

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Brandes, Chair
Senator Gibson, Vice Chair

MEETING DATE: Tuesday, March 9, 2021**TIME:** 11:45 a.m.—3:15 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 WEST PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	CS/SB 76 Banking and Insurance / Boyd (Compare H 305, S 212)	Residential Property Insurance; Providing that, for certain attorney fees awarded for claims arising under property insurance policies, a strong presumption is created that a lodestar fee is sufficient and reasonable; providing that certain provisions relating to homeowners' policies, offers of replacement cost coverage, and offers of law and ordinance coverage do not prohibit insurers from providing specified property insurance policies by including roof surface reimbursement schedules; requiring notice of intent to initiate litigation; authorizing an insurer to request to inspect, photograph, or evaluate certain property, etc. BI 02/02/2021 Fav/CS JU 03/09/2021 Fav/CS RC	Fav/CS Yeas 7 Nays 3
2	SB 420 Hooper (Similar CS/H 273, Compare H 719, CS/CS/S 54)	Motor Vehicle Insurance Coverage Exclusions; 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, etc. BI 03/03/2021 Favorable JU 03/09/2021 Fav/CS RC	Fav/CS Yeas 10 Nays 0
3	SB 472 Bracy (Compare H 235, H 1215, CS/S 1032)	Gain-time; Revising a principle of the Criminal Punishment Code relating to a prisoner's required minimum term of imprisonment; revising the incentive gain-time that the Department of Corrections may grant a prisoner, etc. JU 03/09/2021 Temporarily Postponed CJ AP	Temporarily Postponed

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Tuesday, March 9, 2021, 11:45 a.m.—3:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 482 Bracy (Compare H 1615, S 1904)	Criminal Sentencing; Increasing the number of sentence points below which the court is required to impose a nonstate prison sanction under certain circumstances; providing that a sentencing judge's decision regarding sentencing is guided by the computed recommended sentencing range, from the lowest permissible sentence to the highest recommended prison sentence; increasing the minimum number of sentence points for a state prison sanction; revising the calculation of the lowest permissible sentence, etc. JU 03/09/2021 Favorable CJ AP	Favorable Yeas 10 Nays 0
5	SB 848 Powell (Identical H 483)	Electronic Legal Documents; Revising the definition of the term "online notarization"; clarifying that supervising the witnessing of an electronic record by an online notary public is a notarial act; revising the statutory form for an affidavit for acceptance of and reliance upon a power of attorney to reflect means of notarization; revising the form for a petition of summary relief for the sale or transfer of certain property owned by an absentee to reflect means of notarization, etc. CM 03/02/2021 Favorable JU 03/09/2021 Favorable RC	Favorable Yeas 10 Nays 0
6	SB 1048 Bean (Identical H 643)	Public Records/Conviction Integrity Unit Reinvestigation Information; Providing a public records exemption for certain conviction integrity unit reinvestigation information; providing for the future review and repeal of the exemption; providing a statement of public necessity, etc. CJ 03/02/2021 Favorable JU 03/09/2021 Fav/CS RC	Fav/CS Yeas 10 Nays 0
7	SB 492 Rouson (Identical H 565)	Council on the Discretionary Imposition of Criminal Justice and Traffic Fines and Fees; Establishing the council adjunct to the Department of Legal Affairs; requiring the department to provide administrative support to the council; specifying application of law governing advisory bodies; prescribing the composition of the council; providing duties of the council; providing for future repeal, etc. JU 03/09/2021 Favorable ACJ AP	Favorable Yeas 10 Nays 0

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8	SB 1114 Pizzo (Compare H 589)	Compensation for Eligible Victims of Wrongful Incarceration; Extending the filing deadline for a petition claiming wrongful incarceration; providing limited retroactivity for filing a petition claiming wrongful incarceration; providing that a deceased person's heirs, successors, or assigns do not have standing to file a petition related to the wrongful incarceration of the deceased person; revising eligibility for compensation for wrongful incarceration for a wrongfully incarcerated person; authorizing the Chief Financial Officer to adjust compensation for inflation for persons found to be wrongfully incarcerated after a specified date; specifying that payments for certain petitions filed under the Victims of Wrongful Incarceration Compensation Act are subject to specific appropriation, etc. JU 03/09/2021 Favorable AP RC	Favorable Yeas 10 Nays 0
9	SB 846 Brandes (Similar H 561)	Medical Expenses; Specifying that certain evidence offered to prove damages for the cost of past medical expenses is admissible in a personal injury or wrongful death action under certain circumstances; specifying damages that may be recovered by a claimant for the reasonable and necessary cost or value of medical care rendered, etc. JU 03/09/2021 Favorable HP RC	Favorable Yeas 7 Nays 3
10	SB 838 Boyd (Similar H 903, Compare H 557, S 356, S 386)	Clerks of the Circuit Court; Clarifying the responsibility of an individual released from incarceration regarding enrolling in a payment plan for any outstanding court obligations; modifying duties of the Florida Clerks of Court Operations Corporation with respect to the funding of clerks' offices; requiring the corporation to establish and manage a contingency reserve within the Clerks of the Court Trust Fund for specified purposes; requiring orders and notifications for certain traffic citations and suspensions to include information regarding payment plans, etc. JU 03/09/2021 Fav/CS ACJ AP	Fav/CS Yeas 10 Nays 0

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11	SB 1288 Boyd (Identical H 6077)	Assets of an Estate in Administration; Deleting a requirement that assets of an estate in administration may be placed in a savings and loan association only if such savings and loan association is a member of the Federal Savings and Loan Insurance Corporation, etc. JU 03/09/2021 Fav/CS BI RC	Fav/CS Yeas 10 Nays 0
12	SB 1520 Boyd (Identical H 1139)	Ancillary Property Rights; Providing that a utility easement is an interest in real property and subject to certain actions unless otherwise provided in the instrument creating the easement; revising rights that are not affected or extinguished by marketable record titles; requiring persons with certain interests in land which may be extinguished by this act to file a specified notice to preserve such interests, etc. JU 03/09/2021 Fav/CS CA RC	Fav/CS Yeas 10 Nays 0
13	SB 144 Brandes	Searches of Cellular Phones and Other Electronic Devices; Expanding the grounds for issuance of a search warrant to include content held within a cellular phone, portable electronic communication device, or microphone-enabled household device when such content constitutes evidence relevant to proving that a felony has been committed; adopting the constitutional protection against unreasonable interception of private communications by any means for purposes of obtaining a search warrant; prohibiting the use of certain communication content in any trial, hearing, or other proceeding which was obtained without a specified warrant, etc. CJ 01/26/2021 Favorable JU 03/02/2021 Temporarily Postponed JU 03/09/2021 Favorable RC	Favorable Yeas 10 Nays 0

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 76

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senators Boyd and Brandes

SUBJECT: Residential Property Insurance

DATE: March 11, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 76, in broad terms, revises the statutes that govern property insurance policies including attorney fees, roof coverage provisions, notice periods for bringing claims, alternative dispute resolution, lawsuits involving property insurance policies, consolidation of legal actions, and assignment agreements. Additionally, the bill establishes a third degree felony for knowingly aiding or abetting an unlicensed person who transacts or engages in insurance activities without a license. If an unauthorized person provides claims adjusting services, the Department of Financial Services may take administrative action and impose fines for those activities. Finally, the bill requests that the Florida Supreme Court adopt a rule that requires attorneys to submit itemized closing statements in cases where a recovery is made in residential property litigation.

The bill provides that attorney fees will be awarded under a property insurance policy or a surplus lines policy using the “lodestar” calculation, which is determined by multiplying the number of hours reasonably worked by a reasonable hourly rate for an attorney of the insured or beneficiary. The strong presumption that the lodestar fee is sufficient and reasonable may only be rebutted in rare and exceptional circumstances when competent counsel could not be found. Attorney fees will also be awarded to a claimant using the demand-judgment quotient which is determined by dividing the amount of the judgment by the amount of the demand. Award ratios for recovery are stated in statute.

The bill allows an insurer to offer homeowner's insurance policies that adjust claims on roofs 10-years old or older on the basis of a roof surface reimbursement schedule without also having to offer a policy that provides replacement cost adjustment for such a roof. The roof surface reimbursement schedule must provide for repair, replacement, and installation based on the annual age of the roof and the roof surface type. In the event of a total loss, the insurer's liability will be for the amount of the insured property as specified in the personal lines residential property insurance policy, as provided for in Florida's Valued Policy Law.

The bill reduces from 3 years to 2 years the time allowed for an insured to file a property insurance claim, supplemental claim, or reopened claim including a claim issued by a surplus lines insurer.

A property insurance policy may require the policyholder and an assignee of the policy benefits to participate in mediation, if requested by the insurer.

The bill creates s. 627.70152, F.S., governing suits brought by an insured or assignee arising under a property insurance policy. Claimants must provide notice prior to the filing of a lawsuit and make a presuit demand. Insurers may file to abate proceedings until notice has been perfected or where their rights to inspect are infringed.

When a court receives notice of multiple legal actions arising from the same residential property insurance policy, property, and owners, it may consolidate and transfer jurisdiction to a court having proper jurisdiction based on the total amount in controversy of all of the consolidated claims. The parties have a duty to notify the court of the multiple actions so that consolidation and transfer may occur.

Finally, the bill establishes that the provisions of an assignment agreement, while currently provided to the insurer, must also be provided and delivered to the named insured. Additionally, an assignment agreement does not modify or eliminate the right of an insurer to communicate directly with the named insured if the insured is not represented by counsel.

The bill takes effect July 1, 2021.

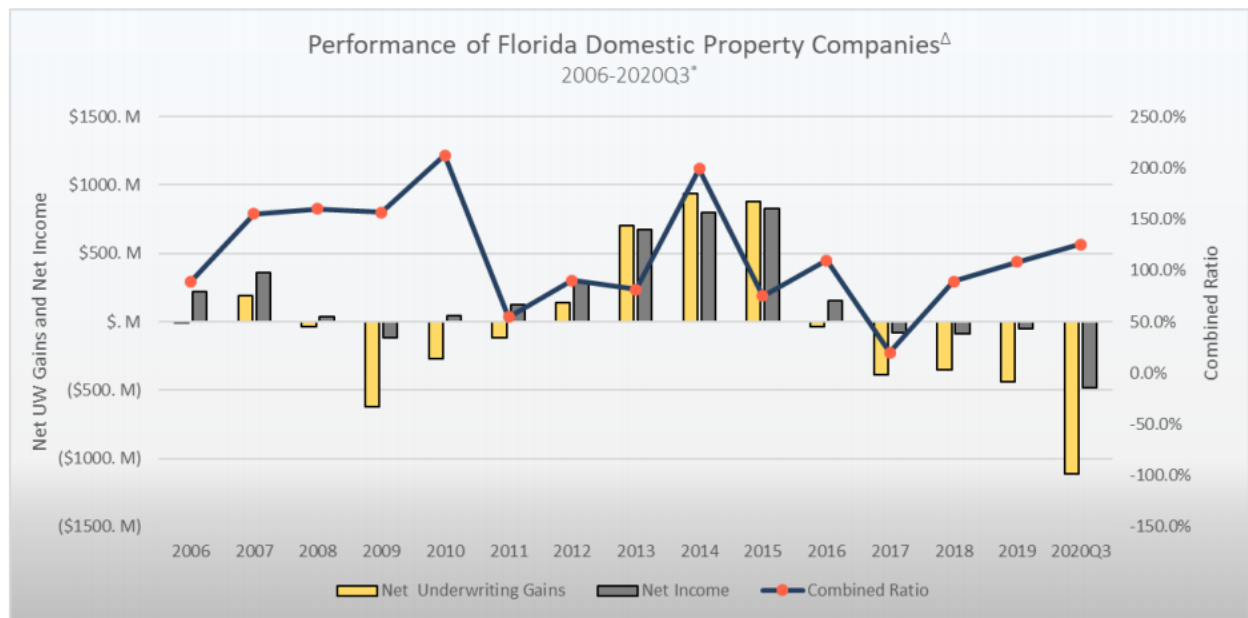
II. Present Situation:

Florida Residential Property Insurance Market Data

According to the Florida Office of Insurance Regulation (OIR), Florida domestic property insurers are likely to double their losses from 2019 to 2020. The resulting combined ratios¹ are near or above 100 percent for the third year since 2017 and net underwriting losses have continued for the fifth year since 2015. Figure 1 below displays both the combined ratios and net underwriting gains (losses) of domestic property insurers between 2006 and the third quarter of 2020.

¹ The combined ratio is the sum of the expense ratio and the loss ratio. A combined ratio below 100 percent indicates underwriting profits, whereas a combined ratio above 100 percent indicates underwriting losses.

Figure 1. Financial Performance of Florida's Domestic Property Market.²



^Δ The domestic companies do not include Citizens Property Insurance Corporation. The data is from financial statements submitted to the National Association of Insurance Commissioners.

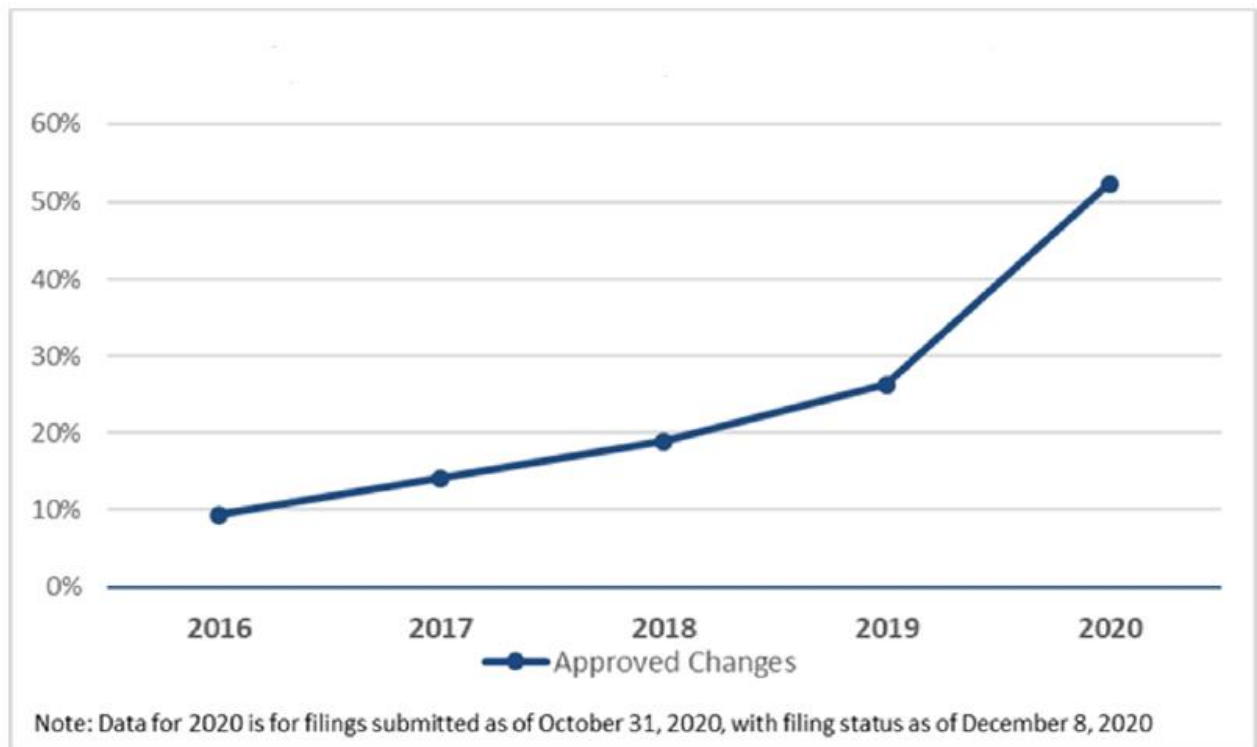
OIR similarly reports an increasing trend of domestic property insurers filing for rate increases. Insurers submitted 105 rate filings in 2020 for increases of 10 percent or more, with OIR approving 55 of those filings. In 2016, OIR approved only 6 rate increases of at least 10 percent.³ Figure 2 below displays the percentage of approved filings for rates increases above 10 percent between 2016 and December 8, 2020.

Figure 2. OIR-Approved Property Insurance Rate Increases Greater than 10 Percent.⁴

² Data provided by the Florida Office of Insurance Regulation to the Senate Committee on Banking and Insurance on January 12, 2021 (Senate Meeting Packet).
https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/4966/8842_MeetingPacket_4966.pdf (last visited Jan. 27, 2021).

³ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

⁴ Data provided by the Florida Office of Insurance Regulation to the Senate Committee on Banking and Insurance on January 12, 2021 (Senate Meeting Packet).
https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/4966/8842_MeetingPacket_4966.pdf (last visited Jan. 27, 2021).



In a presentation to the Florida Senate Committee on Banking and Insurance on January 12, 2021, the State Insurance Commissioner attributed the net underwriting losses, combined ratios, and resulting rate increases displayed above to several related trends and behaviors present in Florida's domestic property insurance market:

- Claims with litigation;
- Claims solicitation; and
- Adverse loss reserve development.⁵

In 2020, OIR conducted a data call of Florida's domestic property insurers.⁶ According to the State Insurance Commissioner, the data call showed that the severity of non-weather water claims with litigation is nearly double claims that are closed without litigation.⁷ Figure 3 below displays the claims severity disparity between non-weather water claims with litigation and such claims without litigation between the fourth quarter of 2017 and the first quarter of 2020.

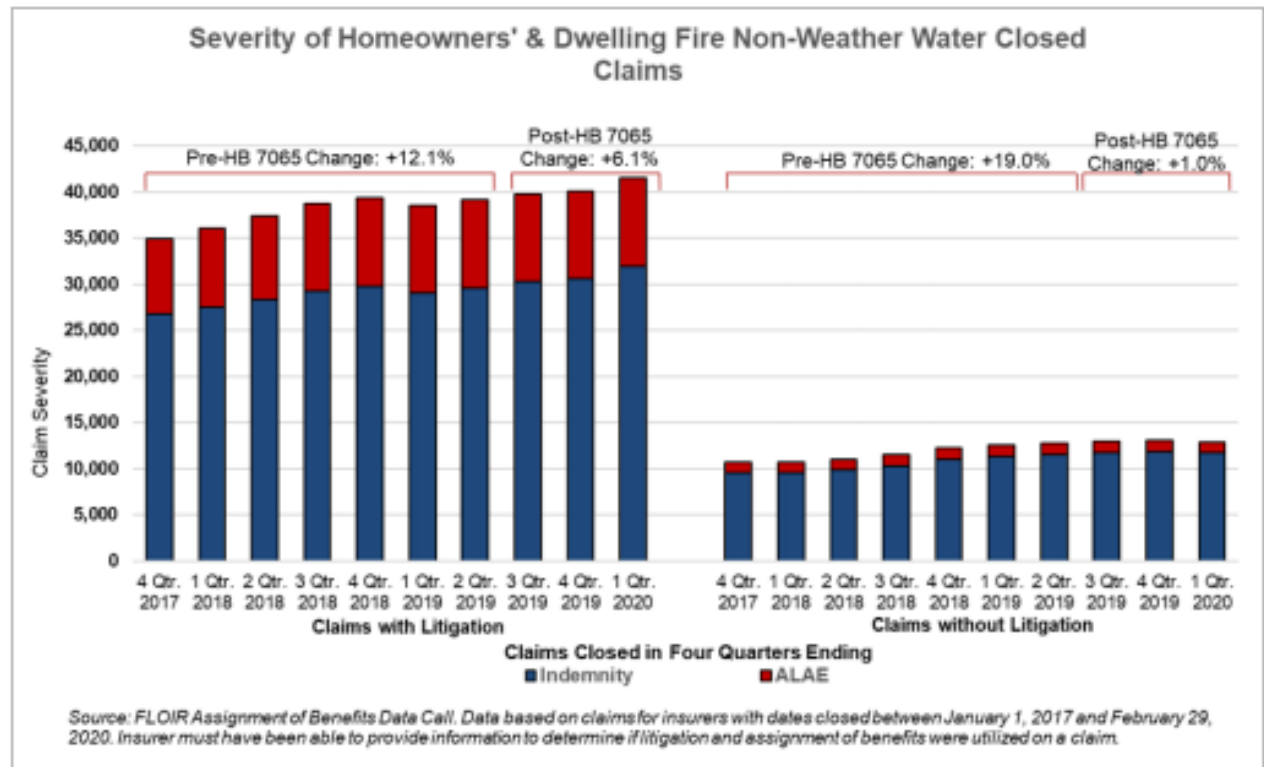
*Figure 3. Severity of Claims with Litigation versus Claims without Litigation.*⁸

⁵ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

⁶ <https://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx> (last visited Jan. 27, 2021).

⁷ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

⁸ Data provided by the Florida Office of Insurance Regulation to the Senate Committee on Banking and Insurance on January 12, 2021 (Senate Meeting Packet) https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/4966/8842_MeetingPacket_4966.pdf (last visited Jan. 27, 2021).



According to OIR, the increased severity of claims involving litigation is driving adverse loss reserve development, leading to high rate filings.⁹ Loss reserve development is the difference between the original loss as initially reserved by the insurer and its subsequent evaluation later or at the time of its final disposal.¹⁰ When adverse loss reserve development occurs, the claim costs more than its reserve was originally estimated by the insurer. The table below displays the adverse loss reserve development of Florida's domestic property insurers. The 1-year and 2-year look-backs periods for calendar years 2018 and 2019 show claims costing \$241-\$682 million more than their corresponding loss reserves.

Florida Domestic Property Insurance Market Adverse Loss Reserve Development¹¹		
Year	1-Year Look-Back	2-Year Look-Back
2018	\$418 million	\$241 million
2019	\$422 million	\$682 million

Figure 4 below provides another look at the increasing multi-year trend, displaying adverse loss reserve development between 2015 and 2019.

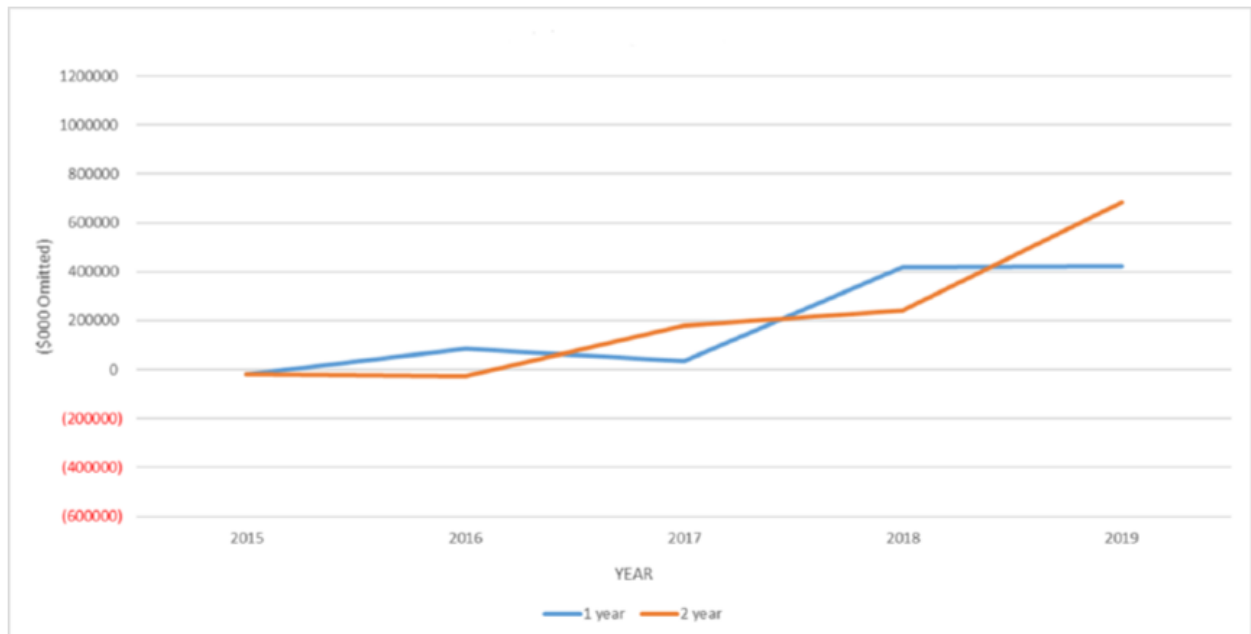
Figure 4. Loss Reserve Development in Florida's Domestic Property Insurance Market¹²

⁹ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation)

¹⁰ International Risk Management Institute, *Glossary*, <https://www.irmi.com/term/insurance-definitions/loss-development> (last visited Jan. 27, 2021).

¹¹ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

¹² Data provided by the Florida Office of Insurance Regulation to the Senate Committee on Banking and Insurance on January 12, 2021 (Senate Meeting Packet)



OIR and Citizens Property Insurance Corporation (Citizens) have also analyzed the contribution of claims volume following a loss to the multi-year adverse loss reserve development present in Florida's domestic property insurance market. Following the expiration of the 3-year claims filing deadline for Hurricane Irma in September 2020, Citizens analyzed the development of claims by Citizens policyholders related to Hurricane Irma.¹³ Citizens' analysis shows that almost 90 percent of total claims were filed within 2 years after a Hurricane Irma-related loss. The analysis further demonstrates that, as the 3 year claim-filing deadline approached, significantly more claims were filed with legal representation at the first notice of loss. The percentage of claims filed with legal representation at the first notice of loss increased from 10.3 percent in 2017 to 43.1 percent in 2018. However, the claims increased to 63.3 percent and 64.5 percent in years 2019 and 2020, respectively.

Citizens Hurricane Irma-Related Claims ¹⁴				
Year Filed	Total Filed	% of Total Irma Claims Filed	Total Filed w/ Representation at First Notice of Loss	% Filed w/ Representation at First Notice of Loss
2017	61,677	79.8%	6,393	10.3%
2018	7,579	9.8%	3,269	43.1%
2019	4,374	5.7%	2,769	63.3%

https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/4966/8842_MeetingPacket_4966.pdf (last visited Jan. 27, 2021).

¹³ Data provided by Citizens Property Insurance Corporation to the Senate Committee on Banking and Insurance on January 12, 2021 (Senate Meeting Packet)
https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/4966/8842_MeetingPacket_4966.pdf (last visited Jan. 14, 2021).

¹⁴ Data provided by Citizens Property Insurance Corporation to the Senate Committee on Banking and Insurance on January 12, 2021 (Senate Meeting Packet)
https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/4966/8842_MeetingPacket_4966.pdf (last visited Jan. 14, 2021).

2020*	3,645	4.7%	2,352	64.5%
Total	77,275	100.0%	14,783	19.1%

As of October 28, 2020

*The 3-year claims filing deadline for Hurricane Irma occurred in September 2020.

Following the expiration of the 3-year claims filing deadline for Hurricane Irma in September 2020, OIR analyzed the development of claims by all domestic property policyholders related to Hurricane Irma. Similarly to the Citizen’s analysis, OIR shows more than 90 percent of total claims were filed within 2 years of experiencing a Hurricane Irma-related loss.

Hurricane Irma-Related Claims in Florida¹⁵		
Data Call	Total Filed	% of Total Irma Claims Filed
November 2018	1,002,821	89.1%
January 2020	60,014	5.3%
November 2020	62,753	5.6%
Total	1,125,588	100.0%

Awarding Attorney Fees in Litigation

In most United States jurisdictions, each party to the litigation pays its own attorney, regardless of the outcome of the litigation, and a court may only award attorney fees to the prevailing side if authorized by statute or agreement of the parties to the litigation.¹⁶ This is often referred to as the “American Rule” for attorney fees, and contravenes the “English Rule” under which English courts generally awarded attorney fees to the prevailing party in litigation.¹⁷

Florida has enacted a number of statutes that authorize courts to award attorney fees in civil litigation. As the Florida Supreme Court has noted, these statutory provisions generally fall into two categories.¹⁸ In the first category, statutes direct a court to assess attorney fees against only one side in certain types of actions. An example is found in s. 627.428, F.S., which directs the court to assess reasonable attorney fees against the insurer and in favor of the insured or a beneficiary who prevails in litigation. The second category follows the English Rule and authorizes the prevailing party, whether it is the plaintiff or the defendant, to recover its attorney fees from the opposing party. An example is found in the recently enacted s. 627.7152, F.S., which directs the court to award an attorney fee to the statutorily defined prevailing party in assignment of benefits litigation under a residential or commercial property insurance policy.

¹⁵ Email from Allison Hess Sitte, Director of Government Affairs, Florida Office of Insurance Regulation (January 26, 2021).

¹⁶ *Florida Patient’s Compensation Fund v. Rowe*, 472 So. 2d 1145, 1147-1148, (Fla. 1985).

¹⁷ *Id.*

¹⁸ *Id.*

Attorney Fees Arising from Insurance Litigation

Section 627.428, F.S., allows an insured to recover attorney fees if he or she prevails in a lawsuit against the insurer to enforce an insurance policy. Some version of this statute has been the law in Florida since at least 1893.¹⁹ The statute provides, in part:

Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.²⁰

The Florida Supreme Court recently explained the purpose of the statute:

The need for fee and cost reimbursement in the realm of insurance litigation is deeply rooted in public policy. Namely, the Legislature recognized that it was essential to “level the playing field” between the economically-advantaged and sophisticated insurance companies and the individual citizen. Most assuredly, the average policyholder has neither the finances nor the expertise to single-handedly take on an insurance carrier. Without the funds necessary to compete with an insurance carrier, often a concerned policyholder's only means to take protective action is to hire that expertise in the form of legal counsel For this reason, the Legislature recognized that an insured is not made whole when an insurer simply grants the previously denied benefits without fees. The reality is that once the benefits have been denied and the plaintiff retains counsel to dispute that denial, additional costs that require relief have been incurred. Section 627.428, F.S., takes these additional costs into consideration and levels the scales of justice for policyholders by providing that the insurer pay the attorney's fees resulting from incorrectly denied benefits.²¹

Florida courts have broadly interpreted the statute to allow recovery of fees when the insurer ultimately settles the case before trial.²² A finding of bad faith on the part of the insurer is not a necessary precondition for the award of fees under the statute.²³

¹⁹ See *Tillis v. Liverpool & London & Globe Insurance Company*, 35 So. 171 (Fla. 1903) (rejecting an insurance company argument that the 1893 law providing that an insured may recover attorney fees in actions against an insurance company to enforce a policy violates due process and equal protection).

²⁰ Section 626.9373, F.S., contains substantially similar language but it applies to surplus lines insurers. Florida courts have interpreted the statutes to have the same meaning.

²¹ *Johnson v. Omega Ins. Co.*, 200 So. 3d 1207, 1215-1216 (Fla. 2016) (internal citations omitted).

²² *Johnson v. Omega Ins. Co.*, 200 So. 3d 1207, 1215 (Fla. 2016) (Noting that “it is well settled that the payment of a previously denied claim following the initiation of an action for recovery, but prior to the issuance of a final judgment, constitutes the functional equivalent of a confession of judgment”).

²³ *Insurance Co. of North America v. Lexow*, 602 So. 2d 528, 531 (Fla. 1992) (“We reject the argument that attorney's fees should not be assessed against INA because this dispute involved a type of claim which reasonably could be expected to be resolved by a court. INA's good faith in bringing this suit is irrelevant. If the dispute is within the scope of s. 627.428, F.S., and the insurer loses, the insurer is always obligated for attorney's fees”).

Lodestar Calculation

Florida courts determine reasonable attorney fees by using the federal “lodestar” calculation. This is computed by multiplying the number of hours reasonably expended on a case by a reasonable hourly rate.²⁴ In adopting a “suitable foundation for an objective structure” for the award of attorney fees, the Court explained in *Fla. Patient’s Comp. Fund v. Rowe*, that:

There is but little analogy between the elements that control the determination of a lawyer’s fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney’s fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.²⁵

In calculating the lodestar amount under *Rowe*, courts must consider the following elements:

- The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service.
- The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- The fee customarily charged in the locality for similar legal services.
- The amount involved and the results obtained.
- The time limitations imposed by the client or by the circumstances.
- The nature and length of the professional relationship with the client.
- The experience, reputation, and ability of the lawyer or lawyers performing the services.
- Whether the fee is fixed or contingent.²⁶

Contingency Fee Multipliers – Florida Court Discretion to Apply a Contingency Fee Multiplier and the Contingency Fee Multiplier Schedule

Florida courts have discretion to consider whether applying a contingency fee multiplier to the produced lodestar amount is appropriate.²⁷ However, before determining that a multiplier is warranted, a court must consider whether:

- The relevant legal market requires a contingency fee multiplier for a plaintiff to be able to obtain competent counsel.
- The attorney was able, in any way, to mitigate the risk of nonpayment.

²⁴ *Fla. Patient’s Comp. Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985).

²⁵ *Id.* at 1149 (quoting *Baruch v. Giblin*, 122 Fla. 59, 63, 164 So. 831, 833 (1935)).

²⁶ *Fla. Patient’s Comp. Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985).

²⁷ *Joyce v. Federated National Insurance Company*, 228 So. 3d 1122, 1124, 1128 (Fla. 2017) (quoting *Standard Guaranty Ins. Co. v. Quanstrom* 555 So. 2d 828, 834 (Fla. 1990)).

- Any of the factors established in *Rowe* are applicable, particularly the amount involved, the results that were obtained, and the type of fee arrangement agreed to between the client and the attorney.²⁸

When a court concludes that the presented evidence supports utilization of a multiplier, courts may use the following multiplier schedule, established in the 1990 *Quanstrom* ruling.²⁹

Contingency Fee Multiplier	Case's Likelihood of Success at Outset
1.0 to 1.5	More likely than not.
1.5 to 2.0	Approximately even.
2.0 to 2.5	Unlikely.

After the Florida Supreme Court adopted this approach in *Rowe*, the United States Supreme Court issued decisions rejecting and limiting the use of contingency fee multipliers in federal cases. In response, the Florida Supreme Court has reaffirmed Florida precedent and the underlying public policy reasoning for the use of contingency fee multipliers as articulated in *Rowe* on multiple occasions.

Federal Precedent Limiting the Use of Contingency Fee Multipliers

After the Florida Supreme Court's 1985 decision in *Rowe*, Justice Scalia, writing the majority opinion in *City of Burlington v. Dague*, couched his disapproval of contingency fee multipliers by reasoning that the multipliers incentivize nonmeritorious claims, so that those claims are effectively raised as often as meritorious claims:

[T]he consequence of awarding contingency enhancement to take account of this "merits" factor would be to provide attorneys with the same incentive to bring relatively meritless claims as relatively meritorious ones. Assume, for example, two claims, one with underlying merit of 20 percent, the other of 80 percent. Absent any contingency enhancement, a contingent-fee attorney would prefer to take the latter, since he is four times more likely to be paid. But with a contingency enhancement, this preference will disappear: the enhancement for the 20 percent claim would be a multiplier of 5 (100/20), which is quadruple the 1.25 multiplier (100/80) that would attach to the 80 percent claim. Thus, enhancement for the contingency risk posed by each case would encourage meritorious claims to be brought, but only at the social cost of indiscriminately encouraging nonmeritorious claims to be brought as well. We think that an unlikely objective of the "reasonable fees" provisions.³⁰

Building on *Dague*, the U.S. Supreme Court in *Perdue* further limited the use of contingency fee multipliers, reserving them for "rare and exceptional circumstances" in which the lodestar insufficiently accounts for a factor that may properly be considered in determining a reasonable

²⁸ *Id.*

²⁹ *Joyce*, 228 So. 3d at 1125.

³⁰ *City of Burlington v. Dague*, 505 U.S. 557, 563 (1992).

fee.³¹ Such circumstances “require specific evidence that the lodestar fee would not have been ‘adequate to attract competent counsel.’”³²

Florida Precedent Approving the Use of Contingency Fee Multipliers

The Florida Supreme Court has rejected the U.S. Supreme Court’s reasonings in *Dague* and *Perdue* on multiple occasions. Beginning with *Bell*, the Court reaffirmed the *Rowe* rationale for contingency fee multipliers, explaining:

[W]e find that the primary policy that favors the consideration of the multiplier is that it assists parties with legitimate causes of action or defenses in obtaining competent legal representation even if they are unable to pay an attorney on an hourly basis. In this way, the availability of the multiplier levels the playing field between parties with unequal abilities to secure legal representation.³³

In *Lane*, the Court similarly noted the role full contingency fee cases, generally, and partial contingency fee cases, specifically, play in providing access to the court system:

Attorneys should be encouraged to take cases based on a partial contingency-fee arrangement, since this policy also will encourage attorneys to provide services to persons who otherwise could not afford the customary legal fee. No incentive would exist under the approach taken by the district court below, because no “enhancement” of the customary fee would be given to offset losses.³⁴

More recently, the Florida Supreme Court has rejected the “rare and exceptional” standard articulated in *Perdue*. In *Joyce*, the Court held there is no “rare and exceptional” circumstances requirement before a court can apply a contingency fee multiplier.³⁵ *Joyce* also reaffirmed *Rowe*, *Quanstrom*, and *Bell*. Moreover, Justice Pariente, writing for the majority, criticized Justice Scalia’s reasoning from the majority opinion in *Dague*, arguing that Justice Scalia wrongly conflated nonmeritorious claims with claims that are unlikely to prevail in arguing that multipliers incentivize the pursuit of nonmeritorious claims.³⁶

Additional Statutes Applicable to the Award of Attorney Fees in Property Insurance Litigation

Section 627.428, F.S., generally governs the award of attorney fees in civil litigation under a property insurance policy. There are circumstances, however, where the insurer may obtain attorney fees from an insured. These circumstances include when litigation is brought by an assignee of benefits under a residential property insurance policy, when a claimant brings an action that has no good faith legal or genuine factual basis, or in certain circumstances when the insurer’s offer of settlement is refused.

³¹ *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 543 (2010).

³² *See id.* at 543.

³³ *Bell v. U.S.B. Acquisition Co. Inc.*, 734 So.2d 403, 411 (Fla. 1999).

³⁴ *Lane v. Head*, 566 So. 2d 508, 511 (Fla. 1990).

³⁵ *Joyce v. Federated National Insurance Company*, 228 So.3d 1122, 1135 (Fla. 2017).

³⁶ *Id.* at 1132-33.

Attorney Fees Arising from Assignment of Benefits

Section 627.7152, F.S., prevents recovery of “one way” attorney fees under s. 627.428, F.S., for assignees of post-loss benefits under a residential property insurance policy or commercial property insurance policy, and instead provides a formulaic means by which either party may recover attorney fees.³⁷ An award of attorney fees is based on the difference between the judgment obtained and the presuit settlement offer. Fees are awarded as follows:

- If the difference between the judgment obtained and the presuit offer is less than 25 percent of the disputed amount, the insurer is entitled to an award of reasonable attorney fees.
- If the difference between the judgment obtained and the presuit offer is at least 25 percent but less than 50 percent of the disputed amount, no party is entitled to an award of attorney fees.
- If the difference between the judgment obtained and the presuit offer is at least 50 percent of the disputed amount, the assignee is entitled to an award of reasonable attorney fees.³⁸

Attorney Fees Arising from Unsupported Claims, Defenses, or Delays

Section 57.105, F.S., provides the court with authority to award attorney fees, including prejudgment interest, to the prevailing party if the court finds the losing party or losing party’s attorney brought a civil claim or raised a defense in a civil cause of action that has no good faith legal or genuine factual basis. The court may also award attorney fees if the opposing party took any action, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, for the primary purpose of unreasonable delay.³⁹

Attorney Fees Arising from Offers of Judgment

Section 768.79, F.S., provides for attorney’s fees where a party’s offer to settle a case has been rejected. The statute states, in part:

(1) In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney’s fees incurred by her or him ... if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 percent less than such offer.... If a plaintiff files a demand for judgment which is not accepted by the defendant within 30 days and the plaintiff recovers a judgment in an amount at least 25 percent greater than the offer, she or he shall be entitled to recover reasonable costs and attorney’s fees....

An offer must:

- Be in writing and state that it is being made pursuant to this section;
- Name the party making it and the party to whom it is being made;
- State with particularity the amount offered to settle a claim for punitive damages, if any; and
- State its total amount.⁴⁰

³⁷ Section 627.7152(10)(a), F.S.

³⁸ *Id.*

³⁹ Section 57.105(1) and (2), F.S.

⁴⁰ Section 768.79(2), F.S.

When determining the reasonableness of an award of attorney fees, the court must consider the following factors along with other relevant criteria:

- The then merit or lack of merit in the claim;
- The number and nature of offers made by the parties;
- The closeness of questions of fact and law at issue;
- Whether the person making the offer had unreasonably refused to furnish information necessary to evaluate the reasonableness of such offer;
- Whether the suit was in the nature of a test case presenting questions of far-reaching importance affecting nonparties; and
- The amount of the additional delay cost and expense that the person making the offer reasonably would be expected to incur if the litigation should be prolonged.

Section 768.79(7)(a), F.S., allows the court discretion to disallow an award of costs and attorney fees to the prevailing party if it is determined the prevailing party did not make the offer in good faith.

Property insurance litigation is subject to both s. 627.428, F.S., and s. 768.79, F.S.⁴¹ Florida courts will apply both statutes to the same litigation with s. 627.428, F.S. governing the award of attorney fees prior to the insurer making an offer of judgment, while both s. 627.428, F.S., or s. 768.79, F.S., apply to the award of attorney fees after an offer of judgment is made, depending on how much the insured recovers. The Florida Supreme Court in *State Farm Mut. Auto Ins. Co. v. Nichols* explained how the two statutes interact in different circumstances by including the following chart in its opinion:⁴²

If the judgment is:	The insured receives:	The insurer receives:
No liability	No fees	Post-offer fees under the offer of judgment statute.
75 percent or less of the insurer's offer	Pre-offer fees under s. 627.428, F.S.	Post-offer fees under the offer of judgment statute.
More than 75 percent of the insurer's offer, but not more than 100 percent	Pre-offer fees under s. 627.428, F.S.	No fees.
More than the insurer's offer	All fees under s. 627.428, F.S.	No fees.

Replacement Cost and Actual Cash Value Loss Settlement Provisions

There are two primary settlement options available when purchasing a homeowner's property insurance policy: *replacement cost* and *actual cash value*. Replacement cost is usually defined in the policy as the cost to repair or replace the damaged property with materials of like kind and quality, without any deduction for depreciation.⁴³ Replacement cost is designed to cover the difference between what the property is actually worth and what it would cost to rebuild or repair

⁴¹ See *Pennsylvania Lumbermans Mut. Ins. Co. v. Sunrise Club Inc.*, 711 So.2d 593 (Fla. 3rd DCA 1998).

⁴² 932 So.2d 1067 at 1074 (Fla. 2006).

⁴³ National Association of Insurance Commissioners, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited Mar. 1, 2021).

that property.⁴⁴ Following a covered loss, the insurer assumes the full cost of repairing or replacing the damaged property.⁴⁵

By contrast, actual cash value is the cost to repair or replace the damaged property with material of like kind and quality, minus the cost of depreciation due to use, wear, obsolescence, or age.⁴⁶ Following a covered loss, the insured assumes the cost to cover the difference between the depreciated value of the damaged property and the cost of repairing or replacing it.

Florida law currently requires that insurers writing homeowner's property insurance policies, offer adjustment to the dwelling, including the roof, on the basis of replacement cost.⁴⁷ The Florida Office of Insurance Regulation will approve policy forms that adjust roof losses on the basis of actual cash value, or the depreciated value of the roof. The insurer must, however, also offer replacement cost adjustment on the roof before issuing the policy.

Roof Surface Payment Schedules

Roof surface payment schedules, sometimes referred to in residential property insurance policies as roof surfacing loss percentage tables, are depreciation tables that state upfront in either the individual policy or endorsement the cost the insurers will assume following a covered loss, expressed as a percentage of the loss amount. The depreciation rates in a roof surface payment schedule generally vary by the age of the roof and type of roof to account for differences in estimated roof lifespans based on roof surface material type.

The roof surface payment schedule example below from Nevada demonstrates the variance in depreciation rates between roof surface material type over time.

Roof Surface Payment Schedule⁴⁸								
The percentages shown for the type of roofing surface are applied to all components and installation including overhead, profit, labor, taxes, and fees associated with the replacement of the roofing system.								
Age of Roof in Years	Roof Surface Material Type							
	Class 3 or 4 Impact Resistant, Synthetic, Plastic, or Architectural	All Other Composition or Solar Shingles	Wood Shingles or Shakes	Metal Shingles or Panels	Concrete Tile, Fiber Cement Tile, or Clay Tile	Slate	Built-up Tar With or Without Gravel, Rubber, Membrane, or Other Flat Roof Surface	All Other Roof Types

⁴⁴ See *Trinidad v. Florida Peninsula Ins. Co.*, 121 So.3d 433, 438 (Fla. 2013) (quoting *State Farm Fire & Cas. Co. v. Patrick*, 647 So.2d 983 (Fla. 3d DCA 1994))

⁴⁵ Insureds that elect for adjustment on the basis of replacement cost receive greater coverage than adjustment on the basis of actual cash value because depreciation is not excluded from replacement cost, whereas it is generally excluded from actual cash value. See *Trinidad* at 438 (quoting *Goff v. State Farm Florida Ins. Co.*, 999 So.2d 684, 689 (Fla. 2d DCA 2008))

⁴⁶ National Association of Insurance Commissioner, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited March 1, 2021).

⁴⁷ Section 627.7011(1), F.S.

⁴⁸ Nevada Division of Insurance, *American Family Insurance Group – HO 88 02 01 14: Roof Surface Payment Schedule*, http://doi.nv.gov/uploadedFiles/doinvgov/public-documents/Consumers/Home/American_Family/HO_88_02_01_14.pdf (last visited Mar. 1, 2021).

	Composition Shingles							
0	100%	100%	100%	100%	100%	100%	100%	100%
1	97%	96%	97%	98%	98%	99%	95%	95%
2	94%	92%	94%	96%	96%	98%	90%	90%
3	91%	88%	91%	94%	94%	97%	85%	85%
4	88%	84%	88%	92%	92%	96%	80%	80%
5	85%	80%	85%	90%	90%	95%	75%	75%
6	82%	76%	82%	88%	88%	94%	70%	70%
7	79%	72%	79%	86%	86%	93%	65%	65%
8	76%	68%	76%	84%	84%	92%	60%	60%
9	73%	64%	73%	82%	82%	91%	55%	55%
10	70%	60%	70%	80%	80%	90%	50%	50%
11	67%	56%	67%	78%	78%	89%	45%	45%
12	64%	52%	64%	76%	76%	88%	40%	40%
13	61%	48%	61%	74%	74%	87%	35%	35%
14	58%	44%	58%	72%	72%	86%	30%	30%
15	55%	40%	55%	70%	70%	85%	*****	*****
16	52%	36%	52%	68%	68%	84%		
17	49%	32%	49%	66%	66%	83%		
18	46%	28%	46%	64%	64%	82%		
19	43%	**	43%	62%	62%	81%		
20	40%		40%	60%	60%	80%		
21	37%		37%	58%	58%	79%		
22	34%		34%	56%	56%	78%		
23	31%		31%	54%	54%	77%		
24	28%		28%	52%	52%	76%		
25	*		*	50%	50%	75%		
26				48%	48%	74%		
27				46%	46%	73%		
28				44%	44%	72%		
29				42%	42%	71%		
30				***	***	****		

* 25% payable for 25 years or over; ** 25% payable for 19 years or over; *** 40% payable for 30 years or over; **** 70% payable for 30 years or over; ***** 25% payable for 15 years or over

Valued Policy Law

Florida's Valued Policy Law (VPL)⁴⁹ has been in effect since 1899 and requires the insurer to set the value of the insured property in the event of a total loss.⁵⁰ In the event of a total loss caused by a covered peril, where the covered peril alone would have caused the loss, an insurer's liability under a property insurance policy equals the total coverage limit for which a premium was paid.⁵¹ However, in the event of total loss caused in part by a covered peril and in part by a

⁴⁹ Section 627.702, F.S.

⁵⁰ *Florida Farm Bureau Cas. Ins. Co. v. Cox*, 967 So. 2d 815, 818 (Fla. 2007).

⁵¹ Section 627.702(1)(a), F.S.

noncovered peril, the insurer's liability is limited to the amount of the loss caused by the covered peril.⁵²

Florida's VPL currently applies to the total loss of buildings, structures, mobile homes, or manufactured buildings located in Florida and insured as to a covered peril. While it does not differentiate between residential and commercial property, it does not cover policies issued by surplus lines insurers.

First-Party and Third-Party Litigation under Residential Property Insurance Contracts

Under Florida law, first- and third-party litigants under a property insurance contract are sometimes subject to different sets of statutory and case law and procedural requirements.

Time Limits for Filing Claims and Statute of Limitations

Section 627.70132, F.S., currently requires insureds to notify an insurer of a claim, supplemental claim, or reopened windstorm or hurricane claim within 3 years after the hurricane first made landfall or the windstorm caused the covered damage. Section 627.706(5), F.S., currently requires insureds to notify an insurer of a claim, supplemental claim, or reopened sinkhole claim within 2 years after the insured knew or reasonably should have known about the loss.

For other types of property insurance claims, Florida law currently places a 5-year statute of limitations for bringing an action for the breach of a property insurance contract that runs from the date of the loss.⁵³

Insurer's Duty to Respond to, Investigate, and Pay or Deny a Filed Claim

The insurer must acknowledge a filed claim within 14 days of its submission.⁵⁴ When requested in writing by the insured, the insurer must confirm the claim is either covered in full, partially covered, denied, or being investigated within 30 days of the insured providing a proof-of-loss statement.⁵⁵ Within 90 days of receiving notice of the initial, reopened, or supplemental claim, the insurer must either pay the claim in full, pay a portion of the claim, or deny the claim.⁵⁶

Statutory and Common Law Bad Faith

Florida's bad faith law and jurisprudence were designed to hold insurers accountable for failing to fulfill their contractual obligation to indemnify the insured or beneficiary on a valid claim.⁵⁷ Florida recognizes two distinct bad faith causes of action that may be initiated against an insurer. In the first, s. 624.155, F.S., provides first-party and third-party statutory bad faith causes of action against an insurer. Here, bad faith is statutorily defined as the commission of any of the following acts by the insurer:

⁵² Section 627.702(1)(b), F.S.

⁵³ Section 95.11(2)(e), F.S.

⁵⁴ Section 627.70131(1)(a), F.S.

⁵⁵ Section 627.7142, F.S.

⁵⁶ Section 627.70131(5)(a), F.S.

⁵⁷ *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).

- 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.⁵⁸

The second recognized bad faith cause of action provides a third-party common law cause of action when an insurer fails in good faith to settle a third party's claim against the insurer within policy limits and exposes the insured to liability in excess of his or her insurance coverage.⁵⁹ Florida courts do not recognize a common law first-party bad faith causes of action by the insured against its own insurer.⁶⁰ Most property insurance claims are first-party claims⁶¹, thus bad faith actions on such claims may proceed only pursuant to s. 624.155, F.S.

Presuit Notice to Initiate Litigation

As a condition precedent to bringing a bad faith cause of 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.⁶² The civil remedy 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 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.⁶³

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.⁶⁴

By contrast, as a condition precedent to bring a third-party cause of action to enforce an assignment agreement against the insurer under s. 627.7152(9), F.S., the assignee must provide

⁵⁸ Section 624.155(1)(b)(1)-(3), F.S.

⁵⁹ *Opperman v. Nationwide Mutual Fire Insurance Company*, 515 So.2d 263, 265 (Fla. 5th DCA 1987).

⁶⁰ *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 58-59 (Fla. 1995).

⁶¹ Homeowners insurance provides liability coverage, thus third-party litigation may occur under a property insurance policy.

⁶² Section 624.155(3), F.S.

⁶³ Section 624.155(3)(b)(1)-(5), F.S.

⁶⁴ See *Talat Enterprises, Inc., v. Aetna Cas. and Sur. Co.*, 753 So.2d 1278, 1284.

the named insured and the assignor a written notice of intent to initiate litigation, delivered at least 10 business days before filing suit, but not before the insurer has made a determination of coverage pursuant to s. 627.70131, F.S.⁶⁵ The notice must also include a detailed written invoice or estimate of services that includes itemized information and proof work was performed in accordance with accepted industry standards. If required by the insurer, the assignee must further submit to reasonably necessary examinations under oath and recorded statements administered by the insurer,⁶⁶ and participate in appraisal or other alternative dispute resolution methods in accordance with the policy terms,⁶⁷ before bringing a third-party cause of action to enforce an assignment agreement.

Response by the Insurer

If the insurer fails to respond to a civil remedy notice under s. 624.155, F.S., 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.⁶⁸ No action shall lie if the insurer responds within 60 days of receipt of the civil remedy notice by either paying damages or correcting the circumstances giving rise to the claim.⁶⁹

By contrast, the insurer must respond to a third-party cause of action to enforce an assignment agreement under s. 627.7152, F.S., within 10 business days of receipt of the presuit notice to initiate litigation by making a presuit settlement offer or requiring the assignee to participate in appraisal or other alternative dispute resolution method.⁷⁰

Offer of Settlement

Under Florida law, an 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.⁷¹ In considering whether the insurer has given fair consideration to a settlement offer that is not unreasonable under the facts, Florida courts look to whether there was a realistic opportunity for settlement.⁷²

III. Effect of Proposed Changes:

Unauthorized Insurance Transactions (Section 1)

Section 1 creates a third degree felony for any person who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engages in insurance activities without a license. A

⁶⁵ Section 627.70131, F.S., requires an insurer to make a coverage determination and pay or deny a claim within 90 days of receipt of the claim

⁶⁶ Section 627.7152(4)(d), F.S.

⁶⁷ Section 627.7152(4)(e), F.S.

⁶⁸ *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).

⁶⁹ *Id.*

⁷⁰ Section 627.7152(9)(b), F.S.

⁷¹ *Boston Old Colony Insurance Company v. Gutierrez*, 386 So.2d 783, 785 (Fla. 1980).

⁷² *Barry v. GEICO General Insurance Company*, 938 So.2d 613, 618 (Fla. 4th DCA 2006).

third degree felony is punishable by a term of up to 5 years in state prison and a fine that does not exceed \$5,000.⁷³

Claims Adjusting (Section 2)

Section 2 defines “claims adjusting”⁷⁴ and provides that, except for a duly licensed attorney at law as exempted under s. 626.860, F.S., or an agent as exempted under s. 626.862, F.S., a person may not provide claims adjusting services unless he or she is licensed and appointed as an adjuster. The Department of Financial Services may take administrative action and impose fines against anyone who performs claims adjusting, soliciting, marketing, or any other services as defined by this section or the section applying to a public adjuster in s. 626.854, F.S., who is not properly licensed.

Attorney Fees (Sections 3 and 4)

Surplus Lines

Section 3 amends s. 626.9373, F.S., which governs the award of attorney fees against a surplus lines insurer. The bill creates a strong presumption that a lodestar fee is sufficient and reasonable in claims arising under a property insurance policy issued by a surplus lines carrier. (The lodestar fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate for the services of the attorney.) This presumption may be rebutted in rare and exceptional circumstances when evidence is presented that competent counsel could not be retained in a reasonable manner.

The bill also provides an attorney fee calculation framework, called the demand-judgment quotient, for use in a suit involving a property insurance policy issued by a surplus lines carrier. The demand-judgment quotient is defined as the quotient obtained by dividing the judgment by the demand.

- If the demand-judgment quotient is greater than or equal to 0.8, the full amount of incurred attorney fees may be awarded.
- If the demand-judgment quotient is equal to or greater than 0.2 but less than 0.8, the attorney fees must equal the product of multiplying the incurred attorney fees by the demand-judgment quotient.
- If the demand-judgment quotient is less than 0.2, attorney fees may not be awarded.

⁷³ Sections 775.082(3)(e), F.S., and 775.083(1)(c), F.S.

⁷⁴ Claims adjusting, as defined in the bill, means directly or indirectly:

1. Attempting or undertaking to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertaking to negotiate or effect settlement of a claim, loss, or damage under an insurance contract, if such action results in payment to or receipt of money, commission, or any other thing of value by the party or parties rendering such service or persons affiliated with such party or parties; or
2. Soliciting services as described in subparagraph 1. or soliciting an insured or policyholder to file an insurance claim.

(b) The term does not include:

1. Paid services as a spokesperson used as part of a written or an electronic advertisement.
2. Paid services as a photographer or videographer used to capture images of damage.
3. Paid services to inventory personal property or business personal property.
4. Discussion or explanation of a bid for construction or repair services by a licensed contractor under part I of ch. 489, or a subcontractor for a licensed contractor, with a property owner or the insurer of the property.

The bill states that, notwithstanding any other provision of law, when a suit arises under a residential or commercial property insurance policy, attorney fees and costs may be recovered by a claimant only pursuant to this subsection and s. 57.105, F.S., which governs the award of reasonable attorney fees and awards of prejudgment interest to the prevailing party.

Section 3 also provides definitions for claimant, demand, demand-judgment quotient, incurred attorney fees, and judgment.

Other Property Insurance Policies

Section 4 similarly amends s. 627.428., F.S., to create a strong presumption that the lodestar fee is a sufficient and reasonable award of attorney fees in a claim arising under a property insurance policy. This presumption is rebuttable only in rare and exceptional circumstances by evidence that competent counsel could not be retained in a reasonable manner. Only when such evidence is presented to the court could a contingency fee multiplier be applied in property insurance litigation.

Roof Surface Reimbursement Schedules (Section 5)

Section 5 amends s. 627.7011, F.S., to provide for the use of a roof surface reimbursement schedule to limit coverage in a personal lines residential property insurance policy. The roof surface reimbursement schedule must provide for full replacement coverage for any roof surface type less than 10 years old. For roofs 10 years old or older, the roof surface reimbursement schedule must provide for repair, replacement, and installation based on the annual age of the roof surface type, subject to the following minimum reimbursement amounts, unless otherwise actuarially justified and demonstrated to the Office of Insurance Regulation (OIR):

- 70 percent for a metal roof type;
- 40 percent for a concrete tile and clay tile roof type;
- 40 percent for a wood shake and wood shingle roof type;
- 25 percent for all other roof types.

Roof surface reimbursement schedules must allow for actuarially sound rate standards⁷⁵ under Florida's Rating Law,⁷⁶ be subject to OIR approval, be furnished along with the personal lines residential property insurance policy at the time of issuance or renewal, and include the following notice in no smaller than 12-point uppercase and boldfaced type:

PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF SERVICE REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE BELOW. BE ADVISED THIS MAY RESULT IN YOUR HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT.

⁷⁵ See ch. 627.062, F.S.

⁷⁶ See ch. 627 pt. I, F.S.

The section further provides that, in the event of a total loss caused by a covered peril, actual cash value coverage as determined by the roof surface reimbursement schedule does not apply. The insurer's liability will instead be for the amount of the insured property as specified in the personal lines residential property insurance policy, as provided for in Florida's Valued Policy Law.⁷⁷

Currently, insurers may offer homeowner's insurance policies with roof surface reimbursement schedules approved by the Office of Insurance Regulation, but must also offer policies that provide replacement cost reimbursement. This section removes the requirement to offer replacement cost reimbursement for roofs that are at least 10-years-old.

The bill clarifies that an insurer who is offering a roof reimbursement schedule may also offer a roof reimbursement on the basis of replacement costs such that offering one does not preclude the other.

Additionally, the bill allows an insurer to provide coverage to the roof on a stated value basis. It provides the homeowner with the choice of purchasing limited coverage at the stated value of the coverage. For example, instead of expressing the coverage in the form of a depreciating percentage over time, the stated value clearly provides the dollar value of the coverage of the roof. An insurer may limit its offering to the stated value coverage option, but may also offer replacement cost coverage or a roof reimbursement schedule.

Notice of Property Insurance Claim (Section 6)

Section 6 amends s. 627.70132, F.S., to require that a claim, supplemental claim, or reopened claim under a property insurance policy must be provided to the insurer within 2 years of the date of the loss. This reduces the existing time frame by 1 year and applies to all property insurance notices. It is no longer limited to windstorm or hurricane loss or damage and includes a property insurance policy issued by an eligible surplus lines insurer.

Alternative Dispute Resolution Procedure (Section 7)

Section 7 makes a technical change to s. 627.7015(9), F.S., to conform to the revision of s. 627.70132, F.S., above, by deleting a reference to "windstorm or hurricane loss." The bill also authorizes a property insurance policy to require the policyholder or assignee to participate in the Division of Financial Services property insurance mediation program, if requested by the insurer.

Property Insurance Policy Lawsuits (Section 8)

Section 8 creates s. 627.70152, F.S., creating several provisions governing lawsuits arising under a property insurance policy.

⁷⁷ See s. 627.702, F.S.

Application

The section defines the scope of the section as applicable to all first-party and third-party actions brought under a property insurance policy, including an assignee.

Definitions

The bill defines:

- “Assignee” to mean a person who is assigned post-loss benefits through an assignment agreement, by cross-reference to s. 627.7152, F.S.
- “Claimant” to mean an insured or assignee who is filing suit under a property insurance policy.
- “Demand” to mean the specific amount alleged to be owed by the insurer to the claimant under the property insurance policy.
- “Demand-judgment quotient” to mean the quotient obtained by dividing the judgment by the demand.
- “Incurred attorney fees” to mean the total amount of attorney fees supported by sufficient evidence and determined by the court to have been incurred by the claimant in bringing the action.
- “Judgment” to mean damages recovered, if any, but does not include any amount awarded for attorney fees, costs, or interest.

Presuit Notice Requirements

The claimant must provide the insurer with a written notice of intent to initiate litigation at least 60 days before filing suit under the property insurance policy. Additionally, the notice may not be served before the insurer has made a coverage determination pursuant to s. 627.70131, F.S.⁷⁸

The notice must specify:

- That it is being provided pursuant to this section;
- The alleged acts or omissions of the insurance insurer giving rise to the action;
- The demand amount;
- The amount of the claimant’s attorney fees, calculated as the product of hours worked multiplied by a reasonable hourly rate; and
- If provided by an attorney or other representative, whether a copy of the notice was provided to the claimant.

An assignee bringing a third-party claim must also comply with s. 627.7152, F.S., pertaining to assignment agreements. Concurrent with the notice of intent to initiate litigation, an assignee must also provide the named insured, insurer, and assignor a detailed written invoice or estimate of services, including itemized information on equipment, materials, and supplies; the number of labor hours; and, in the case of work performed, proof that the work has been performed in accordance with accepted industry standards.⁷⁹

⁷⁸ Section 627.70131, F.S., requires an insurer to make a coverage determination and pay or deny a claim within 90 days of receipt of the claim.

⁷⁹ This is a current precondition to an assignee filing suit under s. 627.7152(9), F.S.

The claimant must provide the insurer with notice of intent to initiate litigation within the 5-year statute of limitations for property insurance contracts pursuant to s. 95.11, F.S.

Following the insurer's receipt of claimant's notice of intent to initiate litigation, a court must dismiss without prejudice any action commenced by the insurer against the claimant before the expiration of the 60-day notice period.

Admissibility of Notice and Response

Notice and submissions provided pursuant to this section: are admissible as evidence in a civil action or alternative dispute resolution proceeding; do not limit the evidence of attorney fees, damages, or loss which may be offered at trial; and do not relieve any obligation that insured or assignee has to give notice under another other provision of law.

Right to Inspect

The insurer may request to inspect, photograph, or evaluate the property that is the subject of the claim in a reasonable manner and at a reasonable time within 30 days of receipt of the notice of intent to initiate litigation. If reasonably possible, the insurer must complete the inspection, photography, and evaluation within 60 days of receipt of the notice of intent to initiate litigation. The insurer must then fairly and promptly evaluate the claim after completing the inspection.

Abatement

The action shall be abated by a court order if the court finds the insurer timely filed a motion to abate proceedings within 30 days after the insurer filed an original answer and the insurer either did not receive proper notice under this section or was not provided a reasonable opportunity to inspect, photograph, or evaluate the property in question after making such request.

The action is abated without a court order beginning on the 11th day after the motion to abate is filed if the insurer verifies it either did not receive proper notice under this section or was not provided a reasonable opportunity to inspect, photograph, or evaluate the property in question after making such request, and the claimant does not controvert the motion by filed affidavit within 10 days after the insurer filed the motion.

Abatement continues for 60 days after the claimant provides notice of intent to initiate litigation against the insurer in compliance with this section or 50 days after the insurer completes the requested inspection, photography, or evaluation, whichever occurs later.

During abatement, a court may not compel participation in mediation pursuant to s. 627.7015, F.S., or neutral evaluation pursuant to s. 627.7074, F.S.

Attorney Fee Calculation

Attorney fees are awarded in actions arising under property insurance contracts according to the demand-judgment quotient. If the quotient of the judgment obtained by the claimant divided by the demand made by the claimant is:

- Greater than or equal to 0.8, the claimant is entitled to an award of attorney fees in the full amount.

- Equal to or greater than 0.2 but less than 0.8, the claimant is entitled to an award of attorney fees equal to the product of the incurred reasonable attorney fees multiplied by the demand-judgment quotient. For example, if the claimant obtains a judgment of \$20,000 and the claimant's demand was \$40,000, the demand-judgment quotient would be 0.5. If the claimant's reasonable attorney fees were \$10,000, the attorney fees paid by the insurer would be \$5,000, which is the product of multiplying \$10,000 in attorney fees by the demand judgment quotient of 0.5.
- Less than 0.2, the claimant is not entitled to an award of attorney fees.

Attorney fees may also be awarded under s. 57.105, F.S., pertaining to unsupported claims, defenses, or delays.

A court may deny an award of attorney fees to a claimant that did not comply with the section's presuit notice of intent to initiate litigation requirements, where the insurer pleads insufficient notice by the claimant within 30 days after the insurer files its original answer in court.

The court may order the claimant to pay the insurer's attorney fees resulting from an action previously voluntarily dismissed, if the claimant thereafter commences an action based on or including the same claim against the same insurer that was previously voluntarily dismissed.

Consolidation of Residential Property Insurance Actions (Section 9)

Section 9 requires each party that is aware of ongoing multiple actions based upon coverage provided under the same residential property insurance policy for the same property and owners to provide written notice to the court of the multiple actions. Once the court receives notice, it may order that the actions be consolidated and transferred to the court having jurisdiction based on the total amount in controversy of all consolidated claims. If multiple cases are pending in circuit courts, the cases may be consolidated based on the date on which the first case was filed.

Deletion of Conflicting Provisions (Section 10)

Section 10 amends s. 627.7152, F.S., to delete conflicting provisions pertaining to the requirement that assignees provide notice of intent to initiate litigation and the award of attorney fees in property insurance litigation between assignees and insurers. Under the bill, these matters are now subject to Section 8 of the bill which creates s. 627.70152, F.S.

The bill establishes that the provisions of an assignment agreement, while currently provided to the insurer, must also be provided and delivered to the named insured. Additionally, an assignment agreement and this section do not modify or eliminate the right of an insurer to communicate directly with the named insured if the insured is not represented by counsel.

Lawyer Closing Statements for Property Claims (Section 11)

Section 11 requests the Florida Supreme Court to amend the Rules of Professional conduct of the Rules Regulating The Florida Bar. The new rule would require that, when a recovery is awarded in a residential or commercial residential property claim, each lawyer or law firm involved in the

case provide closing statements to the Department of Financial Services that itemize the amount of the fee received by each participating lawyer or firm, as well as costs and expenses.

Effective Date (Section 12)

Section 12 provides an effective date of 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:

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: 626.112, 626.5813, 626.9373, 627.428, 627.7011, 627.70132, 627.7015, and 627.7152.

This bill creates section 627.70152; 627.70153 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Judiciary on March 9, 2021:

The committee substitute differs from the underlying bill by: providing a criminal penalty for aiding or abetting unlicensed insurance activity; prohibiting an unauthorized person from providing claims adjusting services; establishing, for purposes of awarding attorney fees in surplus lines cases, that the lodestar attorney fee computation is reasonable and a rebuttable presumption and that the demand-judgment quotient will be used to award attorney fees for a claimant; clarifying that an insurer may offer a roof reimbursement on the basis of replacement costs and may provide coverage to the roof on a stated value basis; establishing that the reduced 2-year claim filing notice provision applies to surplus lines; authorizing a policy to require a policyholder or assignee to participate in DFS mediation; authorizing a court to consolidate and transfer multiple claims that involve the same policy, property, and owners to one court; requesting the Florida Supreme Court to amend rules to require that lawyers and law firms, in property claim litigation, provide closing statements that itemize fees, costs, and expenses to the Department of Financial Services.

CS by Banking and Insurance on February 2, 2021:

The committee substitute clarifies that, notwithstanding s. 627.7011(1)(a), F.S., an insurer may offer a roof surface reimbursement schedule that applies once a roof is at least 10-years old, without also being required to offer replacement cost coverage on a roof of such age.

The committee substitute makes additional technical and clarifying changes to the underlying bill.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Boyd

597-01966-21

202176c1

A bill to be entitled
An act relating to residential property insurance;
amending s. 627.428, F.S.; providing that, for certain
attorney fees awarded for claims arising under
property insurance policies, a strong presumption is
created that a lodestar fee is sufficient and
reasonable; providing that such presumption may be
rebutted only under certain circumstances; amending s.
627.7011, F.S.; providing that certain provisions
relating to homeowners' policies, offers of
replacement cost coverage, and offers of law and
ordinance coverage do not prohibit insurers from
providing specified property insurance policies by
including roof surface reimbursement schedules;
providing requirements for roof surface reimbursement
schedules; prohibiting application of a roof surface
reimbursement schedule under certain circumstances;
amending s. 627.70132, F.S.; revising property
insurance coverages for which a notice of claim must
be given to the insurer within a specified timeframe;
revising the timeframe for providing notices of
property insurance claims; revising the definitions of
the terms "supplemental claim" and "reopened claim";
amending s. 627.7015, F.S.; conforming a provision to
changes made by the act; creating s. 627.70152, F.S.;
providing applicability; defining terms; requiring
notice of intent to initiate litigation; specifying
requirements for such notice; specifying an assignee's
presuit obligations; specifying the timeframe within

597-01966-21

202176c1

which a notice of intent to initiate litigation must be served; requiring dismissal of certain actions under specified circumstances; specifying the admissibility of certain evidence; providing construction; authorizing an insurer to request to inspect, photograph, or evaluate certain property; specifying requirements for such inspections, photographs, and evaluations; authorizing motions to abate suits under property insurance policies; specifying conditions for abatement; providing for an award of attorney fees for certain claims under specified circumstances; providing for an award of attorney fees following a voluntary dismissal under certain circumstances; requiring the court to stay proceedings under certain circumstances; amending s. 627.7152, F.S.; deleting definitions; deleting a requirement for a notice of intent to initiate litigation; deleting requirements for such notice; deleting a requirement for a written response to the notice of intent to initiate litigation; deleting requirements for such response; deleting a provision related to an award of reasonable attorney fees and costs for certain claims arising under an assignment agreement; deleting a provision related to an award of reasonable attorney fees and costs following a voluntary dismissal under certain circumstances; deleting a requirement for the court to stay proceedings under certain circumstances; providing an effective date.

597-01966-21

202176c1

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

Section 1. Subsection (4) is added to section 627.428, Florida Statutes, to read:

627.428 Attorney fees.—

(4) In an award of attorney fees under this section for a claim arising under a property insurance policy, a strong presumption is created that a lodestar fee is sufficient and reasonable. Such presumption may be rebutted only in a rare and exceptional circumstance with evidence that competent counsel could not be retained in a reasonable manner.

Section 2. Paragraph (f) is added to subsection (5) of section 627.7011, Florida Statutes, to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(5) This section does not:

(f) Prohibit an insurer, notwithstanding paragraph (1)(a), from providing limited coverage on a personal lines residential property insurance policy by including a roof surface reimbursement schedule. If included in the policy, a roof surface reimbursement schedule must do all of the following:

1. Provide reimbursement for repair, replacement, and installation based on the annual age of a roof surface type.

2. Provide full replacement coverage for any roof surface type less than 10 years old.

3. Unless otherwise demonstrated to the office to be actuarially justified, provide for reimbursement amounts of no less than:

597-01966-21

202176c1

a. Seventy percent for a metal roof type.

b. Forty percent for a concrete tile and clay tile roof type.

c. Forty percent for a wood shake and wood shingle roof type.

d. Twenty-five percent for all other roof types.

4. Include at the top of the schedule, in bold type no smaller than 12 points, the following statement:

"PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF SURFACE REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE BELOW. BE ADVISED THAT THIS MAY RESULT IN YOU HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

5. Allow for all actuarially sound methods of s. 627.062 to apply.

6. Be approved by the office.

7. Be provided to the insured with the policy documents at issuance and renewal.

A roof surface reimbursement schedule may not be applied to a roof if there is a total loss to a primary structure in accordance with the valued policy law under s. 627.702 which is caused by a covered peril.

Section 3. Section 627.70132, Florida Statutes, is amended to read:

597-01966-21

202176c1

117 627.70132 Notice of property insurance ~~windstorm or~~
118 ~~hurricane~~ claim.—A claim, supplemental claim, or reopened claim
119 under an insurance policy that provides property insurance, as
120 defined in s. 624.604, ~~for loss or damage caused by the peril of~~
121 ~~windstorm or hurricane~~ is barred unless notice of the claim,
122 supplemental claim, or reopened claim is ~~was~~ given to the
123 insurer in accordance with the terms of the policy within 2
124 years ~~3 years~~ after the date of loss ~~hurricane first made~~
125 ~~landfall or the windstorm caused the covered damage~~. For
126 purposes of this section, the term “supplemental claim” or
127 “reopened claim” means any additional claim for recovery from
128 the insurer for losses ~~from the same hurricane or windstorm~~
129 ~~which~~ the insurer has previously adjusted pursuant to the
130 initial claim. This section does not affect any applicable
131 limitation on civil actions provided in s. 95.11 for claims,
132 supplemental claims, or reopened claims timely filed under this
133 section.

134 Section 4. Subsection (9) of section 627.7015, Florida
135 Statutes, is amended to read:

136 627.7015 Alternative procedure for resolution of disputed
137 property insurance claims.—

138 (9) For purposes of this section, the term “claim” refers
139 to any dispute between an insurer and a policyholder relating to
140 a material issue of fact other than a dispute:

141 (a) With respect to which the insurer has a reasonable
142 basis to suspect fraud;

143 (b) When, based on agreed-upon facts as to the cause of
144 loss, there is no coverage under the policy;

145 (c) With respect to which the insurer has a reasonable

597-01966-21

202176c1

basis to believe that the policyholder has intentionally made a material misrepresentation of fact which is relevant to the claim, and the entire request for payment of a loss has been denied on the basis of the material misrepresentation;

(d) With respect to which the amount in controversy is less than \$500, unless the parties agree to mediate a dispute involving a lesser amount; or

(e) With respect to a ~~windstorm or hurricane~~ loss that does not comply with s. 627.70132.

Section 5. Section 627.70152, Florida Statutes, is created to read:

627.70152 Suits arising under a property insurance policy.—

(1) APPLICATION.—This section applies to all suits under a property insurance policy, including actions brought by an assignee.

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

(a) "Assignee" has the same meaning as in s. 627.7152.

(b) "Claimant" means an insured or assignee who is filing suit under a property insurance policy.

(c) "Demand" means the specific amount alleged to be owed by the insurer to the claimant under the property insurance policy.

(d) "Demand-judgment quotient" means the quotient obtained by dividing the judgment by the demand.

(e) "Incurred attorney fees" means the total amount of attorney fees supported by sufficient evidence and determined by the court to have been incurred by the claimant in bringing the action.

(f) "Judgment" means damages recovered, if any, but does

597-01966-21

202176c1

not include any amount awarded for attorney fees, costs, or interest.

(3) NOTICE.—

(a) As a condition precedent to filing a suit under a property insurance policy, a claimant must provide the insurer a written notice of intent to initiate litigation in accordance with this section. Such notice must be served by certified mail, return receipt requested, or electronic delivery at least 60 days before filing suit. However, such notice may not be served before the insurer has made a determination of coverage under s. 627.70131. An attorney or other representative of the claimant who provides such notice must provide a copy of the notice to the claimant. The notice and any copy must specify:

1. That the notice is being provided pursuant to this section;

2. The alleged acts or omissions of the insurer giving rise to the action;

3. The demand;

4. The amount of reasonable and necessary attorney fees incurred by the claimant, to be calculated by multiplying the number of hours actually worked on the claim as of the date of the notice by the claimant's attorney by a reasonable hourly rate; and

5. If provided by an attorney or other representative, that a copy of the notice was provided to the claimant.

(b) As a precondition to filing suit, an assignee also must:

1. Comply with s. 627.7152; and

2. Concurrent with the notice, provide the named insured,

597-01966-21

202176c1

the insurer, and the assignor, if not the named insured, a detailed written invoice or estimate of services, including itemized information on equipment, materials, and supplies; the number of labor hours; and, in the case of work performed, proof that the work has been performed in accordance with accepted industry standards.

(c) A notice of intent to initiate litigation must be served within the time limits provided in s. 95.11 and is not required if the action is a counterclaim. Service of a notice tolls the time limits provided in s. 95.11 for 60 days if such time limits will expire before the end of the 60-day notice period.

(d) A court must dismiss without prejudice any action relating to a claim for which a notice of intent to initiate litigation is given as required by this subsection if such action is commenced before the expiration of the 60-day notice period, is brought by an insurer to whom notice was given, and is against the claimant giving notice.

(4) ADMISSIBILITY OF NOTICE AND RESPONSE.—The notice provided pursuant to subsection (3) and the submissions provided pursuant to subparagraph (3)(b)2.:

(a) Are admissible as evidence in a civil action or an alternative dispute resolution proceeding relating to the claim for which the notice is given;

(b) Do not limit the evidence of attorney fees, damages, or loss which may be offered at trial; and

(c) Do not relieve any obligation that an insured or assignee has to give notice under any other provision of law.

(5) INSPECTION.—Within 30 days after an insurer receives

597-01966-21

202176c1

notice pursuant to subsection (3), the insurer may send a written request to the insured or assignee to inspect, photograph, or evaluate, in a reasonable manner and at a reasonable time, the property that is the subject of the claim. If reasonably possible, the insurer must complete the inspection, photography, and evaluation not later than 60 days after the insurer receives the presuit notice. After completing the inspection, the insurer must conduct an internal review by a duly-qualified claims adjuster to fairly and promptly evaluate the claim. This section does not limit any right provided in a property insurance policy or contract to inspect property.

(6) ABATEMENT.—

(a) In addition to taking any other action allowed by an insurance policy or a contract or by any other provision of law, an insurer may file a motion to abate a suit under a property insurance policy if the insurer:

1. Files the motion no later than the 30th day after the insurer filed an original answer in the court in which the action is pending; and

2. Did not receive notice required pursuant to subsection (3) or requested an inspection pursuant to subsection (5) but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

(b) The court shall abate the action if the court finds that the insurer did not receive the notice required by subsection (3) or requested an inspection pursuant to subsection (5) but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the

597-01966-21

202176c1

claim.

(c) The action is abated without a court order beginning on the 11th day after the motion to abate is filed if the motion to abate:

1. Is verified and states that the insurer did not receive the notice required by subsection (3) or requested an inspection pursuant to subsection (5) but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim; and

2. Is not controverted by an affidavit filed by the insured or assignee within 10 days after the date the plea in abatement is filed.

(d) An affidavit filed pursuant to subparagraph (c)2. must include as an attachment a copy of the written notice sent pursuant to subsection (3) and state the date on which such notice was given.

(e) Abatement under this subsection continues until the later of:

1. Sixty days after the claimant provides notice to the insurer in compliance with subsection (3); or

2. Fifty days after the insurer completes the requested inspection, photographing, or evaluating of the property pursuant to subsection (5).

(f) If an action is abated pursuant to this subsection, a court may not compel during the abatement period participation in mediation pursuant to s. 627.7015 or neutral evaluation pursuant to s. 627.7074.

(7) ATTORNEY FEES.—

(a) Notwithstanding any other provision of law, in a suit

597-01966-21

202176c1

arising under a residential or commercial property insurance policy, attorney fees and costs may be recovered by a claimant only pursuant to s. 57.105 and this subsection. Attorney fees may be awarded to a claimant under this section as follows:

1. If the demand-judgment quotient is greater than or equal to 0.8, the full amount of incurred attorney fees may be awarded.

2. If the demand-judgment quotient is equal to or greater than 0.2 but less than 0.8, the attorney fees must equal the product of multiplying the incurred attorney fees by the demand-judgment quotient.

3. If the demand-judgment quotient is less than 0.2, attorney fees may not be awarded.

(b) If an insurer pleads and proves that it did not receive notice that complies with subsection (3) and files such pleading no later than the 30th day after the insurer files an original answer in the court in which the action is pending, the court may not award to the claimant any incurred attorney fees for services rendered after the date on which the insurer files such pleading with the court.

(c) If a claimant commences an action in any court of this state based upon or including the same claim against the same adverse party that such insured or assignee has previously voluntarily dismissed in a court of this state, the court may order the insured or assignee to pay the attorney fees and costs of the adverse party resulting from the action previously voluntarily dismissed. The court shall stay the proceedings in the subsequent action until the insured or assignee has complied with the order.

597-01966-21

202176c1

Section 6. Paragraphs (d) through (g) of subsection (1) and subsections (9) and (10) of section 627.7152, Florida Statutes, are amended to read:

627.7152 Assignment agreements.—

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

~~(d) "Disputed amount" means the difference between the assignee's presuit settlement demand and the insurer's presuit settlement offer.~~

~~(e) "Judgment obtained" means damages recovered, if any, but does not include any amount awarded for attorney fees, costs, or interest.~~

~~(f) "Presuit settlement demand" means the demand made by the assignee in the written notice of intent to initiate litigation as required by paragraph (9) (a).~~

~~(g) "Presuit settlement offer" means the offer made by the insurer in its written response to the notice of intent to initiate litigation as required by paragraph (9) (b).~~

~~(9) (a) An assignee must provide the named insured, insurer, and the assignor, if not the named insured, with a written notice of intent to initiate litigation before filing suit under the policy. Such notice must be served by certified mail, return receipt requested, or electronic delivery at least 10 business days before filing suit, but may not be served before the insurer has made a determination of coverage under s. 627.70131. The notice must specify the damages in dispute, the amount claimed, and a presuit settlement demand. Concurrent with the notice, and as a precondition to filing suit, the assignee must provide the named insured, insurer, and the assignor, if not the named insured, a detailed written invoice or estimate of~~

597-01966-21

202176c1

349 ~~services, including itemized information on equipment,~~
350 ~~materials, and supplies; the number of labor hours; and, in the~~
351 ~~ease of work performed, proof that the work has been performed~~
352 ~~in accordance with accepted industry standards.~~

353 ~~(b) An insurer must respond in writing to the notice within~~
354 ~~10 business days after receiving the notice specified in~~
355 ~~paragraph (a) by making a presuit settlement offer or requiring~~
356 ~~the assignee to participate in appraisal or other method of~~
357 ~~alternative dispute resolution under the policy. An insurer must~~
358 ~~have a procedure for the prompt investigation, review, and~~
359 ~~evaluation of the dispute stated in the notice and must~~
360 ~~investigate each claim contained in the notice in accordance~~
361 ~~with the Florida Insurance Code.~~

362 ~~(10) Notwithstanding any other provision of law, in a suit~~
363 ~~related to an assignment agreement for post-loss claims arising~~
364 ~~under a residential or commercial property insurance policy,~~
365 ~~attorney fees and costs may be recovered by an assignee only~~
366 ~~under s. 57.105 and this subsection.~~

367 ~~(a) If the difference between the judgment obtained by the~~
368 ~~assignee and the presuit settlement offer is:~~

369 ~~1. Less than 25 percent of the disputed amount, the insurer~~
370 ~~is entitled to an award of reasonable attorney fees.~~

371 ~~2. At least 25 percent but less than 50 percent of the~~
372 ~~disputed amount, no party is entitled to an award of attorney~~
373 ~~fees.~~

374 ~~3. At least 50 percent of the disputed amount, the assignee~~
375 ~~is entitled to an award of reasonable attorney fees.~~

376 ~~(b) If the insurer fails to inspect the property or provide~~
377 ~~written or oral authorization for repairs within 7 calendar days~~

597-01966-21

202176c1

378 ~~after the first notice of loss, the insurer waives its right to~~
379 ~~an award of attorney fees under this subsection. If the failure~~
380 ~~to inspect the property or provide written or oral authorization~~
381 ~~for repairs is the result of an event for which the Governor had~~
382 ~~declared a state of emergency under s. 252.36, factors beyond~~
383 ~~the control of the insurer which reasonably prevented an~~
384 ~~inspection or written or oral authorization for repairs, or the~~
385 ~~named insured's failure or inability to allow an inspection of~~
386 ~~the property after a request by the insurer, the insurer does~~
387 ~~not waive its right to an award of attorney fees under this~~
388 ~~subsection.~~

389 ~~(c) If an assignee commences an action in any court of this~~
390 ~~state based upon or including the same claim against the same~~
391 ~~adverse party that such assignee has previously voluntarily~~
392 ~~dismissed in a court of this state, the court may order the~~
393 ~~assignee to pay the attorney fees and costs of the adverse party~~
394 ~~resulting from the action previously voluntarily dismissed. The~~
395 ~~court shall stay the proceedings in the subsequent action until~~
396 ~~the assignee has complied with the order.~~

397 Section 7. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Criminal Justice
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JIM BOYD
21st District

February 4, 2021

Senator Jeff Brandes
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Brandes:

I respectfully request that CS/SB 76: Residential Property Insurance, be scheduled for a hearing in the Committee on Judiciary at your earliest convenience. CS/SB 76 was received favorably in the Committee on Banking and Insurance.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in cursive script, appearing to read "Jim Boyd".

Jim Boyd

cc: Tom Cibula
Joyce Butler
Celia Georgiades

REPLY TO:

- ☐ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

76

Bill Number (if applicable)

Topic Residential Property Insurance

Amendment Barcode (if applicable)

Name Mark Delegal

Job Title Partner

Address 201 East Park Avenue, Suite 200B

Phone 850-508-7779

Street

Tallahassee

FL

32301

Email mark@dacfl.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing State Farm Florida Insurance Company

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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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

CS/SB 76

Bill Number (if applicable)

Topic Residential Property Insurance

Amendment Barcode (if applicable)

Name David Murray

Job Title Attorney

Address 901 West Swan Avenue

Phone 813-258-3600

Street

Tampa

FL

33606

City

State

Zip

Email dave@danahyandmurray.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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

03.09.21

Meeting Date

Topic Residential Property Insurance

Name Steven Richardson

Job Title

Address 2873 Remington Green Cir

Street

Tallahassee

City

FL

State

32308

Zip

Phone 850-518-1050

Email steven.richardson@csklegal.com

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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YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Duplicate

THE FLORIDA SENATE
APPEARANCE RECORD

3/9/2021

Meeting Date

76

Bill Number (if applicable)

Topic Residential Property Insurance

Name Karl N. Rasmussen

Amendment Barcode (if applicable)

Job Title Lobbyist

Address PO Box 11247

Street

Tallahassee

FL

32302

City

State

Zip

Phone 8504254000

Email karl@meenanlawfirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Association of Insurance & Financial Advisors - FL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

3/9/21

Meeting Date

76

Bill Number (if applicable)

Topic Property Insurance

Name BG Murphy

Job Title Director of Government Affairs

Address 217 Shamrock Drive

Street

Tallahassee

City

FL

State

32309

Zip

Phone 863-698-8820

Email bmurphy@faia.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Association of Insurance Agents

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

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

3/9/21
Meeting Date

76
Bill Number (if applicable)

Topic Residential Property Ins.

Name Logan McFadden

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 American Property + Casualty Insurance Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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YOU MUST PRINT AND DELIVER THIS FORM TO THE

CONFERENCE ROOM

Duplicate

March 9, 2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

76

Bill Number (if applicable)

Topic Property Insurance

Amendment Barcode (if applicable)

Name Michael Carlson

Job Title President

Address 215 S. Monroe St. Ste. 835

Phone 850-544-9576

Street

Tallahassee

FL

32301

City

State

Zip

Email michael.carlson@piff.net

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

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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)

3/9/20
Meeting Date

76
Bill Number (if applicable)

Topic Property Insurance

Name Christine Ashburn

Amendment Barcode (if applicable)

Job Title Chief - Communications & Legislative Affairs

Address 2103 Maryland Circle
Street

Phone _____

Tallahassee FL 32312
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Citizens Property Insurance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONIAL CLERK.

Duplicate

THE FLORIDA SENATE
APPEARANCE RECORD

3/9/2021

Meeting Date

SB 76

Bill Number (if applicable)

Topic Residential Property Insurance

Name Timothy J. Meenan

Amendment Barcode (if applicable)

Job Title Lobbyist

Address 300 S. Duval Street, Ste. 410

Phone 850.425.4000

Street

Tallahassee

FL

32301

City

State

Zip

Email tim@meenanlawfirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tower Hill 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.

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S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TEST.

THE FLORIDA SENATE
APPEARANCE RECORD

3/9/21

Meeting Date

SB76

Bill Number (if applicable)

Topic Residential Property Insurance

Name George Feijoo

Amendment Barcode (if applicable)

Job Title Consultant

Address 108 S Monroe St

Street

Phone 850-681-0024

Tallahassee

FL

32301

City

State

Zip

Email grfeijoo@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Insurance 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

Sudi 11:45

3/9/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

76

Bill Number (if applicable)

Topic Residential Property Insurance

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 513 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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Duplicate

3/9/2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

76

Bill Number (if applicable)

Topic Residential Property Insurance

Amendment Barcode (if applicable)

Name Chris Dawson

Job Title Attorney

Address 301 E. Pine Street, Suite 1400

Phone 407-843-8880

Street

Orlando

FL

32801

City

State

Zip

Email chris.dawson@gray-robinson.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Roofing and Sheet Metal Contractors 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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/9/14
Meeting Date

76
Bill Number (if applicable)

Topic SB 76

Amendment Barcode (if applicable)

Name Richie Kidwell

Job Title 941 W Morse Blvd #602

Address Wmtr Park RL 32789

Phone 407-233-0600

City President State _____ Zip _____

Email info@RAFlorida.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Restoration Association of FL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

March 9th

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

CS/SB 76

Bill Number (if applicable)

Topic

Name

Job Title

Address

Street

City

State

Zip

Phone

Email

Amendment Barcode (if applicable)

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

76

Bill Number (if applicable)

Topic Hurricane Michael/Property Insurance

Amendment Barcode (if applicable)

Name Joe Busby

Job Title Ret. Veteran

Address 4879 Magnolia Rd

Phone 850-209-1313

Street

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

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

3/9/2021

Meeting Date

76

Bill Number (if applicable)

Topic Hurricane Michael/Property Insurance

Amendment Barcode (if applicable)

Thurston

Name Joe Busby

Job Title Ret. Veteran

Address 4879 Magnolia Rd

Phone 850-209-1313

Street

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

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)

03/09/21
Meeting Date

SB 76
Bill Number (if applicable)

Topic SB 76

Amendment Barcode (if applicable)

Name Ali Kadir

Job Title Attorney

Address 986 Douglas Ave., Suite 102
Street

Phone 407-501-4833

Altamonte Springs, FL 32714
City State Zip

Email Ali@TheKRfirm.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Kuhn Raslavich, P.A.

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

3/9/2021

Meeting Date

76

Bill Number (if applicable)

280944

Amendment Barcode (if applicable)

Topic Hurricane Michael/Property Insurance

Name Joe Busby

Job Title Ret. Veteran

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.

of the public record for this meeting.

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

03.09.21

Meeting Date

76

Bill Number (if applicable)

280944

Amendment Barcode (if applicable)

Topic Residential Property Insurance

Name Steven Richardson

Job Title _____

Address 2873 Remington Green Cir

Street

Tallahassee

City

FL

State

32308

Zip

Phone 850-518-1050

Email Steven.Richardson@csklegal.com

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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/9/21
Meeting Date

76
Bill Number (if applicable)

280944 SD
Amendment Barcode (if applicable)

Topic SB76

Name Richie Kidwell

Job Title President

Address 941 W more Blvd 100
Street

Winter Park FL 32789
City State Zip

Phone 407-233-0493

Email info@KAFBunder.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Restoration Association of FL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

03.09.21

Meeting Date

76

Bill Number (if applicable)

557490

Amendment Barcode (if applicable)

Topic Residential Property Insurance

Name Steven Richardson

Job Title _____

Address 2873 Remington Green Cir

Street

Tallahassee

City

FL

State

32308

Zip

Phone 850-518-1050

Email steven.richardson@csklegal.com

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

03.09.21

Meeting Date

76

Bill Number (if applicable)

479134

Amendment Barcode (if applicable)

Topic Residential Property Insurance

Name Steven Richardson

Job Title _____

Address 2873 Remington Green Cir

Street

Phone 850-518-1050

Tallahassee

FL

32308

City

State

Zip

Email Steven.Richardson@csklegal.com

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

3/9/2021

Meeting Date

CS/SB 76

Bill Number (if applicable)

~~910978~~ 479134

Amendment Barcode (if applicable)

by Sen. Thurston

Topic Residential Property Insurance

Name Matthew Collett

Job Title Attorney

Address 4494 Southside Boulevard, Suite 101

Street

Jacksonville

City

FL

State

32216

Zip

Phone 904-330-7500

Email mcollett@collett-law.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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

76

Bill Number (if applicable)

479134

Amendment Barcode (if applicable)

Topic Hurricane Michael/Property Insurance

Name Joe Busby

Job Title Ret. Veteran

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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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)

3/9/2021

~~3/10/2021~~

Meeting Date

SB 76

Bill Number (if applicable)

~~0000000000~~

Amendment Barcode (if applicable)

444846

Topic Insurance

Name Hillary Coesel

Job Title Attorney

Address 9000 Hollywood Blvd. Co855

Street

Hollywood FL 33021

City

State

Zip

Phone 561-202-5713

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Policyholders Cooperative

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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Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

76

Bill Number (if applicable)

444846

Amendment Barcode (if applicable)

Topic Hurricane Michael/Property Insurance

Name Joe Busby

Job Title Ret. Veteran

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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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

CS/SB 76

Bill Number (if applicable)

~~468630~~ 827618

Amendment Barcode (if applicable)

by Sen. Thurston

Topic Residential Property Insurance

Name Matthew Collett

Job Title Attorney

Address 4494 Southside Boulevard, Suite 101

Street

Jacksonville

City

FL

State

32216

Zip

Phone 904-330-7500

Email mcollett@collett-law.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

3/9/2021

Meeting Date

CS/SB 76

Bill Number (if applicable)

~~408530~~ 827618

Amendment Barcode (if applicable)

by Sen. Thurston

Topic Residential Property Insurance

Name David Murray

Job Title Attorney

Address 901 West Swan Avenue

Street

Tampa

City

FL

State

33606

Zip

Phone 813-258-3600

Email dave@danahyandmurray.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.

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

CS/SB 76

Bill Number (if applicable)

~~536774~~ 301860

Amendment Barcode (if applicable)

Topic Residential Property Insurance

Name David Murray

Job Title Attorney

Address 901 West Swan Avenu

Street

Tampa

City

FL

State

33606

Zip

Phone 813-258-3600

Email dave@danahyandmurray.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

3/9/2021

Meeting Date

76

Bill Number (if applicable)

301860

Topic Hurricane Michael/Property Insurance

Amendment Barcode (if applicable)

Name Joe Busby

Job Title Ret. Veteran

Address 4879 Magnolia Rd

Phone 850-209-1313

Street

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)

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 420

INTRODUCER: Judiciary Committee and Senator Hooper

SUBJECT: Motor Vehicle Insurance Coverage Exclusions

DATE: March 10, 2021 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
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 420 authorizes private passenger motor vehicle policyholders to exclude identified individuals from the following coverages under their policy:

- Personal injury protection (PIP) coverage applicable to the identified individual's injuries, lost wages, and death benefits;
- Property damage liability coverage;
- Bodily injury liability coverage, when required by law;
- Uninsured motorist coverage for any damages sustained by the excluded individual; and
- 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; or
- The exclusion is inconsistent with the underwriting rules filed by the insurer.

The exclusion of an identified named driver is invalid unless the named policyholder consents in writing to the exclusion of a named driver and the excluded named drivers are listed on the policy's declarations page or policy endorsement.

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. An excluded driver, however, must separately comply with financial responsibility laws.

II. Present Situation:

Part XI of ch. 627, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle coverage requirements. Owners and operators of motor vehicles must maintain the ability to respond in damages at specified minimum amounts for personal injury protection, bodily injury or death, and property damage. Current law requires insurance coverage that provides personal injury protection, or that is used to meet mandatory financial responsibility requirements, be issued to all driving age individuals residing in the same household.¹

Florida's motor vehicle insurance laws do not currently authorize an insurer to exclude mandatory coverages of a named individual, up to minimum limits required under the laws. Thus, the Office of Insurance Regulation (OIR) requires that an insurer provide coverages satisfying minimum financial responsibilities requirements under Florida law, even when a named driver exclusion is elected.²

Minimum Insurance Requirements for Motor Vehicles

Florida's Financial Responsibility Law of 1955³ provides financial security requirements for motor vehicle owners and operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle.⁴ In combination with the Florida Motor Vehicle No-Fault Law,⁵ operators of motor vehicles with four or more wheels are required to purchase minimum insurance coverages for property damage liability⁶ and personal injury protection.⁷ Proof of such coverage is required only after an accident.⁸

Property damage liability (PD) coverage pays damages to the third-party's property caused by the insured or member of the insured's household up to policy limits. Florida law currently requires minimum PD coverage limits in the amount of \$10,000, or \$30,000 for a combined PD and bodily injury liability policy.⁹

Personal injury protection (PIP) coverage pays the reasonable expenses for necessary medical services, lost wages, replacement services, and a death benefit to the insured for damages incurred in an accident regardless of fault. PIP coverage extends beyond the insured to include household relatives, pedestrians, and passengers without PIP coverage. Florida law currently requires minimum PIP coverage limits in the amount of \$10,000 in the event of bodily injury to any one person who sustains an emergency medical condition,¹⁰ which is reduced to a \$2,500

¹ Section 627.736(1), F.S.

² See Office of Insurance Regulation, *Senate Bill 420 Agency Analysis*, p. 4 (February 18, 2021); see also Office of Insurance Regulation, *Senate Bill 518 Agency Analysis*, p. 2 (October 30, 2017) (on file with the Senate Committee on Banking and Insurance).

³ Chapter 624, F.S.

⁴ Section 324.011, F.S.

⁵ Sections 627.730 – 627.7405, F.S.

⁶ Section 324.022, F.S.

⁷ Section 627.733, F.S.

⁸ Section 324.011, F.S.

⁹ Section 324.022(1), F.S.

¹⁰ Section 627.736(1), F.S.

limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed.¹¹ PIP coverage provides reimbursement for 80 percent of reasonable medical expenses, 60 percent of loss of income, and 100 of replacement services, for bodily injuries sustained in a motor vehicle accident, without regard to fault. PIP coverage also provides a \$5,000 death benefit.¹²

Additional Optional Insurance Coverages for Motor Vehicles

Bodily injury liability (BI) coverage pays for bodily injury expenses caused by the insured or members of the insured's household to third-party in an accident. This coverage pays economic damages, such as medical bills and lost wages, and non-economic damages, such as pain and suffering of the third-party, up to policy limits. This coverage also provides legal representation and attorney fees to the insured in the event of a lawsuit. A driver in compliance with the requirement to carry PIP coverage is not required to maintain BI, except that Florida law requires proof of ability to pay monetary damages in the amount of \$10,000 because of bodily injury to, or death of, one person in any one crash, and \$20,000 for bodily injury to, or death of, two or more persons in any one crash.¹³ This requirement is triggered when an operator or owner of a motor vehicle does not have an automobile liability policy and is in a motor vehicle crash that causes injury or death to others, does not stay at the scene of the crash, was driving under the influence, or is involved in a crash that requires a wrecker.¹⁴ An owner or operator who drives under the influence must maintain non-cancelable coverage that provides BI with limits of at least \$100,000/\$300,000 and PD with limits of at least \$50,000.¹⁵ Additionally, motor vehicle insurance policies providing BI must also provide uninsured motor coverage, unless such coverage is declined by a named insured.¹⁶ Uninsured motorist (UM) coverage pays the insured and passengers if injured by an uninsured or underinsured at-fault party. The coverage pays medical benefits and lost wages, and also covers pain and suffering damages. In Florida, UM is an optional coverage but must be offered up to the same limits as the insured has for BI.¹⁷

III. Effect of Proposed Changes:

Section 1 creates s. 627.747, F.S., authorizing a private passenger motor vehicle policyholder to exclude an identified individual of their household from the following coverages under their policy:

- Personal injury protection coverage applicable to the identified individual's injuries, lost wages, and death benefits;
- 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; and
- Any coverage the policyholder is not required by law to purchase.

¹¹ Section 627.736(1)(a)(4), F.S.

¹² Section 627.736(1)(c), F.S.

¹³ Chapter 324.022, F.S.

¹⁴ Section 324.051, F.S.

¹⁵ Section 324.023, F.S.

¹⁶ Section 627.727(1), F.S.

¹⁷ Section 627.727(2), F.S.

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 OIR; or
- The exclusion is inconsistent with the underwriting rules filed by the insurer.

The exclusion of an identified named driver is invalid unless the named policyholder consents in writing to the exclusion of a named driver and the excluded named drivers are listed on the policy's declarations page or policy endorsement.

An excluded driver must separately establish, maintain, and show proof of financial ability to respond for damages arising out of the ownership, maintenance, or use of a motor vehicle as required by the financial responsibility law¹⁸ and must maintain financial security.¹⁹

Section 2 amends s. 324.151, F.S., governing motor vehicle liability policy provisions for satisfying financial responsibility requirements, to provide conforming changes consistent with the named drive exclusion provisions of the bill.

Section 3 amends s. 627.736, F.S., governing personal injury protection benefits, to provide conforming changes consistent with the named driver exclusion provisions of the bill.

Section 4 amends s. 627.7407, F.S., governing the personal injury protection requirements under Florida's Motor Vehicle No-Fault Law, to provide conforming changes consistent with the named drive exclusion provisions of the bill.

Section 5 provides an effective date of 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.

¹⁸ Chapter 324, F.S.

¹⁹ Security can be shown by commercially purchased insurance or qualifying self-insurance. s. 627.733, F.S.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Policyholders are most likely to exclude drivers whose presence in their households results in the policyholder either paying substantially more in premium or not being able to obtain coverage from a preferred insurer. Thus, the bill creates more choice for the consumer of motor vehicle insurance to obtain insurance from a preferred insurer, and likely at a more affordable price. In this scenario, the owner of the vehicle should take special care to prevent the excluded driver from having access to the vehicle because the owner's liability coverage will not cover damages caused by the excluded driver.

Certain losses that are currently required to be covered under a private passenger motor vehicle policy would no longer be covered. This will negatively affect parties who suffer injury to their persons and property caused by an excluded driver who does not obtain their own insurance coverage. The excluded driver may also be negatively affected, as he or she will not receive PIP reimbursement for medical and wage loss damages. This problem will not arise, however, if the excluded driver has motor vehicle insurance coverage of his or her own.

SB 420 may also cause an indeterminate increase in uncompensated medical care. Medical providers may not be reimbursed for medical services provided to a named excluded driver injured as a result of an auto accident unless the named excluded driver had been injured as a passenger, has their own motor vehicle coverage, or has medical insurance. Similarly, when an excluded driver lacks insurance, treatment for injuries to others caused by the excluded driver may go uncompensated.

C. Government Sector Impact:

Public hospitals may not be reimbursed for emergency medical services provided to a named excluded driver injured as a result of an auto accident in certain circumstances.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 324.151, 627.736, and 627.7407.

This bill creates section 627.747, 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 March 9, 2020:

The committee substitute adds the requirement that an excluded driver must comply with existing financial responsibility and security requirements.

- B. **Amendments:**

None.

By Senator Hooper

16-00568-21

2021420__

1 A bill to be entitled
2 An act relating to motor vehicle insurance coverage
3 exclusions; creating s. 627.747, F.S.; providing that
4 private passenger motor vehicle policies may exclude
5 certain identified individuals from specified
6 coverages under certain circumstances; providing that
7 such policies may not exclude coverage under certain
8 circumstances; amending ss. 324.151, 627.736, and
9 627.7407, F.S.; conforming provisions to changes made
10 by the act; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 627.747, Florida Statutes, is created to
15 read:

16 627.747 Named driver exclusion.—

17 (1) A private passenger motor vehicle policy may exclude an
18 identified individual who is not a named insured from the
19 following coverages while the identified individual is operating
20 a motor vehicle, provided the identified individual is named on
21 the declarations page or by endorsement and the named insured
22 consents in writing to such exclusion:

23 (a) Notwithstanding the Florida Motor Vehicle No-Fault Law,
24 the personal injury protection coverage specifically applicable
25 to the identified individual's injuries, lost wages, and death
26 benefits.

27 (b) Property damage liability coverage.

28 (c) Bodily injury liability coverage, if required by law
29 and purchased by the named insured.

16-00568-21

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

(e) Any coverage the named insured is not required by law to purchase.

(2) A private passenger motor vehicle policy may not exclude coverage when:

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

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

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

Section 2. Paragraph (a) of subsection (1) of section 324.151, Florida Statutes, is amended to read:

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy to be proof of financial responsibility under s. 324.031(1) ~~✓~~ shall be issued to owners or operators under the following provisions:

(a) An owner's liability insurance policy must ~~shall~~ designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted, must ~~and shall~~ insure the owner named therein, and, except for a named driver excluded under s. 627.747, must insure any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner against loss from the liability imposed by law for damage arising out of the ownership, maintenance, or use of such motor

16-00568-21

2021420__

59 vehicle or motor vehicles within the United States or the
60 Dominion of Canada, subject to limits, exclusive of interest and
61 costs with respect to each such motor vehicle as is provided for
62 under s. 324.021(7). Insurers may make available, with respect
63 to property damage liability coverage, a deductible amount not
64 to exceed \$500. In the event of a property damage loss covered
65 by a policy containing a property damage deductible provision,
66 the insurer shall pay to the third-party claimant the amount of
67 any property damage liability settlement or judgment, subject to
68 policy limits, as if no deductible existed.

69 Section 3. Subsection (1) of section 627.736, Florida
70 Statutes, is amended to read:

71 627.736 Required personal injury protection benefits;
72 exclusions; priority; claims.—

73 (1) REQUIRED BENEFITS.—An insurance policy complying with
74 the security requirements of s. 627.733 must provide personal
75 injury protection to the named insured, relatives residing in
76 the same household unless excluded under s. 627.747, persons
77 operating the insured motor vehicle, passengers in the motor
78 vehicle, and other persons struck by the motor vehicle and
79 suffering bodily injury while not an occupant of a self-
80 propelled vehicle, subject to subsection (2) and paragraph
81 (4) (e), to a limit of \$10,000 in medical and disability benefits
82 and \$5,000 in death benefits resulting from bodily injury,
83 sickness, disease, or death arising out of the ownership,
84 maintenance, or use of a motor vehicle as follows:

85 (a) *Medical benefits*.—Eighty percent of all reasonable
86 expenses for medically necessary medical, surgical, X-ray,
87 dental, and rehabilitative services, including prosthetic

16-00568-21

2021420__

88 devices and medically necessary ambulance, hospital, and nursing
89 services if the individual receives initial services and care
90 pursuant to subparagraph 1. within 14 days after the motor
91 vehicle accident. The medical benefits provide reimbursement
92 only for:

93 1. Initial services and care that are lawfully provided,
94 supervised, ordered, or prescribed by a physician licensed under
95 chapter 458 or chapter 459, a dentist licensed under chapter
96 466, a chiropractic physician licensed under chapter 460, or an
97 advanced practice registered nurse registered under s. 464.0123
98 or that are provided in a hospital or in a facility that owns,
99 or is wholly owned by, a hospital. Initial services and care may
100 also be provided by a person or entity licensed under part III
101 of chapter 401 which provides emergency transportation and
102 treatment.

103 2. Upon referral by a provider described in subparagraph
104 1., followup services and care consistent with the underlying
105 medical diagnosis rendered pursuant to subparagraph 1. which may
106 be provided, supervised, ordered, or prescribed only by a
107 physician licensed under chapter 458 or chapter 459, a
108 chiropractic physician licensed under chapter 460, a dentist
109 licensed under chapter 466, or an advanced practice registered
110 nurse registered under s. 464.0123, or, to the extent permitted
111 by applicable law and under the supervision of such physician,
112 osteopathic physician, chiropractic physician, or dentist, by a
113 physician assistant licensed under chapter 458 or chapter 459 or
114 an advanced practice registered nurse licensed under chapter
115 464. Followup services and care may also be provided by the
116 following persons or entities:

16-00568-21

2021420__

117 a. A hospital or ambulatory surgical center licensed under
118 chapter 395.

119 b. An entity wholly owned by one or more physicians
120 licensed under chapter 458 or chapter 459, chiropractic
121 physicians licensed under chapter 460, advanced practice
122 registered nurses registered under s. 464.0123, or dentists
123 licensed under chapter 466 or by such practitioners and the
124 spouse, parent, child, or sibling of such practitioners.

125 c. An entity that owns or is wholly owned, directly or
126 indirectly, by a hospital or hospitals.

127 d. A physical therapist licensed under chapter 486, based
128 upon a referral by a provider described in this subparagraph.

129 e. A health care clinic licensed under part X of chapter
130 400 which is accredited by an accrediting organization whose
131 standards incorporate comparable regulations required by this
132 state, or

133 (I) Has a medical director licensed under chapter 458,
134 chapter 459, or chapter 460;

135 (II) Has been continuously licensed for more than 3 years
136 or is a publicly traded corporation that issues securities
137 traded on an exchange registered with the United States
138 Securities and Exchange Commission as a national securities
139 exchange; and

140 (III) Provides at least four of the following medical
141 specialties:

142 (A) General medicine.

143 (B) Radiography.

144 (C) Orthopedic medicine.

145 (D) Physical medicine.

16-00568-21

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(E) Physical therapy.

(F) Physical rehabilitation.

(G) Prescribing or dispensing outpatient prescription medication.

(H) Laboratory services.

3. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. up to \$10,000 if a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced practice registered nurse licensed under chapter 464 has determined that the injured person had an emergency medical condition.

4. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. is limited to \$2,500 if a provider listed in subparagraph 1. or subparagraph 2. determines that the injured person did not have an emergency medical condition.

5. Medical benefits do not include massage as defined in s. 480.033 or acupuncture as defined in s. 457.102, regardless of the person, entity, or licensee providing massage or acupuncture, and a licensed massage therapist or licensed acupuncturist may not be reimbursed for medical benefits under this section.

6. The Financial Services Commission shall adopt by rule the form that must be used by an insurer and a health care provider specified in sub-subparagraph 2.b., sub-subparagraph 2.c., or sub-subparagraph 2.e. to document that the health care provider meets the criteria of this paragraph. Such rule must include a requirement for a sworn statement or affidavit.

16-00568-21

2021420__

175 (b) *Disability benefits.*—Sixty percent of any loss of gross
176 income and loss of earning capacity per individual from
177 inability to work proximately caused by the injury sustained by
178 the injured person, plus all expenses reasonably incurred in
179 obtaining from others ordinary and necessary services in lieu of
180 those that, but for the injury, the injured person would have
181 performed without income for the benefit of his or her
182 household. All disability benefits payable under this provision
183 must be paid at least every 2 weeks.

184 (c) *Death benefits.*—Death benefits of \$5,000 per
185 individual. Death benefits are in addition to the medical and
186 disability benefits provided under the insurance policy. The
187 insurer may pay death benefits to the executor or administrator
188 of the deceased, to any of the deceased's relatives by blood,
189 legal adoption, or marriage, or to any person appearing to the
190 insurer to be equitably entitled to such benefits.

191
192 Only insurers writing motor vehicle liability insurance in this
193 state may provide the required benefits of this section, and
194 such insurer may not require the purchase of any other motor
195 vehicle coverage other than the purchase of property damage
196 liability coverage as required by s. 627.7275 as a condition for
197 providing such benefits. Insurers may not require that property
198 damage liability insurance in an amount greater than \$10,000 be
199 purchased in conjunction with personal injury protection. Such
200 insurers shall make benefits and required property damage
201 liability insurance coverage available through normal marketing
202 channels. An insurer writing motor vehicle liability insurance
203 in this state who fails to comply with such availability

16-00568-21

2021420__

requirement as a general business practice violates part IX of chapter 626, and such violation constitutes an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance. An insurer committing such violation is subject to the penalties provided under that part, as well as those provided elsewhere in the insurance code.

Section 4. Paragraph (a) of subsection (5) of section 627.7407, Florida Statutes, is amended to read:

627.7407 Application of the Florida Motor Vehicle No-Fault Law.—

(5) No later than November 15, 2007, each motor vehicle insurer shall provide notice of the provisions of this section to each motor vehicle insured who is subject to subsection (1). The notice is not subject to approval by the Office of Insurance Regulation. The notice must clearly inform the policyholder:

(a) That beginning on January 1, 2008, Florida law requires the policyholder to maintain personal injury protection ("PIP") insurance coverage and that this insurance pays covered medical expenses for injuries sustained in a motor vehicle crash by the policyholder, passengers, and relatives residing in the policyholder's household unless excluded under s. 627.747.

Section 5. 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: March 3, 2021

I respectfully request that **Senate Bill # 420**, relating to Motor Vehicle Insurance Coverage Exclusions, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ed Hooper", written over a horizontal line.

Senator Ed Hooper
Florida Senate, District 16

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

420

Bill Number (if applicable)

478706

Amendment Barcode (if applicable)

Topic Motor Vehicle Insurance Coverage

Name Mark Delegal

Job Title Partner

Address 201 E Park Avenue, Suite 2001

Phone 850-508-7779

Street

Tallahassee

FL

32301

Email mark@dacfl.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing State Farm Mutual Automobile Insurance Company

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

3/9/2021

Meeting Date

420

Bill Number (if applicable)

Topic Motor Vehicle Insurance

Amendment Barcode (if applicable)

Name Mark Delegal

Job Title Partner

Address 201 E Park Avenue, Suite 200B

Phone 850-508-7779

Street

Tallahassee

FL

32301

City

State

Zip

Email mark@dacfl.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing State Farm Mutual Automobile Insurance Company

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

Duplicate

THE FLORIDA SENATE
APPEARANCE RECORD

3/9/2021

Meeting Date

SB 420

Bill Number (if applicable)

Topic Motor Vehicle Insurance Coverage Exclusions

Amendment Barcode (if applicable)

Name Timothy J. Meenan

Job Title Lobbyist

Address 300 S. Duval Street, Ste. 410

Phone 850.425.4000

Street

Tallahassee

FL

32301

City

State

Zip

Email tim@meenanlawfirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NAIFA-Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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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)

March 9th

Meeting Date

SB 420

Bill Number (if applicable)

Topic

Motor Vehicle Ins Coverage Exclusion

Name

David Serdan

Job Title

Retired Senior Citizen of Florida

Address

Street

City

State

Zip

Phone

Email

66 Wintergreen Dr
Fruitland Park FL 34731
352 805 6597
goldendave1955@gmail.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Self

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
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 472

INTRODUCER: Senator Bracy and others

SUBJECT: Gain-time

DATE: March 8, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	Pre-meeting
2.			CJ	
3.			AP	

I. Summary:

SB 472 revises the rate of gain-time eligibility for inmates awaiting release from a term of imprisonment. Specifically, the bill increases the number of days the Department of Corrections (DOC) may reward for incentive gain-time from 10 days to 20 days per month, regardless of when the offense was committed. Incentive gain-time may be rewarded based on inmate work performance and participation in prison programs. Current law allows the monthly rewards of up to 10 days of incentive based gain-time for offenses committed on or after October 1, 1995, and up to 20 days of incentive based gain-time for offenses committed before January 1, 1994.

Under the bill, an inmate serving a sentence for a nonviolent felony must serve at least 65 percent of his or her sentence, regardless of the amount of accrued gain-time. An inmate serving a sentence for a violent felony, however, must serve at least 85 percent of a sentence as under current law.

Current law prevents an inmate from using gain-time to serve less than 85 percent of a sentence, regardless if the offense is a violent or non-violent felony.

The bill takes effect July 1, 2021.

II. Present Situation:

The Criminal Punishment Code, which applies to convictions for felony offense committed on or after October 1, 1998, contains elements of both retributive and rehabilitative justice, with a clear primary goal of punishing the offender while still declaring rehabilitation as a desired goal.¹ Absent a downward departure, the Code instructs a judge to sentence an offender based on a

¹ Specifically, "The primary purpose of sentencing is to punish the offender. Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment." Section 921.002(1)(b), F.S.

calculation that determines the lowest and highest permissible sentence up to the statutory maximum sentence. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.² Any sentence imposed reflects the length of actual time to be served, and may only be lessened by earned gain-time.³

Gain-time

Gain-time is used to encourage inmate rehabilitation and behavior by awarding deductions to a court-ordered sentence based on participation in certain activities while incarcerated. An inmate, however, must still serve at least 85 percent of his or her term of imprisonment.⁴ There are several different types of gain-time that can be awarded to an inmate:

- Incentive gain-time, based on work performance and participation in training and prison programs;⁵
- Meritorious gain-time, for performance of an outstanding deed such as saving a life;⁶ and
- Educational achievement gain-time, awarded for receiving a General Education Development (GED) diploma or a certificate of completion of a vocational program.⁷

There are certain circumstances where an inmate may not be ineligible for gain-time. The Prison Release Reoffender Punishment Act, for example, provides that an inmate must serve 100 percent of his or her new sentence if the inmate had been released from a state correctional facility operated by the Department of Corrections within the 3 years after release.⁸ Certain felonies, including sexual battery, murder, and false imprisonment, are ineligible for gain-time if the inmate was convicted on or after October 1, 2014.⁹ Likewise, those sentenced to life imprisonment are ineligible for gain-time.¹⁰

III. Effect of Proposed Changes:

The bill will increase the number of days the DOC may reward for incentive gain-time from 10 days to 20 days per month, regardless of when the offense was committed. Gain-time cannot be used if it would prevent an inmate from serving either 65 percent of his or her sentence for a

² Section 775.082(3)(b), (d), and (e), F.S.

³ Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

⁴ Section 944.275(4)(f), F.S.

⁵ Section 944.275(4)(b)3., F.S, provides that incentive gain-time is a total of up to 10 days per month that may be awarded to inmates for institutional adjustment, performing work in a diligent manner, and actively participating in training and programs. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.

⁶ Section 944.275(4)(c), F.S., provides that meritorious gain-time is awarded to an inmate who commits an outstanding deed or whose performance warrants additional credit, such as saving a life or assisting in recapturing an escaped inmate. The award may range from one day to 60 days, and the statute does not prohibit an inmate from earning meritorious gain-time on multiple occasions if warranted.

⁷ Section 944.275(4)(d), F.S., provides that educational gain-time is a one-time award of 60 days that is granted to an inmate who receives a GED diploma or a certificate for completion of a vocational program.

⁸ Section 775.082(9)(a)1., F.S.

⁹ Section 944.275(4)(e), F.S., refers to certain offenses that are ineligible for gain-time, including murder, false imprisonment, kidnapping, sexual battery, computer pornography, traveling to meet a minor for the purpose of unlawful sexual conduct, and lewd and lascivious offenses committed upon or in the presence of a minor, elderly, or disabled person.

¹⁰ Section 775.082(4)(f), F.S.

non-violent felony or 85 percent of his or her sentence based on an offense that is not a non-violent felony.¹¹

Current law makes no distinction between violent and nonviolent felonies for purposes of determining the maximum sentence reduction, and requires all felons to serve at least 85 percent of a sentence.

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:

SB 472 may impact private entities that are contracted with the DOC to provide services to those serving a term of imprisonment. Any reduction in prison capacities due to the bill

¹¹ While undefined in the bill, an offense that is not “non-violent” could seemingly include 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.

by allowing early release based on gain-time may affect the amount of services that are needed by these providers.

C. Government Sector Impact:

The bill will likely reduce prison funding needs because it will likely reduce prison populations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.002, 944.275.

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 Bracy

11-00501-21

2021472__

A bill to be entitled
An act relating to gain-time; amending s. 921.002,
F.S.; revising a principle of the Criminal Punishment
Code relating to a prisoner's required minimum term of
imprisonment; amending s. 944.275, F.S.; revising the
incentive gain-time that the Department of Corrections
may grant a prisoner; providing exceptions; providing
an effective date.

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

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

921.002 The Criminal Punishment Code.—The Criminal
Punishment Code shall apply to all felony offenses, except
capital felonies, committed on or after October 1, 1998.

(1) The provision of criminal penalties and of limitations
upon the application of such penalties is a matter of
predominantly substantive law and, as such, is a matter properly
addressed by the Legislature. The Legislature, in the exercise
of its authority and responsibility to establish sentencing
criteria, to provide for the imposition of criminal penalties,
and to make the best use of state prisons so that violent
criminal offenders are appropriately incarcerated, has
determined that it is in the best interest of the state to
develop, implement, and revise a sentencing policy. The Criminal
Punishment Code embodies the principles that:

(e) The sentence imposed by the sentencing judge reflects
the length of actual time to be served, shortened only by the

11-00501-21

2021472__

30 application of incentive and meritorious gain-time as provided
31 by law, and may not be shortened if the defendant would
32 consequently serve less than 65 percent of his or her term of
33 imprisonment as provided in s. 944.275(4)(b)3.a. or less than 85
34 percent of his or her term of imprisonment as provided in s.
35 944.275(4) or s. 944.275(4)(b)3.b. The provisions of chapter
36 947, relating to parole, shall not apply to persons sentenced
37 under the Criminal Punishment Code.

38 Section 2. Paragraphs (b) and (f) of subsection (4) of
39 section 944.275, Florida Statutes, are amended to read:

40 944.275 Gain-time.—

41 (4)

42 (b) For each month in which an inmate works diligently,
43 participates in training, uses time constructively, or otherwise
44 engages in positive activities, the department may grant
45 incentive gain-time in accordance with this paragraph. The rate
46 of incentive gain-time in effect on the date the inmate
47 committed the offense that ~~which~~ resulted in his or her
48 incarceration shall be the inmate's rate of eligibility to earn
49 incentive gain-time throughout the period of incarceration and
50 may ~~shall~~ not be altered by a subsequent change in the severity
51 level of the offense for which the inmate was sentenced.

52 1. For sentences imposed for offenses committed before
53 ~~prior to~~ January 1, 1994, up to 20 days of incentive gain-time
54 may be granted. If granted, such gain-time shall be credited and
55 applied monthly.

56 2. For sentences imposed for offenses committed on or after
57 January 1, 1994, and before October 1, 1995:

58 a. For offenses ranked in offense severity levels 1 through

11-00501-21

2021472__

7, under former s. 921.0012 or former s. 921.0013, up to 25 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

b. For offenses ranked in offense severity levels 8, 9, and 10, under former s. 921.0012 or former s. 921.0013, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

3. For sentences imposed for offenses, regardless of the date committed, the department may grant up to 20 days per month of incentive gain-time, except that:

a. If the offense is a nonviolent felony, as defined in s. 948.08(6), the prisoner is not eligible to earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, before he or she serves a minimum of 65 percent of the sentence imposed. For purposes of this sub-subparagraph, credits awarded by the court for time physically incarcerated must be credited toward satisfaction of 65 percent of the sentence imposed. A prisoner who is granted incentive gain-time pursuant to this sub-subparagraph may not accumulate further gain-time awards at any point when the tentative release date is the same as that date on which the prisoner will have served 65 percent of the sentence imposed. State prisoners sentenced to life imprisonment must be incarcerated for the rest of their natural lives, unless granted pardon or clemency.

b. If the offense is not a nonviolent felony, as defined in s. 948.08(6), the prisoner is not eligible to earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release,

11-00501-21

2021472__

88 before he or she serves a minimum of 85 percent of the sentence
89 imposed. For purposes of this sub-subparagraph, credits awarded
90 by the court for time physically incarcerated must be credited
91 toward satisfaction of 85 percent of the sentence imposed. A
92 prisoner who is granted incentive gain-time pursuant to this
93 sub-subparagraph may not accumulate further gain-time awards at
94 any point when the tentative release date is the same as that
95 date on which the prisoner will have served 85 percent of the
96 sentence imposed. State prisoners sentenced to life imprisonment
97 must be incarcerated for the rest of their natural lives, unless
98 granted pardon or clemency ~~For sentences imposed for offenses~~
99 ~~committed on or after October 1, 1995, the department may grant~~
100 ~~up to 10 days per month of incentive gain-time.~~

101 (f) An inmate who is subject to subparagraph (b)3. is not
102 eligible to earn or receive gain-time under paragraph (a),
103 paragraph (b), paragraph (c), or paragraph (d) or any other type
104 of gain-time in an amount that would cause a sentence to expire,
105 end, or terminate, or that would result in a prisoner's release,
106 before ~~prior to~~ serving a minimum of 85 percent of the sentence
107 imposed. For purposes of this paragraph, credits awarded by the
108 court for time physically incarcerated shall be credited toward
109 satisfaction of 85 percent of the sentence imposed. Except as
110 provided by this section, a prisoner may not accumulate further
111 gain-time awards at any point when the tentative release date is
112 the same as that date on ~~at~~ which the prisoner will have served
113 85 percent of the sentence imposed. State prisoners sentenced to
114 life imprisonment shall be incarcerated for the rest of their
115 natural lives, unless granted pardon or clemency.

116 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

March 4, 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 bills be placed on the agenda of the Senate Judiciary Committee.

- SB 482, Criminal Sentencing (2021): The purpose of the bill is to increase the number of sentence points below which the court is required to impose a non-state prison sanction under certain circumstances. The bill also provides that a sentencing judge's decision regarding sentencing is guided by the computed recommended sentencing range, from the lowest permissible sentence to the highest recommended prison sentence.
- SB 472, Gain-time (2021): This bill lowers the threshold for minimum time-served from 85% to 65% for nonviolent offenders earning sufficient incentive gain time.

Your consideration is 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
District 11

REPLY TO:

- ☐ 6965 Piazza Grande Avenue, Suite 302, 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

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THE FLORIDA SENATE
APPEARANCE RECORD

3/9/21

Meeting Date

472

Bill Number (if applicable)

Topic Gain-time

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden St.

Phone 850-488-6850

Street

Tallahassee

Fl

32301

Email ndaniels@flpda.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public 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.

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S 001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

03/09/2021

Meeting Date

472

Bill Number (if applicable)

Topic Gain-time

Amendment Barcode (if applicable)

Name Ingrid Delgado

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Address 201 W Park Ave

Phone 850-339-0075

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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)

THE FLORIDA SENATE
APPEARANCE RECORD

March 9 2021
Meeting Date

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

SB 472
Bill Number (if applicable)

Topic Gain Time

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI "Dee-yay-Gott Eteh-UH-Very"

Job Title Legislative Liaison

Address 200 W College Ave Phone _____
Street

TLH FL Email _____
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

472

Bill Number (if applicable)

Topic Gain Time

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street

Phone 850-425-1344

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City

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Zip

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

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S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

3/9/21

Meeting Date

SB472

Bill Number (if applicable)

Topic Gain Time

Amendment Barcode (if applicable)

Name Jorge Chamizo

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32301

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State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Criminal Defense Lawyers

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

3/9/21

Meeting Date

472

Bill Number (if applicable)

Topic Rehabilitation Credits/Gain time reform

Amendment Barcode (if applicable)

Name Carrie Boyd

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Phone 850-570-9560

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Zip

Email carrie.boyd@splcenter.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

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THE FLORIDA SENATE
APPEARANCE RECORD

3/9
Meeting Date

472
Bill Number (if applicable)

Topic Car Time

Amendment Barcode (if applicable)

Name Rebecca McMichael

Job Title _____

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Street

Phone (713) 818-8947

Juno Beach FL 33408
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Email rebecca-mcmichael@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

472

Bill Number (if applicable)

Topic Gain time

Amendment Barcode (if applicable)

Name Russell Meyer

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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 Florida Faith Advocacy Office

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

March 9, 2021

Meeting Date

472

Bill Number (if applicable)

Topic Gain time

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.

Phone 850-321-9386

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Email fcfep@yahoo.com

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State

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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

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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)

3/9
Meeting Date

472
Bill Number (if applicable)

Topic Gain Time

Amendment Barcode (if applicable)

Name Karen Roberts

Job Title _____

Address 935 E. University Ave
Street

Phone 727-366-4080

Orange City FL 32764
City State Zip

Email ucf87apa@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE
APPEARANCE RECORD

3/9/21
Meeting Date

472
Bill Number (if applicable)

Topic SB 472 Gain time

Amendment Barcode (if applicable)

Name Alexandra Barry

Job Title _____

Address 5891 Monterra club Dr
Street

Phone 561-568-7694

Lake Worth FL 33403
City State Zip

Email abarry@siblingsofmurderedsiblings.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

3/921

Meeting Date

SB472

Bill Number (if applicable)

Topic Gain Time

Amendment Barcode (if applicable)

Name Laurette Philipsen

Job Title _____

Address 7240 Westwind Drive

Street

Phone 352-533-7202

Port Richey

FL

34668

Email advocatephilipsen@gmail.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/21

Meeting Date

SB#472

Bill Number (if applicable)

Topic Anne Williams SB#472

Amendment Barcode (if applicable)

Name Anne Williams

Job Title BN BSN

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Street

Phone 850-712-0100

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City State Zip

Email AnneWilliams@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing self

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

3/9
Meeting Date

472
Bill Number (if applicable)

Topic Gain Time

Amendment Barcode (if applicable)

Name John McMichael

Job Title _____

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Street

Phone 1561 339-1395

Juno Beach FL 33408
City State Zip

Email richard-mcmichael@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/9/21
Meeting Date

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

472
Bill Number (if applicable)

Topic Gain Time

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

March 9th

Meeting Date

SB 472

Bill Number (if applicable)

Topic

Gain Time / Criminal Justice

Amendment Barcode (if applicable)

Name

David Skender

Job Title

Retired Citizen of Florida

Address

Street

66 Wintergreen Dr

Phone

352 805 6597

City

Fruitland Park

State

Zip

Email

gotrendave1955@gmail.com

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Representing

Self

ABUSED HUSBAND WHO SAID
IN COURT

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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THAT HAS TO
PLEASE NO ONE

SS 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 482

INTRODUCER: Senator Bracy and others

SUBJECT: Criminal Sentencing

DATE: March 9, 2021

REVISED: 3/10/21

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	Favorable
2.			CJ	
3.			AP	

I. Summary:

SB 482 is designed to result in shorter prison sentences for offenses and allows for more offenders to be sentenced to a nonstate prison sanction in lieu of prison.

The bill works by increasing the sentence point thresholds of the Criminal Punishment Code which define whether a court may or must sentence an offender to a nonstate prison sanction. A sentence must also be based on a sentencing range as calculated by the formulas in the bill and not based on the statutory maximum for any offense. However, the bill allows a court to sentence an offender for a term that exceeds the maximum term under the calculated sentencing range if the trial judge provides justification for the longer sentence. Finally, the bill repeals a provision that would allow the state to appeal a sentence that falls below the lowest permissible sentence for the offense.

The bill takes effect July 1, 2021.

II. Present Situation:

The Criminal Punishment Code (Code) applies to convictions for felony offense committed on or after October 1, 1998. Absent a downward departure, the Code instructs a judge to sentence an offender based on a calculation that determines the lowest and highest permissible sentence up to the statutory maximum sentence.¹ The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.² Any sentence imposed reflects the length of actual time to be serviced, and may only be lessened by earned gain-time.³

¹ Section 921.002(f) and (g), F.S.

² Section 775.082(3)(b), (d), and (e), F.S.

³ Section 921.002(1)(e), F.S. See s. 944.275, F.S., for information on the various types of incentive and meritorious gain-time.

The Code assigns points based on the severity of the offenses as well as certain aggravating factors.⁴ The Code calls for a nonstate prison sanction if the offender scores below 45 points, unless the sentencing judge finds that a term of imprisonment is otherwise appropriate.⁵ If the total sentence points exceed 44 points, the lowest permissible sentence *in prison* months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. If an inmate were to score 50 points, for example, the inmate would score for a minimum of 16.5 months in prison. If an offense has a mandatory minimum term that is greater than the scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.⁶

Gain-time

Gain-time is used to encourage inmate rehabilitation and behavior by awarding deductions to a court-ordered sentence based on participation in certain activities while incarcerated.⁷ Certain felonies, including sexual battery, murder, and false imprisonment, are ineligible for gain-time if the inmate was convicted on or after October 1, 2014.⁸ Likewise, those sentenced to life imprisonment are ineligible for gain-time.⁹ Even with gain-time, however, an inmate must still serve at least 85 percent of his or her term of imprisonment.¹⁰ Thus, sentences imposed under the Code may be decreased by gain-time earned by an offender while imprisoned.

Example

A primary offense of aggravated battery,¹¹ a second degree felony, automatically scores 22 points under the Code.¹² Additional points may be added depending on the victim's injury. A "slight" injury would add an additional 4 points, a "moderate" injury would add an additional 18 points, while a "severe" injury would add an additional 40 points. If the offender committed the offense with a firearm, an additional 18 points are automatically added as an enhancement. Assuming no additional points are added based on the offenders history or other aggravating factors, the minimum score for an offender convicted of aggravated battery would be 26 points if the victim's injuries were "slight," 40 points if the victim's injuries were "moderate," or 62 points if the injuries were "severe." If the offender used a firearm during the commission of the offense, an additional 18 points would be added, increasing this range to 44, 58, and 80 respectively. Thus, a "moderate" or "severe" injury based on an aggravated battery where the offender used a firearm during the commission of the crime, would score more than 44 sentence points, making the offender eligible for a term of imprisonment under the Code.

⁴ Section 921.0024, F.S.

⁵ Section 921.0024(2), F.S.

⁶ Fla. R. Crim. P. 3.704(d)(27).

⁷ Section 944.275(1), F.S.

⁸ Section 944.275(4)(e), F.S., refers to certain offenses that are ineligible for gain-time, including murder, false imprisonment, kidnapping, sexual battery, computer pornography, traveling to meet a minor for the purpose of unlawful sexual conduct, and lewd and lascivious offenses committed upon or in the presence of a minor, elderly, or disabled person.

⁹ Section 775.082(4)(f), F.S.

¹⁰ Section 944.275(4)(f), F.S.

¹¹ Aggravated battery is a battery where the offender "intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement" or commits a battery on a pregnant person, or while using a deadly weapon. Section 784.045, F.S.

¹² Section 921.0023(2) F.S. and s. 921.0024, F.S.

Certain offenses where the “victim injury” results in death, automatically qualify for a term of imprisonment.¹³ Likewise, offenses involving sexual contact or penetration automatically add 40 or 80 points respectively,¹⁴ both of which would meet the minimum 45 points necessary for a recommended term of imprisonment when combined with the primary offense score.

III. Effect of Proposed Changes:

The bill will increase the offense score that is generally necessary to sentence an offender to prison based on the sentencing worksheet used under the Criminal Punishment Code. Specifically, the required score that would make an offender eligible for a term of imprisonment is increased from 45 points to 53 points. Additionally, the bill bases the maximum term of imprisonment on a calculation using the points scored as opposed to the statutory maximum for the offense.

Moreover, the bill provides formulas for calculating the sentencing range for an offense. An offender who scores 56 points, for example, would have a recommended term of imprisonment between 15 and 25 months. Currently, the maximum is based on the statutory maximum for the offense committed, and the lowest permissible sentence for an offense resulting in 56 sentence points is 21 months in prison.

The bill requires the sentencing judge to explain any departure above the recommended sentence scored under the Code. Additionally, the bill declares that sentencing is guided by the “recommended sentencing range under the code, which is from the lowest permissible sentence to the highest recommended prison sentence.”

Under the penalty structure in existing s. 775.082(10), F.S., a court generally may not sentence an offender convicted of a third-degree felony to prison if the total sentence points are 22 or fewer. The bill increases this threshold to 44 sentence points. Accordingly, unless a court makes written findings that a nonstate prison sanction would present a danger to the public, the offender scoring 44 or fewer sentence points must be sentenced to a nonstate prison sanction.

The bill repeals language that specifies that a sentence may only be appealed if the sentence is either *below* the lowest permissible sentence under the Code or *over* any statutory maximum. By repealing the provision, the bill may allow appeals by an offender on the basis that a sentence imposed is longer than that specified by the sentencing range for an offense without sufficient justification by the trial court judge.¹⁵ The bill does not affect the ability or right of an offender to appeal a sentence based on other statutory or constitutional grounds.

¹³ A “victim injury” of death automatically scores 120 points, increasing to 240 points if the death is based on a 2nd degree murder conviction. Section 921.0024(1)(a), F.S.

¹⁴ *Id.*

¹⁵ Specifically, courts have concluded Section 921.002(1)(h), F.S., “does not prohibit all appeals by a defendant, but rather grants the state the right to appeal a *departure* sentence, defining a departure sentence as one that is less than the calculated lowest permissible sentence.” *Peterson v. State*, 775 So. 2d 376, 379 (Fla. 4th DCA 2000). Additionally “in order to challenge a sentence which is within the statutory maximum, it is now necessary for a defendant to argue vindictiveness.” *Willingham v. State*, 781 So. 2d 512, 514 (Fla. 5th DCA 2001).

The bill has an effective date of 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 482 may impact private entities that are contracted with the Department of Corrections to provide services to those serving a term of imprisonment. Any reduction in prison capacities due to the reduction in eligible prison sanctions may affect the amount of services needed from these providers. Conversely, any contracted providers who provide services, such as substance abuse treatment, to offenders serving a nonprison sanction may see additional demands for services due to an increase in offenders serving nonstate prison sanctions.

C. Government Sector Impact:

The bill will likely decrease prison funding needs due to a reduction in prison populations. More offenders will likely be diverted to nonprison sanctions such as probation and substance abuse treatment, which will increase the workload for these programs.

The Department of Corrections believes the bill will result in less serious offenders being diverted from prison to probation or jail.¹⁶ Due to the likely increase in offenders who will receive probation in lieu of a prison sanction, the Department estimates a need for an additional 288 correctional probation officers over the course of the next 5 years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.082, 921.002, and 921.0024.

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.

¹⁶ Department of Corrections, *2021 Agency Legislative Bill Analysis: SB 482*, 3-4 (on file with the Senate Committee on Judiciary)

By Senator Bracy

11-00504-21

2021482__

1 A bill to be entitled
2 An act relating to criminal sentencing; amending s.
3 775.082, F.S.; increasing the number of sentence
4 points below which the court is required to impose a
5 nonstate prison sanction under certain circumstances;
6 amending s. 921.002, F.S.; providing that a sentencing
7 judge's decision regarding sentencing is guided by the
8 computed recommended sentencing range, from the lowest
9 permissible sentence to the highest recommended prison
10 sentence; requiring a trial court judge to explain
11 departures above the highest recommended prison
12 sentence established by the Criminal Punishment Code
13 and to specify his or her reasons for imposing the
14 higher sentence; deleting a limitation on sentence
15 appeals to cases in which the sentence imposed is
16 lower than the lowest permissible sentence or sentence
17 appeals under other specified circumstances; amending
18 s. 921.0024, F.S.; increasing the minimum number of
19 sentence points for a state prison sanction; revising
20 the calculation of the lowest permissible sentence;
21 requiring a calculation of the highest recommended
22 prison sentence; providing a recommended range for
23 sentencing; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsection (10) of section 775.082, Florida
28 Statutes, is amended to read:

29 775.082 Penalties; applicability of sentencing structures;

11-00504-21

2021482__

30 mandatory minimum sentences for certain reoffenders previously
31 released from prison.—

32 (10) If a defendant is sentenced for an offense committed
33 on or after July 1, 2009, which is a third degree felony but not
34 a forcible felony as defined in s. 776.08, and excluding any
35 third degree felony violation under chapter 810, and if the
36 total sentence points pursuant to s. 921.0024 are 44 ~~22~~ points
37 or fewer, the court must sentence the offender to a nonstate
38 prison sanction. However, if the court makes written findings
39 that a nonstate prison sanction could present a danger to the
40 public, the court may sentence the offender to a state
41 correctional facility pursuant to this section.

42 Section 2. Present paragraph (i) of subsection (1) of
43 section 921.002, Florida Statutes, is redesignated as paragraph
44 (j), a new paragraph (h) is added to that subsection, and
45 present paragraphs (f), (g), and (h) of that subsection are
46 amended, to read:

47 921.002 The Criminal Punishment Code.—The Criminal
48 Punishment Code shall apply to all felony offenses, except
49 capital felonies, committed on or after October 1, 1998.

50 (1) The provision of criminal penalties and of limitations
51 upon the application of such penalties is a matter of
52 predominantly substantive law and, as such, is a matter properly
53 addressed by the Legislature. The Legislature, in the exercise
54 of its authority and responsibility to establish sentencing
55 criteria, to provide for the imposition of criminal penalties,
56 and to make the best use of state prisons so that violent
57 criminal offenders are appropriately incarcerated, has
58 determined that it is in the best interest of the state to

11-00504-21

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develop, implement, and revise a sentencing policy. The Criminal Punishment Code embodies the principles that:

(f) The sentence imposed by the sentencing judge is guided by the computed recommended sentencing range under the code, which is from the lowest permissible sentence to the highest recommended prison sentence.

(g) Departures below the lowest permissible sentence established by the code must be articulated in writing by the trial court judge and made only when circumstances or factors reasonably justify the mitigation of the sentence. The level of proof necessary to establish facts that support a departure from the lowest permissible sentence is a preponderance of the evidence.

(h) Departures above the highest recommended prison sentence established by the code must be explained by the trial court judge on the record at the time of the sentencing. The trial court judge's explanation must specify his or her reasons for imposing the higher sentence.

(i) ~~(g)~~ The trial court judge may impose a sentence up to and including the statutory maximum for any offense, including an offense that is before the court due to a violation of probation or community control.

~~(h) A sentence may be appealed on the basis that it departs from the Criminal Punishment Code only if the sentence is below the lowest permissible sentence or as enumerated in s. 924.06(1).~~

Section 3. Subsection (2) of section 921.0024, Florida Statutes, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations;

11-00504-21

2021482__

scoresheets.—

(2) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equal or are ~~equals or is~~ less than 52 ~~44~~ points, unless the court determines within its discretion that a prison sentence, ~~which may be up to the statutory maximums for the offenses committed,~~ is appropriate. When the total sentence points exceed 52 ~~exceeds 44~~ points, the lowest permissible sentence in prison months is ~~shall be~~ calculated by subtracting 36 ~~28~~ points from the total sentence points and decreasing the remaining total by 25 percent. When the total sentence points exceed 52 points, the highest recommended prison sentence in prison months is calculated by subtracting 36 points from the total sentence points and increasing the remaining total by 25 percent. The total sentence points are ~~shall be~~ calculated ~~only~~ as a means of determining the recommended sentencing range, which is from the lowest permissible sentence to the highest recommended prison sentence. The permissible range for sentencing is ~~shall be~~ the lowest permissible sentence up to and including the statutory maximum, as defined in s. 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed. If the total sentence points are greater than or equal to 363, the

11-00504-21

2021482__

117 court may sentence the offender to life imprisonment. An
118 offender sentenced to life imprisonment under this section is
119 not eligible for any form of discretionary early release, except
120 executive clemency or conditional medical release under s.
121 947.149.

122 Section 4. 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

March 4, 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 bills be placed on the agenda of the Senate Judiciary Committee.

- SB 482, Criminal Sentencing (2021): The purpose of the bill is to increase the number of sentence points below which the court is required to impose a non-state prison sanction under certain circumstances. The bill also provides that a sentencing judge's decision regarding sentencing is guided by the computed recommended sentencing range, from the lowest permissible sentence to the highest recommended prison sentence.
- SB 472, Gain-time (2021): This bill lowers the threshold for minimum time-served from 85% to 65% for nonviolent offenders earning sufficient incentive gain time.

Your consideration is 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
District 11

REPLY TO:

- ☐ 6965 Piazza Grande Avenue, Suite 302, 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

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J 11:45

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

482

Bill Number (if applicable)

Topic Criminal Sentencing

Amendment Barcode (if applicable)

Name Russell Meyer

Job Title Executive Director

Address 1308 windsor Place

Phone 8134215330

Street

Jacksonville

fl

City

State

Zip

Email rmeyer@floridachurches.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Faith Advocacy Office

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)

3/9
Meeting Date

482
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Karen Roberts

Job Title _____

Address 935 2, University Ave
Street

Phone 727-366-4080

Orange City FL 32764
City State Zip

Email uct87apa@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE
APPEARANCE RECORD

3/9/21
Meeting Date

SB482
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Denise Rock

Job Title Executive Director

Address PO Box 211174

Phone 561-855-0833

Street

West Palm Beach

FL

33421

Email denise@floridacarescharity.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Cares

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

3/9/21

Meeting Date

SB 482

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Carrie Boyd

Job Title Policy Counsel

Address P.O. Box 10788

Phone 850-570-9560

Street

Tallahassee

FL

32303

Email carrie.boyd@splcenter.org

City

State

Zip

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

482

Bill Number (if applicable)

Topic Criminal Sentencing

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street

Phone 850-425-1344

Street

Tallahassee

FL

32301

City

State

Zip

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

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THE FLORIDA SENATE

APPEARANCE RECORD

03/09/2021

Meeting Date

482

Bill Number (if applicable)

Topic Criminal Sentencing

Amendment Barcode (if applicable)

Name Andrew Kalel

Job Title Legislative Affairs Director

Address 227 N. Bronough Street, Suite 1125

Phone (850)999-4655

Street

Tallahassee, Florida, 32301

Email andrew.kalel@regionalcounsels.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Office of Criminal Conflict and Civil Regional Counsel, 4th DCA Region

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

3/9/21

Meeting Date

SB 482

Bill Number (if applicable)

Topic Criminal Sentencing

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St

Phone 850-681-0024

Street

Tallahassee

FL

32301

Email jorge@flapartners.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

482

Bill Number (if applicable)

Topic Criminal Sentencing

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-321-9386

Email fcfep@yahoo.com

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)

3/9/21
Meeting Date

482
Bill Number (if applicable)

Topic Criminal Sentencing

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

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Meeting Date

#482
Bill Number (if applicable)

Topic SB 482 Criminal Sentencing

Amendment Barcode (if applicable)

Name Alexandra Barry

Job Title _____

Address 5891 Monterra club Dr
Street

Phone 561-568-7694

Lake Worth FL 33463
City State Zip

Email abarry@siblingsofmurderedsiblings.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

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Duplicate

THE FLORIDA SENATE
APPEARANCE RECORD

Meeting Date _____

482
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name John McMichael

Job Title _____

Address 12705 Ellison Wilson Rd
Street

Phone 561 339 1395

Juno Beach, FL 33408
City State Zip

Email richard.mcMichael@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

3/9
Meeting Date

482
Bill Number (if applicable)

Topic # SB 482 Senfencing

Amendment Barcode (if applicable)

Name Rebecca McMichael

Job Title _____

Address 12705 Ellison Wilson
Street

Phone 1713/ 818-8947

Sumo Beach FL 33408
City State Zip

Email rebecca-mcmichael@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

#482

Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date

Topic SB #482 Criminal SentencingName Anne WilliamsJob Title RN BSNAddress 4835 AndradePhone 850-712-0100

Street

PensacolaFLEmail AnneWilliamsRN@yahoo.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing selfAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

3/9/21

Meeting Date

482

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 1013 N. Gadsden St.

Phone 850 488-6850

Street

Tallahassee FL 32301

City

State

Zip

Email ndaniels@flpda.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
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 848

INTRODUCER: Senator Powell

SUBJECT: Electronic Legal Documents

DATE: March 9, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Harmsen	McKay	CM	Favorable
2. Ravelo	Cibula	JU	Favorable
3. _____	_____	RC	_____

I. Summary:

SB 848 amends the existing process for an online notary who witnesses an electronic record to require the online notary to verify both the witness' *and principal's* identities. Under current law, the notary is not required to verify the principal's identity when the notary supervises the witnessing of an electronic record.

The bill requires an online notary to ask the principal certain questions when only one witness is in the physical presence of the principal if an electronic record to be signed is a will, revocable trust, health care advanced directive, agreement regarding succession or a waiver of spousal rights, or power of attorney. These questions are intended to prevent fraudulent or otherwise invalid transactions. For example, these questions might elicit information that would allow the notary to verify that the principal is capable of understanding the record or document in question and capable of giving proper legal consent. Under current law, these questions are necessary and apply in the above scenarios when an online notary witnesses an electronic record, regardless of how many witnesses are in the presence of the principal.

The bill also updates statutory forms used by notaries public and online notaries to reflect how, by physical presence or by audio video technology, the principal and each witnesses appeared before the notary.

The bill takes effect upon becoming law.

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-video communication technology, similar to skype and

zoom.¹ This audio-video technology enables real time, two-way communication where the parties (online notary, principal, and any witnesses) can see, hear, and communicate with each other electronically.

An online notary may perform most of the traditional notary public's duties, including the administration of oaths and affirmations, taking of acknowledgements; attestation to photocopies of certain documents, verification of vehicle identification numbers; and the certification of the contents of a safe-deposit box.² Additionally, s. 117.285, F.S., allows online notaries to supervise the witnessing of electronic records.³ Generally, a notary public is not required to witness a document when all parties are physically present together.

The Department of State governs the registration of online notaries public (online notaries), and as a prerequisite, requires registrants to:⁴

- 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 remote online notarization service provider whose technologies and credentialing processes satisfy the statutory minimum requirements; and
- Maintain a \$25,000 bond and a current errors and omissions insurance policy.

Online Notarizations

To perform an online notarization, an online notary must first determine whether the principal⁵ 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.⁶ 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;⁷

¹ Chapter 2019-71, Laws of Fla. CS/CS/HB 409 (2019) was signed into law on June 7, 2019, and took effect on January 1, 2020.

² Florida Governor's Office, *Duties of a Notary Public*, 13 (December 17, 2019), available at [https://www.flgov.com/wp-content/uploads/Governor's%20Notary Reference Manual 12.17.19%20edited1.pdf](https://www.flgov.com/wp-content/uploads/Governor's%20Notary%20Reference%20Manual%2012.17.19%20edited1.pdf) (last visited Mar. 1, 2021).

³ This duty was newly created by ch. 2019-71, Laws of Fla. (see *supra* note 1).

⁴ 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 Mar. 1, 2021).

⁵ Section 117.201(12), F.S., defines a principal as "an individual whose signature is acknowledged, witnessed, or attested to in an online notarization, or who takes an oath or affirmation administered by an online notary public."

⁶ Section 117.265(4), F.S.

⁷ Section 117.05(5)(b)2., F.S., 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 or identification 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 identification card issued by if the principal is still in the Florida Department of Correction's or U.S. Department of Justice's custody; an identification 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

- The notary's credential analysis⁸ of the identification to ensure its validity; and
- The notary's identity proofing⁹ 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. If the online notary can confirm the pertinent identities, then the online notary may witness the principal electronically sign the document. The online notary will then add his or her unique electronic signature and digital notary seal using tamper-evident technology that would document any subsequent change to the document.¹⁰

For all online notarizations, an online notary must:

- Make and maintain a recording of the audio-video component (video) of the notarization, including the credential analysis and identity proofing he or she performed, if any;¹¹ 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.¹²

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.¹³

Remote Witnessing of Documents

An online notary may also supervise the witnessing of electronic records via the same audio-video platform used for online notarization.¹⁴ If the witness is physically present with the principal, he or she can generally confirm his or her identity by stating his or her name and current address on the recording. If the witness is connected via audio-video 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 in an online notarization.¹⁵

confinement—a sworn, written statement from a law enforcement officer that states that the inmate is the person whose signature is to be notarized.

⁸ Section 117.201(3), F.S. *See also*, s. 117.295(3)(b), F.S.

⁹ Section 117.201(7), F.S. *See also*, s. 117.295(3)(a), F.S.

¹⁰ Section 117.255, F.S.

¹¹ Section 117.245(2), F.S.

¹² Section 117.245(1), F.S.

¹³ Section 117.245(4), F.S.

¹⁴ Section 117.285, F.S.

¹⁵ *See supra* "Online Notarizations."

In certain circumstances,¹⁶ an online notary and his or her remote online notarization service provider must provide a higher level of scrutiny to supervise the witnessing of a document. For example:

- Where the online notary has reason to believe that the principal is impaired or unable to care for him or herself, the notary must ensure that the witness is physically-present with the principal at the time of witnessing.¹⁷
- The remote online notarization service provider must give the principal a notice that, if he or she is a vulnerable adult,¹⁸ the witnessing of a document via audio-video technology is not valid.¹⁹
- The online notary must engage in a specific colloquy with the principal to ensure that the principal is mentally capable of understanding the nature and effect of the document at the time of witnessing.²⁰

The above processes do not guarantee the ultimate effectiveness of the witnessing procedure.²¹

Retroactive Application of a Statute

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective.

The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for the statute to be valid.²² When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute applies to cases that were pending at the time the statute went into effect. The conclusion often turns on whether the statute is procedural or substantive.

In a recent Florida Supreme Court case, the Court acknowledged that “[t]he distinction between substantive and procedural law is neither simple nor certain.”²³ The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.²⁴

¹⁶ An online notary must perform additional inquiries where the document to be witnessed is a will, trust and testamentary aspect, healthcare advanced directive, waiver of spousal rights, or power of attorney concurrent with a will. Section 117.285(5), F.S.

¹⁷ Section 117.285(5)(a)-(b), F.S.

¹⁸ Section 415.102, F.S., defines a “vulnerable adult” as a person who is 18 years or older, whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

¹⁹ Section 117.285(5)(c), F.S.

²⁰ Section 117.285(5)(d)-(e), F.S.

²¹ For example, s. 117.285(5)(f), F.S., states that “[a] principal’s responses to the question in paragraphs (a) and (d) may be offered as evidence regarding the validity of the instrument, but an incorrect answer may not serve as the sole basis to invalidate an instrument.”

²² *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977).

²³ *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) quoting *Caple v. Tuttle’s Design-Build, Inc.*, 753 So. 2d 49, 53 (Fla. 2000).

²⁴ *Love* at 184.

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.²⁵ Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.²⁶

III. Effect of Proposed Changes:

General Requirements

Section 1 amends s. 117.201(9), F.S., to clarify that an “online notarization” is the online notary’s performance of a notarial act during which a principal *or any witness* appears electronically.

Section 2 amends s. 117.285, F.S., to specify that the supervision of the witnessing of an electronic record by an online notary pursuant to ch. 117, F.S., is a “notarial act.”²⁷

Procedural Requirements

Section 2 also creates an explicit requirement that an online notary comply with the online notarization procedures of part II of ch. 117, F.S., including, e.g., the retention of records and recording of the notarial act.²⁸

Section 117.265(4), F.S., currently requires online notaries who perform an online notarization to verify the principal’s identity according to specific procedures. **Section 2** of the bill additionally amends s. 117.285(2), F.S., regarding the witnessing of a document where the witness appears remotely from the principal, to conform to the procedures outlined in s. 117.265(4), F.S.

Therefore, the bill requires an online notary of such a witnessing to verify both the witness’ *and principal’s* identities by either 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 individual’s remote presentation of a government-issued identification;²⁹
- The notary’s credential analysis³⁰ of the identification to ensure its validity; and
- The notary’s identity proofing³¹ of the individual, wherein a third party provides knowledge-based authentication questions that must be correctly answered by the individual in a limited amount of time.

Section 117.285(2), F.S., does not require an online notary to confirm a principal’s identity if the witness is physically present with the principal at the time the document is witnessed; however,

²⁵ *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla. 2004).

²⁶ *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).

²⁷ “Notarial act” is an undefined term, but is used commonly in ch. 117, F.S., to denote those acts that a notary public or online notary may perform. *See, e.g.*, ss. 117.021(7), 117.201(5), 117.245, and 117.265(3), F.S., which all use the term “notarial act” to refer to an act performed by a notary in the course of his or her duty as a notary.

²⁸ *See*, s. 117.245, F.S.

²⁹ *See supra* note 8.

³⁰ Section 117.201(3), F.S. *See also*, s. 117.295(3)(b), F.S.

³¹ Section 117.201(7), F.S. *See also*, s. 117.295(3)(a), F.S.

the online notary must verify the witness' identity by the witness' statement of his or her name and address on the record.³²

Section 2 further amends s. 117.285(5), F.S., to clarify that a heightened scrutiny and additional duties apply when “fewer than two witnesses are in the physical presence of the principal.” This section of the bill then restates in newly created s. 117.285(5)(k), F.S., that the requirements of s. 117.285(5), F.S., do not apply if two or more witnesses appear in the physical presence of the principal at the time of the notarial act.

Conforming Changes to Statutory Forms

In 2019, as part of the overall creation of online notarization by ch. 2019-71, Laws of Florida, the Legislature updated s. 117.05(4)(c), F.S., to require Florida notaries to indicate in a jurat or notarial certificate (included as part of their notarization) whether the person appeared in-person, or by audio-video communication to sign the notarized document.

Sections 709.2119(2)(c), 732.401(2)(e), 732.503(1), 732.703(5)(b)3., 732.703(5)(b)4., and 747.051(1), F.S.,³³ contain statutory forms that must be notarized or witnessed to have effect. The current version of these forms include only a statement that the act was “sworn to...before me by...” and therefore are incompatible with online notarization as authorized effective January 1, 2020. **Sections 3, 4, 5, 7, and 8** of the bill update these forms to allow the notary to indicate whether the subject of the notarization was physically present, or *appeared by online notarization*.

Section 723.503(1), F.S., includes a statutory form for a self-proving will. **Section 5** of the bill amends this statutory form to allow the notary to fill in both the state and county in which it was acknowledged or subscribed before the notary, for cases in which a document is prepared in Florida—but actually notarized in a different state.

Technical Corrections

Sections 2 and 6 amends ss. 117.285(6)(b) and 732.521(7), F.S., respectively, to correct erroneous cross-references.

Current law inaccurately describes the subject of both ss. 732.701 and 732.702, F.S., as “a waiver of spousal rights.” However, s. 732.701, F.S., addresses wills and devises, and s. 732.702, F.S., more specifically addresses waivers of spousal rights. **Section 2** amends s. 117.285(5), F.S., to clarify the subjects of these cross-references as “an agreement concerning succession or a waiver of spousal rights.”

Section 2 of the bill also corrects a reference in s. 117.285(5), F.S., to a *revocable* trust with testamentary aspects *as described in s. 736.0403(2)(b)*, F.S. Only revocable trusts can have

³² Section 117.285(2), F.S.

³³ Sections 709.2119(2)(c), 732.401(2)(e), 732.503(1), 732.703(5)(b)3., F.S., 732.703(5)(b)4., and 747.051(1), F.S., respectively, contain statutory forms to complete a power of attorney, an election of a surviving spouse regarding the descent of homestead, a self-proving will or codicil, divorce and beneficiary designations, and sale of transfer of an absentee's property.

testamentary aspects, and therefore require the witnessing requirements described in s. 117.285(5), F.S. In a correlative change, the bill adds s. 117.285(h)2., F.S., to clarify that the witnessing requirements in s. 117.285(5), F.S., do not affect the nontestamentary aspects of a revocable trust under ch. 736, F.S.

Retroactivity and Effective Date

Section 9 states that the amendments made are remedial in nature and will apply retroactively to January 1, 2020—the date upon which ch. 2019-71, Laws of Florida, creating part II of ch. 117, F.S., took effect.

Section 10 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. 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:

Online notaries and their associated remote online notarization platforms may be required to update some of their practices as a result of the changes made in SB 848. Additionally, those who practice estate law in Florida will need to familiarize themselves with the witnessing requirements established in the bill, as the number of documents witnessed by an online notary will likely increase.

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: 117.201, 117.285, 709.2119, 732.401, 732.503, 732.521, 732.703, and 747.051, F.S.

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 Powell

30-00743B-21

2021848__

A bill to be entitled

An act relating to electronic legal documents;
amending s. 117.201, F.S.; revising the definition of
the term "online notarization"; amending s. 117.285,
F.S.; clarifying that supervising the witnessing of an
electronic record by an online notary public is a
notarial act; specifying applicability of online
notarization procedures to supervision of the
witnessing of an electronic record; modifying
witnessing procedures; revising applicability;
amending s. 709.2119, F.S.; revising the statutory
form for an affidavit for acceptance of and reliance
upon a power of attorney to reflect means of
notarization; amending s. 732.401, F.S.; revising the
statutory form for the notice of election relating to
the descent of homestead property to reflect means of
notarization; amending s. 732.503, F.S.; revising the
statutory form for the self-proof of a will or codicil
to reflect means of notarization; amending s. 732.521,
F.S.; conforming a cross-reference; amending s.
732.703, F.S.; revising statutory forms relating to
the disposition of certain assets at death to reflect
means of notarization; amending s. 747.051, F.S.;
revising the form for a petition of summary relief for
the sale or transfer of certain property owned by an
absentee to reflect means of notarization; providing
for construction and retroactive application;
providing an effective date.

30-00743B-21

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

31
32 Section 1. Subsection (9) of section 117.201, Florida
33 Statutes, is amended to read:

34 117.201 Definitions.—As used in this part, the term:

35 (9) "Online notarization" means the performance of a
36 notarial act using electronic means in which the principal or
37 any witness appears before the notary public by means of audio-
38 video communication technology.

39 Section 2. Section 117.285, Florida Statutes, is amended to
40 read:

41 117.285 Supervising the witnessing of electronic records.—
42 Supervising the witnessing of an electronic record by an online
43 notary public in accordance with this section is a notarial act.
44 An online notary public may supervise the witnessing of
45 electronic records by complying with the online notarization
46 procedures of this part and using the same audio-video
47 communication technology used for online notarization by a
48 principal, as follows:

49 (1) The witness may be in the physical presence of the
50 principal or remote from the principal provided the witness and
51 principal are using audio-video communication technology.

52 (2) If the witness is remote from the principal and viewing
53 and communicating with the principal by means of audio-video
54 communication technology, the principal's and witness's
55 identities ~~identity~~ must be verified in accordance with the
56 procedures for identifying a principal as set forth in s.
57 117.265(4). If the witness is in the physical presence of the
58 principal, the witness must confirm his or her identity by

30-00743B-21

2021848__

59 stating his or her name and current address on the audio-video
60 recording as part of the act of witnessing.

61 (3) The act of witnessing an electronic signature means the
62 witness is either in the physical presence of the principal or
63 present through audio-video communication technology at the time
64 the principal affixes the electronic signature and the witness
65 hears the principal make a statement to the effect that the
66 principal has signed the electronic record.

67 (4) A witness remote from the principal and appearing
68 through audio-video communication technology must verbally
69 confirm that he or she is a resident of and physically located
70 within the United States or a territory of the United States at
71 the time of witnessing.

72 (5) Notwithstanding subsections (2) and (3), if an
73 electronic record to be signed is a will under chapter 732, a
74 revocable trust with testamentary aspects as described in s.
75 736.0403(2)(b) under chapter 736, a health care advance
76 directive, an agreement concerning succession or a waiver of
77 spousal rights under s. 732.701 or s. 732.702, respectively, or
78 a power of attorney authorizing any of the transactions
79 enumerated in s. 709.2208, all of the following apply when fewer
80 than two witnesses are in the physical presence of the principal
81 shall apply:

82 (a) Prior to facilitating witnessing of an instrument by
83 means of audio-video communication technology, a RON service
84 provider shall require the principal to answer the following
85 questions in substantially the following form:

86 1. Are you under the influence of any drug or alcohol today
87 that impairs your ability to make decisions?

30-00743B-21

2021848__

88 2. Do you have any physical or mental condition or long-
89 term disability that impairs your ability to perform the normal
90 activities of daily living?

91 3. Do you require assistance with daily care?

92 (b) If any question required under paragraph (a) is
93 answered in the affirmative, the principal's signature on the
94 instrument may only be validly witnessed by witnesses in the
95 physical presence of the principal at the time of signing.

96 (c) Subsequent to submission of the answers required under
97 paragraph (a), the RON service provider shall give the principal
98 written notice in substantially the following form:

99
100 NOTICE: If you are a vulnerable adult as defined in s. 415.102,
101 Florida Statutes, the documents you are about to sign are not
102 valid if witnessed by means of audio-video communication
103 technology. If you suspect you may be a vulnerable adult, you
104 should have witnesses physically present with you before
105 signing.

106
107 (d) The act of witnessing an electronic signature through
108 the witness's presence by audio-video communication technology
109 is valid only if, during the audio-video communication, the
110 principal provides verbal answers to all of the following
111 questions, each of which must be asked by the online notary
112 public in substantially the following form:

113 1. Are you currently married? If so, name your spouse.

114 2. Please state the names of anyone who assisted you in
115 accessing this video conference today.

116 3. Please state the names of anyone who assisted you in

30-00743B-21

2021848__

117 preparing the documents you are signing today.

118 4. Where are you currently located?

119 5. Who is in the room with you?

120 (e) An online notary public shall consider the responses to
121 the questions specified in paragraph (d) in carrying out of the
122 duties of a notary public as set forth in s. 117.107(5).

123 (f) A principal's responses to the questions in paragraphs
124 (a) and (d) may be offered as evidence regarding the validity of
125 the instrument, but an incorrect answer may not serve as the
126 sole basis to invalidate an instrument.

127 (g) The presence of a witness with the principal at the
128 time of signing by means of audio-video communication technology
129 is not effective for witnessing the signature of a principal who
130 is a vulnerable adult as defined in s. 415.102. The contestant
131 of an electronic record has the burden of proving that the
132 principal was a vulnerable adult at the time of executing the
133 electronic record.

134 (h) Nothing in this subsection shall:

135 1. Preclude a power of attorney, which includes banking or
136 investment powers enumerated in s. 709.2208, from being
137 effective with respect to any other authority granted therein or
138 with respect to the agent's authority in connection with a real
139 property, commercial, or consumer transaction or loan, to
140 exercise any power specified therein or to execute and deliver
141 instruments obligating the principal or to draw upon the
142 proceeds of such transaction or loan; or

143 2. Affect the nontestamentary aspects of a revocable trust
144 under chapter 736.

145 (i) The electronic record containing an instrument signed

30-00743B-21

2021848__

by witnesses who were present with the principal by means of audio-video communication technology shall contain a perceptible indication of their presence by such means.

(j) ~~Nothing in~~ This subsection does not ~~shall~~ affect the application of s. 709.2119.

(k) The requirements of this subsection do not apply if there are at least two witnesses in the physical presence of the principal at the time of the notarial act.

(6) Pursuant to subpoena, court order, an authorized law enforcement inquiry, or other lawful request, a RON service provider or online notary public shall provide:

(a) The last known address of each witness who witnessed the signing of an electronic record using audio-video communication technology under this section.

(b) A principal's responses to the questions in paragraph (5)(a) or paragraph (5)(d) ~~(5)(b)~~, as applicable.

(c) An uninterrupted and unedited copy of the recording of the audio-video communication in which an online notarization is performed.

(7) Except as set forth in s. 709.2202, an act of witnessing performed pursuant to this section satisfies any requirement that the witness must be a subscribing or attesting witness or must be in the presence of the principal at the time of signing.

(8) The law of this state governs the validity of witnessing supervised by an online notary public pursuant to this section, regardless of the physical location of the witness at the time of witnessing. State and federal courts in this state have subject matter jurisdiction over any dispute arising

30-00743B-21

2021848__

out of an act of witnessing pursuant to this section, and may
issue subpoenas for records or to require the appearance of
witnesses in relation thereto in accordance with applicable law.

Section 3. Paragraph (c) of subsection (2) of section
709.2119, Florida Statutes, is amended to read:

709.2119 Acceptance of and reliance upon power of
attorney.—

(2) A third person may require:

(c) A written affidavit executed by the agent under this
subsection which may, but need not, be in the following form:

STATE OF.....

COUNTY OF.....

Before me, the undersigned authority, personally appeared
...(agent)... ("Affiant") by the means specified herein, who
swore or affirmed that:

1. Affiant is the agent named in the Power of Attorney
executed by ...(principal)... ("Principal") on ...(date)....

2. This Power of Attorney is currently exercisable by
Affiant. The principal is domiciled in ...(insert name of state,
territory, or foreign country)....

3. To the best of Affiant's knowledge after diligent search
and inquiry:

a. The Principal is not deceased;

b. Affiant's authority has not been suspended by initiation
of proceedings to determine incapacity or to appoint a guardian
or a guardian advocate;

c. Affiant's authority has not been terminated by the

30-00743B-21

2021848__

filing of an action for dissolution or annulment of Affiant's marriage to the principal, or their legal separation; and

d. There has been no revocation, or partial or complete termination, of the power of attorney or of Affiant's authority.

4. Affiant is acting within the scope of authority granted in the power of attorney.

5. Affiant is the successor to ...(insert name of predecessor agent)..., who has resigned, died, become incapacitated, is no longer qualified to serve, has declined to serve as agent, or is otherwise unable to act, if applicable.

6. Affiant agrees not to exercise any powers granted by the Power of Attorney if Affiant attains knowledge that the power of attorney has been revoked, has been partially or completely terminated or suspended, or is no longer valid because of the death or adjudication of incapacity of the Principal.

.....
...(Affiant)...

Sworn to (or affirmed) and subscribed before me by means of
☐ physical presence or ☐ online notarization this day of
...(month)...., ...(year)...., by ...(name of person making
statement)...

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

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

Personally Known OR Produced Identification

30-00743B-21

2021848__

... (Type of Identification Produced) ...

Section 4. Paragraph (e) of subsection (2) of section 732.401, Florida Statutes, is amended to read:

732.401 Descent of homestead.—

(2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.

(e) The election must ~~shall~~ be made by filing a notice of election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located. The notice must be in substantially the following form:

ELECTION OF SURVIVING SPOUSE
TO TAKE A ONE-HALF INTEREST OF
DECEDENT'S INTEREST IN
HOMESTEAD PROPERTY

STATE OF.....

COUNTY OF.....

1. The decedent,, died on On the date of the decedent's death, the decedent was married to, who survived the decedent.

2. At the time of the decedent's death, the decedent owned

30-00743B-21

2021848__

an interest in real property that the affiant believes to be
homestead property described in s. 4, Article X of the State
Constitution, which real property being in County,
Florida, and described as: ...(description of homestead
property)....

3. Affiant elects to take one-half of decedent's interest
in the homestead as a tenant in common in lieu of a life estate.

4. If affiant is not the surviving spouse, affiant is the
surviving spouse's attorney in fact or guardian of the property,
and an order has been rendered by a court having jurisdiction of
the real property authorizing the undersigned to make this
election.

.....
...(Affiant)...

Sworn to (or affirmed) and subscribed before me by means of ☐
physical presence or ☐ online notarization this day of
...(month)...., ...(year)...., by ...(affiant)...

...(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 5. Subsection (1) of section 732.503, Florida

30-00743B-21

2021848__

Statutes, is amended to read:

732.503 Self-proof of will.—

(1) A will or codicil executed in conformity with s. 732.502 may be made self-proved at the time of its execution or at any subsequent date by the acknowledgment of it by the testator and the affidavits of the witnesses, made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will, in substantially the following form:

STATE OF ~~FLORIDA~~

COUNTY OF

I,, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

.....

Testator

We,and....., have been sworn by the officer signing below, and declare to that officer on our oaths that the testator declared the instrument to be the testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the testator and of each other.

.....

Witness

.....

30-00743B-21

2021848__

Witness

Acknowledged and subscribed before me by means of ☐
physical presence or ☐ online notarization by the testator,
(type or print testator's name), who ☐ is personally known to me
or ☐ ~~who~~ has produced (state type of identification—see s.
117.05(5) (b)2.) as identification, and sworn to and subscribed
before me by each of the following witnesses: ; (type or print
name of first witness) who ☐ is personally known to me or ☐ ~~who~~
has produced (state type of identification—see s.
117.05(5) (b)2.) as identification, by means of ☐ physical
presence or ☐ online notarization; and (type or print name of
second witness) who ☐ is personally known to me or ☐ ~~who~~ has
produced (state type of identification—see s. 117.05(5) (b)2.) as
identification, by means of ☐ physical presence or ☐ online
notarization. ~~and~~ Subscribed by me in the presence of the
testator and the subscribing witnesses, by the means specified
herein, all on (date).

...(Signature of Officer)...

...(Print, type, or stamp commissioned name and affix official
seal)...

Section 6. Subsection (7) of section 732.521, Florida
Statutes, is amended to read:

732.521 Definitions.—As used in ss. 732.521-732.525, the
term:

(7) "Qualified custodian" means a person who meets the
requirements of s. 732.524(1) ~~s. 732.525(1)~~.

Section 7. Paragraph (b) of subsection (5) of section

30-00743B-21

2021848__

732.703, Florida Statutes, is amended to read:

732.703 Effect of divorce, dissolution, or invalidity of marriage on disposition of certain assets at death.—

(5) In the case of an asset described in paragraph (3)(a), paragraph (3)(b), or paragraph (3)(c), unless payment or transfer would violate a court order directed to, and served as required by law on, the payor:

(b) As to any portion of the asset required by the governing instrument to be paid after the decedent's death to a primary beneficiary explicitly designated in the governing instrument as the decedent's spouse:

1. If the death certificate states that the decedent was married at the time of his or her death to that spouse, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to such primary beneficiary.

2. If the death certificate states that the decedent was not married at the time of his or her death, or if the death certificate states that the decedent was married to a person other than the spouse designated as the primary beneficiary at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to a secondary beneficiary under the governing instrument.

3. If the death certificate is silent as to the decedent's marital status at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to the primary beneficiary upon delivery to the payor of an affidavit validly

30-00743B-21

2021848__

executed by the primary beneficiary in substantially the
following form:

STATE OF.....

COUNTY OF.....

Before me, the undersigned authority, personally
appeared by the means specified herein, ...(type or
print Affiant's name)... ("Affiant"), who swore or
affirmed that:

1. ...(Type or print name of Decedent)...
("Decedent") died on ...(type or print the date of the
Decedent's death)....

2. Affiant is a "primary beneficiary" as that
term is defined in Section 732.703, Florida Statutes.
Affiant and Decedent were married on ...(type or print
the date of marriage)...., and were legally married to
one another on the date of the Decedent's death.

...(Affiant)...

Sworn to or affirmed before me by means of ☐
physical presence or ☐ online notarization by the
affiant who ☐ is personally known to me or ☐ ~~who~~ has
produced ...(state type of identification)... as
identification this day of ...(month)....,
...(year)....

...(Signature of Officer)...

...(Print, Type, or Stamp Commissioned name of Notary
Public)...

30-00743B-21

2021848__

407 4. If the death certificate is silent as to the decedent's
408 marital status at the time of his or her death, the payor is not
409 liable for making a payment on account of, or for transferring
410 an interest in, that portion of the asset to the secondary
411 beneficiary upon delivery to the payor of an affidavit validly
412 executed by the secondary beneficiary ~~affidavit~~ in substantially
413 the following form:

414
415 STATE OF.....

416 COUNTY OF.....
417

418 Before me, the undersigned authority, personally
419 appeared by the means specified herein, ...(type or
420 print Affiant's name)... ("Affiant"), who swore or
421 affirmed that:

422 1. ...(Type or print name of Decedent)...
423 ("Decedent") died on ...(type or print the date of the
424 Decedent's death)....

425 2. Affiant is a "secondary beneficiary" as that
426 term is defined in Section 732.703, Florida Statutes.
427 On the date of the Decedent's death, the Decedent was
428 not legally married to the spouse designated as the
429 "primary beneficiary" as that term is defined in
430 Section 732.703, Florida Statutes.

431
432 ...(Affiant)...

433 Sworn to or affirmed before me by means of ☐
434 physical presence or ☐ online notarization by the
435 affiant who ☐ is personally known to me or ☐ ~~who~~ has

30-00743B-21

2021848__

produced ...(state type of identification)... as
identification this day of ...(month)...,
...(year)....
...(Signature of Officer)...
...(Print, Type, or Stamp Commissioned name of Notary
Public)...

Section 8. Subsection (1) of section 747.051, Florida
Statutes, is amended to read:

747.051 Summary procedure.—

(1) If the wife of any person defined as an absentee in s.
747.01(1), or his next of kin if said absentee has no wife,
shall wish to sell or transfer any property of the absentee
which has a gross value of less than \$5,000, or shall require
the consent of the absentee in any matter regarding the
absentee's children or in any other matter in which the gross
value of the subject matter is less than \$5,000, she may apply
to the circuit court for an order authorizing said sale,
transfer, or consent without opening a full conservatorship
proceeding as provided by this chapter. She may make the
application without the assistance of an attorney. Said
application shall be made by petition on the following form,
which form shall be made readily available to the applicant by
the clerk of the circuit court:

In the Circuit Court

In re: ...(Absentee)..., case number

30-00743B-21

2021848__

PETITION FOR SUMMARY RELIEF

Petitioner, ...(Name)..., whose residence is ...(Street & number)..., ...(City or town)..., and ...(County)..., Florida, and who is the ...(Describe relationship to absentee)... of the absentee, ...(Name)..., states that the absentee has been ...(Imprisoned or missing in action)... since ...(Date)... when ...(Describe details).... Petitioner desires to sell/transfer ...(Describe property)... of the value of ...(Value)... because ...(Give reasons).... The terms of sale/transfer are ...(Give reasons).... Petitioner requires the consent of the absentee for the purpose of

...(Petitioner)...

State of ~~Florida~~
County of....

Sworn to (or affirmed) and subscribed before me by means of
☐ physical presence or ☐ online notarization this day of
....., ...(year)..., by ...(name of person making
statement)....

...(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 9. The amendments made by this act are remedial in nature and shall apply retroactively to January 1, 2020.

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



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 3, 2021

I respectfully request that **Senate Bill # 848**, relating to Electronic Legal Documents, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Bobby Powell", is written over a horizontal line.

Senator Bobby Powell
Florida Senate, District 30

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/9/21
Meeting Date

SB 848
Bill Number (if applicable)

Topic Electronic Legal Documents

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior Vice President of Govt. Affairs

Address 1001 Thomasville Rd Suite 201
Street

Phone 850-509-8020

Tallahassee FL 32301
City State Zip

Email kpratt@floridabankers.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Bankers 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 records of the Senate.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/21

Meeting Date

SB 848

Bill Number (if applicable)

Topic Electronic Legal Document

Amendment Barcode (if applicable)

Name Jeffrey Sharkey

Job Title _____

Address 100 E College Ave suite 1110

Street

Phone (850) 224-1660

Tallahassee

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Quicken Loans Rocket Mortgage.

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

3/9/21

Meeting Date

848

Bill Number (if applicable)

Topic Support SB 848 Electronic Legal Documents (Judiciary)

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title _____

Address 106 E. College Ave Suite 1200

Phone 850 999 4100

Street

Tallahassee

FL

32301

Email medenfield@ 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 1048

INTRODUCER: Judiciary Committee and Senators Bean and Baxley

SUBJECT: Public Records/Conviction Integrity Unit Reinvestigation Information

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
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 1048 creates a public records exemption for conviction integrity unit reinvestigation information. Conviction integrity unit reinvestigation information is defined in the bill as information or materials generated during a new investigation by a conviction integrity unit following the unit's formal written acceptance of an applicant's case. The bill contains specific exceptions to the term "conviction integrity unit reinvestigation information." The bill defines the term "conviction integrity unit" as a unit within a state attorney's office established for the purpose of reviewing plausible claims of actual innocence.

The conviction integrity unit reinvestigation information is made exempt from public inspection and copying for 2 years during an active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation. This exemption appears to be no more broad than necessary to accomplish the public interest of safeguarding, preserving, and protecting information relating to a claim of actual innocence by a person who may have been convicted of a crime that he or she did not commit.

The bill provides the public necessity statement for the public records exemption. The bill makes legislative findings in support of the public necessity for the exemption.

The bill requires a two-thirds vote of the members present and voting for final passage. It will stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect July 1, 2021.

II. Present Situation:

Access to Public Records - Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

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

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Agency Investigations

Section 119.071(2), F.S., contains general exemptions from the public records law for agency investigations. For purposes of ch. 119, F.S., the term “agency” means:

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁵ See *generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.²⁷

Conviction Integrity Review Units

Conviction Integrity Review (CIR) units are divisions of prosecutorial offices that work to prevent, identify, and correct false convictions. There were 59 CIR units in the United States in 2019, four times the number of just 5 years earlier. Fifty-five CIR exonerations took place in 2019.²⁸

Currently, four state attorney's offices in Florida have established CIR units within their offices. These offices are located in the:

- Fourth Circuit, covering Duval, Clay, and Nassau Counties;
- Ninth Circuit, covering Orange and Osceola Counties;
- Thirteenth Circuit, covering Hillsborough County; and
- Seventeenth Circuit, covering Broward County.²⁹

The first state attorney's office to establish a CIR unit was the Fourth Circuit in early 2018. All four of the CIR units have essentially the same procedures in place that begin with criteria a person must meet to warrant more than an initial screening. For example, the CIR units require that a person present a plausible claim of innocence, and some of the units report they rely upon an independent review panel of legal experts to work with the units to review and evaluate the cases under investigation.³⁰ Prior to 2018, Florida had 64 exonerations, including eight defendants who had been sentenced to death.³¹

The work of the Fourth Circuit's CIR unit resulted in the 2019 exoneration of two men, Clifford Williams and Nathan Myers, who were sentenced to life in prison for the 1976 Jacksonville murder of Jeanette Williams.³² The CIR unit's investigation confirmed multiple alibi witnesses

²⁷ Section 119.011(2), F.S.

²⁸ The National Registry of Exonerations, *Exonerations in 2019*, March 31, 2020, p. 2, available at http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2019.pdf, (last visited March 7, 2021).

²⁹ Office of the State Attorney for the Fourth Judicial Circuit, *Conviction Integrity Review*, available at <https://www.sao4th.com/about/programs-and-initiatives/conviction-integrity-review/>; Office of the State Attorney for the Ninth Judicial Circuit, *Conviction Integrity Policy*, available at <https://www.sao9.net/conviction-integrity.html>; Office of the State Attorney for the Thirteenth Circuit, *Conviction Review Unit*, available at <https://www.sao13th.com/conviction-review-unit-cru/>; Office of the State Attorney for the Seventeenth Circuit, *Conviction Review Unit*, available at <https://browardsaocom/conviction-review-unit/> (all sites last visited March 7, 2021).

³⁰ *Id.*

³¹ The National Registry of Exonerations, *Exonerations in 2019*, March 31, 2020, p. 9, available at http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2019.pdf, (last visited March 7, 2021).

³² State Attorney's Office of the Fourth Judicial Circuit of Florida, *Conviction Integrity Investigation, State of Florida v. Hubert Nathan Meyers, State of Florida v. Clifford Williams, Jr.*, March 28, 2019, p. 44, available at https://secureservercdn.net/198.71.233.254/9c2.a8b.myftpupload.com/wp-content/uploads/2019/03/CIR_Investigative_Report_FINAL_3.28.19_R.pdf (last visited March 7, 2021).

for the whereabouts of the two men at the time of the murder, and further confirmed that another man, Nathaniel Lawson, admitted to committing the murder. The CIR unit's investigation was able to independently confirm Lawson's presence at the scene at the time of the shooting.³³ Prior to Mr. Williams' and Mr. Myers' convictions and sentences being vacated by the Fourth Circuit Court on March 28, 2019, they had served 42 years and 11 months in prison.³⁴

Currently, the information gathered by CIR units is not considered exempt from the public records law.

III. Effect of Proposed Changes:

The bill creates a public records exemption for conviction integrity unit reinvestigation information in s. 119.071(2)(q), F.S.

Conviction integrity unit is defined in the bill as a unit within a state attorney's office established for the purpose of reviewing plausible claims of actual innocence.

The term "conviction integrity unit reinvestigation information" is defined in the bill as information or materials generated during a new investigation by a conviction integrity unit following the unit's formal written acceptance of an applicant's case. The term specifically does not include:

- Information, materials, or records generated by a state attorney's office during an investigation done for the purpose of responding to motions made pursuant to Rule 3.800, Rule 3.850, or Rule 3.853, Florida Rules of Criminal Procedure, or any other collateral proceeding;
- Petitions by applicants to the conviction integrity unit; or
- Criminal investigative information generated before the commencement of a conviction integrity unit investigation which is not otherwise exempt from this section.

The bill makes conviction integrity unit reinvestigation information exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for 2 years during an active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation. This exemption appears to be no more broad than necessary to accomplish the public interest of safeguarding, preserving, and protecting information relating to a claim of actual innocence by a person who may have been convicted of a crime that he or she did not commit.

The bill provides a public necessity statement for the creation of the public records exemption stating:

The Legislature finds that it is a public necessity that conviction integrity unit reinvestigation information be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 2 years during an active, ongoing,

³³ *Id.* at 4.

³⁴ The Florida Senate, *Senate Bill 28 Special Master's Final Report*, January 23, 2020, p. 1-2, available at <https://www.flsenate.gov/Session/Bill/2020/28/Analyses/2020s00028.ap.PDF> (last visited March 7, 2021).

and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation. Public release of conviction integrity unit reinvestigation information could result in the disclosure of sensitive information, such as the identity or location of an alternate suspect, a witness, or other evidence needed to exonerate a wrongfully convicted person, which could compromise the investigation of a wrongfully convicted person's case. The Legislature further finds that it is necessary to protect this information in order to encourage witnesses, who might otherwise be reluctant to come forward, to be forthcoming with evidence of a crime. It is in the interest of pursuing justice for persons who may have been wrongfully convicted that all conviction integrity unit reinvestigation information be protected until investigation of the claim of actual innocence is no longer capable of further investigation. The Legislature finds that the harm that may result from the release of such information outweighs any public benefit that may be derived from its disclosure, and that it is in the interest of the public to safeguard, preserve, and protect information relating to a claim of actual innocence by a person who may have been convicted of a crime that he or she did not commit.

The bill requires a two-thirds vote of the members present and voting for final passage. It will stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of counties or municipalities to raise revenue.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates an exemption for conviction integrity unit reinvestigation information, as defined in the bill, in s. 119.071(2)(q), F.S., thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect conviction integrity unit reinvestigation information relating to a claim of actual innocence by a convicted person that may be developed or generated during the investigation of the claim. The bill exempts the information for 2 years and until investigation of the claim of actual innocence is no longer capable of reasonable investigation. The exemption does not appear to be broader than necessary to accomplish the purpose of the exemption.

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:

The “2 year” timeframe that limits how long information may be exempted from public records could create confusion when read with the clause “and until the claim is no longer capable of further investigation.”

For clarity, the Legislature may wish to revise the sentence setting forth the duration of the exemption to state that the information is exempt during an “active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation, or for 2 years whichever is shorter.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071, 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 March 9, 2021:

The amount of time that reinvestigation information is exempt from public record is changed to 2 years from “a reasonable period of time.”

- B. Amendments:

None.

By Senator Bean

4-01003-21

20211048__

A bill to be entitled
An act relating to public records; amending s.
119.071, F.S.; defining the terms "conviction
integrity unit" and "conviction integrity unit
reinvestigation information"; providing a public
records exemption for certain conviction integrity
unit reinvestigation information; providing for the
future review and repeal of the exemption; providing a
statement of public necessity; providing an effective
date.

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

Section 1. Paragraph (q) is added to subsection (2) of
section 119.071, Florida Statutes, to read:

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

(2) AGENCY INVESTIGATIONS.—

(q)1. As used in this paragraph, the term:

a. "Conviction integrity unit" means a unit within a state
attorney's office established for the purpose of reviewing
plausible claims of actual innocence.

b. "Conviction integrity unit reinvestigation information"
means information or materials generated during a new
investigation by a conviction integrity unit following the
unit's formal written acceptance of an applicant's case. The
term does not include:

(I) Information, materials, or records generated by a state
attorney's office during an investigation done for the purpose

4-01003-21

20211048__

of responding to motions made pursuant to Rule 3.800, Rule 3.850, or Rule 3.853, Florida Rules of Criminal Procedure, or any other collateral proceeding.

(II) Petitions by applicants to the conviction integrity unit.

(III) Criminal investigative information generated before the commencement of a conviction integrity unit investigation which is not otherwise exempt from this section.

2. Conviction integrity unit reinvestigation information is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for a reasonable period of time during an active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that conviction integrity unit reinvestigation information be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for a reasonable period of time during an active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation. Public release of conviction integrity unit reinvestigation information could result in the disclosure of sensitive information, such as the identity or location of an

4-01003-21

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59 alternate suspect, a witness, or other evidence needed to
60 exonerate a wrongfully convicted person, which could compromise
61 the investigation of a wrongfully convicted person's case. The
62 Legislature further finds that it is necessary to protect this
63 information in order to encourage witnesses, who might otherwise
64 be reluctant to come forward, to be forthcoming with evidence of
65 a crime. It is in the interest of pursuing justice for persons
66 who may have been wrongfully convicted that all conviction
67 integrity unit reinvestigation information be protected until
68 investigation of the claim of actual innocence is no longer
69 capable of further investigation. The Legislature finds that the
70 harm that may result from the release of such information
71 outweighs any public benefit that may be derived from its
72 disclosure, and that it is in the interest of the public to
73 safeguard, preserve, and protect information relating to a claim
74 of actual innocence by a person who may have been convicted of a
75 crime that he or she did not commit.

76 Section 3. 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: March 2, 2021

I respectfully request that **Senate Bill #1048**, relating to Public Records/Conviction Integrity Unit Reinvestigation Information, be placed on the:

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

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

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE
APPEARANCE RECORD

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

8/9
Meeting Date

1048
Bill Number (if applicable)

Topic Conviction Integrity Unit

Amendment Barcode (if applicable)

Name Karen Roberts

Job Title _____

Address 935 E University Ave
Street

Phone 727 366-4080

Orange City FL 32703
City State Zip

Email ucf87opa@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

The Florida Senate
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 492

INTRODUCER: Senator Rouson

SUBJECT: Council on the Discretionary Imposition of Criminal Justice and Traffic Fines and Fees

DATE: March 9, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	Favorable
2.			ACJ	
3.			AP	

I. Summary:

SB 492 creates the Council on the Discretionary Imposition of Criminal Justice and Traffic Fines and Fees (council). The council will review the impact of fines, fees, restitution, and other court costs on individuals having low incomes and publish a report with findings and recommendations on how to reduce financial hardships created by fines, fees, and other costs.

The council will receive administrative support from the Department of Legal Affairs within the Office of the Attorney General. Membership of the council will consist of members appointed by elected state leaders and other public officials and representatives from various community stakeholders.

The bill takes effect July 1, 2021.

II. Present Situation:

Clerks of the Circuit Court

Each of the 67 Florida counties has a clerk of court. The clerk is an elected constitutional officer who oversees judiciary functions as the clerk of both the county and circuit courts.¹ The Florida Constitution requires that the clerks of court be funded from revenue generated from charges for services, court costs, filing fees, and fines from civil and criminal proceedings.² The revenue is used for court related functions as well as select costs, expenses, and salaries as provided by law.³ Court related functions include:

- Case maintenance;
- Records management;

¹ FLA. CONST. art. V, s. 16

² FLA. CONST. art. V, s. 14.

³ *Id.*

- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing for the assignment, reopening, reassignment, and appeals of cases;
- Reasonable administrative support costs;
- Data collection and reporting;
- Determinations of indigent status; and
- Collection and distribution of fines, fees, service charges, and court costs.⁴

The clerk of courts statewide operating budgets vary each year depending on revenues generated. According to the Florida Clerks of Courts Operations Corporation, clerk budgets have declined \$50.6 million over the last 8 years.⁵ For Fiscal Year 2013-2014 clerks had an operating budget of \$472.3 million for court-related functions. The 2017-2018 budget was \$409.04 million,⁶ while the latest 2020-2021 budget was \$421.7 million.⁷ Most recently, Covid-19 caused a drastic cut in the Clerks budget due to a reduction in court filings.⁸

Between October 1, 2017, and September 30, 2018, the Clerks statewide assessed \$1,163,151,976, in fines, and collected a total of \$863,594,314 for a collection rate of 74.25 percent statewide.⁹ Revenue collected from fines and fees are not solely budgeted toward the clerks of courts. The Legislature has provided, for example, a 5 percent surcharge for certain non-criminal traffic citations, which is deposited in the Crimes Compensation Trust Fund.¹⁰ Additionally, that same trust fund collects \$49 from every \$50 collected as a fine from every adjudication a felony, misdemeanor, delinquent act, or criminal traffic offense.¹¹ During Fiscal Year 2018-2019, the Crime Compensation Trust Fund received \$13,794,800.86 of revenue generated from the above fines and fees collected by the clerks of courts.¹²

Fees and Fines

Court costs, fines, and other fines related to a disposition are enforced by court order and collected by the clerks of the circuit and county courts. Certain crimes in Florida have significant mandatory minimum fines. An individual convicted of trafficking cocaine, for example, must pay a fine of \$50,000, if the amount trafficked is at least 28 grams, or \$250,000 if the amount

⁴ Section 28.35(3)(a), F.S.

⁵ Florida Clerks of Court Operations Corporation, *At Your Service 2021 Clerk Legislative Priorities*, <https://www.flclerks.com/page/atyourservice> (last visited Mar. 5 2021).

⁶ Gary Blankenship, *Court Clerks Get a Bit of the Budget Help they Need*, FLA. BAR NEWS, May 13, 2019, <https://www.floridabar.org/the-florida-bar-news/court-clerks-get-a-bit-of-the-budget-help-they-need/>.

⁷ Florida Clerks of Court Operations Corporation, *CFY 2020-2021 APPROVED BUDGET*, <https://flccoc.org/wp-content/uploads/2020/10/CFY2021-Approved-Budget-092920.pdf> (last visited Mar. 4 2021).

⁸ Specifically, the Florida Clerks of Court Operations imposed a \$60 million budget cut. This was in response to a recent report showing that collections were \$48.3 million below estimate. Jim Ash, *Falling Revenue Backs Court Clerks Into a Budget Corner*, FLA. BAR NEWS, July 27, 2020, <https://www.floridabar.org/the-florida-bar-news/falling-revenue-back-court-clerks-into-a-budget-corner/> (last visited Mar. 5 2021).

⁹ Florida Court Clerks and Comptrollers, *2018 Annual Assessments and Collections Report*, <https://flccoc.org/wp-content/uploads/2018/12/2018-Annual-Assessments-and-Collections-Report.pdf>

¹⁰ Section 938.04, F.S. The Crimes Compensation Trust Fund was created for the purpose of compensating victims of crime. Section 960.21, F.S.

¹¹ Section 938.03, F.S.

¹² Memorandum, Florida Clerks of Court Operations Corporation, *Senate Bill 1328 Analysis* (January 2021) (on file with the Senate Committee on Judiciary).

trafficked is more than 400¹³ grams.¹⁴ In fiscal year 2018-2019 more than \$654 million in mandatory criminal and traffic costs were assessed, with an additional \$86 million in discretionary costs and fines assessed.¹⁵ Only a fraction of these costs, however, are collected each year.¹⁶ Additionally, certain costs and fines can be converted to community service in limited circumstances.¹⁷

Once fees, service charges, fines, or court costs have remained unpaid for 90 days, the clerk may forward the accounts to an attorney or collection agent if the clerk of court attempted to collect the unpaid amount through an internal process such as a collection docket.¹⁸ It is unclear how successful collection agents are at collecting the remaining fees and fines. However, some counties such as Broward County have unpaid fines and fees totaling hundreds of millions of dollars which go back decades.¹⁹

Payment Plans

An indigent person may apply to the clerk of court to enter a payment plan. The monthly payments under a payment plan are presumed to correspond to the indigent person's ability to pay if it does not exceed 2 percent of the indigent person's annual net income divided by 12.²⁰ A person is indigent if their his or her income is equal to or below 200 percent of the federal poverty guidelines²¹ or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income.²² Depending on the individual's income and ability to pay, fines and fees may take decades to payoff. An individual on a payment plan in Miami-Dade, for example, is scheduled to complete her \$190,000 payment plan resulting from a grand theft conviction in 190 years.²³ She pays \$100 per month under her payment plan.

¹³ 400 grams is the equivalent to 0.88 pounds.

¹⁴ Section 893.135(1)(b)1., F.S.

¹⁵ Judicial Management Council, Workgroup on Court Costs and Fines, *Court Costs and Fines in Florida*, 6 (June 2020) (on file with the Senate Committee on Judiciary).

¹⁶ Based on that same year, for example, 9.38% was collected in the circuit criminal division, 40.25% was collected in the county criminal division, and 84.55% was collected in civil traffic division. *Id.*

¹⁷ Section 938.30, F.S. allows a judge to convert monetary obligations to community service work based on an offender's inability to pay. For traffic cases, section 318.18, F.S. allows a judge to convert civil penalties into community service work if the offender has a financial hardship.

¹⁸ Section 28.246(6), F.S.

¹⁹ Broward County has \$735.6 million in outstanding fees and fines from felony, misdemeanor, and traffic dispositions. Similarly, Palm-Beach County has \$277.5 million outstanding while Miami-Dade County has \$278 million from felony adjudications alone. Dan Sweeney, *South Florida felons owe a billion dollars in fines - and that will affect their ability to vote*, SOUTH FLORIDA SUN SENTINEL, May 31, 2019, <https://www.sun-sentinel.com/news/politics/fl-ne-felony-fines-broward-palm-beach-20190531-5hxf7mveyree5cjhk4xr7b73v4-story.html>.

²⁰ Section 28.26(4), F.S.

²¹ Based on the 2021 guidelines, an applicant under this scenario would qualify if his or her income were equal to or below \$25,760 (200% of \$12,880) for a single person household, adding \$9,080 for each additional person in the household. U.S. Dept. of Health and Human Service, HHS Poverty Guidelines for 2021, <https://aspe.hhs.gov/poverty-guidelines> (last visited Mar. 4, 2021).

²² Section 27.52(1), F.S.

²³ Lawrence Mower, *Should a felon who owes \$59 million be allowed to vote? How about \$190,000?* MIAMI HERALD, Mar. 29, 2019, <https://www.miamiherald.com/news/politics-government/state-politics/article228399999.html>.

Suspension of Driver License

Between 2015 and 2017, more than 3.5 million suspension notices were issued in relation to unpaid court obligations.²⁴ An estimated 2 million of the more than 14 million driver licenses issued in Florida are currently suspended.²⁵ A license can be suspended for a variety of different reasons, including:

- Failure to pay a traffic fine.
- Failure to comply with or appear at a traffic summons.
- Failure to complete driver improvement school based on court order or citation.
- Unpaid citations reported by another state.
- Failure to pay a court financial obligation.²⁶

III. Effect of Proposed Changes:

The bill creates the Council on Discretionary Imposition of Criminal Justice and Traffic Fines and Fees. The membership of the Council must reflect the racial, ethnic, and cultural diversity of the state and will have a membership composed of:

- A chair, appointed by the Attorney general;
- Two Senators, appointed by the Senate President and Minority Leader respectively;
- Two members of the House of Representatives, appointed by the Speaker and Minority Leader respectively;
- Two Public Defenders, appointed by the President of the board of directors of the Florida Public Defender Association
- Two State Attorneys, appointed by the President of the executive board of the Florida Prosecuting Attorneys Association;
- A justice of the Supreme Court or a judge from a District Court of Appeal, appointed by the Chief Justice of the Florida Supreme Court;
- Two county court judges, appointed by the President of the board of directors of the Conference of County Court Judges of Florida;
- Two circuit judges, appointed by the chair of the executive committee of the Florida Conference of Circuit Judges;
- A representative of the Florida Association of Court Clerks and Comptrollers, appointed by the Association's President;
- A representative of the Fines and Fees Justice Center, nominated by the organization and appointed by the Attorney General; and
- A representative nominated by each of the following organizations and appointed by the Attorney General:

²⁴ Fines and Fees Justice Center, *Driving on Empty: Florida's Counterproductive and Costly Driver's License Suspension Practices* (Dec. 2019), 3, <https://finesandfeesjusticecenter.org/content/uploads/2019/11/florida-fines-fees-drivers-license-suspension-driving-on-empty.pdf> (last visited March 4 2021)

²⁵ Wayne K. Rouston, *Florida suspends nearly 2 million driver's licenses. Help may be on way*, SOUTH FLORIDA SUN SENTINEL, Feb. 16, 2018, <https://www.sun-sentinel.com/news/transportation/fl-reg-drivers-license-suspensions-20180208-story.html>.

²⁶ Florida Department of Highway Safety and Motor Vehicles, *Traffic Citations or Court Suspensions*, <https://www.flhsmv.gov/driver-licenses-id-cards/driver-license-suspensions-revocations/traffic-citations-court-suspensions/> (last visited Jan. 15, 2020). Fines and Fees Justice Center, *Driving on Empty: Florida's Counterproductive and Costly Driver's License Suspension Practices* (Dec. 2019),

- Operation New Hope;
- Florida Rights Restoration Coalition;
- Southern Legal Counsel;
- Florida Rural Legal Services;
- Chainless Change; and
- Abe Brown Ministries.

Duties of the Council

The Council will review the impact of fines, fees, restitution, and other court costs on individuals and families having low incomes. This review will include the proportional impact on people of color as well as how these obligations impact poor individuals and their families. Additionally, the review will include a review of mechanisms used in other states that allow judicial discretion for the imposition of fines and fees.

Additionally, the Council will organize four community meetings with individuals directly impacted by the obligations from criminal fines and fees.

The Council will issue a report with findings and recommendations regarding increased judicial discretion in the imposition of fines, fees, and costs along with recommended policy changes to reduce the financial hardship associated with these obligations.

The bill has a repeal date of December 31, 2024.

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:

None.

C. Government Sector Impact:

SB 492 requires the Department of Legal Affairs within the Office of the Attorney General to provide administrative support to the Council. Likewise, the membership of the Council will include various public officials such as State Attorneys, Public Defenders, and state Judges. This may require these offices to spend additional funds when serving on or providing support to the Council.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 16.6171, 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 Rouson

19-00368C-21

2021492__

1 A bill to be entitled
2 An act relating to the Council on the Discretionary
3 Imposition of Criminal Justice and Traffic Fines and
4 Fees; creating s. 16.6171, F.S.; establishing the
5 council adjunct to the Department of Legal Affairs;
6 requiring the department to provide administrative
7 support to the council; specifying application of law
8 governing advisory bodies; prescribing the composition
9 of the council; providing duties of the council;
10 providing for future repeal; providing an effective
11 date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 16.6171, Florida Statutes, is created to
16 read:

17 16.6171 Council on the Discretionary Imposition of Criminal
18 Justice and Traffic Fines and Fees.—

19 (1) The Council on the Discretionary Imposition of Criminal
20 Justice and Traffic Fines and Fees, a council as defined in s.
21 20.03(7), is established adjunct to the Department of Legal
22 Affairs. The department shall provide administrative support to
23 the council, but the council shall perform its duties and
24 responsibilities independently of the department. Except as
25 otherwise provided in this section, the council shall operate in
26 a manner consistent with s. 20.052.

27 (2) The council is composed of the following members:

28 (a) The chair of the council, appointed by the Attorney
29 General.

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30 (b) Two members of the Senate, one appointed by the
31 President of the Senate and one appointed by the Senate Minority
32 Leader.

33 (c) Two members of the House of Representatives, one
34 appointed by the Speaker of the House of Representatives and one
35 appointed by the House Minority Leader.

36 (d) Two public defenders, one from a judicial circuit with
37 a population of more than 1 million and one from a judicial
38 circuit with a population of less than 1 million, both appointed
39 by the president of the board of directors of the Florida Public
40 Defender Association.

41 (e) Two state attorneys, one from a judicial circuit with a
42 population of more than 1 million and one from a judicial
43 circuit with a population of less than 1 million, both appointed
44 by the president of the executive board of the Florida
45 Prosecuting Attorneys Association.

46 (f) A Supreme Court justice or a district court of appeal
47 judge, appointed by the Chief Justice of the Florida Supreme
48 Court.

49 (g) Two county judges appointed by the president of the
50 board of directors of the Conference of County Court Judges of
51 Florida.

52 (h) Two circuit judges appointed by the chair of the
53 executive committee of the Florida Conference of Circuit Judges.

54 (i) A representative of the Florida Association of Court
55 Clerks and Comptrollers appointed by the president of the
56 association.

57 (j) A community member nominated by each of the following
58 organizations and appointed by the Attorney General:

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- 59 1. Operation New Hope;
60 2. Florida Rights Restoration Coalition;
61 3. Southern Legal Counsel;
62 4. Florida Rural Legal Services;
63 5. Chainless Change; and
64 6. Abe Brown Ministries.

65 (k) A representative of the Fines and Fees Justice Center,
66 nominated by the organization and appointed by the Attorney
67 General.

68 (3) Council members shall reflect the racial, ethnic, and
69 cultural diversity of the state's population. Any vacancies
70 shall be filled in the same manner as the initial appointment.

71 (4) The council has the following duties:

72 (a) Review the impact of fines, fees, restitution, and
73 other court costs on individuals and families with low incomes;
74 the consequences faced by individuals who fail to pay fines,
75 fees, restitution, and other court costs and financial
76 obligations; and how such consequences may be mitigated through
77 increased judicial discretion in imposing fines, fees, and
78 restitution, as well as through policies and other practices
79 that reduce legal financial obligations for low-income residents
80 and lessen the negative impacts of these obligations. Such a
81 review must include an analysis of how fines, fees, citations,
82 and other financial penalties impact people with low incomes,
83 and the proportionality of such impacts on people of color and
84 their families.

85 (b) Evaluate the impact of mandatory assessments of fines,
86 fees, and costs on all relevant stakeholders in the court
87 system, including an analysis of current law relating to the

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discretionary assessment of fines, fees, and costs.

(c) Review mechanisms and collections rates in states that allow judicial discretion for the imposition of fines and fees in criminal and traffic cases, including, but not limited to, the following:

1. Ability to pay determinations at sentencing;
2. Waiver or reduction of fees and costs;
3. Use of day fines;
4. Effective use of community service or other alternative sanctions; and

5. Debt discharge or the write-off of uncollectible debts.

(d) Hold a minimum of four regionally diverse community meetings to hear directly from individuals impacted by the mandatory assessment of criminal and traffic fines and fees.

(e) Perform a systemwide analysis of the costs of collecting fines, fees, restitution, and other mandatory costs, including an analysis of cost-saving benefits associated with increased judicial discretion.

(f) Draft and publish a report that includes findings and recommendations for this state regarding increased judicial discretion in the imposition of fines, fees, and costs at sentencing or disposition, along with recommended policy and other practice changes that would help reduce the financial hardship associated with fines, fees, and other costs on affected individuals and their families.

The council may meet as often as it deems necessary to fulfill the duties prescribed in this subsection.

(5) This section is repealed December 31, 2024.

19-00368C-21

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117

Section 2. 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: February 2, 2021

I respectfully request that **Senate Bill #492**, relating to Council on the Discretionary Imposition of Criminal Justice and Traffic Fines and Fees, be placed on the:

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

A handwritten signature in cursive script that reads "Darryl Ervin Rouson".

Senator Darryl Ervin Rouson
Florida Senate, District 19

11:45 J
YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

492

Bill Number (if applicable)

Topic Council on Discretionary Imposition of criminal justice and traffice fines and fees

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.

Phone 850-321-9386

Street

Tallahassee

FL

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.

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

11-45
March 9, 2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

492

Bill Number (if applicable)

Topic COUNCIL/ STUDY, CONTINUING FINES & FEES 3 MORE YRS

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title president, Tallahassee Veterans Legal Collaborative

Address 319 E Park Ave

Street

TALLAHASSEE

City

FL

State

32301

Zip

Phone 850/570-1967

Email danbhendrickson@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

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

J 11:45

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

492

Bill Number (if applicable)

Topic Council on Discretionary Imposition of criminal justice fines and fees

Amendment Barcode (if applicable)

Name Russell Meyer

Job Title Executive Director

Address 1308 Windsor Place

Phone 8134215330

Street

Jacksonville

fl

32205

City

State

Zip

Email rmeyer@floridachurches.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Faith Advocacy 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.

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 1114

INTRODUCER: Senator Pizzo

SUBJECT: Compensation for Eligible Victims of Wrongful Incarceration

DATE: March 9, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Bond	Cibula	JU	Favorable
2. _____	_____	AP	_____
3. _____	_____	RC	_____

I. Summary:

SB 1114 amends the Victims of Wrongful Incarceration Act to increase eligibility for relief. The bill repeals most of the clean hands provisions in current law that deny relief to a claimant who has committed certain other offenses, including a violent felony, leaving only the prohibition on collecting for time served concurrently with an unrelated offense. The bill extends the deadline to establish one's status as a wrongfully incarcerated person and eligible for compensation from 90 days to 2 years. The bill also allows persons previously ineligible due to the clean hands provisions or inability to meet the 90-day filing deadline until July 1, 2023, to file a new claim for compensation for wrongful incarceration.

The bill repeals the current law requirement that relief under the Act is an exclusive remedy. Accordingly, a claimant under the Act may additionally elect to pursue civil actions and a claim bill related to the wrongful incarceration. While multiple actions are allowed, a claimant who receives compensation in a civil action in an amount less than that authorized as administrative compensation may recover the difference from the state. However, if the claimant recovers more in a civil action than in compensation under the administrative process, the claimant may retain the compensation from the civil action but must return the administrative compensation to the state.

The bill also prohibits the filing of a petition by heirs, successors and assigns, thereby limiting relief under the Act to living persons who were wrongfully incarcerated.

The fiscal impact of this bill is indeterminate.

The bill is effective July 1, 2021.

II. Present Situation:

The Victims of Wrongful Incarceration Compensation Act (the Act) has been in effect since July 1, 2008.¹ The Act provides a process whereby a person may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation from the state.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.² The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years. A successful claimant receives the following benefits:

- Cash compensation calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.
- Waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any state college as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets certain requirements.
- The amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person.
- The amount of any reasonable attorney's fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals regarding the wrongful conviction.
- Immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration.³

An individual claiming to be a wrongfully incarcerated person eligible for compensation must file a petition with the original sentencing court, with a copy of the petition and proper notice to the prosecuting authority in the underlying felony for which the person was incarcerated. The petition must be filed with the court within 90 days after the order vacating a conviction and sentence becomes final. The original enactment in 2008 gave a 2 year window for filing a claim that would otherwise be untimely.⁴

The petition must state that verifiable and substantial evidence of actual innocence exists, must state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence, and must state that the person is not disqualified by reason of other felony convictions. The prosecuting authority must respond within 30 days, either confirming the petition or contesting it. If the prosecuting authority contests the petition, the claimant must prove actual innocence by clear and convincing evidence. Actual innocence means that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense.⁵

¹ Chapter 961, F.S. (ch. 2008-39, Laws of Fla.).

² Section 961.05, F.S.

³ Section 961.06, F.S.

⁴ Section 961.03(1)(b), F.S.

⁵ Section 961.03(3), F.S. The hearing process is complicated and is split between the sentencing court and the Division of Administrative Hearings. The process is not affected by this bill.

Current law contains a requirement for compensation known as the “clean hands” doctrine. In cases where sufficient evidence of actual innocence exists, a person is nonetheless *ineligible* for compensation if:

- *Before* the person’s wrongful conviction and incarceration the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication *any single violent felony*, or *more than one nonviolent felony*, or a crime or crimes committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- *During* the person’s wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any violent felony offense* or *more than one nonviolent felony*; or
- *During* the person’s wrongful incarceration, the person was also serving a *concurrent sentence for another felony* for which the person was not wrongfully convicted.⁶

Also, a person could be wrongfully incarcerated for a crime and then placed on parole or community supervision for that crime after the incarcerative part of the sentence is served.⁷ Section 961.06(2), F.S., addresses this situation in terms of eligibility for compensation for the period of wrongful incarceration. Under this provision, if a person commits a misdemeanor, no more than one nonviolent felony, or some technical violation of his or her supervision that results in the revocation of parole or community supervision, the person is still eligible for compensation. If, however, any single violent felony law violation or multiple nonviolent felony law violations result in revocation, the person is ineligible for compensation.⁸

The term “violent felony” is defined in s. 961.02(6), F.S., by cross-referencing felonies listed in s. 775.084(1)(c)1. or s. 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar. The violent felonies referenced in s. 961.02(6), F.S., are:

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;

⁶ Section 961.04, F.S.

⁷ Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines, which was October 1, 1983, and only then if they meet the statutory criteria. Chapter 82-171, Laws of Fla., and s. 947.16, F.S. The term “community supervision” as used in s. 961.06(2), F.S., could include control release, conditional medical release, or conditional release under the authority of the Florida Commission on Offender Review (ch. 947, F.S.), or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

⁸ Section 961.06(2), F.S.

- Sexual Battery;
- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

Chapter 961, F.S., effectively contains a choice of remedy requirement. A person seeking compensation through this process is ineligible for compensation if there is a pending federal or state civil action regarding the wrongful incarceration, or if there is a pending claim bill. Payment of compensation is intended to be the sole redress for claims related to a wrongful incarceration.⁹ A previously passed claim bill makes a person ineligible for compensation under the Act.¹⁰ A successful claimant must sign a release to qualify for payment,¹¹ thereby foreclosing the future filing of a civil action and likely foreclosing pursuit of a future claim bill.

Through 2019, four persons have been compensated under the Act for a total of \$4,276,901.¹²

III. Effect of Proposed Changes:

Section 1 of the bill extends the deadlines for a person who was wrongfully incarcerated to file the petition with the court for a determination of eligibility for compensation. For a person whose conviction and sentence is vacated on or after July 1, 2021, a petition must be filed within 2 years after the time the order vacating a conviction and sentence becomes final and the criminal charges against the person are dismissed or the person is retried and found not guilty. Payment of these claims are available to claimants pursuant to a continuing appropriation.

⁹ Section 961.06(6), F.S.

¹⁰ Section 961.06(6)(c), F.S. The Act also says that one compensated under the Act may not thereafter pursue a claim bill, but this is not binding, as one Legislature cannot by statute bind the actions of a future Legislature.

¹¹ Section 961.06(5), F.S.

¹² E-mail and documentation received from the Office of the Attorney General, October 16, 2019 (on file with the Senate Committee on Criminal Justice).

For a person whose conviction and sentence was vacated on or after January 1, 2006, but before July 1, 2021, then the person must file a petition for eligibility between July 1, 2021 and July 1, 2023, and any payment is subject to a specific appropriation made for this purpose:

- If the person previously filed a petition that was dismissed, the person may re-file for compensation.
- If the person did not previously file a petition because he or she was ineligible to file because the date when the criminal charges against the person were dismissed or the date the person was acquitted upon retrial occurred more than 90 days after the date of the final order vacating the conviction and sentence, the person may file an original petition.
- If the person did not previously file a petition because he or she was ineligible to file due to unrelated felony convictions (the “clean hands” restriction), the person may file an original petition.

Section 1 of the bill also limits the filing of any petition for compensation to the living. A deceased person’s heirs, successors, or assigns may not file a petition for compensation on behalf of the deceased.

Section 2 of the bill amends s. 961.04, F.S., to repeal ineligibility for compensation for wrongful incarceration based on the commission of an unrelated past felony. Section 3 of the bill amends s. 961.06, F.S., to repeal ineligibility based on offenses committed while on probation, parole or conditional release. The bill, however, retains the provision by which a person is not eligible for compensation for time incarcerated for a different offense served concurrently with the wrongful conviction.

Section 3 of the bill amends s. 961.06, F.S., to repeal the choice of remedy provisions. A claimant may seek an award for wrongful incarceration in addition to filing a civil action or while pursuing a claim bill. The requirement that a successful claimant sign a release is repealed.

While multiple civil actions are allowed, excess civil recovery by the claimant is prohibited. The amount of a prior civil judgment or settlement, less attorney fees and costs, is a deduction from the award made pursuant to the Act. If the claimant receives a later civil judgment or settlement, the amount of such judgment or settlement, less attorney fees and costs, must be refunded to the state, up to the amount paid under the Act. A claimant must notify the Department of Legal Affairs of any civil action related to the wrongful incarceration, and the department must give notice to the trial court of the state’s interest. The bill retains the current law prohibition on receiving compensation under the Act by someone who has previously received compensation through a claim bill.

Section 4 of the bill amends s. 961.07, F.S., to provide that future payments of regular compensation for wrongful incarceration is payable from a continuing appropriation. However, payment of claims barred by current law but revived by this bill are payable from a specific appropriation.

Sections 5, 6, 7, and 8 of the bill reenact portions of ss. 961.02, 961.03, and 961.05, F.S., which relate to eligibility for compensation of wrongfully incarcerated persons.

The bill is effective July 1, 2021.

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

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. The number of individuals eligible for compensation because of SB 1114 is unknown.

VI. Technical Deficiencies:

The catchline for s. 961.07, F.S., at line 283 of the bill should perhaps be amended to reflect the changes made by this bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 961.03, 961.04, 961.06, and 961.07.

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

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

None.

B. Amendments:

None.

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

By Senator Pizzo

38-00025A-21

20211114__

A bill to be entitled

An act relating to compensation for eligible victims of wrongful incarceration; amending s. 961.03, F.S.; extending the filing deadline for a petition claiming wrongful incarceration; providing limited retroactivity for filing a petition claiming wrongful incarceration; providing that a deceased person's heirs, successors, or assigns do not have standing to file a petition related to the wrongful incarceration of the deceased person; amending s. 961.04, F.S.; revising eligibility for compensation for wrongful incarceration for a wrongfully incarcerated person; amending s. 961.06, F.S.; authorizing the Chief Financial Officer to adjust compensation for inflation for persons found to be wrongfully incarcerated after a specified date; revising conditions for eligibility for compensation for wrongful incarceration; requiring the state to deduct the amount of a civil award from the state compensation amount owed if the claimant first receives a civil award; deleting a requirement that a wrongfully incarcerated person sign a liability release before receiving compensation; requiring a claimant to reimburse the state for any difference between state compensation and a civil award if the claimant receives statutory compensation before a civil award; requiring a claimant to notify the Department of Legal Affairs upon filing a civil action; requiring the department to file a notice of payment of monetary compensation in such civil action;

38-00025A-21

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30 deleting provisions prohibiting an application for
31 compensation if the applicant has a pending civil suit
32 requesting compensation; amending s. 961.07, F.S.;
33 specifying that payments for certain petitions filed
34 under the Victims of Wrongful Incarceration
35 Compensation Act are subject to specific
36 appropriation; reenacting ss. 961.02(4) and
37 961.03(1)(a), (2), (3), and (4), F.S., relating to
38 eligibility for compensation for wrongfully
39 incarcerated persons to incorporate the amendment made
40 to s. 961.04, F.S., in references thereto; reenacting
41 ss. 961.02(5) and 961.05(6), F.S., relating to
42 receiving compensation to incorporate the amendment
43 made to s. 961.06, F.S., in references thereto;
44 providing an effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Paragraph (b) of subsection (1) of section
49 961.03, Florida Statutes, is amended, and paragraph (c) is added
50 to that subsection, to read:

51 961.03 Determination of status as a wrongfully incarcerated
52 person; determination of eligibility for compensation.—

53 (1)

54 (b) The person must file the petition with the court:

55 1. Within 2 years after the order vacating a conviction and
56 sentence becomes final and the criminal charges against the
57 person are dismissed or the person is retried and acquitted, if
58 the person's conviction and sentence is vacated on or after July

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1, 2021.

2. By July 1, 2023, if the person's conviction and sentence was vacated and the criminal charges against the person were dismissed or the person was retried and acquitted on or after January 1, 2006, but before July 1, 2021, and he or she previously filed a petition under this section which was dismissed or did not file a petition under this section because:

a. The date when the criminal charges against the person were dismissed or the date the person was acquitted upon retrial occurred more than 90 days after the date of the final order vacating the conviction and sentence; or

b. The person was convicted of an unrelated felony before or during his or her wrongful conviction and incarceration and was ineligible for compensation under former s. 961.04.

(c) A deceased person's heirs, successors, or assigns do not have standing to file a petition on the deceased person's behalf under this section

~~1. Within 90 days after the order vacating a conviction and sentence becomes final if the person's conviction and sentence is vacated on or after July 1, 2008.~~

~~2. By July 1, 2010, if the person's conviction and sentence was vacated by an order that became final prior to July 1, 2008.~~

Section 2. Section 961.04, Florida Statutes, is amended to read:

961.04 Eligibility for compensation for wrongful incarceration.—A wrongfully incarcerated person is not eligible for compensation under the act for any period of incarceration during which the person was concurrently serving a sentence for a conviction of another crime for which such person was lawfully

38-00025A-21

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88 incarcerated if:

89 ~~(1) Before the person's wrongful conviction and~~
90 ~~incarceration, the person was convicted of, or pled guilty or~~
91 ~~nolo contendere to, regardless of adjudication, any violent~~
92 ~~felony, or a crime committed in another jurisdiction the~~
93 ~~elements of which would constitute a violent felony in this~~
94 ~~state, or a crime committed against the United States which is~~
95 ~~designated a violent felony, excluding any delinquency~~
96 ~~disposition;~~

97 ~~(2) Before the person's wrongful conviction and~~
98 ~~incarceration, the person was convicted of, or pled guilty or~~
99 ~~nolo contendere to, regardless of adjudication, more than one~~
100 ~~felony that is not a violent felony, or more than one crime~~
101 ~~committed in another jurisdiction, the elements of which would~~
102 ~~constitute a felony in this state, or more than one crime~~
103 ~~committed against the United States which is designated a~~
104 ~~felony, excluding any delinquency disposition;~~

105 ~~(3) During the person's wrongful incarceration, the person~~
106 ~~was convicted of, or pled guilty or nolo contendere to,~~
107 ~~regardless of adjudication, any violent felony;~~

108 ~~(4) During the person's wrongful incarceration, the person~~
109 ~~was convicted of, or pled guilty or nolo contendere to,~~
110 ~~regardless of adjudication, more than one felony that is not a~~
111 ~~violent felony; or~~

112 ~~(5) During the person's wrongful incarceration, the person~~
113 ~~was also serving a concurrent sentence for another felony for~~
114 ~~which the person was not wrongfully convicted.~~

115 Section 3. Section 961.06, Florida Statutes, is amended to
116 read:

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961.06 Compensation for wrongful incarceration.—

(1) Except as otherwise provided in this act and subject to the limitations and procedures prescribed in this section, a person who is found to be entitled to compensation under the provisions of this act is entitled to:

(a) Monetary compensation for wrongful incarceration, which shall be calculated at a rate of \$50,000 for each year of wrongful incarceration, prorated as necessary to account for a portion of a year. For persons found to be wrongfully incarcerated after December 31, 2005 ~~2008~~, the Chief Financial Officer may adjust the annual rate of compensation for inflation using the change in the December-to-December "Consumer Price Index for All Urban Consumers" of the Bureau of Labor Statistics of the Department of Labor;

(b) A waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, any Florida College System institution as defined in s. 1000.21(3), or any state university as defined in s. 1000.21(6), if the wrongfully incarcerated person meets and maintains the regular admission requirements of such career center, Florida College System institution, or state university; remains registered at such educational institution; and makes satisfactory academic progress as defined by the educational institution in which the claimant is enrolled;

(c) The amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person;

(d) The amount of any reasonable attorney ~~attorney's~~ fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals

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regarding the wrongful conviction, to be calculated by the department based upon the supporting documentation submitted as specified in s. 961.05; and

(e) Notwithstanding any provision to the contrary in s. 943.0583 or s. 943.0585, immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. The Department of Legal Affairs and the Department of Law Enforcement shall, upon a determination that a claimant is entitled to compensation, immediately take all action necessary to administratively expunge the claimant's criminal record arising from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. All fees for this process shall be waived.

The total compensation awarded under paragraphs (a), (c), and (d) may not exceed \$2 million. No further award for attorney ~~attorney's~~ fees, lobbying fees, costs, or other similar expenses shall be made by the state.

~~(2) In calculating monetary compensation under paragraph (1)(a), a wrongfully incarcerated person who is placed on parole or community supervision while serving the sentence resulting from the wrongful conviction and who commits no more than one felony that is not a violent felony which results in revocation of the parole or community supervision is eligible for compensation for the total number of years incarcerated. A wrongfully incarcerated person who commits one violent felony or more than one felony that is not a violent felony that results in revocation of the parole or community supervision is~~

38-00025A-21

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~~ineligible for any compensation under subsection (1).~~

~~(2)(3)~~ Within 15 calendar days after issuing notice to the claimant that his or her claim satisfies all of the requirements under this act, the department shall notify the Chief Financial Officer to draw a warrant from the General Revenue Fund or another source designated by the Legislature in law for the purchase of an annuity for the claimant based on the total amount determined by the department under this act.

~~(3)(4)~~ The Chief Financial Officer shall issue payment in the amount determined by the department to an insurance company or other financial institution admitted and authorized to issue annuity contracts in this state to purchase an annuity or annuities, selected by the wrongfully incarcerated person, for a term of not less than 10 years. The Chief Financial Officer is directed to execute all necessary agreements to implement this act and to maximize the benefit to the wrongfully incarcerated person. The terms of the annuity or annuities shall:

(a) Provide that the annuity or annuities may not be sold, discounted, or used as security for a loan or mortgage by the wrongfully incarcerated person.

(b) Contain beneficiary provisions for the continued disbursement of the annuity or annuities in the event of the death of the wrongfully incarcerated person.

~~(4)(5)~~ If, at the time monetary compensation is determined under paragraph (1)(a), a court has previously entered a monetary judgment in favor of the claimant in a civil action related to the claimant's wrongful incarceration, or the claimant has entered into a settlement agreement with the state or any political subdivision thereof related to the claimant's

38-00025A-21

20211114__

204 wrongful incarceration, the amount of the damages in the civil
205 action or settlement agreement, less any sums paid for attorney
206 fees or for costs incurred in litigating the civil action or
207 obtaining the settlement agreement, shall be deducted from the
208 total monetary compensation to which the claimant is entitled
209 under this section ~~Before the department approves the~~
210 ~~application for compensation, the wrongfully incarcerated person~~
211 ~~must sign a release and waiver on behalf of the wrongfully~~
212 ~~incarcerated person and his or her heirs, successors, and~~
213 ~~assigns, forever releasing the state or any agency,~~
214 ~~instrumentality, or any political subdivision thereof, or any~~
215 ~~other entity subject to s. 768.28, from all present or future~~
216 ~~claims that the wrongfully incarcerated person or his or her~~
217 ~~heirs, successors, or assigns may have against such entities~~
218 ~~arising out of the facts in connection with the wrongful~~
219 ~~conviction for which compensation is being sought under the act.~~

220 (5) If subsection (4) does not apply, and if after the time
221 monetary compensation is determined under paragraph (1)(a) the
222 court enters a monetary judgment in favor of the claimant in a
223 civil action related to the claimant's wrongful incarceration,
224 or the claimant enters into a settlement agreement with the
225 state or any political subdivision thereof related to the
226 claimant's wrongful incarceration, the claimant shall reimburse
227 the state for the monetary compensation in paragraph (1)(a),
228 less any sums paid for attorney fees or for costs incurred in
229 litigating the civil action or obtaining the settlement
230 agreement. A reimbursement required under this subsection shall
231 not exceed the amount of the monetary award the claimant
232 received for damages in a civil action or settlement agreement.

38-00025A-21

20211114__

233 In the order of judgment, the court shall award to the state any
234 amount required to be deducted under this subsection.

235 (6) (a) The claimant shall notify the department upon filing
236 a civil action against the state or any political subdivision
237 thereof in which the claimant is seeking monetary damages
238 related to the claimant's wrongful incarceration for which he or
239 she previously received or is applying to receive compensation
240 under paragraph (1) (a).

241 (b) Upon notice of the claimant's civil action, the
242 department shall file in the case a notice of payment of
243 monetary compensation to the claimant under paragraph (1) (a).
244 The notice shall constitute a lien upon any monetary judgment or
245 settlement recovered under the civil action which is equal to
246 the sum of monetary compensation paid to the claimant under
247 paragraph (1) (a), less any attorney fees and costs incurred in
248 litigating the civil action or obtaining the settlement
249 agreement ~~A wrongfully incarcerated person may not submit an~~
250 ~~application for compensation under this act if the person has a~~
251 ~~lawsuit pending against the state or any agency,~~
252 ~~instrumentality, or any political subdivision thereof, or any~~
253 ~~other entity subject to the provisions of s. 768.28, in state or~~
254 ~~federal court requesting compensation arising out of the facts~~
255 ~~in connection with the claimant's conviction and incarceration.~~

256 (7) (a) ~~(b)~~ A wrongfully incarcerated person may not submit
257 an application for compensation under this act if the person is
258 the subject of a claim bill pending for claims arising out of
259 the facts in connection with the claimant's conviction and
260 incarceration.

261 (b) ~~(e)~~ Once an application is filed under this act, a

38-00025A-21

20211114__

wrongfully incarcerated person may not pursue recovery under a claim bill until the final disposition of the application.

~~(c)(d) Any amount awarded under this act is intended to provide the sole compensation for any and all present and future claims arising out of the facts in connection with the claimant's conviction and incarceration.~~ Upon notification by the department that an application meets the requirements of this act, a wrongfully incarcerated person may not recover under a claim bill.

~~(d)(e)~~ Any compensation awarded under a claim bill shall be the sole redress for claims arising out of the facts in connection with the claimant's conviction and incarceration and, upon any award of compensation to a wrongfully incarcerated person under a claim bill, the person may not receive compensation under this act.

~~(8)(7)~~ Any payment made under this act does not constitute a waiver of any defense of sovereign immunity or an increase in the limits of liability on behalf of the state or any person subject to the provisions of s. 768.28 or other law.

Section 4. Section 961.07, Florida Statutes, is amended to read:

961.07 Continuing appropriation.—

(1) Beginning in the 2021-2022 ~~2008-2009~~ fiscal year and continuing each fiscal year thereafter, a sum sufficient to pay the approved payments under s. 961.03(1)(b)1. ~~this act~~ is appropriated from the General Revenue Fund to the Chief Financial Officer, which sum is further appropriated for expenditure pursuant to the provisions of this act.

(2) Payments for petitions filed pursuant to s.

38-00025A-21

20211114__

291 961.03(1)(b)2. are subject to specific appropriation.

292 Section 5. For the purpose of incorporating the amendment
293 made by this act to section 961.04, Florida Statutes, in a
294 reference thereto, subsection (4) of section 961.02, Florida
295 Statutes, is reenacted to read:

296 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

297 (4) "Eligible for compensation" means that a person meets
298 the definition of the term "wrongfully incarcerated person" and
299 is not disqualified from seeking compensation under the criteria
300 prescribed in s. 961.04.

301 Section 6. For the purpose of incorporating the amendment
302 made by this act to section 961.04, Florida Statutes, in
303 references thereto, paragraph (a) of subsection (1) and
304 subsections (2), (3), and (4) of section 961.03, Florida
305 Statutes, are reenacted to read:

306 961.03 Determination of status as a wrongfully incarcerated
307 person; determination of eligibility for compensation.—

308 (1)(a) In order to meet the definition of a "wrongfully
309 incarcerated person" and "eligible for compensation," upon entry
310 of an order, based upon exonerating evidence, vacating a
311 conviction and sentence, a person must set forth the claim of
312 wrongful incarceration under oath and with particularity by
313 filing a petition with the original sentencing court, with a
314 copy of the petition and proper notice to the prosecuting
315 authority in the underlying felony for which the person was
316 incarcerated. At a minimum, the petition must:

317 1. State that verifiable and substantial evidence of actual
318 innocence exists and state with particularity the nature and
319 significance of the verifiable and substantial evidence of

38-00025A-21

20211114__

actual innocence; and

2. State that the person is not disqualified, under the provisions of s. 961.04, from seeking compensation under this act.

(2) The prosecuting authority must respond to the petition within 30 days. The prosecuting authority may respond:

(a) By certifying to the court that, based upon the petition and verifiable and substantial evidence of actual innocence, no further criminal proceedings in the case at bar can or will be initiated by the prosecuting authority, that no questions of fact remain as to the petitioner's wrongful incarceration, and that the petitioner is not ineligible from seeking compensation under the provisions of s. 961.04; or

(b) By contesting the nature, significance, or effect of the evidence of actual innocence, the facts related to the petitioner's alleged wrongful incarceration, or whether the petitioner is ineligible from seeking compensation under the provisions of s. 961.04.

(3) If the prosecuting authority responds as set forth in paragraph (2)(a), the original sentencing court, based upon the evidence of actual innocence, the prosecuting authority's certification, and upon the court's finding that the petitioner has presented clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense, shall certify to the department that the petitioner is a wrongfully incarcerated person as defined by this act. Based upon the prosecuting

38-00025A-21

20211114__

authority's certification, the court shall also certify to the department that the petitioner is eligible for compensation under the provisions of s. 961.04.

(4)(a) If the prosecuting authority responds as set forth in paragraph (2)(b), the original sentencing court shall make a determination from the pleadings and supporting documentation whether, by a preponderance of the evidence, the petitioner is ineligible for compensation under the provisions of s. 961.04, regardless of his or her claim of wrongful incarceration. If the court finds the petitioner ineligible under the provisions of s. 961.04, it shall dismiss the petition.

(b) If the prosecuting authority responds as set forth in paragraph (2)(b), and the court determines that the petitioner is eligible under the provisions of s. 961.04, but the prosecuting authority contests the nature, significance or effect of the evidence of actual innocence, or the facts related to the petitioner's alleged wrongful incarceration, the court shall set forth its findings and transfer the petition by electronic means through the division's website to the division for findings of fact and a recommended determination of whether the petitioner has established that he or she is a wrongfully incarcerated person who is eligible for compensation under this act.

Section 7. For the purpose of incorporating the amendment made by this act to section 961.06, Florida Statutes, in a reference thereto, subsection (5) of section 961.02, Florida Statutes, is reenacted to read:

961.02 Definitions.—As used in ss. 961.01-961.07, the term:

(5) "Entitled to compensation" means that a person meets

38-00025A-21

20211114__

the definition of the term "eligible for compensation" and satisfies the application requirements prescribed in s. 961.05, and may receive compensation pursuant to s. 961.06.

Section 8. For the purpose of incorporating the amendment made by this act to section 961.06, Florida Statutes, in a reference thereto, subsection (6) of section 961.05, Florida Statutes, is reenacted to read:

961.05 Application for compensation for wrongful incarceration; administrative expunction; determination of entitlement to compensation.—

(6) If the department determines that a claimant meets the requirements of this act, the wrongfully incarcerated person who is the subject of the claim becomes entitled to compensation, subject to the provisions in s. 961.06.

Section 9. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

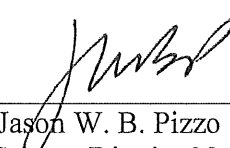
To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 18, 2021

I respectfully request that **Senate Bill #1114**, relating to Compensation for Eligible Victims of Wrongful Incarceration, be placed on the:

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



Senator Jason W. B. Pizzo
Florida Senate, District 38

Judiciary

THE FLORIDA SENATE

APPEARANCE RECORD

3-9-21

Meeting Date

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

1114

Bill Number (if applicable)

Topic Compensation for Wrongful Incarceration Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title _____

Address 625 E. Brenda St

Street

Tallahassee

City

FL 32308

State

Zip

Phone 251-4280

Email barbadevane1@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/9/21

Meeting Date

1114

Bill Number (if applicable)

Topic Compensation for Eligible Victims

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

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3/9/21
Meeting Date

THE FLORIDA SENATE
APPEARANCE RECORD

SB#1114
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Alexandria Barry

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Lake Worth FL 33463
City State Zip

Phone 561-568-7694

Email abarry@siblingsofmurderalsiblings.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

03/09/2021

Meeting Date

1114

Bill Number (if applicable)

Topic Compensation for Eligible Victims of Wrongful Incarceration

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate Director for Social Concerns & Respect Life

Address 201 W Park Ave

Phone 850-339-0075

Street

Tallahassee

FL

32301

Email idelgado@flaccb.org

City

State

Zip

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

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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3/9
Meeting Date

THE FLORIDA SENATE
APPEARANCE RECORD

SB 1114
Bill Number (if applicable)

Topic 1114

Amendment Barcode (if applicable)

Name Rebecca McMichael

Job Title _____

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Phone 17137818-8947

Juno Beach FL 33408
City State Zip

Email rebecca-mcmichael@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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CS-001 (10/14/11)

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Reset Form

3/9/2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

1114

Bill Number (if applicable)

Topic Comp. for Eligible Victims of Wrongful Incarceration

Name Pamela Burch Fort

Amendment Barcode (if applicable)

Job Title _____

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Phone 850-425-1344

Street

Tallahassee

FL

32301

City

State

Zip

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)

1145
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THE FLORIDA SENATE
APPEARANCE RECORD

3/9/21
Meeting Date

SB #1114
Bill Number (if applicable)

Topic SB #1114

Amendment Barcode (if applicable)

Name Anne Williams

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Phone 850-712-0100

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City

State

32504

Zip

Email AnneWilliamsRN@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing self/son

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

3/9/21

Meeting Date

SB 1114

Bill Number (if applicable)

Topic Compensation for Eligible Victims of Wrongful Incarceration

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

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Phone 850-681-0024

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FL

32301

Email jorge@flapartners.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Criminal Defense Lawyers

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 (10/11/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

SB1114

Bill Number (if applicable)

Topic Compensation for Eligible Victims of Wrongful Incarceration

Amendment Barcode (if applicable)

Name Dr. Adina M. Thompson

Job Title Intake Coordinator, Innocence Project of Florida

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Phone 954-465-7128

Street

Tallahassee

FL

32301

Email AThompson@FloridaInnocence.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Innocence Project 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/9
Meeting Date

1114
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Karen Roberts

Job Title _____

Address 935 E University Ave
Street
Orange City FL 32763
City State Zip

Phone 727 366-4080

Email ucf87cpa@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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 846

INTRODUCER: Senator Brandes

SUBJECT: Medical Expenses

DATE: March 8, 2021

REVISED: _____

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

I. Summary:

SB 846 significantly alters the current method of proving medical cost damages at trial. The bill limits the scope of evidence that is admitted to prove past paid and unpaid medical charges in a personal injury or wrongful death lawsuit. To prove past *paid* medical expenses that have been satisfied, evidence is limited to the amount paid, regardless of the source of the payment.

For a plaintiff to prove the amount necessary to satisfy an *unpaid* charge for medical expenses, evidence is limited to the amount necessary to satisfy the charge.

- If the plaintiff has health care coverage, evidence of the amount needed to satisfy an unpaid medical charge may not exceed the amount needed to satisfy the charge under his or her health care coverage, plus the plaintiff's share of medical expenses under the insurance contract or regulation. It is irrelevant whether the claimant has used or will be using his or her health care coverage to satisfy the charge.
- If the plaintiff does not have health care coverage, evidence of the amount necessary to satisfy an unpaid charge may not exceed the usual and customary amount or the amount customarily accepted for those services by the plaintiff's medical providers and by providers in the same geographic area.

The damages that may be recovered by a plaintiff for the cost or value of medical services provided may not exceed the sum of the amounts paid to the health care provider and any amounts necessary to satisfy charges that have been incurred but remain to be paid.

The bill abrogates the collateral source rule by permitting the introduction of collateral source payments to satisfy past medical costs.

The bill takes effect July 1, 2021.

II. Present Situation:

Background

A tort lawsuit is a civil legal action filed by a plaintiff to recover damages for a loss, injury, or death caused by the negligent conduct of a defendant. In essence, the plaintiff is seeking to be compensated, made whole, or returned to a pre-accident condition from the defendant's financial resources. The purpose is not to punish the defendant. In order to establish liability, the plaintiff bears the legal burden of proving four elements:

- Duty – That the defendant owed a duty, or obligation, of care to the plaintiff;
- Breach – That the defendant breached that duty by not conforming to the standard required;
- Causation – That the breach of the duty was the legal cause of the plaintiff's injury; and
- Damages – That the plaintiff suffered actual harm or loss.

Damages

While these four elements seem relatively straightforward, the issue of computing damages for medical costs has become very complex. Much of the complexity is driven by the application of the common law collateral source rule as it has been partially abrogated and modern medical billing practices. Modern medical billing practices are known to result in medical bills that have little relationship to amounts usually accepted as payment in full. Due to the collateral source rule and its partial abrogation, juries may receive evidence of the plaintiff's medical bills instead of evidence of much lower actual medical expenses. This evidentiary practice, in violation of the tort law principle to make the plaintiff whole, seems to permit excessive awards for medical expenses which then may result in greater damages for pain and suffering.¹ On the other hand, the collateral source rule as partially abrogated may prevent a defendant from reduced liability and receiving the full benefit of a plaintiff's insurance coverage or other collateral source benefits.²

Collateral Source Rule or Doctrine

Background

The collateral source rule was an established legal doctrine in English common law³ as early as 1838.⁴ The doctrine traveled across the Atlantic and was embraced by the United States Supreme Court before the Civil War. In an 1854 decision, *The Monticello*,⁵ a steamboat collided with a schooner, causing the schooner and its cargo to sink. The schooner was insured and its owner was fully compensated for the loss by his insurance company. The owner of the steamboat, who was at fault, argued that, because the schooner's owner was compensated by the insurance company and made whole for the loss of the schooner and its cargo, the schooner's owner could not seek additional compensation from him. The U.S. Supreme Court disagreed and held that the steamboat owner was bound to pay for the entire injury he had caused. The payment by the insurance company was irrelevant and did not provide the steamboat owner with a defense.

¹ *Higgs v. Costa Crociere, S.P.A. Co.*, 969 F.3d 1295, 1313 (11th Cir. 2020).

² *Id.* at 1311.

³ "Common law" refers to laws made by judicial decisions as opposed to laws found in statutes. It also refers to old rules found in English law. BLACK'S LAW DICTIONARY (11th ed. 2019).

⁴ *Yates v. Whyte*, 4 Bing NC 272, (1838).

⁵ *The Propeller Monticello v. Mollison*, 58 U.S. 152 (1854).

The collateral source rule has since been construed to mean that a plaintiff's award of damages may not be reduced by benefits received or payments made by "collateral sources."⁶ In other words, a defendant must pay the full cost of a plaintiff's injury, even if the plaintiff receives compensation from an independent or collateral source. A collateral source generally means any source of compensation that provides a benefit to a plaintiff as compensation for the injury he or she has sustained and the compensation is also wholly independent of the defendant.⁷ The most common collateral source payments to plaintiffs are insurance proceeds.⁸

Evidence and Damages

Historically, the common law collateral source rule functioned as both a rule of evidence and a rule of damages. With respect to evidence, the rule prevented the introduction of evidence of collateral source benefits available to a plaintiff. A long line of cases reasoned that the introduction of collateral source evidence could mislead the jury on the issue of liability and subvert the jury process. The cases also reasoned that the evidence could lead a jury to conclude that the plaintiff was trying to obtain double or triple payments for a single injury or that compensation already obtained was sufficient.⁹ With respect to damages, the rule prevented the reduction of a plaintiff's damages based on collateral source benefits.¹⁰

Reform Efforts

Although most states have retained some form of the collateral source rule, where it has been partially or completely abrogated by statute, the rule's impact has been reduced.¹¹ The logic used to abrogate the rule is simple: If a plaintiff has been compensated for his or her injuries and damages, it is unfair and a duplication of resources to require the defendant to pay again for the damages.

Collateral Source Statute

In 1986, the Legislature adopted a collateral source statute which modified the general rule the courts had followed for longer than a century.¹² The statute is contained in s. 768.76, F.S. In the preamble to the bill, the Legislature noted that "the current tort system has contributed to the insurance availability and affordability crisis" and named the legislation the "Tort Reform and Insurance Act of 1986." Under the statute, the collateral source rule continues to prohibit the introduction of evidence at trial of collateral source benefits. Accordingly, a plaintiff may introduce into evidence the full amount of his or her medical bills, but a defendant is generally not allowed to introduce the amounts paid and accepted in full satisfaction of those bills.¹³ As

⁶ Robert E. Gordon and Justin Linn, *Goble, Thyssenkrupp, and the Collateral Source Rule: Resolving the Ongoing Conflict*, 84 FLA. B.J., Dec. 2010, at 18, 18.

⁷ Jacob A. Stein, 3 Stein on Personal Injury Damages Treatise s. 19:31 (3d ed. (Oct. 2020)).

⁸ BLACK'S LAW DICTIONARY (11th ed. 2019).

⁹ *Gormley v. GTE Products Corp.*, 587 So. 2d 455, 457 - 458 (Fla. 1991).

¹⁰ *Joerg v. State Farm Mut. Auto. Ins. Co.*, 176 So. 3d 1247, 1248 (2015).

¹¹ Stein, *supra* note 7.

¹² Chapter 86-160, s. 55, Laws of Fla.

¹³ Lance B. Stephan, *Sticker Shock: Florida Juries Still Awarding Phantom Damages*, 33 TRIAL ADVOC. Q. 23 (Fall 2014).

such, juries are not told the actual amounts that were paid and accepted for a plaintiff's medical care.¹⁴

With respect to damages, the statute requires a court, after trial, to reduce the amount of damages awarded to a plaintiff from all collateral sources, except where a subrogation or reimbursement right exists.¹⁵ For example, if a jury awards damages for past medical costs that were paid in full by the plaintiff's health insurer, the court will reduce that award after the trial to prevent the plaintiff from receiving a windfall.

Calculating Damages for Medical Expenses

When a plaintiff is injured, he or she generally receives treatment from a medical professional and is billed for those services. When presenting those medical expenses at trial, a plaintiff prefers that the "original face value of the bills" be presented to the jury rather than the amounts that the plaintiff *actually paid* or the amount the medical provider has negotiated with the plaintiff's insurance company. One reason is that amounts billed and presented to the jury, rather than the actual amounts paid or written off, are believed to have a positive influence on increasing a jury's award for future medical costs and non-economic damages such as pain and suffering.¹⁶

"Phantom Damages"

It is well known that the original face value of a medical bill often bears little relationship to the amount actually paid by the patient and accepted by the provider as payment in full. Providers may also have significantly different rates for the identical procedure based on their contracts with an insurer. In the *Goble v. Frohman* decision rendered by the Florida Supreme Court in 2005, the Court referred to the difference between the amounts billed and amounts accepted as payment as "phantom damages," repeating a phrase used earlier by the Second District Court of Appeal.¹⁷ In the *Goble* case, the plaintiff's medical providers billed him \$574,554 for treatment. However, because his insurer had a preexisting fee schedule with the medical providers, the providers accepted \$145,970, writing-off of more than \$400,000. The plaintiff argued on appeal that the jury award of \$574,554 should stand. The courts disagreed and held that the payments were collateral sources made on the claimant's behalf subject to setoff under s. 768.76, F.S. The Second District Court of Appeal determined, and the Florida Supreme Court agreed, that permitting a setoff for contractual discounts was consistent with the Legislature's intent to reduce litigation costs when insurers are required to pay damages in excess of what an injured party actually incurred.¹⁸

Hospital Chargemasters

Chargemasters have come under attack for contributing to artificially high medical bills. A chargemaster is a hospital's price list of goods and services. The chargemaster prices are reported to run as much as ten times the amount that a hospital often accepts as full payment

¹⁴ Instead of providing evidence of the amounts paid and accepted for the plaintiff's care, the defense will need to introduce evidence of the reasonable value of the medical care. See Instruction 501.2b., Fla. Std. Jury Instr. (Civ.).

¹⁵ Section 768.76(1), F.S.

¹⁶ *Durse v. Henn*, 68 So. 3d 271, 275 (Fla. 4th DCA 2011).

¹⁷ *Goble v. Frohman*, 901 So. 2d 830, 834 (Fla. 2005).

¹⁸ *Goble v. Frohman*, 848 So. 2d 406, 409 (Fla. 2d DCA 2003).

from an insurer. The chargemaster prices are alleged to serve as a starting point for negotiations with third-party payers for the amount they will ultimately pay the hospital for the goods and services. According to one law professor, these chargemaster prices place a particularly difficult burden on patients who self-pay the expenses.¹⁹

Letters of Protection

Letters of protection are often characterized as a mechanism used by plaintiff attorneys to place excessive medical bills before a jury. Letters of protection have been criticized as being inflated and not reflective of the usual and customary billing practices in the medical community. A letter of protection is a document sent by a plaintiff's attorney to a health care provider on behalf of the client who needs medical treatment but might not have insurance. The letter is an agreement that entitles the physician to deferred payment from the proceeds of the plaintiff's recovery. If there is no favorable recovery, the client may remain liable to pay the medical bills.²⁰

Because a letter of protection gives the plaintiff's physician a financial interest in the outcome of the litigation, it is admissible to show bias. However, the potential bias a medical provider has developed from a longstanding referral relationship with a law firm is not discoverable based upon a 2017 Florida Supreme Court opinion.²¹

Unpaid and Future Medical Costs

Although the collateral source rule has been partially abrogated by statute, it has no mechanism to reduce to actual costs the amounts a jury may award for unpaid medical costs, including future medical costs. Therefore, the rule, in some instances, allows a plaintiff to recover amounts that exceed his or her actual medical costs.

III. Effect of Proposed Changes:

The bill specifies the evidence that is admissible at trial to prove past medical expenses in a personal injury or wrongful death lawsuit. By providing jurors with information reflecting what a medical provider actually received for past services, rather than what the provider billed for past services, jurors may be able to more accurately determine the plaintiff's damages for medical expenses. The bill does not address future medical expenses.

Past Paid Medical Expenses

For a plaintiff to prove the amount of a past medical expense that has been satisfied, evidence is limited to the amount paid, regardless of the source of the payment. This provision prohibits a plaintiff from placing medical bills that have no relationship to amounts accepted as payment, before jurors that might cause them to believe the plaintiff's medical injuries are more extensive than they actually are.

¹⁹ George A. Nation III, *Hospital Chargemaster Insanity: Heeling the Healers*, 43 PEPP. L. REV. 745 (2016).

²⁰ *Worley v. Central Florida Young Men's Christian Ass'n, Inc.*, 228 So. 3d 18 (Fla. 2017), at footnote 4, quoting Caroline C. Pace, *Tort Recovery for Medicare Beneficiaries: Procedures, Pitfalls and Potential Values*, 49 HOUS. LAW. 24, 27 (2012).

²¹ *Worley*, 228 So. 3d at 28. It is worth noting that two cases are pending before the Florida Supreme Court which may result in *Worley* being overruled. See *Younkin v. Blackwelder*, 2019 WL 847548 (Fla. 5th DCA 2019), *rev. granted*, 2019 WL 2180625 (Fla. 2019); *Dodgen v. Grijalva*, 281 So. 3d 490 (2019), *rev. granted*, 2019 WL 4805833 (Fla. 2019).

Past Unpaid Medical Expenses

For a plaintiff to prove the amount necessary to satisfy an unpaid charge for a medical expense, evidence is limited to the amount necessary to satisfy the charge.

With Health Care Coverage

If the plaintiff has health care coverage, evidence of the amount needed to satisfy an unpaid medical charge may not exceed:

- The amount by which the charge may be satisfied by the claimant's health care coverage, *plus*
- The claimant's share of medical expenses²² under the insurance contract or regulation, regardless of whether the health care coverage is used or will be used to satisfy the charge.

Without Health Care Coverage

If the claimant does not have health care coverage, evidence of the amount necessary to satisfy an unpaid medical charge may not exceed the usual and customary amount or the amount customarily accepted as payment for the services by the claimant's medical providers and by other providers in the same geographic area. For purposes of determining the amount customarily accepted, the trier of fact must consider amounts accepted by providers in the same geographic area for identical or substantially similar medical or health care services:

- On a cash basis;
- Under Medicare;
- Under the Workers' Compensation Law; and
- By Payors regulated under the Florida Insurance Code.

Limit on Damages Recoverable

The bill places a limit on the damages that may be recovered by a claimant in a personal injury or wrongful death action for the reasonable and necessary cost or value of medical care. The amount may not exceed the sum of:

- The amounts paid by or on behalf of the injured person to a health care provider who treated the claimant; and
- Any amounts necessary to satisfy the medical care charges that have been incurred but not yet satisfied.

Health Care Coverage

Health care coverage is defined in the bill to mean any form of third-party coverage of applicable medical expenses, including, but not limited to:

- Commercial health insurance;
- Medicare;
- Medicare supplemental health insurance;
- Medicaid;
- Tricare;

²² The claimant's share of medical expenses would likely be deductibles or insurance premiums.

- Workers' compensation; and
- Personal Injury Protection.

Effective Date

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:

If SB 846 results in reduced jury awards, then insurance companies might experience more financial stability that could ultimately reduce insurance costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 768.0427, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Brandes

24-00414C-21

2021846__

A bill to be entitled
An act relating to medical expenses; creating s.
768.0427, F.S.; defining the term "health care
coverage"; specifying that certain evidence offered to
prove damages for the cost of past medical expenses is
admissible in a personal injury or wrongful death
action under certain circumstances; specifying damages
that may be recovered by a claimant for the reasonable
and necessary cost or value of medical care rendered;
providing an effective date.

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

Section 1. Section 768.0427, Florida Statutes, is created
to read:

768.0427 Recovery of past medical expenses in personal
injury or wrongful death actions.—

(1) DEFINITION.—For the purposes of this section, the term
"health care coverage" means any form of third-party coverage of
applicable medical expenses, including, but not limited to,
commercial health insurance, Medicare, Medicare supplemental
health insurance, Medicaid, Tricare, workers' compensation, and
personal injury protection.

(2) ADMISSIBLE EVIDENCE.—Evidence offered to prove damages
for the cost of past medical expenses is admissible in a
personal injury or wrongful death action as provided in this
subsection.

(a) Past paid medical expenses.—Evidence offered to prove
the amount of a past medical expense that has been satisfied is

24-00414C-21

2021846__

limited to evidence of the amount paid, regardless of the source of payment.

(b) Past unpaid medical expenses.—Evidence offered to prove the amount necessary to satisfy an unpaid charge for a medical expense is limited to evidence of the amount necessary to satisfy the charge as provided in this paragraph.

1. If the claimant has health care coverage, evidence of the amount necessary to satisfy an unpaid medical charge may not exceed the amount by which the charge may be satisfied by such health care coverage plus the claimant's share of medical expenses under the insurance contract or regulation, and regardless of whether the health care coverage is used or will be used to satisfy the charge.

2. If the claimant does not have health care coverage, evidence of the amount necessary to satisfy an unpaid medical charge may not exceed the usual and customary amount or the amount customarily accepted in payment for the services by the claimant's medical providers and by other providers in the same geographic area. In determining the amount customarily accepted, the trier of fact shall consider amounts accepted by providers in the same geographic area for identical or substantially similar medical or health care services on a cash basis, under Medicare, under the Workers' Compensation Law, and by payors regulated under the Florida Insurance Code.

(3) DAMAGES RECOVERABLE.—The damages that may be recovered by a claimant in a personal injury or wrongful death action for the reasonable and necessary cost or value of medical care rendered may not exceed the sum of the amounts paid by or on behalf of the injured person to a health care provider who

24-00414C-21

2021846__

59 rendered treatment and any amounts necessary to satisfy the
60 medical care charges that have been incurred but not yet
61 satisfied.

62 Section 2. 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

03.09.21

Meeting Date

846

Bill Number (if applicable)

825674

Amendment Barcode (if applicable)

Topic Medical Expenses

Name William Large

Job Title President

Address 210 South Monroe Street

Street

Tallahassee

City

FL

State

33605

Zip

Phone (850) 222-0170

Email William@fljustice.org

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

03.09.21

Meeting Date

846

Bill Number (if applicable)

825674

Amendment Barcode (if applicable)

Topic Medical Expenses

Name William Large

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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

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S-001 (10/14/14)

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03.09.21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

846

Bill Number (if applicable)

627880

Amendment Barcode (if applicable)

Topic Medical Expenses

Name Andy Bolin

Job Title _____

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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

03.09.21

Meeting Date

846

Bill Number (if applicable)

627880

Amendment Barcode (if applicable)

Topic Medical Expenses

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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

03.09.21

Meeting Date

846

Bill Number (if applicable)

290838

Amendment Barcode (if applicable)

Topic Medical Expenses

Name Andy Bolin

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Speaking: ☐ For ☒ Against ☐ Information

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(The Chair will read this information into the record.)

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

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S-001 (10/14/14)

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3/9/21

Meeting Date

THE FLORIDA SENATE
APPEARANCE RECORD

846

Bill Number (if applicable)

715314

Amendment Barcode (if applicable)

Topic Medical Expenses

Name Cort Sabina

Job Title VP., Chief Financial Officer

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Email csabina@wasteprousa.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Waste Pro

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

3/9/ 2021

Meeting Date

SB 846

Bill Number (if applicable)

715314

Amendment Barcode (if applicable)

Topic Medical Damages

Name Tiffany Faddis

Job Title Attorney

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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

03.09.21

Meeting Date

846

Bill Number (if applicable)

715314

Amendment Barcode (if applicable)

Topic Medical Expenses

Name Andy Bolin

Job Title _____

Address 1905 E. 7th Ave.

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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

03.09.21

Meeting Date

846

Bill Number (if applicable)

377066

Amendment Barcode (if applicable)

Topic Medical Expenses

Name William Large

Job Title President

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Phone (850) 222-0170

Email William@fljustice.org

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

3/9/2021

Meeting Date

SB 846

Bill Number (if applicable)

377066

Amendment Barcode (if applicable)

Topic Medical Damages

Name Curry Pajcic

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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

03.09.21

Meeting Date

846

Bill Number (if applicable)

973596

Amendment Barcode (if applicable)

Topic Medical Expenses

Name William Large

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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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SENATE (10/14/11)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

SB 846

Bill Number (if applicable)

973596

Amendment Barcode (if applicable)

Topic Medical Damages

Name Curry Pajcic

Job Title Attorney

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Email curry@pajcic.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

3/9/ 2021

Meeting Date

SB 846

Bill Number (if applicable)

Topic Medical Damages

Amendment Barcode (if applicable)

Name Todd Williams

Job Title Physician Assistant

Address 4211 W. Boy Scout Blvd., Suite 400

Phone 813-443-2108

Street

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FL

33607

Email todd@biospine.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing BioSpine

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

3/9/2021

Meeting Date

SB 846

Bill Number (if applicable)

Topic Medical Damages

Name James Cusack

Amendment Barcode (if applicable)

Job Title Attorney

Address One Tampa City Center, Suite 2880

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33602

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Phone 813-223-1276

Email jimcusack.Tampa@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Clinical Capital Solutions

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

3/9/2021

Meeting Date

SB 846

Bill Number (if applicable)

Topic Medical Damages

Name Tiffany Faddis

Amendment Barcode (if applicable)

Job Title Attorney

Address 7335 West Sand Lake Road, Suite 300

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Orlando

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32819

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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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/9/2024
Meeting Date

846
Bill Number (if applicable)

Topic MEDICAL DAMAGES

Amendment Barcode (if applicable)

Name DR. KENNETH ARMSTRONG

Job Title CEO

Address 350 E. COLLEGE AVE

Phone 850-222-7900

TALLAHASSEE FL 32301
City State Zip

Email Ken@FloridaTrucking.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA TRUCKING ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

SB 846

Bill Number (if applicable)

Topic Medical Damages

Amendment Barcode (if applicable)

Name Thomas W. Carey

Job Title President, CSC Corp.

Address 622 Bypass Drive, Suite 100

Phone 727-799-3900

Street

Clearwater

FL

33764

Email tcarey@tcarey.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Spine surgeons

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

3/9/ 2021

Meeting Date

SB 846

Bill Number (if applicable)

Topic Medical Damages

Amendment Barcode (if applicable)

Name Rob Tremp, MA, CRC, CLCP

Job Title Life Care Planner

Address 1259 S. Myrtle Avenue

Street

Phone 407-977-3223

Clearwater

FL

33767

Email robtremp@gmail.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing self

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

3/9/21
Meeting Date

8400
Bill Number (if applicable)

Topic criminal justice

Amendment Barcode (if applicable)

Name Alexandra Barry

Job Title _____

Address 5891 Monterra club dr
Street

Phone 561-508-7694

Lake Worth FL 33463
City State Zip

Email abarry@siblingsmurderedsiblings.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing self

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

03.09.21

Meeting Date

846

Bill Number (if applicable)

Topic Medical Expenses

Amendment Barcode (if applicable)

Name Andy Bolin

Job Title

Address 1905 E. 7th Ave.

Phone (813) 848-0600

Street

Tampa

FL

33605

City

State

Zip

Email asb@bolin-law.com

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

3/9/21

Meeting Date

846

Bill Number (if applicable)

Topic Medical Expenses

Amendment Barcode (if applicable)

Name Cort Sabina

Job Title VP., Chief Financial Officer

Address 2101 West S.R. 434

Phone 407-937-0800

Street

Longwood

FL

32779

Email csabina@wasteprousa.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Waste Pro

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

3/9/21

Meeting Date

846

Bill Number (if applicable)

Topic Medical Expenses

Amendment Barcode (if applicable)

Name Romeo Vellutini

Job Title Safety Director

Address 2101 West S.R. 434

Phone 407-937-0800

Street

Longwood

FL

32779

Email rvellutini@wasteprousa.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Waste Pro

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

03/09/21

Meeting Date

846

Bill Number (if applicable)

Topic Medical Expenses

Amendment Barcode (if applicable)

Name Jason Rodriguez

Job Title State Government Relations Manager

Address 2985 Drew Street

Phone 727-519-1885

Street

Clearwater

FL

33759

Email jason.rodriguez@baycare.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing BayCare Health System

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

03/09/21

Meeting Date

846

Bill Number (if applicable)

Topic Medical Expenses

Amendment Barcode (if applicable)

Name Keri Eisenbeis

Job Title Vice President of Government & Community Relations

Address 2985 Drew Street

Phone 727-519-1884

Street

Clearwater

FL

33759

Email keri.eisenbeis@baycare.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing BayCare Health System

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

3/9/21

Meeting Date

846

Bill Number (if applicable)

Topic Medical Expenses

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Senior Policy Director

Address 136 S Bronough Street

Phone 850-521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/9/21

Meeting Date

846

Bill Number (if applicable)

Topic ACCESS TO HEALTH CARE

Amendment Barcode (if applicable)

Name ROBERT SITO TIENT

Job Title ATTORNEY

Address P.O. BOX 12583

Phone 813-946-5560

Street

TAMPA

City

FL

State

33622

Zip

Email _____

Speaking: ☒ For ☒ Against ☐ Information

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

Representing BIO SPINE

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

3/9/21
Meeting Date

SB # 846
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Anne Williams RW

Job Title RW BSN

Address 4835 Andrade
Street

Phone 850-712-0100

Pensacola, FL 32504
City State Zip

Email Anne Williams SR@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing self

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

3/9/2021

Meeting Date

846

Bill Number (if applicable)

Topic Medical Expenses

Amendment Barcode (if applicable)

Name Jake Farmer

Job Title Director of Government Affairs

Address 227 S Adams Street

Phone 352-359-6835

Street

Tallahassee

Florida

32301

Email jake@frf.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

3/9/21

Meeting Date

846

Bill Number (if applicable)

Topic Medical Expenses

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 513 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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 838

INTRODUCER: Judiciary Committee and Senator Boyd

SUBJECT: Clerks of the Circuit Court

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 838 amends laws related to the funding of the clerks of court to:

- Require the Clerk of Courts Operations Corporation to establish and maintain a budget reserve of up to 16 percent of the budget from the previous year.
- Require the Clerk of Courts Operations Corporation to identify areas of increased costs to the clerks, and require these increased costs be presented in the Legislative Budget Request of the clerks.

The bill amends laws related to monies owed to a clerk of court to:

- Specify that fines, costs, service charges, and court costs are due immediately upon assessment.
- Require a person owing monies to the clerk who cannot immediately pay to contact the clerk and set up a payment plan.
- Require an offender to contact the clerk within 30 days after release from incarceration to arrange for payment of any outstanding court obligations.
- Require creation of a statewide uniform payment plan form for monies owed to a clerk.
- Require notice of the availability of payment plans to individuals receiving a traffic infraction or a notice of suspension of driving privilege.

The portions of the bill related to clerk funding are effective upon becoming law, the remaining portions of the bill are effective October 1, 2021.

II. Present Situation:

Clerk of the Circuit Court

The clerk of the circuit court is a constitutional officer. Each of Florida's 67 counties are required to elect a clerk of the circuit court¹ to serve as both the clerk of court, completing judiciary functions, and as the “*ex officio*”² clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds.”³ In other words, the clerk of the circuit court wears approximately five hats. In wearing the auditor and custodian of county funds hats, the clerk may also be referred to as the comptroller.⁴

Funding for the Clerks’ Court-Related Functions

In its capacity as the clerk of the circuit and county courts, the clerk is required to perform various court-related, administrative and ministerial functions. Any court-related function authorized by law or court rule must be funded by the clerk’s collection of filing fees, service charges, costs, and fines, including the following:

- Case maintenance.
- Records management.
- Court preparation and attendance.
- Processing the assignment, reopening, and reassignment of cases.
- Processing appeals.
- Collection and distribution of fines, fees, service charges, and court costs.
- Data collection and reporting.
- Determinations of indigent status.
- Paying reasonable administrative support costs to enable the clerks to carry out court-related functions.⁵

Court funding is governed by article V, section 14 of the Florida Constitution. For the clerks of the circuit courts, article V, section 14(b) provides that the clerks are self-sustaining and fund their court-related functions through the collection of filing fees, service charges, and other costs. Specifically, article V, section 14(b) states:

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for

¹ FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.

² See BLACK’S LAW DICTIONARY (10th ed. 2014) (“*ex officio*” means “By virtue or because of an office; by virtue of the authority implied by office.”)

³ FLA. CONST. art. V, s. 16. This provision also provides that two officials may split the position, one serving as clerk of court and one serving in the *ex officio* position. Additionally, this provision permits the election of a county clerk of court when authorized by general or special law. *Id.*

⁴ See generally Florida Court Clerks & Comptrollers, *About Us, Clerks Duties & Services*, available at <https://www.flclerks.com/page/ClerksDuties> (last visited Mar. 5, 2021). See also BLACK’S LAW DICTIONARY (10th ed. 2014) (“comptroller” means “An officer of a business or a private, state, or municipal corporation who is charged with duties usu. relating to fiscal affairs, including auditing and examining accounts and reporting the financial status periodically.”)

⁵ Section 28.35(3)(a), F.S. See also Florida Court Clerks & Comptrollers, *About Us, Clerks Duties & Services*, available at <https://www.flclerks.com/page/ClerksDuties> (last visited Mar. 5, 2021).

judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the Legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.⁶

County Funding Referenced in Article V, Section 14(c)

As referenced above, article V, section 14(c) of the Florida Constitution states that while funding for the state courts system, including the clerks of court, will *not* be required by a county or municipality, the counties are responsible to fund certain types of court infrastructure and maintenance, including “the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems and the cost of construction or lease, maintenance, utilities, and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions.”⁷ Additionally, counties pay “reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.”⁸

No-Fee Court Functions

Additionally, as referenced above, there are certain categories of cases and certain types of filings for which the clerks of court cannot charge a filing fee and possibly other service charges or other costs. These types of cases and filings include the following:

- Various services and filings for indigent parties to pending litigation.⁹
- Petitions for Habeas Corpus filed by persons detained as mental health patients.¹⁰
- Filing an ex parte order for involuntary examination (Baker Act).¹¹
- Petitions for involuntary inpatient placement for mental health.¹²
- Appellate filing fees for indigent persons determined to be and involuntarily committed as a sexually violent predator.¹³
- Petitions for involuntary assessment and stabilization for substance abuse impairment.¹⁴

⁶ FLA. CONST. art. V, s. 14(b). (emphasis added).

⁷ FLA. CONST. art. V, s. 14(c).

⁸ *Id.* Additionally, article V, section 14(a) provides that funding for state court systems as well as state attorney’s offices, public defender’s offices, and court-appointed counsel will generally be paid from “state revenues appropriated by general law; and section 14(d) clarifies that the court system has no appropriations authority.

⁹ Sections 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.

¹⁰ Section 394.459, F.S.

¹¹ Section 394.463, F.S. *See also Collins v. State*, 125 So. 3d 1046, 1047 (Fla. 4th DCA 2013) (noting s. 394.463, F.S., is also known as the Florida Statutes Florida Mental Health Act or *Baker Act*).

¹² Section 394.467, F.S.

¹³ Section 394.917, F.S.

¹⁴ Section 397.6814, F.S.

- Petitions for a risk protection order (Marjory Stoneman Douglas High School Public Safety Act).¹⁵
- Petitions for protective injunctions against domestic violence,¹⁶ repeat, dating, or sexual violence,¹⁷ or stalking.¹⁸

History of the Clerks of Court Funding Model

1998 Article V Revision (“Revision 7”) and Implementing Legislation

Article V, section 14, was amended in 1998 to “substantially and significantly revise[] judicial system funding, greatly reducing funding from local governments and placing the responsibility primarily on the state.”¹⁹ The statement of intent accompanying the revision of article V, section 14(b), also known as “Revision 7,” reflects that the proposers intended for the Legislature to adopt procedures: (1) to fund the clerks’ office in the event “filing fees, services charges and costs are insufficient to cover the court-related salaries, costs, and expenses of the offices of the clerks . . . in a given fiscal year”; and (2) for the disposition of excess revenues collected by the clerks’ offices in a given fiscal year.²⁰

Further, the statement of intent clarifies that the purpose for Revision 7 is to require legislative oversight and an independent review of clerk funding and spending practices. The reason for independent oversight is set out as follows:

The drafters of subsection (b) recognize that there currently exists significant disparities among what the various clerks’ offices spend to perform the same functions. The determination by the [L]egislature as to the appropriate level of spending should not entail an acceptance of the current level of spending by the clerks’ offices throughout the state to perform court-related functions. Rather, it is the intent of this proposal that the clerks be held accountable and responsible to a cost standard which is independently established by the [L]egislature.²¹

Revision 7’s 1998 amendment to article V had to be implemented by July 1, 2004.²² In order to implement the 1998 amendment, the Legislature responded “in stages, beginning with passage of SB 1212 in 2000 (Chapter 200-237, Laws of Florida), followed by additional changes to that law in 2001, and, finally in 2002, through the funding of a study to assist in the final phase of implementation.”²³

¹⁵ Section 790.401, F.S.; Ch. 2018-3, s. 16, Laws of Fla.

¹⁶ Section 741.30, F.S.

¹⁷ Section 784.046, F.S.

¹⁸ Section 784.0485, F.S.

¹⁹ *City of Fort Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008) (“In its Statement of Intent, the Constitution Revision Commission explained: ‘The state’s obligation includes, but is not limited to, funding for all core functions and requirements of the state courts system and all other court-related functions and requirements *which are statewide in nature.*’ [e.s.] 26 Fla. Stat. Ann. (Supp.) 67.”).

²⁰ William A. Buzzett and Deborah K. Kearney, *Commentary <1998 Amendment (1997-1998 Constitution Revision Commission Revision 7)>*, FLA. STAT. ANN., FLA. CONST. art. V, s. 14.

²¹ *Id.*

²² *Office of State Attorney for Eleventh Judicial Circuit v. Polites*, 904 So. 2d 527, 530 (Fla. 3d DCA 2005).

²³ Florida House of Representatives, *House Bill 113A Staff Analysis*, (May 14, 2003).

The final stage was implemented during the 2003 legislative session. To provide Revision 7's envisioned oversight, accountability, uniformity, and procedures in funding and budgeting for the clerks of court, the Legislature enacted **sections 28.35, 28.36, and 28.37, F.S.**²⁴:

- **Section 28.35, F.S.**, created the Florida Clerks of Court Operations Corporation (Corporation)²⁵ which is responsible to provide accountability, procedural review, and oversight to the clerks of court budgeting process throughout the state.
- **Section 28.36, F.S.**, established budget review and approval procedures of individual clerk of court budgets by the Corporation.
- **Section 28.37, F.S.**, ensures that a portion of certain fines, fees, service charges, and costs collected by the clerks of court are remitted to the state to fund other court-related salaries, costs, and expenses.

Post-Article V Revision to Clerk Funding: 2004-2008²⁶

Between 2004 and 2008, the clerks collected and deposited into their local fine and forfeiture funds revenues from court filing fees, service charges, court costs, and fines assessed in civil and criminal proceedings.²⁷ A portion of the revenues in a clerk's fine and forfeiture fund was retained to finance the clerk's operations. However, another portion of these revenues were distributed to the General Revenue Fund or other state trust funds to meet other court-related costs. For example, the clerks were required to remit one-third of all fines, fees, service charges, and costs collected to the Department of Revenue for deposit into the Clerk of the Court Trust Fund,²⁸ a fund established to assist the clerks in meeting revenue deficits.

Regarding budget planning, the clerks had discretion to set their individual budgets based on anticipated revenues and expenditures. Each clerk's proposed budget had to be balanced with estimated revenues equaling or exceeding anticipated expenditures, although the budget could include a 10 percent contingency reserve.²⁹ If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, that clerk could follow the statutory procedure for receiving funds from the Clerks of the Court Trust Fund to address the deficit.³⁰

Each clerk had to submit its proposed budget to the Corporation for review and certification that the individual budget was complete and complied with budget procedures.³¹ Upon review and certification by the Corporation, revenue exceeding the amount needed to fund each budget was deposited in the General Revenue Fund.³²

²⁴ 2003 Fla. Sess. Law Serv. Ch. 2003-402 (H.B. 113-A). *See also City of Ft. Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008). Note also that the bill seeks to amend each of these provisions.

²⁵ *See supra* note 5, and text. When it was first enacted, section 28.35 the "Clerk of court Operations Conference" which was changed in 2004 to the "Florida Clerks of Court Operations Corporation." Chapter 2004-265, s. 23, Laws of Fla. All clerks are members of the Corporation.

²⁶ This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

²⁷ Section 142.01, F.S.

²⁸ Section 28.37(2), F.S. (2008).

²⁹ Section 28.36(3)(b), (c), F.S. (2008).

³⁰ Section 28.36(4), F.S. (2008).

³¹ Section 28.36(3), F.S. (2008).

³² Section 28.37(4), F.S. (2008).

During this time, the Legislature's involvement in the clerks' budgets was limited. The Legislative Budget Commission (LBC) had authority to approve increases to the maximum annual budgets approved for individual clerks if the additional funding was necessary to:

- Pay the cost of performing new or additional functions required by changes in law or court rule; or
- Pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.³³

Clerks in the General Appropriations Act: 2009-2012³⁴

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court, the Legislature passed Chapter 2009-204, Laws of Fla., which substantially amended the clerks' statutory budget process and procedures. The new law brought the clerks into the state budget and appropriated their funding in the annual General Appropriations Act.

More specifically, the 2009 law required that all revenues received by the clerks from court-related fees, fines, costs and service charges be remitted to the Department of Revenue for deposit into the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).³⁵ The law permitted the clerks, however, to deposit 10 percent of all court-related fines in the Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.³⁶

By 2009, revenues accruing to the Clerks of Court Trust Fund began to decline due to the downturn in the economy and the reduction in foreclosure filing fees. As a result, the Legislature reinforced the clerks' budgets with additional moneys from the General Revenue Fund. The 2011 Legislature appropriated \$44.2 million from the General Revenue Fund to address FY 2010-2011 revenue deficits and the 2012 Legislature appropriated \$57.6 million to address FY 2011-2012 deficits.

Return to Pre-2009 Funding Model: 2013-2019³⁷

In 2013, the Legislature reversed many of the 2009 funding model changes, but expanded the oversight and accountability in the clerks' budget process. Significantly, the 2013 law³⁸ added the following:

- Monthly accounting: required each clerk to submit all collected revenues exceeding one-twelfth of the clerk's total budget for the prior month to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.
- Annual accounting: required the transfer of revenue exceeding one-twelfth of the clerks' total budget out of the Clerks of Court Trust Fund into the General Revenue Fund each January

³³ Section 28.36(6), F.S. (2008).

³⁴ This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

³⁵ Chapter 2009-204, ss. 5-8, 12, 14, 19, Laws of Fla. The clerks' budgets were appropriated within the JAC budget from 2009-2012. *See also* s. 43.16, F.S. (establishes the Justice Administrative Commission, which administratively serves 49 judicial-related entities, as well as provides compliance and financial review of billings for services provided by private court-appointed attorneys representing indigent citizens and associated due process vendors).

³⁶ Section 28.37(5), F.S.

³⁷ This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

³⁸ Chapter 2013-44, Laws of Fla.

unless the official estimate by the Revenue Estimating Conference projects a trust fund deficit (based on the current budget) in the current or upcoming fiscal year.

- Corporation audits: directed the Corporation to conduct annual base budget reviews, conduct cost-comparisons of similarly situated clerks, report pay and benefit issues, and provide an explanation of any clerk expenditure increases over 3 percent.³⁹
- Corporation budget standard: required the Corporation to use the official Article V Revenue Estimating Conference revenue estimates for the clerks' budget process.⁴⁰

The 2013 law also enhanced the role and responsibilities of the Legislative Budget Commission (LBC), and directed the LBC to review the budgets of the clerks and either: (1) approve, (2) disapprove, or (3) amend and approve the budgets by October 1 of each year.⁴¹ In 2017, however, the Legislature removed these duties from the LBC to review the clerks' budgets.⁴²

Most Recent Changes -- 2019 to present

The clerk's budget process was amended again in 2019.⁴³ In addition to the total estimated revenues from fees, service charges, costs, and fines for court-related functions available for court-related expenditures as determined by the most recent Revenue Estimating Conference, the combined budget for the clerks of court may also include:

- The unspent budgeted funds for court-related functions carried forward by the clerks of court from the previous county fiscal year; and
- The balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37, F.S.

In 2019, the requirement that the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of court exceeding the amount needed to fund their authorized budgets was transferred to the General Revenue Fund, was changed as follows:

- No later than February 1, 2020, the cumulative excess of all fines, fees, services charges, and costs exceeding \$10 million will be transferred to the General Revenue Fund.
- No later than February 1, 2021, and no later than February 1, 2022, not less than 50 percent of the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund; provided, however, that the balance remaining in the Clerks of Courts Trust Fund after the transfer may not exceed \$20 million.
- No later than February 1, 2023, and each February 1 thereafter, the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund.

In that same act, the 2019 Legislature was looking ahead to 2022, including this:

Section 32. Before the 2022 Regular Session of the Legislature, the Legislature shall review and consider the results of the analysis submitted pursuant to Specific Appropriation 2754 of the 2019-2020 General Appropriations Act regarding the

³⁹ Section 28.35(2)(f), F.S.

⁴⁰ Section 28.35(2)(f)6., F.S.

⁴¹ Section 11.90(6)(d), F.S.

⁴² Chapter 2017-126, s. 1, Laws of Fla.

⁴³ Chapter 2019-58, Laws of Fla.

review of the Clerk of Court Processes for the purpose of considering the extension or reenactment of provisions in this act relating to clerk funding.⁴⁴

Specific appropriation 2754 reads in relevant part:

From the funds in Specific Appropriation 2754, the Office of Program Policy Analysis and Government Accountability is directed to contract with an independent third party consulting firm to assist with a review of the Clerk of Court processes including collection and compilation of empirical evidence based on observation of a random sample of clerks' offices employees; comparison of clerks' office work patterns to propose efficiency and productivity standards; and assessment and comparison of organizational arrangements and deployment of personnel resources among all clerks' offices. Sample groups must include a broad number of large and small counties and include entities from all areas of the state. The analysis shall be submitted to the chair of the Senate Appropriations Committee and the chair of the House of Representatives Appropriations Committee by November 15, 2019.

The report contains 26 recommendations for operational efficiency and cost savings in five categories.⁴⁵ It is unknown how many recommendations have been implemented.

Payment Plans

Persons who pay money to the clerk of court for an outstanding fine, penalty, fee, service charge, or court cost are expected to pay in full. Many individuals, however, cannot afford to pay. Current law at s. 28.246(4), F.S., authorizes a clerk to accept partial payments and to enter into payment plans with individuals. Monthly payments of no more than 2 percent of the individual's net pay is presumed to be within an individual's ability to pay.⁴⁶

III. Effect of Proposed Changes:

Clerk of Court Budgeting and Finances

The bill amends s. 28.35, F.S., to add to the duties of the Clerk of Courts Operations Corporation the duty to determine if:

- The estimated revenue available for the upcoming county fiscal year is adequate to fund court-related functions.
- New duties have been imposed on the clerks of court acting in their court-related role.
- Additional judges or magistrates have been authorized, leading to additional court-related duties for the clerks of court.
- Whether the total estimated revenues for court-related expenditures (determined by the Revenue Estimating Conference), plus unspent monies carried forward, plus any

⁴⁴ Chapter 2019-58, s. 32, Laws of Fla.

⁴⁵ Florida Clerks of Court Study, *Final Report* (November 15, 2019), available at <https://oppaga.fl.gov/Products/ReportDetail?rn=19-CLERKS>

⁴⁶ Using the 2021 Florida minimum wage at full-time employment and subtracting the standard federal payroll deductions, an unmarried individual would pay no more than \$26.80 a month on a clerk's payment plan.

appropriations, are insufficient to fund the court-related functions of the clerks of the court at the current level of operations.

If any of these apply, the corporation is required to submit a legislative budget request for consideration.

The bill amends s. 28.35, F.S., to add to the duties of the Clerk of Courts Operations Corporation the duty to ask the Governor for a temporary transfer of unobligated funds to the Clerks of the Court Trust Fund. A temporary transfer (in the nature of a loan) to a state trust fund facing a shortfall is currently authorized by s. 215.18(1), F.S.

The bill amends s. 28.37, F.S., regarding funds collected in the Clerk of the Courts Trust Fund. Currently, if the clerks have a budget surplus at the end of their fiscal year, 50 percent of the surplus must be transferred to General Revenue, with a maximum retainage in the trust fund of \$20 million. After the county fiscal year 2021-22, 100 percent of the annual surplus with no retainage is to be transferred to General Revenue. The bill repeals the current sweeps and retainage laws and requires instead that 50 percent of the surplus be transferred to the General Revenue Fund. Of the remaining 50 percent, a minimum of 10 percent must be held in reserve in the Clerk of the Courts Trust Fund, and the remainder may be used to increase clerk budgets. The reserve may not exceed 16 percent of the total budget authority of the clerks from the current county fiscal year.⁴⁷

The bill amends s. 28.36, F.S., to allow the Florida Clerks of Court Operations Corporation to create a budget reserve in the Clerks of the Court Trust Fund of up to 16 percent of the total budget authority during the current county fiscal year. The budget reserve will only accrue should the clerks have a budget surplus that is not otherwise subject to being swept by the Department of Revenue. The budget reserve may only be used to:

- Offset a current year deficit caused by a revenue shortfall.
- Provide supplemental funding related to a declared emergency.
- Provide for a minimum continuation budget where the clerks have projected a deficit and the legislature did not appropriate funds sufficient to create a minimum continuation budget. A minimum continuation budget is the current county fiscal year budget unless the corporation requires a lesser budget.

The bill requires the corporation to request a budget amendment from the Governor in order to access the reserve. This is in line with the requirements for Executive Branch agencies accessing a trust fund to fund a shortfall.

The bill amends s. 28.36, F.S., to allow a clerk of the court to request, and the Florida Clerks of Court Operations Corporation to approve, an increase in a clerk's budget authority for a financial impact resulting from increases in use of hearing officers and senior judges.

⁴⁷ For the latest county fiscal year (FY 2019-20), the total budget authority of the clerks was approximately \$403 million. If this bill were in effect, the maximum reserve would be approximately \$64.5 million.

Monies Owed to a Clerk of Court

The bill amends s. 28.246, F.S., to direct the clerks of court to offer a payment plan to every person who owes money to the clerk and cannot immediately pay. The clerk is responsible for setting the terms of individual plans, although the trial court may review the reasonableness of the plan.

The bill amends s. 28.42, F.S., to require the Florida Clerks of Court Operations Corporation to create a uniform payment plan form. The form must be created by October 1, 2021, and must be used by each clerk starting January 1, 2022. The bill amends traffic and licensing laws at ss. 318.15, 318.20, and 322.45, F.S., to require notice of the availability of payment plans through the clerk of court. The notice must be included with a notice of suspension of a license and must be appended to a citation.

The bill amends s. 28.246, F.S., to require that an individual released from incarceration contact the clerk within 30 days after release to either pay the outstanding fines and fees in full or set up a payment plan.

The bill amends the criminal fine statute at s. 775.083, F.S., to add that the clerk of the court is the entity that collects fines, fees, service charges, and court costs. This reflects current law. The bill also adds the requirement that an offender must contact the clerk to pay, or set up a payment plan, upon assessment by the court.

The portions of the bill related to budgeting and financial matters of the clerks of court are effective upon becoming law, the remainder of the bill is effective October 1, 2021.

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

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact of SB 838 is indeterminate.⁴⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.246, 28.35, 28.36, 28.37, 28.42, 318.15, 318.20, 322.245, and 775.083.

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 March 9, 2020:

The committee substitute removed a provision that would have allowed a clerk of court to request a budget increase due to requirements of the courts, changed the effective date of portions of the bill other than clerk budgeting to October 1, 2021, and made technical corrections and clarifications.

B. Amendments:

None.

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

⁴⁸ Florida Clerks of Court Operations Corporation, *Senate Bill 838 Analysis*, p. 10 (February 23, 2021).

By Senator Boyd

21-00565-21

2021838__

A bill to be entitled
An act relating to clerks of the circuit court;
amending s. 28.246, F.S.; clarifying the
responsibility of an individual released from
incarceration regarding enrolling in a payment plan
for any outstanding court obligations; modifying the
manner of calculating a monthly payment amount under a
payment plan; requiring the clerk to establish all
terms of a payment plan; amending s. 28.35, F.S.;
modifying duties of the Florida Clerks of Court
Operations Corporation with respect to the funding of
clerks' offices; conforming a cross-reference;
amending s. 28.36, F.S.; conforming a cross-reference;
requiring the corporation to establish and manage a
contingency reserve within the Clerks of the Court
Trust Fund for specified purposes; prescribing
reporting requirements; specifying circumstances under
which moneys held in reserve may be used; prescribing
procedures for the release of such funds; revising
circumstances under which the corporation can modify
previously authorized budgets for clerks; amending s.
28.37, F.S.; modifying a provision regarding state
court system funding; defining terms; revising
provisions governing the transfer of certain funds
from the Clerks of the Court Trust Fund to the General
Revenue Fund by the Department of Revenue; conforming
a cross-reference; amending s. 28.42, F.S.; requiring
the clerks to develop a uniform payment plan form by a
specified date; prescribing requirements for the form;

21-00565-21

2021838__

requiring the clerks to use such form by a specified date; amending ss. 318.15, 318.20, and 322.245, F.S.; requiring orders and notifications for certain traffic citations and suspensions to include information regarding payment plans; amending s. 775.083, F.S.; designating the clerk as the entity responsible for collecting payment of certain court obligations; requiring a person ordered to pay such obligations to contact the clerk in order to pay or establish a payment plan, unless otherwise provided; providing an effective date.

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

Section 1. Subsection (4) of section 28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.—

(4) (a) Each ~~The~~ clerk of the circuit court shall accept partial payments for each case type for court-related fees, service charges, court costs, and fines in accordance with the terms of an established payment plan developed by the clerk.

(b) An individual seeking to defer payment of fees, service charges, court costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. It is the responsibility of an

21-00565-21

2021838__

individual who is released from incarceration and has
outstanding court obligations to contact the clerk within 30
days after release to pay fees, service charges, court costs,
and fines in full, or to apply for enrollment in a payment plan.

A monthly payment amount, calculated based upon all fees and all anticipated fees, service charges, court costs, and fines, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12. The clerk shall establish all terms of a payment plan and the court may review the reasonableness of the payment plan.

Section 2. Paragraph (f) of subsection (2) and paragraph (a) of subsection (3) of section 28.35, Florida Statutes, are amended, and paragraphs (i) and (j) are added to subsection (2) of that section, to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the following:

(f) Approving the proposed budgets submitted by clerks of the court pursuant to s. 28.36. The corporation must ensure that the total combined budgets of the clerks of the court do not exceed the total estimated revenues from fees, service charges, court costs, and fines for court-related functions available for court-related expenditures as determined by the most recent Revenue Estimating Conference, plus the total of unspent budgeted funds for court-related functions carried forward by the clerks of the court from the previous county fiscal year, ~~and~~ plus the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General

21-00565-21

2021838__

Revenue Fund required pursuant to s. 28.37(4)(b), and plus any appropriations for court-related functions ~~s. 28.37(3)(b)~~. The corporation may amend any individual clerk of the court budget to ensure compliance with this paragraph and must consider performance measures, workload performance standards, workload measures, and expense data before modifying the budget. As part of this process, the corporation shall:

1. Calculate the minimum amount of revenue necessary for each clerk of the court to efficiently perform the list of court-related functions specified in paragraph (3)(a). The corporation shall apply the workload measures appropriate for determining the individual level of review required to fund the clerk's budget.

2. Prepare a cost comparison of similarly situated clerks of the court, based on county population and numbers of filings, using the standard list of court-related functions specified in paragraph (3)(a).

3. Conduct an annual base budget review and an annual budget exercise examining the total budget of each clerk of the court. The review shall examine revenues from all sources, expenses of court-related functions, and expenses of noncourt-related functions as necessary to determine that court-related revenues are not being used for noncourt-related purposes. The review and exercise shall identify potential targeted budget reductions in the percentage amount provided in Schedule VIII-B of the state's previous year's legislative budget instructions, as referenced in s. 216.023(3), or an equivalent schedule or instruction as may be adopted by the Legislature.

4. Identify those proposed budgets containing funding for

21-00565-21

2021838__

117 items not included on the standard list of court-related
118 functions specified in paragraph (3)(a).

119 5. Identify those clerks projected to have court-related
120 revenues insufficient to fund their anticipated court-related
121 expenditures.

122 6. Use revenue estimates based on the official estimate for
123 funds from fees, service charges, court costs, and fines for
124 court-related functions accruing to the clerks of the court made
125 by the Revenue Estimating Conference, as well as any unspent
126 budgeted funds for court-related functions carried forward by
127 the clerks of the court from the previous county fiscal year and
128 the balance of funds remaining in the Clerks of the Court Trust
129 Fund after the transfer of funds to the General Revenue Fund
130 required pursuant to s. 28.37(4)(b), plus any appropriations for
131 the purpose of funding court-related functions ~~s. 28.37(3)(b)~~.

132 7. Identify pay and benefit increases in any proposed clerk
133 budget, including, but not limited to, cost of living increases,
134 merit increases, and bonuses.

135 8. Identify increases in anticipated expenditures in any
136 clerk budget that exceeds the current year budget by more than 3
137 percent.

138 9. Identify the budget of any clerk which exceeds the
139 average budget of similarly situated clerks by more than 10
140 percent.

141 10. Request the Governor to order, pursuant to s.
142 215.18(1), a temporary transfer of moneys from unobligated funds
143 in the State Treasury to the Clerks of the Court Trust Fund in
144 the Department of Revenue to meet temporary deficiencies in that
145 fund.

21-00565-21

2021838__

146 11. Determine if the estimated revenue available for the
147 upcoming county fiscal year is adequate to fund court-related
148 functions, and certify and submit any aggregate difference to
149 the chairs of the legislative appropriations committees and the
150 Executive Office of the Governor for consideration, at least 30
151 days before the start of the next regular session of the
152 Legislature.

153
154 For the purposes of this paragraph, the term "unspent budgeted
155 funds for court-related functions" means undisbursed funds
156 included in the clerks of the courts budgets for court-related
157 functions established pursuant to this section and s. 28.36.

158 (i) If the corporation determines that the cumulative
159 budget for all clerks will vary by more than 5 percent from the
160 approved cumulative budget for the previous year, certify to the
161 Legislature the specific causes for the variance and how each
162 variance relates to the clerks' responsibilities in performing
163 their court-related functions.

164 (j) Prepare and submit legislative budget requests to the
165 Legislature, consistent with the requirements of s. 216.023.
166 Such requests must be submitted for any fiscal year for which
167 the corporation determines that new duties or financial
168 obligations under s. 28.36(4), beyond those funded in prior
169 fiscal years, have been imposed on the court-related functions
170 of clerks of the court; and for any fiscal year for which the
171 corporation determines that the total estimated revenues
172 available for court-related expenditures as determined by the
173 most recent Revenue Estimating Conference, unspent revenues
174 carried forward from the previous fiscal year, and budget

21-00565-21

2021838__

175 amendments and appropriations made by law for the purpose of
176 funding court-related functions will be inadequate to provide
177 funding for court-related functions of clerks of the court at
178 the current level of operations.

179 (3) (a) The list of court-related functions that clerks may
180 fund from filing fees, service charges, court costs, and fines
181 is limited to those functions expressly authorized by law or
182 court rule. Those functions include the following: case
183 maintenance; records management; court preparation and
184 attendance; processing the assignment, reopening, and
185 reassignment of cases; processing of appeals; collection and
186 distribution of fines, fees, service charges, and court costs;
187 processing of bond forfeiture payments; data collection and
188 reporting; determinations of indigent status; and paying
189 reasonable administrative support costs to enable the clerk of
190 the court to carry out these court-related functions.

191 Section 3. Present subsection (3) of section 28.36, Florida
192 Statutes, is redesignated as subsection (4), a new subsection
193 (3) is added to that section, and subsection (1), paragraph (b)
194 of subsection (2), and present subsection (4) of that section
195 are amended, to read:

196 28.36 Budget procedure.—There is established a budget
197 procedure for the court-related functions of the clerks of the
198 court.

199 (1) Only those functions listed in s. 28.35(3) (a) may be
200 funded from fees, service charges, court costs, and fines
201 retained by the clerks of the court.

202 (2) Each proposed budget shall further conform to the
203 following requirements:

21-00565-21

2021838__

(b) The proposed budget must be balanced such that the total of the estimated revenues available equals or exceeds the total of the anticipated expenditures. Such revenues include revenue projected to be received from fees, service charges, costs, and fines for court-related functions during the fiscal period covered by the budget, plus the total of unspent budgeted funds for court-related functions carried forward by the clerk of the court from the previous county fiscal year and plus the portion of the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37(4)(b) ~~s. 28.37(3)(b)~~ which has been allocated to each respective clerk of the court by the Florida Clerks of Court Operations Corporation. For the purposes of this paragraph, the term "unspent budgeted funds for court-related functions" means undisbursed funds included in the clerk of the courts' budget for court related functions established pursuant to s. 28.35 and this section. The anticipated expenditures must be itemized as required by the corporation.

(3)(a) The Florida Clerks of Court Operations Corporation shall establish and manage a reserve for contingencies within the Clerks of the Court Trust Fund which must consist of an amount not to exceed 16 percent of the total budget authority for the clerks of court during the current county fiscal year, to be carried forward at the end of the fiscal year. Funds to be held in reserve include transfers of cumulative excess, as provided in s. 28.37(4)(b), from the Clerks of the Court Trust Fund and may also include revenues provided by law or moneys appropriated by the Legislature.

21-00565-21

2021838__

(b) The corporation shall provide a reporting of the balance and use of these funds during each county fiscal year as part of the corporation's annual report submitted under s. 28.35(2)(h).

(c) The corporation may use these funds to ensure the clerks of court can perform the court-related functions as provided in s. 28.35(3)(a). Moneys in the Clerks of the Court Trust Fund which are held in reserve may be used by the corporation under the following circumstances:

1. To offset a deficit between the revenue available and the original budget authority. A deficit is deemed to occur when the revenue available to the clerks of court falls below the original revenue projection for that county fiscal year.

2. To provide funding for an emergency, as defined in s. 252.34(4). The emergency must have been declared by the Governor, pursuant to s. 252.36, or otherwise declared by law.

3. To provide funds in the development of the total aggregate budget of the clerks of court to ensure that a minimum continuation budget is met if, after the corporation has notified the Legislature of a deficit under s. 28.35(2)(f)6., there remains a deficit between the total revenues available and the total budget from the previous county fiscal year.

(d) The corporation shall request a budget amendment and the Executive Office of the Governor may approve the release of funds in accordance with the notice, review, and objection procedures set forth in s. 216.177, and the office shall provide notice to the Department of Revenue and the Chief Financial Officer.

(5) ~~(4)~~ The corporation may approve increases or decreases

21-00565-21

2021838__

to the previously authorized budgets approved for ~~individual~~
clerks of the court pursuant to s. 28.35 for court-related
functions, if:

(a) The additional budget authority is necessary to pay the
cost of performing new or additional functions required by
changes in law or court rule, by an impact resulting from
financial obligations imposed on court-related functions by a
county or by administrative order of a circuit court or the
Supreme Court, or by order of a federal or state court; or

(b) The additional budget authority is necessary to pay the
cost of supporting increases in the number of judges or
magistrates authorized by the Legislature, or for increases in
the use of hearing officers and senior judges assigned by the
courts.

Section 4. Section 28.37, Florida Statutes, is amended to
read:

28.37 Fines, fees, service charges, and costs remitted to
the state.—

(1) Pursuant to s. 14(b), Art. V of the State Constitution,
selected salaries, costs, and expenses of the state courts
system and court-related functions shall be funded from a
portion of the revenues derived from statutory fines, fees,
service charges, and court costs collected by the clerks of the
court, and from adequate and appropriate supplemental funding
from state revenues as appropriated by the Legislature.

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

(a) "Cumulative excess" means revenues derived from
statutory fees, service charges, court costs, and fines
collected by the clerks of the court which are greater than the

21-00565-21

2021838__

original revenue projection.

(b) "Original revenue projection" means the official estimate, as determined by the Revenue Estimating Conference, of revenues from fines, fees, service charges, and court costs available for court-related functions for the county fiscal year covered by the projection.

(3) The Beginning November 1, 2013, that portion of all fines, fees, service charges, and costs collected by the clerks of the court for the previous month which is in excess of one-twelfth of the clerks' total budget for the performance of court-related functions must ~~shall~~ be remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund. Such collections do not include funding received for the operation of the Title IV-D child support collections and disbursement program. The clerk of the court shall remit the revenues collected during the previous month due to the state on or before the 10th day of each month.

(4) (a) ~~(3) (a)~~ Each year, no later than January 25, for the previous county fiscal year, the clerks of court, in consultation with the Florida Clerks of Court Operations Corporation, shall remit to the Department of Revenue for deposit in the Clerks of the Court Trust Fund the cumulative excess of all fines, fees, service charges, and court costs retained by the clerks of the court, plus any funds received by the clerks of the court from the Clerks of the Court Trust Fund under s. 28.36(4) ~~s. 28.36(3)~~, which exceed the amount needed to meet their authorized budget amounts established under s. 28.35.

(b) No later than February 1, 2022, and each February 1 thereafter, the Department of Revenue shall transfer 50 percent

21-00565-21

2021838__

of the cumulative excess of the original revenue projection from
the Clerks of the Court Trust Fund to the General Revenue Fund.
The remaining 50 percent in the Clerks of the Court Trust Fund
may be used in the development of the total combined budgets of
the clerks of the court as provided in s. 28.35(2)(f)6. However,
a minimum of 10 percent of the clerk-retained portion of the
cumulative excess amount must be held in reserve until such
funds reach an amount equal to at least 16 percent of the total
budget authority from the current county fiscal year, as
provided in s. 28.36(3)(a) 1. ~~No later than February 1, 2020,~~
~~the Department of Revenue shall transfer from the Clerks of the~~
~~Court Trust Fund to the General Revenue Fund the sum of the~~
~~cumulative excess of all fines, fees, service charges, and costs~~
~~submitted by the clerks of court pursuant to subsection (2) and~~
~~the cumulative excess of all fines, fees, service charges, and~~
~~costs remitted by the clerks of court pursuant to paragraph (a)~~
~~in excess of \$10 million.~~

2. ~~No later than February 1, 2021, the Department of~~
~~Revenue shall transfer from the Clerks of the Court Trust Fund~~
~~to the General Revenue Fund not less than 50 percent of the sum~~
~~of the cumulative excess of all fines, fees, service charges,~~
~~and costs submitted by the clerks of court pursuant to~~
~~subsection (2) and the cumulative excess of all fines, fees,~~
~~service charges, and costs remitted by the clerks of court~~
~~pursuant to paragraph (a); provided however, the balance~~
~~remaining in the Clerks of Courts Trust Fund after such transfer~~
~~may not be more than \$20 million.~~

3. ~~No later than February 1, 2022, the Department of~~
~~Revenue shall transfer from the Clerks of the Court Trust Fund~~

21-00565-21

2021838__

349 ~~to the General Revenue Fund not less than 50 percent of the sum~~
350 ~~of the cumulative excess of all fines, fees, service charges,~~
351 ~~and costs submitted by the clerks of court pursuant to~~
352 ~~subsection (2) and the cumulative excess of all fines, fees,~~
353 ~~service charges, and costs remitted by the clerks of court~~
354 ~~pursuant to paragraph (a); provided however, the balance~~
355 ~~remaining in the Clerks of Courts Trust Fund after such transfer~~
356 ~~may not be more than \$20 million.~~

357 ~~4. No later than February 1, 2023, and each February 1~~
358 ~~thereafter, the Department of Revenue shall transfer from the~~
359 ~~Clerks of the Court Trust Fund to the General Revenue Fund the~~
360 ~~cumulative excess of all fines, fees, service charges, and costs~~
361 ~~submitted by the clerks of court pursuant to subsection (2) and~~
362 ~~the cumulative excess of all fines, fees, service charges, and~~
363 ~~costs remitted by the clerks of court pursuant to paragraph (a).~~

364 ~~(5)-(4)~~ The Department of Revenue shall collect any funds
365 that the Florida Clerks of Court Operations Corporation
366 determines upon investigation were due but not remitted to the
367 Department of Revenue. The corporation shall notify the clerk of
368 the court and the Department of Revenue of the amount due to the
369 Department of Revenue. The clerk of the court shall remit the
370 amount due no later than the 10th day of the month following the
371 month in which notice is provided by the corporation to the
372 clerk of the court.

373 ~~(6)-(5)~~ Ten percent of all court-related fines collected by
374 the clerk, except for penalties or fines distributed to counties
375 or municipalities under s. 316.0083(1)(b)3. or s. 318.18(15)(a),
376 must ~~shall~~ be deposited into the fine and forfeiture fund to be
377 used exclusively for clerk court-related functions, as provided

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in s. 28.35(3) (a).

Section 5. Section 28.42, Florida Statutes, is amended to read:

28.42 Manual of filing fees, charges, costs, and fines; payment plan form.—

(1) The clerks of court, through their association and in consultation with the Office of the State Courts Administrator, shall prepare and disseminate a manual of filing fees, service charges, costs, and fines imposed pursuant to state law, for each type of action and offense, and classified as mandatory or discretionary. The manual also shall classify the fee, charge, cost, or fine as court-related revenue or noncourt-related revenue. The clerks, through their association, shall disseminate this manual to the chief judge, state attorney, public defender, and court administrator in each circuit and to the clerk of the court in each county. The clerks, through their association and in consultation with the Office of the State Courts Administrator, shall at a minimum update and disseminate this manual on July 1 of each year.

(2) By October 1, 2021, the clerks of court, through the Florida Clerks of Court Operations Corporation, shall develop a uniform payment plan form for use by persons seeking to establish a payment plan in accordance with s. 28.246(4). The form must inform the person of the minimum payment due each month, the term of the plan, acceptable payment methods, and the circumstances under which a case may be sent to collections for nonpayment.

(3) By January 1, 2022, each clerk of court shall use the uniform payment plan form developed pursuant to subsection (2)

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when establishing payment plans.

Section 6. Paragraph (a) of subsection (1) of section 318.15, Florida Statutes, is amended to read:

318.15 Failure to comply with civil penalty or to appear; penalty.—

(1)(a) If a person fails to comply with the civil penalties provided in s. 318.18 within the time period specified in s. 318.14(4), fails to enter into or comply with the terms of a penalty payment plan with the clerk of the court in accordance with ss. 318.14 and 28.246, fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court must ~~shall~~ notify the Department of Highway Safety and Motor Vehicles of such failure within 10 days after such failure. Upon receipt of such notice, the department must ~~shall~~ immediately issue an order suspending the driver license and privilege to drive of such person effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6). The order also must inform the person that he or she may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for court-related fines, fees, service charges, and court costs.

Any such suspension of the driving privilege which has not been reinstated, including a similar suspension imposed outside of this state Florida, must ~~shall~~ remain on the records of the department for a period of 7 years from the date imposed and must ~~shall~~ be removed from the records after the expiration of 7 years from the date it is imposed. The department may not accept the resubmission of such suspension.

Section 7. Section 318.20, Florida Statutes, is amended to

21-00565-21

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read:

318.20 Notification; duties of department.—The department shall prepare a notification form to be appended to, or incorporated as a part of, the Florida uniform traffic citation issued in accordance with s. 316.650. The notification form must ~~shall~~ contain language informing persons charged with infractions to which this chapter applies of the procedures available to them under this chapter. Such notification form must ~~shall~~ contain a statement that, if the official determines that no infraction has been committed, no costs or penalties may ~~shall~~ be imposed and any costs or penalties that ~~which~~ have been paid will ~~shall~~ be returned. Additionally, the notification form must include information on paying the civil penalty to the clerk of the court and the ability to establish a payment plan pursuant to s. 28.246(4). A uniform traffic citation that is produced electronically must also include the information required by this section.

Section 8. Subsections (1) and (3) and paragraph (a) of subsection (5) of section 322.245, Florida Statutes, are amended to read:

322.245 Suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.—

(1) If a person charged with a violation of any of the criminal offenses enumerated in s. 318.17 or with the commission of any offense constituting a misdemeanor under chapter 320 or

21-00565-21

2021838__

465 this chapter fails to comply with all of the directives of the
466 court within the time allotted by the court, the clerk of the
467 ~~traffic~~ court must provide ~~shall mail to~~ the person, either
468 electronically or by mail sent to ~~at~~ the address specified on
469 the uniform traffic citation, a notice of such failure,
470 notifying him or her that, if he or she does not comply with the
471 directives of the court within 30 days after the date of the
472 notice and pay a delinquency fee of up to \$25 to the clerk, from
473 which the clerk shall remit \$10 to the Department of Revenue for
474 deposit into the General Revenue Fund, his or her driver license
475 will be suspended. The notice must ~~shall~~ be sent ~~mailed~~ no later
476 than 5 days after such failure. The delinquency fee may be
477 retained by the office of the clerk to defray the operating
478 costs of the office.

479 (3) If the person fails to comply with the directives of
480 the court within the 30-day period, or, in non-IV-D cases, fails
481 to comply with the requirements of s. 61.13016 within the period
482 specified in that statute, the depository or the clerk of the
483 court must ~~shall~~ electronically notify the department of such
484 failure within 10 days. Upon electronic receipt of the notice,
485 the department shall immediately issue an order suspending the
486 person's driver license and privilege to drive effective 20 days
487 after the date the order of suspension is mailed in accordance
488 with s. 322.251(1), (2), and (6). The order of suspension must
489 also contain information specifying that the person may contact
490 the clerk of the court to establish a payment plan pursuant to
491 s. 28.246(4) to make partial payments for fines, fees, service
492 charges, and court costs.

493 (5) (a) When the department receives notice from a clerk of

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the court that a person licensed to operate a motor vehicle in this state under the provisions of this chapter has failed to pay financial obligations for any criminal offense other than those specified in subsection (1), in full or in part under a payment plan pursuant to s. 28.246(4), the department must ~~shall~~ suspend the license of the person named in the notice. The department shall mail an order of suspension in accordance with s. 322.251(1), (2), and (6), which must also contain information specifying that the person may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for fines, fees, service charges, and court costs.

Section 9. Present subsection (3) of section 775.083, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

775.083 Fines.—

(3) The clerk of the court of each county is the entity responsible for collecting payment of fines, fees, service charges, and court costs. Unless otherwise designated by the court, a person who has been ordered to pay court obligations under this section shall immediately contact the clerk to pay fines, fees, service charges, and court costs in full, or to apply for enrollment in a payment plan, pursuant to s. 28.246(4).

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JIM BOYD
21st District

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Criminal Justice
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee

February 4, 2021

Senator Jeff Brandes
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Brandes:

I respectfully request that SB 838: Clerks of the Circuit Court, be scheduled for a hearing in the Committee on Judiciary at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in cursive script, appearing to read "Jim Boyd".

Jim Boyd

cc: Tom Cibula
Joyce Butler
Celia Georgiades

REPLY TO:

- ☐ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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THE FLORIDA SENATE
APPEARANCE RECORD

3/9/21

Meeting Date

SB 838

Bill Number (if applicable)

Topic SB 838

Amendment Barcode (if applicable)

Name Tom Bexley

Job Title Flagler County Clerk and Comptroller

Address _____

Phone 8503456835

Street

Bunnell

FL

32110

City

State

Zip

Email tbexley@FIClerks.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Court Clerks & Comptrollers

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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THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

838

Bill Number (if applicable)

Topic Clerks of the Circuit Court

Amendment Barcode (if applicable)

Name Jason L. Welty

Job Title Budget and Communications Director

Address 2560 Barrington Circle

Phone 850-386-2223

Street

Tallahassee

FL

32308

Email jwelty@flccoc.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Clerks of Court Operations Corporation

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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11:43
March 9, 2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

A3
838

Bill Number (if applicable)

Topic CLERKS FINANCING (POSSIBLE FEE WAIVERS)

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title president, Tallahassee Veterans Legal Collaborative

Address 319 E Park Ave

Street

Phone 850/570-1967

TALLAHASSEE

FL

32301

Email danbhendrickson@comcast.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

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

3/9/21

Meeting Date

SB 838

Bill Number (if applicable)

Topic SB 838

Amendment Barcode (if applicable)

Name Jason Harrell

Job Title Director of Legislative & Public Affairs

Address 215 S. Monroe

Phone 8503456835

Street

Tallahassee

USA

32312

City

State

Zip

Email JasonHarrell@Flcde

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Court Clerks & Comptrollers

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

3/9/2021

Meeting Date

838

Bill Number (if applicable)

Topic Clerk of the Circuit Court

Amendment Barcode (if applicable)

Name Jenna Hodgens

Job Title Senior Director, Government Relations

Address 601 E. Kennedy Blvd.

Phone 813-415-5708

Street

Tampa

FL

33601

City

State

Zip

Email jenna.hodgens@hillsclerk.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Hillsborough County Clerk and Comptroller

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

3/9/2021

Meeting Date

838

Bill Number (if applicable)

761372

Amendment Barcode (if applicable)

Topic Clerks of the Circuit Court

Name Jason L. Welty

Job Title Budget and Communications Director

Address 2560 Barrington Circle

Street

Tallahassee

City

FL

State

32308

Zip

Phone 850-386-2223

Email jwelty@flccoc.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Clerks of Court Operations Corporation

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

3/9/2021

Meeting Date

838

Bill Number (if applicable)

252502

Topic Clerks of the Circuit Court

Amendment Barcode (if applicable)

Name Jason L. Welty

Job Title Budget and Communications Director

Address 2560 Barrington Circle

Phone 850-386-2223

Street

Tallahassee

FL

32308

Email jwelty@flccoc.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Clerks of Court Operations Corporation

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.

CS-001 (10/14/14)



BILL ANALYSIS

BILL NUMBERS: SB 838

SUBJECT: Clerks of the Circuit Court

SPONSORS: Senator Boyd

COMMITTEE REFERENCE: Judiciary; Appropriations Subcommittee on Criminal and Civil Justice; Appropriations

LEAD CCOC STAFF: Jason Welty, CCOC Budget and Communications Director

LEAD FCCC STAFF: Jason Harrell, FCCC Legislative & Public Affairs Director

BILL SUMMARY:

This bill provides several critical changes to help set the framework for future long-term funding solutions and stabilizes Clerks' of Court court-related budgets. The bill:

- **Requires the Florida Clerks of Court Operations Corporation (CCOC) to establish and maintain statewide reserves** of up to **16 percent** of the county fiscal year's total budget authority within the Clerks of the Court Trust Fund. Clerks will fund the reserve with excess revenue.
- **Codifies cumulative excess carryforward authority.** The bill allows clerks to continue to carry forward 50 percent of the cumulative excess for clerks' court-related budgets.
- **Provides clear definitions for "original revenue projection" and "cumulative excess"** to ensure the carryforward process works as intended.
- **Requires CCOC to certify and notify the Legislature of an estimated deficit.**
- **Authorizes CCOC to use appropriations from the Legislature** for court-related functions in developing clerks' budgets.
- **Provides CCOC the authority to request a loan** from the Governor for temporary deficits.
- **Authorizes CCOC to submit Legislative Budget Requests** for duties from the Judiciary or Legislature not accounted for in established "fines and fees" estimate.
- **Requires CCOC to certify to the Legislature variances in clerks' total budget of more than 5 percent** from the previous year and the reasons for those variances.
- **Provides CCOC additional authority to adjust budgets based on** impacts from administrative orders or increases in hearing officers and senior judges assigned by the court.
- **Improves clerks' compliance/collections processes.** Creates an incentive for collections to fund court-related activities:
 - Each clerk provides payment plans for each case type.
 - Encourages individuals to use payment plans by noticing them via the Florida Department of Highway Safety and Motor Vehicles (FLHSMV) order to suspend and as part of the uniform traffic citation (UTC).
 - Provides improved processes for individuals to see the clerk for full payment or enter a payment plan upon sentencing before leaving the courthouse.
 - Incarcerated individuals are responsible for contacting the clerk within 30 days of release to pay in full or establish a payment plan.
 - Requires CCOC to develop a statewide payment plan form that all clerks will utilize by a specific date.

Clerk Budgeting 101

The clerk budgeting process is vital to understand because it is unlike most other state entities. Although clerks have responsibilities to the counties in which they are elected as local constitutional officers, they also perform a state function through the ministerial support of the state courts system. As such, the clerks' court-related duties should be considered as a state entity, such as the public defenders or the state attorneys. However, the differences are vast.

The first difference is the funding mechanics. The Legislature funds the clerks through the fines, fees, court costs, and service charges outlined in statute and collected by the clerks.¹ External forces direct how much fine and fee revenue clerks receive, such as external events that impact case filings statewide resulting in no guarantee for how much funding clerks will collect annually, outside of \$11.7 million recurring General Revenue funding for juror management the Legislature provides in the annual General Appropriations Act (GAA).

For instance, as the collector of fines, clerks handle most of the work on civil traffic cases after the law enforcement officer issues the citation. The chart below highlights one of the external factors clerks face, using data from the Florida Court Clerks & Comptrollers (FCCC) Annual Assessments and Collections Reports.

Civil Traffic Collections Comparison	CFY 2008-09	CFY 2018-19	Change	Percent Change
Civil Traffic Cases (CY) ²	4,332,203	2,636,315	-1,695,888	-39%
Total Collectible Amount	\$507,550,260	\$388,785,609	(\$118,764,651)	-23%
Total Collections	\$386,012,511	\$358,293,591	(\$27,718,920)	-7%
Collection Rate	76.1% ³	92.2%	23.3%	

Civil traffic citations fell 39 percent from CY 2009 to CY 2019. During these ten years, the collectible amount fell by 23 percent, and the total collections dropped by almost \$28 million. However, the clerks' collection rate increased by 23 percent during this period, suggesting clerks made operational improvements to collect the amounts owed. However, the increased collection rate could not make up for a \$119 million decline in collectible assessments (see the change in Total Collectible Amount between CFY 2008-2009 and CFY 2018-2019 above).

The second difference in clerk versus state budgeting is the revenue distribution. Clerks operate more like a small business than a state entity. Most of the clerks' judicial partners receive their budget authority through the GAA, with the bulk of revenue received through a quarterly distribution from the General Revenue Fund at the beginning of each quarter. In contrast, the Legislature funds clerks on a cash basis: what revenue a clerk brings in one month pays for the next month's expenditures. Thus, the clerks' "revenue year" does not precisely line up with their fiscal year. Since most clerks have county-related duties (Recorder, Comptroller, Clerk to the Board, etc.), they operate on the county fiscal year, October to September; however, since clerks work on a cash basis, their revenue fiscal year for the court-related functions is September to August. This cash-basis approach to funding the clerks creates cash flow difficulties as September through January are typically the months with the clerks'

¹ s. 28.37(1), F.S.

² Cases are on the Calendar Year and retrieved from the FLHSMV database, <https://services.flhsmv.gov/SpecialtyPlates/UniformTrafficCitationReport> (last accessed Feb. 10, 2021).

³ The CFY 2008-09 collection rate took a significant drop from 88.17 percent in CFY 2007-08. It rebounded slightly in CFY 2009-10 to 82.63 percent, which was the first full year after the Legislature increased traffic citation fines.

least amount of revenue. In the last two fiscal years before the pandemic, clerks averaged \$32.9 million in the five months between September and January; however, clerks averaged \$37 million in the remaining seven months of the fiscal year.

Another difference between clerk budgeting and state entities is the revenue sharing amongst the clerks. Similar to Major League Baseball, clerks have a system where those counties producing more revenue share with those counties that make less revenue. Section 28.37, F.S., requires a clerk collecting more than one-twelfth of their yearly budget authority in any given month to deposit the excess into the Clerks of the Court Trust Fund (COCTF). The COCTF acts as a repository for the “Depository Counties” (i.e., those producing more revenue share) and a financier for the “Funded Counties” (i.e., those that do not expect to collect enough revenue from fines, fees, service charges, and court costs to meet its annual budget authority). In short, the depository counties deposit their excess into the COCTF and the funded counties drawdown from the balance of the trust fund. As outlined in the above cash-basis description of clerk budgeting, September through January are historically the slowest revenue-generating months. In the past, this slow-revenue season has left the CCOC unable to send funded counties revenue from the trust fund due to the inability of depository counties to generate enough monthly one-twelfth revenue.

Finally, clerks are members of the Florida Retirement System (FRS), like the other justice partners that they work with daily. However, unlike the judges, state attorneys, or public defenders, clerks must fund their FRS increases within their current revenue streams. In the appropriations process, the Legislature does not require state agencies to ask for their FRS or health insurance increases as a separate Legislative Budget Request issue. The Legislature appropriates these statewide issues as “Administered Funds,” and the state agencies receive these funds in their budgets as part of their annual budget authority. Last year, the FRS contribution rate increases required clerks to cut \$5.4 million out of their current expenditures to pay for these new rates. The Administered Funds annually appropriated by the Legislature do not cover the state’s portion of the clerks’ annual FRS employer contribution costs.

The chart below summarizes and highlights some of the key funding and budgeting differences between the clerks and most state entities.

Differences Between Budgeting Process	State Entity	Clerks
Makes Legislative Budget Requests	Yes	No
Base Budget in the General Appropriations Act	Yes	No
FRS and Health Insurance Funded Outside of Current Revenue/Budget Authority	Yes	No
Recurring General Revenue	Yes	No ¹
Quarterly Distribution of General Revenue	Yes	No ²
Nonrecurring Revenue	Yes	Yes
Fiscal Year	State	County
Revenue Sharing	No ³	Yes
Revenue-Based Budgeting	No	Yes
¹ Clerks receive less than 3 percent of their funding in recurring General Revenue.		
² Clerks receive \$2.9 million in General Revenue quarterly for Juror Management.		
³ Some state entities have the option share their revenue, but it is rare and dissimilar from the forced revenue sharing established for the clerks.		

CURRENT SITUATION:

Payment of Court-Related Fines and Fees (s. 28.246, F.S.)

From CFY 2013-14 to CFY 2017-18, clerks experienced an almost \$63 million budget cut due to decreasing revenues. To reverse the decreasing revenues, in October 2017, clerks held a statewide “Compliance Summit” to discuss various programs and best practices from around the state to keep people employed, driving, and able to live their daily lives. The clerks held a second summit in October 2019, continuing to share the best practices and ideas for clerks to help keep people in compliance with court-related financial obligations without suspending their driver licenses. Ideally, clerks would never need to initiate the process of suspending a driver license because everyone would pay their statutory financial obligations; however, clerks recognize the their communities’ unique needs and work with struggling customers to develop payment plans to fit their needs while completing their financial obligations.

As part of the statutory revisions that originated from Revision 7 of Article V, of the Florida Constitution, the Legislature created s. 28.246, F.S., which requires clerks to accept partial payments for unpaid court-related fees, charges, and costs following the terms of an established payment plan. Clerks design payment plans to meet the needs of the individuals that owe obligations to the state. There is a diversity of payment plans that typically meet the needs of a clerk’s constituency. Most clerks attempt to customize or tailor a payment plan to fit the needs of the customer. Some clerks currently have trouble setting payment plans because many defendants do not realize that the payment is due on the day of sentencing.

There is currently no responsibility of recently released individuals to report to the clerk’s office to set up a payment plan. As a result, much of the assessed fines and court costs in the Circuit Criminal Division go unpaid for years. Based on historical data from the Florida Court Clerks & Comptrollers, the collection rate for felony cases ranges from 12 to 21 percent over the last ten years, with a ten-year average of 16 percent.⁴

Florida Clerks of Court Operations Corporation (s. 28.35, F.S.)

The Florida Clerks of Court Operations Corporation (CCOC) is the legislatively created statewide budget office for the 67 elected clerks. Section 28.35, F.S., provides for the corporation’s duties, including approving the clerks’ court-related budgets. The corporation must ensure the clerks’ budgets do not exceed the original revenue projection set by the Revenue Estimating Conference (REC), plus the total unspent budgeted funds, plus the balance of funds remaining in the COCTF.

Before 2009, clerks operated on the county fiscal year and outside of the state appropriations process. Senate Bill 2108 (2009) facilitated the transition to bring the clerks into the GAA, and the Legislature provided clerk funding through the state budget. When clerks were a part of the state budgeting process, in s. 28.36(10)(a), F.S., CCOC had the authority to request a loan from the Governor if funds in the COCTF were insufficient for the first quarter release. In 2013, the Legislature removed the clerks from the state appropriations process and removed CCOC’s authority to request a loan from the Governor.

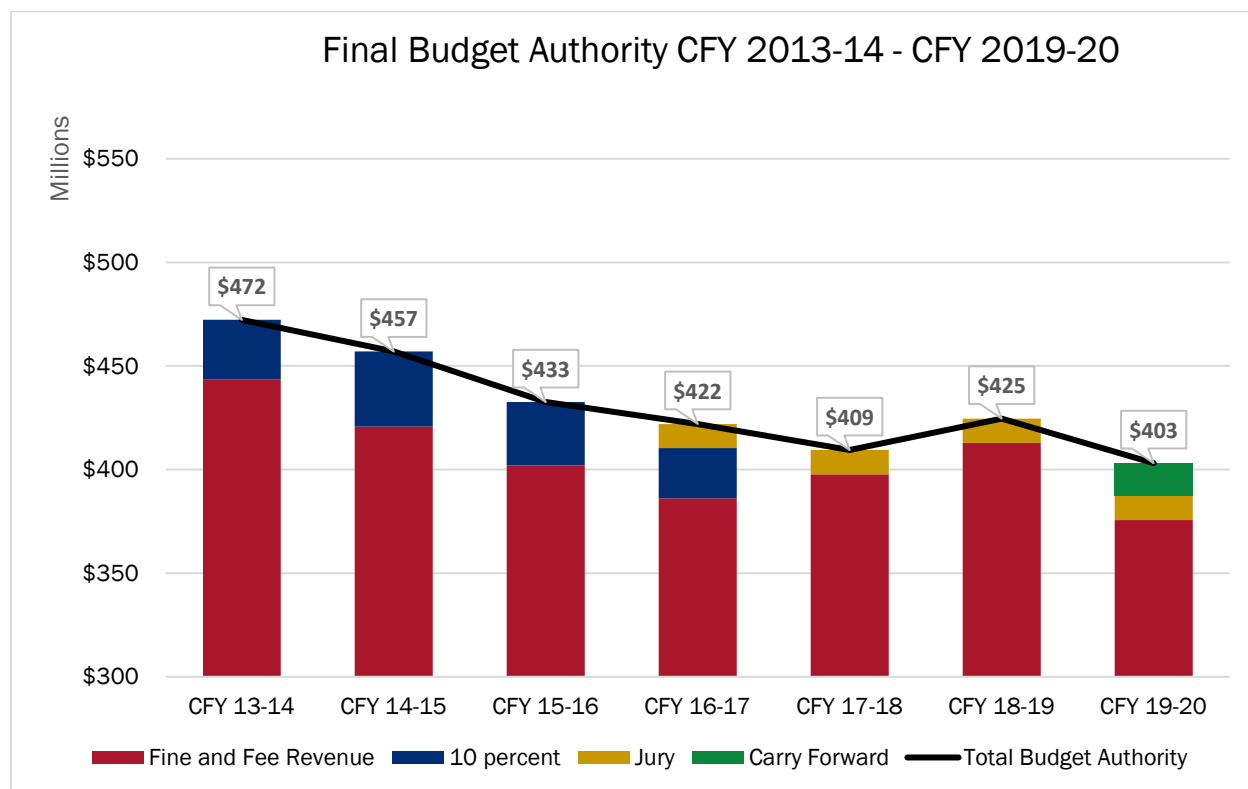
Because clerks are not currently part of the GAA, there is no entry point into the appropriations process. Despite not being a part of the state appropriations process, the Legislature provided clerks with critical funding in several years since removing them from the GAA. This legislative support comes through changes in the law, resulting in recurring revenue streams, and direct support through recurring General Revenue appropriations and nonrecurring “back of the bill” appropriations. From

⁴ Analysis of Florida Court Clerks & Comptrollers Annual Assessments and Collections Reports 2004 – 2020.

CFY 2013-14 through CFY 2019-20, the Legislature provided almost \$333 million of funding to support Floridians' services provided by clerks.

Legislative Support of Clerks' Budgets Since 2013	Year	Total
\$80 Filing Fee	2013	\$240 million
Re-Open fee	2015	\$12.5 million
Recurring General Revenue - Jury	2016	\$46.8 million
Back of the Bill (Nonrecurring)	2016	\$12.9 million
Appeals, Adj Withholds, Cross Claims, Counter Claims	2017	\$27.7 million
Back of the Bill (Nonrecurring)	2017	\$7 million
Carry Forward Cumulative Excess and Unspent Budgeted Funds (Nonrecurring)	2019	\$15.8 million
Total		\$332.7 million

Despite the Legislature's help, the decline in clerks' revenues outpaced this legislative assistance during that same period, as shown in the chart below.



Budget Procedure (s. 28.36, F.S.)

From 2004 to 2009, the clerks could maintain a reserve of up to 10 percent. After going into the state appropriation process in 2009 and being removed from the process in 2013, clerks no longer had the ability to maintain a reserve. Additionally, there is no authority or directive in statute for the CCOC to manage or maintain a reserve in the trust fund.

After 2017, the Legislature provided CCOC with the authority to increase a clerk's court-related budget to support increases in the number of judges or magistrates authorized by the Legislature or to pay for new functions required by law or court rule.

Fines, Fees, Service Charges, and Costs Remitted to the State (s. 28.37, F.S.)

In 2019, clerks advocated for, and the Legislature provided, two new funding streams for the clerks to build their annual court-related budgets:

- Cumulative excess is the sum of all fines, fees, service charges, and court costs more than the clerks' authorized budget amount. Since current law caps the clerks' budgets to the revenue projected by the REC, cumulative excess is essentially any revenue brought in over the REC projection used to establish the clerks' budgets. Clerks deposit that revenue into the COCTF either through the one-twelfth monthly remittance⁵ or through the annual reconciliation.⁶ With the passage of HB 337 (2019), the Legislature established a three-year period where clerks could maintain a portion of the cumulative excess. For CFY 2019-20, clerks could maintain the first \$10 million, and for CFY 2020-21 and CFY 2021-22, clerks could keep 50 percent of the cumulative excess. The current law also requires the Department of Revenue (DOR) to sweep any amount greater than \$20 million in the COCTF. These provisions (50/50 split and \$20 million sweeps) sunset at the end of CFY 2021-22, and the state will retain 100 percent of the cumulative excess revenue as General Revenue.
- Unspent budgeted funds are the revenues clerks had available to spend in a year but did not expend. In CFY 2019-20, clerks brought forward \$5.8 million of unspent budgeted funds. The \$15.8 million revenue source helped raise the clerks' budget authority for only the second time since CFY 2013-14.

Typically, in July or August, the REC will meet to project the revenue for the next five state fiscal years. Because clerks are on the county fiscal year, CCOC uses the summer projection to calculate the clerks' fiscal year revenue, which begins in October. This projection is what CCOC considers the original revenue projection.

The REC will reconvene typically in the winter (November or December) and sometimes in the spring (February or March). Each time the REC convenes, the Conference updates the revenue projections. Currently, if the revenue projection decreases, CCOC must adjust the clerks' budget authority downward because this means that the amount of revenue is insufficient to support the current authority. If the REC projects a revenue increase, CCOC cannot increase the budget authority. For example:

In July 2017, the REC projected clerks would collect \$397.7 million for CFY 2017-18.⁷ That year, clerks collected \$418.6 million. However, CCOC could not increase budget authority mid-year to capture the increased revenue and DOR swept \$20.9 million (100 percent) of the cumulative excess to the General Revenue Fund.

In August 2018, the REC adopted a revenue projection of \$412.9 million for the clerks.⁸ The clerks collected \$428.5 during CFY 2018-19. With the changes made in 2019, clerks retained \$10 million of the cumulative excess and sent \$5.6 million to the General Revenue Fund. At the end of CFY 2019-20, the COCTF had \$4.7 million, and the revenue collected was \$53.6 million less than the projection; therefore, there was no transfer to General Revenue.

⁵ s. 28.37(2), F.S.

⁶ s. 28.37(3), F.S.

⁷ Revenue Estimating Conference - Article V Fees & Transfers, Executive Summary - July 31, 2017, page 7 <http://edr.state.fl.us/Content/conferences/articleV/archives/170731articleV.pdf>. Last accessed 2/10/12

⁸ Revenue Estimating Conference - Article V Fees & Transfers, Executive Summary - August 2, 2018, page 9 <http://edr.state.fl.us/Content/conferences/articleV/archives/180802articleV.pdf>. Last accessed 2/10/12

Manual of Filing Fees, Charges, Costs, and Fines (s. 28.42, F.S.)

Current law does not provide for a uniform payment plan form.

Failure to Comply with Civil Penalty or to Appear (s. 318.15, F.S.)

Section 318.15, F.S., provides an additional incentive for a person to pay their civil traffic citations. If a person fails to:

1. pay the civil penalties in s. 318.18, F.S., within the time specified in s. 381.14(4), F.S.;
2. enter or comply with a payment plan;
3. attend driver improvement school; or
4. appear at a scheduled hearing

The clerk must then notify FLHSMV within ten days after the failure to comply.⁹ Upon receiving the notification, FLHSMV must send the person notice and suspend their driver's license 20 days after the mailing. There is no current requirement for FLHSMV to notify a person of the availability of payment plans through the clerk's office.

Notification; Duties of Department (s. 318.20, F.S.)

The Legislature made FLHSMV responsible for preparing a notification form, which law enforcement must issue with a UTC. The notification must contain language informing the person of the procedures available to them. Additionally, the notice must include a statement that if an official determines no infraction was committed, no costs or penalties may be imposed, and any fee or penalties already paid will be refunded. There is no current requirement for the UTC to include information about the availability of payment plans through the clerk's office.

Suspension of License Upon Failure...to Comply (s. 322.245, F.S.)

The penalties and time frames for failure to comply with a criminal traffic case is like the failure to comply for civil traffic infractions in s. 318.15, F.S., discussed above. If a person fails to comply with all the court's directives, the clerk must notify the person of the failure. If the person does not comply within 30 days after the notice, the clerk must begin the driver license suspension process and notify FLHSMV of the person's failure to comply with the court's directives. Upon receiving the notification, FLHSMV must send a second notice to the person and suspend their driver license 20 days after the mailing. Like civil traffic cases, FLHSMV is currently not required to notify a person of the availability of payment plans through the clerk's office when suspending someone for a criminal traffic offense or failing to pay financial obligations for a criminal offense.

Fines (s. 775.083, F.S.)

Section 775.083, F.S., provides a uniform penalty structure for criminal offenses. The law currently provides judicial discretion to give a grace period to a person who cannot immediately pay their fines. However, absent this grace period, the law does not direct a person to the clerk to pay their fines or to establish a payment plan.

⁹ s. 318.15(1)(a), F.S.

Effect of Proposed Changes

Payment of Court-Related Fines and Fees (s. 28.246, F.S.)

The bill provides that clerks must accept partial payments and payment plans for certain types of cases. Additionally, the bill clarifies that the clerks are to develop the payment plans. Finally, the bill provides a recently released individual 30 days to pay their legal financial obligations or apply for enrollment in a payment plan. These changes should increase payment options and encourage the timely fulfillment of financial obligations.

Florida Clerks of Court Operations Corporation Duties (s. 28.35, F.S.)

The bill allows the Legislature to provide appropriations for court-related duties. The Legislature currently provides clerks a recurring General Revenue appropriation for the cost of juror management. However, the current budget development process is silent on CCOC using these funds as part of the clerks' budgets. The bill codifies the current process by explicitly allowing CCOC to consider appropriations by the Legislature when calculating the clerks' total combined budget.

Additionally, the bill allows CCOC to request a loan from the Governor under s. 215.18, F.S., which provides the Governor with authority to transfer money temporarily from one fund to another. The ability to request a trust fund loan will provide CCOC an additional avenue to seek assistance if revenue dramatically decreases. During the COVID-19 pandemic of 2020, clerk revenue plummeted by more than \$50 million between April and August. Since clerks are not in the GAA, it was unclear if the Governor had the power to authorize a temporary loan to minimize the drastic budget reductions clerks faced due to the sudden decline in revenue. The bill provides clerks the ability to make the request, like any state agency and the judiciary.

The bill also amends s. 28.35, F.S., requiring CCOC to determine if there will be a revenue deficit for the next county fiscal year. If there will be a deficit, CCOC must notify the chairs of the legislative appropriations committees and the Executive Office of the Governor at least 30 days before the start of the next regular session. Additionally, the bill requires CCOC to prepare and submit a legislative budget request (LBR) if any new duties are assigned to clerks, or if the revenue estimates will be inadequate to provide a continuation of court-related functions at the current level of operations.

Budget Procedure (s. 28.36, F.S.)

The bill requires CCOC to establish a reserve of up to 16 percent of the current total budget authority within the COCTF. CCOC must report the balance and use of the reserve funds each year in the corporation's annual report, as required in s. 28.35(2)(h), F.S. The bill also delineates under what circumstances the clerks may use the reserve:

1. to offset an in-year revenue deficit;
2. to provide funding for an emergency; or
3. to stabilize funding from one fiscal year to the next, ensuring a continuation budget.

The bill also provides the process that CCOC must complete to use the reserve funds. Typically, the state releases trust fund authority, at 100 percent, at the beginning of the state fiscal year. However, the state does not release the COCTF at 100 percent; instead, the state uses a quarterly release for the COCTF. Currently, in s. 28.36(3), F.S., CCOC must request a quarterly trust fund authority release through DOR, which is subject to a 14-day review by the Legislature, according to s. 216.177, F.S.

The bill mimics the current process for the quarterly trust fund release, applying it to the process for clerks to request release to use the reserve fund. This process subjects the request to use the reserve funds to oversight by DOR (which processes the CCOC budget amendments), the Governor's Office of

Policy and Budget, and the Legislature. If there are no objections to this process, the Chief Financial Officer will release the reserve funds.

Additionally, the bill amends s. 28.36.(4), F.S., to allow CCOC to increase a clerks' budget authority in two specific situations in addition to those currently provided in s. 28.36(4) F.S. CCOC may increase a clerks' budget authority if a county or an administrative order of a court places new or additional duties on the clerk. CCOC may also increase a clerks' budget authority if the Legislature increases the use of hearing officers or senior judges assigned by the courts.

Fines, Fees, Service Charges, and Costs Remitted to the State (s. 28.37, F.S.)

Article V Section 14(b) of the Florida Constitution states:

All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.

The bill modifies s. 28.37(1), F.S., to allow the Legislature to provide adequate and appropriate supplemental funding from state revenue.

The bill provides definitions for the terms "Cumulative Excess" and "Original Revenue Projection." These terms codify the current process and give clarity to the process by which the state receives a portion of the excess revenue collected by the clerks.

Cumulative Excess is defined as the amount of revenue clerks collect over the original revenue projection. Original revenue projection is defined as the official REC projection for the county fiscal year. CCOC uses the original revenue projection to develop the clerks' budget for the upcoming county fiscal year.

Unless modified by this bill, after CFY 2020-21, the clerks will send 100 percent of the cumulative excess to General Revenue. The bill codifies the current 50/50 split of cumulative excess between the clerks and General Revenue and allows CCOC to continue to use these funds to develop clerks' annual budgets. Additionally, the bill requires 10 percent of the clerks' portion of the cumulative excess to become part of the reserve until it equals at least 16 percent of the current clerk budget authority.

Manual of Filing Fees, Charges, Costs, and Fines (s. 28.42, F.S.)

The bill directs CCOC to develop a uniform payment plan form by October 1, 2021 and requires all clerks to use the form starting by January 1, 2022. This change should make it easier for people who owe financial obligations in multiple counties, providing a more uniform process across all counties.

Failure to Comply with Civil Penalty or to Appear (s. 318.15, F.S.)

When FLHSMV issues an order suspending a driver license for a civil traffic case, the bill requires the order to inform the person about the availability of payment plans through the clerk's office, under s. 28.246(4), F.S. An estimated 47 percent of people currently pay off their civil traffic cases or enter a payment plan and avoid having their driver license suspended once they receive the notification from FLHSMV. The proposed change will encourage people to set up a payment plan before the sanction is

effective, which will allow them to stop the suspension process, reducing the number of driver license suspensions. With additional payment plans, clerks should also begin to see more revenue as a result.

Notification; Duties of Department (s. 318.20, F.S.)

The FLHSMV is responsible for creating a notification form that is part of the UTC. The bill requires the notification form to include information about paying the civil penalty to the clerk of court and the ability to establish a payment plan. Like the changes to the order suspending a driver license, this proposed change will encourage people to set up a payment plan to increase compliance and reduce driver license suspensions. With additional payment plans, clerks should also begin to see more revenue as a result.

Suspension of License Upon Failure...to Comply (s. 322.245, F.S.)

When FLHSMV issues an order suspending a driver license for a criminal traffic case, the bill requires the order to contain information about the availability of payment plans through the clerk's office under s. 28.246(4), F.S. The proposed change will encourage people to set up a payment plan before the sanction is effective, which will allow them to stop the suspension process, reducing the number of driver license suspensions. With additional payment plans, clerks' revenue is expected to increase as a result.

Fines (s. 775.083, F.S.)

The bill creates a duty for a person who owes legal financial obligations to immediately contact the clerk to pay the fines, fees, service charges, and court costs in full or apply for enrollment in a payment plan, under s. 28.246(4), F.S. With additional payment plans, clerks' revenue is expected to increase as a result.

FISCAL IMPACT:

The fiscal impact is indeterminate. The provisions providing notice to individuals about payment plans could increase revenue. If these provisions encourage additional payments, revenue to the clerks, counties, law enforcement, state trust funds, and General Revenue should all increase. Based on the Operation Green Light¹⁰ data from CFY 2019-20, an estimated 40 percent of the revenue collected went to the state (11 percent to General Revenue and 29 percent to state trust funds), local entities collected 24 percent, and clerks collected 36 percent of the revenue.

The provisions creating a reserve within the COCTF do not have a fiscal impact, as clerks will fund this reserve with excess revenue.

The sections removing the sunset date of the 50/50 split of cumulative excess may have a fiscal impact on future General Revenue. However, this revenue is unexpected as the REC attempts to project Article V revenues accurately. There is only a budgetary impact to General Revenue if the REC under projects the clerks' revenue, creating a cumulative excess amount.

¹⁰ Section 322.75, F.S., requires each clerk of court to establish an annual Driver License Reinstatement Days program for reinstating suspended driver licenses. These statewide events are branded as "Operation Green Light."

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 1288

INTRODUCER: Judiciary Committee and Senator Boyd

SUBJECT: Assets of an Estate in Administration

DATE: March 10, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1288 amends s. 69.031, F.S., to repeal the requirements that a savings and loan be a member of the Federal Savings and Loan Insurance Corporation and doing business in the state in order to qualify as a depository institution for court-appointed fiduciaries. The Federal Savings and Loan Insurance Corporation was dissolved in 1989, making compliance with that requirement impossible.

The bill is effective July 1, 2021.

II. Present Situation:

Courts are commonly called on to assume control over a person's property. The most common form of this is probate, but other common areas include guardianship and receivership. The trial judge does not have the time or expertise to inventory, manage, and distribute such property, and so a fiduciary is appointed. These court-appointed fiduciaries are known by many names, including personal representative, guardian, curator, executor, administrator, trustee, or receiver. Current law provides numerous safeguards to guard against theft or mismanagement of property by a court-appointed fiduciary. A common safeguard is a requirement that a court-appointed fiduciary post a surety bond.

Surety bonds are expensive, and may not be available at any cost for large or complicated estates. Current law at s. 69.031, F.S., gives the court an alternative safeguard applicable to all

court-appointed fiduciaries -- the use of a depository account. A depository account may be used where “the size of the bond . . . is burdensome or for other cause.” Where a depository account is used, the property of the estate is deposited with a bank, trust company, or savings and loan. Court approval is required for every distribution from a depository account.

A depository account must be placed with a bank, trust company, or savings and loan association “(which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state)” designated by the court, consideration being given to any bank, trust company or savings and loan association proposed by the officer.¹

The requirement that a savings and loan be a member of the Federal Savings and Loan Insurance Corporation is problematic. The Federal Savings and Loan Insurance Corporation was dissolved in 1989.² The requirement that a savings and loan must be doing business in the state is unique to savings and loan institutions, there is no similar requirement applicable to a bank or trust company appointed by the court as a depository institution.

III. Effect of Proposed Changes:

The bill amends s. 69.031, F.S., to remove the requirements that a savings and loan be a member of the Federal Savings and Loan Insurance Corporation and be doing business in the state in order to qualify as a depository institution for court-appointed fiduciaries.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹ Section 69.031(1), F.S.

² Pub. L. No. 101–73, 103 Stat. 183 (August 9, 1989).

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 69.031, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Judiciary on March 9, 2020:

The bill as filed only repealed the requirement that a savings and loan be a member of Federal Savings and Loan Insurance Corporation. The committee substitute also repeals the requirement that a savings and loan institution be doing business in the state in order to qualify as a depository institution.

B. Amendments:

None.

By Senator Boyd

21-01680-21

20211288__

1 A bill to be entitled
2 An act relating to assets of an estate in
3 administration; amending s. 69.031, F.S.; deleting a
4 requirement that assets of an estate in administration
5 may be placed in a savings and loan association only
6 if such savings and loan association is a member of
7 the Federal Savings and Loan Insurance Corporation;
8 providing an effective date.
9

10 Be It Enacted by the Legislature of the State of Florida:
11

12 Section 1. Subsection (1) of section 69.031, Florida
13 Statutes, is amended to read:

14 69.031 Designated financial institutions for assets in
15 hands of guardians, curators, administrators, trustees,
16 receivers, or other officers.—

17 (1) When it is expedient in the judgment of any court
18 having jurisdiction of any estate in process of administration
19 by any guardian, curator, executor, administrator, trustee,
20 receiver, or other officer, because the size of the bond
21 required of the officer is burdensome or for other cause, the
22 court may order part or all of the personal assets of the estate
23 placed with a bank, trust company, or savings and loan
24 association (which savings and loan association is ~~a member of~~
25 ~~the Federal Savings and Loan Insurance Corporation and~~ doing
26 business in this state) designated by the court, consideration
27 being given to any bank, trust company or savings and loan
28 association proposed by the officer. When the assets are placed
29 with the designated financial institution, it shall file a

21-01680-21

20211288__

30 receipt therefor in the name of the estate and give the officer
31 a copy. Such receipt shall acknowledge the assets received by
32 the financial institution. All interest, dividends, principal
33 and other debts collected by the financial institution on
34 account thereof shall be held by the financial institution in
35 safekeeping, subject to the instructions of the officer
36 authorized by order of the court directed to the financial
37 institution.

38 Section 2. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Criminal Justice
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JIM BOYD

21st District

February 24, 2021

Senator Jeff Brandes
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Brandes:

I respectfully request that SB 1288: Assets of an Estate in Administration, be scheduled for a hearing in the Committee on Judiciary at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in cursive script, appearing to read "Jim Boyd".

Jim Boyd

cc: Tom Cibula
Joyce Butler
Celia Georgiades

REPLY TO:

☐ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

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 1520

INTRODUCER: Judiciary Committee and Senator Boyd

SUBJECT: Ancillary Property Rights

DATE: March 10, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1520 amends real property law to specify that a utility easement is an interest in real property that must be recorded and may be transferred or assigned, and amends the Marketable Recordable Title Act (MRTA) to provide that it may extinguish certain covenants or restrictions related to zoning requirements or a building or development permit.

In general, an easement allows the holder of the easement the right to enter into a servient estate, which is land owned by another. A utility easement allows entry for the purpose of constructing or maintaining utilities serving the public. The holder of an easement has the right to do what is reasonably necessary to utilize the easement for its original purpose, but no more. The bill requires a utility easement to be recorded in the public records, allows the holder of the easement full property rights in the easement unless expressly provided otherwise in the easement, and provides that assignment of an easement is not an undue burden upon the servient estate.

MRTA simplifies property transactions and modernizes land use by eliminating property rights that are more than 30 years old and predate the root of the title of the property in question. There are, however, numerous exceptions to MRTA whereby a property right is not extinguished by MRTA. The bill amends MRTA to:

- Modify an exception to extinguishment to require that a general reference to a prior right must include an affirmative statement of intent to preserve such property right.
- Specify that MRTA may extinguish a covenant or restriction related to a zoning requirement, building permit, or development permit. However, this will not extinguish the underlying

zoning or building codes or ordinances; nor will it extinguish a covenant or restriction that says on its first page that it was required by local codes.

- Allow covenant revitalization of a covenant or restriction that had been required by a government agency as a condition of a development permit.

The bill includes a statement that the changes to MRTA apply to all real property interests. A person who wishes to protect a property interest potentially extinguished by the bill has until July 1, 2022 to file a Statement of Marketable Title Action in the public records in order to preserve the property interest.

The bill is effective upon becoming law.

II. Present Situation:

Utility Easements

Ownership of real property includes many rights. Maybe one of the most important is the right to exclude others from entering onto the land. Like the other real property rights, the right to exclude others can be transferred in part to another individual or entity. Giving someone else the right to enter a specified portion of one's property for a specific use is known as granting an easement, and the real property subject to the easement is referred to as the servient estate.

A utility easement is a form of easement held by a utility company for the specific purpose of furnishing utilities, generally for benefit of society at large.

The law governing easements generally provides that an easement holder has the right to do what is reasonably necessary for the full enjoyment of the easement, but that the right must not be increased to any greater extent than reasonably necessary and contemplated at the time the easement was created.¹ The "holder of an electric transmission line easement may avail itself of modern inventions and improvements so long as such action is within the scope of the easement."² An easement, like any other contract, is construed according to its plain terms. "The scope of an easement is defined by what is granted, not by what is excluded, and all rights not granted are retained by the grantor. Likewise, the scope of an express easement for a stated purpose cannot be expanded to include any use merely because such use does not impose an added burden on the servient estate."³

The Marketable Record Title Act

The Marketable Record Title Act (MRTA) was enacted in 1963 "to simplify conveyances of real property, stabilize titles, and give certainty to land ownership."^{4,5} Specifically, MRTA extinguishes most rights in real property that are more than 30 years old based on the date of the

¹ *Crutchfield v. F.A. Sebring Realty Co.*, 69 So. 2d 328 (Fla. 1954).

² *Florida Power Corp. v. Silver Lake Homeowners Ass'n*, 727 So. 2d 1149, 1150 (Fla. 5th DCA 1999) (allowing electric utility to change from wood poles to stronger and larger steel poles).

³ *City of Orlando v. MSD-MATTIEK, L.L.C.*, 895 So. 2d 1127 (Fla. 5th DCA 2005)(it was an undue burden on the servient estate to allow installation of fiber optic lines along an electric easement)(internal citations omitted).

⁴ *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910, 914 (Fla. 3d DCA 2016).

⁵ The Marketable Record Title Act is ch. 712, F.S.

root of the title. The root of title “means any title transaction purporting to create or transfer the estate claimed by any person which is the last title transaction to have been recorded at least 30 years before the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.”⁶ Any person who has been vested with any estate in land of record for 30 years or more has a marketable record title, free and clear of most claims or encumbrances against the land that occurred prior to that record title. This allows a prospective buyer, for example, to rely on the first title transaction that occurred more than 30 years ago, together with all title transactions to date, as opposed to searching through decades of possible title transactions. Specifically, MRTA extinguishes the following rights, subject to exceptions:

[A]ll estates, interests, claims, or charges, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title.⁷

MRTA includes a number of exceptions—real property rights that MRTA expressly does not extinguish even if the rights were created in a pre-root instrument. One exception provides that MRTA does not extinguish any property right or title defect disclosed in an instrument recorded in the chain of title from the root forward. However, a general reference to the right or defect is insufficient notice to the title examiner, the reference must be made to the book and page, or to the name of the recorded plat.⁸

Section 712.04, F.S., lists the real property interests that are extinguished where MRTA applies. Unless one of the exceptions of s. 712.03, F.S., applies, a marketable record title is free and clear of all estates, interests, claims, or charges, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title.

Property owners, particularly those with recorded covenants and restrictions designed to preserve the character of the neighborhood, were often dismayed in the past when they discovered that their neighborhood covenants and restrictions had been invalidated by the operation of MRTA. In response, MRTA was amended to allow for covenant revitalization. Different procedures apply, depending upon whether the covenants created a homeowners’ association. Section 712.12, F.S., governs covenant or restriction revitalization by parcel owners not subject to a homeowners’ association. It does not apply to a covenant or restriction required by a governmental agency as a condition of a development permit.

Save Calusa Trust

In *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016), the court addressed the issue of “whether a restrictive covenant, recorded in compliance with a government-imposed condition of a land use approval, is a title interest subject to extinguishment by MRTA.”⁹ The court held that the 99-year restrictive covenant was not a title interest under MRTA, and thus was not subject to extinguishment by MRTA. The court reasoned that the

⁶ Section 712.01(6), F.S.

⁷ Section 712.04, F.S. The exceptions are set forth at s. 712.03, F.S.

⁸ Section 712.03(1), F.S.

⁹ *Id.* at 914. The restrictive covenant at issue required the owner of a golf course, as a prerequisite to redeveloping the property, to have the consent of 75 percent of the homeowners whose homes were in a ring around the course.

restrictive covenant in question was an inseparable part of a governmental action to rezone the property at issue. The court concluded that, based on MRTA's language and case law, MRTA did not extinguish zoning regulations, including the one at issue in the case.¹⁰

III. Effect of Proposed Changes:

Utility Easements

Section 1 of the bill creates s. 704.09, F.S., regarding utility easements. A utility easement is an easement, created by a written grant of easement, for the purpose of providing utility services such as water, wastewater, reclaimed water, natural gas, electricity, drainage, and other utility services.

The bill requires a utility easement to be recorded under the general recording statute, s. 95.01, F.S.

The bill provides that a utility easement may be alienated, assigned, partially assigned, divided, transferred, or apportioned as a divided or undivided interest by its grantee and its successors and assigns, unless otherwise expressly provided in the instrument by which it is created. The bill further provides that an assignment is not an undue burden upon the servient estate if the assignment is consistent with the terms set forth in the instrument creating the utility easement.

The Marketable Record Title Act

Section 2 of the bill amends the exception to MRTA at s. 712.03(1), F.S., for real property rights or title defects referenced in an instrument recorded after the root of title, to require that such instrument is not extinguished by MRTA if it either:

- Specifically references the official records book and page, instrument number, or plat name, of the pre-root instrument; or
- Generally references the estate, interest, easement or use restriction, together with an affirmative statement of intent that the property is subject to such estate, interest, easement or use restriction.

Section 3 of the bill amends the scope of real property rights that may be extinguished by MRTA, at s. 712.04, F.S., to specifically include covenants and restrictions, including any covenant or restriction that depends upon a zoning requirement, building permit, or development permit.

Section 3 also creates two exceptions to the otherwise broad scope of s. 712.04, F.S., to provide that MRTA does not alter or invalidate:

- A comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval, to the extent such law, regulation, or regulatory approval operates independently of matters recorded in the official records; or

¹⁰ *Id.* at 915-16.

- Any recorded covenant or restriction that on the face of the first page of the document states that it was accepted by a governmental entity as part of, or as a condition of, any such comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval.

Section 4 amends s. 712.12, F.S., to allow covenant or restriction revitalization by parcel owners not subject to a homeowners' association where such covenant or restriction was required by a governmental agency as a condition of a development permit.

Section 5 provides an affirmative statement to declare that the amendments made to ss. 712.03, 712.04, and 712.12, F.S., pursuant to this bill are to provide clarification to already existing law. This clarification applies to all estates, interests, claims, covenants, restrictions, and charges, whether imposed or accepted after the effective date of the bill.

Section 6 requires that an individual who seeks to avoid losing a property interest because of the changes to MRTA in this bill file a notice in the public records no later than the earlier of the expiration of the interest or July 1, 2021. The form of notice is governed by s. 712.06, F.S.¹¹

Section 7 directs the Division of Law Revision to replace any language in the bill regarding "the effective date of this act" to the date that the bill becomes law.

Section 8 provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹¹ The notice must contain name and address of the claimant, name and address of the owner, legal description of the affected land, a statement of the legal claim, and the recording information for the document supporting the claim. The notice must be executed and recorded the same as a deed.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Professionals working in the real estate and title industry may need to revise certain documents to clarify what property interests are part of the marketability in the MRTA.

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: 712.03, 712.04, and 712.12.

This bill creates section 704.09, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Judiciary on March 9, 2020

The committee substitute removed telephone service from the description of a utility easement.

B. Amendments:

None.

By Senator Boyd

21-01513A-21

20211520__

A bill to be entitled
An act relating to ancillary property rights; creating
s. 704.09, F.S.; defining the term "utility easement";
providing that a utility easement is an interest in
real property and subject to certain actions unless
otherwise provided in the instrument creating the
easement; providing that the easement is not an undue
burden; amending s. 712.03, F.S.; revising rights that
are not affected or extinguished by marketable record
titles; amending s. 712.04, F.S.; revising what types
of interests are extinguished by a marketable record
title; providing construction; amending s. 712.12,
F.S.; revising the definition of the term "covenant or
restriction"; providing applicability; requiring
persons with certain interests in land which may be
extinguished by this act to file a specified notice to
preserve such interests; providing a directive to the
Division of Law Revision; providing an effective date.

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

Section 1. Section 704.09, Florida Statutes, is created to
read:

704.09 Utility easements.—

(1) For purposes of this section, the term "utility
easement" means an easement, created by a written grant of
easement, for the purpose of providing utility services such as
water, wastewater, reclaimed water, natural gas, electricity,
drainage, telephone, and other utility services.

21-01513A-21

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(2) A utility easement is an interest in real property subject to s. 695.01. Unless otherwise expressly provided in the instrument by which it is created, a utility easement may be alienated, assigned, partially assigned, divided, transferred, or apportioned as a divided or undivided interest by its grantee and its successors and assigns. Provided the assignment is consistent with the terms set forth in the instrument creating the utility easement, the assignment is not an undue burden upon the servient estate.

Section 2. Subsection (1) of section 712.03, Florida Statutes, is amended to read:

712.03 Exceptions to marketability.—Such marketable record title shall not affect or extinguish the following rights:

(1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title, ÷ provided, ~~however,~~ that in the muniments of title those estates, interests, easements, or use restrictions created before the root of title are preserved by identification in the legal description of the property by specific reference to the official records book and page number, instrument number, or plat name or there is otherwise an affirmative statement in a muniment of title to preserve such estates, interests, easements, or use restrictions created before the root of title as identified by the official records book and page or instrument number ~~a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of~~

21-01513A-21

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~~record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests; subject, however, to the provisions of subsection (5).~~

Section 3. Section 712.04, Florida Statutes, is amended to read:

712.04 Interests extinguished by marketable record title.— Subject to s. 712.03, a marketable record title is free and clear of all estates, interests, claims, covenants, restrictions, or charges, the existence of which depends upon any act, title transaction, event, zoning requirement, building or development permit, or omission that occurred before the effective date of the root of title. Except as provided in s. 712.03, all such estates, interests, claims, covenants, restrictions, or charges, however denominated, whether they are or appear to be held or asserted by a person sui juris or under a disability, whether such person is within or without the state, natural or corporate, or private or governmental, are declared to be null and void. However, this chapter does not affect any right, title, or interest of the United States, Florida, or any of its officers, boards, commissions, or other agencies reserved in the patent or deed by which the United States, Florida, or any of its agencies parted with title. This section may not be construed to alter or invalidate:

(1) A comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval, to the extent such law, regulation, or regulatory approval operates independently of matters recorded

21-01513A-21

20211520__

in the official records; or

(2) Any recorded covenant or restriction that on the face of the first page of the document states that it was accepted by a governmental entity as part of, or as a condition of, any such comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval.

Section 4. Paragraph (b) of subsection (1) of section 712.12, Florida Statutes, is amended to read:

712.12 Covenant or restriction revitalization by parcel owners not subject to a homeowners' association.—

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

(b) "Covenant or restriction" means any agreement or limitation ~~imposed by a private party and not required by a governmental agency as a condition of a development permit, as defined in s. 163.3164, which is~~ contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction that may be enforced by a parcel owner.

Section 5. The amendments to ss. 712.03, 712.04, and 712.12, Florida Statutes, in this act are intended to clarify existing law, are remedial in nature, and apply to all estates, interests, claims, covenants, restrictions, and charges, whether imposed or accepted before, on, or after the effective date of this act.

Section 6. A person with an interest in land which may potentially be extinguished by this act, and whose interest has not been extinguished before July 1, 2021, must file a notice

21-01513A-21

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117 pursuant to s. 712.06, Florida Statutes, by July 1, 2022, to
118 preserve such interest.

119 Section 7. The Division of Law Revision is directed to
120 replace the phrase "the effective date of this act" wherever it
121 occurs in this act with the date the act becomes a law.

122 Section 8. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Criminal Justice
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JIM BOYD
21st District

March 2, 2021

Senator Jeff Brandes
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Brandes:

I respectfully request that SB 1520: Ancillary Property Rights, be scheduled for a hearing in the Committee on Judiciary at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in cursive script, appearing to read "Jim Boyd".

Jim Boyd

cc: Tom Cibula
Joyce Butler
Celia Georgiades

REPLY TO:

- ☐ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/9/2021

Meeting Date

1520

Bill Number (if applicable)

Topic Ancillary Property Rights

Amendment Barcode (if applicable)

Name French Brown

Job Title Lobbyist

Address 106 East College Avenue, Suite 1200

Phone 850-459-0992

Street

Tallahassee

FL

32301

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City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Real Property, Probate, and Trust Law Section of the 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: SB 144

INTRODUCER: Senators Brandes and Rodrigues

SUBJECT: Searches of Cellular Phones and Other Electronic Devices

DATE: March 9, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cella	Jones	CJ	Favorable
2. Bond	Cibula	JU	Favorable
3. _____	_____	RC	_____

I. Summary:

SB 144 amends chs. 933 and 934, F.S., relating to search warrants and the security of communications, to address privacy issues related to the use of communication technology and the contents of stored electronic communications.

The bill amends ch. 933, F.S., by:

- Codifying the state constitutional provision that extends the security against unreasonable searches or seizures to the interception of private communications by any means; and
- Expanding the grounds for issuance of a search warrant to include that the content within certain communication devices constitutes evidence relevant to proving a felony.

The bill amends ch. 934, F.S., by:

- Providing legislative intent;
- Defining the terms “historical location data,” “microphone-enabled household device,” “mobile tracking device,” “real-time location tracking,” and “portable electronic communication device”;
- Amending the definition of oral communication to include the use of a microphone-enabled household device;
- Amending the definition of electronic communication, adding the terms “communication tower” and “satellite” to the ways in which the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature can be transmitted; removing the exception of “any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object” from the definition;
- Requiring a search warrant for the interception of wire, oral, or electronic communications, the use of a tracking device, or historical location data;
- Setting forth time constraints for use of a tracking device, and when notice must be provided to the person tracked;

- Allowing for a delayed application for a search warrant when emergency tracking is necessary due to emergency circumstances; and
- Clarifying that certain conduct relating to access to stored communications is not a criminal offense.

The bill is effective July 1, 2021.

II. Present Situation:

The Fourth Amendment of the United States Constitution guarantees:

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures; and
- No warrants shall issue without probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹

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

The Florida Constitution similarly protects the people against unreasonable searches and seizures, and that right is construed in conformity with the Fourth Amendment of the U.S. Constitution.⁵ The Florida Constitution also explicitly protects against the "unreasonable interception of private communications by any means."⁶

Both the Florida and federal constitutions require a search warrant to be supported by probable cause,⁷ as established by oath or affirmation, and to particularly describe the place to be searched and the persons or things to be seized.⁸

Advancing technology has presented law enforcement with new means of investigation and surveillance, and correspondingly has presented the courts with new questions about the Fourth Amendment implications of this technology.⁹

¹ U.S. CONST. AMEND. IV.

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

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

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

⁵ FLA. CONST. art. I, s. 12.

⁶ "No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained." *Id.*

⁷ Probable cause is defined "in terms of facts and circumstances 'sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense'" *Gerstein v. Pugh*, 420 U.S. 103, 111-112 (1975), quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964).

⁸ FLA. CONST. art. I, s. 12 and *supra* note 1.

⁹ See *United States v. Jones*, 565 U.S. 400 (2012), where, in a 5-4 decision the Court found (in a narrow holding eschewing the "reasonable expectation of privacy" analysis most often used by the Court) that attaching a GPS real-time tracker on the suspect's vehicle for the purpose of tracking his whereabouts was a "trespass" upon his "effects" by the Government and therefore a warrant is required; *Smallwood v. State*, 113 So.3d 724, 741 (Fla. 2013), in which the Court, in what it called a

Chapter 933, F.S., Search Warrants

Chapter 933, F.S., contains grounds related to when and why a search warrant may be issued to a law enforcement officer by a judge authorizing the search and seizure of evidence, and the procedures for executing the search warrant.¹⁰

The issuance of a search warrant is based upon probable cause. An application under oath to a judge for a search warrant must “set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.”¹¹ The application must particularly describe the place to be searched and the person and thing to be seized.¹² If the judge finds that probable cause exists for the issuance of the search warrant, the judge must issue the search warrant.¹³

The grounds for the issuance of a search warrant include:

- When the property has been stolen or embezzled in violation of law;
- When any property has been used:
 - As a means to commit any crime;
 - In connection with gambling, gambling implements and appliances; or
 - In violation of s. 847.011, F.S., or other laws in reference to obscene prints and literature;
- When any property constitutes evidence relevant to proving that a felony has been committed;
- When any property is being held or possessed:
 - In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;
 - In violation of the fish and game laws;
 - In violation of the laws relative to food and drug; or
 - In violation of the laws relative to citrus disease pursuant to s. 581.184, F.S.; or
- When the laws in relation to cruelty to animals, as provided in ch. 828, F.S., have been or are violated in any particular building or place.¹⁴

A search warrant may also be issued for the search for and seizure of “any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.”¹⁵

Section 933.18, F.S., limits the grounds for the issuance of a search warrant for a private

decision “narrowly limited to the legal question and facts with which we were presented,” decided that for a search incident to arrest of the contents of a suspect’s cell phone, a warrant is required if there are no search incident to arrest justifications (officer protection or evidence preservation) for searching the contents; *Tracey v. State*, 152 So.3d 504 (Fla. 2014), a case involving real-time cell site location information, where the Court determined that the use of Tracey’s cell site location information to track him in real-time was a search for which probable cause was required; *Carpenter v. United States*, 138 S.Ct. 2206 (2018), found that obtaining a court order, rather than a warrant requiring a showing of probable cause, to access historical cell-site records implicates the Fourth Amendment therefore the Government will generally need a warrant.

¹⁰ Sections 933.01- 933.19, F.S.

¹¹ Section 933.06, F.S.

¹² Section 933.04, F.S.

¹³ Section 933.07, F.S.

¹⁴ Section 933.02(1)-(5), F.S.

¹⁵ Section 933.02, F.S.

dwelling to particular circumstances. No search warrant may be issued for a private dwelling under ch. 933, F.S., or any other law of the state unless:

- It is being used for the unlawful sale, possession, or manufacture of intoxicating liquor;
- Stolen or embezzled property is contained therein;
- It is being used to carry on gambling;
- It is being used to perpetrate frauds and swindles;
- The law relating to narcotics or drug abuse is being violated therein;
- A weapon, instrumentality, or means by which a felony has been committed, or evidence relevant to proving said felony has been committed, is contained therein;
- One or more of the following child abuse offenses is being committed there:
 - Interference with custody, in violation of s. 787.03, F.S.;
 - Commission of an unnatural and lascivious act with a child, in violation of s. 800.02, F.S.; or
 - Exposure of sexual organs to a child, in violation of s. 800.03, F.S.
- It is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, boardinghouse, or lodginghouse;
- It is being used for the unlawful sale, possession, or purchase of wildlife, saltwater products, or freshwater fish being unlawfully kept therein;
- The laws in relation to cruelty to animals, as provided in ch. 828, F.S., have been or are being violated therein; or
- An instrumentality or means by which sexual cyberharassment has been committed in violation of s. 784.049, F.S., or evidence relevant to proving that sexual cyberharassment has been committed in violation of s. 784.049, F.S., is contained therein.¹⁶

After a law enforcement officer executes a search warrant, he or she must then bring the property seized and any person arrested in connection with the property before the judge or another court having jurisdiction of the offense.¹⁷ A copy of the search warrant and an inventory of any property seized during the execution of the warrant must either be delivered to the person whose property is the subject of the search warrant, or may be left upon the premises if no one is there.¹⁸ The search warrant and a sworn copy of any required inventory must be returned to the judge.¹⁹

Chapter 934, F.S., Security of Communications; Surveillance – Interception of Wire, Oral, or Electronic Communications

Sections 934.03-934.09, F.S., govern the interception of wire, oral, or electronic communications. “Intercept” is defined as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.²⁰ These sections of law are patterned after federal law, and address the relationships

¹⁶ Section 933.18, F.S.

¹⁷ Section 933.07(1), F.S.

¹⁸ Section 933.11, F.S.

¹⁹ Section 933.12, F.S.

²⁰ Section 934.02(3), F.S.

between citizens, communications service providers, and investigative and law enforcement officers with respect to the obtainment and use of wire, oral, or electronic communications.²¹

Intentionally intercepting another person's wire, oral, or electronic communication is generally prohibited under s. 934.03, F.S. However, under circumstances where a communications service provider is served with a court order, the service provider is allowed to provide information, facilities, or technical assistance to a person who is authorized to intercept wire, oral, or electronic communications.²² If a person's wire or oral communications are intercepted under circumstances not permitted in ss. 934.03-934.09, F.S., none of the content or evidence derived from the content may be used as evidence.²³

The Governor, Attorney General, statewide prosecutor, or any state attorney can authorize a law enforcement agency to apply to a judge for a court order permitting the interception of wire, oral, or electronic communications.²⁴ Intercepting the communication is authorized when the interception may provide or has provided evidence of the commission of the crimes enumerated in s. 934.07(1), F.S.²⁵

Section 934.09, F.S., contains the procedures related to the interception of wire, oral, or electronic communications. The procedures include what the application for a court order for the interception must contain, the time limitations for the interception, extensions of time, notice to the person whose communication has been intercepted, and special procedures in emergency situations.

To issue an order authorizing the interception, a court must determine that there is probable cause for belief that an individual is committing, has committed, or is about to commit an offense as listed in s. 934.07, F.S., and that there is probable cause for belief that particular communications concerning that offense will be obtained through such interception.²⁶

²¹ Electronic Communications Privacy Act of 1986 (ECPA), 18 U.S.C. s. 2510-22. The ECPA updated the Federal Wiretap Act of 1968, which addressed interception of conversations using "hard" telephone lines, but did not apply to interception of computer and other digital and electronic communications. See U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Justice Information Sharing, Privacy & Civil Liberties* (April 23, 2019), available at <https://it.ojp.gov/PrivacyLiberty/authorities/statutes/1285> (last viewed Jan. 21, 2021).

²² Section 934.03(2)(a)2., F.S.

²³ The content of the wire or oral communications or evidence derived from the content may not be admitted as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof. Section 934.06, F.S.

²⁴ Section 934.07(1), F.S.

²⁵ The crimes listed in s. 934.07(1)(a), F.S., are murder, kidnapping, aircraft piracy, arson, gambling, robbery, burglary, theft, dealing in stolen property, criminal usury, bribery, or extortion; any felony violation of ss. 790.161-790.166, F.S. (offenses for destructive devices); inclusive; any violation of s. 787.06, F.S. (human trafficking); any violation of ch. 893, F.S. (drug abuse prevention and control); any violation of the provisions of the Florida Anti-Fencing Act; any violation of ch. 895, F.S., (offenses concerning racketeering and illegal debts); any violation of ch. 896, F.S. (offenses related to financial transactions); any violation of ch. 815, F.S. (computer-related crimes); any violation of ch. 847, F.S. (offenses related to obscenity); any violation of s. 827.071, F.S. (sexual performance by a child); any violation of s. 944.40, F.S. (offenses related to escape); or any conspiracy or solicitation to commit any violation of the laws of this state relating to the crimes listed.

Section 934.07(1)(b), F.S., authorizes the FDLE to seek a court order to intercept wire, oral, or electronic communications when the interception may provide or has provided evidence of the commission of any offense that may be an act of terrorism or in furtherance of an act of terrorism or evidence of any conspiracy or solicitation to commit any such violation.

²⁶ Section 934.09(3), F.S.

Section 934.10, F.S., contains the civil remedies available to a person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09, F.S.

Advancing Technology - Location Tracking

Cell phones, smartphones, laptops, and tablets are all mobile devices that can be located whenever they are turned on.²⁷ There are essentially three methods of locating a mobile device:

- *Network-based location*, which occurs when a mobile device communicates with nearby cell sites. The mobile device communicates through a process called registration even when the device is idle. The service provider of the mobile device²⁸ can also initiate the registration of a device. This information is stored in provider databases in order to route calls. The smaller the cell site, the more precise the location data.
- *Handset-based location*, which uses information transmitted by the device itself, such as global positioning system (GPS) data.
- *Third-party methods*, which facilitate real-time tracking of a mobile signal directly by using technology that mimics a wireless carrier's network.²⁹

Mobile Tracking Devices

Mobile tracking devices can also be used to track a person's location. This broad category of devices includes radio frequency (RF)-enabled tracking devices (commonly referred to as "beepers"), satellite-based tracking devices, and cell-site tracking devices. Satellite-based tracking devices are commonly referred to as "GPS devices."³⁰

Florida law defines a "tracking device" as an electronic or mechanical device which permits the tracking of movement of a person or object.³¹ Section 934.42, F.S., requires a law enforcement officer to apply to a judge for a court order approving the "installation and use of a mobile tracking device."³² If the court grants the order, the officer installs and uses the device.³³ The application for such an order must include:

- A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation;
- A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency;
- A statement of the offense to which the information likely to be obtained relates; and
- A statement whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.³⁴

²⁷ *Locational Privacy, Cell Phone Tracking Methods*, Electronic Privacy Information Center, available at <https://epic.org/privacy/location> (last viewed Jan. 21, 2021).

²⁸ A service provider is the company that provides the Internet to the mobile device. *Id.*

²⁹ *Id.*

³⁰ Ian Herbert, *Where We are with Location Tracking: A Look at the Current Technology and the Implications on Fourth Amendment Jurisprudence*, Berkley J. of Crim. Law, Vol. 16, Issue 2, p. 442, n. 1 (Fall 2011), available at https://www.bjcl.org/assets/files/16_2-herbert_formatted.pdf (last viewed Jan. 21, 2021).

³¹ Section 934.42(6), F.S.

³² Section 934.42(1)-(2), F.S.

³³ Section 934.42(3), F.S.

³⁴ Section 934.42(2), F.S.

The court then must review the application. If it finds that the above-described requirements are met, the court will order the authorization of the installation and use of a mobile tracking device. The court is not allowed to require greater specificity or additional information than the information listed above.³⁵

The installation and the monitoring of a mobile tracking device is governed by the standards established by the United States Supreme Court.³⁶

Cellular-Site Location Data

In the United States, it has been reported that there are 327.6 million cell phones in use, which is more than the current U.S. population (315 million people).³⁷ “As the cell phone travels, it connects to various cell phone towers, which means an electronic record of its location is created[.]”³⁸ The cell phone’s location record is held by the telecommunications company that services the device.³⁹

Cellular-site location information (CSLI) is information generated when a cell phone connects and identifies its location to a nearby cell tower that, in turn, processes the phone call or text message made by the cell phone. “CSLI can be ‘historic,’ in which case the record is of a cell phone’s past movements, or it can be ‘real-time’ or prospective, in which case the information reveals the phone’s current location.”⁴⁰ Historic CSLI enables law enforcement to piece together past events by connecting a suspect to the location of a past crime.⁴¹ Real-time location information helps law enforcement trace the current whereabouts of a suspect.⁴²

GPS Location Data

A cell phone’s GPS capabilities allow it to be tracked to within 5 to 10 feet.⁴³ GPS provides users with positioning, navigation, and timing services based on data available from satellites orbiting the earth.⁴⁴ If a mobile device is equipped with GPS technology, significantly more precise location information is then sent from the handset to the carrier.⁴⁵

³⁵ Section 934.42(3) and (4), F.S.

³⁶ Section 934.42(5), F.S.

³⁷ Mana Azarmi, *Location Data: The More They Know*, Center for Democracy and Technology, (November 27, 2017), available at <https://cdt.org/blog/location-data-the-more-they-know/> (last viewed Jan. 21, 2021).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Cell Phone Location Tracking*, National Association of Criminal Defense Lawyers, (June 7, 2016) available at https://www.law.berkeley.edu/wp-content/uploads/2015/04/2016-06-07_Cell-Tracking-Primer_Final.pdf (last viewed Jan. 21, 2021).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *GPS Location Privacy*, GPS.gov, (December 11, 2020) available at <https://www.gps.gov/policy/privacy> (last viewed Jan. 21, 2021).

⁴⁵ Patrick Bertagna, *How does a GPS tracking system work?*, October 26, 2010, EE Times available at https://www.eetimes.com/document.asp?doc_id=1278363&page_number=2 (last viewed Jan. 21, 2021).

Microphone-Enabled Household Devices

Another emerging technology raising privacy concerns is the smart speaker. Smart speakers, like the Google Nest⁴⁶ or Amazon Alexa,⁴⁷ are devices that use voice-activated artificial intelligence technology to respond to commands. They are designed as virtual home assistants and intended to be used in as many different ways as possible.⁴⁸

Although the term “always on” is often used to describe smart speakers, this is not entirely accurate. Speech activated devices use the power of energy efficient processors to remain in an inert state of passive processing, or “listening,” for the “wake words.” The device buffers and re-records locally, without transmitting or storing any information, until it detects the word or phrase that triggers the device to begin actively recording and transmitting audio outside of the device to the service provider.⁴⁹

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

Several definitions in ch. 934, F.S., are pertinent to the bill:

- “Contents,” when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.⁵⁰
- “Electronic communication” means the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce. The definition does not include: any wire or oral communication; any communication made through a tone-only paging device; any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.⁵¹
- “Electronic communication service” means any service which provides to users thereof the ability to send or receive wire or electronic communications.⁵²
- “Electronic communications system” means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.⁵³
- “Electronic, mechanical, or other device” means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than any telephone or telegraph instrument, equipment, or facility, or any component thereof:

⁴⁶ Google Nest, Google Store, available at https://store.google.com/category/connected_home (last viewed Jan. 21, 2021).

⁴⁷ Amazon Alexa, available at <https://developer.amazon.com/en-US/alexa> (last viewed January 21, 2021).

⁴⁸ Allen St. John, *Smart Speakers that Listen When They Shouldn't*, Consumer Reports, August 29, 2019, available at <https://www.consumerreports.org/smart-speakers/smart-speakers-that-listen-when-they-shouldnt/> (last viewed Jan. 21, 2021).

⁴⁹ *Id.* See also Stacey Gray, *Always On: Privacy Implications Of Microphone-Enabled Devices*, The Future of Privacy Forum, (April 2016), available at https://fpf.org/wp-content/uploads/2016/04/FPF_Always_On_WP.pdf (last viewed Jan. 21, 2021).

⁵⁰ Section 934.02(7), F.S.

⁵¹ Section 934.02(12), F.S.

⁵² Section 934.02(15), F.S.

⁵³ Section 934.02(14), F.S.

- Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or
- Being used by a provider of wire or electronic communications service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of her or his duties.⁵⁴
- “Electronic storage” means any temporary intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof, and any storage of a wire or electronic communication by an electronic communication service for purposes of backup protection of such communication.⁵⁵
- “Intercept” means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.⁵⁶
- “Investigative or law enforcement officer” means any officer of the State of Florida or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, who is empowered by law to conduct on behalf of the Government investigations of, or to make arrests for, offenses enumerated in this chapter or similar federal offenses, any attorney authorized by law to prosecute or participate in the prosecution of such offenses, or any other attorney representing the state or political subdivision thereof in any civil, regulatory, disciplinary, or forfeiture action relating to, based upon, or derived from such offenses.⁵⁷
- “Oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.⁵⁸
- “Remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communications system.⁵⁹
- “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of such connection in a switching station furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce.⁶⁰

Prohibited Access to Stored Communications

Under certain circumstances, Florida law prohibits accessing stored communications. It is unlawful for a person to:

- Intentionally access a facility through which an electronic communication service is provided; or

⁵⁴ Section 934.02(4), F.S.

⁵⁵ Section 934.02(17), F.S.

⁵⁶ Section 934.02(3), F.S.

⁵⁷ Section 934.02(6), F.S.

⁵⁸ Section 934.02(2), F.S.

⁵⁹ Section 934.02(19), F.S.

⁶⁰ Section 934.02(1), F.S.

- Intentionally exceed an authorization to access; and
- Obtain, alter, or prevent authorized access to a wire or electronic communication while it is in electronic storage in such a system.⁶¹

The penalties for this offense vary based on the specific intent and the number of offenses.⁶² It is a first degree misdemeanor⁶³ if the above described offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain.⁶⁴ Any subsequent offense with this intent is a third degree felony.⁶⁵ If the person did not have the above-described intent then the above-described offense is a second degree misdemeanor.⁶⁶

III. Effect of Proposed Changes:

Chapter 933, F.S., Search Warrants (Sections 1 and 2)

The bill amends s. 933.02, F.S., to incorporate content held within a cellular phone, portable electronic communication device, or microphone-enabled household device as among the grounds upon which a search warrant may be issued by a judge, if the content constitutes evidence relevant to proving that a felony has been committed.

Section 933.04, F.S., is amended to add the constitutional provision found in Article I, section 12 of the Constitution of Florida that protects private communications from unreasonable interception just as persons, houses, and effects are protected from unreasonable searches and seizures.

Chapter 934, F.S., Legislative Findings (Section 3)

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

The bill also creates new legislative findings:

- Recognizing a subjective and objectively reasonable expectation of privacy in real-time cell-site location data, real-time precise GPS location data, and historical precise GPS location data. As such, the law enforcement collection of the precise location of a person, cellular phone, or portable electronic communication device without the consent of the device owner should be allowed only when authorized by a warrant issued by a court and should remain under the control and supervision of the authorizing court.
- Recognizing that the use of portable electronic devices is growing at a rapidly increasing rate. These devices can store, and encourage the storage of, an almost limitless amount of personal and private information. Further recognizing that these devices are commonly used

⁶¹ Section 934.21(1), F.S.

⁶² See s. 934.21(2), F.S.

⁶³ A first degree misdemeanor is punishable by up to one year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

⁶⁴ Section 934.21(2), F.S.

⁶⁵ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

⁶⁶ A second degree misdemeanor is punishable by up to 60 days in county jail, a fine of up to \$500, or both. Sections 775.082 and 775.083, F.S.

to access personal and business information and other data stored in computers and servers that can be located anywhere in the world. Recognizing a person who uses a portable electronic device has a reasonable and justifiable expectation of privacy in the information contained in the portable electronic device.

- Recognizing that microphone-enabled household devices often contain microphones that listen for and respond to environmental triggers. Further recognizing that these devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility of daily household information in a device itself or in a remote computing service. Finding that an individual should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in one's home.

Chapter 934, F.S., Security of Communications Definitions (Section 4)

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

- The current definition of “oral communication” is amended to include the use of a microphone-enabled household device.
- The definition of “electronic communication” is amended by:
 - Adding the terms “communication tower” and “satellite” to the ways in which the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature can be transmitted; and
 - Removing the exception of “any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object” from the definition;
- The definition of “microphone-enabled household device” is created and is defined as a device, sensor, or other physical object within a residence:
 - Capable of connecting to the Internet, directly or indirectly, or to another connected device;
 - Capable of creating, receiving, accessing, processing, or storing electronic data or communications;
 - Which communicates with, by any means, another device, entity, or individual; and
 - Which contains a microphone designed to listen for and respond to environmental cues.
- The definition of “portable electronic communication device” is created and is defined as an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, or storing electronic data or communications and which communicates with, by any means, another device, entity, or individual.

Interception of Wire, Oral, or Electronic Communications (Sections 5 – 9)

Section 5: The bill amends s. 934.03(2)(a), F.S., to require a search warrant, rather than a court order, for a law enforcement officer authorized by law to intercept wire, oral, or electronic communications to obtain information, facilities, or technical assistance from a wire, oral, or electronic communication service provider.

Section 6: Section 934.06, F.S., currently prohibits the use of intercepted wire or oral communication as evidence if the disclosure of that information would violate a provision of ch. 934, F.S. The bill adds the content of a cellular phone, microphone-enabled household device, or portable electronic communication device to this prohibition, and requires a search

warrant to obtain that content. The bill also specifically provides that the communication may be used as evidence if the communication is lawfully obtained under circumstances where a search warrant is not required.

Section 7: The bill amends s. 934.07(1) and (2), F.S., to require a search warrant, rather than a court order, for the interception of wire, oral, or electronic communications.

Section 8: The bill amends the procedures found in s. 934.09, F.S., for intercepting the contents of wire, oral, or electronic communications to require that a judge issue a search warrant, rather than a court order.

Section 9: The bill retains current law relating to the civil remedies available to a person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09, F.S., while replacing the terms court order, subpoena, and legislative authorization with the term search warrant.

Penalties for Accessing Stored Communications (Section 10)

The bill amends s. 934.21, F.S., to specify that the penalty for accessing a facility through which an electronic communication service is provided without authorization to obtain, alter, or prevent authorized access to a wire or electronic communication does not apply to conduct authorized:

- By the provider⁶⁷ or user⁶⁸ of wire, oral, or electronic communications services through cellular phones, portable electronic communication devices, or microphone-enabled household devices;
- In ss. 934.09, 934.23, or 934.24, F.S.;
- Under ch. 933, F.S.;⁶⁹ or
- For legitimate business purposes that do not identify the user.

Location Tracking (Section 11)

The bill creates new definitions related to location tracking in s. 934.42, F.S. The bill provides that:

- “Historical location data” means historical precise GPS location data in the possession of a provider.
- “Mobile tracking device” means an electronic or mechanical device that tracks the movement of a person or an object.
- “Real-time location tracking” means the:
 - Installation and use of a mobile tracking device on the object to be tracked;
 - Acquisition of real-time cell-site location data; or
 - Acquisition of real-time precise GPS location data.

The bill also amends s. 934.42, F.S., to require a search warrant rather than a court order for an investigative or law enforcement officer to engage in real-time location tracking or to acquire

⁶⁷ Section 934.21(3)(a), F.S.

⁶⁸ Section 934.21(3)(b), F.S.

⁶⁹ Chapter 933, F.S., authorizes search and inspection warrants.

historical location data in the possession of a provider. This means that an investigative or law enforcement officer must meet the higher standard of having probable cause for purposes of a search warrant rather than the lower standard of having a reasonable, articulable suspicion.

The bill requires that the application for a search warrant set forth a reasonable length of time that the mobile tracking device may be used or the location data may be obtained in real-time. This time period may not exceed 45 days from the date the search warrant is issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. When seeking historical location data the applicant must specify a date range for the data sought.

If the court issues a search warrant, the search warrant must also require the investigative or law enforcement officer to complete any authorized installation within a specified time-frame no longer than 10 days. A search warrant that permits the use of a mobile tracking device must be returned to the issuing judge within 10 days of the time period specified in the search warrant ending. Additionally, a search warrant authorizing the collection of historical GPS data must be returned to the issuing judge within 10 days after receiving the records.

Also, within 10 days after the use of the tracking device has ended or the historical location has been received from the service provider, the investigative or law enforcement officer executing the search warrant must serve a copy of the search warrant on the person who was tracked, whose property was tracked, or whose historical location data was received.⁷⁰ Upon a showing of good cause for postponement, the court may grant a postponement of this notice in 90 day increments.

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

The bill retains current provisions for real-time tracking without a search warrant if an emergency exists which:

- Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner;
- Requires the real-time tracking before a warrant authorizing such tracking can, with due diligence, be obtained; and if
- There are grounds upon which a warrant could be issued to authorize the real-time tracking.⁷¹

Within 48 hours after the tracking has occurred or begins to occur, a search warrant approving the real-time tracking must be issued in accordance with s. 934.42, F.S. When an application for a search warrant is denied, when the information sought has been obtained, or when 48 hours have lapsed since the tracking began, whichever is earlier, the tracking must be terminated immediately.

⁷⁰ Service may be accomplished by delivering a copy to the person who, or whose property, was tracked or data obtained; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address.

⁷¹ This exception is similar to that found in s. 934.09(7), F.S., related to intercepting wire, oral, or electronic communication.

The bill reenacts ss. 934.22, 934.27, 934.23, 934.24, 934.25, and 934.28, F.S., for the purpose of incorporating the amendments made by the bill.

The bill is effective 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:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement reports that it does not anticipate a fiscal impact related to SB 144.⁷²

VI. Technical Deficiencies:

None.

⁷² FDLE, *Senate Bill 144 Analysis* (December 22, 2020) (on file with the Senate Committee on Criminal Justice).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 933.02, 933.04, 934.01, 934.02, 934.03, 934.06, 934.07, 934.09, 934.10, 934.21, and 934.42.

The bill reenacts the following sections of the Florida Statutes: 934.22, 934.23, 934.24, 934.25, 934.27, and 934.28.

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 Brandes

24-00046-21

2021144__

A bill to be entitled

An act relating to searches of cellular phones and other electronic devices; amending s. 933.02, F.S.; expanding the grounds for issuance of a search warrant to include content held within a cellular phone, portable electronic communication device, or microphone-enabled household device when such content constitutes evidence relevant to proving that a felony has been committed; amending s. 933.04, F.S.; adopting the constitutional protection against unreasonable interception of private communications by any means for purposes of obtaining a search warrant; amending s. 934.01, F.S.; revising and providing legislative findings; amending s. 934.02, F.S.; redefining the terms "oral communication" and "electronic communication"; defining the terms "microphone-enabled household device" and "portable electronic communication device"; amending s. 934.03, F.S.; authorizing specified persons to provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if such person has been provided with a search warrant issued by a judge of competent jurisdiction; prohibiting specified persons from disclosing the existence of any interception of a wire, oral, or electronic communication with respect to which the person has been served with a search warrant, rather than a court order; amending s. 934.06, F.S.; prohibiting the use of certain

24-00046-21

2021144__

communication content in any trial, hearing, or other proceeding which was obtained without a specified warrant; providing an exception; amending s. 934.07, F.S.; authorizing a judge to issue a search warrant, rather than grant a court order, in conformity with specified provisions; authorizing the Department of Law Enforcement to request a law enforcement agency that provided certain information to join the department in seeking a new search warrant; amending s. 934.09, F.S.; requiring that each application for a search warrant, rather than an order, authorizing or approving the interception of wire, oral, or electronic communications be made in writing and state the applicant's authority; revising the required information that each application for a search warrant must include; authorizing a judge to authorize a search warrant ex parte, rather than an ex parte order, based on the application under certain circumstances; specifying requirements for search warrants, rather than orders, issued under certain circumstances; authorizing an aggrieved person to move to suppress the contents of certain wire, oral, or electronic communications before, as well as during, a trial, hearing, or proceeding; providing for inadmissibility of certain evidence if a certain motion is granted; authorizing a judge of competent jurisdiction to authorize interception within this state under specified circumstances; amending s. 934.10, F.S., and reenacting subsection (1), relating

24-00046-21

2021144__

to civil remedies; providing that a good faith
reliance on a search warrant, rather than a court
order, subpoena, or legislative authorization, issued
under certain provisions constitutes a complete
defense against specified actions; amending s. 934.21,
F.S.; revising the exceptions to conduct that
constitutes unlawful access to stored communications;
conforming a provision to changes made by the act;
amending s. 934.42, F.S.; defining the terms
"historical location data," "mobile tracking device,"
and "real-time location tracking"; authorizing an
investigative or law enforcement officer to apply to a
judge of competent jurisdiction for a search warrant,
rather than an order, authorizing real-time location
tracking or acquisition of historical location data;
requiring an application for a search warrant to
include a statement setting forth a reasonable period
of time the mobile tracking device may be used or the
location data may be obtained in real time, not to
exceed a specified limit; authorizing a court to
grant, for good cause, extensions that do not
individually exceed a specified limit; requiring an
applicant seeking historical location data to specify
a date range for the data sought; deleting a provision
requiring a certification to be included in the
application; requiring the court, if it finds probable
cause and that the application contains the required
statements, to grant a search warrant ex parte rather
than entering an ex parte order; specifying that the

24-00046-21

2021144__

88 search warrant may authorize real-time location
89 tracking or acquisition of historical location data;
90 providing that the search warrant may authorize the
91 tracking as specified; requiring the search warrant to
92 command the investigative or law enforcement officer
93 to complete any initiation of the location tracking or
94 execution of the search warrant for historical
95 location data authorized by the search warrant within
96 a certain timeframe; providing requirements for the
97 return of the search warrant to the judge and for
98 service of a copy of the search warrant on the person
99 who was tracked or whose property was tracked;
100 providing requirements for returning and serving a
101 search warrant authorizing the acquisition of
102 historical location data; authorizing a court, for
103 good cause, to postpone the notice requirement for a
104 specified time period; requiring that the standards
105 established by Florida courts for the installation,
106 use, or monitoring of mobile tracking devices and the
107 acquisition of location data apply to the
108 installation, use, or monitoring of any device and the
109 acquisition of location data as authorized by certain
110 provisions; deleting the definition of "tracking
111 device"; authorizing any investigative or law
112 enforcement officer who is specially designated by
113 certain persons and who makes specified determinations
114 to engage in real-time location tracking if a search
115 warrant is obtained, as specified, after the tracking
116 has occurred or begins to occur; specifying when real-

24-00046-21

2021144__

time location tracking must terminate; reenacting s. 934.22(2)(b), F.S., relating to voluntary disclosure of customer communications or records, to incorporate the amendments made to ss. 934.03 and 934.07, F.S., in references thereto; reenacting s. 934.27(1) and (4), F.S., relating to relief, damages, and defenses for certain civil actions, to incorporate the amendments made to ss. 934.09 and 934.21, F.S., in references thereto; reenacting ss. 934.23(6), 934.24(6) and (7), 934.25(5), and 934.28, F.S., relating to required disclosures of customer communications or records, a subscriber or customer filing a motion for certain relief and customer notification, delayed notice, and the exclusivity of remedies and sanctions for certain violations, respectively, to incorporate the amendment made to s. 934.21, F.S., in references thereto; providing an effective date.

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

Section 1. Section 933.02, Florida Statutes, is amended to read:

933.02 Grounds for issuance of search warrant.—Upon proper affidavits being made, a search warrant may be issued under ~~the provisions of~~ this chapter upon any of the following grounds:

(1) When the property shall have been stolen or embezzled in violation of law.†

(2) When any property shall have been used:

(a) As a means to commit any crime;

24-00046-21

2021144__

(b) In connection with gambling, gambling implements and appliances; or

(c) In violation of s. 847.011 or other laws in reference to obscene prints and literature.~~+~~

(3) When any property, or when content held within a cellular phone, a portable electronic communication device as defined in s. 934.02(28), or a microphone-enabled household device as defined in s. 934.02(27), constitutes evidence relevant to proving that a felony has been committed.~~+~~

(4) When any property is being held or possessed:

(a) In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;

(b) In violation of the fish and game laws;

(c) In violation of the laws relative to food and drug; or

(d) In violation of the laws relative to citrus disease pursuant to s. 581.184.~~;~~~~or~~

(5) When the laws in relation to cruelty to animals, as provided in chapter 828, have been or are violated in any particular building or place.

This section also applies to any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.

Section 2. Section 933.04, Florida Statutes, is amended to read:

933.04 Affidavits.—The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches and against the unreasonable interception of private communications by any means may ~~shall~~ not be violated

24-00046-21

2021144__

and ~~a~~ ~~no~~ search warrant may not ~~shall~~ be issued except upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person and thing to be seized.

Section 3. Section 934.01, Florida Statutes, is amended to read:

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

(1) Wire communications are normally conducted through the use of facilities which form part of an intrastate network. The same facilities are used for interstate and intrastate communications.

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

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

24-00046-21

2021144__

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

(5) To safeguard the privacy of innocent persons, the Legislature recognizes the subjective expectation of privacy in real-time cell-site location data, real-time precise global positioning system location data, and historical precise global positioning system location data which society is now prepared to accept is objectively reasonable. As such, the law enforcement collection of the precise location of a person, cellular phone, or portable electronic communication device without the consent of the person or owner of the cellular phone or portable electronic communication device should be allowed only when authorized by a search warrant issued by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court.

(6) The Legislature recognizes that the use of portable electronic communication devices is growing at a rapidly increasing rate. These devices can store, and encourage the storing of, an almost limitless amount of personal and private information. Often linked to the Internet, these devices are

24-00046-21

2021144__

commonly used to access personal and business information and databases in computers and servers that can be located anywhere in the world. The user of a portable electronic communication device has a reasonable and justifiable expectation of privacy in the information that these devices contain.

(7) The Legislature recognizes that the use of household electronic devices, including microphone-enabled household devices, is growing rapidly. These devices often contain microphones that listen for and respond to environmental cues. These household devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility to daily household information in the device itself or in a remote computing service. Persons should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in their own homes.

Section 4. Subsections (2) and (12) of section 934.02, Florida Statutes, are amended, and subsections (27) and (28) are added to that section, to read:

934.02 Definitions.—As used in this chapter:

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

(12) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence

24-00046-21

2021144__

of any nature transmitted in whole or in part by a wire, a
radio, a communication tower, a satellite, an electromagnetic, a
photoelectronic, or a photooptical system that affects
intrastate, interstate, or foreign commerce, but does not
include:

(a) Any wire or oral communication;

(b) Any communication made through a tone-only paging
device;

~~(c) Any communication from an electronic or mechanical
device which permits the tracking of the movement of a person or
an object; or~~

(c)(d) Electronic funds transfer information stored by a
financial institution in a communications system used for the
electronic storage and transfer of funds.

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

(a) Is capable of connecting to the Internet, directly or
indirectly, or to another connected device;

(b) Is capable of creating, receiving, accessing,
processing, or storing electronic data or communications;

(c) Communicates with, by any means, another device,
entity, or individual; and

(d) Contains a microphone designed to listen for and
respond to environmental cues.

(28) "Portable electronic communication device" means an
object that may be easily transported or conveyed by a person;
is capable of creating, receiving, accessing, processing, or
storing electronic data or communications; and communicates
with, by any means, another device, entity, or individual.

24-00046-21

2021144__

Section 5. Subsection (2) of section 934.03, Florida Statutes, is amended to read:

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited.—

(2)(a)1. It is lawful under this section and ss. 934.04-934.09 for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public may not use ~~shall not utilize~~ service observing or random monitoring except for mechanical or service quality control checks.

2. Notwithstanding any other law, a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person, may provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if such provider, or an officer, employee, or agent thereof, or landlord, custodian, or other person, has been provided with:

a. ~~A court order directing such assistance signed by the authorizing judge; or~~

~~b. A certification in writing by a person specified in s. 934.09(7) that~~ a search ~~no~~ warrant or court order is not

24-00046-21

2021144__

required by law, that all statutory requirements have been met,
and that the specified assistance is required, setting forth the
period of time during which the provision of the information,
facilities, or technical assistance is authorized and specifying
the information, facilities, or technical assistance required;
or

b. A search warrant issued by a judge of competent
jurisdiction as required by law.

3. A provider of wire, oral, or electronic communication
service, or an officer, employee, or agent thereof, or landlord,
custodian, or other person may not disclose the existence of any
interception or the device used to accomplish the interception
with respect to which the person has been served with a search
warrant ~~furnished an order under this section and ss. 934.04-
934.09~~, except as may otherwise be required by legal process and
then only after prior notice to the Governor, the Attorney
General, the statewide prosecutor, or a state attorney, as may
be appropriate. Any such disclosure renders such person liable
for the civil damages provided under s. 934.10, and such person
may be prosecuted under s. 934.43. An action may not be brought
against any provider of wire, oral, or electronic communication
service, or an officer, employee, or agent thereof, or landlord,
custodian, or other person for providing information,
facilities, or assistance in accordance with the terms of a
search warrant ~~court order under this section and ss. 934.04-
934.09~~.

(b) It is lawful under this section and ss. 934.04-934.09
for an officer, employee, or agent of the Federal Communications
Commission, in the normal course of his or her employment and in

24-00046-21

2021144__

349 discharge of the monitoring responsibilities exercised by the
350 commission in the enforcement of 47 U.S.C. chapter 5, to
351 intercept a wire, oral, or electronic communication transmitted
352 by radio or to disclose or use the information thereby obtained.

353 (c) It is lawful under this section and ss. 934.04-934.09
354 for an investigative or law enforcement officer or a person
355 acting under the direction of an investigative or law
356 enforcement officer to intercept a wire, oral, or electronic
357 communication when such person is a party to the communication
358 or one of the parties to the communication has given prior
359 consent to such interception and the purpose of such
360 interception is to obtain evidence of a criminal act.

361 (d) It is lawful under this section and ss. 934.04-934.09
362 for a person to intercept a wire, oral, or electronic
363 communication when all of the parties to the communication have
364 given prior consent to such interception.

365 (e) It is unlawful to intercept any wire, oral, or
366 electronic communication for the purpose of committing any
367 criminal act.

368 (f) It is lawful under this section and ss. 934.04-934.09
369 for an employee of a telephone company to intercept a wire
370 communication for the sole purpose of tracing the origin of such
371 communication when the interception is requested by the
372 recipient of the communication and the recipient alleges that
373 the communication is obscene, harassing, or threatening in
374 nature. The individual conducting the interception shall notify
375 local police authorities within 48 hours after the time of the
376 interception.

377 (g) It is lawful under this section and ss. 934.04-934.09

24-00046-21

2021144__

for an employee of:

1. An ambulance service licensed pursuant to s. 401.25, a fire station employing firefighters as defined by s. 633.102, a public utility, a law enforcement agency as defined by s. 934.02(10), or any other entity with published emergency telephone numbers;

2. An agency operating an emergency telephone number "911" system established pursuant to s. 365.171; or

3. The central abuse hotline operated pursuant to s. 39.201 to intercept and record incoming wire communications; however, such employee may intercept and record incoming wire communications on designated "911" telephone numbers and published nonemergency telephone numbers staffed by trained dispatchers at public safety answering points only. It is also lawful for such employee to intercept and record outgoing wire communications to the numbers from which such incoming wire communications were placed when necessary to obtain information required to provide the emergency services being requested. For the purpose of this paragraph, the term "public utility" has the same meaning as provided in s. 366.02 and includes a person, partnership, association, or corporation now or hereafter owning or operating equipment or facilities in the state for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

(h) It is lawful ~~shall not be unlawful~~ under this section and ss. 934.04-934.09 for any person:

1. To intercept or access an electronic communication made through an electronic communication system that is configured so

24-00046-21

2021144__

that such electronic communication is readily accessible to the general public.

2. To intercept any radio communication which is transmitted:

a. By any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

b. By any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including any police or fire communications system, readily accessible to the general public;

c. By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

d. By any marine or aeronautical communications system.

3. To engage in any conduct which:

a. Is prohibited by s. 633 of the Communications Act of 1934; or

b. Is excepted from the application of s. 705(a) of the Communications Act of 1934 by s. 705(b) of that act.

4. To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station of consumer electronic equipment to the extent necessary to identify the source of such interference.

5. To intercept, if such person is another user of the same frequency, any radio communication that is not scrambled or encrypted made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of

24-00046-21

2021144__

such system.

6. To intercept a satellite transmission that is not scrambled or encrypted and that is transmitted:

a. To a broadcasting station for purposes of retransmission to the general public; or

b. As an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls, when such interception is not for the purposes of direct or indirect commercial advantage or private financial gain.

7. To intercept and privately view a private satellite video communication that is not scrambled or encrypted or to intercept a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted, if such interception is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

(i) It is lawful ~~shall not be unlawful~~ under this section and ss. 934.04-934.09:

1. To use a pen register or a trap and trace device as authorized under ss. 934.31-934.34 or under federal law; or

2. For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of such service.

(j) It is lawful ~~not unlawful~~ under this section and ss.

24-00046-21

2021144__

934.04-934.09 for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser which are transmitted to, through, or from a protected computer if:

1. The owner or operator of the protected computer authorizes the interception of the communications of the computer trespasser;

2. The person acting under color of law is lawfully engaged in an investigation;

3. The person acting under color of law has reasonable grounds to believe that the contents of the communications of the computer trespasser will be relevant to the investigation; and

4. The interception does not acquire communications other than those transmitted to, through, or from the computer trespasser.

(k) It is lawful under this section and ss. 934.04-934.09 for a child under 18 years of age to intercept and record an oral communication if the child is a party to the communication and has reasonable grounds to believe that recording the communication will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against the child.

Section 6. Section 934.06, Florida Statutes, is amended to read:

934.06 Prohibition of use as evidence of intercepted wire or oral communications; content of cellular phone, microphone-enabled household device, or portable electronic communication

24-00046-21

2021144__

494 device; exceptions ~~exception~~.—Whenever any wire or oral
495 communication has been intercepted, or when the content of a
496 cellular phone, microphone-enabled household device, or portable
497 electronic communication device is obtained without a search
498 warrant supported by probable cause, no part of the contents of
499 such communication or content and no evidence derived therefrom
500 may be received in evidence in any trial, hearing, or other
501 proceeding in or before any court, grand jury, department,
502 officer, agency, regulatory body, legislative committee, or
503 other authority of the state, or a political subdivision
504 thereof, if the disclosure of that information would be in
505 violation of this chapter. The prohibition of use as evidence
506 provided in this section does not apply in cases of prosecution
507 for criminal interception in violation of ~~the provisions of this~~
508 chapter, or in cases where the content of a cellular phone,
509 microphone-enabled household device, or portable electronic
510 communication device is lawfully obtained under circumstances
511 where a search warrant is not required.

512 Section 7. Subsections (1) and (2) of section 934.07,
513 Florida Statutes, are amended to read:

514 934.07 Authorization for interception of wire, oral, or
515 electronic communications.—

516 (1) The Governor, the Attorney General, the statewide
517 prosecutor, or any state attorney may authorize an application
518 to a judge of competent jurisdiction for, and such judge may
519 issue a search warrant as required by law ~~grant in conformity~~
520 ~~with ss. 934.03–934.09 an order~~ authorizing or approving the
521 interception of, wire, oral, or electronic communications by:

522 (a) The Department of Law Enforcement or any law

24-00046-21

2021144__

523 enforcement agency as defined in s. 934.02 having responsibility
524 for the investigation of the offense as to which the application
525 is made when such interception may provide or has provided
526 evidence of the commission of the offense of murder, kidnapping,
527 aircraft piracy, arson, gambling, robbery, burglary, theft,
528 dealing in stolen property, criminal usury, bribery, or
529 extortion; any felony violation of ss. 790.161-790.166,
530 inclusive; any violation of s. 787.06; any violation of chapter
531 893; any violation of ~~the provisions of~~ the Florida Anti-Fencing
532 Act; any violation of chapter 895; any violation of chapter 896;
533 any violation of chapter 815; any violation of chapter 847; any
534 violation of s. 827.071; any violation of s. 944.40; or any
535 conspiracy or solicitation to commit any violation of the laws
536 of this state relating to the crimes specifically enumerated in
537 this paragraph.

538 (b) The Department of Law Enforcement, together with other
539 assisting personnel as authorized and requested by the
540 department under s. 934.09(5), for the investigation of the
541 offense as to which the application is made when such
542 interception may provide or has provided evidence of the
543 commission of any offense that may be an act of terrorism or in
544 furtherance of an act of terrorism or evidence of any conspiracy
545 or solicitation to commit any such violation.

546 (2)(a) If, during the course of an interception of
547 communications by a law enforcement agency as authorized under
548 paragraph (1)(a), the law enforcement agency finds that the
549 intercepted communications may provide or have provided evidence
550 of the commission of any offense that may be an act of terrorism
551 or in furtherance of an act of terrorism, or evidence of any

24-00046-21

2021144__

conspiracy or solicitation to commit any such violation, the law enforcement agency shall promptly notify the Department of Law Enforcement and apprise the department of the contents of the intercepted communications. The agency notifying the department may continue its previously authorized interception with appropriate minimization, as applicable, and may otherwise assist the department as provided in this section.

(b) Upon its receipt of information of the contents of an intercepted communications from a law enforcement agency, the Department of Law Enforcement shall promptly review the information to determine whether the information relates to an actual or anticipated act of terrorism as defined in this section. If, after reviewing the contents of the intercepted communications, there is probable cause that the contents of the intercepted communications meet the criteria of paragraph (1)(b), the Department of Law Enforcement may make application for the interception of wire, oral, or electronic communications consistent with paragraph (1)(b). The department may make an independent new application for interception based on the contents of the intercepted communications. Alternatively, the department may request the law enforcement agency that provided the information to join with the department in seeking a new search warrant as required by law or an amendment of the original interception search warrant ~~order~~, or may seek additional authority to continue intercepting communications under the direction of the department. In carrying out its duties under this section, the department may use the provisions for an emergency interception provided in s. 934.09(7) if applicable under statutory criteria.

24-00046-21

2021144__

581 Section 8. Section 934.09, Florida Statutes, is amended to
582 read:

583 934.09 Procedure for interception of wire, oral, or
584 electronic communications.—

585 (1) Each application for a search warrant ~~an order~~
586 authorizing or approving the interception of a wire, oral, or
587 electronic communication under ss. 934.03-934.09 shall be made
588 in writing upon oath or affirmation to a judge of competent
589 jurisdiction and shall state the applicant's authority to make
590 such application. Each application shall include the following
591 information:

592 (a) The identity of the investigative or law enforcement
593 officer making the application and the officer authorizing the
594 application.

595 (b) A full and complete statement of the facts and
596 circumstances relied upon by the applicant to justify his or her
597 belief that a search warrant ~~an order~~ should be issued,
598 including:

599 1. Details as to the particular offense that has been, is
600 being, or is about to be committed.

601 2. Except as provided in subsection (11), a particular
602 description of the nature and location of the facilities from
603 which, or the place where, the communications are to be
604 intercepted.

605 3. A particular description of the type of communications
606 sought to be intercepted.

607 4. The identity of the person, if known, committing the
608 offense and whose communications are to be intercepted.

609 (c) A full and complete statement as to whether or not

24-00046-21

2021144__

other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

(d) A statement of the period of time for which the interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(e) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application.

(f) When the application is for the extension of a search warrant ~~an order~~, a statement setting forth the results thus far obtained from the interception or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application, the judge may authorize a search warrant ~~enter an ex parte order~~, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of

24-00046-21

2021144__

the court in which the judge is sitting, and outside such jurisdiction but within the State of Florida in the case of a mobile interception device authorized by the judge within such jurisdiction, if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense as provided in s. 934.07.

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception.

(c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.

(d) Except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each search warrant ~~order~~ authorizing or approving the interception of any wire, oral, or electronic communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted.

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.

(c) A particular description of the type of communication

24-00046-21

2021144__

sought to be intercepted and a statement of the particular offense to which it relates.

(d) The identity of the agency authorized to intercept the communications and of the person authorizing the application.

(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

A search warrant ~~An order~~ authorizing the interception of a wire, oral, or electronic communication shall, upon the request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. The obligation of a provider of wire, oral, or electronic communication service under such a search warrant ~~an order~~ may include, but is not limited to, conducting an in-progress trace during an interception, or providing other assistance to support the investigation as may be specified in the search warrant ~~order~~. Any provider of wire or electronic communication service, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance.

24-00046-21

2021144__

697 (5) A search warrant ~~No order~~ entered under this section
698 may not authorize or approve the interception of any wire, oral,
699 or electronic communication for any period longer than is
700 necessary to achieve the objective of the authorization or in
701 any event longer than 30 days. Such 30-day period begins on the
702 day on which the agent or officer of the law enforcement agency
703 first begins to conduct an interception under the search warrant
704 ~~order~~ or 10 days after the search warrant is approved ~~order is~~
705 ~~entered~~, whichever occurs earlier. Extensions of a search
706 warrant ~~an order~~ may be granted but only upon application for an
707 extension made in accordance with subsection (1) and upon the
708 court making the findings required by subsection (3). The period
709 of extension shall be no longer than the authorizing judge deems
710 necessary to achieve the purposes for which it was granted and
711 in no event for longer than 30 days. Every search warrant ~~order~~
712 and extension thereof shall contain a provision that the
713 authorization to intercept shall be executed as soon as
714 practicable, shall be conducted in such a way as to minimize the
715 interception of communications not otherwise subject to
716 interception under ss. 934.03-934.09, and must terminate upon
717 attainment of the authorized objective or in any event in 30
718 days. If the intercepted communication is in code or foreign
719 language and an expert in that foreign language or code is not
720 reasonably available during the interception period,
721 minimization may be accomplished as soon as practicable after
722 such interception. An interception under ss. 934.03-934.09 may
723 be conducted in whole or in part by government personnel or by
724 an individual operating under a contract with the government,
725 acting under the supervision of an agent or officer of the law

24-00046-21

2021144__

enforcement agency authorized to conduct the interception.

(6) Whenever a search warrant ~~an order~~ authorizing interception is granted ~~entered~~ pursuant to ss. 934.03-934.09, the search warrant ~~order~~ may require reports to be made to the judge who issued the search warrant ~~order~~ showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer specially designated by the Governor, the Attorney General, the statewide prosecutor, or a state attorney acting under this chapter, who reasonably determines that:

(a) An emergency exists that:

1. Involves immediate danger of death or serious physical injury to any person, the danger of escape of a prisoner, or conspiratorial activities threatening the security interest of the nation or state; and

2. Requires that a wire, oral, or electronic communication be intercepted before a search warrant ~~an order~~ authorizing such interception can, with due diligence, be obtained; and

(b) There are grounds upon which a search warrant ~~an order~~ could be entered under this chapter to authorize such interception,

may intercept such wire, oral, or electronic communication if an application for a search warrant ~~an order~~ approving the interception is made in accordance with this section within 48 hours after the interception has occurred or begins to occur. In

24-00046-21

2021144__

the absence of a search warrant ~~an order~~, such interception shall immediately terminate when the communication sought is obtained or when the application for the search warrant ~~order~~ is denied, whichever is earlier. If such application for approval is denied, or in any other case in which the interception is terminated without a search warrant ~~an order~~ having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of s. 934.03(4), and an inventory shall be served as provided for in paragraph (8)(e) on the person named in the application.

(8)(a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by ss. 934.03-934.09 shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be kept in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the search warrant ~~order~~, or extensions thereof, such recordings shall be made available to the judge approving the search warrant ~~issuing such order~~ and sealed under his or her directions. Custody of the recordings shall be wherever the judge orders. They may ~~shall~~ not be destroyed except upon an order of the issuing or denying judge, or that judge's successor in office, and in any event shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to ~~the provisions of~~ s. 934.08(1) and (2) for investigations, or for purposes of discovery as required by law.

(b) The presence of the seal provided for by this

24-00046-21

2021144__

subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under s. 934.08(3), as required by federal law.

(c) Applications made and search warrants ~~orders~~ granted under ss. 934.03-934.09 shall be sealed by the judge. Custody of the applications and search warrants ~~orders~~ shall be wherever the judge directs. As required by ~~federal~~ law, such applications and search warrants ~~orders~~ shall be disclosed only for purposes of discovery or upon a showing of good cause before a judge of competent jurisdiction and may ~~shall~~ not be destroyed except on order of the issuing or denying judge, or that judge's successor in office, and in any event shall be kept for 10 years.

(d) Any violation of ~~the provisions of~~ this subsection may be punished as contempt of the issuing or denying judge.

(e) Within a reasonable time but not later than 90 days after the termination of the period of a search warrant ~~an order~~ or extensions thereof, the issuing or denying judge shall cause to be served on the persons named in the search warrant ~~order~~ or the application, and such other parties to intercepted communications as the judge may determine in his or her discretion to be in the interest of justice, an inventory which shall include notice of:

1. The fact of the approval of the search warrant ~~entry of the order~~ or the application.

2. The date of the approval of the search warrant ~~entry~~ and the period of authorized, approved, or disapproved interception, or the denial of the application.

24-00046-21

2021144__

813 3. The fact that during the period wire, oral, or
814 electronic communications were or were not intercepted.

815
816 The judge, upon the filing of a motion, may make available to
817 such person or the person's counsel for inspection such portions
818 of the intercepted communications, applications, and search
819 warrants ~~orders~~ as the judge determines to be in the interest of
820 justice. On an ex parte showing of good cause to a judge of
821 competent jurisdiction, the serving of the inventory required by
822 this paragraph may be postponed.

823 (9) ~~As required by federal law,~~ The contents of any
824 intercepted wire, oral, or electronic communication or evidence
825 derived therefrom may ~~shall~~ not be received in evidence or
826 otherwise disclosed in any trial, hearing, or other proceeding
827 unless each party, not less than 10 days before the trial,
828 hearing, or proceeding, has been furnished with a copy of the
829 search warrant ~~court order~~ and accompanying application under
830 which the interception was authorized or approved. This 10-day
831 period may be waived by the judge if he or she finds that it was
832 not possible to furnish the party with the above information 10
833 days before the trial, hearing, or proceeding and that the party
834 will not be prejudiced by the delay in receiving such
835 information.

836 (10) (a) An ~~Any~~ aggrieved person before or in any trial,
837 hearing, or proceeding in or before any court, department,
838 officer, agency, regulatory body, or other authority may move to
839 suppress the contents of any intercepted wire, oral, or
840 electronic communication, or evidence derived therefrom, on the
841 grounds that:

24-00046-21

2021144__

842 1. The communication was unlawfully intercepted;

843 2. The search warrant ~~order of authorization or approval~~
844 under which it was intercepted is insufficient on its face; or

845 3. The interception was not made in conformity with the
846 search warrant ~~order of authorization or approval~~.

847 (b) Except as otherwise provided in the applicable Florida
848 Rules of Criminal Procedure, in a criminal matter:

849 1. Such motion shall be made before the trial, hearing, or
850 proceeding unless there was no opportunity to make such motion
851 or the person was not aware of the grounds of the motion.

852 2. If the motion is granted, the contents of the
853 intercepted wire or oral communication, or evidence derived
854 therefrom, shall be treated as having been obtained in violation
855 of ss. 934.03-934.09 and are not admissible as evidence.

856 3. The judge, upon the filing of such motion by the
857 aggrieved person, may make available to the aggrieved person or
858 his or her counsel for inspection such portions of the
859 intercepted communication or evidence derived therefrom as the
860 judge determines to be in the interest of justice.

861 (c) ~~(b)~~ In addition to any other right to appeal, the state
862 shall have the right to appeal from an order granting a motion
863 to suppress made under paragraph (a) or the denial of an
864 application for a search warrant ~~an order of approval~~ if the
865 attorney shall certify to the judge or other official granting
866 such motion or denying such application that the appeal is not
867 taken for purposes of delay. Such appeal shall be taken within
868 30 days after the date the order was entered and shall be
869 diligently prosecuted.

870 (d) ~~(c)~~ The remedies and sanctions described in ss. 934.03-

24-00046-21

2021144__

934.10 with respect to the interception of electronic communications are the only judicial remedies and sanctions for violations of those sections involving such communications.

(11) The requirements of subparagraph (1)(b)2. and paragraph (3)(d) relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(a) In the case of an application with respect to the interception of an oral communication:

1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney General, the statewide prosecutor, or a state attorney.

2. The application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted.

3. The judge finds that such specification is not practical.

(b) In the case of an application with respect to a wire or electronic communication:

1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney General, the statewide prosecutor, or a state attorney.

2. The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility or that the person whose communications are to be intercepted

24-00046-21

2021144__

has removed, or is likely to remove, himself or herself to another judicial circuit within the state.

3. The judge finds that such showing has been adequately made.

4. The search warrant ~~order~~ authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

~~Consistent with this paragraph, a judge of competent jurisdiction may authorize interception within this state, whether the interception is within or outside the court's jurisdiction, if the application for the interception makes a showing that some activity or conspiracy believed to be related to, or in furtherance of, the criminal predicate for the requested interception has occurred or will likely occur, or the communication to be intercepted or expected to be intercepted is occurring or will likely occur, in whole or in part, within the jurisdiction of the court where the order is being sought.~~

(12) If an interception of a communication is to be carried out pursuant to subsection (11), such interception may not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception search warrant ~~order~~. A provider of wire or electronic communications service that has received a search warrant ~~an order~~ as provided under paragraph (11)(b) may petition the court to modify or quash the search warrant ~~order~~ on the ground that the interception cannot be performed in a

24-00046-21

2021144__

timely or reasonable fashion. The court, upon notice to the state, shall decide such a petition expeditiously.

(13) Consistent with this section, a judge of competent jurisdiction may authorize interception within this state, whether the interception is within or outside the court's jurisdiction, if the application for the interception makes a showing that some activity or conspiracy believed to be related to, or in furtherance of, the criminal predicate for the requested interception has occurred or will likely occur, or the communication to be intercepted or expected to be intercepted is occurring or will likely occur, in whole or in part, within the jurisdiction of the court where the search warrant is being sought.

Section 9. Subsection (2) of section 934.10, Florida Statutes, is amended, and subsection (1) of that section is reenacted, to read:

934.10 Civil remedies.—

(1) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09 shall have a civil cause of action against any person or entity who intercepts, discloses, or uses, or procures any other person or entity to intercept, disclose, or use, such communications and shall be entitled to recover from any such person or entity which engaged in that violation such relief as may be appropriate, including:

(a) Preliminary or equitable or declaratory relief as may be appropriate;

(b) Actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or

24-00046-21

2021144__

\$1,000, whichever is higher;

(c) Punitive damages; and

(d) A reasonable attorney's fee and other litigation costs reasonably incurred.

(2) A good faith reliance on any of the following constitutes a complete defense to any civil, criminal, or administrative action arising out of such conduct under the laws of this state:

(a) A search warrant ~~court order, subpoena, or legislative authorization~~ as provided for in ss. 934.03-934.09;; ~~or~~

(b) A request of an investigative or law enforcement officer under s. 934.09(7);; ~~or~~

(c) A good faith determination that Florida or federal law, other than 18 U.S.C. s. 2511(2)(d), authorized ~~permitted~~ the conduct complained of

~~shall constitute a complete defense to any civil or criminal, or administrative action arising out of such conduct under the laws of this state.~~

Section 10. Section 934.21, Florida Statutes, is amended to read:

934.21 Unlawful access to stored communications; penalties.—

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

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

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

24-00046-21

2021144__

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

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

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

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

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

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

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

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

(b) By a user of a wire, an oral, or an electronic communications service, including through cellular phones, microphone-enabled household devices, or portable electronic

24-00046-21

2021144__

communication devices, with respect to a communication of or intended for that user; ~~or~~

(c) In s. 934.09, s. 934.23, or s. 934.24;

(d) In chapter 933; or

(e) For accessing for a legitimate business purpose information that is not personally identifiable or that has been collected in a way that prevents identification of the user of the device.

Section 11. Section 934.42, Florida Statutes, is amended to read:

934.42 Mobile tracking device and location tracking authorization.—

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

(a) "Historical location data" means historical precise global positioning system location data in the possession of a provider.

(b) "Mobile tracking device" means an electronic or a mechanical device that tracks the movement of a person or an object.

(c) "Real-time location tracking" means the:

1. Installation and use of a mobile tracking device on the object to be tracked;

2. Acquisition of real-time cell-site location data; or

3. Acquisition of real-time precise global positioning system location data.

(2) ~~(1)~~ An investigative or law enforcement officer may make application to a judge of competent jurisdiction for a search warrant ~~an order~~ authorizing or approving real-time location tracking or the acquisition of historical location data in the

24-00046-21

2021144__

possession of the provider ~~the installation and use of a mobile tracking device.~~

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

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

(b) A statement setting forth a reasonable period of time during which the mobile tracking device may be used or the location data may be obtained in real time, not to exceed 45 days from the date on which the search warrant is issued. The court may, for good cause, grant one or more extensions for a reasonable period of time, not to exceed 45 days each. When seeking historical location data, the applicant must specify a date range for the data sought ~~certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency.~~

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

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

(4)~~(3)~~ Upon application made as provided under subsection (3) ~~(2)~~, the court, if it finds probable cause ~~that the certification and finds that the~~ statements required by subsection (3) ~~(2)~~ have been made in the application, must grant a search warrant ~~shall enter an ex parte order~~ authorizing real-time location tracking or the acquisition of historical location

24-00046-21

2021144__

1074 ~~data the installation and use of a mobile tracking device.~~ Such
1075 search warrant order may authorize the location tracking use of
1076 ~~the device~~ within the jurisdiction of the court and outside that
1077 jurisdiction but within the State of Florida if the location
1078 tracking device is initiated ~~installed~~ within the jurisdiction
1079 of the court. The search warrant must command the investigative
1080 or law enforcement officer to complete any initiation of the
1081 location tracking or execution of the search warrant for
1082 historical location data authorized by the search warrant within
1083 a specified period of time not to exceed 10 calendar days.

1084 (5) ~~(4)~~ A court may not require greater specificity or
1085 additional information beyond that which is required by law and
1086 this section as a requisite for issuing a search warrant ~~an~~
1087 ~~order~~.

1088 (6) Within 10 days after the timeframe specified in
1089 paragraph (3)(b) has ended, the investigative or law enforcement
1090 officer executing a search warrant must return the search
1091 warrant to the issuing judge. When the search warrant is
1092 authorizing the acquisition of historical location data, the
1093 investigative or law enforcement officer executing the search
1094 warrant must return the search warrant to the issuing judge
1095 within 10 days after receipt of the records. The investigative
1096 or law enforcement officer may do so by reliable electronic
1097 means.

1098 (7) Within 10 days after the timeframe specified in
1099 paragraph (3)(b) has ended, the investigative or law enforcement
1100 officer executing a search warrant must serve a copy of the
1101 search warrant on the person who, or whose property, was
1102 tracked. When the search warrant is authorizing the acquisition

24-00046-21

2021144__

of historical location data, the investigative or law enforcement officer executing the search warrant must serve a copy of the search warrant on the person whose data was obtained within 10 days after receipt of the records. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked or whose data was obtained or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon a showing of good cause to a court of competent jurisdiction, the court may grant one or more postponements of this notice for a period of 90 days each.

(8) ~~(5)~~ The standards established by Florida courts and the United States Supreme Court for the installation, use, or and monitoring of mobile tracking devices and the acquisition of location data shall apply to the installation, use, or monitoring and use of any device and the acquisition of location data as authorized by this section.

~~(6) As used in this section, a "tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.~~

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

1. An emergency exists which:

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

24-00046-21

2021144__

b. Requires real-time location tracking before a search warrant authorizing such tracking can, with due diligence, be obtained; and

2. There are grounds upon which a search warrant could be issued under this chapter to authorize such tracking, may engage in real-time location tracking if, within 48 hours after the tracking has occurred or begins to occur, a search warrant approving the tracking is issued in accordance with this section.

(b) In the absence of an authorizing search warrant, such tracking must immediately terminate when the information sought is obtained, when the application for the search warrant is denied, or when 48 hours have lapsed since the tracking began, whichever is earlier.

Section 12. For the purpose of incorporating the amendments made by this act to sections 934.03 and 934.07, Florida Statutes, in references thereto, paragraph (b) of subsection (2) of section 934.22, Florida Statutes, is reenacted to read:

934.22 Voluntary disclosure of customer communications or records.—

(2) A provider described in subsection (1) may divulge the contents of a communication:

(b) As otherwise authorized in s. 934.03(2)(a), s. 934.07, or s. 934.23.

Section 13. For the purpose of incorporating the amendments made by this act to sections 934.09 and 934.21, Florida Statutes, in references thereto, subsections (1) and (4) of section 934.27, Florida Statutes, are reenacted to read:

24-00046-21

2021144__

934.27 Civil action: relief; damages; defenses.—

(1) Except as provided in s. 934.23(5), any provider of electronic communication service, or subscriber or customer thereof, aggrieved by any violation of ss. 934.21-934.28 in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as is appropriate.

(4) A good faith reliance on any of the following is a complete defense to any civil or criminal action brought under ss. 934.21-934.28:

(a) A court warrant or order, a subpoena, or a statutory authorization, including, but not limited to, a request of an investigative or law enforcement officer to preserve records or other evidence, as provided in s. 934.23(7).

(b) A request of an investigative or law enforcement officer under s. 934.09(7).

(c) A good faith determination that s. 934.03(3) permitted the conduct complained of.

Section 14. For the purpose of incorporating the amendment made by this act to section 934.21, Florida Statutes, in a reference thereto, subsection (6) of section 934.23, Florida Statutes, is reenacted to read:

934.23 Required disclosure of customer communications or records.—

(6) No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance

24-00046-21

2021144__

with the terms of a court order, warrant, subpoena, or certification under ss. 934.21-934.28.

Section 15. For the purpose of incorporating the amendment made by this act to section 934.21, Florida Statutes, in references thereto, subsections (6) and (7) of section 934.24, Florida Statutes, are reenacted to read:

934.24 Backup preservation; customer notification; challenges by customer.—

(6) Within 14 days after notice by the investigative or law enforcement officer to the subscriber or customer under subsection (2), the subscriber or customer may file a motion to quash the subpoena or vacate the court order seeking contents of electronic communications, with copies served upon the investigative or law enforcement officer and with written notice of such challenge to the service provider. A motion to vacate a court order must be filed in the court which issued the order. A motion to quash a subpoena must be filed in the circuit court in the circuit from which the subpoena issued. Such motion or application must contain an affidavit or sworn statement:

(a) Stating that the applicant is a subscriber or customer of the service from which the contents of electronic communications maintained for her or him have been sought, and

(b) Stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of ss. 934.21-934.28 in some other respect.

(7) Except as otherwise obtained under paragraph (3)(a), service must be made under this section upon an investigative or law enforcement officer by delivering or mailing by registered

24-00046-21

2021144__

or certified mail a copy of the papers to the person, office, or department specified in the notice which the subscriber or customer has received pursuant to ss. 934.21-934.28. For the purposes of this subsection, the term "delivering" shall be construed in accordance with the definition of "delivery" as provided in Rule 1.080, Florida Rules of Civil Procedure.

Section 16. For the purpose of incorporating the amendment made by this act to section 934.21, Florida Statutes, in a reference thereto, subsection (5) of section 934.25, Florida Statutes, is reenacted to read:

934.25 Delayed notice.—

(5) Upon the expiration of the period of delay of notification under subsection (1) or subsection (4), the investigative or law enforcement officer must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request together with notice which:

(a) States with reasonable specificity the nature of the law enforcement inquiry, and

(b) Informs the subscriber or customer:

1. That information maintained for such subscriber or customer by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which such information was so supplied or requested.

2. That notification of such subscriber or customer was delayed.

3. What investigative or law enforcement officer or what court made the certification or determination pursuant to which

24-00046-21

2021144__

1248 that delay was made.

1249 4. Which provision of ss. 934.21-934.28 allowed such delay.

1250 Section 17. For the purpose of incorporating the amendment
1251 made by this act to section 934.21, Florida Statutes, in a
1252 reference thereto, section 934.28, Florida Statutes, is
1253 reenacted to read:

1254 934.28 Exclusivity of remedies and sanctions.—The remedies
1255 and sanctions described in ss. 934.21-934.27 are the only
1256 judicial remedies and sanctions for violation of those sections.

1257 Section 18. This act shall take effect July 1, 2021.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/9
Meeting Date

144
Bill Number (if applicable)

Topic Searches of cell phones

Amendment Barcode (if applicable)

Name Karen Roberts

Job Title _____

Address 935 E University Ave
Street

Phone 727 366-4080

Orange City FL 327103
City State Zip

Email ucf87epa@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

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Duplicate

THE FLORIDA SENATE
APPEARANCE RECORD

3/9/21

Meeting Date

144

Bill Number (if applicable)

Topic Cellphone Searches

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 n. Gadsden St.

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public 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.

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S-001 (10/14/14)

JUDICIARY

3/9/21

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

144

Bill Number (if applicable)

Topic

CELL PHONE SEARCHES

Amendment Barcode (if applicable)

Name

CHRISTIAN CAMARX

Job Title

Address

PO Box 122

Phone

305 608-4300

Street

TALLAHASSEE

FL

32302

Email

CHRISTIAN@CHAMBER CONSULTANTS FL
.COM

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

INSTITUTE FOR JUSTICE

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

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

March 9 2021
Meeting Date

SB 144
Bill Number (if applicable)

Topic Searches of cell phones

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI "Dee-yay-Goh Eteh-uh-very"

Job Title Legislative Liaison

Address 200 W College Ave Phone _____
Street City State Zip
TLH FL

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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Reset Form

3/9/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

SB 144

Bill Number (if applicable)

Topic Searches of Cellular Phones and Other Electronic Devices

Amendment Barcode (if applicable)

Name Vittorio Nastasi

Job Title Policy Analyst

Address 901 Riggins Road

Phone 407-618-6168

Street

Tallahassee

FL

32308

City

State

Zip

Email vittorio.nastasi@reason.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Reason Foundation

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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MArch 9, 2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

SB 144

Bill Number (if applicable)

Topic Searches of Cellular Phones and Other Electronic Devices

Amendment Barcode (if applicable)

Name Kenneth C. Morrow Jr.

Job Title Member, Legislative Action Committee

Address P. O. Box 410045

Phone (904) 414-0644

Street

Melbourne

Florida

32941-0045

City

State

Zip

Email morrow827505@bellsouth.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Republican Liberty Caucus 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

3/9/21

Meeting Date

SB144

Bill Number (if applicable)

Topic Searches of Cellular Phones and Other Electronic Devices

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St

Phone 850-681-0024

Street

Tallahassee

FL

32301

Email jorge@flapartners.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Criminal Defense Lawyers

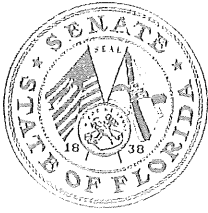
Appearing at request of Chair: ☐ Yes ☒ No

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

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

COMMITTEES:
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development
Military and Veterans Affairs, Space,
and Domestic Security
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

March 8, 2021

Senator Jeff Brandes
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Brandes:

I respectfully ask to be excused from this week's Judiciary committee meeting, due to family matters.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Audrey Gibson".

Audrey Gibson
State Senator
Senate District 6

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553
410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

CourtSmart Tag Report

Room: KB 412

Case No.: -

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 3/9/2021 11:48:08 AM

Ends: 3/9/2021 3:11:12 PM **Length:** 03:23:05

11:48:08 AM Meeting called to order by Chair Brandes
11:48:16 AM Roll call by CAA Celia Georgiades
11:48:23 AM Quorum present
11:48:35 AM Comments from Chair Brandes
11:48:55 AM Introduction of Tab 1, CS/SB 76 by Chair Brandes
11:49:19 AM Introduction of Amendment Barcode 372938 by Chair Brandes
11:49:31 AM Explanation of Bill and Amendment by Senator Boyd
11:56:10 AM Comments from Chair Brandes
11:56:22 AM Question from Senator Thurston
11:56:33 AM Response from Senator Boyd
11:56:56 AM Follow-up question from Senator Thurston
11:57:05 AM Response from Senator Boyd
11:57:32 AM Follow-up question from Senator Thurston
11:57:40 AM Response from Senator Boyd
11:57:55 AM Follow-up question from Senator Thurston
11:58:01 AM Response from Senator Boyd
11:58:18 AM Follow-up question from Senator Thurston
11:58:39 AM Response from Senator Boyd
11:59:07 AM Follow-up question from Senator Thurston
11:59:13 AM Response from Senator Boyd
11:59:27 AM Follow-up question from Senator Thurston
11:59:34 AM Response from Senator Boyd
11:59:43 AM Question from Senator Polsky
11:59:53 AM Response from Senator Boyd
12:00:48 PM Follow-up question from Senator Polsky
12:00:56 PM Response from Senator Boyd
12:01:25 PM Follow-up question from Senator Polsky
12:02:01 PM Follow-up question from Senator Polsky
12:02:08 PM Response from Senator Boyd
12:02:38 PM Follow-up question from Senator Polsky
12:02:59 PM Response from Senator Boyd
12:03:59 PM Follow-up question from Senator Polsky
12:04:05 PM Response from Senator Boyd
12:05:00 PM Follow-up question from Senator Polsky
12:05:29 PM Response from Senator Boyd
12:08:03 PM Follow-up question from Senator Polsky
12:08:12 PM Response from Senator Boyd
12:09:41 PM Follow-up question from Senator Polsky
12:09:52 PM Response from James Knudson, Staff Director, Banking and Insurance
12:10:50 PM Follow-up question from Senator Polsky
12:10:57 PM Response from Senator Boyd
12:11:34 PM Question from Senator Broxson

12:11:51 PM Response from Senator Boyd
12:14:46 PM Question from Senator Rouson
12:15:46 PM Response from Senator Boyd
12:17:28 PM Follow-up question from Senator Rouson
12:17:35 PM Response from Senator Boyd
12:18:30 PM Follow-up question from Senator Rouson
12:18:36 PM Response from Senator Boyd
12:19:33 PM Follow-up question from Senator Rouson
12:19:42 PM Response from Senator Boyd
12:19:55 PM Question from Senator Baxley
12:20:07 PM Response from Senator Boyd
12:21:42 PM Question from Chair Brandes
12:21:48 PM Response from Senator Boyd
12:22:01 PM Question from Senator Rouson
12:22:16 PM Question from Senator Thurston
12:22:18 PM Response from Chair Brandes
12:22:42 PM Introduction of Amendment Barcode 736434 by Chair Brandes
12:22:50 PM Explanation of Amendment by Senator Polsky
12:24:33 PM Question from Chair Brandes
12:24:42 PM Response from Senator Polsky
12:24:57 PM Question from Chair Brandes
12:25:04 PM Response from Senator Polsky
12:25:32 PM Comments from Chair Brandes
12:25:40 PM Senator Broxson in debate
12:26:09 PM Senator Boyd in support of Amendment
12:26:55 PM Comments from Chair Brandes
12:27:00 PM Amendment adopted
12:27:06 PM Introduction of Amendment to Amendment Barcode 479134 by Chair Brandes
12:27:15 PM Explanation of Amendment by Senator Rouson
12:27:52 PM Speaker Joe Busby in support of Amendment
12:28:13 PM Speaker Matthew Collett, Florida Homeowners in support of the Amendment
12:30:58 PM Question from Chair Brandes
12:31:04 PM Response from Mr. Collett
12:31:30 PM Speaker Steven Richardson, Florida Justice Reform Institute in support
12:34:49 PM Comments from Chair Brandes
12:35:03 PM Senator Boyd in opposition of Amendment
12:35:40 PM Senator Rouson in closure on Amendment
12:36:17 PM Amendment not adopted
12:36:26 PM Introduction of Amendment Barcode 444846 by Chair Brandes
12:36:51 PM Explanation of Amendment by Senator Polsky
12:38:35 PM Comments from Chair Brandes
12:38:39 PM Speaker Hillary Cassel, Florida Policyholders Cooperative in support
12:41:31 PM Speaker Joe Busby in support
12:42:02 PM Senator Boyd in opposition of Amendment
12:42:13 PM Senator Polsky in closure on Amendment
12:42:47 PM Amendment not adopted
12:43:01 PM Introduction of Amendment Barcode 301860 by Chair Brandes
12:43:20 PM Explanation of Amendment by Senator Rouson
12:44:45 PM Comments from Chair Brandes
12:44:50 PM Speaker Joe Busby in support of the Amendment
12:46:44 PM Speaker David Murray, Florida Justice Association in support
12:50:33 PM Senator Boyd in opposition of Amendment

12:51:15 PM Senator Rouson in closure on Amendment
12:51:28 PM Amendment not adopted
12:52:03 PM Introduction of Late-filed Amendment Barcode 827618 by Chair Brandes
12:52:26 PM Explanation of Amendment by Senator Thurston
12:55:17 PM Speaker David Murray, Florida Justice Association in support
12:59:21 PM Question from Chair Brandes
12:59:41 PM Response from Mr. Murray
1:01:01 PM Speaker Matthew Collett, Florida Homeowners in support
1:04:00 PM Senator Boyd in opposition of Amendment
1:04:11 PM Senator Thurston in closure on Amendment
1:04:34 PM Amendment not adopted
1:05:44 PM Comments from Chair Brandes
1:06:41 PM Amendment Substitute delete-all Amendment adopted
1:07:06 PM Question from Senator Thurston
1:07:17 PM Response from Senator Boyd
1:07:52 PM Follow-up question from Senator Thurston
1:07:59 PM Response from Senator Boyd
1:08:44 PM Speaker Richie Kidwell, Restoration Association of Florida in opposition
1:12:27 PM Speaker Steven Richardson, Florida Justice Reform Institute in support
1:13:45 PM Speaker Joe Busby in support
1:14:49 PM Speaker Ali Kadir, Kuhn Raslavich in opposition
1:18:42 PM Speaker David Serdar in support
1:19:44 PM Comments from Chair Brandes
1:20:00 PM Speaker Matthew Collette, Florida Homeowners in opposition
1:21:40 PM Speaker Chris Dawson, Florida Roofing and Sheet Metal Contractors Association
1:22:30 PM Speaker B.G. Murphy, Florida Association of Insurance Agents in support
1:24:25 PM Speaker David Murray, Florida Justice Association in opposition
1:26:47 PM Question from Senator Thurston
1:27:21 PM Response from Senator Boyd
1:28:34 PM Senator Thurston in debate
1:32:52 PM Senator Polsky in debate
1:33:35 PM Senator Broxson in debate
1:36:48 PM Comments from Chair Brandes
1:36:51 PM Senator Boyd in closure
1:37:54 PM Roll call by CAA
1:38:55 PM CS/CS/SB 76 reported favorably
1:39:17 PM SB 472 temporarily postponed per Chair Brandes
1:39:44 PM Introduction of Tab 4, SB 482 by Chair Brandes
1:39:47 PM Explanation of SB 482, Criminal Sentencing by Senator Bracy
1:41:14 PM Comments from Chair Brandes
1:41:28 PM Speaker John McMichael in support
1:43:11 PM Speaker Rebecca McMichael in support
1:45:50 PM Speaker Anne Williams in support
1:46:34 PM Nancy Daniels, Florida Public Defender Association waives in support
1:46:39 PM Russell Myers, Florida Faith Advocacy Office waives in support
1:46:40 PM Karen Roberts waives in support
1:46:43 PM Denise Rock, Florida Cares waives in support
1:46:46 PM Carrie Boyd, SPLC Action Fund waives in support
1:46:49 PM Pamela Burch Fort, NAACP Florida State Conference waives in support
1:46:56 PM Andrew Kalel, Office of Criminal Conflict and Civil Regional Counsel, 4th DCA Region waives in support
1:47:05 PM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support

1:47:09 PM Karen Woodall, Florida Center for Fiscal & Economic Policy waives in support
1:47:14 PM Ida Eskamani, Florida Rising
1:47:18 PM Alexandra Barry waives in support
1:47:44 PM Closure waived
1:47:47 PM Roll call by CAA
1:47:55 PM SB 482 reported favorably
1:48:06 PM Introduction of Tab SB 848 by Chair Brandes
1:48:24 PM Explanation of SB 848, Electronic Legal Documents by Senator Powell
1:49:06 PM Jeffery Sharkey, Quicken Rocket Loans waives in support
1:49:11 PM Kenneth Pratt, Florida Bankers Association waives in support
1:49:16 PM Martha Edenfield, The Real Property, Probate and Trust Law Section of the Florida Bar waives in support
1:49:26 PM Closure waived
1:49:29 PM Roll call by CAA
1:49:32 PM SB 848 reported favorably
1:49:47 PM Introduction of Tab 6, SB 1048 by Chair Brandes
1:50:00 PM Explanation of SB 1048, Public Records/Conviction Integrity Unit Reinvestigation Information by Senator Baxley
1:50:19 PM Explanation of Late-filed Amendment Barcode 946888 by Senator Baxley
1:50:47 PM Comments from Chair Brandes
1:50:54 PM Amendment adopted
1:50:58 PM Karen Roberts waives in support
1:51:16 PM Closure waived
1:51:20 PM Roll call by CAA
1:51:23 PM CS/SB 1048 reported favorably
1:51:43 PM Introduction of Tab 10, SB 838 by Chair Brandes
1:51:59 PM Explanation of SB 838, Clerks of the Circuit Court by Senator Boyd
1:52:56 PM Introduction of Amendment Barcode 761312 by Senator Boyd
1:53:20 PM Introduction of Amendment to Amendment Barcode 252502 by Senator Boyd
1:53:38 PM Comments from Chair Brandes
1:53:48 PM Amendment-to-Amendment 252502 adopted
1:54:00 PM Comments from Chair Brandes
1:54:04 PM Amendment adopted
1:54:11 PM Speaker Tom Bexley, Florida Court Clerks & Comptrollers in support
1:54:53 PM Speaker Jason Wetley, Florida Clerks of Court Operations Corporation waives in support
1:55:22 PM Dan Hendrickson, Tallahassee Veterans Legal Collaborative waives in support
1:55:25 PM
1:55:27 PM Jenna Hodgens, Hillsborough County Clerk and Comptroller waives in support
1:55:30 PM Jason Harrell, Florida Court Clerks & Comptrollers waives in support
1:55:52 PM Roll call by CAA
1:55:56 PM SB 838 reported favorably
1:56:04 PM Introduction of Tab 2, SB 420 by Chair Brandes
1:56:26 PM Explanation of SB 420, Motor Vehicle Insurance Coverage Exclusions by Senator Hooper
1:57:00 PM Explanation of Amendment Barcode 596252 by Chair Brandes
1:57:23 PM Comments from Chair Boyd
1:57:27 PM Question from Senator Thurston
1:57:38 PM Response from Senator Hooper
1:58:30 PM Question from Senator Broxson
1:58:40 PM Response from Senator Hooper
1:59:47 PM Follow-up question from Senator Broxson

1:59:56 PM Response from Senator Hooper
2:00:03 PM Follow-up question from Senator Broxson
2:00:10 PM Response from Senator Hooper
2:00:44 PM Question from Senator Broxson
2:01:18 PM Response from William Arnold, Banking and Insurance Committee
2:01:41 PM Question from Senator Broxson
2:01:48 PM Response from Mr. Arnold
2:02:08 PM Follow-up question from Senator Broxson
2:02:17 PM Response from Mr. Arnold
2:03:28 PM Speaker Mark Delegal, State Farm Mutual Automobile Insurance Company in support
2:07:03 PM Closure waived on Amendment
2:07:08 PM Amendment adopted
2:07:25 PM Introduction of Amendment Barcode 478706 by Chair Boyd
2:07:33 PM Explanation of Amendment by Senator Broxson
2:08:11 PM Amendment withdrawn
2:08:19 PM Comments from Chair Brandes
2:08:21 PM Speaker Mark Delegal, State Farm Mutual Automobile Insurance Company waives in support
2:08:34 PM Speaker David Serdar
2:08:50 PM Tim Meenan, NAIFA-Florida waives in support
2:08:57 PM Comments from Chair Boyd
2:09:10 PM Senator Thurston in debate
2:10:46 PM Comments from Chair Boyd
2:10:52 PM Senator Hooper in closure
2:10:57 PM Roll call by CAA
2:11:27 PM CS/SB 420 reported favorably
2:11:52 PM Introduction of Tab 8, SB 1114
2:12:03 PM Explanation of SB 1114, Compensation for Eligible Victims of Wrongful Incarceration by Senator Pizzo
2:12:30 PM Comments from Chair Brandes
2:12:41 PM Barbara DeVane, FL NOW waives in support
2:12:53 PM Ida Eskamani, Florida Rising
2:12:59 PM Alexandra Barry waives in support
2:13:03 PM Ingrid Delgado, Florida Conference of Catholic Bishops waives in support
2:13:07 PM Rebecca McMichael waives in support
2:13:09 PM Pamela Burch Fort, NAACP Florida State Conference waives in support
2:13:16 PM Anne Williams waives in support
2:13:21 PM Jorge Chamizo waives in support
2:13:29 PM Dr. Adina Thompson, Innocence Project of Florida waives in support
2:13:32 PM Karen Roberts waives in support
2:13:46 PM Closure waived
2:13:48 PM Roll call by CAA
2:13:53 PM SB 1114 reported favorably
2:14:05 PM Introduction of Tab 7, SB 492 by Chair Brandes
2:14:20 PM Explanation of SB 492, Council on the Discretionary Imposition of Criminal Justice and Traffic Fines and Fees by Senator Rouson
2:15:29 PM Comments from Chair Brandes
2:15:34 PM Karen Woodall, Florida Center for Fiscal & Economic Policy waives in support
2:15:38 PM Dan Hendrickson, Tallahassee Veterans Legal Collaborative waives in support
2:15:42 PM Russell Meyer, Florida Faith Advocacy Office waives in support
2:15:52 PM Closure waived
2:15:55 PM Roll call by CAA

2:16:00 PM SB 492 reported favorably
2:16:17 PM Introduction of Tab 11, SB 1288 by Chair Brandes
2:16:25 PM Explanation of SB 1288, Assets of an Estate in Administration by Senator Boyd
2:16:45 PM Comments from Chair Brandes
2:17:04 PM Introduction of Amendment Barcode 523996 by Chair Brandes
2:17:10 PM Explanation of Amendment by Senator Boyd
2:17:22 PM Amendment adopted
2:17:34 PM Closure waived
2:17:38 PM Roll call by CAA
2:17:41 PM CS/SB 1288 reported favorably
2:17:56 PM Introduction of Tab 12, SB 1520 by Chair Brandes
2:18:06 PM Explanation of SB 1520, Ancillary Property Rights by Senator Boyd
2:18:28 PM Introduction of Substitute Amendment Barcode 597912 by Chair Brandes
2:18:38 PM Explanation of Amendment by Senator Boyd
2:18:45 PM Comments from Chair Brandes
2:18:51 PM Closure waived
2:18:56 PM Amendment adopted
2:19:16 PM Speaker French Brown, Real Property, Probate, and Trust Law Section of the Florida Bar waives in support
2:19:37 PM Comments from Chair
2:19:43 PM Closure waived
2:19:45 PM Roll call by CAA
2:19:54 PM CS/SB 1520 reported favorably
2:20:12 PM Chair turned over to Senator Boyd
2:20:21 PM Introduction of Tab 13, SB 144 by Chair Boyd
2:20:34 PM Explanation of SB 144, Searches of Cellular Phones and Other electronic Devices by Senator Brandes
2:21:26 PM Comments from Chair Boyd
2:21:42 PM Speaker Vittorio Nastasi, Reason Foundation in support
2:24:24 PM Kenneth Morrow, Republican Liberty Caucus of Florida waives in support
2:24:29 PM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support
2:24:35 PM Diego Echeverri, Americans for Prosperity waives in support
2:24:42 PM Christian Camarx, Institute for Justice waives in support
2:24:47 PM Nancy Daniels, Florida Public Defender Association waives in support
2:24:54 PM Karen Roberts waives in support
2:25:16 PM Senator Brandes in closure
2:25:21 PM Roll call by CAA
2:25:51 PM SB 144 reported favorably
2:26:10 PM Introduction of Tab 9, SB 846 by Chair Boyd
2:26:25 PM Explanation of SB 846, Medical Expense by Senator Brandes
2:27:32 PM Comments from Chair Boyd
2:27:37 PM Amendment Barcode 825674 by Senator Rouson
2:28:10 PM Explanation of Amendment by Senator Rouson
2:29:16 PM Amendment withdrawn
2:29:24 PM Introduction of Amendment Barcode 627880 by Chair Boyd
2:29:38 PM Explanation of Amendment by Senator Rouson
2:29:50 PM Amendment withdrawn
2:30:02 PM Introduction of Amendment Barcode 290838 by Chair Boyd
2:30:17 PM Explanation of Amendment by Senator Rouson
2:30:29 PM Amendment withdrawn
2:31:02 PM Introduction of Amendment Barcode 715314 by Senator Boyd
2:31:19 PM Explanation of Amendment by Senator Polsky

2:32:24 PM Comments from Chair Boyd
2:32:41 PM Speaker Cort Sabina, Waste Pro in opposition
2:34:25 PM Speaker Tiffany Faddis, Florida Justice Association in support
2:37:46 PM Speaker Andy Bolin, Florida Justice Reform Institute in opposition
2:40:05 PM Comments from Chair Boyd
2:40:14 PM Senator Brandes in opposition of Amendment
2:41:15 PM Senator Polsky in closure on Amendment
2:42:18 PM Amendment not adopted
2:42:40 PM Introduction of Amendment Barcode 377066 by Chair Boyd
2:42:57 PM Explanation of Amendment by Senator Thurston
2:44:21 PM Senator Brandes in opposition of Amendment
2:45:06 PM Senator Brandes on Point of Order on Amendment
2:45:42 PM Chair rules Amendment is out of order
2:45:58 PM Response from Senator Thurston regarding Point of Order
2:47:40 PM Comments from Chair Boyd
2:47:55 PM Introduction of Amendment Barcode 973596 by Chair Boyd
2:48:09 PM Amendment withdrawn
2:48:21 PM Comments from Chair Boyd
2:48:38 PM Speaker James Cusack, Clinical Capital Solutions in opposition
2:50:40 PM Speaker Tiffany Faddis, Florida Justice Association in opposition
2:53:37 PM Speaker Dr. Kenneth Armstrong, Florida Trucking Association in support
2:56:16 PM Speaker Thomas Carey, Spine Surgeons in opposition
2:58:47 PM Speaker Rob Tremp in opposition
3:01:20 PM Speaker Todd Williams, BioSpine in opposition
3:03:25 PM Speaker Andy Bolin, Florida Justice Reform Institute in support
3:04:29 PM Speaker Cort Sabina, Waste Pro in support
3:05:33 PM Speaker Romeo Vellutini, Waste Pro in support
3:07:40 PM Jason Rodriguez, BayCare Health System waives in support
3:07:45 PM Curry Pajcic, Florida Justice Association waives in support
3:07:50 PM Carolyn Johnson, Florida Chamber of Commerce waives in support
3:07:54 PM Robert Shuttem, BioSpine waives in opposition
3:08:01 PM Alexandra Barry waives in support
3:08:06 PM Anne Williams waives in support
3:08:08 PM Jake Farmer, Florida Retail Federation waives in support
3:08:14 PM Brewster Bevis, Associated Industries of Florida waives in support
3:08:29 PM Senator Brandes in closure
3:08:40 PM Roll call by CAA
3:09:06 PM CS/SB 846 reported favorably
3:09:33 PM Chair returned to Senator Brandes
3:09:39 PM Senator Broxson would like to be shown as voting in the affirmative on SB 848
3:09:48 PM Senator Bradley would like to be shown as voting in the affirmative on SB 848
3:10:00 PM Senator Baxley would like to be shown as voting in the affirmative on CS/SB 838
3:10:09 PM Comments from Chair Brandes
3:10:21 PM Senator Boyd moves to adjourn
3:11:00 PM Meeting adjourn