private construction projects, contains almost identical language.

²⁴ Section 713.18(2)(a)(b), F.S.

²⁵ Section 713.13(3)(a), F.S.

Notices of Termination

An owner may terminate the effectiveness of a notice of commencement by recording a notice of termination.²⁶ In other words, by recording a notice of termination, a property owner can prevent the improved property from being subject to liens from unknown lienors. The property owner may record the notice of termination after all lienors who have served a notice to owner have been served with the notice of termination and after all lienors have been paid in full or paid their pro rata portion of the contractor's direct contract with the owner.²⁷

The notice of termination may be effective as early as 30 days after it is recorded.²⁸ However, a lienor has 45 days after commencing to furnish labor, services, or materials to serve a notice to owner, which is a prerequisite to recording a lien on the improved property.²⁹ As a result, lienors who begin work within 15 days before a notice of termination is recorded may have their lien rights cutoff before the time period to serve a notice to owner expires.

III. Effect of Proposed Changes:

This bill revises several provisions of the Construction Lien Law, which is codified in part I of chapter 713, F.S., as detailed below.

Form Waivers and Releases (Sections 1, 9, & 12)

Existing law provides forms for a lienor to use to waive and release a lien or to waive a claim against a payment bond. However, the law also provides that waivers and releases remain enforceable even if they are not substantially similar to the statutory forms.

The bill provides that provisions of waivers and releases are unenforceable unless the claimant has otherwise agreed to those provisions in its direct contract. The statutory forms include a form to acknowledge payment for labor, services, or materials and a form waiver or release of a lien or the waiver of the right to make a claim against the contractor's payment bond. Accordingly, provisions included in a waiver or release that release a party from other liabilities or waive other rights are unenforceable under the bill.

Notice of Commencement Form Changes (Section 6)

The notice of commencement form for a construction project provides the name and address of the owner of the property to be improved and the names and addresses of others who may be responsible for the project, including the fee simple title holder, lessee, contractor, surety, and lender.

The bill makes technical changes to the notice of commencement form in a way that the owner and lessee, if any, will be identified on separate lines of the form.

²⁶ Section 713.132(1), F.S.

²⁷ Section 713.132(1)(e), (2), and (4), F.S.

²⁸ Section 713.13(4), F.S.

²⁹ Section 713.06(2)(a), F.S.

Serving Notices (Sections 1, 2, 8, & 11)

Existing statutes governing public contracting and construction or maintenance contracts with the Department of Transportation can be read to require a lienor to serve two original notices to contractor, one on the contractor and one on the surety, as a prerequisite to making a claim against the contractor's payment bond.³⁰ The bill provides that a lienor must serve an original notice to contractor on the contractor and that the surety need only receive a copy.

Existing s. 713.18(2), F.S., provides that service of an instrument under the Construction Lien Law is generally effective on the "date of mailing." As a result, the law may imply that a different effective date applies if a notice or other document is delivered by an authorized shipping service other than U.S. mail. The bill resolves this issue by providing that an instrument shipped by an authorized shipping service is effective on the date of "shipment."

Additionally, the bill provides that same requirements for serving documents under the Construction Lien Law apply to serving documents under s. 255.05, F.S., relating to public contracting and s. 337.18, F.S., relating to construction or maintenance contracts with the Department of Transportation.

Notices of Termination (Section 7)

Under existing law, a notice of termination is effective 30 days after it is recorded. However, existing law also provides a lienor with 45 days to serve a notice to owner after commencing work on a construction project to perfect his or her right to record a lien on the improved property. Similarly, existing law provides a lienor with 45 days to serve a notice to contractor on contracts secured by a bond. As a result of the conflicting time periods, a lienor who begins working on a construction project within the 15 days before a notice of termination is recorded can lose the right to record a lien on the property or make a claim against a bond.

The bill addresses the rights of lienors caught in the 15-day gap by providing that the notice of termination does not cutoff their rights to record a lien or make a claim against a payment bond if they serve a notice to owner within 45 days after commencing their work. The bill further provides that the notice of termination is not effective against these lienors until 30 days after they are served with a notice of termination.

Single Claim of Lien (Section 4)

A large construction project may result in a lienor receiving multiple contracts on the project. The bill provides that in these cases, the lienor can record a single consolidated lien, instead of a lien for each contract, to enforce the lienor's rights to payment.

Mobile Home Parks (Section 5)

The bill corrects a drafting error in existing law to clarify that mobile home parks are not subject to liens for improvements made by lessees, those owning a mobile home but not the lot.

³⁰ Sections 255.05(2)(a)1., and 713.23(1)(d), F.S.

Revised Defined Terms (Section 3)

The bill makes several clarifying changes to the definitions applicable to the Construction Lien Law. The term “clerk’s office” is revised to include “another office serving as the county recorder as provided by law.” The bill revises the definition of “contractor” to include general contractors who perform construction management services.

The definition of “real property” is revised to expressly include a private leasehold interest in government owned property. This change will clarify that a private leasehold interest can be subject to a lien when the real property itself cannot.

Identification of Recorded Documents (Sections 7 & 10)

The Construction Lien Law requires various documents to be recorded in the official records of a county. The book and page number assigned by the clerk is then required to be listed on other documents to facilitate the location of those documents by others. Instead of identifying documents by a book and page number, the bill requires that those documents be identified by the “official records’ reference numbers and recording date affixed by the recording office.”

Transfers of Liens to Security (Sections 13)

The bill recognizes that in some cases, a property owner may wish to transfer a disputed lien to security so that the property may be sold without a cloud on its title. In these cases, the bill provides that any attorney fees permissible under current law remain permissible after a lien is transferred to security.

Online notarization line (Sections 1, 6, & 11)

The construction lien laws require many different forms and notices to be notarized. The bill allows these forms to be notarized through the on-line notarization procedures.

Effective Date (Section 14)

The bill takes effect July 1, 2021.

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

This bill does not appear to be a mandate because it does not appear to require counties or municipalities to spend funds or limit their revenues.

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 makes a number of changes that may clarify potential ambiguities in the Construction Lien Law. Additionally, the bill will minimize the ability of those with superior bargaining power to exact waivers or releases at the moment of payment which were not contemplated by the prior agreement of the parties.

Provisions of the bill changing procedures relating to notices of termination and defining as an improper payment a payment made before a notice of commencement is recorded will help lienors receive payment for their work. However these same provisions may result in delayed final payments to contractors and discourage contractors from seeking advance deposits for construction work.

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: 255.05, 337.18, 713.01, 713.09, 713.10, 713.13, 713.132, 713.18, 713.20, 713.21, 713.23, 713.235, and 713.29.

IX. Additional Information:

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

CS by Judiciary on February 15, 2021:

The committee substitute removes a provision from the bill that states that a payment made by a property owner to a contractor before the notice of commencement is recorded is an improper payment.

The committee substitute restores a provision of existing law requiring an owner who contracts for an improvement to describe his or her interest in the property on the notice of commencement form.

The committee substitute also restores a provision of existing law allowing documents relating to construction liens to be served on partnerships, corporations, and limited liability companies by delivering those documents to a partner, officer, director, agent, member, or manager.

- B. **Amendments:**

None.

By Senator Perry

8-00207D-21

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A bill to be entitled
An act relating to liens and bonds; amending s.
255.05, F.S.; requiring that a copy of a notice of
nonpayment be served on the surety; revising the
process for notarizing a notice of nonpayment;
prohibiting a person from requiring a claimant to
furnish a certain waiver in exchange for or to induce
certain payments; providing that specified provisions
in certain waivers are unenforceable; providing an
exception; requiring service of documents to be made
in a specified manner; amending s. 337.18, F.S.;
providing that certain waivers apply to certain
contracts; requiring service of documents to be made
in a specified manner; amending s. 713.01, F.S.;
revising definitions; amending s. 713.09, F.S.;
authorizing a lienor to record one claim of lien for
multiple direct contracts; amending s. 713.10, F.S.;
revising the extent of certain liens; amending s.
713.13, F.S.; revising information to be included in a
notice of commencement; specifying that payments made
by an owner before the recording of a notice of
commencement are considered improper payments;
revising the process for notarizing a notice of
commencement; amending s. 713.132, F.S.; revising
requirements for a notice of termination; amending s.
713.18, F.S.; requiring service of documents relating
to construction bonds to be made in a specified
manner; making technical changes; amending s. 713.20,
F.S.; prohibiting a person from requiring a lienor to

8-00207D-21

2021622__

furnish a certain waiver or release in exchange for or
to induce certain payments; providing that specified
provisions in certain waivers or releases are
unenforceable; providing an exception; amending s.
713.21, F.S.; authorizing the full or partial release
of a lien under specified conditions; amending s.
713.23, F.S.; requiring that a copy of a notice of
nonpayment be served on the surety; revising the
process for notarizing a notice of nonpayment under a
payment bond; amending s. 713.235, F.S.; prohibiting a
person from requiring a lienor to furnish a certain
waiver or release in exchange for or to induce certain
payments; providing that specified provisions in
certain waivers or releases are unenforceable;
providing an exception; amending s. 713.29, F.S.;
authorizing attorney fees in actions to enforce a lien
that has been transferred to security; providing an
effective date.

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

Section 1. Paragraphs (a), (d), and (f) of subsection (2)
of section 255.05, Florida Statutes, are amended, and subsection
(12) is added to that section, to read:

255.05 Bond of contractor constructing public buildings;
form; action by claimants.—

(2)(a)1. If a claimant is no longer furnishing labor,
services, or materials on a project, a contractor or the
contractor's agent or attorney may elect to shorten the time

8-00207D-21

2021622__

within which an action to enforce any claim against a payment bond must be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

To: ...(Name and address of claimant)...

You are notified that the undersigned contests your notice of nonpayment, dated, ..., and served on the undersigned on, ..., and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on, ...

Signed: ...(Contractor or Attorney)...

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest on ~~to~~ the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45

8-00207D-21

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88 days after commencing to furnish labor, services, or materials
89 for the prosecution of the work, serve the contractor with a
90 written notice that he or she intends to look to the bond for
91 protection. A claimant who is not in privity with the contractor
92 and who has not received payment for furnishing his or her
93 labor, services, or materials shall serve a written notice of
94 nonpayment on the contractor and a copy of the notice on the
95 surety. The notice of nonpayment shall be under oath and served
96 during the progress of the work or thereafter but may not be
97 served earlier than 45 days after the first furnishing of labor,
98 services, or materials by the claimant or later than 90 days
99 after the final furnishing of the labor, services, or materials
100 by the claimant or, with respect to rental equipment, later than
101 90 days after the date that the rental equipment was last on the
102 job site available for use. Any notice of nonpayment served by a
103 claimant who is not in privity with the contractor which
104 includes sums for retainage must specify the portion of the
105 amount claimed for retainage. An action for the labor, services,
106 or materials may not be instituted against the contractor or the
107 surety unless the notice to the contractor and notice of
108 nonpayment have been served, if required by this section.
109 Notices required or permitted under this section must be served
110 in accordance with s. 713.18. A claimant may not waive in
111 advance his or her right to bring an action under the bond
112 against the surety. In any action brought to enforce a claim
113 against a payment bond under this section, the prevailing party
114 is entitled to recover a reasonable fee for the services of his
115 or her attorney for trial and appeal or for arbitration, in an
116 amount to be determined by the court, which fee must be taxed as

8-00207D-21

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part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety are ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment under this subparagraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

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146 To: ...(name of contractor and address)...

148 ...(name of surety and address)...

150 The undersigned claimant notifies you that:

151 1. Claimant has furnished ...(describe labor, services, or
152 materials)... for the improvement of the real property
153 identified as ...(property description).... The corresponding
154 amount unpaid to date is \$...., of which \$.... is unpaid
155 retainage.

156 2. Claimant has been paid to date the amount of \$.... for
157 previously furnishing ...(describe labor, services, or
158 materials)... for this improvement.

159 3. Claimant expects to furnish ...(describe labor,
160 services, or materials)... for this improvement in the future
161 (if known), and the corresponding amount expected to become due
162 is \$.... (if known).

164 I declare that I have read the foregoing Notice of Nonpayment
165 and that the facts stated in it are true to the best of my
166 knowledge and belief.

168 DATED on, ...

170 ...(signature and address of claimant)...

172 STATE OF FLORIDA

173 COUNTY OF

8-00207D-21

2021622__

The foregoing instrument was sworn to (or affirmed) and
subscribed before me by means of ☐ physical presence or sworn to
(or affirmed) by ☐ online notarization this day of,
...(year)...., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary
Public)...

Personally Known OR Produced Identification

Type of Identification Produced

(d) A person may not require a claimant to furnish a waiver
that is different from the forms in paragraphs (b) and (c) in
exchange for, or to induce payment of, a progress payment or
final payment unless the claimant has entered into a direct
contract that requires the claimant to furnish a waiver that is
different from the forms in paragraphs (b) and (c).

(f) Any provisions in a waiver which are ~~that is~~ not
related to the waiver of a claim or a right to claim against a
payment bond as provided in this subsection are unenforceable,
unless the claimant has otherwise agreed to those provisions in
the direct contract ~~substantially similar to the forms in this~~
~~subsection is enforceable in accordance with its terms.~~

(12) Unless otherwise provided in this section, service of
any document must be made in accordance with s. 713.18.

Section 2. Paragraph (c) of subsection (1) of section
337.18, Florida Statutes, is amended, and subsection (6) is

8-00207D-21

2021622__

added to that section, to read:

337.18 Surety bonds for construction or maintenance contracts; requirement with respect to contract award; bond requirements; defaults; damage assessments.—

(1)

(c) A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 90 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. An action by a claimant, except a laborer, who is not in privity with the contractor for the labor, materials, or supplies may not be instituted against the contractor or the surety unless both notices have been given. Written notices required or permitted under this section must ~~may~~ be served in accordance with any manner provided in s. 713.18, and provisions for the waiver of a claim or a right to claim against a payment bond

8-00207D-21

2021622__

233 contained in s. 713.235 apply to all contracts under this
234 section.

235 (6) Unless otherwise provided in this section, service of
236 any document must be made in accordance with s. 713.18.

237 Section 3. Subsections (4), (8), and (26) of section
238 713.01, Florida Statutes, are amended to read:

239 713.01 Definitions.—As used in this part, the term:

240 (4) "Clerk's office" means the office of the clerk of the
241 circuit court of the county, or another office serving as the
242 county recorder as provided by law, in which the real property
243 is located.

244 (8) "Contractor" means a person other than a materialman or
245 laborer who enters into a contract with the owner of real
246 property for improving it, or who takes over from a contractor
247 as so defined the entire remaining work under such contract. The
248 term "contractor" includes an architect, landscape architect, or
249 engineer who improves real property pursuant to a design-build
250 contract authorized by s. 489.103(16). The term also includes a
251 licensed general contractor or building contractor, as those
252 terms are defined in s. 489.105(3)(a) and (b), respectively, who
253 provides construction management services, which include
254 responsibility for scheduling and coordination in both
255 preconstruction and construction phases and for the successful,
256 timely, and economical completion of the construction project,
257 or who provides program management services, which include
258 responsibility for schedule control, cost control, and
259 coordination in providing or procuring planning, design, and
260 construction.

261 (26) "Real property" means the land that is improved and

8-00207D-21

2021622__

the improvements thereon, including fixtures, except any such property owned by the state or any county, municipality, school board, or governmental agency, commission, or political subdivision. The term includes a private leasehold interest that is improved, and the improvements thereon, on land that is owned by the state or any county, municipality, school board, or governmental agency, commission, or political subdivision.

Section 4. Section 713.09, Florida Statutes, is amended to read:

713.09 Single claim of lien.—A lienor may ~~is required to~~ record only one claim of lien covering his or her entire demand against the real property when the amount demanded is for labor or services or material furnished for more than one improvement under the same direct contract or multiple direct contracts. The single claim of lien is sufficient even though the improvement is for one or more improvements located on separate lots, parcels, or tracts of land. If materials to be used on one or more improvements on separate lots, parcels, or tracts of land ~~under one direct contract~~ are delivered by a lienor to a place designated by the person with whom the materialman contracted, other than the site of the improvement, the delivery to the place designated is prima facie evidence of delivery to the site of the improvement and incorporation in the improvement. The single claim of lien may be limited to a part of multiple lots, parcels, or tracts of land and their improvements or may cover all of the lots, parcels, or tracts of land and improvements. If a ~~In each~~ claim of lien under this section is for multiple direct contracts, the owner under the direct contracts ~~contract~~ must be the same person for all lots, parcels, or tracts of land

8-00207D-21

2021622__

291 against which a single claim of lien is recorded.

292 Section 5. Paragraph (b) of subsection (2) of section
293 713.10, Florida Statutes, is amended, and subsection (4) is
294 added to that section, to read:

295 713.10 Extent of liens.—

296 (2)

297 (b) The interest of the lessor is not subject to liens for
298 improvements made by the lessee when:

299 1. The lease, or a short form or a memorandum of the lease
300 that contains the specific language in the lease prohibiting
301 such liability, is recorded in the official records of the
302 county where the premises are located before the recording of a
303 notice of commencement for improvements to the premises and the
304 terms of the lease expressly prohibit such liability; or

305 2. The terms of the lease expressly prohibit such
306 liability, and a notice advising that leases for the rental of
307 premises on a parcel of land prohibit such liability has been
308 recorded in the official records of the county in which the
309 parcel of land is located before the recording of a notice of
310 commencement for improvements to the premises, and the notice
311 includes the following:

312 a. The name of the lessor.

313 b. The legal description of the parcel of land to which the
314 notice applies.

315 c. The specific language contained in the various leases
316 prohibiting such liability.

317 d. A statement that all or a majority of the leases entered
318 into for premises on the parcel of land expressly prohibit such
319 liability.

8-00207D-21

2021622__

~~3. The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.~~

A notice that is consistent with subparagraph 2. effectively prohibits liens for improvements made by a lessee even if other leases for premises on the parcel do not expressly prohibit liens or if provisions of each lease restricting the application of liens are not identical.

(4) The interest of the lessor is not subject to liens for improvements made by the lessee when the lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.

Section 6. Paragraphs (a), (c), and (d) of subsection (1) of section 713.13, Florida Statutes, are amended to read:

713.13 Notice of commencement.—

(1)(a) Except for an improvement that is exempt under ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address and tax folio number of the property if available

8-00207D-21

2021622__

or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner.

4. The name and address of the lessee, if the A lessee who contracts for the improvements as is an owner as defined in s. 713.01 ~~under s. 713.01(23) and must be listed as the owner together with a statement that the ownership interest is a leasehold interest.~~

~~5.4.~~ The name and address of the contractor.

~~6.5.~~ The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond.

~~7.6.~~ The name and address of any person making a loan for the construction of the improvements.

~~8.7.~~ The name and address within the state of a person other than himself or herself who may be designated by the owner as the person upon whom notices or other documents may be served under this part; and service upon the person so designated constitutes service upon the owner.

(c) If the contract between the owner and a contractor named in the notice of commencement expresses a period of time for completion for the construction of the improvement greater than 1 year, the notice of commencement must state that it is effective for a period of 1 year plus any additional period of time. Any payments made by the owner either before recording the notice of commencement or after the expiration of the notice of

8-00207D-21

2021622__

commencement are considered improper payments.

(d) A notice of commencement must be in substantially the following form:

Permit No.....

Tax Folio No.....

NOTICE OF COMMENCEMENT

State of....

County of....

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: ...(legal description of the property, and street address if available)....

2. General description of improvement:.....

3.a. Owner: ...name and address....

b. Owner's phone number:..... ~~Owner information or Lessee information if the Lessee contracted for the improvement:~~

~~a. Name and address:.....~~

~~b. Interest in property:.....~~

c. Name and address of fee simple titleholder (if different from Owner listed above):.....

4.a. Lessee, if the lessee contracted for the improvement: ... (name and address)....

b. Lessee's phone number:..... ~~a.~~

5.a. Contractor: ... (name and address)....

b. Contractor's phone number:.....

6.5. ~~Surety~~ (if applicable, a copy of the payment bond is

8-00207D-21

2021622__

attached):

a. Name and address:.....

b. Phone number:.....

c. Amount of bond: \$.....

7.a.6.a. Lender: ...(name and address)....

b. Lender's phone number:.....

8.7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida Statutes:

a. Name and address:.....

b. Phone numbers of designated persons:.....

9.a.8.a. In addition to himself or herself, Owner designates of to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.

b. Phone number of person or entity designated by owner:.....

10.9. Expiration date of notice of commencement (the expiration date will be 1 year after ~~from~~ the date of recording unless a different date is specified).....

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN

8-00207D-21

2021622__

ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
COMMENCEMENT.

...(Signature of Owner or Lessee, or Owner's or Lessee's
Authorized Officer/Director/Partner/Manager)...

...(Signatory's Title/Office)...

The foregoing instrument was acknowledged before me by means of
☐ physical presence or acknowledged before me by means of ☐
online notarization, this day of, ...(year)...., by
...(name of person)... as ...(type of authority, . . . e.g.
officer, trustee, attorney in fact)... for ...(name of party on
behalf of whom instrument was executed)....

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

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

Personally Known OR Produced Identification

Type of Identification Produced.....

Section 7. Subsections (1), (3), and (4) of section
713.132, Florida Statutes, are amended to read:

713.132 Notice of termination.—

(1) An owner may terminate the period of effectiveness of a
notice of commencement by executing, swearing to, and recording
a notice of termination that contains:

(a) The same information as the notice of commencement;

8-00207D-21

2021622__

(b) The official records' ~~recording office document book~~
and ~~page~~ reference numbers and recording date affixed by the
recording office on ~~of~~ the recorded notice of commencement;

(c) A statement of the date as of which the notice of
commencement is terminated, which date may not be earlier than
30 days after the notice of termination is recorded;

(d) A statement specifying that the notice applies to all
the real property subject to the notice of commencement or
specifying the portion of such real property to which it
applies;

(e) A statement that all lienors have been paid in full;
and

(f) A statement that the owner has, before recording the
notice of termination, served a copy of the notice of
termination ~~on the contractor and~~ on each lienor who has a
direct contract with the owner or who has timely served a notice
to owner, and a statement that the owner will serve a copy of
the notice of termination on each lienor who timely serves a
notice to owner after the notice of termination has been
recorded. The owner is not required to serve a copy of the
notice of termination on any lienor who has executed a waiver
and release of lien upon final payment in accordance with s.
713.20.

(3) An owner may ~~not~~ record a notice of termination at any
time after ~~except after completion of construction, or after~~
~~construction ceases before completion and~~ all lienors have been
paid in full or pro rata in accordance with s. 713.06(4).

(4) If an owner or a contractor, by fraud or collusion,
knowingly makes any fraudulent statement or affidavit in a

8-00207D-21

2021622__

notice of termination or any accompanying affidavit, the owner and the contractor, or either of them, ~~as the case may be,~~ is liable to any lienor who suffers damages as a result of the filing of the fraudulent notice of termination,⁷ and any such lienor has a right of action for damages ~~occasioned thereby.~~

(5) ~~(4)~~ A notice of termination must be served before recording on each lienor who has a direct contract with the owner and on each lienor who has timely and properly served a notice to owner in accordance with this part before the recording of the notice of termination. A notice of termination must be recorded in the official records of the county in which the improvement is located. If properly served before recording in accordance with this subsection, the notice of termination terminates the period of effectiveness of the notice of commencement 30 days after the notice of termination is recorded in the official records ~~is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination or a later~~ the date stated in the notice of termination as the date on which the notice of commencement is terminated. However, if a lienor who began work under the notice of commencement before its termination lacks a direct contract with the owner and timely serves his or her notice to owner after the notice of termination has been recorded, the owner must serve a copy of the notice of termination upon such lienor, and the termination of the notice of commencement as to that lienor is effective 30 days after service of the notice of termination ~~if the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on each lienor who has a direct contract with the owner or who has~~

8-00207D-21

2021622__

523 ~~served a notice to owner.~~

524 Section 8. Section 713.18, Florida Statutes, is amended to
525 read:

526 713.18 Manner of serving documents ~~notices and other~~
527 ~~instruments.~~

528 (1) Unless otherwise specifically provided by law, service
529 of any document ~~notices, claims of lien, affidavits,~~
530 ~~assignments, and other instruments~~ permitted or required under
531 this part, s. 255.05, or s. 337.18, or copies thereof when so
532 permitted or required, ~~unless otherwise specifically provided in~~
533 ~~this part,~~ must be made by one of the following methods:

534 (a) By hand ~~actual~~ delivery to the person to be served; ~~if~~
535 ~~a partnership, to one of the partners; if a corporation, to an~~
536 ~~officer, director, managing agent, or business agent; or, if a~~
537 ~~limited liability company, to a member or manager.~~

538 (b) By common carrier delivery service or by registered,
539 Global Express Guaranteed, or certified mail to the person to be
540 served, with postage or shipping paid by the sender and with
541 evidence of delivery, which may be in an electronic format.

542 (c) By posting on the site of the improvement if service as
543 provided by paragraph (a) or paragraph (b) cannot be
544 accomplished.

545 (2) Notwithstanding subsection (1), service of a notice to
546 owner or a preliminary notice to contractor under this part, s.
547 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date
548 of mailing and the requirements for service under this section
549 have been satisfied if:

550 (a) The notice is mailed by registered, Global Express
551 Guaranteed, or certified mail, with postage prepaid, to the

8-00207D-21

2021622__

person to be served and addressed as prescribed ~~at any of the~~
~~addresses set forth~~ in subsection (3);

(b) The notice is mailed within 40 days after the date the
lienor first furnishes labor, services, or materials; and

(c)1. The person who served the notice maintains a
registered or certified mail log that shows the registered or
certified mail number issued by the United States Postal
Service, the name and address of the person served, and the date
stamp of the United States Postal Service confirming the date of
mailing; or

2. The person who served the notice maintains ~~electronic~~
tracking records approved or generated by the United States
Postal Service containing the postal tracking number, ~~the name~~
~~and address of the person served,~~ and verification of the date
of receipt by the United States Postal Service.

(3)(a) Notwithstanding subsection (1), service of a
document under an instrument pursuant to this section is
effective on the date of mailing or shipping, and the
requirements for service under this section have been satisfied,
~~the instrument if the document it:~~

1. Is sent to the last address shown in the notice of
commencement or any amendment thereto or, in the absence of a
properly indexed notice of commencement that contains the
information specified in s. 713.13(1)(b), ~~notice of~~
~~commencement,~~ ~~to the last address shown in the building permit~~
~~application,~~ or to the last known address of the person to be
served unless otherwise specifically provided in this part, s.
255.05, or s. 337.18; and

2. Is returned as being "refused," "moved, not

8-00207D-21

2021622__

forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the document item.

(b) If the address shown in the notice of commencement or any amendment thereto ~~to the notice of commencement, or, in the absence of a notice of commencement, in the building permit application,~~ is incomplete for purposes of mailing or delivery, the person serving the document ~~item~~ may complete the address and properly format it according to United States Postal Service addressing standards using information obtained from the property appraiser or another public record without affecting the validity of service under this section.

(4) A document ~~notice~~ served by a lienor on one owner or one partner of a partnership owning the real property is deemed served on ~~notice to~~ all owners and partners.

Section 9. Subsections (6) and (8) of section 713.20, Florida Statutes, are amended to read:

713.20 Waiver or release of liens.—

(6) A person may not require a lienor to furnish a lien waiver or release of lien that is different from the forms in subsection (4) or subsection (5) in exchange for, or to induce payment of, a progress payment or final payment unless the lienor has entered into a direct contract that requires the lienor to furnish a waiver or release that is different from the forms in subsection (4) or subsection (5).

(8) Any provisions in a lien waiver or lien release which are that is not related to the waiver or release of a lien or the right to claim a lien as provided in this section are unenforceable, unless the lienor has otherwise agreed to those

8-00207D-21

2021622__

provisions in the direct contract ~~substantially similar to the~~
~~forms in subsections (4) and (5) is enforceable in accordance~~
~~with the terms of the lien waiver or lien release.~~

Section 10. Section 713.21, Florida Statutes, is amended to
read:

713.21 Discharge of lien.—A lien properly perfected under
this chapter may be discharged, or released in whole or in part,
by any of the following methods:

(1) By entering satisfaction of the lien upon the margin of
the record thereof in the clerk's office when not otherwise
prohibited by law. This satisfaction shall be signed by the
lienor, the lienor's agent or attorney and attested by said
clerk. Any person who executes a claim of lien has ~~shall have~~
authority to execute a satisfaction in the absence of actual
notice of lack of authority to any person relying on the same.

(2) By the satisfaction or release of the lienor, duly
acknowledged and recorded in the clerk's office. The
satisfaction or release must include the lienor's notarized
signature and set forth the official records' reference numbers
and recording date affixed by the recording office on the
subject lien. Any person who executes a claim of lien has ~~shall~~
~~have~~ authority to execute a satisfaction or release in the
absence of actual notice of lack of authority to any person
relying on the same.

(3) By failure to begin an action to enforce the lien
within the time prescribed in this part.

(4) By an order of the circuit court of the county where
the property is located, as provided in this subsection. Upon
filing a complaint therefor by any interested party the clerk

8-00207D-21

2021622__

shall issue a summons to the lienor to show cause within 20 days why his or her lien should not be enforced by action or vacated and canceled of record. Upon failure of the lienor to show cause why his or her lien should not be enforced or the lienor's failure to commence such action before the return date of the summons the court shall forthwith order cancellation of the lien.

(5) By recording in the clerk's office the original or a certified copy of a judgment or decree of a court of competent jurisdiction showing a final determination of the action.

Section 11. Paragraph (d) of subsection (1) of section 713.23, Florida Statutes, is amended to read:

713.23 Payment bond.—

(1)

(d) In addition, a lienor who has not received payment for furnishing his or her labor, services, or materials must, as a condition precedent to recovery under the bond, serve a written notice of nonpayment on ~~to~~ the contractor and a copy of the notice on the surety. The notice must be under oath and served during the progress of the work or thereafter, but may not be served later than 90 days after the final furnishing of labor, services, or materials by the lienor, or, with respect to rental equipment, later than 90 days after the date the rental equipment was on the job site and available for use. A notice of nonpayment that includes sums for retainage must specify the portion of the amount claimed for retainage. The required notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment, including unpaid finance charges due under the lienor's contract, and with respect to any

8-00207D-21

2021622__

other payments which become due to the lienor after the date of the notice of nonpayment. The time period for serving a notice of nonpayment is ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the lienor and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. If the payment bond is not recorded before commencement of construction, the time period for the lienor to serve a notice of nonpayment may at the option of the lienor be calculated from the date specified in this section or the date the lienor is served a copy of the bond. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A lienor who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the lienor has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not

8-00207D-21

2021622__

constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the lienor's claim against the bond. The notice under this paragraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To ...(name of contractor and address)...

...(name of surety and address)...

The undersigned lienor notifies you that:

1. The lienor has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is \$...., of which \$.... is unpaid retainage.

2. The lienor has been paid to date the amount of \$.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. The lienor expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is \$.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my

8-00207D-21

2021622__

726 knowledge and belief.

727
728 DATED on, ...

729
730 ...(signature and address of lienor)...

731
732 STATE OF FLORIDA

733 COUNTY OF.....

734
735 The foregoing instrument was sworn to (or affirmed) and
736 subscribed before me by means of ☐ physical presence or sworn to
737 (or affirmed) by ☐ online notarization, this day of,
738 ...(year)...., by ...(name of signatory)....

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

740 ...(Print, Type, or Stamp Commissioned Name of Notary
741 Public)...

742
743 Personally Known OR Produced Identification

744
745 Type of Identification Produced

746 Section 12. Subsections (3) and (5) of section 713.235,
747 Florida Statutes, are amended to read:

748 713.235 Waivers of right to claim against payment bond;
749 forms.—

750 (3) A person may not require a claimant to furnish a waiver
751 that is different from the forms in subsections (1) and (2) in
752 exchange for, or to induce payment of, a progress payment or
753 final payment unless the claimant has entered into a direct
754 contract that requires the claimant to furnish a waiver that is

8-00207D-21

2021622__

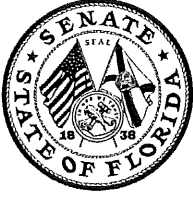
different from the forms in subsections (1) and (2).

(5) Any provisions in a waiver which are ~~that is~~ not related to the waiver of a claim or a right to claim against the payment bond as provided in this section are unenforceable, unless the claimant has otherwise agreed to those provisions in the claimant's direct contract ~~substantially similar to the forms in this section is enforceable in accordance with its terms.~~

Section 13. Section 713.29, Florida Statutes, is amended to read:

713.29 Attorney ~~Attorney's~~ fees.—In any action brought to enforce a lien, including a lien that has been transferred to security, or to enforce a claim against a bond under this part, the prevailing party is entitled to recover a reasonable fee for the services of her or his attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

Section 14. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 28, 2021

I respectfully request that **Senate Bill #622**, relating to Liens and Bonds, be placed on the:

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



Senator Keith Perry
Florida Senate, District 8

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/21

Meeting Date

622

Bill Number (if applicable)

Topic Construction Liens

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title Lobbyist

Address 108 S. Monroe Street

Phone 850-570-0269

Street

Tallahassee

FL

32301

Email melissa@flapartners.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NACM-Improved Construction Practices Committee

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

2-15-21

Meeting Date

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

SB 622

Bill Number (if applicable)

Topic Construction liens & Bonds

Amendment Barcode (if applicable)

Name KARI HEBRANK

Job Title _____

Address 215 S. Monroe, Suite 500

Phone 850-566-7824

TALLAHASSEE FL 32301

City State Zip

Email Khebrank@carltonfields.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA HOME BUILDERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

02/15/2021

Meeting Date

622

Bill Number (if applicable)

Topic Construction Defects Liens and Bonds

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone (850) 205-9000

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla. Associated General Contractors Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/21

Meeting Date

622

Bill Number (if applicable)

Topic Liens & Bonds

Amendment Barcode (if applicable)

Name French Brown

Job Title Lobbyist

Address 106 E. College Ave., Suite 1200

Phone 850-459-0992

Street

Tallahassee

FL

32301

Email fbrown@deanmead.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

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

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

SEN-1 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 402

INTRODUCER: Senator Rodrigues

SUBJECT: Public Notice and Voting Rights Restoration Database

DATE: January 22, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 402 proposes a process to identify amounts owed for fines, fees, and restitution by non-violent ex-felons to help them determine whether their voting rights have been restored in accordance with Amendment 4. Any remaining balances owed will be published on a website operated by the Supreme Court. The website will receive funding from fees collected from legal notices published through a statewide website.

The bill allows for legal notices to be published through a statewide website established and maintained by the Supreme Court in lieu of publication in a newspaper. The cost to publish a legal notice may not exceed \$500, unless the Supreme Court adjusts this fee with the approval of the Legislative Budget Commission.

The bill allows for either of these websites to be operated by the Supreme Court, the Office of State Courts Administrator, or a contractor selected the Court.

A county may publish a legal notice in a newspaper of general circulation within that county, but the newspaper may not charge a fee in excess of the website publication fee established by the Supreme Court.

The bill requires the Office of State Courts Administrator, on a monthly basis, to:

- Publish the existence of the legal notice website, along with its web address, in at least one newspaper of general circulation in each county of the state;
- Direct each county to post a clear written notice of the legal notices website at the entrance of each county courthouse and each annex containing court facilities;
- Direct each clerk of court to include a notice of the legal notices website on its official website; and
- Direct each judicial circuit to include a notice of the legal notices website on its official website.

The bill is effective July 1, 2021.

II. Present Situation:

The Florida Constitution requires that certain meetings between public officials be “open and noticed to the public.”¹ Generally, this requirement applies to meetings where official acts will be taken, or where public business will be transacted or discussed.

Similarly, procedural due process requires that a citizen receive proper notice of any government action that may affect his or her life, liberty, or property. The purpose of this notice is “to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”² and “must be of such nature as reasonably to convey the required information.”³

Historically, notice can be established by service of process by personally and directly delivering the notice to the interested party.⁴ Issues may arise, for example, when an interested party is difficult to locate or when someone is purposefully avoiding service.⁵ Likewise, some government actions such as public meetings affect so many interested individuals that it becomes implausible to individually notice each interested individual. To balance these interests, the Legislature has provided options to satisfy notice requirements for both litigation purposes as well as notices of public meetings and actions.

Statutory Notice Requirements

Florida law requires that all legal notices and publications, including those made in lieu of service of process, be made in a newspaper that:

- Is printed and published at least once a week;
- Contains at least 25 percent of its words in the English language;
- Is considered a periodical by the post office in the county where it is published;
- Is for sale to the public generally;
- Customarily contains information of public interest to the residents or property owners in the county where it is published or is of interest or of value to the general public;⁶ and
- Has been in existence for at least 1 year at the time the notice is published.⁷

¹ Art. I, s. 24(b), Fla. Const.

² *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

³ *Id.*

⁴ “Personal service guarantees actual notice of the pendency of a legal action; it thus presents the ideal circumstance under which to commence legal proceedings against a person, and has traditionally been deemed necessary in actions styled.” *Greene v. Lindsey*, 456 U.S. 444, 449 (1982).

⁵ “Where person to be served with process flees from presence of process server in a deliberate attempt to avoid service of process, the delivery requirement may be satisfied if the process server leaves the papers at a place in which such person can easily retrieve them and takes reasonable steps to call such delivery to the attention of the person to be served.” *Olin Corp. v. Haney*, 245 So. 2d 669 (Fla. 4th DCA 1971). This only applies, however, to a service of process made at the individual’s “usual place of abode.” Section 48.031, F.S.

⁶ Section 50.011, F.S.

⁷ Section 50.031, F.S.

If no newspaper is published in the county, three copies of the notice or advertisement must be posted in the county, with one being posted at the front door of the courthouse, two others posted at other locations in the county, and by publication of the notice in the nearest county where a newspaper is published.⁸

A newspaper publishing any notice is also tasked with placing the notice on a statewide website established and maintained by the Florida Press Association.⁹ This website must be accessible and searchable by party name and case number, and each notice must be posted for at least 90 days.¹⁰ This provision of Florida law is similar to statewide legal notice websites established in Alabama,¹¹ Colorado,¹² Illinois,¹³ Louisiana,¹⁴ Maine,¹⁵ Massachusetts,¹⁶ North Dakota,¹⁷ Ohio,¹⁸ Tennessee,¹⁹ Utah,²⁰ Virginia,²¹ and Wisconsin.²² The above states require that any notice published in a newspaper as set forth by law also be published in a statewide website maintained and operated by a private entity on behalf of the newspapers of that state, such as a union or trade group.

Newspaper Website

Florida law further provides that if the newspaper publishing the notice maintains a website, the legal notice must be published on the website the same day that it appears in the newspaper at no additional charge.²³ The newspaper's website must contain a search function to facilitate searching for legal notices.²⁴ Registration cannot be a requirement, nor can a fee be charged, for searching or viewing legal notices on a newspaper's website if the legal notices are published in a newspaper.²⁵

Fees

The fees for a legal notice published in a newspaper are set by statute and may not be rebated, commissioned, or refunded. The charge for publishing a legal notice is set by statute at 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion. Notices required to be published more than once and paid for by the government entity may not be charged greater than 85 percent of the original rate for second and successive insertions. If the

⁸ Section 50.021, F.S.

⁹ Section 50.021, F.S. The website established by the Florida Press Association, Florida Public Notices, is available at <https://www.floridapublicnotices.com/>.

¹⁰ *Id.*

¹¹ Ala. Code § 6-8-62.

¹² Colo. Rev. Stat. Ann. § 24-70-103.

¹³ 715 Ill. Comp. Stat. Ann. 5/2.1.

¹⁴ La. Stat. Ann. § 43:111E.

¹⁵ Me. Rev. Stat. tit. 1, § 603(2).

¹⁶ Mass. Gen. Laws Ann. ch. 4, § 13.

¹⁷ N.D. Cent. Code Ann. § 46-05-09.

¹⁸ Ohio Rev. Code Ann. § 125.182(a).

¹⁹ Tenn. Code Ann. § 1-3-120(a)(2).

²⁰ Utah Code Ann. § 45-1-101(2)(b).

²¹ Va. Code Ann. § 8.01-324(g).

²² Wis. Stat. Ann. § 985.01(7).

²³ Section 50.0211(2), F.S.

²⁴ *Id.*

²⁵ *Id.*

regular established minimum commercial rate per square inch is greater than the rate stipulated in statute, the publisher may charge the minimum commercial rate for each insertion, except that notices required to be published more than once and paid for by the government entity may not be charged greater than 85 percent of the original rate for second and successive insertions. All notices and legal advertisements are charged on the basis of 6-point type on 6-point body, unless otherwise specified by statute.²⁶

Actual fees vary depending on the type of notice requested, the size of the notice, any subsequent insertions or publications, as well as which newspaper publicizes the notice. The Tampa Bay Times, for example, charges \$200 for a “full run” of a notice of a foreclosure action.²⁷ If the notice needs to be up for more than 2 days, the charge increases to \$400. Additionally, the per-line cost above the included 165 line limit is \$6.45.

Felony Fees and Fines

In 2018, Amendment 4 to the Florida Constitution was approved by the voters of Florida. Prior to the amendment passing, individuals convicted of a felony were disqualified from voting unless their civil rights were restored.²⁸ The amendment provides for the automatic restoration of voting rights “upon completion of all terms of sentence including parole or probation.”²⁹ The amendment does not apply to those convicted of murder or a felony sexual offense.³⁰

In 2019, SB 7066 was signed into law and further defined “completion of all terms of sentence.” Specifically, s. 98.0751, F.S., created by the bill, defined the phrase to require:

- Completion of all terms of imprisonment;
- Completion of any court ordered probation or community control;
- Termination any term of supervision monitored by the Florida Commission on Offender Review;
- Completion of any court ordered community service hours;
- Payment in full of any restitution ordered to a victim by the court as a part of a sentence;
- Fulfillment of any term ordered by the court as part of a sentence; and
- Payment in full of any fines or fees ordered by the court as a part of the sentenced or as part of any condition of supervision, including probation, community control, or parole.³¹

The local supervisor of elections must verify and make the final determination on whether an individual is eligible to vote based on his or her felony conviction and his or her completion of sentence.³² To determine eligibility, the supervisor of elections may obtain information from the

²⁶ Section 50.061, F.S.

²⁷ For the Tampa Bay Times, a “full run” includes all of Pinellas, Pasco, Hernando, Citrus, and Hillsborough counties. Opting for an individual run of a specific county costs \$135 for Pasco County, and \$155 for Hillsborough or Pinellas Counties. TAMPA BAY TIMES, *Certified Legal Rates*, <https://www.tampabay.com/resources/images/marketing/mediakit/pdf/Legal-Rate-Card.pdf> (Last visited January 21, 2021)

²⁸ Civil rights, including voting and firearm ownership rights, may be restored based on the approval of the Governor along with two members of the Florida Cabinet. Article IV Section 8(a)

²⁹ Art. VI, s. 4(a), FLA. CONST.

³⁰ Art. VI, s. 4(b), FLA. CONST. and s. 98.0751(1), F.S.

³¹ Section 98.0751(a), F.S.

³² Section 98.0751(3)(b), F.S.

Department of State, which verifies registered voters who have been convicted of a disqualifying felony based on records from a clerk of the circuit court, the Board of Executive Clemency, the Department of Corrections, the Department of Law Enforcement, or a United States Attorney's Office.³³ The supervisor of elections in several different counties, as well as the Department of State, have instructions on their websites for ex-felons to contact the clerk of the circuit court or the Department of Correction to determine if their sentences have been completed for the purposes of voting rights restoration.³⁴

If the supervisor of elections determines that the individual is ineligible to register to vote, the supervisor must notify the applicant within 7 days after receiving information regarding the individual's ineligibility.³⁵ The registered voter may, within 30 days, challenge the ineligibility determination and request a hearing for the purpose of determining eligibility. Determinations of eligibility are based on a preponderance of evidence standard.³⁶ The final determination of eligibility may be appealed to the circuit court.³⁷

If an individual is unsure of his or her eligibility to vote based on his or her inability to verify a completion of sentence, he or she may request an advisory opinion from the Department of State.³⁸ If the Department "finds no credible or reliable information to indicate that the felon is eligible to vote, the Division will issue an opinion stating that the felon is eligible."³⁹ In 2020, the Department issued 19 separate advisory opinions in response to specific individual requests to determine voter eligibility based on felony convictions and any costs, fees, fines, and restitution owed.⁴⁰

III. Effect of Proposed Changes:

Legal Notice Website

The bill provides an option for those required by law to publish legal notices to publish those notices on a website maintained by the Florida Supreme Court in lieu of a newspaper publication. Legal notice may be satisfied upon the notice being accessible during the period of time that notice was required. A court may find that the notice was not sufficient if the notice was not accessible during the period of time that the notice was required.

³³ Section 98.075(5)

³⁴ Lori Scott, Supervisor of Elections, Brevard County, *Amendment 4: Registering to Vote*, <https://www.votebrevard.gov/Voter-Information/Restoration-of-Rights> (Last visited Jan. 21, 2021) and Sarasota County Supervisor of Elections, *Amendment 4 Fact Sheet*, <https://www.sarasotavotes.com/content.aspx?id=307> (Last visited Jan. 21, 2021) and Michael Bennett, Supervisor of Elections, Manatee County, *Restoration of Civil Rights*, <https://www.votemanatee.com/m/Voter-Information/Restoration-of-Civil-Rights> (Last visited Jan. 21, 2021).

³⁵ Section 98.075(7)(a)(1), F.S.

³⁶ Section 98.075(7)(b)(1), F.S.

³⁷ Section 98.0755, F.S.

³⁸ Section 106.23(2), F.S.

³⁹ Florida Department of State, *Constitutional Amendment 4/Felon Voting Right*, <https://dos.myflorida.com/elections/for-voters/voter-registration/constitutional-amendment-4felon-voting-rights/> (Last visited Jan. 21, 2021).

⁴⁰ Florida Department of State, *Advisory Opinions By Year, 2020-Felon Opinions*, <https://dos.myflorida.com/elections/laws-rules/advisory-opinions/advisory-opinions-by-year/> (Last visited Jan. 21, 2021).

The website may be operated by the Office of the State Courts Administrator or by a contractor selected by the Court. The operating costs of the website may not exceed 15 percent of the revenue from fees for posting legal notices on the website.

The bill requires the Office of State Courts Administrator, on a monthly basis, to:

- Publish the existence of the website, along with its web address, on a monthly basis in at least one newspaper of general circulation in each county of the state;
- Direct each county to post a clear written notice of the legal notices website at the entrance of each county courthouse and each annex containing court facilities;
- Direct each clerk of court to include a notice of the website on its official website; and
- Direct each judicial circuit to include a notice of the legal notices website on its official website.

Fees

The bill limits the fee charged to post a notice on the website to \$500, allowing for adjustment by the Supreme Court with the approval of the Legislative Budget Commission. This same fee limit, or an alternative if established by the Supreme Court, would apply to any legal notice that a county posts in a newspaper of general circulation in lieu of publishing the notice in the Supreme Court's legal notices website.

After taking into account the operating costs of the legal notices website, revenue from fees collected will be used to aggregate and collect data regarding restitution, fines, and fees owed by non-violent⁴¹ ex-felons.⁴²

Any excess revenue which remains after the operating costs of the website will be deposited into the Senate Courts Revenue Trust Fund. Fifteen percent of this excess revenue may be pledged toward the operation of the website created for the publication of legal notices.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴¹ The language of Amendment 4 allows restoration of voting rights upon completion of all terms of sentence with the exception of those convicted of murder or a felony sexual offense. The bill is narrower in that it would mandate only "non-violent" felony convictions to be included in the aggregated data on the website. While undefined in the bill, "non-violent" could seemingly exclude certain felony convictions based assault, battery, and certain weapons based offenses. Under the Violent Career Criminals law, for example, violent felonies include: arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly or disabled person, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly or disabled person, aggravated manslaughter of a child, unlawful throwing, placing or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking. Section 775.084(1)(b)(1), F.S. The Legislature likely intends for the language of the bill to refer to the ex-felons identified in State Constitution who may have their voting rights restored.

⁴² The bill includes the language "to victims and the judicial branch." Broadly, this would indicate payment of restitution to the victim, as well as court costs, fees, and fines owed to the judicial branch.

B. Public Records/Open Meetings Issues:

This bill does not make confidential the information relating to amounts owed by ex-felons. If the Legislature determines that information should be confidential and exempt from the disclosure requirements of the public records laws, it would need to address that issue in a separate bill.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19(a) of the State Constitution prohibits the Legislature from imposing a new fee except through legislation approved by supermajority vote of each house of the Legislature. Because the bill preserves the option of publishing legal notices in a newspaper, the supermajority vote requirements do not appear to apply.

E. Other Constitutional Issues:

The bill may raise procedural due process concerns to the extent that it hinders actual notice of legal proceedings. Procedural due process requires fair notice “to apprise interested parties of the pendency of” an action that may affect life, liberty, or property.⁴³ For example, notice is required for termination of parent rights proceedings,⁴⁴ certain local county initiatives,⁴⁵ and civil judgements based on litigation.⁴⁶ On the other hand, the publication of a notice on a website instead of a newspaper may, in some cases, be more effective than publishing a notice solely in a newspaper. Courts have accepted various alternatives to actual service of process over the years.⁴⁷

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

None.

⁴³ 339 U.S. 306, 314 (1950).

⁴⁴ *J.B. v. Florida Dept. of Children & Family Services*, 768 So. 2d 1060, 1066 (Fla. 2000) (Finding that 24-hour notice of a hearing regarding termination of parent rights was insufficient notice) .

⁴⁵ *Baycol, Inc. v. Downtown Dev. Auth. of City of Fort Lauderdale*, 315 So. 2d 451, 455 (Fla. 1975) (Finding that the city failed to place express or de facto notice in an eminent domain proceeding) and *Keys Citizens For Responsible Gov't, Inc. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940, 949 (Fla. 2001) (The Court found in dictum that “constructive notice by publication is appropriate in bond validation proceedings”).

⁴⁶ “To give such proceedings any validity, there must be a competent tribunal to pass on their subject-matter; and, if that involves merely a determination of the personal liability of defendant, he must be brought within its jurisdiction by service of process within the state, or by his voluntary appearance.” *Pennoyer v. Neff*, 95 U.S. 714, 719 (1877), overruled in part by *Shaffer v. Heitner*, 433 U.S. 186 (1977).

⁴⁷ For example, the courts have routinely upheld certified mail as a valid method of constructive notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (The Court found in dictum that mail “provide[s] an ‘efficient and inexpensive means of communication’ upon which prudent men will ordinarily rely in the conduct of important affairs”).

B. Private Sector Impact:

This bill will likely reduce revenue for newspapers to the extent that public officials and parties in litigation decide to use the Supreme Court's website in lieu of a newspaper for the publication of legal notices.

C. Government Sector Impact:

The bill may reduce government costs to publish legal notices.

According to the Office of the State Courts Administrator, it anticipates an increase in its workload in order to maintain the two websites described in the bill. Additionally, OSCA anticipates having to collaborate with the clerks of court to collect the relevant data. Complicating matters further is the fact that the "67 clerks of court currently do not have a statewide system for identifying legal financial obligations."

VI. Technical Deficiencies:

The Legislature may wish to revise the bill to provide more detail regarding how data regarding amounts owed by non-violent ex-felons is to be collected.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of Florida law.

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

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Rodrigues) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 28.46, Florida Statutes, is created to
read:

28.46 Felon financial obligations website.—The Florida
Association of Court Clerks and Comptrollers, Inc., or a
contractor selected by the association, shall establish and
maintain an Internet database that aggregates amounts of



608062

financial obligations owed by persons who are convicted of a felony.

(1) For each person convicted of a felony, the amounts owed must be detailed based on the following categories:

(a) The amount owed in order to satisfy completion of all terms of a sentence as provided in sentencing documents, which must detail the amounts owed for restitution, fines, and fees as described in s. 98.0751(2)(a)5.a. and b.

(b) The amount of all other financial obligations owed which accrue after the date an obligation is ordered as part of a sentence, which must detail the amounts described in s. 98.0751(2)(a)5.c.

(2) The information on the website must be in a searchable format that allows a person convicted of a felony to quickly identify his or her outstanding financial obligations resulting from the felony conviction. Additionally, the website must include a disclaimer stating that while the information on the website regarding a person's outstanding financial obligations may help to facilitate the restoration of a person's voting rights, the Department of State is responsible for determining a person's eligibility to vote.

(3) The website must contain data for persons sentenced for a felony on or after October 1, 2021, or released from incarceration for a felony on or after October 1, 2021.

(4) Funding for the website shall be as provided under s. 50.0311(4).

Section 2. Section 50.011, Florida Statutes, is amended to read:

50.011 Publication of ~~Where and in what language~~ legal



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40 notices ~~to be published.~~ Whenever by statute an official or
41 legal advertisement or a publication, or notice in a newspaper
42 or the legal notice website established pursuant to s. 50.0311,
43 has been or is directed or permitted in the nature of or in lieu
44 of process, or for constructive service, or in initiating,
45 assuming, reviewing, exercising or enforcing jurisdiction or
46 power, or for any purpose, including all legal notices and
47 advertisements of sheriffs and tax collectors, the
48 contemporaneous and continuous intent and meaning of such
49 legislation all and singular, existing or repealed, is and has
50 been and is hereby declared to be and to have been, and the rule
51 of interpretation is and has been the following:

52 (1) A publication in a newspaper printed and published
53 periodically at least once a week ~~or oftener~~, containing at
54 least 25 percent of its words in the English language, entered
55 or qualified to be admitted and entered as periodicals matter at
56 a post office in the county where published, ~~for sale to the~~
57 ~~public generally,~~ available to the public generally for the
58 publication of official or other notices and customarily
59 containing information of a public character or of interest or
60 of value to the residents or owners of property in the county
61 where published, or of interest or of value to the general
62 public; or

63 (2) On the legal notice website established pursuant to s.
64 50.0311.

65 Section 3. Section 50.021, Florida Statutes, is amended to
66 read:

67 50.021 Publication when no newspaper in county.—When any
68 law, or order or decree of court, directs ~~shall direct~~



608062

advertisements to be made in a any county and there is ~~be~~ no newspaper published in the ~~said~~ county, the advertisement may be posted on the legal notice website as provided in s. 50.0311 or made by posting three copies thereof in three different places in the ~~said~~ county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.

Section 4. Subsections (2) and (3) of section 50.0211, Florida Statutes, are amended to read:

50.0211 Internet website publication.—

(2) If a governmental agency publishes a legal notice in a newspaper, each legal notice must be posted on the newspaper's website on the same day that the printed notice appears in the newspaper, at no additional charge, on ~~in~~ a separate web page titled "Legal Notices," "Legal Advertising," or comparable identifying language. A link to the legal notices web page shall be provided on the front page of the newspaper's website which ~~that~~ provides access to the legal notices. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on the newspaper's website must optimize its online visibility in keeping with the print requirements. The newspaper's web pages that contain legal notices must present the legal notices as the dominant and leading subject matter of those pages. The newspaper's website must contain a search function to facilitate searching the legal notices. A fee may not be charged, and registration may not be required, for viewing or searching legal notices on a newspaper's website if the legal notice is published in a newspaper.



608062

(3) (a) If a legal notice is published in a newspaper, the newspaper publishing the notice shall place the notice on the statewide website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at the following address: www.floridapublicnotices.com.

(b) A legal notice placed on the statewide website created under this subsection must be:

1. Accessible and searchable by party name and case number.
2. Posted for a period of at least 90 consecutive days after the first day of posting.

(c) The statewide website created under this subsection shall maintain a searchable archive of all legal notices posted on the publicly accessible website ~~on or after October 1, 2014,~~ for 18 months after the first day of posting. Such searchable archive shall be provided and accessible to the general public without charge.

Section 5. Section 50.031, Florida Statutes, is amended to read:

50.031 Newspapers in which legal notices and process may be published.—If a governmental agency publishes a legal notice in a newspaper, no notice or publication required to be published ~~in a newspaper~~ in the nature of or in lieu of process of any kind, nature, character, or description provided for under any law of the state, whether heretofore or hereafter enacted, and whether pertaining to constructive service, or the initiating, assuming, reviewing, exercising, or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's, or administrator's or any



608062

127 sale made pursuant to any judicial order, decree, or statute or
128 any other publication or notice pertaining to any affairs of the
129 state, or any county, municipality, or other political
130 subdivision thereof, shall be deemed to have been published in
131 accordance with the statutes providing for such publication,
132 unless the notice has ~~same shall have~~ been published for the
133 prescribed period of time required for such publication, in a
134 newspaper which at the time of such publication has ~~shall have~~
135 been in existence for 1 year and ~~shall have been~~ entered as
136 periodicals matter at a post office in the county where
137 published, or in a newspaper that ~~which~~ is a direct successor of
138 a newspaper which together have been so published; provided,
139 however, that this section does not apply to ~~nothing herein~~
140 ~~contained shall apply where in any county where there shall be~~
141 ~~no newspaper exists that has been in existence which shall have~~
142 ~~been published for the prescribed length of time above~~
143 ~~prescribed~~. No legal publication of any kind, nature, or
144 description, as herein defined, shall be valid or binding or
145 held to be in compliance with the statutes providing for such
146 publication unless the same shall have been published in
147 accordance with ~~the provisions of~~ this section or s. 50.0311.
148 Proof of such publication shall be made by uniform affidavit.

149 Section 6. Section 50.0311, Florida Statutes, is created to
150 read:

151 50.0311 Statewide legal notice website.—

152 (1) For purposes of this chapter, the term:

153 (a) "Association" means the Florida Association of Court
154 Clerks and Comptrollers, Inc.

155 (b) "Governmental agency" means a county, municipality,



608062

school board, or other unit of local government or political
subdivision in this state.

(2)(a) The association shall establish a legal notice
website to serve as a centralized statewide repository for the
publication of any advertisement or public notice by a
governmental agency or a party to litigation which would
otherwise be required by law to be published in a newspaper. The
advertisement or public notice must be posted to the website
following the governmental agency's payment of a fee established
by the association. The fee charged for publishing an
advertisement or a public notice may not exceed the amount for
charges authorized in s. 50.061. The maximum fee may be adjusted
by the association, upon approval by the Legislative Budget
Commission. A governmental agency may publish the advertisement
or public notice in at least one newspaper of general
circulation in the affected county in lieu of website
publication.

(b) Notwithstanding any other law, an advertisement or a
legal notice may be published on the statewide legal notice
website in lieu of an advertisement or a notice in a newspaper
if the advertisement or notice is posted on the website for an
adequate time before any proposed action specified in the
advertisement or notice is taken. For an advertisement or a
notice required to be published only once, the advertisement or
notice is deemed to be posted for an adequate time if it is
posted and continuously available on the website for at least 7
days before any proposed action; 1 week for each weekly
advertisement or notice that would have otherwise been published
in a newspaper; and 1 month for each monthly notice that would



608062

185 have otherwise been published in a newspaper.

186 (3) (a) The legal notice website must be operated by the
187 association or by a contractor selected by the association. The
188 website operating costs may not exceed 15 percent of the revenue
189 from fees for advertisements and public notices published on the
190 website. The association must publicize the existence of the
191 website and its web address on at least a monthly basis through
192 publishing a notice in at least one newspaper of general
193 circulation in each county of this state, and each clerk of
194 court must post a clear written notice at the entrance of each
195 county courthouse and each annex containing court facilities. A
196 governmental agency that posts advertisements or notices on the
197 legal notice website must also include such advertisements or
198 notices, or additional information pertaining to such
199 advertisements or notices, on the governmental agency's official
200 website.

201 (b) The legal notice website must be accessible and
202 searchable by the public.

203 1. The advertisements and legal notices must be searchable
204 by case number; party name; party type; purpose; the county,
205 municipality, or other relevant geographic area or political
206 subdivision affected; the initial date of posting or
207 publication; and any other criteria that facilitates notice and
208 public access.

209 2. Each advertisement and notice must include its initial
210 date of publication or posting and remain available on the
211 website for at least 2 years after such date.

212 (4) All revenue from fees collected for postings on the
213 legal notice website which is in excess of the operating costs



608062

for the legal notice website must be used toward the felon financial obligations website operated by the association pursuant to s. 28.46. However, the operating costs of the felon financial obligations website may not exceed 50 percent of excess revenue remaining after any deductions made pursuant to subsection (3).

(5) Fifty percent of any excess revenue remaining after deducting operating costs for the felon financial obligations website shall be deposited into the Clerks of the Court Trust Fund in the Department of Revenue and the remaining 50 percent shall be deposited into the General Revenue Fund. Fifteen percent of such excess revenue from fees collected in any fiscal year may be pledged for the operation of the legal notice website.

Section 7. Section 50.041, Florida Statutes, is amended to read:

50.041 Proof of publication; uniform affidavits required.—

(1) All affidavits ~~of publishers of newspapers (or their official representatives)~~ made for the purpose of establishing proof of publication of public notices or legal advertisements shall be uniform throughout the state.

(2) Each such affidavit shall be printed upon white paper and shall be 8 1/2 inches in width and of convenient length, not less than 5 1/2 inches. A white margin of not less than 2 1/2 inches shall be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed. Alternatively, the affidavit may be provided in electronic rather than paper



608062

form, provided the notarization of the affidavit complies with the requirements of s. 117.021.

(3) ~~In all counties having a population in excess of 450,000 according to the latest official decennial census, in addition to the charges which are now or may hereafter be established by law for the publication of every official notice or legal advertisement,~~ There may be a charge not to exceed \$2 levied for the preparation and execution of each such proof of publication or ~~publisher's~~ affidavit.

Section 8. Section 50.051, Florida Statutes, is amended to read:

50.051 Proof of publication; form of uniform affidavit.—The printed form upon which all such affidavits establishing proof of publication are to be executed shall be substantially as follows:

NAME OF COUNTY NEWSPAPER
~~Published (Weekly or Daily)~~
~~(Town or City) (County) FLORIDA~~
STATE OF FLORIDA

COUNTY OF:

Before the undersigned authority personally appeared, who on oath says that he or she is of ~~the, a~~ ~~newspaper published at in~~ County, Florida; that the attached copy of advertisement, being a in the matter of in the Court, was published on the legal notice website maintained by the Florida Association of Court Clerks and Comptrollers, Inc., or in a said newspaper. ~~in the issues of~~



608062

Affiant further says that the website or newspaper complies
with all legal requirements for publication in chapter 50,
Florida Statutes ~~said is a newspaper published at, in~~
~~said County, Florida, and that the said newspaper has~~
~~heretofore been continuously published in said County,~~
~~Florida, each and has been entered as periodicals matter at~~
~~the post office in, in said County, Florida, for a~~
~~period of 1 year next preceding the first publication of the~~
~~attached copy of advertisement; and affiant further says that he~~
~~or she has neither paid nor promised any person, firm or~~
~~corporation any discount, rebate, commission or refund for the~~
~~purpose of securing this advertisement for publication in the~~
~~said newspaper.~~

Sworn to and subscribed before me this day of,
...(year)...., by, who is personally known to me or who has
produced (type of identification) as identification.

...(Signature of Notary Public)...

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

...(Notary Public)...

Section 9. Section 50.0711, Florida Statutes, is amended to
read:

50.0711 Court docket fund; service charges; publications.—

(1) The clerk of the court in each county may establish a
court docket fund for the purpose of paying the cost of
publication of the fact of the filing of any civil case in the



608062

circuit court of the county by the style and of the calendar relating to such cases. This court docket fund shall be funded by \$1 mandatory court cost for all civil actions, suits, or proceedings filed in the circuit court of the county. The clerk shall maintain such funds separate and apart, and the proceeds from this court cost shall not be diverted to any other fund or for any purpose other than that established in this section. The clerk of the court shall dispense the fund to the operators of the legal notice website established in s. 50.0311 or the designated record newspaper in the county on a quarterly basis.

(2) If a judicial circuit publishes legal notices in a newspaper, a newspaper qualified under the terms of s. 50.011 shall be designated as the record newspaper for such publication by an order of the majority of the judges in the judicial circuit in which such county is located, and such order shall be filed and recorded with the clerk of the circuit court for such county. The designated record newspaper may be changed at the end of any fiscal year of the county by a majority vote of the judges of the judicial circuit of the county ordering such change 30 days before ~~prior to~~ the end of the fiscal year, notice of which order shall be given to the previously designated record newspaper.

(3) The publishers of any designated record newspapers, or the legal notice website, receiving payment from this court docket fund shall publish, without additional charge, the fact of the filing of any civil case, suit, or action filed in such county in the circuit. Such publication must ~~shall~~ be in accordance with a schedule agreed upon between the Florida Association of Court Clerks and Comptrollers, Inc., for notices



608062

published on the legal notice website, or the record newspaper and the clerk of the court in such county.

(4) The legal notice website or the publishers of any designated record newspapers receiving revenues from the court docket fund established in subsection (1) shall, without charge, accept legal advertisements for the purpose of service of process by publication under s. 49.011(4), (10), and (11) when such publication is required of persons authorized to proceed as indigent persons under s. 57.081.

Section 10. Subsection (4) of section 83.806, Florida Statutes, is amended to read:

83.806 Enforcement of lien.—An owner's lien as provided in s. 83.805 may be satisfied as follows:

(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located or published continuously for 14 consecutive days on the legal notice website established pursuant to s. 50.0311.

(a) A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility or unit owner is not required to hold a license to post property for online sale. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.

(b) The advertisement must ~~shall~~ include:

1. A brief and general description of what is believed to constitute the personal property contained in the storage unit,



608062

as provided in paragraph (2)(b).

2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.

3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place at least 15 days after the first publication.

(c) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in at least three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located or published continuously for 14 consecutive days on the legal notice website established pursuant to s. 50.0311.

Section 11. Subsection (11) of section 775.089, Florida Statutes, is amended to read:

775.089 Restitution.—

(11)(a) The court shall ~~may~~ order the clerk of the court to collect and dispense restitution payments in any felony case unless the court orders the Department of Corrections to collect and remit the restitution payments. The court may order the clerk of the court to collect and disburse restitution in any misdemeanor or civil case.

(b) The court may order the Department of Corrections to collect and dispense restitution and other payments from persons remanded to its custody or supervision. If the Department of Corrections is ordered to collect and remit restitution payments or any other payments, it must report the amounts collected and



608062

disbursed on a monthly basis to the Florida Association of Court Clerks and Comptrollers, Inc., in the form and detail required by the association for purposes of posting on the felon financial obligations website established under s. 28.46.

Section 12. Section 11.02, Florida Statutes, is amended to read:

11.02 Notice of special or local legislation or certain relief acts.—The notice required to obtain special or local legislation or any relief act specified in s. 11.065 shall be by publishing the identical notice ~~in each county involved in some newspaper~~ as provided ~~defined~~ in chapter 50 ~~published in or~~ circulated throughout the county or counties where the matter or thing to be affected by such legislation shall be situated one time at least 30 days before introduction of the proposed law into the Legislature or, if the notice is not posted on the legal notice website established pursuant to s. 50.0311 and there being no newspaper circulated throughout or published in the county, by posting for at least 30 days at not less than three public places in the county or each of the counties, one of which places shall be at the courthouse in the county or counties where the matter or thing to be affected by such legislation shall be situated. Notice of special or local legislation shall state the substance of the contemplated law, as required by s. 10, Art. III of the State Constitution. Notice of any relief act specified in s. 11.065 shall state the name of the claimant, the nature of the injury or loss for which the claim is made, and the amount of the claim against the affected municipality's revenue-sharing trust fund.

Section 13. Subsection (2) of section 45.031, Florida



608062

Statutes, is amended to read:

45.031 Judicial sales procedure.—In any sale of real or personal property under an order or judgment, the procedures provided in this section and ss. 45.0315-45.035 may be followed as an alternative to any other sale procedure if so ordered by the court.

(2) PUBLICATION OF SALE.—Notice of sale shall be published on the legal notice website established pursuant to s. 50.0311 for at least 2 consecutive weeks before the sale or once a week for 2 consecutive weeks in a newspaper of general circulation, as provided ~~defined~~ in chapter 50, published in the county where the sale is to be held. The second publication by newspaper shall be at least 5 days before the sale. The notice shall contain:

(a) A description of the property to be sold.

(b) The time and place of sale.

(c) A statement that the sale will be made pursuant to the order or final judgment.

(d) The caption of the action.

(e) The name of the clerk making the sale.

(f) A statement that any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens must file a claim before the clerk reports the surplus as unclaimed.

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

Section 14. Subsection (2) of section 121.0511, Florida



608062

Statutes, is amended to read:

121.0511 Revocation of election and alternative plan.—The governing body of any municipality or independent special district that has elected to participate in the Florida Retirement System may revoke its election in accordance with the following procedure:

(2) At least 7 days, but not more than 15 days, before the hearing, notice of intent to revoke, specifying the time and place of the hearing, must be published as provided in chapter 50 in a newspaper of general circulation in the area affected, ~~as provided by ss. 50.011-50.031.~~ Proof of publication of the notice must be submitted to the Department of Management Services.

Section 15. Paragraphs (b) and (h) of subsection (1) of section 121.055, Florida Statutes, are amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(b)1. Except as provided in subparagraph 2., effective January 1, 1990, participation in the Senior Management Service Class is compulsory for the president of each community college, the manager of each participating municipality or county, and all appointed district school superintendents. Effective January 1, 1994, additional positions may be designated for inclusion in the Senior Management Service Class if:

a. Positions to be included in the class are designated by the local agency employer. Notice of intent to designate



608062

positions for inclusion in the class must be published for at least 2 consecutive weeks if published on the legal notice website established pursuant to s. 50.0311 or once a week for 2 consecutive weeks in a newspaper of general circulation published in the county or counties affected, as provided in chapter 50.

b. Up to 10 nonelective full-time positions may be designated for each local agency employer reporting to the department; for local agencies with 100 or more regularly established positions, additional nonelective full-time positions may be designated, not to exceed 1 percent of the regularly established positions within the agency.

c. Each position added to the class must be a managerial or policymaking position filled by an employee who is not subject to continuing contract and serves at the pleasure of the local agency employer without civil service protection, and who:

(I) Heads an organizational unit; or

(II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

2. In lieu of participation in the Senior Management Service Class, members of the Senior Management Service Class, pursuant to subparagraph 1., may withdraw from the Florida Retirement System altogether. The decision to withdraw from the system is irrevocable as long as the employee holds the position. Any service creditable under the Senior Management Service Class shall be retained after the member withdraws from the system; however, additional service credit in the Senior Management Service Class may not be earned after such



608062

withdrawal. Such members are not eligible to participate in the Senior Management Service Optional Annuity Program.

3. Effective January 1, 2006, through June 30, 2006, an employee who has withdrawn from the Florida Retirement System under subparagraph 2. has one opportunity to elect to participate in the pension plan or the investment plan.

a. If the employee elects to participate in the investment plan, membership shall be prospective, and the applicable provisions of s. 121.4501(4) govern the election.

b. If the employee elects to participate in the pension plan, the employee shall, upon payment to the system trust fund of the amount calculated under sub-sub-subparagraph (I), receive service credit for prior service based upon the time during which the employee had withdrawn from the system.

(I) The cost for such credit shall be an amount representing the actuarial accrued liability for the affected period of service. The cost shall be calculated using the discount rate and other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation. The calculation must include any service already maintained under the pension plan in addition to the period of withdrawal. The actuarial accrued liability attributable to any service already maintained under the pension plan shall be applied as a credit to the total cost resulting from the calculation. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an actuary.

(II) The employee must transfer a sum representing the net cost owed for the actuarial accrued liability in sub-sub-



608062

subparagraph (I) immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and the period of withdrawal.

(h)1. Except as provided in subparagraph 3., effective January 1, 1994, participation in the Senior Management Service Class shall be compulsory for the State Courts Administrator and the Deputy State Courts Administrators, the Clerk of the Supreme Court, the Marshal of the Supreme Court, the Executive Director of the Justice Administrative Commission, the capital collateral regional counsel, the clerks of the district courts of appeals, the marshals of the district courts of appeals, and the trial court administrator and the Chief Deputy Court Administrator in each judicial circuit. Effective January 1, 1994, additional positions in the offices of the state attorney and public defender in each judicial circuit may be designated for inclusion in the Senior Management Service Class of the Florida Retirement System, provided that:

a. Positions to be included in the class shall be designated by the state attorney or public defender, as appropriate. Notice of intent to designate positions for inclusion in the class shall be published for at least 2 consecutive weeks if published on the legal notice website established pursuant to s. 50.0311 or once a week for 2 consecutive weeks in a newspaper of general circulation published in the county or counties affected, as provided in chapter 50.

b. One nonelective full-time position may be designated for each state attorney and public defender reporting to the Department of Management Services; for agencies with 200 or more



608062

regularly established positions under the state attorney or public defender, additional nonelective full-time positions may be designated, not to exceed 0.5 percent of the regularly established positions within the agency.

c. Each position added to the class must be a managerial or policymaking position filled by an employee who serves at the pleasure of the state attorney or public defender without civil service protection, and who:

(I) Heads an organizational unit; or

(II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

2. Participation in this class shall be compulsory, except as provided in subparagraph 3., for any judicial employee who holds a position designated for coverage in the Senior Management Service Class, and such participation shall continue until the employee terminates employment in a covered position. Effective January 1, 2001, participation in this class is compulsory for assistant state attorneys, assistant statewide prosecutors, assistant public defenders, and assistant capital collateral regional counsel. Effective January 1, 2002, participation in this class is compulsory for assistant attorneys general.

3. In lieu of participation in the Senior Management Service Class, such members, excluding assistant state attorneys, assistant public defenders, assistant statewide prosecutors, assistant attorneys general, and assistant capital collateral regional counsel, may participate in the Senior Management Service Optional Annuity Program as established in



608062

subsection (6).

Section 16. Paragraph (a) of subsection (2) and paragraph (b) of subsection (4) of section 125.66, Florida Statutes, are amended to read:

125.66 Ordinances; enactment procedure; emergency ordinances; rezoning or change of land use ordinances or resolutions.—

(2) (a) The regular enactment procedure shall be as follows: The board of county commissioners at any regular or special meeting may enact or amend any ordinance, except as provided in subsection (4), if notice of intent to consider such ordinance is given at least 10 days before any such ~~prior to said~~ meeting by publication as provided in chapter 50 ~~in a newspaper of general circulation in the county~~. A copy of such notice must ~~shall~~ be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners. The notice of proposed enactment must ~~shall~~ state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where such proposed ordinances may be inspected by the public. The notice must ~~shall~~ also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(4) Ordinances or resolutions, initiated by other than the county, that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to subsection (2). Ordinances or resolutions that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances or resolutions initiated by the



608062

county that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

(b) In cases in which the proposed ordinance or resolution changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the board of county commissioners shall provide for public notice and hearings as follows:

1. The board of county commissioners shall hold two advertised public hearings on the proposed ordinance or resolution. At least one hearing shall be held after 5 p.m. on a weekday, unless the board of county commissioners, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days before ~~prior to~~ the public hearing.

2. If published in a newspaper, the required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper ~~of~~ ~~general paid circulation~~ in the county and of general interest and readership in the community pursuant to chapter 50, not one of limited subject matter. It is the legislative intent that,



608062

whenever possible, the advertisement shall appear in a newspaper that is published at least weekly ~~5 days a week~~ unless the only newspaper in the community is published less than weekly ~~5 days a week~~. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The ...(name of local governmental unit)... proposes to adopt the following by ordinance or resolution:...(title of ordinance or resolution)....

A public hearing on the ordinance or resolution will be held on ...(date and time)... at ...(meeting place)....

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area within the local government covered by the proposed ordinance or resolution. The map shall include major street names as a means of identification of the general area. In addition to being published on the legal notice website established pursuant to s. 50.0311 or in the newspaper, the map must be part of the online notice required pursuant to s. 50.0211 or s. 50.0311.

3. In lieu of publishing the advertisements set out in this paragraph, the board of county commissioners may mail a notice to each person owning real property within the area covered by the ordinance or resolution. Such notice shall clearly explain the proposed ordinance or resolution and shall notify the person of the time, place, and location of both public hearings on the



608062

proposed ordinance or resolution.

Section 17. Paragraph (a) of subsection (2) of section 162.12, Florida Statutes, is amended to read:

162.12 Notices.—

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may be served by publication or posting, as follows:

(a)1. Such notice shall be published for 4 consecutive weeks on the legal notice website as provided in s. 50.0311 or once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

Section 18. Paragraph (c) of subsection (3) of section 166.041, Florida Statutes, is amended to read:

166.041 Procedures for adoption of ordinances and resolutions.—

(3)

(c) Ordinances initiated by other than the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to paragraph (a). Ordinances that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances initiated by the municipality that change the actual zoning map designation of a parcel or parcels of land shall be



608062

enacted pursuant to the following procedure:

1. In cases in which the proposed ordinance changes the actual zoning map designation for a parcel or parcels of land involving less than 10 contiguous acres, the governing body shall direct the clerk of the governing body to notify by mail each real property owner whose land the municipality will redesignate by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least 30 days before ~~prior to~~ the date set for the public hearing, and a copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the governing body. The governing body shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.

2. In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the governing body shall provide for public notice and hearings as follows:

a. The local governing body shall hold two advertised public hearings on the proposed ordinance. At least one hearing shall be held after 5 p.m. on a weekday, unless the local governing body, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing



608062

shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days before ~~prior to~~ the public hearing.

b. If published in a newspaper, the required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper ~~of general paid circulation~~ in the municipality and of general interest and readership in the municipality, not one of limited subject matter, pursuant to chapter 50. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least weekly ~~5 days a week~~ unless the only newspaper in the municipality is published less than weekly ~~5 days a week~~. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The ...(name of local governmental unit)... proposes to adopt the following ordinance:...(title of the ordinance)....

A public hearing on the ordinance will be held on ...(date and time)... at ...(meeting place)....

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the



608062

advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the general area. ~~If In addition to being~~ published in the newspaper, the map must also be part of the online notice required pursuant to s. 50.0211 or s. 50.0311.

c. In lieu of publishing the advertisement set out in this paragraph, the municipality may mail a notice to each person owning real property within the area covered by the ordinance. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of any public hearing on the proposed ordinance.

Section 19. Subsection (1) of section 189.015, Florida Statutes, is amended to read:

189.015 Meetings; notice; required reports.—

(1) The governing body of each special district shall file quarterly, semiannually, or annually a schedule of its regular meetings with the local governing authority or authorities. The schedule shall include the date, time, and location of each scheduled meeting. The schedule shall be published quarterly, semiannually, or annually ~~in a newspaper of general paid circulation~~ in the manner required in this subsection. The governing body of an independent special district shall advertise the day, time, place, and purpose of any meeting other than a regular meeting or any recessed and reconvened meeting of the governing body, at least 7 days before such meeting as provided in chapter 50, ~~in a newspaper of general paid circulation in the county or counties in which the special district is located~~, unless a bona fide emergency situation



608062

exists, in which case a meeting to deal with the emergency may be held as necessary, with reasonable notice, so long as it is subsequently ratified by the governing body. No approval of the annual budget shall be granted at an emergency meeting. The notice shall be posted as provided in ~~advertisement shall be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the county is published fewer than 5 days a week. The newspaper selected must be one of general interest and readership in the community and not one of limited subject matter, pursuant to~~ chapter 50. Any other provision of law to the contrary notwithstanding, and except in the case of emergency meetings, water management districts may provide reasonable notice of public meetings held to evaluate responses to solicitations issued by the water management district, by publication as provided in chapter 50 on the legal notice website or in a newspaper ~~of general paid circulation~~ in the county where the principal office of the water management district is located, or in the county or counties where the public work will be performed, no less than 7 days before such meeting.

Section 20. Paragraph (d) of subsection (1) of section 190.005, Florida Statutes, is amended to read:

190.005 Establishment of district.—

(1) The exclusive and uniform method for the establishment of a community development district with a size of 2,500 acres or more shall be pursuant to a rule, adopted under chapter 120 by the Florida Land and Water Adjudicatory Commission, granting



608062

a petition for the establishment of a community development district.

(d) A local public hearing on the petition shall be conducted by a hearing officer in conformance with the applicable requirements and procedures of the Administrative Procedure Act. The hearing shall include oral and written comments on the petition pertinent to the factors specified in paragraph (e). The hearing shall be held at an accessible location in the county in which the community development district is to be located. The petitioner shall cause a notice of the hearing to be published for 4 successive weeks on the legal notice website established pursuant to s. 50.0311 or in a newspaper at least once a week for the 4 successive weeks immediately before ~~prior to~~ the hearing as provided in chapter 50. Such notice shall give the time and place for the hearing, a description of the area to be included in the district, which description shall include a map showing clearly the area to be covered by the district, and any other relevant information which the establishing governing bodies may require. If published in a newspaper, the advertisement may ~~shall~~ not be placed in the ~~that~~ portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper ~~of general paid circulation~~ in the county and of general interest and readership in the community, not one of limited subject matter, pursuant to chapter 50. Whenever possible, the advertisement shall appear in a newspaper that is published at least weekly ~~5 days a week~~, unless the only newspaper in the community is published less than weekly ~~fewer than 5 days a week~~. If ~~In addition to being~~ published in the



608062

newspaper, the map referenced above must also be part of the online advertisement required pursuant to s. 50.0211 or s. 50.0311. All affected units of general-purpose local government and the general public shall be given an opportunity to appear at the hearing and present oral or written comments on the petition.

Section 21. Paragraph (h) of subsection (1) of section 190.046, Florida Statutes, is amended to read:

190.046 Termination, contraction, or expansion of district.—

(1) A landowner or the board may petition to contract or expand the boundaries of a community development district in the following manner:

(h) For a petition to establish a new community development district of less than 2,500 acres on land located solely in one county or one municipality, sufficiently contiguous lands located within the county or municipality which the petitioner anticipates adding to the boundaries of the district within 10 years after the effective date of the ordinance establishing the district may also be identified. If such sufficiently contiguous land is identified, the petition must include a legal description of each additional parcel within the sufficiently contiguous land, the current owner of the parcel, the acreage of the parcel, and the current land use designation of the parcel. At least 14 days before the hearing required under s. 190.005(2)(b), the petitioner must give the current owner of each such parcel notice of filing the petition to establish the district, the date and time of the public hearing on the petition, and the name and address of the petitioner. A parcel



608062

may not be included in the district without the written consent of the owner of the parcel.

1. After establishment of the district, a person may petition the county or municipality to amend the boundaries of the district to include a previously identified parcel that was a proposed addition to the district before its establishment. A filing fee may not be charged for this petition. Each such petition must include:

a. A legal description by metes and bounds of the parcel to be added;

b. A new legal description by metes and bounds of the district;

c. Written consent of all owners of the parcel to be added;

d. A map of the district including the parcel to be added;

e. A description of the development proposed on the additional parcel; and

f. A copy of the original petition identifying the parcel to be added.

2. Before filing with the county or municipality, the person must provide the petition to the district and to the owner of the proposed additional parcel, if the owner is not the petitioner.

3. Once the petition is determined sufficient and complete, the county or municipality must process the addition of the parcel to the district as an amendment to the ordinance that establishes the district. The county or municipality may process all petitions to amend the ordinance for parcels identified in the original petition, even if, by adding such parcels, the district exceeds 2,500 acres.



608062

4. The petitioner shall cause to be published in a newspaper of general circulation in the proposed district a notice of the intent to amend the ordinance that establishes the district. The notice must be in addition to any notice required for adoption of the ordinance amendment. Such notice must be published as provided in chapter 50 at least 10 days before the scheduled hearing on the ordinance amendment ~~and may be published in the section of the newspaper reserved for legal notices~~. The notice must include a general description of the land to be added to the district and the date and time of the scheduled hearing to amend the ordinance. The petitioner shall deliver, including by mail or hand delivery, the notice of the hearing on the ordinance amendment to the owner of the parcel and to the district at least 14 days before the scheduled hearing.

5. The amendment of a district by the addition of a parcel pursuant to this paragraph does not alter the transition from landowner voting to qualified elector voting pursuant to s. 190.006, even if the total size of the district after the addition of the parcel exceeds 5,000 acres. Upon adoption of the ordinance expanding the district, the petitioner must cause to be recorded a notice of boundary amendment which reflects the new boundaries of the district.

6. This paragraph is intended to facilitate the orderly addition of lands to a district under certain circumstances and does not preclude the addition of lands to any district using the procedures in the other provisions of this section.

Section 22. Subsection (1) of section 194.037, Florida Statutes, is amended to read:



608062

194.037 Disclosure of tax impact.—

(1) After hearing all petitions, complaints, appeals, and disputes, the clerk shall make public notice of the findings and results of the board as provided in chapter 50. If published in a newspaper, the notice must be in at least a quarter-page size advertisement of a standard size or tabloid size newspaper, and the headline shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county. The newspaper selected shall be one of general interest and readership in the community, and not one of limited subject matter, pursuant to chapter 50. For all advertisements published pursuant to this section, the headline shall read: TAX IMPACT OF VALUE ADJUSTMENT BOARD. The public notice shall list the members of the value adjustment board and the taxing authorities to which they are elected. The form shall show, in columnar form, for each of the property classes listed under subsection (2), the following information, with appropriate column totals:

(a) In the first column, the number of parcels for which the board granted exemptions that had been denied or that had not been acted upon by the property appraiser.

(b) In the second column, the number of parcels for which petitions were filed concerning a property tax exemption.

(c) In the third column, the number of parcels for which the board considered the petition and reduced the assessment from that made by the property appraiser on the initial assessment roll.



608062

(d) In the fourth column, the number of parcels for which petitions were filed but not considered by the board because such petitions were withdrawn or settled before ~~prior to~~ the board's consideration.

(e) In the fifth column, the number of parcels for which petitions were filed requesting a change in assessed value, including requested changes in assessment classification.

(f) In the sixth column, the net change in taxable value from the assessor's initial roll which results from board decisions.

(g) In the seventh column, the net shift in taxes to parcels not granted relief by the board. The shift shall be computed as the amount shown in column 6 multiplied by the applicable millage rates adopted by the taxing authorities in hearings held pursuant to s. 200.065(2)(d) or adopted by vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution, but without adjustment as authorized pursuant to s. 200.065(6). If for any taxing authority the hearing has not been completed at the time the notice required herein is prepared, the millage rate used shall be that adopted in the hearing held pursuant to s. 200.065(2)(c).

Section 23. Subsection (1) of section 197.402, Florida Statutes, is amended to read:

197.402 Advertisement of real or personal property with delinquent taxes.—

(1) If advertisements are required, the board of county commissioners shall make such notice ~~select the newspaper~~ as provided in chapter 50. The tax collector shall pay all ~~newspaper~~ charges, and the proportionate cost of the



608062

advertisements shall be added to the delinquent taxes collected.

Section 24. Subsection (3) of section 200.065, Florida Statutes, is amended to read:

200.065 Method of fixing millage.—

(3) The advertisement shall be published as provided in chapter 50. If the advertisement is published in a newspaper, the advertisement must be no less than one-quarter page in size of a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county or in a geographically limited insert of such newspaper. The geographic boundaries in which such insert is circulated shall include the geographic boundaries of the taxing authority. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least weekly 5 days a week unless the only newspaper in the county is published less than weekly 5 days a week, or that the advertisement appear in a geographically limited insert of such newspaper which insert is published throughout the taxing authority's jurisdiction at least twice each week. It is further the legislative intent that the newspaper selected be one of general interest and readership in the community and not one of limited subject matter, pursuant to chapter 50.

(a) For taxing authorities other than school districts which have tentatively adopted a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection



(1), the advertisement shall be in the following form:

NOTICE OF PROPOSED TAX INCREASE

The ...(name of the taxing authority)... has tentatively adopted a measure to increase its property tax levy.

Last year's property tax levy:

A. Initially proposed tax levy.....\$XX,XXX,XXX

B. Less tax reductions due to Value Adjustment Board and other assessment changes..... (\$XX,XXX,XXX)

C. Actual property tax levy.....\$XX,XXX,XXX

This year's proposed tax levy.....\$XX,XXX,XXX

All concerned citizens are invited to attend a public hearing on the tax increase to be held on ...(date and time)... at ...(meeting place)....

A FINAL DECISION on the proposed tax increase and the budget will be made at this hearing.

(b) In all instances in which the provisions of paragraph (a) are inapplicable for taxing authorities other than school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING

The ...(name of taxing authority)... has tentatively adopted a budget for ...(fiscal year).... A public hearing to make a FINAL DECISION on the budget AND TAXES will be held on ...(date and time)... at ...(meeting place)....



(c) For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1) and which propose to levy nonvoted millage in excess of the minimum amount required pursuant to s. 1011.60(6), the advertisement shall be in the following form:

NOTICE OF PROPOSED TAX INCREASE

The ...(name of school district)... will soon consider a measure to increase its property tax levy.

Last year's property tax levy:

A. Initially proposed tax levy.....\$XX,XXX,XXX

B. Less tax reductions due to Value Adjustment Board and other assessment changes.....(\$XX,XXX,XXX)

C. Actual property tax levy.....\$XX,XXX,XXX

This year's proposed tax levy.....\$XX,XXX,XXX

A portion of the tax levy is required under state law in order for the school board to receive \$...(amount A)... in state education grants. The required portion has ...(increased or decreased)... by ...(amount B)... percent and represents approximately ...(amount C)... of the total proposed taxes.

The remainder of the taxes is proposed solely at the discretion of the school board.

All concerned citizens are invited to a public hearing on the tax increase to be held on ...(date and time)... at ...(meeting place)....

A DECISION on the proposed tax increase and the budget will be made at this hearing.

1. AMOUNT A shall be an estimate, provided by the



608062

Department of Education, of the amount to be received in the current fiscal year by the district from state appropriations for the Florida Education Finance Program.

2. AMOUNT B shall be the percent increase over the rolled-back rate necessary to levy only the required local effort in the current fiscal year, computed as though in the preceding fiscal year only the required local effort was levied.

3. AMOUNT C shall be the quotient of required local-effort millage divided by the total proposed nonvoted millage, rounded to the nearest tenth and stated in words; however, the stated amount shall not exceed nine-tenths.

(d) For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1) and which propose to levy as nonvoted millage only the minimum amount required pursuant to s. 1011.60(6), the advertisement shall be the same as provided in paragraph (c), except that the second and third paragraphs shall be replaced with the following paragraph:

This increase is required under state law in order for the school board to receive \$...(amount A)... in state education grants.

(e) In all instances in which the provisions of paragraphs (c) and (d) are inapplicable for school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING



608062

The ...(name of school district)... will soon consider a budget for ...(fiscal year).... A public hearing to make a DECISION on the budget AND TAXES will be held on ...(date and time)... at ...(meeting place)....

(f) In lieu of publishing the notice set out in this subsection, the taxing authority may mail a copy of the notice to each elector residing within the jurisdiction of the taxing authority.

(g) In the event that the mailing of the notice of proposed property taxes is delayed beyond September 3 in a county, any multicounty taxing authority which levies ad valorem taxes within that county shall advertise its intention to adopt a tentative budget and millage rate in a newspaper of paid general circulation within that county, as provided in this subsection, and shall hold the hearing required pursuant to paragraph (2)(c) not less than 2 days or more than 5 days thereafter, and not later than September 18. The advertisement shall be in the following form, unless the proposed millage rate is less than or equal to the rolled-back rate, computed pursuant to subsection (1), in which case the advertisement shall be as provided in paragraph (e):

NOTICE OF TAX INCREASE

The ...(name of the taxing authority)... proposes to increase its property tax levy by ...(percentage of increase over rolled-back rate)... percent.



608062

All concerned citizens are invited to attend a public hearing on the proposed tax increase to be held on ...(date and time)... at ...(meeting place)....

(h) In no event shall any taxing authority add to or delete from the language of the advertisements as specified herein unless expressly authorized by law, except that, if an increase in ad valorem tax rates will affect only a portion of the jurisdiction of a taxing authority, advertisements may include a map or geographical description of the area to be affected and the proposed use of the tax revenues under consideration. In addition, if published in the newspaper, the map must be part of the online advertisement required by s. 50.0211 or s. 50.0311. The advertisements required herein shall not be accompanied, preceded, or followed by other advertising or notices which conflict with or modify the substantive content prescribed herein.

(i) The advertisements required pursuant to paragraphs (b) and (e) need not be one-quarter page in size or have a headline in type no smaller than 18 point.

(j) The amounts to be published as percentages of increase over the rolled-back rate pursuant to this subsection shall be based on aggregate millage rates and shall exclude voted millage levies unless expressly provided otherwise in this subsection.

(k) Any taxing authority which will levy an ad valorem tax for an upcoming budget year but does not levy an ad valorem tax currently shall, in the advertisement specified in paragraph (a), paragraph (c), paragraph (d), or paragraph (g), replace the phrase "increase its property tax levy by ...(percentage of



608062

increase over rolled-back rate)... percent" with the phrase
"impose a new property tax levy of \$...(amount)... per \$1,000
value."

(1) Any advertisement required pursuant to this section
shall be accompanied by an adjacent notice meeting the budget
summary requirements of s. 129.03(3)(b). Except for those taxing
authorities proposing to levy ad valorem taxes for the first
time, the following statement shall appear in the budget summary
in boldfaced type immediately following the heading, if the
applicable percentage is greater than zero:

THE PROPOSED OPERATING BUDGET EXPENDITURES OF ...(name of
taxing authority)... ARE ...(percent rounded to one decimal
place)... MORE THAN LAST YEAR'S TOTAL OPERATING EXPENDITURES.

For purposes of this paragraph, "proposed operating budget
expenditures" or "operating expenditures" means all moneys of
the local government, including dependent special districts,
that:

1. Were or could be expended during the applicable fiscal
year, or

2. Were or could be retained as a balance for future
spending in the fiscal year.

Provided, however, those moneys held in or used in trust,
agency, or internal service funds, and expenditures of bond
proceeds for capital outlay or for advanced refunded debt
principal, shall be excluded.

Section 25. Paragraph (c) of subsection (1) of section



608062

338.223, Florida Statutes, is amended to read:

338.223 Proposed turnpike projects.—

(1)

(c) Before ~~Prior to~~ requesting legislative approval of a proposed turnpike project, the environmental feasibility of the proposed project shall be reviewed by the Department of Environmental Protection. The department shall submit its Project Development and Environmental Report to the Department of Environmental Protection, along with a draft copy of a public notice. Within 14 days of receipt of the draft public notice, the Department of Environmental Protection shall return the draft public notice to the Department of Transportation with an approval of the language or modifications to the language. Upon receipt of the approved or modified draft, or if no comments are provided within 14 days, the Department of Transportation shall publish the notice as provided in chapter 50 ~~in a newspaper~~ to provide a 30-day public comment period. If published in a newspaper, the headline of the required notice shall be in a type no smaller than 18 point. The notice shall be placed in that portion of the newspaper where legal notices appear and. ~~The notice~~ shall be published in a newspaper of general circulation in the county or counties of general interest and readership in the community as provided in s. 50.031, not one of limited subject matter. Whenever possible, the notice shall appear in a newspaper that is published at least weekly ~~5 days a week~~. All The notices ~~notice~~ published pursuant to this section shall include, at a minimum ~~but is not limited to~~, the following information:

1. The purpose of the notice is to provide for a 30-day



608062

period for written public comments on the environmental impacts of a proposed turnpike project.

2. The name and description of the project, along with a geographic location map clearly indicating the area where the proposed project will be located.

3. The address where such comments must be sent and the date such comments are due.

After a review of the department's report and any public comments, the Department of Environmental Protection shall submit a statement of environmental feasibility to the department within 30 days after the date on which public comments are due. The notice and the statement of environmental feasibility shall not give rise to any rights to a hearing or other rights or remedies provided pursuant to chapter 120 or chapter 403, and shall not bind the Department of Environmental Protection in any subsequent environmental permit review.

Section 26. Subsection (3) of section 348.0308, Florida Statutes, is amended to read:

348.0308 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(3) The agency may request proposals for public-private transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative



608062

Register and as provided in chapter 50 ~~a newspaper of general circulation in the county in which it is located at least once a week~~ for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has expired, the agency shall rank the proposals in order of preference. In ranking the proposals, the agency shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the agency is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the agency may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the agency may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The agency may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 27. Subsection (3) of section 348.635, Florida Statutes, is amended to read:

348.635 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate



608062

the construction of additional safe, convenient, and economical transportation facilities.

(3) The authority may request proposals for public-private transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register as provided in chapter 50 ~~and a newspaper of general circulation in the county in which it is located at least once a week~~ for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has expired, the authority shall rank the proposals in order of preference. In ranking the proposals, the authority shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the authority is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the authority may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the authority may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The authority may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 28. Subsection (3) of section 348.7605, Florida Statutes, is amended to read:



608062

348.7605 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(3) The authority may request proposals for public-private transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register and as provided in chapter 50 ~~a newspaper of general circulation in the county in which it is located at least once a week~~ for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has expired, the authority shall rank the proposals in order of preference. In ranking the proposals, the authority shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the authority is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the authority may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the authority may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations



608062

with the proposer. The authority may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 29. Section 373.0397, Florida Statutes, is amended to read:

373.0397 Floridan and Biscayne aquifers; designation of prime groundwater recharge areas.—Upon preparation of an inventory of prime groundwater recharge areas for the Floridan or Biscayne aquifers, but before ~~prior to~~ adoption by the governing board, the water management district shall publish a legal notice of public hearing on the designated areas for the Floridan and Biscayne aquifers, with a map delineating the boundaries of the areas, as provided ~~in newspapers defined in~~ chapter 50 in each county ~~as having general circulation~~ within the area to be affected. The notice shall be at least one-fourth page and shall read as follows:

NOTICE OF PRIME RECHARGE
AREA DESIGNATION

The ...(name of taxing authority)... proposes to designate specific land areas as areas of prime recharge to the ...(name of aquifer)... Aquifer.

All concerned citizens are invited to attend a public hearing on the proposed designation to be held on ...(date and time)... at ...(meeting place)....

A map of the affected areas follows.

The governing board of the water management district shall adopt



608062

a designation of prime groundwater recharge areas to the Floridan and Biscayne aquifers by rule within 120 days after the public hearing, subject to the provisions of chapter 120.

Section 30. Section 373.146, Florida Statutes, is amended to read:

373.146 Publication of notices, process, and papers.—

(1) Whenever in this chapter the publication of any notice, process, or paper is required or provided for, unless otherwise provided by law, the publication thereof ~~in some newspaper or newspapers~~ as provided ~~defined~~ in chapter 50 in each county ~~having general circulation~~ within the area to be affected shall be taken and considered as being sufficient.

(2) Notwithstanding any other provision of law to the contrary, and except in the case of emergency meetings, water management districts may provide reasonable notice of public meetings held to evaluate responses to solicitations issued by the water management district, by publication as provided in chapter 50 ~~in a newspaper of general paid circulation~~ in the county where the principal office of the water management district is located, or in the county or counties where the public work will be performed, no less than 7 days before such meeting.

Section 31. Subsection (12) of section 403.722, Florida Statutes, is amended to read:

403.722 Permits; hazardous waste disposal, storage, and treatment facilities.—

(12) On the same day of filing with the department of an application for a permit for the construction modification, or operation of a hazardous waste facility, the applicant shall



608062

notify each city and county within 1 mile of the facility of the filing of the application and shall publish notice of the filing of the application. The applicant shall publish a second notice of the filing within 14 days after the date of filing. Each notice shall be published ~~in a newspaper of general circulation~~ in the county in which the facility is located or is proposed to be located as provided in chapter 50. ~~Notwithstanding the provisions of chapter 50, for purposes of this section, a "newspaper of general circulation" shall be the newspaper within the county in which the installation or facility is proposed which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notice shall appear in both the newspaper with the largest daily circulation in that county, and a newspaper authorized to publish legal notices in that county. The notice shall contain:~~

(a) The name of the applicant and a brief description of the project and its location.

(b) The location of the application file and when it is available for public inspection.

The notice shall be prepared by the applicant and shall comply with the following format:

Notice of Application

The Department of Environmental Protection announces receipt of an application for a permit from ...(name of applicant)... to ...(brief description of project).... This proposed project will



608062

be located at ...(location)... in ...(county)... ...(city)....

This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at ...(name and address of office)....

Section 32. Paragraph (b) of subsection (3) of section 712.06, Florida Statutes, is amended to read:

712.06 Contents of notice; recording and indexing.—

(3) The person providing the notice referred to in s. 712.05, other than a notice for preservation of a community covenant or restriction, shall:

(b) Publish the notice referred to in s. 712.05 for 2 consecutive weeks on the legal notice website as provided in s. 50.0311, or once a week, for 2 consecutive weeks in a newspaper as defined in chapter 50, the notice referred to in s. 712.05, with the official record book and page number in which such notice was recorded, ~~in a newspaper as defined in chapter 50~~ in the county in which the property is located.

Section 33. Subsection (5) of section 849.38, Florida Statutes, is amended to read:

849.38 Proceedings for forfeiture; notice of seizure and order to show cause.—

(5) If the value of the property seized is shown by the sheriff's return to have an appraised value of \$1,000 or less, the above citation shall be served by posting at three public places in the county, one of which shall be the front door of the courthouse; if the value of the property is shown by the sheriff's return to have an approximate value of more than



608062

\$1,000, the citation shall be published for at least 2
consecutive weeks on the legal notice website as provided in s.
50.0311 or at least once each week for 2 consecutive weeks in
some newspaper of general publication published in the county,
if there be such a newspaper published in the county and if not,
then said notice of such publication shall be made by
certificate of the clerk if publication is made by posting, and
by affidavit as provided in chapter 50, if made by publication
as provided in chapter 50 ~~in a newspaper~~, which affidavit or
certificate shall be filed and become a part of the record in
the cause. Failure of the record to show proof of such
publication shall not affect any judgment made in the cause
unless it shall affirmatively appear that no such publication
was made.

Section 34. Paragraph (a) of subsection (3) of section
865.09, Florida Statutes, is amended to read:

865.09 Fictitious name registration.—

(3) REGISTRATION.—

(a) A person may not engage in business under a fictitious
name unless the person first registers the name with the
division by filing a registration listing:

1. The name to be registered.
2. The mailing address of the business.
3. The name and address of each registrant.
4. If the registrant is a business entity that was required
to file incorporation or similar documents with its state of
organization when it was organized, such entity must be
registered with the division and in active status with the
division; provide its Florida document registration number; and



608062

provide its federal employer identification number if the entity has such a number.

5. Certification by at least one registrant that the intention to register such fictitious name has been advertised as provided at least once in a newspaper as defined in chapter 50 in the county in which the principal place of business of the registrant is or will be located.

6. Any other information the division may reasonably deem necessary to adequately inform other governmental agencies and the public as to the registrant so conducting business.

Section 35. Paragraph (a) of subsection (6) of section 932.704, Florida Statutes, is amended to read:

932.704 Forfeiture proceedings.—

(6) (a) If the property is required by law to be titled or registered, or if the owner of the property is known in fact to the seizing agency, or if the seized property is subject to a perfected security interest in accordance with the Uniform Commercial Code, chapter 679, the attorney for the seizing agency shall serve the forfeiture complaint as an original service of process under the Florida Rules of Civil Procedure and other applicable law to each person having an ownership or security interest in the property. The seizing agency shall also publish, in accordance with chapter 50, notice of the forfeiture complaint for 2 consecutive weeks on the legal notice website as provided in s. 50.0311 or once each week for 2 consecutive weeks in a newspaper of general circulation, ~~as defined in s. 165.031,~~ in the county where the seizure occurred.

Section 36. This act shall take effect July 1, 2022.



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===== 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 legal notices; creating s. 28.46,
F.S.; requiring the Florida Association of Court
Clerks and Comptrollers, Inc., to establish and
maintain an Internet database regarding financial
obligations owed by felons; specifying requirements
for the database; amending s. 50.011, F.S.; providing
for the publication of legal notices on a legal notice
database website established by the association;
amending ss. 50.021, 50.0211, and 50.031, F.S.;
conforming provisions to changes made by the act;
creating s. 50.0311, F.S.; defining terms; authorizing
certain legal notices and advertisements to be
published on the legal notice database website
established by the association, in lieu of newspaper
publication; providing that such legal notifications
be posted to the website following payment of a fee;
providing limitations for, and for the adjustment of,
such fees; specifying what constitutes adequate notice
for any notice or advertisement posted on the website;
providing requirements and limitations regarding the
operation of the website; providing that certain
revenue be used toward the association's felon
financial obligations website; providing for the
deposit of any remaining excess revenue into specified



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1548 trust funds; specifying that a certain portion of
1549 remaining excess revenue may be pledged toward
1550 operating costs of the legal notice website; amending
1551 s. 50.041, F.S.; removing provisions relating to the
1552 publication of legal notices in newspapers; amending
1553 s. 50.051, F.S.; revising a form for affidavits of
1554 publication; amending s. 50.0711, F.S.; revising
1555 provisions relating to the use of court docket funds;
1556 amending s. 83.806, F.S.; providing that an
1557 advertisement of a sale or disposition of property may
1558 be published on the legal notice website for a
1559 specified time period; amending s. 775.089, F.S.;
1560 revising provisions governing the collection and
1561 disbursement of restitution payments; requiring the
1562 Department of Collections to report certain
1563 restitution data to the association for display on the
1564 felon financial obligations website; amending ss.
1565 11.02, 45.031, 121.0511, 121.055, 125.66, 162.12,
1566 166.041, 189.015, 190.005, 190.046, 194.037, 197.402,
1567 200.065, 338.223, 348.0308, 348.635, 348.7605,
1568 373.0397, 373.146, 403.722, 712.06, 849.38, 865.09,
1569 and 932.704, F.S.; conforming provisions to changes
1570 made by the act; providing an effective date.

By Senator Rodrigues

27-00581-21

2021402__

A bill to be entitled

An act relating to the Public Notice and Voting Rights Restoration Database; authorizing legal notifications in certain cases to be published on a website established by the Supreme Court, in lieu of newspaper publication; providing that such legal notifications be posted to the website following payment of a fee; providing limitations for, and for the adjustment of, such fees; specifying that website publication constitutes proof of publication, unless otherwise determined by a court; authorizing a county to publish such legal notifications in a newspaper, subject to certain limitations; providing requirements and limitations regarding the operation of the website; providing that certain revenue be used toward certain data collection regarding nonviolent felons and the publication of such data on a website; providing requirements and limitations regarding the operation of the website containing such data; providing for the deposit of any remaining excess revenue into the State Courts Revenue Trust Fund; specifying that a certain portion of remaining excess revenue may be pledged toward operating costs of the website containing legal notifications; providing an effective date.

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

Section 1. Public Notice and Voting Rights Restoration Database.—

27-00581-21

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(1) Notwithstanding any other law, in any civil or criminal case in which a legal notification must be made by publication in a newspaper, the notification may be published on a website established by the Supreme Court in lieu of newspaper publication. The notification must be posted to the website following the payment of a fee established by the Supreme Court. The fee charged may vary based on the number of words contained in the notification but may not exceed \$500 per notification. The maximum fee may be adjusted by the Supreme Court, upon approval by the Legislative Budget Commission. Actual access by the court of a notification on the Internet constitutes proof of publication for all purposes, unless the court with jurisdiction over the particular matter determines that access to the website was not sufficiently available during the notice period to constitute sufficient notice. A county may publish the legal notification in at least one newspaper of general circulation in such county in lieu of website publication; however, the fee charged by the newspaper for publication may not exceed the website publication fee established by the Supreme Court.

(2) The website established pursuant to subsection (1) must be operated by the Supreme Court, by the Office of the State Courts Administrator, or by a contractor selected by the court. The website operating costs may not exceed 15 percent of revenue from fees for legal notifications published on the website. The Office of the State Courts Administrator must publicize the existence of the website and its web address on at least a monthly basis through publishing a notice in at least one newspaper of general circulation in each county of the state, directing each county to post a clear written notice at the

27-00581-21

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59 entrance of each county courthouse and each annex containing
60 court facilities, and directing each clerk of court and judicial
61 circuit to include a notice on their official website.

62 (3) All revenue from fees collected pursuant to subsection
63 (1) which is in excess of the operating costs for the legal
64 notification website must be used toward aggregating and
65 publishing data regarding restitution, fines and fees owed by
66 nonviolent felons to victims and the judicial branch, and the
67 operation of a website that displays such data. Such website
68 must be operated by the Supreme Court, by the Office of the
69 State Courts Administrator, or by a contractor selected by the
70 court; however, the operating costs of the website may not
71 exceed 50 percent of excess revenue remaining after any
72 deductions made pursuant to subsection (2).

73 (4) Any excess revenue remaining after deducting operating
74 costs for the website established in subsection (3) shall be
75 deposited into the State Courts Revenue Trust Fund. Fifteen
76 percent of such excess revenue from fees collected in any fiscal
77 year may be pledged for the operation of the website established
78 in subsection (1).

79 Section 2. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Committee on Public Counsel Oversight

SENATOR RAY WESLEY RODRIGUES
27th District

January 13, 2021

The Honorable Jeff Brandes
Senate Judiciary, Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 402 - Public Notice and Voting Rights Restoration Database

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to place SB 402, relating to the Public Notice and Voting Rights Restoration Database, on the next committee agenda.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Ray Rodrigues".

Ray Rodrigues
Senate District 27

Cc: Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant

REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 686

INTRODUCER: Judiciary Committee and Senator Brandes

SUBJECT: Offers of Judgment

DATE: February 17, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 686 revises and expands the statute that governs settlement offers in civil litigation. These offers of judgment and demands for judgment encourage settlements by providing a mechanism to shift significant attorney fees and costs to a party who does not accept an offer that will ultimately be assessed as a reasonable settlement offer.

The bill creates an additional settlement mechanism in statute. The bill permits a party to make an offer of judgment that compensates someone solely for their harm or loss. It does not include an offer to compensate for the more complicated and often contentious issues of awarding attorney fees and costs.

The bill permits an offer of judgment that is served on joint owners of real property who are insureds to require that both insureds either accept or reject the offer.

Finally, the bill requires a party served with a settlement offer to notify the party making the offer, within 30 days, of any grounds for challenging the validity of the offer. The bill specifies what must be contained in the notice. The right to challenge the validity of the offer is waived if not objected to in the proper timeframe.

The bill takes effect July 1, 2021.

II. Present Situation:

Offers of Judgment

Background

In 1986, the Legislature adopted an “offer of judgment and demand for judgment” statute to serve as a tool to encourage civil litigation settlements.¹ At common law, each party to a lawsuit was generally required to pay its own attorney fees, but this statute is a partial repeal of that principle.² The statute creates the potential to shift the expense of costs and attorney fees to the opposing party in a lawsuit. In general terms, if a specially designated settlement offer is made and rejected and the damages awarded are less favorable by 25 percent of the offer, the offer to settle becomes the tool that shifts the burden of paying costs and attorney fees to the rejecting party.³ This applies pressure and creates significant risks for an opposing party.⁴

Purpose

Several appellate courts have offered explanations for the purposes of the offer-of-judgment statute. One court noted that the purpose of the statute was to encourage the settlement of lawsuits.⁵ Another court stated that the purpose was to reduce litigation costs, not create more.⁶ Yet another reasoned that the purpose of the statute was to deter parties from rejecting reasonable settlement offers by permitting the imposition of sanctions in the form of costs and attorney fees.⁷

An Offer of Judgment and a Demand for Judgment

A Defendant’s Offer of Judgment

In a civil action for damages, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant is entitled to recover reasonable costs and attorney fees incurred by her or him or on the defendant’s behalf⁸ from the date of filing the offer, if the judgment is:

- One of no liability; or
- The judgment obtained by the plaintiff is at least 25 percent less than the offer.

The court must set off the costs and attorney fees against the award. If the costs and attorney fees total more than the judgment, the court must enter judgment for the defendant against the plaintiff for the amount of the costs and fees, less the amount of the plaintiff’s award.⁹

¹ Chapter 86-160, s. 58, Laws of Fla.

² *Anderson v. Hilton Hotels Corp.*, 202 So. 3d 846, 852 (Fla. 2016).

³ See also Fla.R.Civ.P. Rule 1.442, the Proposal for Settlement rule which applies to all proposals for settlement authorized by Florida law.

⁴ Ellen Koehler Lyons, Carlton Fields Law Firm, *Understanding Proposals for Settlement* (2006)

<https://www.carltonfields.com/files/Publication/C93C8D17-3532-4F25-A1FB-65366405D522/Presentation/PublicationAttachment/E2F69B42-8754-42A7-B087-2E37794E4818/Understanding%20Offers%20of%20Judgment.pdf>.

⁵ *Wilcox v. Neville*, 283 So. 3d 878, 881 (Fla. 1st DCA 2019).

⁶ *Diecidue v. Lewis*, 223 So. 3d 1015, 1019 (Fla. 2d DCA 2017).

⁷ *Diamond Aircraft Industries, Inc. v. Horowitch*, 107 So. 3d 362, 372 (Fla. 2013).

⁸ This is premised on the assumption that there is a policy of liability insurance or some other contract.

⁹ Section 768.79(1), F.S.

A Plaintiff's Demand for Judgment

If a plaintiff files a demand for judgment that is rejected by the defendant within 30 days and the plaintiff recovers a judgment in an amount at least 25 percent greater than the offer, the plaintiff is entitled to recover reasonable costs and attorney fees incurred from the date of the filing of the demand.¹⁰

Rejected Offers

If either an offer of judgment or a demand for judgment is rejected, neither is admissible in future litigation, except for the purpose of pursuing penalties set forth in the statute.¹¹ If an offer is not accepted, that does not preclude a party from making a subsequent offer.¹² If an offer is not accepted, the date that the offer is served on the offeree is the date upon which the fees that may be shifted start accruing.

Contents of an Offer

An offer must:

- Be in writing and state that it is being made pursuant to s. 768.79, F.S.
- Name the party making the offer and name the party to whom the offer is made.
- State the particular amount that is being offered to settle a claim for punitive damages, if any.
- State the total amount of the offer.¹³

The offer must be construed as including all damages which may be awarded in a final judgment.¹⁴ The offer must be served upon the party to whom it is made, but the offer may not be filed unless it is accepted or if it is necessary to file the offer to enforce an accepted offer or to determine the imposition of sanctions.^{15,16}

Acceptance of an Offer

An offer is accepted by filing a written acceptance with the court within 30 days after the offer is served.¹⁷

Enforcement by the Court

After a judgment or after a voluntary or involuntary dismissal is entered, the offeror has 30 days to file a motion with the court to enforce the terms of the offer. As mentioned above, if a defendant's offer is not accepted and the plaintiff's judgment is at least 25 percent less than the amount of the offer, the defendant will be awarded reasonable costs, which include investigative expenses, and attorney fees calculated in accordance with Supreme Court guidelines. These costs, fees, and expenses are calculated from the date the offer was served.¹⁸

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 768.79(2), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 768.79(3), F.S.

¹⁶ Section 768.79(8), F.S.

¹⁷ Section 768.79(4), F.S.

¹⁸ Section 768.29(6)(a), F.S.

Similarly, if a plaintiff's offer is not accepted and the plaintiff's judgment is at least 25 percent more than the amount of the offer, the plaintiff will be awarded reasonable costs, including investigative expenses, and attorney fees calculated from the date the offer was served.¹⁹

The term "judgment obtained" is defined slightly differently depending on whether the defendant or the plaintiff made the offer. For purposes of calculating a defendant's offer, it means the amount of the net judgment entered, plus any postoffer collateral source payments received or due as of the date of the judgment, plus any postoffer settlement amounts that reduced the verdict. If the plaintiff made the offer that was not accepted, the judgment obtained means the amount of the net judgment entered, plus any postoffer settlement amounts that were used to reduce the verdict.²⁰

If a court determines that a party, entitled to costs and fees, did not make the offer to settle in good faith, the court may disallow the award of costs and attorney fees.²¹

Interpretations of the Phrase "Judgment Obtained"

The phrase "judgment obtained" occurs several times in s. 768.69, F.S., and has been the subject of much conjecture and controversy. The judgment obtained is the financial amount a court uses as the benchmark to determine whether a party has met the settlement amount stated in an offer of judgment which entitles a party to receive costs and attorney fees. What constitutes the components of a judgment obtained is not clear. The statute and case law do not appear to be in agreement.

Statute Definition

As discussed above, the term "judgment obtained" is defined slightly differently for a defendant's offer of judgment and a plaintiff's demand for judgment. When a defendant serves an offer on a plaintiff, and the offer is rejected, a judgment obtained includes:

- The amount of the net judgment entered;
- Plus any postoffer collateral source payments received or due as of the date of the judgment;
- Plus any postoffer settlement amounts²² by which the verdict was reduced.²³

When a plaintiff serves a proposal for settlement on a defendant and the offer is rejected, a judgment obtained includes:

- The amount of the net judgment entered;
- Plus any postoffer settlement amounts by which the verdict was reduced.²⁴

¹⁹ Section 768.79(6)(b), F.S.

²⁰ Section 768.79(6), F.S.

²¹ Section 768.79(7)(a), F.S.

²² Postoffer settlement is not defined in statute. However, the First District Court of Appeal recently determined that a postoffer settlement is a "settlement reached any time after the service of the offer." *Wilcox v. Neville*, 283 So. 3d 878, 882 (Fla. 1st DCA 2019).

²³ Section 768.79(6), F.S.

²⁴ *Id.*

Florida Supreme Court Definition

In contrast to the statutory language, the Florida Supreme Court has interpreted the phrase “judgment obtained” much more broadly. In *White v. Steak and Ale of Florida, Inc.*, the Court held that a judgment obtained is not limited solely to the amount of the judgment for damages. Two district courts of appeal had earlier determined that the phrase was limited to the amount of the judgment for damages awarded by the jury. Two other district courts of appeal disagreed and determined that a judgment obtained included taxable costs incurred up until the time of the offer for purposes of determining the entitlement to attorney fees and costs. The Court held that the judgment obtained means the net judgment for damages plus any attorney fees and taxable costs that could have been included in a final judgment if the final judgment had been entered on the date of the offer.²⁵ The terms supplied by the Court, however, do not appear in the statute’s definition.

The Florida Supreme Court has accepted review of the case, *CCM Condominium Association, Inc., v. Petri Positive Pest Control, Inc.*, which asks the Court to resolve the issue of how prejudgment interest is to be calculated in an offer of judgment. Oral argument was held in October, 2020, but a decision has not been rendered.²⁶ In the lower court decision, the Fourth District Court of Appeal noted, “Nevertheless, we are troubled by how far the formula created in *White* strays from what we believe is the plain meaning of the statute.”²⁷

Current Practice of Making Settlement Offers for Damages Only

Because litigators recognize the complexity that calculating attorney fees and costs present when making proposals for settlement, some have chosen to offer proposals for damages only. It is understood that attorney fees and costs will be resolved at a later time. While some practitioners might read the current statute and believe that offers for damages only are not prohibited, others might conclude that the statute is silent as to whether someone can offer a proposal for damages only, and choose not to participate in that type of offer.

A practical example would be a defendant who serves a proposal for settlement for \$50,000. The proposal is rejected and the plaintiff recovers \$10,000 at trial. The defendant’s position is that the plaintiff did not meet the 75 percent threshold of recovering \$37,500; therefore, the defendant is entitled to recover its costs and attorney fees incurred from the date of the offer, pursuant to the language of the statute. The plaintiff then counter-argues that, in order to arrive at the correct figure to determine whether the plaintiff met the 75 percent threshold, you must add the plaintiff’s fees and costs in to make a correct comparison. Because attorney fees and costs often far eclipse the damages judgment, the plaintiff’s fees and costs generally exceed the amount needed to reach the \$37,500 threshold. Therefore, the proposal for settlement is not enforced. Using this rationale, it may be difficult to recover attorney fees and costs because they are added in to the damages, thereby substantially raising the threshold that must be met.

²⁵ *White v. Steak and Ale of Florida, Inc.*, 816 So. 2d 546 (Fla. 2002).

²⁶ *CCM Condominium Association, Inc., v. Petri Positive Pest Control, Inc.*, 271 So. 3d 1001 (Fla. 4th DCA 2019) review granted, SC 19-861, 2019 WL 5704171 (Fla., Nov. 5, 2019).

²⁷ *Petri Positive Pest Control, Inc. v. CCM Condominium Association, Inc.*, 271 So. 3d 1001, 1006 (Fla. 4th DCA 2019).

Enforcing Offers with “Ambiguities”

It appears from a review of appellate cases that enforcing proposals for settlement can be problematic. The party who does not prevail and is looking at the possibility of paying costs and attorney fees often argues that the proposal contained ambiguities and is not enforceable. In an effort to bring clarity to this argument, the Florida Supreme Court has noted that a proposal must be sufficiently clear and free from ambiguities so that the recipient has an opportunity to fully consider the proposal. The Court expounded on this concept and said that it has not required that every ambiguity be eliminated, only the reasonable ambiguities. The Court stated

We recognize that, given the nature of language, it may be impossible to eliminate all ambiguity. The rule does not demand the impossible. It merely requires that the settlement proposal be sufficiently clear and definite to allow the offeree to make an informed decision without needing clarification. If ambiguity within the proposal could reasonably affect the offeree’s decision, the proposal will not satisfy the particularity requirement [of Rule 1.442(c)(2)(C)-(D)]²⁸

The Court concluded by noting that courts are discouraged from “nitpicking” settlement proposals in search of an ambiguity.²⁹

Offers to Joint Property Owners

The Florida Supreme Court rendered a decision in 2010 that addressed the imposition of attorney fees pursuant to a joint offer of settlement involving joint property owners. The issue before the Court was whether a joint offer or proposal for settlement that is conditioned on the mutual acceptance of all joint offerees is valid and enforceable. The Court determined that the joint offer was “invalid and unenforceable because it is conditioned such that neither offeree can independently evaluate or settle his or her respective claim by accepting the proposal.”³⁰

III. Effect of Proposed Changes:***“Exclusive” Offer of Judgment***

The bill creates a new tool to encourage settlements. The additional offer of judgment limits the financial scope of what may be included in an offer of judgment or a demand for judgment. The offer includes all “damages” that may be awarded in a final judgment. However, the provision specifically excludes any amount that may be awarded for attorney fees or costs, which are currently permitted. By removing the often contentious issues of what constitutes valid attorney fees and reasonable costs, the underlying claim for damages should be easier to reconcile. The bill also removes any doubt as to whether proposals for damages only are authorized by statute.

The bill specifies that a party who serves an offer of judgment for damages only is not required to specify an amount being offered for attorney fees and costs. In essence, when a party serves this offer of judgment, he or she is saying that the offer is only being made for a specific damage

²⁸ *Anderson v. Hilton Hotels Corp.*, 202 So. 3d 846, 853 (Fla. 2016).

²⁹ *Id.*

³⁰ *Attorneys’ Title Insurance Fund, Inc. v. Gorka*, 36 So. 3d 646, 647 (Fla. 2010).

amount and *does not* include the additional costs and attorney fees that are currently included in an offer. In theory, the process will be bifurcated. The attorneys will apparently resolve the amount of fees and costs due among themselves or hold a hearing before the court at some later time to resolve what constitutes reasonable costs and attorney fees.

An Offer for People Who Jointly Own Property

If an action involves damages to real property that is jointly owned by two individuals who are insured, an offer of judgment which is served on both insureds may require that both insured people either accept or reject the offer. In other words, one person cannot accept the offer and the other person reject the offer.

Details for Challenging the Validity of an Offer

Under current law, an offer is accepted by filing a written acceptance with the court within 30 days after service of the offer. For an offer to be withdrawn, it must be in writing and served before the date a written acceptance is filed. Once an offer is withdrawn, the offer is void.³¹ However, when an offer and acceptance are filed, a court has full jurisdiction to enforce the settlement agreement.³²

The bill provides a mechanism and a time frame for challenging the validity of an offer. Within 30 days after an offer of judgment is served, the offeree must notify the offeror of any grounds for challenging the validity of the offer. The basis for challenging the validity of the offer must be in writing and stated with enough specificity to enable the offeror to reevaluate the offer and make corrections if corrections are warranted. If the recipient of the offer fails to timely notify the offeror in writing of the grounds for challenging the validity of the offer, the offeree waives the right to later object to the validity of the offer. By placing this mechanism in statute, the validity or invalidity of the offer must be raised and addressed promptly where it can be resolved, rather than waiting much later, perhaps after the damages are resolved to raise the issue.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³¹ Section 768.79(5), F.S.

³² Section 768.79(4), F.S.

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:

The bill may reduce litigation costs and fees that would otherwise be incurred if the action were not resolved more promptly by an offer of judgment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.79, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on February 15, 2021:

The committee substitute does not differ substantially from the underlying bill. The phrase “exclusive offer of judgment” is removed but the concept remains that a party may make an offer of judgment that identifies only the total amount of indemnity or damages and stipulates that attorney fees and costs will be established at a later time by the parties or the court.

The committee substitute deletes the phrase “or paragraph (b)” referring to what the term “judgment obtained” means when a plaintiff serves an offer which is not accepted by the defendant. Additionally, the word “interest” is deleted from the underlying bill when referring to what is excluded from an offer of judgment made to a plaintiff.

B. Amendments:

None.

By Senator Brandes

24-01000A-21

2021686__

A bill to be entitled
An act relating to offers of judgment; amending s.
768.79, F.S.; authorizing parties to serve exclusive
offers of judgment; specifying that parties serving
exclusive offers of judgment are not required to
specify an amount being offered for attorney fees and
costs; providing construction; authorizing certain
offerings of judgment require both individuals to
either accept or reject the offer; providing
requirements relating to grounds for challenging the
validity of offers; defining the term "judgment
obtained" as it relates to exclusive offers of
judgment; providing applicability; providing an
effective date.

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

Section 1. Present subsections (3) through (8) of section
768.79, Florida Statutes, are redesignated as subsections (5)
through (10), respectively, new subsections (3) and (4) are
added to that section, and subsection (2) and present
subsections (3), (4), and (6) of that section are amended, to
read:

768.79 Offer of judgment and demand for judgment.—

(2) The making of an offer of settlement which is not
accepted does not preclude the making of a subsequent offer.

(3) Parties may serve an exclusive offer of judgment
identifying only the total amount of indemnity or damages and
stipulating to entitlement to attorney fees and costs to be

24-01000A-21

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determined at a later time by the parties or the court. A party serving an exclusive offer of judgment is not required to specify an amount being offered for attorney fees and costs.

(4) An offer must:

(a) Be in writing and state that it is being made pursuant to this section.

(b) Name the party making it and the party to whom it is being made.

(c) State with particularity the amount offered to settle a claim for punitive damages, if any.

(d) State its total amount.

The offer shall be construed as including all damages which may be awarded in a final judgment unless it is an exclusive offer of judgment. An exclusive offer of judgment shall be construed as including all damages, if any, that may be awarded in a final judgment, not including any amount that may be awarded for attorney fees, costs, or interest.

(5)~~(3)~~ The offer shall be served upon the party to whom it is made, but it shall not be filed unless it is accepted or unless filing is necessary to enforce the provisions of this section. In an action relating to damages to real property that is jointly owned by two individuals who are insureds, an offer of judgment which is served on both insureds may require that both insureds either accept or reject the offer.

(6)~~(4)~~ An offer shall be accepted by filing a written acceptance with the court within 30 days after service. Upon filing of both the offer and acceptance, the court has full jurisdiction to enforce the settlement agreement. Within 30 days

24-01000A-21

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after service of an offer of judgment, the offeree must notify the offeror of any grounds for challenging the validity of the offer. The grounds for challenging the validity of the offer must be in writing and stated with specificity to enable the offeror to reevaluate the offer and make corrections, if warranted. If the offeree fails to timely notify the offeror in writing of the grounds for challenging the validity of the offer, the offeree waives the right to object to the validity of the offer.

~~(8)-(6)~~ Upon motion made by the offeror within 30 days after the entry of judgment or after voluntary or involuntary dismissal, the court shall determine the following:

(a) If a defendant serves an offer which is not accepted by the plaintiff, and if the judgment obtained by the plaintiff is at least 25 percent less than the amount of the offer, the defendant shall be awarded reasonable costs, including investigative expenses, and attorney's fees, calculated in accordance with the guidelines promulgated by the Supreme Court, incurred from the date the offer was served, and the court shall set off such costs in attorney's fees against the award. When such costs and attorney's fees total more than the amount of the judgment, the court shall enter judgment for the defendant against the plaintiff for the amount of the costs and fees, less the amount of the award to the plaintiff.

(b) If a plaintiff serves an offer which is not accepted by the defendant, and if the judgment obtained by the plaintiff is at least 25 percent more than the amount of the offer, the plaintiff shall be awarded reasonable costs, including investigative expenses, and attorney's fees, calculated in

24-01000A-21

2021686__

88 accordance with the guidelines promulgated by the Supreme Court,
89 incurred from the date the offer was served.
90

91 For purposes of the determination required by paragraph (a), the
92 term "judgment obtained" means the amount of the net judgment
93 entered, plus any postoffer collateral source payments received
94 or due as of the date of the judgment, plus any postoffer
95 settlement amounts by which the verdict was reduced. For
96 purposes of the determination required by paragraph (b), the
97 term "judgment obtained" means the amount of the net judgment
98 entered, plus any postoffer settlement amounts by which the
99 verdict was reduced. However, for purposes of determinations
100 required by paragraph (a) or paragraph (b), whenever the offer
101 is an exclusive offer of judgment, the term "judgment obtained"
102 means the total amount of damages recovered, if any, but does
103 not include any amount awarded for attorney fees, costs, or
104 interest.

105 Section 2. This act applies to all offers of judgment
106 served on or after July 1, 2021.

107 Section 3. This act shall take effect July 1, 2021.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

SB 686

Bill Number (if applicable)

Topic Offers of Judgment

Amendment Barcode (if applicable)

Name W. Wyndham "Wyn" Geyer, Jr.

Job Title Attorney

Address 490 Sawgrass Corporate Parkway, Suite 110

Phone 954-990-5251

Street

Sunrise

FL

33325

Email wyn.geyer@gftlawfirm.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Homeowners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

SB 686

Bill Number (if applicable)

Topic Offers of Judgment

Amendment Barcode (if applicable)

Name Tiffany Faddis

Job Title Attorney

Address 7335 West Sand Lake Road, Suite 300

Phone 407-845-1756

Street

Orlando

FL

32819

City

State

Zip

Email tiffany.faddis@newlinlaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

SB 686

Bill Number (if applicable)

Topic Offers of Judgment

Amendment Barcode (if applicable)

Name Steven Silverberg

Job Title Attorney

Address 1200 Northwest 78th Avenue, Suite 302

Phone 305-735-3966

Street

Miami

FL

33126

City

State

Zip

Email steven@silverbergbritto.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Homeowners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

02.15.21

Meeting Date

686

Bill Number (if applicable)

Topic Offers of Judgment

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

FL

32301

Email William@fljustice.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/21

Meeting Date

686

Bill Number (if applicable)

Topic Offers of Judgement - Homeowner perspective

Amendment Barcode (if applicable)

Name Joe Busby

Job Title Retired Veteran/Large Agricultural Operations Consultant

Address 4879 Magnolia Rd

Street

Phone (850) 209-1313

Marianna

FL

32448

Email joebusby@wfeca.net

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self/Homeowners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/21

Meeting Date

686

Bill Number (if applicable)

597082

Amendment Barcode (if applicable)

Topic Offers of Judgement - Homeowner perspective

Name Joe Busby

Job Title Retired Veteran/Large Agricultural Operations Consultant

Address 4879 Magnolia Rd

Street

Marianna

City

FL

State

32448

Zip

Phone (850) 209-1313

Email joebusby@wfeca.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self/Homeowners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

SB 686

Bill Number (if applicable)

597082

Amendment Barcode (if applicable)

Topic Offers of Judgment

Name Steven Silverberg

Job Title Attorney

Address 1200 Northwest 78th Avenue, Suite 302

Street

Miami

City

FL

State

33126

Zip

Phone 305-735-3966

Email steven@silverbergbritto.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Homeowners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

SB 686

Bill Number (if applicable)

597082

Amendment Barcode (if applicable)

Topic Offers of Judgment

Name Tiffany Faddis

Job Title Attorney

Address 7335 West Sand Lake Road, Suite 300

Street

Orlando

City

FL

State

32819

Zip

Phone 407-845-1756

Email tiffany.faddis@newlinlaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

SB 686

Bill Number (if applicable)

597082

Amendment Barcode (if applicable)

Topic Offers of Judgment

Name W. Wyndham "Wyn" Geyer, Jr.

Job Title Attorney

Address 490 Sawgrass Corporate Parkway, Suite 110

Phone 954-990-5251

Street

Sunrise

FL

33325

Email wyn.geyer@gftlawfirm.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Homeowners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/21

Meeting Date

686

Bill Number (if applicable)

139882

Amendment Barcode (if applicable)

Topic Offers of Judgement - Homeowner perspective

Name Joe Busby

Job Title Retired Veteran/Large Agricultural Operations Consultant

Address 4879 Magnolia Rd

Street

Marianna

City

FL

State

32448

Zip

Phone (850) 209-1313

Email joebusby@wfeca.net

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self/Homeowners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

SB 686

Bill Number (if applicable)

139882

Amendment Barcode (if applicable)

Topic Offers of Judgment

Name Steven Silverberg

Job Title Attorney

Address 1200 Northwest 78th Avenue, Suite 302

Street

Miami

City

FL

State

33126

Zip

Phone 305-735-3966

Email steven@silverbergbritto.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Homeowners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

SB 686

Bill Number (if applicable)

139882

Amendment Barcode (if applicable)

Topic Offers of Judgment

Name Tiffany Faddis

Job Title Attorney

Address 7335 West Sand Lake Road, Suite 300

Street

Orlando

City

FL

State

32819

Zip

Phone 407-845-1756

Email tiffany.faddis@newlinlaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2021

Meeting Date

SB 686

Bill Number (if applicable)

139882

Amendment Barcode (if applicable)

Topic Offers of Judgment

Name W. Wyndham "Wyn" Geyer, Jr.

Job Title Attorney

Address 490 Sawgrass Corporate Parkway, Suite 110

Phone 954-990-5251

Street

Sunrise

FL

33325

Email wyn.geyer@gftlawfirm.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Homeowners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 2/15/2021 2:31:13 PM

Ends: 2/15/2021 5:42:14 PM **Length:** 03:11:02

2:31:11 PM Meeting called to order by Chair Brandes
2:31:15 PM Roll call by Celia Georgiades
2:31:22 PM Quorum present
2:31:37 PM Comments from Chair Brandes
2:32:28 PM Introduction of Tab 2, CS/SB 228 by Chair Brandes
2:32:56 PM Introduction of Amendment Barcode 240700 by Chair Brandes
2:34:42 PM Explanation of Amendment by Senator Bradley
2:34:55 PM Question from Senator Rouson
2:35:00 PM Response from Senator Bradley
2:35:09 PM Follow-up question from Senator Rouson
2:35:21 PM Response from Senator Bradley
2:35:39 PM Follow-up question from Senator Rouson
2:35:49 PM Response from Senator Bradley
2:36:29 PM Comments from Chair Brandes
2:36:49 PM Barney Bishop, Florida Smart Justice Alliance waives in support
2:37:05 PM Comments from Chair Brandes
2:37:08 PM Closure waived
2:37:12 PM Amendment adopted
2:37:16 PM Comments from Chair Brandes
2:37:29 PM Corrine Mixson, Florida Court Reporters Association waives in support
2:37:45 PM Speaker Warren Husband, Attorney's Title Fund Services, LLC waives in support
2:38:23 PM Closure by Senator Bradley
2:38:28 PM Roll call by CAA
2:38:37 PM CS/CS/SB 228 reported favorably
2:38:49 PM Introduction of Tab 3, CS/SB 234 by Chair Brandes
2:38:59 PM Explanation of CS/SB 234, Registration of Sexual Predators and Sexual Offenders by Senator Book
2:42:07 PM Comments from Chair Brandes
2:42:11 PM Ron Draa, Florida Department of Law Enforcement waives in support
2:42:23 PM Brandon Ragan, Orange County Sheriff's Office waives in support
2:42:28 PM Speaker Barney Bishop, Florida Smart Justice Alliance in support
2:42:47 PM Amy Mercer, Florida Police Chiefs Association waives in support
2:43:05 PM Senator Bradley in debate
2:43:22 PM Closure waived
2:43:28 PM Roll call by CAA
2:43:35 PM CS/SB 234 reported favorably
2:43:52 PM Introduction of Tab 1, CS/SB 54 by Chair Brandes
2:43:58 PM Explanation of CS/SB 54, Motor Vehicle Insurance by Senator Burgess
2:44:11 PM
2:47:04 PM Comments from Chair Brandes
2:47:12 PM Introduction of Amendment Barcode 406904 by Chair Brandes
2:47:38 PM Explanation of Amendment by Senator Broxson

2:49:13 PM Introduction of Amendment Barcode 460076 by Chair Brandes
2:50:14 PM Explanation of Amendment by Senator Broxson
2:50:31 PM Comments from Chair Brandes
2:50:57 PM Closure waived on Amendment
2:51:02 PM Amendment Barcode 460076 adopted
2:51:10 PM Introduction of Amendment Barcode 501598 by Chair Brandes
2:51:20 PM Explanation of Amendment by Senator Thurston
2:53:59 PM Comments from Chair Brandes
2:54:20 PM Speaker Kathy Maus, Florida Justice Reform Institute in support
2:59:10 PM Speaker Matthew Posgay, Insurance Consumers in support
3:02:19 PM Comments from Chair Brandes
3:02:29 PM Senator Broxson in debate
3:02:59 PM Senator Thurston in Closure
3:03:40 PM Comments from Chair Brandes
3:03:48 PM Amendment not adopted
3:04:08 PM Comments from Chair Brandes
3:04:14 PM Question from Senator Polsky
3:04:26 PM Response from Senator Broxson
3:05:30 PM Comments from Senator Brandes
3:06:41 PM Question from Senator Thurston
3:07:26 PM Follow-up question from Senator Thurston
3:07:35 PM Response from Chair Brandes
3:08:34 PM Follow-up question from Senator Thurston
3:08:41 PM Response from Chair Brandes
3:09:10 PM Question from Senator Gibson
3:09:15 PM Response from Chair Brandes
3:09:47 PM Follow-up question from Senator Gibson
3:10:04 PM Response from Senator Broxson
3:10:37 PM Response from Chair Brandes
3:10:42 PM Follow-up question from Senator Gibson
3:10:51 PM Response from Chair Brandes
3:11:25 PM Follow-up question from Senator Gibson
3:11:34 PM Response from Chair Brandes
3:11:54 PM Follow-up question from Senator Gibson
3:12:02 PM Response from Chair Brandes
3:13:06 PM Kathy Maus, Florida Justice Reform Institute in support
3:18:01 PM Speaker Matthew Posgay, Insurance Consumers in opposition
3:19:54 PM Speaker Eric Romano, Florida Justice Association in opposition
3:22:30 PM Comments from Chair Brandes
3:22:49 PM Senator Burgess speaking in favor of Amendment
3:24:39 PM Senator Broxson in closure on Amendment
3:24:48 PM Amendment to Amendment adopted
3:25:15 PM Comments from Chair Brandes
3:25:23 PM Question from Senator Rouson
3:25:34 PM Response from Senator Burgess
3:26:43 PM Follow-up question from Senator Rouson
3:27:07 PM Response from Senator Burgess
3:27:22 PM Response from Chair Brandes
3:27:56 PM Speaker Michael Carlson, Personal Insurance Federation of Florida, Inc.
3:29:47 PM Speaker Toni Large, Florida College of Emergency Physicians in opposition
3:33:25 PM Question from Senator Thurston
3:33:31 PM Response from Ms. Large

3:34:30 PM Speaker Eric Ramano, Florida Justice Association in support
3:37:06 PM Speaker Kathy Maus, Florida Justice Reform Institute in support
3:39:13 PM Speaker David Mica, Florida Hospital Association in opposition
3:42:23 PM Speaker Doug Bell, Progressive Insurance in support
3:44:03 PM Comments from Chair Brandes
3:44:09 PM Senator Gibson in debate
3:51:58 PM Senator Rouson in debate
3:53:37 PM Senator Burgess in closure
3:54:18 PM Roll call by CAA
3:55:20 PM CS/CS/SB 54 reported favorably
3:55:45 PM Introduction of Tab 6, 474 by Chair Brandes
3:56:07 PM Explanation of SB 474, Prosecuting Children as Adults by Senator Bracy
3:59:38 PM Comments from Chair Brandes
3:59:49 PM Speaker Nancy Lawther, Florida PTA in support
4:01:40 PM Trish Neely, League of Women Voters waives in support
4:01:44 PM Karen Woodall, Florida Center for Fiscal & Economic Policy waives in support
4:01:47 PM Pamela Burch Fort, NAACP Florida State Conference waives in support
4:01:55 PM Ingrid Delgado, Florida Conference of Catholic Bishops waives in support
4:01:59 PM Kara Gross, ACLU of Florida waives in support
4:02:02 PM Ida Eskamani, Florida Rising waives in support
4:02:07 PM Carrie Boyd, SPLC Action Fund waives in support
4:02:28 PM Barney Bishop, Florida Smart Justice waives in opposition
4:02:56 PM Question from Senator Broxson
4:03:06 PM Response from Mr. Bishop
4:03:49 PM Question from Senator Thurston
4:03:57 PM Response from Mr. Bishop
4:04:36 PM Follow-up question from Senator Thurston
4:04:47 PM Response from Mr. Bishop
4:05:35 PM Comments from Chair Brandes
4:05:52 PM Senator Baxley in debate
4:08:23 PM Senator Bracy in closure
4:09:21 PM Roll call by CAA
4:09:28 PM SB 474 reported favorably
4:09:56 PM Introduction of Tab 5, 354 by Chair Brandes
4:10:06 PM Explanation of SB 354, Restitution by Senator Harrell
4:13:44 PM Introduction of Substitute Amendment 456722 by Chair Brandes
4:13:53 PM Explanation of Amendment by Senator Harrell
4:14:50 PM Comments from Chair Brandes
4:15:07 PM Amendment adopted
4:15:16 PM Question from Senator Gibson on Bill as amended
4:15:41 PM Response from Senator Harrell
4:17:06 PM Question from Senator Rouson
4:17:14 PM Response from Senator Harrell
4:18:19 PM Question from Senator Thurston
4:18:23 PM Response from Senator Harrell
4:19:38 PM Speaker Barney Bishop, Florida Smart Justice in Support
4:20:02 PM Speaker Trish Neely, League of Women Voters in opposition
4:21:33 PM Kara Gross. ACLU of Florida waives in opposition
4:21:50 PM Comments from Chair Brandes
4:22:03 PM Closure by Senator Harrell
4:22:37 PM Roll call by CAA
4:22:44 PM CS/SB 354 reported favorably

4:23:06 PM Introduction of Tab 4, SB 270 by Chair Brandes
4:23:19 PM Explanation of SB 270, Construction Defects by Senator Perry
4:24:09 PM Question from Senator Polsky
4:24:15 PM Response from Senator Perry
4:25:06 PM Follow-up question from Senator Polsky
4:25:20 PM Response from Senator Perry
4:26:22 PM Question from Senator Rouson
4:26:26 PM Response from Senator Perry
4:26:59 PM Follow-up question from Senator Rouson
4:27:04 PM Response from Senator Perry
4:27:35 PM Follow-up question from Senator Rouson
4:27:46 PM Response from Senator Perry
4:28:11 PM Follow-up question from Senator Rouson
4:28:18 PM Response from Senator Perry
4:29:00 PM Follow-up question from Senator Rouson
4:29:09 PM Response from Senator Perry
4:29:43 PM Question from Senator Polsky
4:29:49 PM Response from Senator Perry
4:30:41 PM Speaker Chris Dawson, Florida Roofing and Sheet Metal Contractors Association in support
4:31:32 PM Speaker Carol Bowen, Associated Builders & Contractors in support
4:33:23 PM Speaker Kari Hebrank, Florida Home Builders Association in support
4:34:58 PM Speaker Warren Husband, Florida Associated General Contractors Council in support
4:36:24 PM Speaker William Cotterall, Florida Justice Association in opposition
4:38:54 PM Tim Meenan, Florida Fire Sprinkler Association waives in support
4:39:12 PM William Large, Florida Justice Reform Institute waives in support
4:39:24 PM Dane Bennett, Florida Home Builders Association waives in support
4:39:33 PM Andrew Ketchel, Lennar Ventures waives in support
4:39:51 PM Edward Briggs, Highland Homes and American Fire Sprinklers waives in support
4:40:15 PM Comments from Chair Brandes
4:40:23 PM Senator Gibson in debate
4:42:54 PM Senator Perry in Closure
4:43:01 PM Roll call by CAA
4:43:09 PM SB 270 reported favorably
4:43:30 PM Chair turned to Senator Gibson
4:43:53 PM Introduction of SB 686 by Chair Gibson
4:44:00 PM Explanation of SB 686, Offers of Judgement by Senator Brandes
4:45:40 PM Comments from Chair Gibson
4:45:52 PM Introduction of Amendment Barcode 139882 by Chair Gibson
4:46:02 PM Explanation of Amendment by Senator Brandes
4:46:06 PM Comments from Chair Gibson
4:46:23 PM Speaker Joe Busby, Self/Homeowners speaking in opposition
4:48:50 PM Question from Senator Broxson
4:49:06 PM Response from Mr. Busby
4:50:34 PM Question from Senator Mayfield
4:50:40 PM Response from Mr. Busby
4:51:29 PM Speaker Steven Silverberg, Florida Homeowners in opposition
4:53:39 PM Speaker Tiffany Faddis, Florida Justice Association in opposition
4:56:03 PM Speaker W. Wyndham "Wyn" Geyer, Jr., Florida Homeowners in opposition
4:58:19 PM Senator Brandes in closure on Amendment
4:58:50 PM Amendment adopted
4:59:00 PM Introduction of Amendment Barcode 597082 by Chair Gibson

4:59:29 PM Explanation of Amendment by Senator Rouson
5:01:17 PM Comments from Senator Brandes regarding moves to reconsider Amendment Barcode 139882
5:02:24 PM Speaker W. Wyndham "Wyn" Geyer, Jr., Florida Homeowners in support of Amendment
5:03:06 PM Speaker Tiffany Faddis, Florida Justice Association in support of Amendment
5:05:11 PM Speaker Steven Silverberg, Florida Homeowners in support of Amendment
5:05:46 PM Speaker Joe Busby, Self/Homeowners in support of Amendment
5:08:01 PM Recording Paused
5:08:14 PM Recording Resumed
5:08:21 PM Speaker Joe Busby, Self/Homeowners in support of Amendment
5:08:38 PM Senator Brandes in debate on Amendment
5:09:57 PM Senator Rouson in closure on Amendment
5:11:42 PM Comments from Chair Gibson
5:11:47 PM Amendment not adopted
5:12:15 PM Closure waived on Amendment by Senator Brandes
5:12:33 PM Amendment Barcode 139882 adopted
5:12:47 PM Comments from Chair Gibson
5:13:00 PM Question from Senator Polsky
5:13:09 PM Response from Senator Brandes
5:14:59 PM Speaker Joe Busby, Self/Homeowners in opposition
5:15:56 PM Speaker William Large, Florida Justice Reform Institute waives in support
5:16:13 PM Speaker Steven Silverberg, Florida Homeowners in opposition
5:17:46 PM Speaker Tiffany Faddis, Florida Justice Association in opposition
5:20:17 PM Question from Senator Thurston
5:21:17 PM Response from Ms. Faddis
5:23:08 PM Question from Senator Polsky
5:23:14 PM Response from Ms. Faddis
5:25:30 PM Speaker W. Wyndham "Wyn" Geyer, Jr., Florida Homeowners in opposition
5:27:42 PM Senator Brandes moves to TP
5:28:15 PM Bill is now being taken up again
5:28:23 PM Senator Polsky in debate
5:30:40 PM Comment from Chair Gibson
5:30:49 PM Senator Brandes in closure
5:32:37 PM Roll call by CAA
5:32:42 PM CS/SB 686 reported favorably
5:33:16 PM Chair returned to Senator Brandes
5:33:30 PM Chair Brandes states that SB 402 is TP'd
5:33:37 PM Introduction of Tab 7, SB 622 by Chair Brandes
5:33:49 PM Explanation of SB 622, Liens and Bonds by Senator Perry
5:34:09 PM Introduction of Amendment Barcode 200554 by Chair Brandes
5:34:21 PM Explanation of Amendment by Senator Perry
5:34:49 PM Closure waived
5:34:51 PM Amendment adopted
5:34:56 PM Comments from Chair Brandes
5:35:09 PM Speaker Kari Hebrank, Florida Home Builders in opposition
5:35:41 PM Speaker Warren Husband, Florida Associated General Contractors Council in support
5:37:14 PM Question from Senator Thurston
5:37:23 PM Response from Mr. Husband
5:37:53 PM Follow-up question from Senator Thurston
5:37:59 PM Response from Mr. Husband
5:38:08 PM Speaker French Brown, The Real Property, Probate, and Trust Law Section of the Florida Bar in support

5:38:35 PM Melissa Ramba, NACM-Improved Construction Practices Committee in support
5:39:29 PM Comments from Chair Brandes
5:39:35 PM Senator Gibson in debate
5:40:04 PM Senator Thurston in debate
5:41:03 PM Closure by Senator Perry
5:41:11 PM Roll call by CAA
5:41:23 PM CS/SB 622 reported favorably
5:41:46 PM Senator Bradley would like to be shown voting in the affirmative on 474, CS/SB 354 and SB 270
5:41:58 PM Senator Rouson moves to rise
5:42:05 PM Meeting adjourned