

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Burgess, Chair
Senator Gibson, Vice Chair

MEETING DATE: Monday, January 10, 2022**TIME:** 4:00—6:00 p.m.**PLACE:** Pat Thomas Committee Room, 412 Knott Building**MEMBERS:** Senator Burgess, 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
1	SB 190 Brodeur (Similar CS/H 95)	Controlled Substances; Revising the elements that constitute the capital offense of murder in the first degree; prohibiting specified activities involving controlled substances within 1,000 feet of additional specified facilities; providing criminal penalties, etc. JU 11/30/2021 Not Considered JU 01/10/2022 Fav/CS CJ RC	Fav/CS Yeas 7 Nays 3
2	SB 634 Bradley (Similar H 677)	Judicial Notice; Authorizing courts to take judicial notice of certain information taken from web mapping services, global satellite imaging sites, or Internet mapping tools upon request of a party; requiring parties who intend to offer such information into evidence to file a notice of intent containing specified information; authorizing parties to object to the admissibility of such information; requiring courts to overrule such objection unless certain findings are made, etc. JU 11/30/2021 Not Considered JU 01/10/2022 Favorable CM RC	Favorable Yeas 10 Nays 0
3	SB 1062 Bradley (Similar H 545)	Service of Process; Authorizing the Department of State to electronically receive service of process under ch. 48, F.S.; revising procedures for service on partnerships, limited liability partnerships, and limited partnerships; requiring designation of registered agents and registered offices by certain partnerships, corporations, and companies; providing for substituted service on certain nonresidents and foreign business entities and on individuals and foreign business entities concealing their whereabouts; providing for service of process for removal of unknown parties in possession of real property, etc. JU 01/10/2022 Fav/CS CM RC	Fav/CS Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, January 10, 2022, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 468 Banking and Insurance / Perry (Similar H 503, Compare H 959, S 1874)	Insurance; Redefining the term "covered policy" under the Florida Hurricane Catastrophe Fund in relation to certain collateral protection insurance policies; authorizing any association, trust, or pool created for the purpose of forming a risk management mechanism or providing self-insurance for a public entity to establish a quorum and conduct public business through communications media technology; authorizing insurers to file certain insurance rating plans based on certain windstorm mitigation construction standards, if certain requirements are met, etc. BI 12/01/2021 Fav/CS JU 01/10/2022 Fav/CS AP	Fav/CS Yeas 10 Nays 0
5	SB 542 Rodriguez (Similar H 411)	Evidentiary Standards for Actions Arising During an Emergency; Defining the term "engaged individual"; prohibiting certain actions taken by a business during a public health emergency from being used as evidence in certain civil causes of action, etc. CM 11/30/2021 Favorable JU 01/10/2022 Favorable RC	Favorable Yeas 10 Nays 0
6	SB 596 Baxley (Similar CS/H 383, Compare H 385, Linked S 598)	Criminal Conflict and Civil Regional Counsels; Specifying the responsibilities of regional counsels regarding witness coordination; removing the requirement that regional counsel employees be governed by Justice Administrative Commission classification and salary and benefits plans; providing that regional counsels can access certain confidential information relating to proceedings involving children under specified circumstances; authorizing regional counsel offices to obtain fictitious names for motor vehicle and vessel plates or decals, etc. JU 01/10/2022 Fav/CS ACJ AP	Fav/CS Yeas 10 Nays 0
7	SB 598 Baxley (Identical H 385, Compare CS/H 383, Linked S 596)	Public Records/Criminal Conflict and Civil Regional Counsel Office; Expanding a public records exemption to include all records pertaining to a registration application submitted by any criminal conflict and civil regional counsel office; providing for future legislative review and repeal; providing a statement of public necessity, etc. JU 01/10/2022 Fav/CS ACJ AP	Fav/CS Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, January 10, 2022, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 360 Harrell (Identical H 6037, Compare S 158)	Traveling Across County Lines to Commit a Burglary; Deleting a requirement that travel across county lines be for a specified purpose in order to reclassify a burglary offense, etc. CJ 11/02/2021 Temporarily Postponed CJ 11/30/2021 Favorable JU 01/10/2022 Favorable RC	Favorable Yeas 7 Nays 3
9	SB 336 Berman (Identical H 519)	Uniform Commercial Code; Providing that certain restrictions on the effectiveness of terms in specified agreements and the effectiveness of certain rules of law, statutes, or regulations related to the discharge of account debtors and certain restrictions on the assignment of promissory notes, health-care- insurance receivables, and certain general intangibles, respectively, do not apply to a security interest in an ownership interest in a general partnership, a limited partnership, or a limited liability company, etc. CM 11/02/2021 Favorable JU 01/10/2022 Fav/CS RC	Fav/CS Yeas 10 Nays 0
10	SB 868 Stewart (Identical H 525)	Sexual Battery on a Mentally Incapacitated Person; Revising the definition of the term "mentally incapacitated"; revising provisions concerning sexual battery upon a person who is mentally incapacitated, etc. JU 01/10/2022 Favorable CJ RC	Favorable Yeas 10 Nays 0
11	SB 82 Torres (Identical H 6513)	Relief of Kareem Hawari by the Osceola County School Board; Providing for the relief of Kareem Hawari by the Osceola County School Board; providing an appropriation to Mr. Hawari to compensate him for injuries and damages sustained as a result of the negligence of employees of the Osceola County School Board; providing a limitation on compensation and the payment of attorney fees, etc. JU 01/10/2022 Favorable ED 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/SB 190

INTRODUCER: Judiciary Committee and Senator Brodeur

SUBJECT: Controlled Substances

DATE: January 11, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u> </u>	<u> </u>	<u>CJ</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 190 amends several sections of law regarding the unlawful distribution of controlled substances.

First, the bill amends the causation requirement for the capital offense of “death caused by the unlawful distribution of a controlled substance.” Currently, the substance needs to be the “proximate cause” of the death of the victim. Determining the proximate cause may be difficult in certain situations. A victims medical conditions, substance abuse history, and a “cocktail,” the use of multiple substances at once, may make it difficult to assess precisely what substance was the proximate cause of death. The bill replaces this standard with the “sufficient to cause death” standard. This language would essentially cover situations where an individual overdoses after taking multiple lethal substances, any of which could have caused his or her death.

Additionally, the bill incorporates two recommendations from the Statewide Task Force on Opioid Abuse (Task Force). The bill amends the list of controlled substances eligible for conviction under the above referenced offense to include methamphetamine. The list of substances eligible for this offense currently includes: Cocaine, Opium, Methadone, Alfentanil, Carfentanil, Fentanyl, Sufentanil or an analog of any of these substances.

The bill incorporates a second recommendation from the Task Force, creating an enhanced penalty for the sale of a controlled substance if the offense is committed within 1,000 feet of certain facilities that often provide health and substance abuse treatment. Depending on the

substance, the enhancement may increase the penalty from a third degree felony to a second degree felony, or from a second degree felony to a first degree felony.

The bill provides an effective date of October 1, 2022.

II. Present Situation:

On April 1, 2019, citing an increase in the number of opioid-caused deaths in Florida, Governor DeSantis created the Statewide Task Force on Opioid Abuse (Task Force).¹ The Governor directed the Task Force to develop a statewide strategy to identify best practices to combat the opioid epidemic through education, treatment, prevention, recovery, and law enforcement, and to compile a report containing legislative recommendations. Two specific recommendations made by the Task Force relating to law enforcement included:

- Adding methamphetamine as a controlled substance qualifying for prosecution as a first degree murder offense when its distribution proximately causes the user's death; and
- Enhancing criminal penalties for the sale of a controlled substance within 1,000 feet of substance abuse treatment facilities.²

The Task Force's report did not address the proximate cause requirement for the capital offense of the unlawful distribution certain controlled substances resulting in the death of the user.

First Degree Murder

Under Florida law, first degree murder is a capital felony³ punishable by a sentence of death or life imprisonment without the possibility of parole.⁴ Although first degree murder is commonly thought of as requiring "premeditation," Florida law classifies three separate classes of first degree murder, two of which do not require any sort of premeditation or intent to cause a death.

Premeditated First Degree Murder

Premeditated first degree murder⁵ generally requires that:

- The death of the victim be caused by the criminal act of the defendant, and
- The defendant make a conscious decision to kill the victim.

Felony Murder

First degree felony murder, often termed the "Felony Murder Rule," is an unlawful killing as a result of an individual engaging in the perpetration of, or in the attempt to perpetrate certain felonies, including:

¹ Fla. Exec. Order No. 19-97 (April 1, 2019), available at <https://www.flgov.com/wp-content/uploads/2019/04/EO-19-97.pdf>.

² Florida Statewide Task Force on Opioid Abuse, *Findings and Recommendation of the Statewide Task Force on Opioid Abuse*, 45 (April 1, 2020), available at <https://doseofrealityfl.com/pdfs/opioid-task-force-findings-recommendations-opioid-abuse.pdf>.

³ Section 782.04(1)(a), F.S.

⁴ Section 775.082(1)(a), F.S.

⁵ Section 782.04(1)(a)1, F.S.

- Certain drug trafficking offenses,⁶
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,
- Unlawful throwing, placing, or discharging of a destructive device or bomb,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person,
- Aggravated fleeing or eluding with serious bodily injury or death,
- Any felony that is an act of terrorism or is in furtherance of an act of terrorism, and
- Human trafficking.⁷

Death Caused by the Unlawful Distribution of a Controlled Substance

First degree murder offenses include the unlawful distribution of certain controlled substances if committed by a person 18 years of age or older and the distribution *proximately causes* the death of a user. (Emphasis added).⁸ The applicable controlled substances include:

- Cocaine,
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium,
- Methadone,
- Alfentanil,
- Carfentanil,
- Fentanyl,
- Sufentanil, and
- A controlled substance analog of any of the above controlled substances.⁹

The Florida Standard Jury instructions for death caused by the unlawful distribution of a controlled substance defines *proximate cause* as conduct “that was the *primary* or moving cause

⁶ See s. 893.135(1)(a), F.S., which includes knowingly selling, purchasing, manufacturing, delivering or bringing into the state certain amounts of cannabis, cannabis plants, cocaine, morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin.

⁷ Section 782.04(1)(a)2., F.S.

⁸ Section 782.04(1)(a)3., F.S.

⁹ A “controlled substance analog” is defined in s. 893.0356(2)(a), F.S., as a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

- Is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.; and
- Has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.

of the death; the death would not have occurred but for the defendant's conduct; and the death was a natural and reasonably anticipated consequence of the defendant's conduct."¹⁰ (Emphasis added). Because the instruction requires the substance be the *primary* cause of death, a prosecutor may encounter certain scenarios where he or she cannot prove a specific substance was the primary cause of death. A victim may, for example, have ingested lethal amounts of both cocaine and opium, each of which *equally* could have caused his or her death. Prosecutors have reported difficulty obtaining convictions in scenarios such as this, as it is virtually impossible to determine if something was the *primary* cause if there are multiple sufficient possibilities that were all equally lethal.¹¹

Sale of a Controlled Substance

Florida law prohibits a person from selling, manufacturing,¹² or delivering¹³ a controlled substance.¹⁴ The penalty for selling a controlled substance varies depending on several factors, including the type and amount of the substance sold, and the location where the sale takes place. Generally, the sale of a controlled substance is punishable as either a second degree felony¹⁵ or third degree felony.¹⁶ The penalties are enhanced to a second degree felony or first degree felony if the sale occurs within 1,000 feet of the real property of specified locations, including a:

- Child care facility,
- Public or private elementary, middle, or secondary school,
- State, county, or municipal park,
- Community center or publicly owned recreational facility,
- Public or private college, university, or other postsecondary institution,
- Place of worship that conducts religious services,
- Convenience business,
- Public housing facility, or
- Assisted living facility

¹⁰ Fla. Std. Jury Instr. (Crim.) 7.3(a); *see also Aumuller v. State*, 944 So. 2d 1137 (Fla. 2d DCA 2006).

¹¹ Office Memorandum to Bob Cortes from Daniel E. Faggard, Assistant State Attorney, Eighteenth Judicial Circuit, Re: Substantial Factor Test (Feb. 5, 2021) (on file with the Senate Committee on Judiciary).

¹² "Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

- A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.
- A practitioner, or his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale. Section 893.02(15)(a), F.S.

¹³ "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship. Section 893.02(6), F.S.

¹⁴ Section 893.13, F.S.

¹⁵ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁶ Section 893.13(1), F.S. A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

III. Effect of Proposed Changes:

The bill amends several sections of law regarding the unlawful distribution of controlled substances.

Section 1 of the bill amends s. 782.04(1)(a), F.S., to revise the causation requirement for the first degree murder offense of “death caused by the unlawful distribution of a controlled substance.” Under current law, a controlled substance is required to be the *proximate cause* of the death of the user. The bill, instead, only requires that the substance be a “substantial factor” in producing the death of the user. This new language may cover situations where a user dies with a combination of multiple illegal substances in his or her body, each of which could have caused the user’s death.

The bill further amends s. 782.04, F.S., to include methamphetamine to the list of substances that may subject the person who distributed the controlled substance to a conviction for first degree murder based any unlawful distribution. This specific provision was recommended by the Statewide Task Force on Opioid Abuse.¹⁷

Section 2 of the bill incorporates a second recommendation from the Task Fork and creates an enhancement to the criminal act of selling, manufacturing, delivering, or possessing with the intent to sell, manufacture, or deliver a controlled substance within 1000 feet of any:

- Mental health facility under ch. 394, F.S.,
- Health care facility licensed under ch. 395, F.S., which provides substance abuse treatment,
- Licensed service provider as defined in s. 397.311, F.S.,
- Facility providing services that include clinical treatment, intervention, or prevention as described in s. 397.311(26), F.S.,
- Recovery residence as defined in s. 397.311, F.S., or
- Pain management clinic as defined in ss. 458.3265(1)(a)1.c. or s. 459.0137(1)(a)1.c., F.S.

Depending on the substance, the enhancement increases the penalty from a third degree felony to a second degree felony, or from a second degree felony to a first degree felony.

Section 3 of the bill provides an effective date of October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁷ See Fla. Exec. Order No. 19-97 and Florida Statewide Task Force on Opioid Abuse, *supra* notes 1-2.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 190, like CS/HB 325 (2021), a somewhat similar bill from last session is likely to increase the prison population by an indeterminate amount.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 782.04 and 893.13.

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 January 10, 2022:

The committee substitute reorganizes provisions of the bill to make it identical to HB 95.

¹⁸ Criminal Justice Impact Conference, Narrative Analysis of Adopted Impact for PCS for HB 325, (updated Mar. 4, 2021) <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm>.

The committee substitute does not substantially change the bill and only differs in technical drafting choices.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2022	.	
	.	
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	.	

The Committee on Judiciary (Brodeur) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 65 - 69

and insert:

punishable as provided in s. 775.082.

(4) The unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

(a) Trafficking offense prohibited by s. 893.135(1),

(b) Arson,



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(c) Sexual battery,
(d) Robbery,
(e) Burglary,
(f) Kidnapping,
(g) Escape,
(h) Aggravated child abuse,
(i) Aggravated abuse of an elderly person or disabled adult,
(j) Aircraft piracy,
(k) Unlawful throwing, placing, or discharging of a destructive device or bomb,
(l) Unlawful distribution of any substance listed in sub-
subparagraphs (1)(a)3.a.-j. controlled under s. 893.03(1),
cocaine as described in s. 893.03(2)(a)4., or opium or any
synthetic or natural salt, compound, derivative, or preparation
of opium by a person 18 years of age or older, when such
substance drug is proven to have caused, or is proven to have
been a substantial factor in producing, be the proximate cause
of the death of the user,
(m) Carjacking,
(n) Home-invasion robbery,
(o) Aggravated stalking,
(p) Murder of another human being,
(q) Aggravated fleeing or eluding with serious bodily injury or death,
(r) Resisting an officer with violence to his or her person, or
(s) Felony that is an act of terrorism or is in furtherance of an act of terrorism, including a felony under s. 775.30, s.



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775.32, s. 775.33, s. 775.34, or s. 775.35,
is murder in the third degree and constitutes a felony of the
second degree, punishable as provided in s. 775.082, s. 775.083,
or s. 775.084.

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

(a) "Substantial factor" means that the use of the
substance or mixture alone is sufficient to cause death,
regardless of whether any other substance or mixture used is
also sufficient to cause death.

(b) "Terrorism" means an activity that:

1.a.(a)1. Involves a violent act or an act dangerous to
human life which is a violation of the criminal laws of this
state or of the United States; or

b.2. Involves a violation of s. 815.06; and

2.(b) Is intended to:

a.1. Intimidate, injure, or coerce a civilian population;

b.2. Influence the policy of a government by intimidation
or coercion; or

c.3. Affect the conduct of government through destruction
of property, assassination, murder, kidnapping, or aircraft
piracy.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete lines 13 - 14

and insert:

Section 1. Paragraph (a) of subsection (1) and subsections
(4) and (5) of section 782.04, Florida Statutes, are amended to



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70 read:
71
72 ===== T I T L E A M E N D M E N T =====
73 And the title is amended as follows:
74 Between lines 4 and 5
75 insert:
76 revising the elements that constitute the felony
77 offense of murder in the third degree;

By Senator Brodeur

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A bill to be entitled

An act relating to controlled substances; amending s. 782.04, F.S.; revising the elements that constitute the capital offense of murder in the first degree; defining the term "substantial factor"; amending s. 893.13, F.S.; prohibiting specified activities involving controlled substances within 1,000 feet of additional specified facilities; providing criminal penalties; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 782.04, Florida Statutes, is amended to read:

782.04 Murder.—

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;

2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:

- a. Trafficking offense prohibited by s. 893.135(1),
- b. Arson,
- c. Sexual battery,
- d. Robbery,
- e. Burglary,
- f. Kidnapping,
- g. Escape,
- h. Aggravated child abuse,
- i. Aggravated abuse of an elderly person or disabled adult,

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- j. Aircraft piracy,
- k. Unlawful throwing, placing, or discharging of a destructive device or bomb,
- l. Carjacking,
- m. Home-invasion robbery,
- n. Aggravated stalking,
- o. Murder of another human being,
- p. Resisting an officer with violence to his or her person,
- q. Aggravated fleeing or eluding with serious bodily injury or death,
- r. Felony that is an act of terrorism or is in furtherance of an act of terrorism, including a felony under s. 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35, or
- s. Human trafficking; or
- 3. Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to have caused, or is proven to have been a substantial factor in producing, ~~be the proximate cause of~~ the death of the user:
 - a. A substance controlled under s. 893.03(1);
 - b. Cocaine, as described in s. 893.03(2)(a)4.;
 - c. Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;
 - d. Methadone;
 - e. Alfentanil, as described in s. 893.03(2)(b)1.;
 - f. Carfentanil, as described in s. 893.03(2)(b)6.;
 - g. Fentanyl, as described in s. 893.03(2)(b)9.;
 - h. Sufentanil, as described in s. 893.03(2)(b)30.; ~~or~~

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59 i. Methamphetamine, as described in s. 893.03(2)(c)5.; or
 60 j. A controlled substance analog, as described in s.
 61 893.0356, of any substance specified in sub-subparagraphs a.-i.
 62 ~~sub-subparagraphs a.-h.,~~
 63
 64 is murder in the first degree and constitutes a capital felony,
 65 punishable as provided in s. 775.082. As used in this paragraph,
 66 the term "substantial factor" means that the use of the
 67 substance or mixture alone is sufficient to cause death,
 68 regardless of whether any other substance or mixture used is
 69 also sufficient to cause death.
 70 Section 2. Paragraph (h) of subsection (1) of section
 71 893.13, Florida Statutes, is amended to read:
 72 893.13 Prohibited acts; penalties.—
 73 (1)
 74 (h) Except as authorized by this chapter, a person may not
 75 sell, manufacture, or deliver, or possess with intent to sell,
 76 manufacture, or deliver, a controlled substance in, on, or
 77 within 1,000 feet of the real property comprising a mental
 78 health facility, as that term is used in chapter 394; a health
 79 care facility licensed under chapter 395 which provides
 80 substance abuse treatment; a licensed service provider as
 81 defined in s. 397.311; a facility providing services that
 82 include clinical treatment, intervention, or prevention as
 83 described in s. 397.311(26); a recovery residence as defined in
 84 s. 397.311; an assisted living facility, as defined ~~that term is~~
 85 used in chapter 429; or a pain management clinic as defined in
 86 s. 458.3265(1)(a)1.c. or s. 459.0137(1)(a)1.c. A person who
 87 violates this paragraph with respect to:

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88 1. A controlled substance named or described in s.
 89 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.
 90 commits a felony of the first degree, punishable as provided in
 91 s. 775.082, s. 775.083, or s. 775.084.
 92 2. A controlled substance named or described in s.
 93 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7.,
 94 (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of
 95 the second degree, punishable as provided in s. 775.082, s.
 96 775.083, or s. 775.084.
 97 3. Any other controlled substance, except as lawfully sold,
 98 manufactured, or delivered, must be sentenced to pay a \$500 fine
 99 and to serve 100 hours of public service in addition to any
 100 other penalty prescribed by law.
 101 Section 3. This act shall take effect October 1, 2022.

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The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: October 1, 2021

I respectfully request that **Senate Bill 190**, relating to **Controlled Substances**, be placed on the:

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

A handwritten signature in black ink that reads "Jason Brodeur". The signature is written in a cursive style with a long horizontal stroke at the end.

Senator Jason Brodeur
Florida Senate, District 9

The Florida Senate

APPEARANCE RECORD

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

1/10/22

Meeting Date

SB 190

Bill Number or Topic

Judiciary

Committee

103162

Amendment Barcode (if applicable)

Name

Buddy Jacobs, General Counsel

Phone

State Atty's. of Fla (FPA A)
904-261-3643

Address

561687 Gateway Blvd. Suite 201-1

Email

ajacobs@comcast.net

Street

Fernandine Bch FL

32034

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

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

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

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

1/10/22

Meeting Date

SB 190

Bill Number or Topic

Deliver both copies of this form to
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Committee

Amendment Barcode (if applicable)

Name

Buddy Jacobs, General Counsel

Phone

State Attorneys OFF La. (FPA)

Address

561 687 Gateway Blvd Suite 201-i

Email

ajacobs@lwncast.net

Street

Fernandina Beach FL

32034

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

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

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S-001 (08/10/2021)

1/10/22

Meeting Date

Judiciary

Committee

The Florida Senate

APPEARANCE RECORD

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SB 190

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Jorge Chamizo**

Phone **850-681-0024**

Address **108 S. Monroe Street**

Email **jorge@flapartners.com**

Street

Tallahassee

FL

32301

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Fla Assoc of Criminal Defense Lawyers

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

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

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5-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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January 10, 2021

Meeting Date

SB 190

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Lauren Jackson

Phone 931-265-8999

Address 205 S. Adams St.

Street

Email lauren@ericksconsultants.com

Tallahassee

City

FL

State

32301

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Seminole County Sheriff's
Office

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

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

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S-001 (08/10/2021)

1/10/2022

Meeting Date

Judiciary

Committee

The Florida Senate
APPEARANCE RECORD

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SB 190

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Nancy Daniels**

Phone **850 228-7444**

Address **103 N Gadsden St.**

Email **ndaniels@flpda.org**

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

**Florida Public Defender
Association**

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

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

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S-001 (08/10/2021)

The Florida Senate

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190

Bill Number or Topic

Amendment Barcode (if applicable)

1-10-2022

Meeting Date

Judiciary

Committee

Name

Bob Cortes

Phone

407-840-3435

Address

100 Esclayer Way

Email

bcortes@seniorshs.fl.gov

Street

Sanford

State

FL

32773

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☒

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

Senior High School Office

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

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The Florida Senate

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1/10/22

Meeting Date

Judiciary

Committee

190

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ida V. Eskamani

Phone

Address

134 E Colonial Dr

Email

Street

Orlando

State

FL

Zip

32801

City

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

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

Florida Rising + Florida Immigrant Coalition

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

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S-001 (08/10/2021)

1/10/2022

Meeting Date

Judiciary

Committee

The Florida Senate

APPEARANCE RECORD

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190

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Matt Dunagan**

Phone **850-877-2165**

Address **2617 Mahan Drive**

Email **mdunagan@flsheriffs.org**

Street

Tallahassee

City

FL

State

32308

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Florida Sheriffs Association

☐

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

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

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The Florida Senate

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1/10/22
Meeting Date

Judiciary
Committee

SB 190
Bill Number or Topic

Amendment Barcode (if applicable)

Name Letitia Harmon Phone _____

Address 1010 N. Davis St Email Letitia@floridarising.org
Street

Jacksonville FL
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 190 ~~AND 360~~

1/10/22

Meeting Date

JUDICIARY

Committee

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Bill Number or Topic

Amendment Barcode (if applicable)

Name

SEN. DWIGHT BULLARD

Phone

Address

10800 BISCAYNE BLVD.

Email

Street

MIAMI

FL

3316

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1/10/22

Meeting Date

JUDICIARY

Committee

SB 190

Bill Number or Topic

Amendment Barcode (if applicable)

Name

REV DR RUSSELL MEYER

Phone

813 763 3610

Address

1308 WINDSOR PL

Street

Email

russellmeyer@att.net

JACKSONVILLE

City

FL

State

32205

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 634

INTRODUCER: Senator Bradley

SUBJECT: Judicial Notice

DATE: November 29, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2. _____	_____	<u>CM</u>	_____
3. _____	_____	<u>RC</u>	_____

I. Summary:

SB 634 creates a process for a court to take “judicial notice” of certain information taken from mapping services, such as Google Maps. Under Florida law, judicial notice may generally be declared for certain facts “not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned” or “because they are generally known within the territorial jurisdiction of the court.”¹

The bill provides a process separate from the above standards for judicial notice of any image, map, location, distance, calculation, or other information taken from any web mapping service, global satellite imaging site, or Internet mapping tool so long as the information in question indicates the date that it was created. Under the process, a party must file a notice of intent to offer the information, and the information will be admitted into evidence unless another party objects. If there is an objection, the court must overrule the objection, unless the court finds by a preponderance of the evidence that the material sought to be admitted does not fairly and accurately portray what it is being offered to prove or that it otherwise should not be admitted into evidence under the Florida Evidence Code. If the court overrules the objection, it must take judicial notice of the information and admit it into evidence.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

The Florida Evidence Code

Florida statutes, such as the Florida Evidence Code (Code) as enacted by the Legislature, contain both procedural and substantive law for the courts to apply. Depending on the type of

¹ Section 90.202(11) and (12), F.S.

proceeding, the Code is generally applicable to all proceedings in Florida courts,² including actions based on federal claims.³ However, statutes that are procedural in nature, even those passed by the Legislature, must be approved by Supreme Court. Occasionally, the Court rejects the legislative changes.

In 2000, for example, the Court refused to adopt a recently enacted hearsay exception, noting that applying the statute would go against long standing rules of evidence and violate a defendant's right of confrontation.⁴ A concurring opinion by Justice Lewis also found that the statute was an unacceptable rule of procedure, and therefore infringed on the Court's ability to adopt rules under article v, section 2(a), of the Florida Constitution. In 2014, the Court refused to adopt a statute that was not part of the evidence code requiring certain qualifications for expert witnesses in medical negligence cases on the grounds that the statute was procedural.⁵

Judicial Notice

Judicial notice allows a court to make a finding that a certain piece of evidence is true without any formal introduction for that basis.⁶ Generally, this may involve undisputed facts or facts that are so well known they speak for themselves. Often, judicial notice may be used to save time and resources, as presenting evidence for certain situations may prove too much of an unnecessary burden.⁷ Courts warn though, that judicial notice "should be exercised with great caution" and "must be of common and general knowledge [and] authoritatively settled and not doubtful."⁸ A famous example occurred in Ohio where a trial court took judicial notice that "Bud Lite is beer" in a case involving the sale of beer to an underage person.⁹ The conviction was eventually vacated by the Ohio Supreme Court, consistent with an appellate court finding that despite Bud Lite meeting the "common, everyday understanding" of the term "beer," this did not align with the statutory language as enacted by Ohio Legislature, which included that the beverage contain "between one-half of one percent and twelve percent alcohol by volume."¹⁰ The conviction was thus vacated because the government failed to prove that the Bud Lite in question contained required percentage of alcohol.

There are practical considerations when asking a court to take judicial notice of something. In the above referenced case, for example, judicial notice likely allowed the prosecutor to avoid testing a sample of Bud Lite to determine the alcoholic content. The Bud Lite in question did not contain

² Section 90.103, F.S.

³ *Byrd v. BT Foods, Inc.*, 26 So. 3d 600, 605 (Fla. 4th DCA 2009) ("[S]tate evidence codes control evidentiary questions presented in state court. This is so even where federal claims are litigated, unless the state rules would affect substantive federal rights.").

⁴ *In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339, 341 (Fla. 2000). The statute in question stripped the former testimony of witnesses hearsay exception of the requirement that the witness be unavailable.

⁵ *In re: Amendments to the Fla. Evidence Code*, 144 So. 3d 536, 537 (Fla. 2014).

⁶ Legal Information Institute, *Cornel Law School*, https://www.law.cornell.edu/wex/judicial_notice

⁷ For example, soliciting testimony from members of the Governor, the Secretary of State, and members of the Legislature to verify that an act of the Legislature was enacted into Florida law would put a large burden on those officials in addition to any parties seeking evidence of any Legislative act.

⁸ *State v. Coleman*, 5 So. 2d 60, 62 (Fla. 1941).

⁹ *State v. Kareski*, 2012 WL 1717976, *2 (Ohio 9th Dist. Ct. App. 2012), *vacated*, 998 N.E.2d 410, (Ohio 2013).

¹⁰ Ohio Rev. Code Ann. § 4301.01(6)(b).

an official marker identifying the amount of alcohol.¹¹ The Code differentiates between when a court *may* or *shall* take judicial notice upon request of a party.

Under s. 90.201, F.S., a court *shall* take judicial notice of:

- Decisional, constitutional, and public statutory law and resolutions of the Florida Legislature and the Congress of the United States,
- Florida rules of court that have statewide application, its own rules, and the rules of United States courts adopted by the United States Supreme Court, and
- Rules of court of the United States Supreme Court and of the United States Courts of Appeal.¹²

Under s. 90.202, F.S., a court *may* take judicial notice of:

- Special, local, and private acts and resolutions of the Congress of the United States and of the Florida Legislature,
- Decisional, constitutional, and public statutory law of every other state, territory, and jurisdiction of the United States,
- Contents of the Federal Register,
- Laws of foreign nations and of an organization of nations,
- Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States,
- Records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States,
- Rules of court of any court of this state or of any court of record of the United States or of any other state, territory, or jurisdiction of the United States,
- Provisions of all municipal and county charters and charter amendments of this state, provided they are available in printed copies or as certified copies,
- Rules promulgated by governmental agencies of this state which are published in the Florida Administrative Code or in bound written copies,
- Duly enacted ordinances and resolutions of municipalities and counties located in Florida, provided such ordinances and resolutions are available in printed copies or as certified copies,
- Facts that are not subject to dispute because they are generally known within the territorial jurisdiction of the court,
- Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned, and
- Official seals of governmental agencies and departments of the United States and of any state, territory, or jurisdiction of the United States.¹³

When presented with a request under s. 90.202, F.S., a court is required to take judicial notice after the court:

- Gives each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request, and

¹¹ *Kareski*, 998 N.E.2d at 411.

¹² Section 90.201, F.S.

¹³ Section 90.202, F.S.

- Is furnished with sufficient information to enable it to take judicial notice of the matter.¹⁴

III. Effect of Proposed Changes:

The bill creates a process to allow a court to take judicial notice of certain information from web mapping services, such as street information from Google Maps. Specifically, the bill will allow a court to take judicial notice of any image, map, location, distance, calculation, or other information taken from any web mapping service, global satellite imaging site, or internet mapping tool so long as the information in question indicates the date that it was created.

In order for a court to take judicial notice of this type of information, the bill requires a party to file notice within a reasonable time, or as required by a court order. This notice must include a copy of the information and specify the Internet address where it may be inspected.

The bill provides a process for a party to object to a request for judicial notice of such information. The court is required to make a judicial notice, overruling the objection, unless the court finds by a preponderance of the evidence¹⁵ that the material sought to be admitted does not fairly and accurately portray what it is being offered to prove or that it otherwise should not be admitted into evidence under the Florida Evidence Code.

The bill provides that this section “does not affect, expand, or limit standards for any matters that may otherwise be judicially noticed.”

The bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁴ Section 90.203, F.S.

¹⁵ “Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true.” Legal Information Institute, *Cornell Law School*, https://www.law.cornell.edu/wex/preponderance_of_the_evidence

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 634 may enable parties in litigation to avoid costs that they would otherwise incur to produce, verify, and authenticate information from web mapping service, a global satellite imaging site, or an Internet mapping tool.

C. Government Sector Impact:

The bill may enable government parties to litigation avoid costs that they would otherwise incur to produce, verify, and authenticate information from web mapping service, a global satellite imaging site, or an Internet mapping tool. The bill may also reduce costs to the judiciary by reducing the judicial time and resources that would otherwise be required in litigation over the admissibility of such information.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 90.2035, 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.



271884

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/10/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 24 - 41
and insert:
other information taken from a widely accepted web mapping
service, global satellite imaging site, or Internet mapping
tool, if such image, map, location, distance, calculation, or
other information indicates the date on which the information
was created.

(b) A party intending to offer such information in evidence
at trial or at a hearing must file notice of such intent within



271884

a reasonable time, or as defined by court order. The notice must include a copy of the information and specify the Internet address or pathway where such information may be accessed and inspected.

(2) (a) A party may object to the court taking judicial notice of the image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or Internet mapping tool within a reasonable time or as defined by court order.

(b) There is a rebuttable presumption that information sought to be judicially noticed under this section should be judicially noticed. The rebuttable presumption may be overcome if the court finds by the greater weight of the evidence that the information does not fairly and accurately portray what it is

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

And the title is amended as follows:

Delete lines 4 - 11

and insert:

notice of certain information taken from widely accepted web mapping services, global satellite imaging sites, or Internet mapping tools upon request of a party; requiring parties who intend to offer such information into evidence to file a notice of intent containing specified information; authorizing parties to object to the court taking judicial notice of such information; creating a rebuttable presumption that such information should be judicially noticed unless



271884

41

certain

By Senator Bradley

5-00450-22

2022634__

1 A bill to be entitled
 2 An act relating to judicial notice; creating s.
 3 90.2035, F.S.; authorizing courts to take judicial
 4 notice of certain information taken from web mapping
 5 services, global satellite imaging sites, or Internet
 6 mapping tools upon request of a party; requiring
 7 parties who intend to offer such information into
 8 evidence to file a notice of intent containing
 9 specified information; authorizing parties to object
 10 to the admissibility of such information; requiring
 11 courts to overrule such objection unless certain
 12 findings are made; providing construction; providing
 13 an effective date.
 14
 15 Be It Enacted by the Legislature of the State of Florida:
 16
 17 Section 1. Section 90.2035, Florida Statutes, is created to
 18 read:
 19 90.2035 Judicial notice of information taken from web
 20 mapping services, global satellite imaging sites, or Internet
 21 mapping tools.—
 22 (1) (a) Upon request of a party, a court may take judicial
 23 notice of an image, map, location, distance, calculation, or
 24 other information taken from a web mapping service, a global
 25 satellite imaging site, or an Internet mapping tool, if such
 26 image, map, location, distance, calculation, or other
 27 information indicates the date on which the information was
 28 created.
 29 (b) A party intending to offer such information in evidence

Page 1 of 2

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

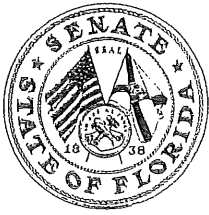
5-00450-22

2022634__

30 at trial or hearing must file notice of such intent within a
 31 reasonable time, or as defined by court order, which notice must
 32 include a copy of the information and specify the Internet
 33 address where such information may be inspected.
 34 (2) (a) A party may object to the admissibility of the
 35 image, map, location, distance, calculation, or other
 36 information taken from a web mapping service, a global satellite
 37 imaging site, or an Internet mapping tool within a reasonable
 38 time or as defined by court order.
 39 (b) The court shall overrule the objection unless the court
 40 finds by a preponderance of evidence that the material sought to
 41 be admitted does not fairly and accurately portray what it is
 42 being offered to prove or that it otherwise should not be
 43 admitted into evidence under the Florida Evidence Code.
 44 (c) If the court overrules the objection, the court must
 45 take judicial notice of the information and admit the
 46 information into evidence.
 47 (3) This section does not affect, expand, or limit
 48 standards for any matters that may otherwise be judicially
 49 noticed.
 50 Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

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



SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary
Reapportionment

SELECT SUBCOMMITTEE:

Select Subcommittee on Congressional
Reapportionment, *Chair*

JOINT COMMITTEES:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

November 16, 2021

Senator Danny Burgess, Chairman
Senate Committee on Judiciary
308 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Burgess:

I respectfully request that Senate Bill 634 be placed on the committee's agenda at your earliest convenience. This bill relates to judicial notice.

Thank you for your consideration.

Sincerely,


Jennifer Bradley

cc: Tom Cibula, Staff Director
Celia Georgiades, Administrative Assistant

REPLY TO:

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

January 10, 2022

Meeting Date

Judiciary

Committee

Name

Curry Pajcic

Phone

(904) 358-8881

Address

1 Independent Drive, Suite 1900

Email

curry@pajcic.com

Street

Jacksonville

FL

32202

City

State

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 634

Bill Number or Topic

Amendment Barcode (if applicable)

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1062

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Service of Process

DATE: January 11, 2022

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1062 amends laws governing service of process. The term “service of process” refers to the manner of delivery of legal notice to an individual or entity which provides notice of a pending legal action. The bill:

- Details and standardizes the manner and priority of forms of service of process as related to different forms of business entities as appropriate to the form and structure of the entities.
- Prioritizes service of process on the registered agent of an entity.
- Clarifies procedures for substituted service of process by delivery to the Secretary of State.
- Creates the authority of a trial court to allow any effective alternative means of service of process where an entity cannot be served with process by conventional means.
- Creates a framework for service of process on an individual or entity in a foreign country, to include any form of process recognized under that country’s laws.
- Creates procedures for service of process for removal of unknown party in possession of rented real property.
- Provides that service of a medical negligence pre-suit notice starts to toll the statute of limitations from the date of mailing rather than the date of receipt, and broadens the forms of such delivery to allow commercial delivery services or use of a certified process server.
- Broadens statutes on service of process by registered or certified mail to also allow delivery by a commercial delivery service.
- Allows the Department of State to accept substituted service of process by electronic means.

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

The section of the bill regarding notice before filing an action for medical malpractice takes effect upon becoming law, the remainder of the bill takes effect January 2, 2023.

II. Present Situation:

A fundamental concept of due process is that a person must be given fair notice of the initiation of an action against the person. Delivery of that notice is referred to as “service of process.” Adequate service of process is also required to summon a witness for testimony or for production of evidence. Centuries ago, service of process was only trusted to the county sheriff. Modern concepts of due process required for adequate service of process recognize that there are numerous means by which a person or entity may be fairly appraised of a lawsuit or a requirement to produce evidence.

The traditional and best form of service of process on a competent adult is by personal delivery to that individual, but that is not always possible. Individuals may be difficult to find, whether intentionally or not. Individuals may be incompetent, whether medically or by youth. Procedures need to be established for determining how to serve process on an entity in a manner likely to have it noticed by management for a timely response. A large body of law has been devoted to the allowable methods for service of process.

The Secretary of State is involved in many aspects of service of process. The Secretary is head of the Department of State, which handles the administrative duties of the Secretary. The Division of Corporations, under the Department of State, accepts business entity registrations and renewals, and maintains a publicly-accessible record of every entity, listing a registered agent and the names of the related top-level individuals in the entity. Every current entity must appoint a registered agent, a person within the state who is authorized by the entity to accept service of process directed to the entity. In some instances, substituted service of process may be made on the Secretary of State.

III. Effect of Proposed Changes:

Service of Process on a General Partnership (Section 2)

A general partnership is a form of business where two or more individuals jointly engage in an enterprise. The assets of the partnership are subject to creditor claims, and every partner is jointly and severally liable for the debts of the partnership. Currently, service on any partner, or on a registered agent if one is named, is deemed service on the partnership, making the assets of the partnership available to the plaintiff. Individual partners are personally liable for partnership debts if partnership assets are exhausted, but must be served with process as an individual in order for his or her non-partnership assets to be subject to creditor claims.¹ A general partnership may, but is not required to, register with the Department of State and name a registered agent for

¹ Sections 48.061(1), 620.8306, and 620.8307, F.S.

service of process.² A general partnership may designate an employee to accept service of process during regular business hours.³

The bill provides that, after one attempt at service of process on any partner, registered agent, or designated employee, a partnership may be served by delivery of the process to a person in charge of the partnership during regular business hours.

Service of Process on a Limited Liability Partnership (Section 2)

A partnership may elect to be a limited liability partnership by registration with the Secretary of State. The assets of the partnership are subject to creditor claims, but the non-partnership assets of all of the individual partners are not subject to creditor claims.⁴ Current statutes do not specifically address service of process on a limited liability partnership, current law on general partnerships therefore applies.

The bill specifies the manner of service of process on a limited liability partnership. Process must first be attempted on the registered agent. If service on the registered agent fails, process may be made on any partner. If no partner is available during regular business hours, any partner may designate an employee to accept service of process. If service on a partner or designated employee fails, process may be served on the person in charge of the partnership during regular business hours. If all of these fail, process may be served upon the Secretary of State or by any other method approved by court order.

Service of Process on a Limited Partnership (Sections 2, 28, 29, 30, 31, 32, 33)

A limited partnership has two classes of partners, limited partners and general partners. The limited partnership must have at least one of each. A limited partnership formed in the state or doing business in the state must register with the Secretary of State. The assets of the limited partnership are subject to creditor claims, as are the assets of a general partner, but the non-partnership assets of any limited partner are not subject to creditor claims.⁵ Service of process on a limited partnership is by service on the registered agent. If service cannot be made against the registered agent, substituted service may be made on the Secretary of State.⁶

The bill provides that service of process on a domestic limited partnership must first be attempted by delivery to the registered agent. If that service fails, service may be on any general partner of the limited partnership. If that fails, service may be made on the Secretary of State or by any other method approved by court order.

The bill also provides that a notice or demand required to be delivered to the limited partnership which is not service of process may be delivered to any general partner, the registered agent, or to any other address that is the principal place of business in this state.

² Section 620.8105, F.S.

³ Section 48.061(1), F.S. This designation is internal to the partnership.

⁴ Section 620.8306(3), F.S.

⁵ Section 620.1404(1), F.S.

⁶ Section 620.1117, F.S.

Service of Process on a Limited Liability Company (Sections 3, 17, 19 and 20)

A limited liability company is a form of business entity that is formed by enactment of an operating agreement and registration with the Secretary of State. Like a corporation, individual investors are not liable for entity debts. Service of process on a limited liability company may be on the registered agent. If service on the registered agent fails, process may be served on any member of a member-managed limited liability company or any manager of a manager-managed limited liability company. If these fail, substituted service may be on the Secretary of State.⁷

The bill keeps the registered agent first and the Secretary of State as a last resort, and adds that any other person listed publicly in the company's latest annual report, as most recently amended, as an additional alternative to any manager of a manager-managed limited liability company or any member of a member-managed limited liability company. The bill also adds any other method approved by court order as an alternative to service on the Secretary of State as a last resort.

To cancel its certificate of authority to transact business in the state, a foreign limited liability company must in part furnish the Secretary of State with an address that can be used should the company be served with substitute process through the Secretary of State,⁸ and must commit to keeping the address on file current.⁹ The bill adds a requirement to furnish and update, as necessary, an e-mail address.

Business entities may have authority to convert from one form of entity to another. Where the converting entity is a registered limited liability company and the converted entity is any form of foreign entity that is not registered in Florida, the entity must give the Secretary of State a mailing address that can be used should the entity be served with substitute process through the Secretary of State.¹⁰ The bill adds a requirement to furnish an e-mail address with the mailing address.

Service of Process on a Corporation (Sections 5, 21, 22, 23, 24, 25, 26, and 27)

A corporation is a form of business entity in which investors purchase shares of stock in the corporation and vote for a board of directors to manage the entity. Shareholders are generally not liable for the debts of the corporation. Service of process on a corporation is by delivery to the president, vice president, or any other head of the corporation. In the absence of a president or other head of the corporation, service may be made on the cashier, treasurer, secretary, or general manager. In the absence of any of the foregoing, service may be made on any director of the corporation. In the absence of any of the foregoing, service may be made on any officer or business agent residing in the state. If a foreign corporation has none of the foregoing officers or agents in this state, service may be made on any agent transacting business for it in this state. As an alternative to all of the foregoing, process may be served on the registered agent.¹¹ Also as an

⁷ Section 605.0117, F.S.

⁸ Section 605.0910(1)(f), F.S.

⁹ Section 605.0910(1)(g), F.S.

¹⁰ Section 605.1045(2)(f), F.S.

¹¹ Section 48.081, F.S. Note that this section does not apply to a corporation that is an insurance company. Service on an insurance company is not affected by this bill.

alternative, should all of the foregoing fail, service may be by delivery to any employee of the corporation at the principal place of business or any employee of the registered agent.

The bill requires that the first attempt at service of process be delivery to the registered agent. If service on the registered agent fails, service may be by delivery to the chair of the board of directors, the president, any vice president, the secretary, the treasurer, or any other person listed on the most recent corporate filing with the Secretary of State. If service on these fail, service may be by substituted service on the Secretary of State or any by other method approved by court order. The bill repeals the duty to go down the hierarchy of officers and repeals the “any employee” option.

To cancel its certificate of authority to transact business in the state, a foreign corporation must in part furnish the Secretary of State with an address that can be used should the corporation be served with substitute process through the Secretary of State,¹² and must commit to update the mailing address in the future.¹³ The bill adds a requirement to furnish an e-mail address as a part of the withdrawal, and requires a corporation to also commit to future updates to the e-mail address.

Alternative Use of Commercial Delivery Services (Sections 4, 10, and 15)

Various forms of service of process require that a copy of the papers served also be furnished to the person affected by mailing through the United States Postal Service. In the following statutes, the bill adds that delivery by a commercial firm regularly engaged in the business of document or package delivery is an alternative to U.S. postal delivery:

- Service of process on agents of nonresidents (natural persons or partnerships) doing business in the state.¹⁴
- Substituted service of process by service on the Secretary of State.¹⁵
- Pre-suit service of a notice of intent to file a medical negligence action.¹⁶

Offices of Registered Agents (Section 6)

A registered agent for a corporation is required to be open daily from 10 a.m. to noon, except for weekends and holidays, and must post a sign listing the corporations that the registered agent serves.¹⁷ No statute governs operating hours or signs of a registered agent for other forms of business entity.

The bill adds all forms of a business entity to the statute governing registered agents, allows a registered agent to be open at times in addition to the 10 a.m. to noon requirement, repeals the sign requirement, specifies that service on a registered agent may be by delivery to any employee of the registered agent, and codifies the commonly understood duty of a registered agent to

¹² Section 607.1520(1)(f), F.S. (for-profit corporations); s. 617.1520(2)(d), F.S. (not-for-profit corporations).

¹³ Section 607.1520(1)(g), F.S. (for-profit corporations); s. 617.1520(2)(e), F.S. (not-for-profit corporations).

¹⁴ Section 48.071, F.S.

¹⁵ Section 48.161, F.S.

¹⁶ Section 766.106(2)(a), F.S.

¹⁷ Section 48.091, F.S.

promptly forward the process and any related papers to the responsible person in the business entity.

Service on a Dissolved Entity (Section 7)

Service of process on a dissolved corporation is the same as service of process on an active corporation.¹⁸ The statutes do not address service of process on other forms of a business entity after dissolution of the entity.

The bill confirms that service on a dissolved corporation is the same as an active corporation as such is amended by the bill; adds that service on a dissolved corporation may also be delivered to an existing court-appointed trustee, custodian, or receiver; and adds that the court may appoint a trustee, custodian or receiver to receive process on behalf of a dissolved domestic for-profit corporation. The bill also provides that service on a dissolved limited liability company is the same as an active limited liability company, the process may be delivered to a court-appointed liquidator, trustee, or receiver of a dissolved limited liability company, and the court may appoint a trustee, custodian or receiver to receive process on behalf of a dissolved domestic limited liability company. Finally, the bill adds that service on a dissolved limited partnership is the same as service on an active limited partnership.

Court-Ordered Alternative Means of Service of Process (Section 8)

Current law on service of process specifies the manner of service of process for various entities and situations, but gives no flexibility for unique circumstances. The bill provides flexibility where, despite due diligence, the party has been unable to personally serve process on any of the following forms of business entity:

- A domestic or foreign corporation;
- A domestic or foreign general partnership, including a limited liability partnership;
- A domestic or foreign limited partnership, including a limited liability limited partnership; or
- A domestic or foreign limited liability company.

In situations where the entity cannot otherwise be served, the court, upon motion and a showing of such inability, may authorize service in any other manner that the party seeking to effectuate service shows will be reasonably effective to give the entity actual notice of the suit. Such other manners of service may include service electronically by e-mail or other technology.

Procedures for Substituted Service through the Secretary of State (Sections 1 and 10)

Several statutes on service of process refer to substituted service of process by service on the Secretary of State. This is generally only available where attempts at personal service have failed. Substituted service on the Secretary of State is effectuated by either hand delivery or by certified mail addressed to the Secretary of State, together with a fee of \$8.75. A copy of the process must be sent to the individual or entity at the last known address by certified or registered mail.¹⁹ Case law interpreting the statute requires that a party using substituted service

¹⁸ Section 48.101, F.S.

¹⁹ Section 48.161, F.S.

on the Secretary of State make an honest and conscientious effort, in addition to the mailing, to provide the defendant with actual notice of the lawsuit,²⁰ which may be notice through a known email.²¹ When using substituted service on the Secretary of State, the bill:

- Allows the Secretary of State to agree to receive service of process electronically.
- Repeals the \$8.75 fee payable to the Secretary of State.
- Expands the options for delivery by adding the option to use a commercial firm regularly engaged in the business of document or package delivery as an alternative to mailing.
- Requires that the party send a copy by e-mail or other electronic means if the parties have recently and regularly used any of those means of communication.
- Requires that the party send a copy by mail or commercial delivery of the process to the last known address of the party being served.
- Requires the party to file with the court proof of delivery from the post office or commercial service, unless the party being served is actively refusing or rejecting delivery.
- Requires the party to file an affidavit showing due diligence in the search for the party being served and the need for substituted service, together with any return receipt or other proof of mailing or delivery, within 40 days after delivery to the Secretary of State. The court may extend the 40 days.
- Establishes that the date of service of substituted process is the date of delivery to the Secretary of State. The Secretary of State must maintain a record of each process delivered.

The bill also defines the due diligence necessary before resorting to substituted service on a natural person as:

- Diligent inquiry and an honest and conscientious effort appropriate to the circumstances to acquire the information necessary to effectuate personal service;
- Reasonable use of the knowledge at the party's command, including knowledge obtained by the diligent inquiry; and
- An appropriate number of attempts to serve the party, taking into account the particular circumstances.

In making the determination as to whether the party effectuating service on a natural person used due diligence, the bill creates a rebuttable presumption that the serving party exercised due diligence by making three good faith attempts to serve the other party at each location where and during the hours when such party is likely to be found, using reasonably available resources to the party seeking to secure service of process.

Authorization for Substituted Service on Nonresidents and Foreign Business Entities Doing Business in the State or Who Are Concealing Their Whereabouts (Section 11)

Current law provides that a nonresident individual or entity doing business in the state is presumed to have appointed the Secretary of State to accept service of process. This also applies

²⁰ *All Mobile Video v. Whitener*, 773 So. 2d 587, 589-90 (Fla. 1st DCA 2000) (plaintiff knew telephone and fax number of defendant company but did not call or fax for new address when mailed copy of process was returned).

²¹ *Crystal Springs Partners, Ltd. v. Michael R. Band, P.A.*, 132 So. 3d 1230 (Fla 3rd DCA 2014) (law firm plaintiff knew former client's email address and should have emailed copy of process in addition to mailing).

to any person who was a resident of the state but who has left the state and to a person who is concealing his or her whereabouts.²²

The bill repeals the application of this section to former residents, as service on them is provided in statutes allowing for service outside of the state. If a nonresident business entity has properly registered with the Department of State, the bill requires that service of process first be attempted by delivery to the registered agent, then to the entity officials as appropriate to the form of entity, and only after failing in all such attempts, by substituted service on the Secretary of State.

Service on Unknown Parties in Possession of Rental Property (Section 12)

Landlord-tenant eviction requires two attempts at personal service on a tenant at least six hours apart. If the tenant is not found after the second attempt, the process must be conspicuously posted on the rental property and a copy mailed to the tenant by the clerk.²³ It is unclear whether this procedure applies where an unknown person is discovered to be living in the rental unit.

The bill creates a new section of law limited to service of process on an unknown person in possession of real property. The clerk of court is required to issue a summons in the name of “Unknown Party in Possession.” The property owner must make three attempts at service, one during business hours, one during nonbusiness hours, and one on a weekend.²⁴ On each attempt the process server must inquire as to the name of the unknown occupant. The property owner must have a copy of the process mailed by the clerk of court to the unknown party in possession at the property address and must post a copy of the process conspicuously on the property. The date of service for purposes of calculating the 5 days for a defendant to file an answer is the later of the date of personal service, the date of posting on the property, or the date the clerk mails the process. If the inquiry discovers the name of the unknown person in possession, the person must be named in the pleadings. If the name is not known and the legal requirements of eviction are met, the clerk may issue a writ of possession against an unknown person and the sheriff may remove any person in the property.

Personal Service Outside of Florida (Sections 13 and 14)

Service on persons outside the state is effective if made in the manner required for in-state process, except that it must be served by a person authorized under that jurisdiction’s law to serve process.²⁵ The statute mentions that service outside of the United States may be subject to treaty, but does not require compliance. The bill limits application of this section to service within the other 49 states and within U.S. territories and commonwealths, and creates a new section governing service of Florida process upon a person or entity in a foreign country.

The bill provides that service of process may be effectuated in a foreign country upon a party, other than a minor or an incompetent person, by any internationally agreed-upon means of service reasonably calculated to give actual notice of the proceedings, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in

²² Section 48.181, F.S.

²³ Section 48.183, F.S.

²⁴ In general, service of process may not be made on a Sunday. Section 48.20, F.S.

²⁵ Section 48.194, F.S.

Civil or Commercial Matters. If there is no internationally agreed-upon means of service, or if an international agreement allows but does not specify other means, service of process may be made by any method reasonably calculated to give actual notice of the proceedings. Reasonable methods are those prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction; those directed by the foreign authority in response to a letter rogatory or letter of request; or unless prohibited by the foreign country's law, by delivering a copy of the summons and of the complaint to the individual personally; or by using any form of mail which the clerk addresses and sends to the party and which requires a signed receipt. Pursuant to motion and order by the court, service of process may be by other means, including electronically by e-mail or other technology, if the party seeking service shows such form of service is reasonably calculated to give actual notice of the proceedings and is not prohibited by international agreement.

Presuit Notice in Medical Negligence Action (Section 15)

Before filing a medical negligence action, an injured patient must first deliver to each prospective defendant a notice of intent to file the action. This notice starts a 90-day pre-suit investigation period. The notice also tolls the running of the statute of limitations. The notice must be delivered by certified mail, return receipt requested.²⁶ While many laws on service of process by mail provide that the date of service is the day of mailing, this statute has been interpreted to mean that the date of service is the day that the prospective defendant received the mailing.²⁷

The bill expands the methods of service of the presuit notice to allow United States mail service with a tracking number, use of an interstate commercial mail carrier or delivery service, or service by a certified process server as if it were from a court. The bill also specifies that delivery to an address on file with the Department of Health, the Secretary of State, or the Agency for Health Care Administration creates a rebuttable presumption that service of the presuit notice was made. If the question of proper service is made, the court must conduct an evidentiary hearing. The bill also provides that tolling of the statute of limitations begins on the date of mailing or the date of the first attempt at service by the certified process server, tolling applies to all defendants, and the 90-day investigation period starts upon delivery of the notice rather than upon mailing.

Effective Date

The section of the bill regarding notice before filing an action for medical malpractice takes effect upon becoming law, the remainder of the bill takes effect January 2, 2023.

²⁶ Section 766.106(2), F.S.

²⁷ *Boyd v. Becker*, 627 So. 2d 481 (Fla.1993); *Bove v. Naples, LLC*, 196 So. 3d 411 (Fla. 2nd DCA 2016) (case dismissed where notice was mailed one day before statute of limitations ran and received several days after).

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 15.16, 48.061, 48.062, 48.071, 48.081, 48.091, 48.101, 48.151, 48.161, 48.181, 48.194, 766.106, 495.145,

605.0117, 605.09091, 605.0910, 605.1045, 607.0504, 607.1423, 607.15101, 607.1520, 617.0504, 617.1510, 617.1520, 620.1117, 620.1907, 620.2105, 620.2109, 620.8915, and 620.8919.

This bill creates the following sections of the Florida Statutes: 48.102, 48.184, and 48.197.

IX. Additional Information:

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

CS by Judiciary on January 11, 2022:

The committee substitute removes references to service or notice by social media, limits the new criteria for due diligence to only apply the criteria to service of process on an individual, makes technical amendments to section of bill regarding service of process on an unnamed occupant of a rental property and allows posting on any attempt, and adds a duty of a foreign corporation to keep its email address on file with the Secretary of State current to match the same change made by the bill to partnerships and limited liability companies.

- B. **Amendments:**

None.



501522

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2022	.	
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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment

Delete line 544
and insert:
service electronically by e-mail or other



496864

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2022	.	
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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment

Delete line 578
and insert:
regularly used e-mail or other electronic means



773144

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2022	.	
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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment

Delete lines 634 - 640
and insert:

(b) In connection with service of process on any party who is a natural person, in making the determination as to whether the party effectuating service used due diligence, there is a rebuttable presumption that the serving party exercised due diligence by making three good faith attempts to serve the other party during such times when and where such party is reasonably likely to be found, as determined through resources reasonably



773144

12 available to the party seeking to secure



456766

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2022	.	
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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment

Delete line 782
and insert:
means, including electronically by e-mail or



877968

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2022	.	
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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 791 - 796
and insert:

Section 14. Section 48.184, Florida Statutes, is created to
read:

48.184 Service of process for removal of unknown parties in
possession.-

(1) This section applies only to actions governed by s.
82.03, s. 83.21, s. 83.59, or s. 723.061 and only to the extent
that such actions seek relief for



877968

12

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

14 And the title is amended as follows:

15 Delete line 51

16 and insert:

17 country; creating s. 48.184, F.S.; providing for



397986

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/10/2022	.	
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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment

Delete line 823
and insert:
possession after three attempts to obtain service as provided in



631374

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2022	.	
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	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Substitute for Amendment (397986)

Delete lines 822 - 846
and insert:

(4) Service of process must also be made on unknown parties
by both of the following means:

(a) By attaching the summons and complaint to a conspicuous
location on the premises involved in the proceedings.

(b) Upon issuance of the summons, by the plaintiff
providing the clerk of the court with one additional copy of the
summons and complaint for each unknown occupant and a prestamped



631374

12 envelope for each unknown occupant addressed to the unknown
13 occupant at the address of the premises involved in the
14 proceedings. The clerk of the court shall immediately mail a
15 copy of the summons and complaint by first-class mail, note the
16 fact of mailing in the docket, and file a certificate in the
17 court file of the fact and date of mailing. The clerk of the
18 court shall charge such fees for such services as provided by
19 law.

20 (5) Service is effective on the unknown party in possession
21 on the later of the date that personal service is made, the date
22 of attaching the summons and complaint to a conspicuous location
23 on the premises, or upon mailing by the clerk.



107756

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with directory amendment)

Between lines 1160 and 1161

insert:

(g) A commitment to notify the department in the future of
any change in its mailing address or email address.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete line 1146

and insert:



107756

12 Section 24. Paragraphs (f) and (g) of subsection (1) and
13 subsection

By Senator Bradley

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1 A bill to be entitled
 2 An act relating to service of process; amending s.
 3 15.16, F.S.; authorizing the Department of State to
 4 electronically receive service of process under ch.
 5 48, F.S.; amending s. 48.061, F.S.; revising
 6 procedures for service on partnerships, limited
 7 liability partnerships, and limited partnerships;
 8 amending s. 48.062, F.S.; defining the term
 9 "registered foreign limited liability company";
 10 revising procedures for service on a domestic limited
 11 liability company or registered foreign limited
 12 liability company; amending s. 48.071, F.S.; providing
 13 for service on nonresidents doing business in this
 14 state by use of a commercial firm regularly engaged in
 15 the business of document or package delivery; amending
 16 s. 48.081, F.S.; defining the term "registered foreign
 17 corporation"; revising requirements for service on a
 18 domestic corporation or registered foreign
 19 corporation; amending s. 48.091, F.S.; defining terms;
 20 requiring designation of registered agents and
 21 registered offices by certain partnerships,
 22 corporations, and companies; specifying duties of a
 23 registered agent; authorizing a person serving process
 24 to serve certain persons under specified conditions;
 25 amending s. 48.101, F.S.; providing for service on
 26 dissolved corporations, dissolved limited liability
 27 companies, dissolved limited partnerships, and
 28 dissolved limited liability partnerships; creating s.
 29 48.102, F.S.; authorizing service by other means in

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

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30 certain circumstances; amending s. 48.151, F.S.;
 31 revising the applicability of provisions relating to
 32 service on statutory agents for certain persons;
 33 amending s. 48.161, F.S.; revising provisions relating
 34 to substituted service; providing for substituted
 35 service on individuals or corporations or other
 36 business entities; specifying actions that may be
 37 considered due diligence in effectuating service;
 38 specifying when service is considered effectuated;
 39 requiring the Department of State to maintain certain
 40 records; amending s. 48.181, F.S.; defining the term
 41 "foreign business entity"; revising provisions
 42 relating to substituted service; providing for
 43 substituted service on certain nonresidents and
 44 foreign business entities and on individuals and
 45 foreign business entities concealing their
 46 whereabouts; amending s. 48.194, F.S.; revising
 47 provisions relating to service outside this state but
 48 within the United States; deleting provisions relating
 49 to service outside the United States; creating s.
 50 48.197, F.S.; providing for service in a foreign
 51 country; creating s. 49.072, F.S.; providing for
 52 service of process for removal of unknown parties in
 53 possession of real property; amending s. 766.106,
 54 F.S.; revising requirements for service of presuit
 55 notice before filing a medical negligence complaint;
 56 creating a rebuttable presumption that service was
 57 received by a prospective defendant in certain
 58 circumstances; providing court duties if service is

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challenged during subsequent litigation; revising provisions concerning tolling of the statute of limitations upon service of presuit notice by specified means; amending ss. 495.145, 605.0117, 605.09091, 605.0910, 605.1045, 607.0504, 607.1423, 607.15101, 607.1520, 617.0504, 617.1510, 617.1520, 620.1117, 620.1907, 620.2105, 620.2109, 620.8915, and 620.8919, F.S.; conforming cross-references and provisions to changes made by the act; providing effective dates.

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

Section 1. Subsection (3) of section 15.16, Florida Statutes, is amended to read:

15.16 Reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgment.—

(3) The Department of State may cause to be received electronically any records that are required or authorized to be filed with it pursuant to chapter 48, chapter 55, chapter 117, chapter 118, chapter 495, chapter 605, chapter 606, chapter 607, chapter 610, chapter 617, chapter 620, chapter 621, chapter 679, chapter 713, or chapter 865, through facsimile or other electronic transfers, for the purpose of filing such records. The originals of all such electronically transmitted records must be executed in the manner provided in paragraph (5)(b). The receipt of such electronic transfer constitutes delivery to the department as required by law. The department may use electronic

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transmissions for purposes of notice in the administration of chapters 48, 55, 117, 118, 495, 605, 606, 607, 610, 617, 620, 621, 679, and 713 and s. 865.09. The Department of State may collect e-mail addresses for purposes of notice and communication in the performance of its duties and may require filers and registrants to furnish such e-mail addresses when presenting documents for filing.

Section 2. Section 48.061, Florida Statutes, is amended to read:

48.061 Service on partnerships, limited liability partnerships, and limited partnerships.—

(1) (a) Process against a partnership that is not a limited liability partnership or a limited partnership, including a limited liability limited partnership, must ~~shall~~ be served on any partner and is as valid for service on the partnership as if served on each individual partner.

1. If a partner is not available during regular business hours to accept service on behalf of the partnership, he or she may designate an employee or agent to accept such service.

2. After one attempt to serve a partner or designated employee or agent for service of process has been made, process may be served on a person in charge of the partnership during regular business hours.

(b) If the partnership designated an agent when registering as a general partnership with the Department of State, service on the agent is as valid for service on the partnership as if served on each individual partner; however, unless individual partners are served, the plaintiff may only proceed to judgment and execution against the assets of the partnership.

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(2) (a) Process against a domestic limited liability partnership must first be served on the then-current registered agent for service of process specified in its statement of qualification, in its statement of qualification as amended or restated, or as redesignated in its annual report or change of agent filing and is as valid for service on the limited liability partnership as if served on each individual partner. If service cannot be made on the registered agent because the domestic limited liability partnership ceases to have a registered agent, or if the registered agent cannot otherwise be served after one good faith attempt because of a failure to comply with this chapter or chapter 620, the process may be served on any partner.

1. If a partner is not available during regular business hours to accept service on behalf of the partnership, he or she may designate an employee to accept such service.

2. After one attempt to serve a partner or designated employee has been made, process may be served on a person in charge of the partnership during regular business hours.

(b) If, after due diligence, the process cannot be completed under paragraph (a), the process may be served as provided in s. 48.161 on the Secretary of State as an agent of the domestic limited liability partnership or by order of the court under s. 48.102.

(3) (a) 1. Process against a domestic limited partnership, including a domestic limited liability limited partnership, must first be served on the then-current agent for service of process specified in its certificate of limited partnership, in its certificate as amended or restated, or as redesignated in its

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annual report or change of agent filing and is as valid for service on the domestic limited partnership as if served on each individual general partner of the partnership.

2. If service cannot be made on the registered agent because the domestic limited partnership or domestic limited liability limited partnership ceases to have a registered agent, or if the registered agent cannot otherwise be served following one good faith attempt because of a failure to comply with this chapter or chapter 620, the process may be served on any general partner.

3. After service on a general partner or the registered agent, the plaintiff may proceed to judgment and execution against the assets of the domestic limited partnership or of that general partner, unless the domestic limited partnership is a limited liability limited partnership.

(b) If, after due diligence, the process cannot be completed under paragraph (a), then process may be served as provided in s. 48.161 on the Secretary of State as an agent of the limited partnership or by order of the court under s. 48.102.

(4) (a) Process against a foreign limited liability partnership that was required to comply with s. 620.9102 may be served as prescribed under subsection (2).

(b) A foreign limited liability partnership engaging in business in this state but not registered is considered, for purposes of service of process, a nonresident engaging in business in this state and may be served pursuant to s. 48.181 or by order of the court under s. 48.102.

(5) (a) Process against a foreign limited partnership that

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was required to comply with s. 620.1902 may be served as prescribed under subsection (3).

(b) A foreign limited partnership engaging in business in this state but not registered is considered, for purposes of service of process, a nonresident engaging in business in this state and may be served pursuant to s. 48.181 or by order of the court under s. 48.102. After one attempt to serve a partner or designated employee has been made, process may be served on the person in charge of the partnership during regular business hours. After service on any partner, plaintiff may proceed to judgment and execution against that partner and the assets of the partnership. After service on a designated employee or other person in charge, plaintiff may proceed to judgment and execution against the partnership assets but not against the individual assets of any partner.

(2) Process against a domestic limited partnership may be served on any general partner or on the agent for service of process specified in its certificate of limited partnership or in its certificate as amended or restated and is as valid as if served on each individual member of the partnership. After service on a general partner or the agent, the plaintiff may proceed to judgment and execution against the limited partnership and all of the general partners individually. If a general partner cannot be found in this state and service cannot be made on an agent because of failure to maintain such an agent or because the agent cannot be found or served with the exercise of reasonable diligence, service of process may be effected by service upon the Secretary of State as agent of the limited partnership as provided for in s. 48.181. Service of process may

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be made under ss. 48.071 and 48.21 on limited partnerships.

(3) Process against a foreign limited partnership may be served on any general partner found in the state or on any agent for service of process specified in its application for registration and is as valid as if served on each individual member of the partnership. If a general partner cannot be found in this state and an agent for service of process has not been appointed or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence, service of process may be effected by service upon the Secretary of State as agent of the limited partnership as provided for in s. 48.181, or process may be served as provided in ss. 48.071 and 48.21.

Section 3. Section 48.062, Florida Statutes, is amended to read:

48.062 Service on a domestic limited liability company or registered foreign limited liability company.

(1) As used in this section, the term "registered foreign limited liability company" means a foreign limited liability company that has an active certificate of authority to transact business in this state pursuant to a record filed with the Department of State.

(2) Process against A domestic limited liability company, ~~domestic or registered foreign limited liability company~~, may be served with process required or authorized by law by service on its the registered agent designated by the domestic limited liability company or registered foreign limited liability company under chapter 605. A person attempting to serve process pursuant to this subsection may serve the process on any

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employee of the registered agent during the first attempt at service even if the registered agent is a natural person and is temporarily absent from his or her office.

(3)(2) If service cannot be made on a registered agent of the domestic limited liability company or registered foreign limited liability company because the domestic limited liability company or registered foreign limited liability company ceases to have a registered agent, or if the registered agent of the domestic limited liability company or registered foreign limited liability company cannot otherwise be served after one good faith attempt because of a failure to comply with this chapter or chapter 605 or because the limited liability company does not have a registered agent, or if its registered agent cannot with reasonable diligence be served, process against the limited liability company, domestic or foreign, the process may be served on any of the following:

(a) Any manager of a manager-managed domestic limited liability company or registered foreign limited liability company. ~~On a member of a member-managed limited liability company.~~

(b) Any member of a member-managed domestic limited liability company or registered foreign limited liability company. ~~On a manager of a manager-managed limited liability company; or~~

(c) Any person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended ~~if a member or manager is not available during regular business hours to accept service on behalf of the limited liability~~

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company, he, she, or it may designate an employee of the limited liability company to accept such service. After one attempt to serve a member, manager, or designated employee has been made, process may be served on the person in charge of the limited liability company during regular business hours.

(4)(3) If, after due reasonable diligence, the service of process cannot be completed under subsection (2) and if either:

(a) The only person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended, is also the registered agent on whom service was attempted under subsection (2); or

(b) After due diligence, service was attempted on at least one person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended, and cannot be completed on such person under subsection (3) ~~(1) or subsection (2),~~

the service of process may be served as provided in s. 48.161 on ~~effected by service upon~~ the Secretary of State as an agent of the domestic limited liability company or the registered foreign limited liability company or by order of the court under s. 48.102 ~~as provided for in s. 48.181.~~

(5)(4) If the address for the registered agent or any person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended, member, or manager is a residence, a private mailbox, a virtual office, or an executive

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office or mini suite, service on the domestic limited liability company or registered foreign limited liability company may be made by serving any of the following:

(a) The registered agent of the domestic limited liability company or registered foreign limited liability company, in accordance with s. 48.031.

(b) Any person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended, in accordance with s. 48.031.

(c) Any member or manager of the domestic limited liability company or registered foreign limited liability company, in accordance with s. 48.031.

(6) A foreign limited liability company engaging in business in this state which is not registered is considered, for purposes of service of process, a nonresident engaging in business in this state and may be served pursuant to s. 48.181 or by order of the court under s. 48.102.

(7)(5) This section does not apply to service of process on insurance companies.

Section 4. Section 48.071, Florida Statutes, is amended to read:

48.071 Service on agents of nonresidents doing business in the state.—When any natural person or partnership not residing or having a principal place of business in this state engages in business in this state, process may be served on the person who is in charge of any business in which the defendant is engaged within this state at the time of service, including agents soliciting orders for goods, wares, merchandise, or services.

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Any process so served is as valid as if served personally on the nonresident person or partnership engaging in business in this state in any action against the person or partnership arising out of such business. A copy of such process with a notice of service on the person in charge of such business ~~must~~ shall be sent forthwith to the nonresident person or partnership by registered mail; ~~by~~ or by certified mail, return receipt requested; or by use of a commercial firm regularly engaged in the business of document or package delivery. The party seeking to effectuate service, or the attorney for such party, shall prepare an affidavit of compliance with this section ~~which must~~ shall be filed before the return day or within such further time as the court may allow.

Section 5. Section 48.081, Florida Statutes, is amended to read:

48.081 Service on a domestic corporation or registered foreign corporation.—

(1) As used in this section, the term “registered foreign corporation” means a foreign corporation that has an active certificate of authority to transact business in this state pursuant to a record filed with the Department of State.

(2) A domestic corporation or a registered foreign corporation may be served with process required or authorized by law by service on its registered agent designated by the corporation under chapter 607 or chapter 617, as applicable.

(3) If service cannot be made on a registered agent of the domestic corporation or registered foreign corporation because the domestic corporation or registered foreign corporation ceases to have a registered agent, or if the registered agent of

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349 the domestic corporation or registered foreign corporation
 350 cannot otherwise be served after one good faith attempt because
 351 of a failure to comply with this chapter, chapter 607, or
 352 chapter 617, as applicable, the process may be served on either
 353 of the following ~~Process against any private corporation,~~
 354 ~~domestic or foreign,~~ may be served:

355 (a) The chair of the board of directors, ~~On~~ the president,
 356 any ~~or~~ vice president, the secretary, or the treasurer ~~or other~~
 357 head of the domestic corporation or registered foreign
 358 corporation.

359 (b) Any person listed publicly by the domestic corporation
 360 or registered foreign corporation on its latest annual report,
 361 as most recently amended ~~In the absence of any person described~~
 362 in paragraph (a), on the cashier, treasurer, secretary, ~~or~~
 363 general manager.

364 (c) In the absence of any person described in paragraph (a)
 365 or paragraph (b), on any director; ~~or~~

366 (d) In the absence of any person described in paragraph
 367 (a), paragraph (b), or paragraph (c), on any officer or business
 368 agent residing in the state.

369 (4) If, after due diligence, the process cannot be
 370 completed under subsection (2) and if either:

371 (a) The only person listed publicly by the domestic
 372 corporation or registered foreign corporation on its latest
 373 annual report, as most recently amended, is also the registered
 374 agent on whom service was attempted under subsection (2); ~~or~~

375 (b) After due diligence, service was attempted on at least
 376 one person listed publicly by the domestic corporation or
 377 registered foreign corporation on its latest annual report, as

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378 most recently amended, and cannot be completed on such person
 379 under subsection (3),

380
 381 the process may be served as provided in s. 48.161 on the
 382 Secretary of State as an agent of the domestic corporation or
 383 registered foreign corporation or by order of the court under s.
 384 48.102

385 (2) ~~If a foreign corporation has none of the foregoing~~
 386 ~~officers or agents in this state, service may be made on any~~
 387 ~~agent transacting business for it in this state.~~

388 (3) (a) ~~As an alternative to all of the foregoing, process~~
 389 ~~may be served on the agent designated by the corporation under~~
 390 ~~s. 48.091. However, if service cannot be made on a registered~~
 391 ~~agent because of failure to comply with s. 48.091, service of~~
 392 ~~process shall be permitted on any employee of the corporation's~~
 393 ~~principal place of business or on any employee of the registered~~
 394 ~~agent. A person attempting to serve process pursuant to this~~
 395 ~~paragraph may serve the process on any employee of the~~
 396 ~~registered agent during the first attempt at service even if the~~
 397 ~~registered agent is temporarily absent from his or her office.~~

398 (5) ~~(b)~~ If the address for the registered agent ~~or any~~
 399 person listed publicly by the domestic corporation or registered
 400 foreign corporation on its latest annual report, as most
 401 recently amended, officer, director, ~~or principal place of~~
 402 business is a residence, a private mailbox, a virtual office, or
 403 an executive office or mini suite, service on the domestic
 404 corporation ~~or registered foreign corporation~~ may be made by
 405 serving any of the following:

406 (a) The registered agent of the domestic corporation or

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~~registered foreign corporation, officer, or director~~ in accordance with s. 48.031.

(b) Any person listed publicly by the domestic corporation or registered foreign corporation on its latest annual report, as most recently amended, in accordance with s. 48.031.

(c) Any person serving in one of the positions specified in paragraph (3) (a), in accordance with s. 48.031.

(6) A foreign corporation engaging in business in this state which is not registered is considered, for purposes of service of process, a nonresident engaging in business in this state and may be served pursuant to s. 48.181 or by order of the court under s. 48.102.

(7)~~(4)~~ This section does not apply to service of process on insurance companies.

~~(5) When a corporation engages in substantial and not isolated activities within this state, or has a business office within the state and is actually engaged in the transaction of business therefrom, service upon any officer or business agent while on corporate business within this state may personally be made, pursuant to this section, and it is not necessary in such case that the action, suit, or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business being transacted within the state.~~

Section 6. Section 48.091, Florida Statutes, is amended to read:

48.091 Partnerships, corporations, and limited liability companies; designation of registered agent and registered office.—

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

(a) "Registered foreign corporation" and "registered foreign limited liability company" have the same meanings as in ss. 48.081 and 48.062, respectively.

(b) "Registered foreign limited liability partnership" or "registered foreign limited partnership" means a foreign limited liability partnership or foreign limited partnership that has an active certificate of authority to transact business in this state pursuant to a record filed with the Department of State.

(2) Every domestic limited liability partnership; domestic limited partnership, including limited liability limited partnerships; domestic corporation; domestic limited liability company; registered foreign limited liability partnership; registered foreign limited partnership, including limited liability limited partnerships; registered foreign corporation; and registered foreign limited liability company Florida corporation and every foreign corporation now qualified or hereafter qualifying to transact business in this state shall designate a registered agent and registered office in accordance with chapter 605, ~~part I of~~ chapter 607, chapter 617, or chapter 620, as applicable.

(3)~~(2)~~ Every domestic limited liability partnership; domestic limited partnership, including limited liability limited partnerships; domestic corporation; domestic limited liability company; registered foreign limited liability partnership; registered foreign limited partnership, including limited liability limited partnerships; registered foreign corporation; registered foreign limited liability company; and domestic or foreign general partnership that elects to designate

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a registered agent, shall cause the designated registered agent to ~~corperation shall~~ keep the designated registered office open from at least 10 a.m. to 12 noon each day except Saturdays, Sundays, and legal holidays, and shall cause the designated registered agent to keep one or more individuals who are, or are representatives of, the designated registered agents on whom process may be served at the office during these hours. The corporation shall keep a sign posted in the office in some conspicuous place designating the name of the corporation and the name of its registered agent on whom process may be served at the office during these hours.

(4) A person attempting to serve process pursuant to this section on a registered agent that is other than a natural person may serve the process on any employee of the registered agent. A person attempting to serve process pursuant to this section on a natural person, if the natural person is temporarily absent from his or her office, may serve the process during the first attempt at service on any employee of such natural person.

(5) The registered agent shall promptly forward copies of the process and any other papers received in connection with the service to a responsible person in charge of the business entity. Failure to comply with this subsection does not invalidate the service of process.

Section 7. Section 48.101, Florida Statutes, is amended to read:

48.101 Service on dissolved corporations, dissolved limited liability companies, dissolved limited partnerships, and dissolved limited liability partnerships.-

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(1) Process against the directors of any corporation that ~~which~~ was dissolved before July 1, 1990, as trustees of the dissolved corporation must ~~shall~~ be served on one or more of the directors of the dissolved corporation as trustees thereof and binds all of the directors of the dissolved corporation as trustees thereof. ~~Process against any other dissolved corporation shall be served in accordance with s. 48.081.~~

(2) (a) Process against any other dissolved domestic corporation must be served in accordance with s. 48.081.

(b) In addition, provided that service was first properly attempted on the registered agent pursuant to s. 48.081(2), but was not successful, service may then be attempted as required under s. 48.081(3). In addition to the persons listed in s. 48.081(3), service may then be attempted on the person appointed by the circuit court as the trustee, custodian, or receiver under s. 607.1405(6).

(c) A party attempting to serve a dissolved domestic for-profit corporation under this section may petition the court to appoint one of the persons specified in s. 607.1405(6) to receive service of process on behalf of the corporation.

(3) (a) Process against any dissolved domestic limited liability company must be served in accordance with s. 48.062.

(b) In addition, provided that service was first properly attempted on the registered agent pursuant to s. 48.062(2), but was not successful, service may then be attempted as required under s. 48.062(3). In addition to the persons listed in s. 48.062(3), service on a dissolved domestic limited liability company may be made on the person appointed as the liquidator, trustee, or receiver under s. 605.0709.

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(c) A party attempting to serve a dissolved domestic limited liability company under this section may petition the court to appoint one of the persons specified in s. 605.0709(5) to receive service of process on behalf of the limited liability company.

(4) Process against any dissolved domestic limited partnership must be served in accordance with s. 48.061.

Section 8. Section 48.102, Florida Statutes, is created to read:

48.102 Service by other means.—If, after due diligence, a party seeking to effectuate service is unable to effectuate personal service of process on a domestic or foreign corporation; a domestic or foreign general partnership, including a limited liability partnership; a domestic or foreign limited partnership, including a limited liability limited partnership; or a domestic or foreign limited liability company, the court, upon motion and a showing of such inability, may authorize service in any other manner that the party seeking to effectuate service shows will be reasonably effective to give the entity on which service is sought to be effectuated actual notice of the suit. Such other manners of service may include service electronically by social media, e-mail, or other technology.

Section 9. Subsection (2) of section 48.151, Florida Statutes, is amended to read:

48.151 Service on statutory agents for certain persons.—

(2) This section does not apply to substituted service of process under s. 48.161 or s. 48.181 ~~on nonresidents~~.

Section 10. Section 48.161, Florida Statutes, is amended to

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read:

48.161 Method of substituted service on nonresident.—

(1) When authorized by law, substituted service of process on a nonresident individual or a corporation or other business entity incorporated or formed under the laws of any other state, territory, or commonwealth, or the laws of any foreign country, ~~may or a person who conceals his or her whereabouts by serving a public officer designated by law shall~~ be made by sending ~~leaving~~ a copy of the process to the office of the Secretary of State by personal delivery; by registered mail; with a fee of \$8.75 with the public officer or in his or her office or by mailing the copies by certified mail, return receipt requested; by use of a commercial firm regularly engaged in the business of document or package delivery; or by electronic transmission to the public officer with the fee. The service is sufficient service on a party that ~~defendant who~~ has appointed or is deemed to have appointed the Secretary of State a public officer as such party's ~~his or her~~ agent for the service of process. The Secretary of State shall keep a record of all process served on the Secretary of State showing the day and hour of service.

(2) Notice of service and a copy of the process ~~must shall~~ be sent forthwith by the party effectuating service or by such party's attorney by registered mail; by registered or certified mail, return receipt requested; or by use of a commercial firm regularly engaged in the business of document or package delivery. In addition, if the parties have recently and regularly used e-mail, social media, or other electronic means to communicate between themselves, the notice of service and a copy of the process must be sent by such electronic means or, if

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the party is being served by substituted service, the notice of service and a copy of the process must be served at such party's last known physical address and, if applicable, last known electronic address. The party effectuating service shall file proof of service or return receipts showing delivery to the other party by mail or courier and by electronic means, if electronic means were used, unless the party is actively refusing or rejecting the delivery of the notice. ~~An~~ by the plaintiff or his or her attorney to the defendant, and the defendant's return receipt and the affidavit of compliance of the party effectuating service plaintiff or such party's his or her attorney must of compliance shall be filed within 40 days after on or before the date return day of service on the Secretary of State process or within such additional time as the court allows. The affidavit of compliance must set forth the facts that justify substituted service under this section and that show due diligence was exercised in attempting to locate and effectuate personal service on the party before using substituted service under this section. The party effectuating service does not need to allege in its original or amended complaint the facts required to be set forth in the affidavit of compliance.

(3) When an individual or a business entity conceals its whereabouts, the party seeking to effectuate service, after exercising due diligence to locate and effectuate personal service, may use substituted service pursuant to subsection (1) in connection with any action in which the court has jurisdiction over such individual or business entity. The party seeking to effectuate service must also comply with subsection

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(2); however, a return receipt or other proof showing acceptance of receipt of the notice of service and a, or the notice and copy of the shall be served on the defendant, if found within the state, by an officer authorized to serve legal process by the concealed party need not be filed, or if found without the state, by a sheriff or a deputy sheriff of any county of this state or any duly constituted public officer qualified to serve like process in the state or jurisdiction where the defendant is found. The officer's return showing service shall be filed on or before the return day of the process or within such time as the court allows. The fee paid by the plaintiff to the public officer shall be taxed as cost if he or she prevails in the action. The public officer shall keep a record of all process served on him or her showing the day and hour of service.

(4) (a) The party effectuating service is considered to have used due diligence if that party:

1. Made diligent inquiry and exerted an honest and conscientious effort appropriate to the circumstances to acquire the information necessary to effectuate personal service;

2. In seeking to effectuate personal service, reasonably employed the knowledge at the party's command, including knowledge obtained pursuant to subparagraph 1.; and

3. Made an appropriate number of attempts to serve the party, taking into account the particular circumstances.

(b) Notwithstanding paragraph (a), in making the determination as to whether the party effectuating service used due diligence, there is a rebuttable presumption that the serving party exercised due diligence by making three good faith attempts to serve the other party at each location where and

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during the hours when such party is likely to be found, using reasonably available resources to the party seeking to secure service of process.

(5)(2) If any individual person on whom service of process is authorized under subsection (1) dies, service may be made in the same manner on his or her administrator, executor, curator, or personal representative in the same manner.

(9)(3) This section does not apply to persons on whom service is authorized under s. 48.151.

(6)(4) The Secretary of State public officer may designate an individual some other person in his or her office to accept service.

(7) Service of process is effectuated under this section on the date the service is received by the Department of State.

(8) The Department of State shall maintain a record of each process served pursuant to this section and record the time of and the action taken regarding the service.

Section 11. Section 48.181, Florida Statutes, is amended to read:

48.181 Substituted service on nonresidents and foreign business entities nonresident engaging in business in state or concealing their whereabouts.-

(1) As used in this section, the term "foreign business entity" means any corporation or other business entity that is incorporated, formed, or existing under the laws of any other state, territory, or commonwealth, or the laws of any foreign country.

(2) The acceptance by any individual person or persons, individually or associated together as a copartnership or any

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~~other form or type of association, who is a resident are residents of any other state, territory, or commonwealth, or of any foreign or country, or by any foreign business entity and all foreign corporations, and any person who is a resident of the state and who subsequently becomes a nonresident of the state or conceals his or her whereabouts,~~ of the privilege extended by law to nonresidents ~~and others~~ to operate, conduct, engage in, or carry on a business or business venture in this the state, or to have an office or agency in this the state, is deemed to constitute ~~constitutes~~ an appointment by the individual or persons and foreign business entity corporations of the Secretary of State of this the state as its ~~their~~ agent on whom ~~all~~ process in any action or proceeding against the individual or business entity them, or any combination thereof of them, arising out of any transaction or operation connected with or incidental to the business or business venture may be served as substituted service in accordance with this chapter. The acceptance of the privilege is signification of the agreement of the respective individual or persons and foreign business entity corporations that the process served against it ~~them~~ in accordance with this chapter ~~which is so served~~ is of the same validity as if served personally on the individual persons or foreign business entity corporations.

(3)(2) If a foreign business entity corporation has registered to do business ~~a resident agent or officer~~ in this the state and has maintained its registration in an active status or otherwise continued to have a registered agent, personal service of process must first ~~shall~~ be attempted ~~served~~ on the foreign business entity in the manner and order of

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 697 priority described in this chapter as applicable to the foreign
 698 business entity. If, after due diligence, the party seeking to
 699 effectuate service of process is unable to effectuate service of
 700 process on the registered agent or other official as provided in
 701 this chapter, the party may use substituted service of process
 702 on the Secretary of State resident agent or officer.

(4) Any individual or foreign business entity that conceals
its whereabouts is deemed to have appointed the Secretary of
State as its agent on whom all process may be served, in any
action or proceeding against it, or any combination thereof,
arising out of any transaction or operation connected with or
incidental to any business or business venture carried on in
this state by such individual or foreign business entity.

(5)(3) Any individual or foreign business entity that
person, firm, or corporation which sells, consigns, or leases by
any means whatsoever tangible or intangible personal property,
through brokers, jobbers, wholesalers, or distributors to any
individual person, firm, or corporation, or other business
entity in this state is conclusively presumed to be both engaged
in substantial and not isolated activities within this state and
operating, conducting, engaging in, or carrying on a business or
business venture in this state.

(6) Service pursuant to this section must be effectuated in
the manner prescribed by s. 48.161.

Section 12. Subsections (1) and (2) of section 48.194,
 Florida Statutes, are amended to read:

48.194 Personal service in another outside state,
territory, or commonwealth of the United States.-

(1) Except as otherwise provided herein, service of process

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 726 on a party in another persons outside of this state, territory,
 727 or commonwealth of the United States must shall be made in the
 728 same manner as service within this state by any officer person
 729 authorized to serve process in the state where service shall be
 730 made the person is served. No order of court is required. An
 731 affidavit of the officer must be filed, stating the time,
 732 manner, and place of service. The A court may consider the
 733 affidavit return-of-service form described in s. 48.21, or any
 734 other competent evidence, in determining whether service has
 735 been properly made. Service of process on persons outside the
 736 United States may be required to conform to the provisions of
 737 the Hague Convention on the Service Abroad of Judicial and
 738 Extrajudicial Documents in Civil or Commercial Matters.

(2) When where in rem or quasi in rem relief is sought in a
 foreclosure proceeding as defined by s. 702.09, and the address
of the person to be served is known, service of process on a
person in another state, territory, or commonwealth outside of
the United States this state where the address of the person to
be served is known may be made by registered mail as follows:

(a) The party's attorney or the party, if the party is not
 represented by an attorney, shall place a copy of the original
 process and the complaint, petition, or other initial pleading
 or paper and, if applicable, the order to show cause issued
 pursuant to s. 702.10 in a sealed envelope with adequate postage
 addressed to the person to be served.

(b) The envelope must shall be placed in the mail as
 registered mail.

(c) Service under this subsection is deemed shall be
considered obtained upon the signing of the return receipt by

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the person allowed to be served by law.

Section 13. Section 48.197, Florida Statutes, is created to read:

48.197 Service in a foreign country.—

(1) Service of process may be effectuated in a foreign country upon a party, other than a minor or an incompetent person, as provided in any of the following:

(a) By any internationally agreed-upon means of service reasonably calculated to give actual notice of the proceedings, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

(b) If there is no internationally agreed-upon means of service, or if an international agreement allows but does not specify other means, by a method reasonably calculated to give actual notice of the proceedings:

1. As prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

2. As the foreign authority directs in response to a letter rogatory or letter of request; or

3. Unless prohibited by the foreign country's law, by:

a. If serving an individual, delivering a copy of the summons and of the complaint to the individual personally; or

b. Using any form of mail which the clerk addresses and sends to the party and which requires a signed receipt.

(c) Pursuant to motion and order by the court, by other means, including electronically by social media, e-mail, or other technology, which the party seeking service shows is

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reasonably calculated to give actual notice of the proceedings and is not prohibited by international agreement, as the court orders.

(2) Service of process may be effectuated in a foreign country upon a minor or an incompetent person in the manner prescribed by subparagraph (1)(b)1., subparagraph (1)(b)2., or paragraph (1)(c).

Section 14. Section 49.072, Florida Statutes, is created to read:

49.072 Service of process for removal of unknown parties in possession.—

(1) This section applies only to actions governed by s. 51.011 and only to the extent that such actions seek relief for the removal of unknown parties in possession of real property. The provisions of this section are cumulative to other provisions of law or rules of court about service of process, and all other such provisions are cumulative to this section.

(2) A summons must be issued in the name of "Unknown Party in Possession" when the name of an occupant of real property is not known to the plaintiff and the property occupied by the unknown party is identified in the complaint and summons. A separate summons must be issued for each such unknown occupant.

(3) The plaintiff shall attempt to serve the summons on any unknown occupant of the property described in the summons and complaint. If service on the unknown occupant is not effectuated on the first attempt, at least two further attempts must be made. The three attempts to obtain service must be made once during business hours, once during nonbusiness hours, and once on a weekend. The process server shall make an inquiry as to the

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813 name of the unknown occupant at the time of service. The return
 814 of service must note the name of the occupant if obtained by the
 815 process server or state that the name of the occupant could not
 816 be obtained after inquiry. If the name of the occupant becomes
 817 known to the plaintiff through the return of service or
 818 otherwise, without notice or hearing thereon, all subsequent
 819 proceedings must be conducted under the true name of such
 820 occupant and all prior proceedings are deemed amended
 821 accordingly.

822 (4) If service is not effectuated on an unknown party in
 823 possession after two attempts to obtain service as provided in
 824 subsection (3), and even if an unknown party in possession is
 825 served as provided in subsection (3), service of process must
 826 also be made on unknown parties by both of the following means:

827 (a) By attaching the summons and complaint to a conspicuous
 828 location on the premises involved in the proceedings.

829 (b) Upon issuance of the summons, by the plaintiff
 830 providing the clerk of the court with one additional copy of the
 831 summons and complaint for each unknown occupant and a prestamped
 832 envelope for each unknown occupant addressed to the unknown
 833 occupant at the address of the premises involved in the
 834 proceedings. The clerk of the court shall immediately mail a
 835 copy of the summons and complaint by first-class mail, note the
 836 fact of mailing in the docket, and file a certificate in the
 837 court file of the fact and date of mailing. The clerk of the
 838 court shall charge such fees for such services as provided by
 839 law.

840 (5) Service is effective on the unknown party in
 841 possession, regardless of whether personal service is made, on

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842 the later of the date of attaching the summons and complaint to
 843 a conspicuous location on the premises or upon mailing; however,
 844 at least 5 days must have elapsed after the date of service
 845 before a judgment for final removal of the unknown party in
 846 possession may be entered.

847 (6) The judgment and writ of possession must refer to any
 848 unknown party in possession by name if the name is shown on the
 849 return of service or is otherwise known to the plaintiff. If the
 850 name of any unknown party in possession is not shown on the
 851 return of service or otherwise known to the plaintiff and
 852 service has been effectuated as provided in this section, the
 853 judgment and writ of possession must refer to each such person
 854 as "Unknown Party in Possession," and the writ of possession
 855 must be executed by the sheriff by dispossessing the occupants
 856 and placing the plaintiff in possession of the property.

857 Section 15. Effective upon this act becoming a law,
 858 subsection (2), paragraph (a) of subsection (3), and subsection
 859 (4) of section 766.106, Florida Statutes, are amended to read:

860 766.106 Notice before filing action for medical negligence;
 861 presuit screening period; offers for admission of liability and
 862 for arbitration; informal discovery; review.-

863 (2) PRESUIT NOTICE.-

864 (a) After completion of presuit investigation pursuant to
 865 s. 766.203(2) and before ~~prior to~~ filing a complaint for medical
 866 negligence, a claimant shall notify each prospective defendant
 867 of intent to initiate litigation for medical negligence by at
 868 least one of the following verifiable means:

869 1. United States Postal Service certified mail, return
 870 receipt requested;

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871 2. United States Postal Service mail with a tracking
 872 number;
 873 3. An interstate commercial mail carrier or delivery
 874 service; or
 875 4. A certified process server as provided in s. 48.27
 876 making service in accordance with chapter 48.
 877 (b) Proof of service made pursuant to this subsection and
 878 delivered to an address on file with the Department of Health,
 879 the Secretary of State, or the Agency for Health Care
 880 Administration creates a rebuttable presumption that service was
 881 received by the prospective defendant. If service is challenged
 882 during subsequent litigation, an evidentiary hearing must be
 883 held by the court to determine whether the prospective defendant
 884 or a person legally related to the prospective defendant was
 885 provided notice pursuant to this subsection and, if so, the date
 886 of such service by certified mail, return receipt requested, of
 887 intent to initiate litigation for medical negligence.
 888 (c) Notice to each prospective defendant must include, if
 889 available, a list of all known health care providers seen by the
 890 claimant for the injuries complained of subsequent to the
 891 alleged act of negligence, all known health care providers
 892 during the 2-year period before prior to the alleged act of
 893 negligence who treated or evaluated the claimant, copies of all
 894 of the medical records relied upon by the expert in signing the
 895 affidavit, and the executed authorization form provided in s.
 896 766.1065.
 897 (d) ~~(b)~~ Following the initiation of a suit alleging medical
 898 negligence with a court of competent jurisdiction, and service
 899 of the complaint upon a prospective defendant, the claimant

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900 shall provide a copy of the complaint to the Department of
 901 Health and, if the complaint involves a facility licensed under
 902 chapter 395, the Agency for Health Care Administration. The
 903 requirement of providing the complaint to the Department of
 904 Health or the Agency for Health Care Administration does not
 905 impair the claimant's legal rights or ability to seek relief for
 906 his or her claim. The Department of Health or the Agency for
 907 Health Care Administration shall review each incident that is
 908 the subject of the complaint and determine whether it involved
 909 conduct by a licensee which is potentially subject to
 910 disciplinary action, in which case, for a licensed health care
 911 practitioner, the provisions of s. 456.073 applies ~~apply~~ and,
 912 for a licensed facility, the provisions of part I of chapter 395
 913 applies ~~apply~~.
 914 (3) PRESUIT INVESTIGATION BY PROSPECTIVE DEFENDANT.—
 915 (a) A ~~no~~ suit may not be filed for a period of 90 days
 916 after notice is delivered ~~mailed~~ to any prospective defendant.
 917 During the 90-day period, the prospective defendant or the
 918 prospective defendant's insurer or self-insurer shall conduct a
 919 review as provided in s. 766.203(3) to determine the liability
 920 of the prospective defendant. Each insurer or self-insurer shall
 921 have a procedure for the prompt investigation, review, and
 922 evaluation of claims during the 90-day period. This procedure
 923 must ~~shall~~ include one or more of the following:
 924 1. Internal review by a duly qualified claims adjuster;
 925 2. Creation of a panel comprised of an attorney
 926 knowledgeable in the prosecution or defense of medical
 927 negligence actions, a health care provider trained in the same
 928 or similar medical specialty as the prospective defendant, and a

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duly qualified claims adjuster;

3. A contractual agreement with a state or local professional society of health care providers, which maintains a medical review committee; or

4. Any other similar procedure which fairly and promptly evaluates the pending claim.

Each insurer or self-insurer shall investigate the claim in good faith, and both the claimant and prospective defendant shall cooperate with the insurer in good faith. If the insurer requires, a claimant must ~~shall~~ appear before a pretrial screening panel or before a medical review committee and shall submit to a physical examination, if required. Unreasonable failure of any party to comply with this section justifies dismissal of claims or defenses. There shall be no civil liability for participation in a pretrial screening procedure if done without intentional fraud.

(4) SERVICE OF PRESUIT NOTICE AND TOLLING.—The notice of intent to initiate litigation must ~~shall~~ be served within the time limits set forth in s. 95.11. However, upon mailing of the notice of intent to initiate litigation, as provided in subparagraph (2)(a)1., subparagraph (2)(a)2., or subparagraph (2)(a)3., and during the 90-day period provided in subsection (3), the statute of limitations is tolled as to all prospective potential defendants. If the notice of intent to initiate litigation is served by a certified process server as provided in subparagraph (2)(a)4., the statute of limitations is tolled upon the certified process server's first attempt to serve the prospective defendant and continues during the 90-day period as

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to all prospective defendants. Upon stipulation by the parties, the 90-day period may be extended and the statute of limitations is tolled during any such extension. Upon receiving notice of termination of negotiations in an extended period, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit.

Section 16. Section 495.145, Florida Statutes, is amended to read:

495.145 Forum for actions regarding registration.—An action seeking cancellation of a registration of a mark registered under this chapter may be brought in any court of competent jurisdiction in this state. Service of process on a nonresident registrant may be made in accordance with ss. 48.161 and 48.181 ~~s. 48.181~~. The department may ~~shall~~ not be made a party to cancellation proceedings.

Section 17. Section 605.0117, Florida Statutes, is amended to read:

605.0117 Serving ~~Service of~~ process, giving notice, or making a demand.—

(1) Process against a limited liability company or registered foreign limited liability company may be served in accordance with s. 48.062 and chapter 48 or chapter 49 with ~~process required or authorized by law by serving on its registered agent.~~

(2) ~~If a limited liability company or registered foreign limited liability company ceases to have a registered agent or if its registered agent cannot with reasonable diligence be served, the process required or permitted by law may instead be served:~~

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987 ~~(a) On a member of a member-managed limited liability~~
 988 ~~company or registered foreign limited liability company; or~~
 989 ~~(b) On a manager of a manager-managed limited liability~~
 990 ~~company or registered foreign limited liability company.~~
 991 ~~(3) If the process cannot be served on a limited liability~~
 992 ~~company or registered foreign limited liability company pursuant~~
 993 ~~to subsection (1) or subsection (2), the process may be served~~
 994 ~~on the secretary of state as an agent of the company.~~
 995 ~~(4) Service of process on the secretary of state may be~~
 996 ~~made by delivering to and leaving with the department duplicate~~
 997 ~~copies of the process.~~
 998 ~~(5) Service is effectuated under subsection (3) on the date~~
 999 ~~shown as received by the department.~~
 1000 ~~(6) The department shall keep a record of each process~~
 1001 ~~served pursuant to this section and record the time of and the~~
 1002 ~~action taken regarding the service.~~
 1003 ~~(7) Any notice or demand on a limited liability company or~~
 1004 ~~registered foreign limited liability company under this chapter~~
 1005 ~~may be given or made to any member of a member-managed limited~~
 1006 ~~liability company or registered foreign limited liability~~
 1007 ~~company or to any manager of a manager-managed limited liability~~
 1008 ~~company or registered foreign limited liability company; to the~~
 1009 ~~registered agent of the limited liability company or registered~~
 1010 ~~foreign limited liability company at the registered office of~~
 1011 ~~the limited liability company or registered foreign limited~~
 1012 ~~liability company in this state; or to any other address in this~~
 1013 ~~state which that is in fact the principal office of the limited~~
 1014 ~~liability company or registered foreign limited liability~~
 1015 ~~company in this state.~~

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1016 (3) A registered series of a foreign series limited
 1017 liability company may be served in the same manner as a
 1018 registered limited liability company.
 1019 ~~(4)(8)~~ This section does not affect the right to serve
 1020 process, give notice, or make a demand in any other manner
 1021 provided by law.
 1022 Section 18. Subsection (1) of section 605.09091, Florida
 1023 Statutes, is amended to read:
 1024 605.09091 Judicial review of denial of reinstatement.—
 1025 (1) If the department denies a foreign limited liability
 1026 company's application for reinstatement after revocation of its
 1027 certificate of authority, the department must ~~shall~~ serve the
 1028 foreign limited liability company, pursuant to s. 605.0117(2) ~~s.~~
 1029 ~~605.0117(7)~~, with a written notice that explains the reason or
 1030 reasons for the denial.
 1031 Section 19. Paragraphs (f) and (g) of subsection (1) and
 1032 subsection (2) of section 605.0910, Florida Statutes, are
 1033 amended to read:
 1034 605.0910 Withdrawal and cancellation of certificate of
 1035 authority.—
 1036 (1) To cancel its certificate of authority to transact
 1037 business in this state, a foreign limited liability company must
 1038 deliver to the department for filing a notice of withdrawal of
 1039 certificate of authority. The certificate of authority is
 1040 canceled when the notice becomes effective pursuant to s.
 1041 605.0207. The notice of withdrawal of certificate of authority
 1042 must be signed by an authorized representative and state the
 1043 following:
 1044 (f) A mailing address and an e-mail address to which a

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party seeking to effectuate service of process ~~the department~~ may send mail a copy of any process served on the Secretary of State under paragraph (e).

(g) A commitment to notify the department in the future of any change in its mailing address or e-mail address.

(2) After the withdrawal of the foreign limited liability company is effective, service of process on the Secretary of State using the procedures set forth in s. 48.161 under this section is service on the foreign limited liability company. Upon receipt of the process, the department shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under paragraph (1)(f).

Section 20. Paragraph (f) of subsection (2) of section 605.1045, Florida Statutes, is amended to read:

605.1045 Articles of conversion.—

(2) The articles of conversion must contain the following:

(f) If the converted entity is a foreign entity that does not have a certificate of authority to transact business in this state, a mailing address and an e-mail address to which a party seeking to effectuate service of process the department may send any process served on the Secretary of State department pursuant to s. 605.0117 and chapter 48.

Section 21. Section 607.0504, Florida Statutes, is amended to read:

607.0504 Serving Service of process, giving notice, or making a demand on a corporation.—

(1) A corporation may be served with process required or authorized by law in accordance with s. 48.081 and chapter 48 or chapter 49 by serving on its registered agent.

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(2) ~~If a corporation ceases to have a registered agent or if its registered agent cannot with reasonable diligence be served, the process required or permitted by law may instead be served on the chair of the board, the president, any vice president, the secretary, or the treasurer of the corporation at the principal office of the corporation in this state.~~

~~(3) If the process cannot be served on a corporation pursuant to subsection (1) or subsection (2), the process may be served on the secretary of state as an agent of the corporation.~~

~~(4) Service of process on the secretary of state shall be made by delivering to and leaving with the department duplicate copies of the process.~~

~~(5) Service is effectuated under subsection (3) on the date shown as received by the department.~~

~~(6) The department shall keep a record of each process served on the secretary of state pursuant to this subsection and record the time of and the action taken regarding the service.~~

~~(7) Any notice or demand on a corporation under this chapter may be given or made to the chair of the board, the president, any vice president, the secretary, or the treasurer of the corporation; to the registered agent of the corporation at the registered office of the corporation in this state; or to any other address in this state which that is in fact the principal office of the corporation in this state.~~

~~(3)(8)~~ This section does not affect the right to serve process, give notice, or make a demand in any other manner provided by law.

Section 22. Subsection (1) of section 607.1423, Florida Statutes, is amended to read:

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1103 607.1423 Judicial review of denial of reinstatement.-
 1104 (1) If the department denies a corporation's application
 1105 for reinstatement after administrative dissolution, the
 1106 department ~~must shall~~ serve the corporation under either s.
 1107 607.0504 (1) ~~or (2)~~ with a written notice that explains the
 1108 reason or reasons for denial.
 1109 Section 23. Section 607.15101, Florida Statutes, is amended
 1110 to read:
 1111 607.15101 Serving Service of process, giving notice, or
 1112 making a demand on a foreign corporation.-
 1113 (1) A foreign corporation may be served with process
 1114 required or authorized by law in accordance with s. 48.081 and
 1115 chapter 48 or chapter 49 by serving on its registered agent.
 1116 (2) ~~If a foreign corporation ceases to have a registered~~
 1117 ~~agent or if its registered agent cannot with reasonable~~
 1118 ~~diligence be served, the process required or permitted by law~~
 1119 ~~may instead be served on the chair of the board, the president,~~
 1120 ~~any vice president, the secretary, or the treasurer of the~~
 1121 ~~foreign corporation at the principal office of the foreign~~
 1122 ~~corporation in this state.-~~
 1123 ~~(3) If the process cannot be served on a foreign~~
 1124 ~~corporation pursuant to subsection (1) or subsection (2), the~~
 1125 ~~process may be served on the secretary of state as an agent of~~
 1126 ~~the foreign corporation.-~~
 1127 ~~(4) Service of process on the secretary of state may be~~
 1128 ~~made by delivering to and leaving with the department duplicate~~
 1129 ~~copies of the process.-~~
 1130 ~~(5) Service is effectuated under subsection (3) on the date~~
 1131 ~~shown as received by the department.-~~

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1132 ~~(6) The department shall keep a record of each process~~
 1133 ~~served on the secretary of state pursuant to this section and~~
 1134 ~~record the time of and the action taken regarding the service.-~~
 1135 ~~(7)~~ Any notice or demand on a foreign corporation under
 1136 this chapter may be given or made ~~+~~ to the chair of the board,
 1137 the president, any vice president, the secretary, or the
 1138 treasurer of the foreign corporation; to the registered agent of
 1139 the foreign corporation at the registered office of the foreign
 1140 corporation in this state; or to any other address in this state
 1141 which ~~that~~ is in fact the principal office of the foreign
 1142 corporation in this state.
 1143 ~~(3)(6)~~ This section does not affect the right to serve
 1144 process, give notice, or make a demand in any other manner
 1145 provided by law.
 1146 Section 24. Paragraph (f) of subsection (1) and subsection
 1147 (2) of section 607.1520, Florida Statutes, are amended to read:
 1148 607.1520 Withdrawal and cancellation of certificate of
 1149 authority for foreign corporation.-
 1150 (1) To cancel its certificate of authority to transact
 1151 business in this state, a foreign corporation must deliver to
 1152 the department for filing a notice of withdrawal of certificate
 1153 of authority. The certificate of authority is canceled when the
 1154 notice of withdrawal becomes effective pursuant to s. 607.0123.
 1155 The notice of withdrawal of certificate of authority must be
 1156 signed by an officer or director and state the following:
 1157 (f) A mailing address and an e-mail address to which a
 1158 party seeking to effectuate service of process ~~the secretary of~~
 1159 ~~state~~ may send mail a copy of any process served on the
 1160 Secretary of State under paragraph (e).

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(2) After the withdrawal of the foreign corporation is effective, service of process on the Secretary of State using the procedures in s. 48.161 under this section is service on the foreign corporation. Upon receipt of the process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under paragraph (1)(f).

Section 25. Subsections (1) and (3) of section 617.0504, Florida Statutes, are amended to read:

617.0504 Serving Service of process, giving notice, or making a demand on a corporation.—

(1) Process against any corporation may be served in accordance with s. 48.081 and chapter 48 or chapter 49.

(3) This section does not prescribe the only means, or necessarily the required means, of serving process, giving notice, or making a demand on a corporation.

Section 26. Section 617.1510, Florida Statutes, is amended to read:

617.1510 Serving Service of process, giving notice, or making a demand on a foreign corporation.—

(1) Process against a foreign corporation may be served in accordance with s. 48.081 and chapter 48 or chapter 49 The registered agent of a foreign corporation authorized to conduct its affairs in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(2) ~~A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office~~

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~~shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:~~

~~(a) Has no registered agent or its registered agent cannot with reasonable diligence be served;~~

~~(b) Has withdrawn from conducting its affairs in this state under s. 617.1520; or~~

~~(c) Has had its certificate of authority revoked under s. 617.1531.~~

~~(3) Service is perfected under subsection (2) at the earliest of:~~

~~(a) The date the foreign corporation receives the mail;~~

~~(b) The date shown on the return receipt, if signed on behalf of the foreign corporation; or~~

~~(c) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.~~

~~(4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation. Process against any foreign corporation may also be served in accordance with chapter 48 or chapter 49.~~

~~(5) Any notice to or demand on a foreign corporation made pursuant to this act may be made in accordance with the procedures for notice to or demand on domestic corporations under s. 617.0504.~~

Section 27. Subsections (2) and (3) of section 617.1520, Florida Statutes, are amended to read:

617.1520 Withdrawal of foreign corporation.—

(2) A foreign corporation authorized to conduct its affairs in this state may apply for a certificate of withdrawal by

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1219 delivering an application to the Department of State for filing.
 1220 The application ~~must shall~~ be made on forms prescribed and
 1221 furnished by the Department of State and ~~must shall~~ set forth
 1222 all of the following:

1223 (a) The name of the foreign corporation and the
 1224 jurisdiction under the law under ~~of~~ which it is incorporated.
 1225 (b) That it is not conducting its affairs in this state and
 1226 that it surrenders its authority to conduct its affairs in this
 1227 state.
 1228 (c) That it revokes the authority of its registered agent
 1229 to accept service on its behalf and appoints the Secretary of
 1230 State ~~Department of State~~ as its agent for service of process
 1231 based on a cause of action arising during the time it was
 1232 authorized to conduct its affairs in this state.
 1233 (d) A mailing address and an e-mail address to which a
 1234 party seeking to effectuate service of process ~~the Department of~~
 1235 ~~State may send mail~~ a copy of any process served on it under
 1236 paragraph (c).
 1237 (e) A commitment to notify the Department of State in the
 1238 future of any change in its mailing address or e-mail address.
 1239 (3) After the withdrawal of the corporation is effective,
 1240 service of process in accordance with s. 48.161 ~~on the~~
 1241 ~~Department of State under this section~~ is service on the foreign
 1242 corporation. ~~Upon receipt of the process, the Department of~~
 1243 ~~State shall mail a copy of the process to the foreign~~
 1244 ~~corporation at the mailing address set forth under subsection~~
 1245 ~~(2).~~
 1246 Section 28. Section 620.1117, Florida Statutes, is amended
 1247 to read:

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1248 620.1117 Serving Service of process, giving notice, or
 1249 making a demand on a limited partnership or a foreign limited
 1250 partnership.

1251 (1) Service of process on a limited partnership or foreign
 1252 limited partnership must be made in accordance with s. 48.061
 1253 and chapter 48 or chapter 49 ~~A registered agent appointed by a~~
 1254 ~~limited partnership or foreign limited partnership is an agent~~
 1255 ~~of the limited partnership or foreign limited partnership for~~
 1256 ~~service of any process, notice, or demand required or permitted~~
 1257 ~~by law to be served upon the limited partnership or foreign~~
 1258 ~~limited partnership.~~

1259 (2) Any notice or demand on a limited partnership or
 1260 foreign limited partnership under this chapter may be given or
 1261 made to any general partner of the limited partnership or
 1262 foreign limited partnership, to the registered agent of the
 1263 limited partnership or foreign limited partnership at the
 1264 registered office in this state, or to any other address in this
 1265 state which is in fact the principal office of the limited
 1266 partnership or foreign limited partnership in this state ~~If a~~
 1267 ~~limited partnership or foreign limited partnership does not~~
 1268 ~~appoint or maintain a registered agent in this state or the~~
 1269 ~~registered agent cannot with reasonable diligence be found at~~
 1270 ~~the address of the registered office, the Department of State~~
 1271 ~~shall be an agent of the limited partnership or foreign limited~~
 1272 ~~partnership upon whom process, notice, or demand may be served.~~

1273 (3) Service of any process, notice, or demand on the
 1274 Department of State may be made by delivering to and leaving
 1275 with the Department of State duplicate copies of the process,
 1276 notice, or demand.

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1277 ~~(4) Service is effected under subsection (3) upon the date~~
 1278 ~~shown as having been received by the Department of State.~~
 1279 ~~(5) The Department of State shall keep a record of each~~
 1280 ~~process, notice, and demand served pursuant to this section and~~
 1281 ~~record the time of, and the action taken regarding, the service.~~
 1282 ~~(6) This section does not affect the right to serve~~
 1283 ~~process, give notice, or make a demand in any other manner~~
 1284 ~~provided by law.~~
 1285 Section 29. Subsection (5) of section 620.1907, Florida
 1286 Statutes, is amended to read:
 1287 620.1907 Cancellation of certificate of authority; effect
 1288 of failure to have certificate.-
 1289 (5) If a foreign limited partnership transacts business in
 1290 this state without a certificate of authority or cancels its
 1291 certificate of authority, it may be served under s. 48.061(5)(b)
 1292 ~~the foreign limited partnership shall appoint the Department of~~
 1293 ~~State as its agent for service of process for rights of action~~
 1294 ~~arising out of the transaction of business in this state.~~
 1295 Section 30. Subsections (3) and (4) of section 620.2105,
 1296 Florida Statutes, are amended to read:
 1297 620.2105 Effect of conversion.-
 1298 (3) A converted organization that is a foreign organization
 1299 consents to the jurisdiction of the courts of this state to
 1300 enforce any obligation owed by the converting limited
 1301 partnership, if before the conversion the converting limited
 1302 partnership was subject to suit in this state on the obligation.
 1303 A converted organization that is a foreign organization and not
 1304 authorized to transact business in this state appoints the
 1305 Secretary of State Department of State as its agent for service

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

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1306 of process for purposes of enforcing an obligation under this
 1307 subsection and any appraisal rights of limited partners under
 1308 ss. 620.2113-620.2124 to the extent applicable to the
 1309 conversion. Service on the Secretary of State Department of
 1310 ~~State~~ under this subsection is made in the same manner and with
 1311 the same consequences as in ss. 48.161 and 620.1117 ~~s.~~
 1312 ~~620.1117(3) and (4).~~
 1313 (4) A copy of the statement of conversion, certified by the
 1314 Secretary of State Department of State, may be filed in any
 1315 county of this state in which the converting organization holds
 1316 an interest in real property.
 1317 Section 31. Subsection (2) of section 620.2109, Florida
 1318 Statutes, is amended to read:
 1319 620.2109 Effect of merger.-
 1320 (2) A surviving organization that is a foreign organization
 1321 consents to the jurisdiction of the courts of this state to
 1322 enforce any obligation owed by a constituent organization, if
 1323 before the merger the constituent organization was subject to
 1324 suit in this state on the obligation. A surviving organization
 1325 that is a foreign organization and not authorized to transact
 1326 business in this state shall appoint the Secretary of State
 1327 ~~Department of State~~ as its agent for service of process for the
 1328 purposes of enforcing an obligation under this subsection and
 1329 any appraisal rights of limited partners under ss. 620.2113-
 1330 620.2124 to the extent applicable to the merger. Service on the
 1331 Secretary of State Department of State under this subsection is
 1332 made in the same manner and with the same consequences as in ss.
 1333 48.161 and 620.1117 ~~s. 620.1117(3) and (4).~~
 1334 Section 32. Subsections (3) and (4) of section 620.8915,

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Florida Statutes, are amended to read:

620.8915 Effect of conversion.—

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting partnership, if before the conversion the converting partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state shall appoint the Secretary of State ~~Department of State~~ as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the Secretary of State ~~Department of State~~ under this subsection ~~is shall be~~ made in the same manner and with the same consequences as provided in s. 48.161 ~~s. 48.181~~.

(4) A copy of the certificate of conversion, certified by the Secretary of State ~~Department of State~~, may be filed in any county of this state in which the converting organization holds an interest in real property.

Section 33. Subsection (2) of section 620.8919, Florida Statutes, is amended to read:

620.8919 Effect of merger.—

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this state shall appoint the Secretary of State ~~Department of State~~ as its agent for service of process pursuant

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to s. 48.161 ~~the provisions of s. 48.181~~.

Section 34. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect January 2, 2023.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY
5th District

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary
Reapportionment

SELECT SUBCOMMITTEE:
Select Subcommittee on Congressional
Reapportionment, *Chair*

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

December 20, 2021

Senator Danny Burgess, Chairman
Senate Committee on Judiciary
308 Senate Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 1062 be placed on the Judiciary Committee agenda at your earliest convenience. The bill contains several provisions related to the service of process which were recommended by the Business Law Section and Real Property Probate and Trust Law Section of the Florida Bar.

Please let me know if you have any questions regarding the bill. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Bradley".

Jennifer Bradley

REPLY TO:

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

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

1/10/22

Meeting Date

JUDICIARY

Committee

SB 1062

Bill Number or Topic

Amendment Barcode (if applicable)

Name

JAMES B. MURPHY, JR.

Phone

(813) 416-3706

Address

5000 CULBREATH KEY WAY # 9125

Email

jbmurphyjr@gmail.com

Street

TAMPA

City

FL

State

33611

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



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

Appearing for BUSINESS LAW SECTION OF THE FLORIDA BAR

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

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

S-001 (08/10/2021)

January 10, 2022

Meeting Date

Judiciary

Committee

Name **Bill Cotterall**

Phone **(850) 224-9403**

Address **218 S. Monroe Street**

Email **wcotterall@myfja.org**

Street

Tallahassee

FL

32301

City

State

Zip

The Florida Senate
APPEARANCE RECORD

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

SB 1062

Bill Number or Topic

Amendment Barcode (if applicable)

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:

FJA



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

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

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

S-001 (08/10/2021)

1/10/22

Meeting Date

Judiciary

Committee

The Florida Senate

APPEARANCE RECORD

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

SB 1062

Bill Number or Topic

Amendment Barcode (if applicable)

Name **French Brown**

Phone **850-459-0992**

Address **106 E. College Ave, Suite 1200**

Email **fbrown@deanmead.com**

Street

Tallahassee

FL

32301

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

**The Real Property, Probate, and Trust
Law Section of the Florida Bar**

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

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

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 468

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senators Perry and Broxson

SUBJECT: Insurance

DATE: January 11, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	Fav/CS
2.	Ravelo	Cibula	JU	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 468 amends several insurance-related statutes. Specifically, the bill:

- Directs the Florida Hurricane Catastrophe Fund to provide reimbursement for a loss under collateral protection insurance (also known as lender-placed or force-placed insurance) when the coverage amount differs from the coverage amount under the lapsed policy if the homeowner received notice of the collateral protection insurance coverage amount, or the homeowner requested a different coverage amount from the collateral protection insurer.
- Provides that current requirements under the Workers' Compensation Law for annual, physical onsite payroll audits of employers in the construction class will only apply when the estimated annual premium is \$10,000 or more.
- Authorizes associations, trusts, and pools formed to provide self-insurance for public entities to use communications media technology to establish quorum and conduct public business.
- Provides that an all-lines adjuster who is appointed and employed by an insurer's affiliate may serve as a company employee adjuster for the purpose of adjusting claims.
- Allows a residential property insurer's rate filing to estimate projected hurricane losses by using a weighted or straight average of two or more models approved by the Florida Commission on Hurricane Loss Projection Methodology.
- Authorizes an insurer to file a personal lines residential property insurance rating plan that provides premium discounts, credits, and other rate differentials based on windstorm construction standards developed by an independent, not-for-profit, scientific research organization.

- Limits the requirement that an insurer provide a policyholder who has an automatic bank withdrawal agreement with the insurer with 15 days advance written notice of any increase in policy premiums. Instead, notice will only be required for premium increases that will result in an increase in the automatic withdrawal of more than \$10 from the previous withdrawal amount.
- Provides Citizens Property Insurance Corporation with discretion to offer wind-only policies to condominium associations when 50 percent or more of their units are rented more than eight times per year for a period of less than 30 days.
- Eliminates a requirement that an insurer that provides electronic delivery of the insurance policy to a policyholder (or the person entitled to delivery) to also provide within the electronic transmission notice of the policyholder's right to receive the policy via United States mail. The bill also eliminates a requirement that the insurer provide a paper copy of the policy to the insured upon his or her request.
- Allows a policyholder to select a hurricane deductible greater than 10 percent, reject windstorm coverage, or reject contents coverage under a residential property insurance policy by typing the existing exclusionary statement language, instead of handwriting it.
- Provides that s. 627.7152, F.S., governing assignment agreements, applies to instruments that assign or transfer post-loss benefits to a service provider that provides scopes of service or provides inspection services.
- Provides that the term "assignment agreement" does not include an instrument by which a licensed public adjuster is compensated for public adjuster services.
- Requires that an assignee provide the notice of intent to initiate litigation to the name and mailing address designated by the insurer in the policy forms if notice is sent by certified mail, return receipt requested, or to the e-mail address designated by the insurer in the policy forms if notice is sent by electronic delivery.
- Requires that an automobile policy that does not provide coverage for bodily injury liability and property damage liability include notice accompanying the declarations page that the policy does not provide such coverages and does not comply with any financial responsibility laws. Such policies generally cover antique motor vehicles.
- Exempts licensed personal lines and general lines agents from salesperson licensing requirements otherwise required to solicit, negotiate, advertise, or sell motor vehicle service agreements, home warranty contracts, and service agreement contracts.

The bill takes effect July 1, 2022, except as otherwise provided.

II. Present Situation:

The Florida Hurricane Catastrophe Fund (FHCF)

The FHCF is a tax-exempt¹ fund created in 1993² after Hurricane Andrew³ as a form of mandatory reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration (SBA)⁴ and is a tax-exempt source of reimbursement to property

¹ Section 215.555(1)(f), F.S.

² Chapter 93-409, Laws of Fla.

³ Ed Rappaport, *Preliminary Report, Hurricane Andrew* (updated Dec. 10, 1993; addendum Feb. 7, 2005), <https://www.nhc.noaa.gov/1992andrew.html>.

⁴ State Board of Administration of Florida, *About the SBA*, <https://www.sbafla.com/fsb/> (last visited Mar. 23, 2021).

insurers for a selected percentage (45, 75, or 90 percent)⁵ of hurricane losses above the insurer's retention (deductible). The FHCF provides insurers an additional source of reinsurance that is less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers.

All insurers admitted to do business in this state writing residential property insurance that includes wind coverage must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.⁶ The FHCF is authorized by statute to sell \$17 billion of mandatory layer coverage.⁷ Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. Each insurer may select a reimbursement contract wherein the FHCF promises to reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 10 percent⁸ of the reimbursed losses for loss adjustment expenses.⁹

The FHCF must charge insurers the actuarially indicated premium¹⁰ for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.¹¹ The actuarially indicated premium is an amount determined by the principles of actuarial science to be adequate to pay current and future obligations and expenses of the fund.¹² In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. Historically, FHCF coverage generally costs less than private reinsurance because the fund is a tax-exempt non-profit corporation and does not charge a risk load as it relates to overhead and operating expenses incurred by other private insurers.¹³

When the moneys in the FHCF are or will be insufficient to cover losses, the law¹⁴ authorizes the FHCF to issue revenue bonds funded by emergency assessments on all lines of insurance except medical malpractice and workers compensation.¹⁵ Emergency assessments may be levied up to 6 percent of premium for losses attributable to any one contract year, and up to 10 percent of premium for aggregate losses from multiple years. The FHCF's broad-based assessment

⁵ Section 215.555(2)(e), F.S.

⁶ See s. 215.555(4)(a), F.S.

⁷ Section 215.555(4)(c)1., F.S.

⁸ Section 215.555(4)(b)1., F.S.

⁹ Loss adjustment expenses are costs incurred by insurers when investigating, adjusting, and processing a claim.

¹⁰ Section 215.555(5)(a), F.S.

¹¹ See, *Florida Commission on Hurricane Loss Methodology*, <https://www.sbafla.com/method/> (last visited Mar. 23, 2021).

¹² Section 215.555(2)(a), F.S.

¹³ State Board of Administration of Florida, Florida Hurricane Catastrophe Fund, *2016 Annual Report*, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943 (last visited Mar. 8, 2021).

¹⁴ Section 215.555(6), F.S.

¹⁵ Section 215.555(6)(b), F.S.

authority is one of the reasons the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.¹⁶

Reimbursement of Collateral Protection Insurance

Collateral protection insurance, sometimes referred to as “lender-placed” or “force-placed” insurance, is insurance that is placed by a lender, at the expense of the borrower, to protect the lender’s security interest in property pursuant to a loan, such as a home mortgage. Collateral protection insurance is placed by the lender when it deems the homeowners’ insurance insufficient, usually because the borrower’s insurance policy is lapsed or cancelled. The FHCF covers policies of collateral protection insurance if the collateral protection insurance covers a personal residence and protects both the borrower’s and the lender’s financial interests in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowners policy.¹⁷

Payroll Audits for Construction Classification of Employers

Florida law currently requires biennial payroll audits for employers in all classes other than construction, with factors for more frequent audits, and annual, physical onsite payroll audits for employers in the construction class, to ensure that the appropriate premium is charged for workers’ compensation coverage.¹⁸ Section 440.381, F.S., does not provide a minimum premium threshold for compliance purposes.

An employer that fails to provide reasonable access to payroll records for an audit must pay the insurer a premium not to exceed three times the most recent estimated annual premium.¹⁹ An employer that understates or conceals payroll, misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, or misrepresents or conceals information pertinent to the computation and application of an experience rating modification factor, must pay the insurer a penalty equal to 10 times the amount of the difference in premium paid and the amount the employer should have paid, plus reasonable attorney’s fees.²⁰

Electronic Meetings for Public Self-Insurers

Florida law authorizes two or more local governmental entities to enter into an interlocal agreement (fund) for the purpose of securing workers’ compensation payments, or insuring or self-insuring real or personal property of every kind and every interest in such property against loss or damage from any hazard or cause and against any loss consequential to such loss or damage.²¹

¹⁶ The U.S. Internal Revenue Service has, by a Private Letter Ruling, authorized the FHCF to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, for 5 years until June 30, 2003. On May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that the prior exemption, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis. See Florida Hurricane Catastrophe Fund, *Fiscal Year 2009-2010 Annual Report*, 14, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/SBA_CATF_Annual_ReportFHCF_Final.pdf?ver=2016-06-08-121900-647 (last visited March 23, 2021).

¹⁷ Section 215.555(2)(c), F.S.

¹⁸ Section 440.381(3), F.S.

¹⁹ Section 440.381(8), F.S.

²⁰ Section 440.381(6)(a), F.S.

²¹ Section 624.4622(1), F.S.

For any fund created after October 1, 2004, the fund is subject to the requirements of group self-insurance funds for the first 5 years of its existence,²² including participation in the Florida Self-Insurance Guaranty Association.²³ The Florida Self-Insurers Guaranty Association is exempt from certain public record requirements under s. 119.07(1), F.S., related to claims and minutes meetings, and certain public meeting requirements under s. 286.011, F.S.,²⁴ related to discussion to claims and other confidential information. Section 286.011, F.S., declares all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken to be public meetings open to the public at all times. Any resolution, rule, or formal action taken in contravention of this provision is not considered binding.²⁵

Insurance Adjusters

Florida law requires all insurance adjusters to be licensed by DFS and appointed by the appropriate entity or person²⁶ in order to adjust claims. General requirements for licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.²⁷

Under s. 626.864, F.S., there are both public adjusters and all-lines adjuster license types, with all-lines appointments further divided into independent adjusters,²⁸ company employee adjusters,²⁹ and public adjuster apprentices.³⁰ The same adjuster may not be concurrently licensed as a public adjuster and an all-lines adjuster.³¹ In the case of an all-lines adjuster, the adjuster may be appointed as an independent adjuster, company employee adjuster, or public adjuster apprentice, but not more than one concurrently.³²

A public adjuster is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.³³ Public adjusters operate independently and are not affiliated with any insurer.

²² Section 624.4622(3), F.S.

²³ Section 624.4621(9).

²⁴ Section 440.3851, F.S.

²⁵ Section 286.011, F.S.

²⁶ See s. 626.015(4), F.S., defining “appointment” as the authority given by an insurer or employer to a licensee to adjust claims on behalf of an insurer or employer.

²⁷ Section 626.171, F.S.

²⁸ Section 626.855, F.S.

²⁹ Section 626.856, F.S.

³⁰ Section 626.8561, F.S.

³¹ Section 626.864(2), F.S.

³² Section 626.864(3), F.S.

³³ Section 626.854(1), F.S.

An all-lines adjuster is any person who, for compensation, ascertains and determines the amount of any claim, loss, or damage payable under an insurance contract or settles such claim, loss, or damage on behalf of a public adjuster or insurer.³⁴

An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract.³⁵

A company employee adjuster is any person employed in-house by an insurer, or a wholly owned subsidiary of the insurer, who ascertains and determines the amount of an insurance claim, loss, or damage, or settles such claim, loss or damage.³⁶

Regulation of Property Insurance Rates

Part I of ch. 627, F.S., is the Rating Law³⁷ governing property, casualty, and surety insurance which covers subjects of insurance resident, located, or to be performed in this state.³⁸ The Rating Law provides that the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.³⁹ Though the terms “rate” and “premium” are often used interchangeably, the rating law specifies that “rate” is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.⁴⁰

All insurers or rating organizations must file rates with the Office of Insurance Regulation (OIR) either 90 days before the proposed effective date of a new rate, which is considered a “file and use” rate filing, or 30 days after the effective date of a new rate, which is considered a “use and file” rate filing.

Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The office makes that determination in accordance with generally acceptable actuarial techniques and, in a property insurance rate filing, considers the following:

- Past and prospective loss experience.
- Past and prospective expenses.
- The degree of competition among insurers for the risk insured.
- Investment income reasonably expected by the insurer.
- The reasonableness of the judgment reflected in the rate filing.
- Dividends, savings, or unabsorbed premium deposits returned to policyholders.
- The adequacy of loss reserves.
- The cost of reinsurance.
- Trend factors, including trends in actual losses per insured unit for the insurer.

³⁴ Section 626.8548, F.S.

³⁵ Section 626.855, F.S.

³⁶ Section 626.856, F.S.

³⁷ Section 627.011, F.S.

³⁸ Section 627.021, F.S.

³⁹ Section 627.062(1), F.S.

⁴⁰ Section 627.041, F.S.

- Conflagration and catastrophe hazards.
- Projected hurricane losses.
- Projected flood losses, if the policy covers the risk of flood.
- A reasonable margin for underwriting profit and contingencies.
- Other relevant factors that affect the frequency or severity of claims or expenses.

Florida Commission on Hurricane Loss Projection Methodology

Projected hurricane losses in a rate filing must be estimated using a model or method found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology.⁴¹ The commission consists of 12 members with expertise in the elements that are used to develop computer models to estimate hurricane and flood loss. Members of the commission include State University System faculty experts in insurance finance, statistics, computer system design, meteorology, and structural engineering; three actuaries; the insurance consumer advocate; the director of the FHCF; the Executive Director of Citizens Property Insurance Corporation; and the Director of the Division of Emergency Management.⁴²

Residential Property Insurance Mitigation Credits, Discounts, or Other Rate Differentials

Residential property insurance rate filings must account for mitigation measures undertaken by policyholders to reduce hurricane losses.⁴³ Specifically, the rate filings must include actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties.⁴⁴ Upon their filing by an insurer or rating organization, OIR determines the discounts, credits, other rate differentials and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation,⁴⁵ which in turn may be used in rate filings under the Rating Law. Windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength; roof covering performance, roof-to-wall strength; wall-to-floor foundation strength; opening protections; and window, door, and skylight strength.⁴⁶

Automatic Bank Withdrawal Agreements in the Insurance Context

Florida law allows insurers and policyholders to enter into automatic bank withdrawal agreements for the purpose of paying insurance premiums.⁴⁷ Policyholders generally have the option of selecting between payment plans that divide the premium into two or four separate payments or in monthly installments. Under current law, insurers must provide the policyholder with 15 days advance written notice prior to any automatic bank withdrawal if the premium payment increases from the previous withdrawal period by any amount.

⁴¹ Section 627.062(2)(b)11., F.S.

⁴² Section 627.0628(2)(b), F.S.

⁴³ Section 627.062(2)(j), F.S.

⁴⁴ Section 627.0629(1), F.S.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Section 627.0665, F.S.

By contrast, federal law requires financial institutions to provide 10 days advance written notice prior to any automatic bank withdrawal either when the amount varies from the previous withdrawal amount, when the amount varies outside a specified range of amounts, or when the amount varies from the previous withdrawal amount by an agreed-upon amount.⁴⁸

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide affordable property insurance coverage to those unable to find coverage in the voluntary admitted market.⁴⁹ Citizens is not a private insurance company.⁵⁰ Citizens was statutorily created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by a nine-member Board of Governors⁵¹ that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. The Governor appoints three members to the board, one of whom serves solely to advocate for consumers. Citizens is subject to regulation by the OIR.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.⁵² Assets may not be commingled or used to fund losses in another account.⁵³

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.

The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

⁴⁸ 12 CFR 1005.10(d).

⁴⁹ Admitted market means insurance companies licensed to transact insurance in Florida.

⁵⁰ Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the OIR.

⁵¹ The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members.

⁵² The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

⁵³ Section 627.351(6)(b)2b., F.S.

The Coastal Account offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.⁵⁴

Citizens Eligibility for Commercial Residential Wind-Only Coverage

In 2014,⁵⁵ the Legislature enacted changes to the statutes governing Citizens that prohibited residential condominium associations from obtaining commercial residential property insurance policies from Citizens which cover damage only from wind if 50 percent or more of the condominiums in the association are rented more than eight times a year for less than 30 days. These changes were intended to provide clarity to the classification of transient occupancy risks and remove inconsistencies between commercial residential and commercial non-residential properties.⁵⁶ Condominiums are presently able to obtain Citizens policies that cover damage from multiple perils, including wind.

Delivery of Insurance Policies and Claims Communications

Under s. 627.421, F.S., Florida law currently requires most insurers⁵⁷ to deliver, mail, or electronically transmit the insurance policy to the policyholder within 60 days of such coverage taking effect. Policyholders of personal lines policies may elect electronic transmission of policy documents; however, for commercial lines policies, policy documents are sent via electronic transmission unless the policyholder declines electronic transmission by written or electronic communication to the insurer. The policyholder is further entitled to a paper copy of the policy upon request.⁵⁸ An insurer that electronically transmits policy documents must include notice of the right to receive a paper copy of the policy via United States Mail.⁵⁹

Florida law varies with respect to electronic and nonelectronic transmission of claims communications. In some cases, e.g. written proof of loss, claims communications must be nonelectronic,⁶⁰ while on others, e.g. payment of health insurance claims, claims communication may be electronic or nonelectronic.⁶¹

Affirmative Exclusions of Property Insurance Deductibles and Coverages

A hurricane deductible is the amount paid by the policyholder before the insurer issues any payment for damaged caused by a hurricane.⁶² Under Florida law, the hurricane deductible is

⁵⁴ In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

⁵⁵ Chapter 2015-140, Laws of Fla.

⁵⁶ House Regulatory Affairs Committee, *House Bill 1089 Analysis* (June 16, 2014) <https://www.flsenate.gov/Session/Bill/2014/1089/Analyses/h1089z1.IBS.PDF> (last visited Feb. 8, 2021).

⁵⁷ Part II of ch. 627, F.S., exempts reinsurers, wet marine and transportation, title, and credit life of credit disability insurers from the delivery provisions of s. 627.421, F.S.

⁵⁸ Section 627.421(1), F.S.

⁵⁹ *See Id.*

⁶⁰ Section 627.425, F.S.

⁶¹ Section 627.6131, F.S.

⁶² Department of Financial Services, *Florida's Hurricane Deductible* <https://www.myfloridacfo.com/division/consumers/floridashurricanedeductible.htm> (last visited Nov. 23, 2021).

capped at 10 percent of the policy dwelling limits for a covered risk valued at less than \$500,000, unless the policyholder affirmatively rejects the statutory hurricane deductible limit.⁶³ In order to do so, the policyholder must personally write and provide the insurer the following statement in his or her own handwriting: “I do not want the insurance on my home to pay for the first (specify dollar value) of damage from hurricanes. I will pay those costs. My insurance will not.” Furthermore, the policyholder and each named insured on the policy must sign and date the statement.⁶⁴

Florida law also requires a residential property insurance policy to include windstorm coverage⁶⁵, unless the policyholder affirmatively rejects the coverage.⁶⁶ If the policyholder is a natural person, the policyholder must personally write and provide the insurer the following statement in his or her own handwriting: “I do not want the insurance on my home (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not.” Furthermore, the policyholder and each named insured on the policy must sign and date the statement.⁶⁷

A similar provision exists in statute for exclusion of contents coverage under a residential property insurance policy, except for a condominium unit owner policy or a tenant policy. Under s. 627.712(3), F.S., the policyholder must personally write and provide the insurer the following statement in his or her own handwriting: “I do not want the insurance on my home (home/mobile) to pay for costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not.” Furthermore, the policyholder and each named insured on the policy must sign and date the statement.

Assignment of Post-Loss Benefits Under a Property Insurance Policy

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. This assignment is often called an “assignment of benefits” or “AOB.” Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee may file a lawsuit against the insurer to recover the insurance benefits.⁶⁸

The 2019, the Legislature enacted s. 627.7152, F.S., which governs the execution of assignment of post-loss benefits under a property insurance policy, provides duties that assignees must meet when filing a claim under a property insurance policy, provides requirements pursuant to litigation brought by assignees under property insurance policies, and revises the standards for

⁶³ Section 627.701(4)(d), F.S.

⁶⁴ *See Id.*

⁶⁵ This requirement does not apply to a risk that is eligible for wind-only coverage from Citizens Property Insurance Corporation. Nor does the requirement apply to a risk that is ineligible for Citizens coverage because the risk: (1) is a structure that has a dwelling replacement cost of \$700,000; (2) is a single condominium unit with a combined dwelling and contents replacement cost of \$700,000 or more; or (3) is located in the “wind-borne” debris region as defined in s. 1609.2 of the International Building Code (2006) and has an insured value on the structure of \$750,000 or more.

⁶⁶ Section 627.712, F.S.

⁶⁷ Section 627.712(2)(a)1, F.S.

⁶⁸ *Nationwide Mutual Insurance Company v. Pinnacle Medical, Inc.* 753 So. 2d 55, 57 (Fla. 2000) (“The right of assignee to sue for breach of contract to enforce assigned rights predates the Florida Constitution”).

awarding attorney fees in such litigation. An assignment agreement is any instrument that effectuates the assignment, transfer, or acquisition of post-loss benefits to or from a person providing services to protect, repair, restore, or replace property, or to mitigate against further damage to the property.

Prior to litigation, under s. 627.7152(9), F.S., an assignee must provide 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. 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. In a claim arising under an assignment agreement, the assignee has the burden under s. 627.7152(3)(b), F.S., to demonstrate that the insurer is not prejudiced by the assignee's failure to cooperate with the insurer in the claim investigation.

Notice of Limited Coverage for Antique Vehicles

Some insurers⁶⁹ offer motor vehicle insurance coverage for antique vehicles⁷⁰ which does not include mandatory personal injury protection⁷¹ and property damage liability⁷² coverages. In those cases, Florida law requires the automobile policy to provide notice to the policyholder of the limited coverage and its noncompliance with any financial responsibility law.⁷³ This coverage is generally appropriate for antique vehicles that are stored in a private collection or as part of a public display and are not driven on the roadways of this state. The notice must be stamped or printed in contrasting color from the color used on the policy and placed on the policy declaration page and on the back of the policy.⁷⁴

Agent Licensing

General Lines Agent

A general lines agent⁷⁵ is one who sells the following lines of insurance: property,⁷⁶ casualty,⁷⁷ including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,⁷⁸ or a workers' compensation self-insurance fund;⁷⁹ surety;⁸⁰ health;⁸¹ and marine.⁸² The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance.⁸³ If the general lines

⁶⁹ <https://www.statefarm.com/insurance/auto/antique-classic-cars> (last visited Nov. 29, 2021).

⁷⁰ See section 320.086, F.S.

⁷¹ Section 627.733, F.S.

⁷² Section 324.022, F.S.

⁷³ Section 627.7276(1), F.S.

⁷⁴ Section 627.7276(2), F.S.

⁷⁵ Section 626.015(7), F.S.

⁷⁶ Section 624.604, F.S.

⁷⁷ Section 624.605, F.S.

⁷⁸ As defined in s. 624.462, F.S.

⁷⁹ Pursuant to s. 624.4621, F.S.

⁸⁰ Section 626.606, F.S.

⁸¹ Section 624.603, F.S.

⁸² Section 624.607, F.S.

⁸³ Section 626.827, F.S.

agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.⁸⁴

Personal Lines Agent

A personal lines agent is a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.⁸⁵

Motor Vehicle Servicing Agreements

Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. A motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended.⁸⁶ Motor vehicle service agreements can only be sold by a licensed and appointed salesperson.⁸⁷ Salespersons are licensed in the same manner as insurance representatives under ch. 626, F.S., with some exceptions to the requirements applied to insurance representatives.⁸⁸

Home Warranty Contracts

A home warranty is any contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss.⁸⁹ No person shall solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative.⁹⁰

Service Warranty Contracts

A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.⁹¹ A person or entity

⁸⁴ Section 626.829, F.S.

⁸⁵ Section 626.015(17), F.S.

⁸⁶ Section 634.011(8), F.S.

⁸⁷ Section 634.031, F.S.

⁸⁸ Section 634.171, F.S.

⁸⁹ Section 634.301, F.S.

⁹⁰ Section 634.317, F.S., "sales representative" is any person with whom an insurer or home inspection or warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term includes all employees of an insurer or association engaged directly in the sale or issuance of home warranties. Section 634.301(12), F.S.

⁹¹ Section 634.401(13), F.S.

may not solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless the person or entity is licensed and appointed as a sales representative.⁹²

III. Effect of Proposed Changes:

Collateral Protection Insurance

Section 1 amends s. 215.555, F.S., to require that the FHCF provide reimbursement for a loss under collateral protection insurance (also known as lender-placed or force-placed insurance) when the coverage amount differs from the coverage amount under the lapsed policy if the homeowner received notice of the collateral protection insurance coverage amount, or the homeowner requested a different coverage amount from the collateral protection insurer.

This section is effective June 1, 2023.

Payroll Audits for Construction Classification of Employers

Section 2 amends s. 440.381, F.S., governing payroll audits, provide that current requirements under the Workers' Compensation Law for annual, physical onsite payroll audits of employers in the construction class will only apply when the estimated annual premium is \$10,000 or more

Electronic Meetings of Self-Insured Public Entities

Section 3 creates s. 624.46227, F.S., to authorize associations, trusts, and pools formed to provide self-insurance for public entities to use communications media technology to establish quorum and conduct public business.

Section 4 amends s. 626.221, F.S., to authorize Certified All Lines Adjusters from Kaplan to be exempt from the examination requirement for licensure as an insurance agent or adjuster.

Company Employee Adjusters

Section 5 amends s. 626.856, F.S., revising the definition of a "company employee adjuster" in the Insurance Adjusters Law, to provide that an all-lines adjuster who is appointed and employed by an insurer's affiliate may serve as a company employee adjuster for the purpose of ascertaining and determining the amount of an insurance claim, loss, or damage, or settling such claim, loss or damage.

⁹² Section 634.419, F.S. A "sales representative" is any person, retail store, corporation, partnership, or sole proprietorship utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties. However, in the case of service warranty associations selling service warranties from one or more business locations, the person in charge of each location may be considered the sales representative. Section 634.401(12), F.S.

Florida's Rating Law

Hurricane Model Averaging and Weighting

Section 6 amends s. 627.062, F.S., to provide that a residential property insurer's rate filing may estimate projected hurricane losses by using a weighted or straight average of two or more methods or models approved by the Commission on Hurricane Loss Projection Methodology.

Residential Property Insurance Mitigation Credits, Discounts, or Other Rate Differentials

Section 7 amends s. 627.0629, F.S., to provide that an insurer may file with the Office of Insurance Regulation a personal lines residential rating plan that provides premium discounts, credits, and other rate differentials based on windstorm construction standards developed by an independent, not-for-profit, scientific research organization, if such standards meet statutory requirements.

Required Notifications of Automatic Bank Withdrawals

Section 8 amends s. 627.0065, F.S., governing automatic bank withdrawals agreements between insurers and policyholders, to limit the requirement that an insurer provide a policyholder 15 days advance written notice of any increase in policy premiums. Instead, notice will only be required for premium increases that will result in an increase of the automatic withdrawal of more than \$10 from the previous withdrawal amount.

Citizens Eligibility for Commercial Residential Wind-Only Coverage

Section 9 amends s. 627.351, F.S., governing Citizens, to provide that condominium associations where 50 percent or more of the condominium units are rented more than eight times per year for a period of less than 30 days may be eligible for wind-only Citizens policies.

Delivery of Policies and Claims Communications

Section 10 amends s. 627.421, F.S., to eliminate a requirement that an insurer that provides electronic delivery of the insurance policy to a policyholder (or the person entitled to delivery) must also provide within the electronic transmission notice of the policyholder's right to receive the policy via United States Mail. The section also deletes a requirement that the insurer provide a paper copy of the policy to the insured upon his or her request. For personal lines policies, an insurer may offer electronic delivery to the policyholder, but electronic delivery may only be used if the policyholder elects to receive electronic delivery of the policy. For commercial lines, the insurer may use electronic delivery without the consent of the policyholder unless the policyholder communicates to the insurer that he or she does not agree to electronic delivery.

Affirmative Exclusions of Property Insurance Deductibles and Coverages

Section 11 amends s. 627.701, F.S., governing hurricane deductibles in residential property insurance policies, to allow a policyholder to write *or* type the required statement⁹³ which the

⁹³ "I do not want the insurance on my home to pay for the first (specify dollar value) of damage from hurricanes. I will pay those costs. My insurance will not."

policyholder must complete and sign in order to select a hurricane deductible greater than 10 percent of the policy dwelling limits on a risk valued at less than \$500,000.

Section 12 amends s. 627.712, F.S., governing windstorm and contents coverage exclusions, to allow a policyholder to affirmatively reject windstorm coverage under a residential property insurance policy by typing the required statement⁹⁴ which excludes coverage.

The bill also allows a policyholder, except for a condominium unit owner policy or tenant policy, to affirmatively reject contents coverage under a residential property insurance policy by writing typing the required statement⁹⁵ which excludes coverage.

The bill retains current law in both of these statutory sections that allows the policyholder to write out the required statements required in these sections.

Notice of Claims Under Assignment Agreements

Section 13 amends s. 627.7152, F.S., governing residential property insurance and commercial property insurance assignment agreements. The bill adds the services of inspection and providing a scope of service to the list of services contemplated by the definition of “assignment agreement.”

The bill also specifies that the notice of intent to initiate litigation that must be sent by an assignee to an insurer must be sent to the name and mailing address designated by the insurer in the policy forms if notice is sent by certified mail, return receipt requested, or to the email address designated by the insurer in the policy forms if notice is sent by electronic delivery.

This section is effective upon becoming law.

Notice of Limited Coverage for Antique Vehicles

Section 14 amends s. 627.7276, F.S., to require that an automobile policy that does not provide coverage for bodily injury liability and property damage liability include notice accompanying the declarations page that the policy does not provide such coverages and does not comply with any financial responsibility laws. Such policies generally cover antique motor vehicles.

Agent Licensing

Motor Vehicle Service Agreements

Section 15 amends s. 634.171, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell motor vehicle service agreements.

⁹⁴ “I do not want the insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not.”

⁹⁵ “I do not want the insurance on my (home/mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not.”

Home Warranty Contracts

Section 16 amends s. 634.317, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell home warranty contracts.

Service Warranty Contracts

Section 17 amends s. 634.419, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell service warranty contracts.

Reenactments

Section 18 reenacts s. 624.424(10), F.S., related to insurer's annual statements, to incorporate amendments made to s. 215.555, F.S., which address collateral protection insurance coverage amounts.

This section is effective June 1, 2023.

Section 19 reenacts s. 627.351(6)(v), F.S., related to Citizens Property Insurance Corporation, to incorporate amendments made to s. 215.555, F.S., which address collateral protection insurance coverage amounts.

This section is effective June 1, 2023.

Section 20 reenacts s. 626.8734, F.S., related to public adjuster's qualifications, to incorporate the amendments made to s. 626.221, F.S.

Section 21 reenacts s. 626.865(1)(e), F.S., related to company employee adjusters, to incorporate amendments made to s. 626.865, F.S., which address insurer affiliates.

Section 22 reenacts paragraph (1)(d) and subsection (2) of section 627.7153, F.S., which addresses policies restricting assignments of post-loss benefits under a property insurance policy, to incorporate amendments made to s. 627.7152, F.S., which address assignment agreements.

This section is effective upon becoming law.

Effective Date

Section 23 provides that except as otherwise expressly provided in this act, and except for this section, which takes effect upon this act become law, this act is effective July 1, 2022.

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

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 10 of the State 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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.555, 440.381, 626.221, 626.856, 626.8734, 627.062, 627.0629, 627.0665, 627.351, 627.421, 627.701, 627.712, 627.7152, 627.7276, 634.171, 634.317, 634.419, 624.424, 626.865, and 627.7153.

This bill creates section 624.46227 of the Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on January 10, 2022:

This CS no longer includes a provision from the prior version of the bill which would have revised the effective date of service of process served on an insurer through service on the Chief Financial Officer.

The CS adds to the various designations or certifications listed in statute which exempt a person from the examination requirement for licensure as an insurance agent or as an adjuster. Under the amendment, a designation as a Certified All Lines Adjuster (CALA) from Kaplan will qualify a person for the exemption.

CS by Banking and Insurance on December 1, 2021:

The committee substitute:

Excludes any instrument by which a licensed public adjust receives any compensation, payment, commission, fee, or other thing of value for providing public adjuster services from the definition of “assignment agreement.”

- B. **Amendments:**

None.



174624

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2022	.	
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The Committee on Judiciary (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 142 - 468
and insert:
audits for policies only if the estimated annual premium is
\$10,000 or more. Payroll verification audit rules must include,
but need not be limited to, the use of state and federal reports
of employee income, payroll and other accounting records,
certificates of insurance maintained by subcontractors, and
duties of employees. At the completion of an audit, the employer
or officer of the corporation and the auditor must print and



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sign their names on the audit document and attach proof of identification to the audit document.

Section 3. Section 624.46227, Florida Statutes, is created to read:

624.46227 Meeting requirements.—Any association, trust, or pool authorized by state law and created for the purpose of forming a risk management mechanism or providing self-insurance for public entities in this state may use communications media technology to establish a quorum and conduct public business.

Section 4. Paragraph (j) of subsection (2) of section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(2) However, an examination is not necessary for any of the following:

(j) An applicant for license as an all-lines adjuster who has the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state, Associate in Claims (AIC) from the Insurance Institute of America, Professional Claims Adjuster (PCA) from the Professional Career Institute, Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy, Certified Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster (CCA) from AE21 Incorporated, Claims Adjuster Certified Professional (CACP) from WebCE, Inc., Accredited Insurance Claims Specialist (AICS) from Encore Claim Services, Certified All Lines Adjuster (CALA) from Kaplan, or Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM) whose curriculum has been approved by the department and which includes comprehensive analysis of basic



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property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

Section 5. For the purpose of incorporating the amendment made by this act to section 626.221, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 626.8734, Florida Statutes, is reenacted to read:

626.8734 Nonresident all-lines adjuster license qualifications.—

(1) The department shall issue a license to an applicant for a nonresident all-lines adjuster license upon determining that the applicant has paid the applicable license fees required under s. 624.501 and:

(b) Has passed to the satisfaction of the department a written Florida all-lines adjuster examination of the scope prescribed in s. 626.241(6); however, the requirement for the examination does not apply to:

1. An applicant who is licensed as an all-lines adjuster in his or her home state if that state has entered into a reciprocal agreement with the department;

2. An applicant who is licensed as a nonresident all-lines adjuster in a state other than his or her home state and a reciprocal agreement with the appropriate official of the state of licensure has been entered into with the department; or

3. An applicant who holds a certification set forth in s. 626.221(2)(j).

Section 6. Section 626.856, Florida Statutes, is amended to read:



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626.856 "Company employee adjuster" defined.—A "company employee adjuster" means a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters, by an affiliate, or by a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage.

Section 7. Paragraph (j) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(j) With respect to residential property insurance rate filings, the rate filing:

1. Must account for mitigation measures undertaken by policyholders to reduce hurricane losses.

2. May use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the commission to be accurate or reliable pursuant to s. 627.0628.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 8. Subsection (9) is added to section 627.0629, Florida Statutes, to read:

627.0629 Residential property insurance; rate filings.—

(9) An insurer may file with the office a personal lines



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residential property insurance rating plan that provides justified premium discounts, credits, or other rate differentials based on windstorm mitigation construction standards developed by an independent, not-for-profit scientific research organization, if such standards meet the requirements of this section.

Section 9. Section 627.0665, Florida Statutes, is amended to read:

627.0665 Automatic bank withdrawal agreements; notification required.—Any insurer licensed to issue insurance in this ~~the~~ state who has an automatic bank withdrawal agreement with an insured party for the payment of insurance premiums for any type of insurance shall give the named insured at least 15 days advance written notice of any increase in policy premiums that results in the next automatic bank withdrawal being increased by more than \$10. Such notice must be provided before ~~prior to~~ any automatic bank withdrawal containing the ~~of an~~ increased premium amount.

Section 10. Paragraph (a) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public



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health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in this ~~the~~ state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income



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taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures:

a. Effective January 1, 2014, a structure that has a dwelling replacement cost of \$1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of \$1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the



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corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.

b. Effective January 1, 2015, a structure that has a dwelling replacement cost of \$900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of \$900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.

c. Effective January 1, 2016, a structure that has a dwelling replacement cost of \$800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of \$800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.

d. Effective January 1, 2017, a structure that has a dwelling replacement cost of \$700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of \$700,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by



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the corporation until the end of the policy term.

The requirements of sub-subparagraphs b.-d. do not apply in counties where the office determines there is not a reasonable degree of competition. In such counties a personal lines residential structure that has a dwelling replacement cost of less than \$1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than \$1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of \$750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were



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installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, ~~effective July 1, 2014,~~ a condominium may ~~shall~~ be deemed ineligible for coverage when ~~if~~ 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

Section 11. Subsection (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed, delivered, or electronically transmitted to the insured or to the person entitled thereto not later than 60 days after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy for commercial risks,



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including, but not limited to, workers' compensation and employers' liability, commercial automobile liability, commercial automobile physical damage, commercial lines residential property, commercial nonresidential property, farmowners insurance, and the types of commercial lines risks set forth in s. 627.062(3)(d), constitutes delivery to the insured or to the person entitled to delivery, unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. ~~Electronic transmission shall include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.~~

Section 12. Paragraph (d) of subsection (4) of section 627.701, Florida Statutes, is amended to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(4)

(d)1. A personal lines residential property insurance policy covering a risk valued at less than \$500,000 may not have a hurricane deductible in excess of 10 percent of the policy dwelling limits, unless the following conditions are met:

a. The policyholder must personally write or type and provide to the insurer the following statement ~~in his or her own handwriting~~ and sign his or her name, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my home to pay for the first (specify



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dollar value) of damage from hurricanes. I will pay those costs.
My insurance will not."

b. If the structure insured by the policy is subject to a mortgage or lien, the policyholder must provide the insurer with a written statement from the mortgageholder or lienholder indicating that the mortgageholder or lienholder approves the policyholder electing to have the specified deductible.

2. A deductible subject to the requirements of this paragraph applies for the term of the policy and for each renewal thereafter. Changes to the deductible percentage may be implemented only as of the date of renewal.

3. An insurer shall keep the original copy of the signed statement required by this paragraph, electronically or otherwise, and provide a copy to the policyholder providing the signed statement. A signed statement meeting the requirements of this paragraph creates a presumption that there was an informed, knowing election of coverage.

4. The commission shall adopt rules providing appropriate alternative methods for providing the statements required by this section for policyholders who have a handicapping or disabling condition that prevents them from providing a handwritten statement.

Section 13. Paragraph (a) of subsection (2) and subsection (3) of section 627.712, Florida Statutes, are amended to read:

627.712 Residential windstorm coverage required;
availability of exclusions for windstorm or contents.—

(2) A property insurer must make available, at the option of the policyholder, an exclusion of windstorm coverage.

(a) The coverage may be excluded only if:



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1. When the policyholder is a natural person, the policyholder personally writes or types and provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her name, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not."

2. When the policyholder is other than a natural person, the policyholder provides to the insurer on the policyholder's letterhead the following statement that must be signed by the policyholder's authorized representative and dated: "... (Name of entity)... does not want the insurance on its ... (type of structure)... to pay for damage from windstorms. ... (Name of entity)... will be responsible for these costs. ... (Name of entity's)... insurance will not."

(3) An insurer issuing a residential property insurance policy, except for a condominium unit owner policy or a tenant policy, must make available, at the option of the policyholder, an exclusion of coverage for the contents. The coverage may be excluded only if the policyholder personally writes or types and provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her signature, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my (home/mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not."

Section 14. Effective upon this act becoming a law, paragraph (b) of subsection (1) and paragraph (a) of subsection



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(9) of section 627.7152, Florida Statutes, are amended to read:
627.7152 Assignment agreements.—

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

(b) "Assignment agreement" means any instrument by which post-loss benefits under a residential property insurance policy or commercial property insurance policy, as that term is defined in s. 627.0625(1), are assigned or transferred, or acquired in any manner, in whole or in part, to or from a person providing services, including, but not limited to, services to

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

And the title is amended as follows:

Delete lines 7 - 16

and insert:

requirement for construction classes to apply to policies having estimated annual premiums over a specified threshold; creating s. 624.46227, F.S.; authorizing any association, trust, or pool created for the purpose of forming a risk management mechanism or providing self-insurance for a public entity to use communications media technology to establish a quorum and conduct public business; amending s. 626.221, F.S.; exempting certain applicants for licensure as an all-lines adjuster from a required examination; reenacting s. 626.8734(1)(b), F.S., relating to nonresident all-lines adjuster license qualifications, to incorporate the amendment made to s. 626.221, F.S., in a reference thereto; amending s. 626.856,

By the Committee on Banking and Insurance; and Senator Perry

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1 A bill to be entitled
 2 An act relating to insurance; amending s. 215.555,
 3 F.S.; redefining the term "covered policy" under the
 4 Florida Hurricane Catastrophe Fund in relation to
 5 certain collateral protection insurance policies;
 6 amending s. 440.381, F.S.; revising the annual audit
 7 requirement for construction classes to apply to new
 8 and renewal policies having estimated annual premiums
 9 over a specified threshold; amending s. 624.423, F.S.;
 10 specifying when service of process is valid and
 11 binding upon insurers; creating s. 624.46227, F.S.;
 12 authorizing any association, trust, or pool created
 13 for the purpose of forming a risk management mechanism
 14 or providing self-insurance for a public entity to
 15 establish a quorum and conduct public business through
 16 communications media technology; amending s. 626.856,
 17 F.S.; revising the definition of the term "company
 18 employee adjuster"; amending s. 627.062, F.S.;
 19 authorizing the use of a certain modeling indication
 20 for residential property insurance rate filings;
 21 amending s. 627.0629, F.S.; authorizing insurers to
 22 file certain insurance rating plans based on certain
 23 windstorm mitigation construction standards, if
 24 certain requirements are met; amending s. 627.0665,
 25 F.S.; revising notification requirements for insurers
 26 who have automatic bank withdrawal agreements with
 27 insureds to include notices when withdrawal amounts
 28 increase above a specified threshold; amending s.
 29 627.351, F.S.; revising conditions for determining the

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30 ineligibility of condominiums for wind-only coverage;
 31 amending s. 627.421, F.S.; deleting a requirement for
 32 electronic transmissions of certain documents to
 33 include specified notices; deleting a requirement that
 34 paper copies of policies be provided upon request;
 35 amending ss. 627.701 and 627.712, F.S.; revising
 36 policyholder acknowledgment statement requirements for
 37 property insurance policies having certain hurricane
 38 deductibles or windstorm or contents coverage
 39 exclusions, respectively; amending s. 627.7152, F.S.;
 40 revising the definition of the term "assignment
 41 agreement"; specifying the addresses to which a notice
 42 of intent must be served; amending s. 627.7276, F.S.;
 43 revising notice requirements for motor vehicle
 44 policies that do not provide coverage for bodily
 45 injury and property damage liability; amending ss.
 46 634.171, 634.317, and 634.419, F.S.; authorizing
 47 licensed personal lines or general lines agents to
 48 solicit, negotiate, advertise, or sell motor vehicle
 49 service agreements, home warranty contracts, and
 50 service warranty contracts, respectively, without a
 51 sales representative license; making technical
 52 changes; reenacting ss. 624.424(10) and 627.351(6)(v),
 53 F.S., relating to annual statements and other
 54 information and Citizens Property Insurance
 55 Corporation, respectively, to incorporate the
 56 amendment made to s. 215.555, F.S., in references
 57 thereto; reenacting s. 626.865(1)(e), F.S., relating
 58 to public adjuster's qualifications, to incorporate

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the amendment made to s. 626.856, F.S., in a reference thereto; reenacting s. 627.7153(1) and (2) (d), F.S., relating to policies restricting assignment of post-loss benefits under a property insurance policy, to incorporate the amendment made to s. 627.7152, F.S., in references thereto; providing effective dates.

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

Section 1. Effective June 1, 2023, paragraph (c) of subsection (2) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

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

(c) "Covered policy" means any insurance policy covering residential property in this state, including, but not limited to, any homeowner, mobile home owner, farm owner, condominium association, condominium unit owner, tenant, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including a commercial self-insurance fund holding a certificate of authority issued by the Office of Insurance Regulation under s. 624.462, the Citizens Property Insurance Corporation, and any joint underwriting association or similar entity created under law. The term ~~"covered policy"~~ includes any collateral protection insurance policy covering personal residences which protects both the borrower's and the lender's financial interests, in an amount at least equal to the coverage amount for the dwelling in place under the lapsed homeowner's policy,

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the coverage amount that the homeowner has been notified of by the collateral protection insurer, or the coverage amount the homeowner requests from the collateral protection insurer, if such collateral protection insurance policy can be accurately reported as required in subsection (5). Additionally, covered policies include policies covering the peril of wind removed from the Florida Residential Property and Casualty Joint Underwriting Association or from the Citizens Property Insurance Corporation, created under s. 627.351(6), or from the Florida Windstorm Underwriting Association, created under s. 627.351(2), by an authorized insurer under the terms and conditions of an executed assumption agreement between the authorized insurer and such association or Citizens Property Insurance Corporation. Each assumption agreement between the association and such authorized insurer or Citizens Property Insurance Corporation must be approved by the Office of Insurance Regulation before the effective date of the assumption, and the Office of Insurance Regulation must provide written notification to the board within 15 working days after such approval. "Covered policy" does not include any policy that excludes wind coverage or hurricane coverage or any reinsurance agreement and does not include any policy otherwise meeting this definition which is issued by a surplus lines insurer or a reinsurer. All commercial residential excess policies and all deductible buy-back policies that, based on sound actuarial principles, require individual ratemaking must ~~shall~~ be excluded by rule if the actuarial soundness of the fund is not jeopardized. For this purpose, the term "excess policy" means a policy that provides insurance protection for large commercial property risks and that provides

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a layer of coverage above a primary layer insured by another insurer.

Section 2. Subsection (3) of section 440.381, Florida Statutes, is amended to read:

440.381 Application for coverage; reporting payroll; payroll audit procedures; penalties.—

(3) The Financial Services Commission, in consultation with the department, shall establish by rule minimum requirements for audits of payroll and classifications ~~in order~~ to ensure that the appropriate premium is charged for workers' compensation coverage. The rules must ~~shall~~ ensure that audits performed by both carriers and employers are adequate to provide that all sources of payments to employees, subcontractors, and independent contractors are ~~have been~~ reviewed and that the accuracy of classification of employees is ~~has been~~ verified. The rules must require ~~shall provide~~ that employers in all classes other than the construction class be audited at least ~~not less frequently than~~ biennially and may provide for more frequent audits of employers in specified classifications based on factors such as amount of premium, type of business, loss ratios, or other relevant factors. ~~In no event shall~~ Employers in the construction class, generating more than the amount of premium required to be experience rated, must be audited at least less than annually. The annual audits required for construction classes must ~~shall~~ consist of physical onsite audits for new and renewal policies only if the estimated annual premium is \$10,000 or more. Payroll verification audit rules must include, but need not be limited to, the use of state and federal reports of employee income, payroll and other accounting

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records, certificates of insurance maintained by subcontractors, and duties of employees. At the completion of an audit, the employer or officer of the corporation and the auditor must print and sign their names on the audit document and attach proof of identification to the audit document.

Section 3. Effective upon this act becoming a law, subsection (3) of section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

(3) Service of process is valid and binding upon the insurer on the date process served upon the Chief Financial Officer is delivered to the insurer and sent or the date on which the insurer is notified that such information has been made available on a secured network in accordance with this section and s. 624.307(9) ~~shall for all purposes constitute valid and binding service thereof upon the insurer~~.

Section 4. Section 624.46227, Florida Statutes, is created to read:

624.46227 Meeting requirements.—Any association, trust, or pool authorized by state law and created for the purpose of forming a risk management mechanism or providing self-insurance for public entities in this state may establish a quorum and conduct public business through communications media technology.

Section 5. Section 626.856, Florida Statutes, is amended to read:

626.856 "Company employee adjuster" defined.—A "company employee adjuster" means a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters, by an affiliate, or by a wholly owned subsidiary of

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the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage.

Section 6. Paragraph (j) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(j) With respect to residential property insurance rate filings, the rate filing:

1. Must account for mitigation measures undertaken by policyholders to reduce hurricane losses.

2. May use a modeling indication that is the weighted or straight average of two or more models found by the commission to be accurate or reliable pursuant to s. 627.0628.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 7. Subsection (9) is added to section 627.0629, Florida Statutes, to read:

627.0629 Residential property insurance; rate filings.—

(9) An insurer may file with the office a personal lines residential property insurance rating plan that provides justified premium discounts, credits, or other rate differentials based on windstorm mitigation construction standards developed by an independent, not-for-profit scientific research organization, if such standards meet the requirements

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of this section.

Section 8. Section 627.0665, Florida Statutes, is amended to read:

627.0665 Automatic bank withdrawal agreements; notification required.—Any insurer licensed to issue insurance in ~~this the~~ state who has an automatic bank withdrawal agreement with an insured party for the payment of insurance premiums for any type of insurance shall give the named insured at least 15 days advance written notice of any increase in policy premiums that results in the next automatic bank withdrawal being increased by more than \$10. Such notice must be provided before ~~prior to~~ any automatic bank withdrawal containing the ~~of an~~ increased premium amount.

Section 9. Paragraph (a) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in ~~this the~~ state is insured and that it is insured at affordable rates so as to facilitate the remediation,

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reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation

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shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures:

a. Effective January 1, 2014, a structure that has a dwelling replacement cost of \$1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of \$1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being

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determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.

b. Effective January 1, 2015, a structure that has a dwelling replacement cost of \$900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of \$900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.

c. Effective January 1, 2016, a structure that has a dwelling replacement cost of \$800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of \$800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.

d. Effective January 1, 2017, a structure that has a dwelling replacement cost of \$700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of \$700,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term.

The requirements of sub-subparagraphs b.-d. do not apply in counties where the office determines there is not a reasonable degree of competition. In such counties a personal lines

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residential structure that has a dwelling replacement cost of less than \$1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than \$1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of \$750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after

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July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, ~~effective July 1, 2014~~, a condominium may ~~shall~~ be deemed ineligible for coverage when ~~if~~ 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

Section 10. Subsection (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed, delivered, or electronically transmitted to the insured or to the person entitled thereto not later than 60 days after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy for commercial risks, including, but not limited to, workers' compensation and employers' liability, commercial automobile liability, commercial automobile physical damage, commercial lines residential property, commercial nonresidential property, farmowners insurance, and the types of commercial lines risks

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set forth in s. 627.062(3)(d), constitutes delivery to the insured or to the person entitled to delivery, unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. ~~Electronic transmission shall include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.~~

Section 11. Paragraph (d) of subsection (4) of section 627.701, Florida Statutes, is amended to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(4)

(d)1. A personal lines residential property insurance policy covering a risk valued at less than \$500,000 may not have a hurricane deductible in excess of 10 percent of the policy dwelling limits, unless the following conditions are met:

a. The policyholder must personally write or type and provide to the insurer the following statement ~~in his or her own handwriting~~ and sign his or her name, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my home to pay for the first (specify dollar value) of damage from hurricanes. I will pay those costs. My insurance will not."

b. If the structure insured by the policy is subject to a mortgage or lien, the policyholder must provide the insurer with a written statement from the mortgageholder or lienholder

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indicating that the mortgageholder or lienholder approves the policyholder electing to have the specified deductible.

2. A deductible subject to the requirements of this paragraph applies for the term of the policy and for each renewal thereafter. Changes to the deductible percentage may be implemented only as of the date of renewal.

3. An insurer shall keep the original copy of the signed statement required by this paragraph, electronically or otherwise, and provide a copy to the policyholder providing the signed statement. A signed statement meeting the requirements of this paragraph creates a presumption that there was an informed, knowing election of coverage.

4. The commission shall adopt rules providing appropriate alternative methods for providing the statements required by this section for policyholders who have a handicapping or disabling condition that prevents them from providing a handwritten statement.

Section 12. Paragraph (a) of subsection (2) and subsection (3) of section 627.712, Florida Statutes, are amended to read:

627.712 Residential windstorm coverage required; availability of exclusions for windstorm or contents.—

(2) A property insurer must make available, at the option of the policyholder, an exclusion of windstorm coverage.

(a) The coverage may be excluded only if:

1. When the policyholder is a natural person, the policyholder personally writes or types and provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her name, which must also be signed by every other named insured on the policy, and dated: "I do not want the

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insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not."

2. When the policyholder is other than a natural person, the policyholder provides to the insurer on the policyholder's letterhead the following statement that must be signed by the policyholder's authorized representative and dated: "... (Name of entity)... does not want the insurance on its ... (type of structure)... to pay for damage from windstorms. ... (Name of entity)... will be responsible for these costs. ... (Name of entity's)... insurance will not."

(3) An insurer issuing a residential property insurance policy, except for a condominium unit owner policy or a tenant policy, must make available, at the option of the policyholder, an exclusion of coverage for the contents. The coverage may be excluded only if the policyholder personally writes or types and provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her signature, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my (home/mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not."

Section 13. Effective upon this act becoming a law, paragraph (b) of subsection (1) and paragraph (a) of subsection (9) of section 627.7152, Florida Statutes, are amended to read:

627.7152 Assignment agreements.—

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

(b) "Assignment agreement" means any instrument by which post-loss benefits under a residential property insurance policy

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or commercial property insurance policy, as that term is defined in s. 627.0625(1), are assigned or transferred, or acquired in any manner, in whole or in part, to or from a person providing services, including, but not limited to, scopes of service, to inspect, protect, repair, restore, or replace property or to mitigate against further damage to the property. The term does not include any instrument by which a licensed public adjuster as defined in s. 626.854(1) receives any compensation, payment, commission, fee, or other thing of value for providing services under such licensure.

(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 at least 10 business days before filing suit, but not before the insurer has made a determination of coverage under s. 627.70131, by certified mail, return receipt requested, to the name and mailing address designated by the insurer in the policy forms or by electronic delivery to the e-mail address designated by the insurer in the policy forms 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 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

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has been performed in accordance with accepted industry standards.

Section 14. Section 627.7276, Florida Statutes, is amended to read:

627.7276 Notice of limited coverage.—

(1) An automobile policy that does not contain coverage for bodily injury and property damage must include a notice ~~be clearly stamped or printed to the effect~~ that such coverage is not included in the policy in the following manner:

“THIS POLICY DOES NOT PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE OR ANY OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW.”

(2) This notice legend ~~must accompany~~ appear on the policy declarations ~~declaration~~ page and on the filing back of the ~~policy and be printed in a contrasting color from that used on the policy and in type size larger than the largest type used in the text at least as large as the type size used on the declarations page thereof, as an overprint or by a rubber stamp impression.~~

Section 15. Section 634.171, Florida Statutes, is amended to read:

634.171 Salesperson to be licensed and appointed; exemptions.—Salespersons for motor vehicle service agreement companies and insurers must ~~shall~~ be licensed, appointed, renewed, continued, reinstated, or terminated as prescribed in

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chapter 626 for insurance representatives in general. However, they ~~are shall be~~ exempt from all other provisions of chapter 626, including those relating to fingerprinting, photo identification, education, and examination provisions. Applicable license, appointment, and other fees ~~are as shall be~~ those prescribed in s. 624.501. A licensed and appointed salesperson ~~is shall be~~ directly responsible and accountable for all acts of her or his employees and other representatives. Each service agreement company or insurer shall, on forms prescribed by the department, within 30 days after termination of the appointment, notify the department of such termination. An ~~No~~ employee or a salesperson of a motor vehicle service agreement company or an insurer may not directly or indirectly solicit or negotiate insurance contracts, or hold herself or himself out in any manner to be an insurance agent, unless so qualified, licensed, and appointed therefor under the Florida Insurance Code. A licensed personal lines or general lines agent is not required to be licensed as a salesperson under this section to solicit, negotiate, advertise, or sell motor vehicle service agreements. A motor vehicle service agreement company is not required to be licensed as a salesperson to solicit, sell, issue, or otherwise transact the motor vehicle service agreements issued by the motor vehicle service agreement company.

Section 16. Section 634.317, Florida Statutes, is amended to read:

634.317 License and appointment required; exemptions.—~~A~~ ~~No~~ person may not solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is

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licensed and appointed as a sales representative. A licensed and appointed sales representative ~~is shall be~~ directly responsible and accountable for all acts of the licensee's employees. A licensed personal lines or general lines agent is not required to be licensed as a sales representative under this section to solicit, negotiate, advertise, or sell home warranty contracts.

Section 17. Section 634.419, Florida Statutes, is amended to read:

634.419 License and appointment required; exemptions.—~~A~~ ~~No~~ person or an entity may not ~~shall~~ solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative. Sales representatives are ~~shall be~~ responsible for the actions of persons under their supervision. However, a service warranty association licensed as such under this part ~~is shall~~ not be required to be licensed and appointed as a sales representative to solicit, negotiate, advertise, or effectuate its products. A licensed personal lines or general lines agent is not required to be licensed as a sales representative under this section to solicit, negotiate, advertise, or sell service warranty contracts.

Section 18. Effective June 1, 2023, for the purpose of incorporating the amendment made by this act to section 215.555, Florida Statutes, in a reference thereto, subsection (10) of section 624.424, Florida Statutes, is reenacted to read:

624.424 Annual statement and other information.—

(10) Each insurer or insurer group doing business in this state shall file on a quarterly basis in conjunction with financial reports required by paragraph (1)(a) a supplemental

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report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report shall include the following information for each county on a monthly basis:

- (a) Total number of policies in force at the end of each month.
- (b) Total number of policies canceled.
- (c) Total number of policies nonrenewed.
- (d) Number of policies canceled due to hurricane risk.
- (e) Number of policies nonrenewed due to hurricane risk.
- (f) Number of new policies written.
- (g) Total dollar value of structure exposure under policies that include wind coverage.
- (h) Number of policies that exclude wind coverage.

Section 19. Effective June 1, 2023, for the purpose of incorporating the amendment made by this act to section 215.555, Florida Statutes, in a reference thereto, paragraph (v) of subsection (6) of section 627.351, Florida Statutes, is reenacted to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(v)1. Effective July 1, 2002, policies of the Residential Property and Casualty Joint Underwriting Association become

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policies of the corporation. All obligations, rights, assets and liabilities of the association, including bonds, note and debt obligations, and the financing documents pertaining to them become those of the corporation as of July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

2. Effective July 1, 2002, policies of the Florida Windstorm Underwriting Association are transferred to the corporation and become policies of the corporation. All obligations, rights, assets, and liabilities of the association, including bonds, note and debt obligations, and the financing documents pertaining to them are transferred to and assumed by the corporation on July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

3. The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association shall take all actions necessary to further evidence the transfers and provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the

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assumptions or instruments are executed by the corporation.
 Subject to the relevant financing documents pertaining to their
 outstanding bonds, notes, indebtedness, or other financing
 obligations, the moneys, investments, receivables, choses in
 action, and other intangibles of the Florida Windstorm
 Underwriting Association shall be credited to the coastal
 account of the corporation, and those of the personal lines
 residential coverage account and the commercial lines
 residential coverage account of the Residential Property and
 Casualty Joint Underwriting Association shall be credited to the
 personal lines account and the commercial lines account,
 respectively, of the corporation.

4. Effective July 1, 2002, a new applicant for property
 insurance coverage who would otherwise have been eligible for
 coverage in the Florida Windstorm Underwriting Association is
 eligible for coverage from the corporation as provided in this
 subsection.

5. The transfer of all policies, obligations, rights,
 assets, and liabilities from the Florida Windstorm Underwriting
 Association to the corporation and the renaming of the
 Residential Property and Casualty Joint Underwriting Association
 as the corporation does not affect the coverage with respect to
 covered policies as defined in s. 215.555(2)(c) provided to
 these entities by the Florida Hurricane Catastrophe Fund. The
 coverage provided by the fund to the Florida Windstorm
 Underwriting Association based on its exposures as of June 30,
 2002, and each June 30 thereafter shall be redesignated as
 coverage for the coastal account of the corporation.
 Notwithstanding any other provision of law, the coverage

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provided by the fund to the Residential Property and Casualty
 Joint Underwriting Association based on its exposures as of June
 30, 2002, and each June 30 thereafter shall be transferred to
 the personal lines account and the commercial lines account of
 the corporation. Notwithstanding any other provision of law, the
 coastal account shall be treated, for all Florida Hurricane
 Catastrophe Fund purposes, as if it were a separate
 participating insurer with its own exposures, reimbursement
 premium, and loss reimbursement. Likewise, the personal lines
 and commercial lines accounts shall be viewed together, for all
 fund purposes, as if the two accounts were one and represent a
 single, separate participating insurer with its own exposures,
 reimbursement premium, and loss reimbursement. The coverage
 provided by the fund to the corporation shall constitute and
 operate as a full transfer of coverage from the Florida
 Windstorm Underwriting Association and Residential Property and
 Casualty Joint Underwriting Association to the corporation.

Section 20. For the purpose of incorporating the amendment
 made by this act to section 626.856, Florida Statutes, in a
 reference thereto, paragraph (e) of subsection (1) of section
 626.865, Florida Statutes, is reenacted to read:

626.865 Public adjuster's qualifications, bond.—

(1) The department shall issue a license to an applicant
 for a public adjuster's license upon determining that the
 applicant has paid the applicable fees specified in s. 624.501
 and possesses the following qualifications:

(e) Has been licensed in this state as an all-lines
 adjuster, and has been appointed on a continual basis for the
 previous 6 months as a public adjuster apprentice under s.

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626.8561, as an independent adjuster under s. 626.855, or as a
company employee adjuster under s. 626.856.

Section 21. Effective upon this act becoming a law, for the
purpose of incorporating the amendment made by this act to
section 627.7152, Florida Statutes, in references thereto,
subsection (1) and paragraph (d) of subsection (2) of section
627.7153, Florida Statutes, are reenacted to read:

627.7153 Policies restricting assignment of post-loss
benefits under a property insurance policy.—

(1) As used in this section, the term "assignment
agreement" has the same meaning as provided in s. 627.7152.

(2) An insurer may make available a policy that restricts
in whole or in part an insured's right to execute an assignment
agreement only if all of the following conditions are met:

(d) Each restricted policy include on its face the
following notice in 18-point uppercase and boldfaced type:

THIS POLICY DOES NOT ALLOW THE UNRESTRICTED ASSIGNMENT
OF POST-LOSS INSURANCE BENEFITS. BY SELECTING THIS
POLICY, YOU WAIVE YOUR RIGHT TO FREELY ASSIGN OR
TRANSFER THE POST-LOSS PROPERTY INSURANCE BENEFITS
AVAILABLE UNDER THIS POLICY TO A THIRD PARTY OR TO
OTHERWISE FREELY ENTER INTO AN ASSIGNMENT AGREEMENT AS
THE TERM IS DEFINED IN SECTION 627.7152 OF THE FLORIDA
STATUTES.

Section 22. Except as otherwise expressly provided in this
act and except for this section, which shall take effect upon
this act becoming a law, this act shall take effect July 1,
2022.



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: December 16, 2021

I respectfully request that **CS/Senate Bill #468**, relating to Insurance, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and
Civil Justice, *Chair*
Transportation, *Vice Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Criminal Justice
Environment and Natural Resources

SENATOR KEITH PERRY
8th District

MEMORANDUM

To: Senator Danny Burgess, Chair
Committee on Judiciary
From: Senator Keith Perry
Subject: Bill Presentation – SB 468
Date: January 6, 2022

For informational purposes, please note that Senator Broxson will present **CS/Senate Bill #468**, relating to Insurance, at Monday's committee hearing on my behalf.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a horizontal line extending from the end.

Senator Keith Perry
Florida Senate, District 8

REPLY TO:

- ☐ 2610 NW 43rd Street, Suite 2B, Gainesville, Florida 32606 (352) 264-4040
- ☐ Marion County Board of Commissioners, 115 SE 25th Avenue, Ocala, Florida 34471 (352) 732-1249
- ☐ Putnam County Government Complex, 2509 Crill Avenue, Palatka, Florida 32177
- ☐ 406 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5008

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

January 10, 2022

Meeting Date

Judiciary

Committee

Name **Bill Cotterall**

Address **218 S. Monroe Street**

Street

Tallahassee

City

FL

State

32301

Zip

The Florida Senate
APPEARANCE RECORD

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

SB 468

Bill Number or Topic

174624

Amendment Barcode (if applicable)

Phone **(850) 224-9403**

Email **wcotterall@myfja.org**

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

FJA

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

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

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

S-001 (08/10/2021)

APPEARANCE RECORD

Meeting Date

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Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Dan Olson Phone 850-425-4000

Address 300 S. Duval Street Email Dan@meenanlawfirm.com
Street

Tallahassee FL 32302
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

**Florida Service Agreement
Association**

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

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

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

S-001 (08/10/2021)

The Florida Senate

January 10, 2022

Meeting Date

APPEARANCE RECORD

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

SB 468

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Josh Aubuchon

Phone 850-583-2400

Address 201 E. Park Avenue

Email josh@dacfl.com

Street

Tallahassee

FL

32301

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

State Farm

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

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

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 542

INTRODUCER: Senator Rodriguez

SUBJECT: Evidentiary Standards for Actions Arising During an Emergency

DATE: January 7, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillian	McKay	CM	Favorable
2.	Davis	Cibula	JU	Favorable
3.			RC	

I. Summary:

SB 542 creates a new statute in ch. 448, the General Labor Regulations chapter, which applies during a declared public health emergency. The bill identifies certain actions taken by a business during a declared public health emergency that may not be used as evidence against the business in a civil action to change a worker's classification such that the individual is entitled to receive benefits that he or she would not have previously received from the business.

Specifically, the following actions may not be used as evidence against the business to establish the existence of an employer-employee relationship in certain enumerated civil causes of action:

- Providing financial assistance to previously engaged individuals who are unable to work because of health and safety concerns.
- Directly providing benefits related to the health and safety of engaged individuals, including medical or cleaning supplies, personal protective equipment, health checks, or medical testing.
- Providing training or information related to the health and safety of engaged individuals or the public.
- Taking any action, including action required or suggested by any federal, state, or local law, ordinance, order, or directive intended to protect public health and safety.

The term "engaged individual" means an individual who provides a good or service to a business or on behalf of a business and who is remunerated for the good or service, regardless of the individual's classification as an employee or independent contractor.

The bill applies to civil actions relating to workers' compensation, retaliatory personnel actions, state minimum wage, labor pool violations, devices used in payment for labor, and unclaimed wages. Additionally, the bill applies to civil actions to recover lost wages, salary, employment benefits, or other compensation.

The bill takes effect July 1, 2022.

II. Present Situation:

Public Health Emergency

In Florida, the State Health Officer is responsible for declaring public health emergencies, issuing public health advisories, and ordering isolation or quarantines.¹ A “public health emergency” means any occurrence, or threat of occurrence, which may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters.²

Classification of Independent Contractors and Employees

When a business hires an individual, it is important that the person be correctly classified as either an independent contractor or an employee because tax and labor laws apply differently to each classification. An independent contractor is deemed to be self-employed by the Internal Revenue Service and works for herself or himself. The independent contractor is not technically employed by the business she or he serves and must pay self-employment tax.³ While an employer has control over the independent contractor’s work, it does not control how the work is completed.⁴

For employees, a business must withhold income taxes, Social Security, and Medicare taxes⁵ and pay certain forms of insurance coverage, such as workers’ compensation and unemployment coverage. State and federal labor laws also might require the payment of additional overtime wages and leave plans. However, and in contrast, when an individual is an independent contractor, these same tax and labor requirements do not apply because the individual is deemed to be in business for herself or himself.⁶

If a business misclassifies a person as an independent contractor when it should have classified the person as an employee, the miscalculation can be costly. If it is determined, either by the Internal Revenue Service or in a civil proceeding, that a worker was misclassified, the individual may receive a substantial monetary award in the form of back wages, vacation pay, overtime, sick leave, and healthcare benefits. Additionally, the Internal Revenue Service or another government agency may require the business to pay significant penalties and back taxes.⁷

¹ Section 381.00315, F.S.

² Section 381.00315(1)(c), F.S.

³ Internal Revenue Service, *Independent Contractor Defined*, (updated Oct. 14, 2021) <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-defined>. See also U.S. Small Business Administration, *Hire and Manage Employees*, <https://www.sba.gov/business-guide/manage-your-business/hire-manage-employees>.

⁴ Patrick Proctor, Business News Daily, *Understanding What an Independent Contractor Is*, (updated Dec. 13, 2021). <https://www.businessnewsdaily.com/15853-independent-contractor-employee-differences.html>.

⁵ Internal Revenue Service, *supra* note 3.

⁶ Stephen Fishman, J.D., NOLO, *Employees vs. Independent Contractors*; <https://www.nolo.com/legal-encyclopedia/employees-vs-independent-contractors.html>.

⁷ *Id.*

Florida Workers' Compensation System

Each employer and employee is bound by Florida's Workers' Compensation Law.⁸ An employer must pay compensation or furnish benefits required by the Workers' Compensation Law if an employee suffers an accidental compensable injury or death arising out of work performed in the course and scope of employment.⁹ The injury must be established to a reasonable degree of medical certainty, based on objective relevant medical findings, and the accidental compensable injury must be the major contributing cause of any resulting injuries.¹⁰ Generally, employers may secure coverage from an authorized carrier, qualify as a self-insurer,¹¹ or purchase coverage from the Workers' Compensation Joint Underwriting Association, the insurer of last resort.¹²

An employee has a civil cause of action against his or her employer if the employer:

- Fails to carry sufficient workers' compensation coverage;
- Deliberately intends to injure the employee; or
- Engages in conduct that he or she knows is virtually certain to result in the employee's injury or death in certain situations.¹³

Retaliatory Personnel Actions

An employer may not take any retaliatory personnel action¹⁴ against an employee because the employee has:

- Disclosed or threatened to disclose, to any appropriate governmental agency, under oath, in writing, any activity, policy or practice of the employer that violates a law, rule, or regulation;
- Provided information to, or testified before, any appropriate governmental agency, person, or entity conducting an investigation, hearing, or inquiry into an alleged violation of a law, rule, or regulation by the employer; or
- Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.¹⁵

An employee who is the object of a retaliatory personnel action has a civil cause of action against his or her employer for the following relief:

- An injunction restraining a continued violation;
- The employee's reinstatement to the same position held before the retaliatory personnel action or to an equivalent position;
- Reinstatement of the employee's full fringe benefits and seniority rights;
- Compensation for lost wages, benefits, and other remuneration; and

⁸ Sections 440.03 and 440.10, F.S.

⁹ Section 440.09(1), F.S.

¹⁰ *Id.*

¹¹ Section 440.38, F.S.

¹² Section 627.311(5)(a), F.S.

¹³ Section 440.11, F.S.

¹⁴ "Retaliatory personnel action" means the discharge, suspension, or demotion by an employer of an employee or any other adverse employment action taken by an employer against an employee in the terms and conditions of employment. *See* s. 448.101(5), F.S.

¹⁵ Section 448.102, F.S.

- Any other compensatory damages allowable at law.¹⁶

Minimum Wage

The Florida Constitution requires an employer to pay employees a minimum wage.¹⁷ On September 30, 2021, the minimum wage increased to \$10.00 per hour, and will increase each September 30th by \$1.00 per hour until the minimum wage reaches \$15.00 per hour on September 30, 2026.¹⁸ An employee not paid the minimum wage may bring a civil cause of action against his or her employer to recover the full amount of back wages unlawfully withheld, plus the same amount as liquidated damages.¹⁹ An employee bringing such an action may also be entitled to legal or equitable relief, including employment reinstatement or injunctive relief.²⁰

Labor Pool Violations

A labor pool²¹ must not:

- Charge a day laborer²² for safety equipment, clothing, accessories, any other items required by the nature of the work, more than a reasonable amount to transport a worker to or from the designated worksite, or for directly or indirectly cashing a worker's check;²³
- Request or require that any day laborer sign any document waiving statutory protections;²⁴
- Charge more than the actual cost of providing lunch, if the labor pool provides lunch at the worksite;²⁵ or
- Restrict a day laborer's right to accept a permanent position with a third-party user to whom the laborer is referred for temporary work, or to restrict the right of such a third-party user to offer such employment to an employee of the labor pool.²⁶

¹⁶ Section 448.103(2), F.S.

¹⁷ FLA. CONST. art. X, s. 24(a).

¹⁸ Florida Department of Economic Opportunity, *Florida's Minimum Wage* (Updated Sep. 24, 2021) https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notice/2021-minimum-wage/september-2021/florida-minimum-wage-september-2021-announcement.pdf?sfvrsn=c12151b0_4#:~:text=Effective%20September%2030%2C%202021%2C%20the,per%20hour%20in%20September%202026. On September 30th, 2027 and each subsequent September 30th, the State Agency for Workforce Innovation must calculate an adjusted minimum wage rate in the manner specified in the State Constitution. See also s. 448.110, F.S.

¹⁹ FLA. CONST. art. X, s. 24(e).

²⁰ *Id.*

²¹ "Labor pool" means a business entity that operates a labor hall by one or more of the following methods: contracting with third-party users to supply day laborers on a temporary basis; hiring, employing, recruiting, or contracting with workers to fulfill these temporary labor contracts for day labor; or fulfilling any contracts for day labor in accordance with this subsection, even if the entity also conducts other business. See s. 448.22(1), F.S.

²² "Day labor" means temporary labor or employment that is occasional or irregular for which the worker is employed for not longer than the time period required to complete the temporary assignment for which the individual worker was hired, although an individual may be eligible for additional temporary assignments when available. See s. 448.22(2), F.S.

²³ Section 448.24(1), F.S.

²⁴ Section 448.24(3), F.S.

²⁵ Section 448.24(4), F.S.

²⁶ Section 448.24(6), F.S.

A labor pool must:

- Provide restroom facilities, drinking water, and sufficient seating for a worker waiting at the labor hall for a job assignment;²⁷
- Select cash, commonly accepted negotiable instruments that are payable in cash, a payroll debit card, or an electronic fund transfer, to pay a day laborer for work performed;²⁸
- Notify a day laborer of the payment method that the labor pool intends to use and the day laborer's options to elect a different payment method;²⁹
- If selecting to pay a day laborer by payroll debit card, offer the day laborer the option to elect payment by electronic fund transfer and provide the day laborer with a list, including the address, of a nearby business that does not charge a fee to withdraw the debit card's contents;³⁰
- Compensate day laborers at or above the minimum wage;³¹
- Comply with the requirements of workers' compensation;³²
- Insure any motor vehicle owned or operated by the labor pool and used for worker transportation;³³
- Furnish each worker with a written itemized statement showing in detail each wage deduction;³⁴ and
- Give each worker an annual earnings statement summary.³⁵

Any worker harmed by a labor pool violation may bring a civil action against the labor pool to recover actual and consequential damages, or \$1,000, whichever is greater, for each violation.³⁶

Devices Issued in Payment for Labor

Any order, check, draft, note, memorandum, payroll debit card, or other acknowledgement of indebtedness for wages due must be negotiable and payable in cash, on demand, without discount, at some established place of business in Florida.³⁷

Any person issuing a coupon, punch-out, ticket, tokens, or other device in lieu of cash as payment for labor is:

- Liable for the full face value thereof in current legal tender on or after the 30th day after the date of issuance;
- Liable for payment in legal tender; and

²⁷ Section 448.24(5), F.S.

²⁸ Section 448.24(2), F.S.

²⁹ Section 448.24(2)(b), F.S.

³⁰ Section 448.24(2)(c), F.S.

³¹ Section 448.24(2)(d), F.S.

³² Section 448.24(2)(e), F.S.

³³ Section 448.24(2)(f), F.S.

³⁴ Section 448.24(2)(g), F.S.

³⁵ Section 448.24(2)(h), F.S.

³⁶ Section 448.25, F.S.

³⁷ The business's name and address must appear on the instrument or in the payroll debit card issuing materials. At the time of its issuance, and for at least 30 days thereafter, the maker or drawer must have sufficient funds or credit, arrangement, or understanding with the drawee for its payment. *See* s. 532.01, F.S.

- Subject to suit brought in any court of competent jurisdiction.³⁸

Additionally, an employer may not terminate an employee solely for refusing to authorize the direct deposit of wages.³⁹ An employee may bring a civil action against an employer for equitable relief.⁴⁰

Unclaimed Wages

Unpaid wages owing in the ordinary course of the holder's business that have not been claimed by the owner for more than 1 year after becoming payable are presumed unclaimed.⁴¹ Every holder of unclaimed wages must report the unclaimed wages to the Department of Financial Services (DFS) before May 1 of each year and must simultaneously pay to DFS all unclaimed wages required to be reported.⁴² Employers violating these requirements face penalties imposed by DFS.⁴³

III. Effect of Proposed Changes:

The bill creates s. 448.111, F.S., which identifies actions taken by a business during a declared public health emergency that may not be used as evidence against the business in a civil action to change a worker's classification such that the individual is entitled to receive benefits that he or she did not previously receive .

When a public health emergency is declared by the State Health Officer, the following actions taken by a business may not be used as evidence against the business to establish the existence of an employer-employee relationship in specified civil causes of action:

- Providing financial assistance to previously engaged individuals who are unable to work because of health and safety concerns.
- Directly providing benefits related to the health and safety of engaged individuals, including medical or cleaning supplies, personal protective equipment, health checks, or medical testing.
- Providing training or information related to the health and safety of engaged individuals or the public.
- Taking any action, including action required or suggested by any federal, state, or local law, ordinance, order, or directive intended to protect public health and safety.

The bill defines the term "engaged individual" to mean an individual who provides a good or service to a business or on behalf of a business and who is remunerated for the good or service, regardless of the individual's classification as an employee or independent contractor.

³⁸ The legal holder's recovery must include the full face value of the device, with legal interest from the date of demand. *See* s. 532.02, F.S.

³⁹ Section 532.04(2), F.S.

⁴⁰ Section 532.04(3), F.S.

⁴¹ Section 717.115, F.S.

⁴² Sections 717.117 and 717.119, F.S.

⁴³ *Id.*; Ch. 69I-20, F.A.C.

The bill applies to civil actions relating to workers' compensation, retaliatory personnel actions, state minimum wage, labor pool violations, devices used in payment for labor, and unclaimed wages. Additionally, the bill applies to civil actions to recover lost wages, salary, employment benefits, or other compensation.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 542 provides that specified actions taken by a business during a public health emergency may not be used as evidence against the business to establish the existence of an employer-employee relationship in specified civil causes of action. Thus, the bill potentially protects businesses from being categorized as a plaintiff's employer if the categorization is based exclusively on the specified actions taken by a business during a public health emergency.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 448.111 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

By Senator Rodriguez

39-00329A-22

2022542__

A bill to be entitled

An act relating to evidentiary standards for actions arising during an emergency; creating s. 448.111, F.S.; defining the term "engaged individual"; prohibiting certain actions taken by a business during a public health emergency from being used as evidence in certain civil causes of action; providing an effective date.

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

Section 1. Section 448.111, Florida Statutes, is created to read:

448.111 Evidentiary standards for actions of a business during an emergency.—

(1) For purposes of this section, the term "engaged individual" means an individual who provides a good or service to a business or on behalf of a business and who is remunerated for the good or service, regardless of the individual's classification as an employee or independent contractor.

(2) Notwithstanding any other law, the following actions of a business, if taken during a public health emergency declared by the State Health Officer under s. 381.00315, may not be used as evidence in a civil cause of action brought under s. 440.10, s. 440.192, s. 440.38, s. 440.381, s. 448.103, s. 448.110, s. 448.25, chapter 532, or s. 717.115, or in a civil cause of action to recover lost wages, salary, employment benefits, or other compensation, because an individual has not been properly classified as an employee:

Page 1 of 2

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39-00329A-22

2022542__

(a) Providing financial assistance to previously engaged individuals who are unable to work because of health and safety concerns.

(b) Directly providing benefits related to the health and safety of engaged individuals, including medical or cleaning supplies, personal protective equipment, health checks, or medical testing.

(c) Providing training or information related to the health and safety of engaged individuals or the public.

(d) Taking any action, including action required or suggested by any federal, state, or local law, ordinance, order, or directive, which is intended to protect public health and safety.

Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: November 30, 2021

I respectfully request that **Senate Bill #542**, relating to Evidentiary Standards for Actions Arising During an Emergency, be placed on the:



committee agenda at your earliest possible convenience.



next committee agenda.

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez".

Senator Ana Maria Rodriguez
Florida Senate, District 39

The Florida Senate

APPEARANCE RECORD

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

1/10/22

Meeting Date

542

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Phillip Suderman

Phone _____

Address _____

Email _____

Street

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Americans for
Prosperity

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 596

INTRODUCER: Judiciary Committee and Senator Baxley

SUBJECT: Criminal Conflict and Civil Regional Counsels

DATE: January 11, 2022

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 - Technical Changes

I. Summary:

CS/SB 596 brings the Offices of Criminal Conflict and Civil Regional Counsel into parity with the offices of the public defenders and other governmental entities in the following areas:

- Witness coordination.
- Electronic filing of court documents.
- Security access to courthouses.
- Procedure for setting a classification and pay plan.
- Access to confidential court and state records.
- Limits of witness cost reimbursement.
- Investigator death benefits.
- Confidential motor vehicle registration.
- Criminal justice history access.

Current law requires that an existing Regional Counsel plus between two and five additional individuals be nominated for an open Regional Counsel position. The bill lowers the number of nominees in addition to the existing Regional Counsel that are required to be presented to the Governor for a position as Regional Counsel to between zero and three.

The bill also waives an 8-hour guardianship education requirement for attorneys employed by an Office of Criminal Conflict and Civil Regional Counsel; and clarifies that the court must appoint the Office of Criminal Conflict and Civil Regional Counsel if the Public Defender has a conflict

of interest in a case involving involuntary treatment of sexually violent predator or involuntary mental health treatment of a prisoner.

The bill takes effect July 1, 2022.

II. Present Situation:

The Office of Criminal Conflict and Civil Regional Counsel

The state is divided into five regions, each of which has an Office of Criminal Conflict and Civil Regional Counsel (regional counsel). The regions are defined by the boundaries of the five district courts of appeal. A regional counsel provides legal representation to some indigent persons who are entitled by law to taxpayer-funded legal representation.¹ These persons may be involved in criminal or civil cases. Just as a public defender's office has one public defender and numerous assistant public defenders, each regional counsel's office has a regional counsel and subordinate assistant regional counsels with appropriate staff support.² Each regional counsel is appointed by the Governor to a 4-year term, subject to Senate confirmation.³

The initial appointment of an attorney to represent a criminal defendant is by reference to the Office of the Public Defender for the judicial circuit. The court appoints the Office of the Public Defender for that judicial circuit, and the Public Defender selects one or more attorneys in the office to appear as attorney of record for the defendant. However, if the public defender's office determines that it cannot represent a defendant because of a conflict of interest, the public defender must ask the court for permission to withdraw as counsel.⁴ If the court grants the motion, the court must appoint the Office of Criminal Conflict and Civil Regional Counsel to represent the defendant.⁵ Similarly, the Office of Criminal Conflict and Civil Regional Counsel will select one or more staff attorneys to represent the defendant. If the office has a conflict, the court appoints a private attorney to be paid by the state.

The process is similar in many civil actions where legal representation of an indigent person is required to be furnished at state expense by the federal or state constitution or by state law. The first appointment to represent an indigent individual in most civil actions is to appoint the office of the regional counsel. Subsequent appointments where the office of the regional counsel has a conflict are to appoint a willing private attorney, chosen on a rotating basis. The appointment of regional counsel in civil primarily occur in mental health cases and dependency proceedings.⁶

¹ Section 27.511, F.S.

² Section 27.511(4), F.S.

³ Section 27.511(3)(a), F.S.

⁴ Just like a private law firm, the public defender's representation of two or more individuals whose interests are in conflict is unethical. Primarily, this occurs where two or more defendants are charged with jointly committing a criminal act.

⁵ Section 27.511(5), F.S.

⁶ Section 27.511(6)(a), F.S.

III. Effect of Proposed Changes:

Regional Counsel Parity with Public Defenders and Other Entities

The bill puts the Regional Counsels in parity with public defenders and other public agencies and organizations in the following areas:

Witness Coordination (Section 1)

Witness coordination describes the process for coordinating court appearance by witnesses, contacting witnesses regarding on-call status, contacting witnesses when appearances are cancelled, and contacting the employer of a subpoenaed person to confirm the existence of the summons. A primary goal of witness coordination is to minimize witness time and wage losses. Current law requires the state attorney and public defender work together on witness coordination programs.⁷ The bill adds that the appropriate Regional Counsel must act together with the state attorney and public defender to administer witness coordination.

Electronic Filing and Receipt (Section 2)

The state attorney and public defender of each circuit are required to consult with the local clerks of court, the Florida Court Technology Commission, and the operator of the legal filing portal, regarding the electronic filing and receipt of court documents. The bill adds that the appropriate Regional Counsel must join the state attorney and public defender in consultations regarding the electronic filing and receipt of court documents.

Court Appointments (part of Section 3)

A court is prohibited from appointing the public defender to represent any person who is not indigent or who is already represented by a private attorney. The bill adds that a Regional Counsel, similarly, may not be appointed to represent any person who is already represented by a private attorney.

Courthouse Security and Access (part of Section 3)

County sheriffs, judges, and the county commission are jointly responsible for courthouse security. Together, they develop plans and procedures for securing the courthouse, which vary throughout the state. Some counties screen all persons entering the courthouse, others allow certain trusted persons easier access through minimal or no screening. Assistant state attorneys and assistant public defenders are commonly part of the trusted persons groups. The bill adds a requirement that a Regional Counsel and assistant regional counsels be treated the same as the Public Defender and assistant public defenders are treated regarding courthouse security requirements.

Classification and Pay Plans (Section 4)

The 20 state attorneys of all judicial circuits must jointly develop a coordinated classification and pay plan that must be submitted on or before January 1 of each year to the Justice Administrative Commission, the office of the President of the Senate, and the office of the Speaker of the House

⁷ Section 27.0065, F.S.

of Representatives.⁸ Similarly, the 20 public defenders must jointly develop a coordinated classification and pay plan.⁹ However, the five regional counsel offices are subject to the classification and pay plan of the Justice Administration Commission,¹⁰ and may only recommend changes to the classification and pay plan.¹¹ The bill changes the classification and pay plan procedure to have the five regional counsels jointly develop a coordinated classification and pay plan for their offices, mirroring the current state attorneys and public defenders policies.

Dependency Court Records (Section 5)

A regional counsel may be appointed to represent an indigent parent in a dependency proceeding. Current law generally limits access to the records of dependency court proceedings to the child, the parents of the child, an attorney representing the child or a parent, the guardian ad litem, law enforcement, representatives of the Department of Children and Families, and any other person by court order.¹² Not included in this list are Regional Counsels, but these Regional Counsels may be appointed to represent parents involved in the proceedings. The bill adds Regional Counsels to the list of persons who are expressly authorized to access the dependency court file.

Witness Cost Reimbursement (Section 6)

In any court proceeding, a disinterested witness is entitled to reimbursement for any reasonable costs incurred in producing, searching for, reproducing, and transporting documents produced under subpoena or pursuant to a records request. However, such costs are limited to 15 cents per page and \$10 per hour when the subpoena or records request is from a state attorney or public defender.¹³ The bill adds that reimbursement related to a subpoena or records request from a regional counsel is also limited to 15 cents per page and \$10 per hour.

Investigator Death Benefits (Section 7)

The lawful beneficiary of a state or local law enforcement officer, correctional officer, correctional probation officer, state attorney investigator, or public defender investigator is entitled to a death benefit for a line-of-duty death ranging between \$75,000 and \$375,000, depending upon the circumstances of the death. In addition, funeral expense reimbursements, health benefits, and educational benefits for dependents are authorized.¹⁴ The bill adds regional counsel investigators to the list of persons entitled to the line-of-duty death benefits.

Confidential Motor Vehicle and Vessel Registration (Section 8)

Current law provides for confidential registration and issuance of a license plate or registration certificate of a motor vehicle or vessel owned by a local, state, or federal law enforcement agency, by the Attorney General Medicaid Fraud Unit, or by a public defender. If searched, the

⁸ Section 27.25(1), F.S.

⁹ Section 27.53(1), F.S.

¹⁰ Section 27.511(2), F.S.

¹¹ Section 27.53(4), F.S.

¹² Section 39.0132(3), F.S.

¹³ Section 92.153(2), F.S.

¹⁴ Section 112.19, F.S.

registration will show a fictitious name as the registered owner.¹⁵ Contingent upon passage of the linked public records bill (SB 598), the bill adds regional counsels to the list of government entities eligible for registration of a motor vehicle or vessel under a fictitious name.

Criminal History Fees and Access (Section 12)

The Florida Department of Law Enforcement is the state's central repository of criminal justice information. The department is authorized to charge a fee for furnishing the criminal history information of an individual, which fee varies based on the entity requesting the information. Fees are waived for an office of a public defender,¹⁶ and the department is required to provide public defenders the criminal history records by online access.¹⁷ The bill waives the fee and requires online access for the regional counsels.

Access to Certain Records of the Department of Corrections (Section 13)

Certain records of the Department of Corrections are confidential and exempt from public records laws, and may be released only to authorized persons or entities. Among other exceptions, public defenders are authorized to access preplea, pretrial intervention, and presentence or postsentence investigative records, except for portions of those records related to the victim.¹⁸ The bill adds that a regional counsel may also access preplea, pretrial intervention, and presentence or postsentence investigative records of the Department of Corrections, except for portions of those records related to the victim.

Access to Delinquency Court Records (Section 15)

Delinquency court records held by a clerk of court are confidential and exempt from public records laws, and may be released only to authorized persons or entities. Among other exceptions, public defenders are authorized to access the official records of a juvenile on whose behalf that the public defender is expected to appear in detention or other hearing before formal appointment of an attorney.¹⁹ The bill adds that a regional counsel is also authorized to access the official records of a juvenile on whose behalf that the regional counsel is expected to appear in detention or other hearing before formal appointment of an attorney.

Other Provisions regarding Regional Counsels

Appointment Process for the Regional Counsel (part of Section 3)

Each regional counsel is appointed by the Governor to a 4-year term, subject to Senate confirmation.²⁰ The terms of office of the current five Regional Counsel are from October 1, 2019, to September 30, 2023. The Governor must make an appointment from the nominees given to him or her by the Supreme Court Judicial Nominating Commission.²¹ For each position, the

¹⁵ Section 320.025, F.S.

¹⁶ Section 943.053(3)(e), F.S.

¹⁷ Section 943.053(7), F.S.

¹⁸ Section 945.10(2)(d), F.S.

¹⁹ Section 985.045(2), F.S.

²⁰ Section 27.511(3)(a), F.S.

²¹ The Supreme Court Judicial Nominating Commission is required by FLA. CONST art. V, s. 11(d), and its membership is specified by s. 43.291, F.S. The Supreme Court JNC consists of four members of The Florida Bar, selected by the Governor from a list of nominees recommended by The Florida Bar, and five individuals selected by the Governor. Members of the

Supreme Court Judicial Nominating Commission must nominate the current regional counsel for reappointment, and must also recommend to the Governor not fewer than two or more than five additional qualified candidates for appointment to the position. If it is in the best interest of the fair administration of justice, the Governor may reject the nominations and request that the Supreme Court Judicial Nominating Commission submit three new nominees.

If for any reason a regional counsel is unable to complete a full term in office, the Governor may immediately appoint an interim regional counsel. This appointee must meet the qualifications to be a regional counsel and will be appointed to serve as regional counsel until a new regional counsel is appointed by the same process to serve the remainder of the term of office.

The bill changes the appointment process to require nomination of the current regional counsel only if he or she seeks reappointment. The bill also reduces the number of persons nominated (in addition to the current regional counsel) to between zero and three. This change applies to the current five positions should one of them become vacant in this current term.

Guardian Advocacy Education Requirement (Section 9)

Guardian advocacy is a process for a family member, caregiver, or friend of an individual having a developmental disability²² to obtain the legal authority to act on their behalf if the individual lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property. Guardian advocacy does not require a finding of incapacity and it is less intrusive and simpler than formal guardianship. An individual who is found to have a developmental disability loses certain legal rights but is also entitled to certain services, levels of which are based on the individual's disability.²³

A petition to determine whether an individual has a developmental disability starts a contested proceeding at which the alleged disabled person has a right to have an attorney appointed. If the person is deemed to be indigent, the attorney will be provided at no cost from a regional counsel office or, in the case of a conflict, from a registry of qualified attorneys. If the person is not deemed to be indigent, a private attorney will be appointed from a rotating list of qualified attorneys. Before appointment, the attorney must have completed a minimum of 8 hours of education in guardianship, except that the court may waive the educational requirement for an attorney experienced in guardian advocate proceedings or who has 3 years or more experience as an attorney for guardian advocates.²⁴ The bill adds that the requirement for the education in guardianship does not apply to an attorney employed by a regional counsel office.

commission must be residents of the state, and all of the Bar nominees and two of the five Governor nominees must be actively practicing law. Members serve staggered 4-year terms.

²² "Developmental disability" means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

Section 393.063(12), F.S.

²³ See generally, ch. 393, F.S.

²⁴ Section 393.12(5)(a), F.S.

Appointment in Cases Involving Sexually Violent Predators (Section 10)

There is a civil commitment procedure for the involuntary long-term care and treatment of sexually violent predators.²⁵ An individual subject to involuntary care and treatment is entitled to legal representation. If the individual is indigent, the public defender is appointed to represent the individual. If the public defender has a conflict, the statute requires appointment of “other counsel.”²⁶ The statute on regional counsels provides that the regional counsel is to be appointed if a public defender has a conflict,²⁷ this bill amends the law on sexually violent predators to reaffirm that the regional counsel is the first appointment after the public defender.

Guardianship Education Requirement (Section 11)

Guardianship is a process for an interested person to petition for appointment of a guardian to represent an individual lacking capacity. An individual who is found to be legally incapacitated loses certain legal rights based on the individual’s incapacity.²⁸ An individual subject to guardianship proceedings who is indigent is entitled to appointment of an attorney. Before appointment of any attorney, the attorney must have completed a minimum of 8 hours of education in guardianship, except that the court may waive the educational requirement for an attorney who has 3 years or more experience as an attorney in guardianship proceedings.²⁹ The bill adds that the requirement for the education in guardianship does not apply to an attorney employed by a regional counsel office.

Appointment in Cases Involving Mental Health Treatment of a Prisoner (Section 14)

There is a court procedure for the involuntary mental health treatment of state prisoners.³⁰ A prisoner subject to involuntary treatment is entitled to legal representation. If the prisoner is indigent, the public defender is appointed to represent the prisoner. If the public defender has a conflict, the statute requires appointment of “private counsel.”³¹ The statute on regional counsels provides that the regional counsel is to be appointed if a public defender has a conflict.³² This bill amends the law on prisoners subject to involuntary mental health treatment to reaffirm that the regional counsel is the first appointment after the public defender.

Effective Date

The bill takes effect July 1, 2022.

²⁵ See generally, part V of ch. 394, F.S.

²⁶ Section 394.916(3), F.S.

²⁷ Section 27.40, F.S.

²⁸ See generally, ch. 744, F.S.

²⁹ Section 744.331(2)(d), F.S.

³⁰ See generally, s. 945.48, F.S.

³¹ Section 945.28(3), F.S.

³² Section 27.40, F.S.

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:

CS/SB 596 may have a minimal fiscal impact on state government. This bill does not appear to have a fiscal impact on local governments.

VI. Technical Deficiencies:

Section 8 of the bill should be contingent on passage of CS/SB 598, a companion public records bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.0065, 27.341, 27.511, 27.53, 39.0132, 92.153, 112.19, 320.025, 393.12, 394.916, 744.331, 943.053, 945.10, 945.48, and 985.045.

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 January 10, 2022:

The committee substitute rewords several provisions without making substantive changes, makes technical changes, and corrects a date related to the terms of a Criminal Conflict and Civil Regional Counsel.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 110 - 505

and insert:

Section 3. Subsections (2), (3), and (7) of section 27.511, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

27.511 Offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.—

(2) Each office of criminal conflict and civil regional



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counsel shall be assigned to the Justice Administrative Commission for administrative purposes. The commission shall provide administrative support and service to the offices to the extent requested by each regional counsel within the available resources of the commission. The regional counsel and the offices are not subject to control, supervision, or direction by the commission in the performance of their duties, ~~but the employees of the offices shall be governed by the classification plan and the salary and benefits plan for the commission.~~

(3)(a) Each regional counsel must be, and must have been for the preceding 5 years, a member in good standing of The Florida Bar. Each regional counsel shall be appointed by the Governor and is subject to confirmation by the Senate. The Supreme Court Judicial Nominating Commission, ~~in addition to the current regional counsel,~~ shall nominate ~~recommend~~ to the Governor the currently serving regional counsel, if he or she seeks reappointment, and may also nominate up to three not fewer than two or more than five additional qualified candidates for appointment to each of the five regional counsel positions for consideration by the Governor. The Governor shall appoint the regional counsel for the five regions from among the commission's nominations ~~recommendations~~, or, if it is in the best interest of the fair administration of justice, the Governor may reject the nominations and request that the Supreme Court Judicial Nominating Commission submit three new nominees. The regional counsel shall be appointed to a term of 4 years, the term beginning on October 1, 2015, with each successive term beginning on October 1 every 4 years thereafter. The nomination and appointment process under this paragraph shall apply



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41 retroactively to the term beginning on October 1, 2019.

42 Vacancies shall be filled in the manner provided in paragraph
43 (b).

44 (b) If for any reason a regional counsel is unable to
45 complete a full term in office, the Governor may immediately
46 appoint an interim regional counsel who meets the qualifications
47 to be a regional counsel to serve as regional counsel for that
48 region ~~district~~ until a new regional counsel is appointed in the
49 manner provided in paragraph (a). The ~~Florida~~ Supreme Court
50 Judicial Nominating Commission shall provide the Governor with a
51 list of nominees for appointment within 6 months after the date
52 of the vacancy. A temporary vacancy in office does not affect
53 the validity of any matters or activities of the office of
54 regional counsel.

55 (7) The court may not appoint the office of criminal
56 conflict and civil regional counsel to represent, even on a
57 temporary basis, any person who is not indigent, except to the
58 extent that appointment of counsel is specifically provided for
59 in chapters 390, 394, 415, 743, and 744 without regard to the
60 indigent status of the person entitled to representation. If a
61 defendant has retained private counsel, the court may not
62 appoint the office of criminal conflict and civil regional
63 counsel to represent that defendant simultaneously on the same
64 case.

65 (10) Each court shall allow for the ingress and egress to
66 its facilities for regional counsels and assistant regional
67 counsels in the same manner as is provided to public defenders
68 and assistant public defenders, subject to the security
69 requirements of each courthouse.



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Section 4. Subsection (4) of section 27.53, Florida Statutes, is amended to read:

27.53 Appointment of assistants and other staff; method of payment.—

(4) The five criminal conflict and civil regional counsels ~~counsel~~ may employ and establish, in the numbers authorized by the General Appropriations Act, assistant regional counsels ~~counsel~~ and other staff and personnel in each judicial district pursuant to s. 29.006, who shall be paid from funds appropriated for that purpose. Notwithstanding s. 790.01, s. 790.02, or s. 790.25(2)(a), an investigator employed by an office of criminal conflict and civil regional counsel, while actually carrying out official duties, is authorized to carry concealed weapons if the investigator complies with s. 790.25(3)(o). However, such investigators are not eligible for membership in the Special Risk Class of the Florida Retirement System. The five regional counsels ~~counsel~~ shall jointly develop a coordinated recommended ~~modifications to the classification and pay plan for submission to and the salary and benefits plan for~~ the Justice Administrative Commission, the President of the Senate, and the Speaker of the House of Representatives by January 1 of each year. The plan must ~~recommendations shall be submitted to the commission, the office of the President of the Senate, and the office of the Speaker of the House of Representatives before~~ January 1 of each year. Such ~~recommendations shall~~ be developed in accordance with policies and procedures of the Executive Office of the Governor established in s. 216.181. Each assistant regional counsel appointed by the regional counsel under this section shall serve at the pleasure of the regional counsel.



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Each investigator employed by the regional counsel shall have full authority to serve any witness subpoena or court order issued by any court or judge in a criminal case in which the regional counsel has been appointed to represent the accused.

Section 5. Subsection (3) and paragraph (a) of subsection (4) of section 39.0132, Florida Statutes, are amended to read:

39.0132 Oaths, records, and confidential information.—

(3) The clerk shall keep all court records required by this chapter separate from other records of the circuit court. All court records required by this chapter shall not be open to inspection by the public. All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, subject to the provisions of s. 63.162, a child and the parents of the child and their attorneys, the guardian ad litem, criminal conflict and civil regional counsels, law enforcement agencies, and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child. The Justice Administrative Commission may inspect court dockets required by this chapter as necessary to audit compensation of court-appointed attorneys. If the docket is insufficient for purposes of the audit, the commission may petition the court for additional documentation as necessary and appropriate. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions.



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(4)(a)1. All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, authorized agent of the department, correctional probation officer, or law enforcement agent is confidential and exempt from s. 119.07(1) and may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, the guardian ad litem, criminal conflict and civil regional counsels, and others entitled under this chapter to receive that information, except upon order of the court.

2.a. The following information held by a guardian ad litem is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(I) Medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records.

(II) Any other information maintained by a guardian ad litem which is identified as confidential information under this chapter.

b. Such confidential and exempt information may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, guardians ad litem, and others entitled under this chapter to receive that information, except upon order of the court.

Section 6. Paragraph (a) of subsection (2) of section 92.153, Florida Statutes, is amended to read:

92.153 Production of documents by witnesses; reimbursement of costs.—



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(2) REIMBURSEMENT OF A DISINTERESTED WITNESS.—

(a) In any proceeding, a disinterested witness shall be paid for any costs the witness reasonably incurs either directly or indirectly in producing, searching for, reproducing, or transporting documents pursuant to a summons; however, the cost of documents produced pursuant to a subpoena or records request by a state attorney, a ~~or~~ public defender, or a criminal conflict and civil regional counsel may not exceed 15 cents per page and \$10 per hour for research or retrieval.

Section 7. Paragraph (b) of subsection (1) of section 112.19, Florida Statutes, is amended to read:

112.19 Law enforcement, correctional, and correctional probation officers; death benefits.—

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

(b) "Law enforcement, correctional, or correctional probation officer" means any officer as defined in s. 943.10(14) or employee of the state or any political subdivision of the state, including any law enforcement officer, correctional officer, correctional probation officer, state attorney investigator, ~~or~~ public defender investigator, or criminal conflict and civil regional counsel investigator, whose duties require such officer or employee to investigate, pursue, apprehend, arrest, transport, or maintain custody of persons who are charged with, suspected of committing, or convicted of a crime; and the term includes any member of a bomb disposal unit whose primary responsibility is the location, handling, and disposal of explosive devices. The term also includes any full-time officer or employee of the state or any political subdivision of the state, certified pursuant to chapter 943,



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whose duties require such officer to serve process or to attend a session of a circuit or county court as bailiff.

Section 8. Subsection (1) of section 320.025, Florida Statutes, is amended to read:

320.025 Registration certificate and license plate or decal issued under fictitious name; application.—

(1) A confidential registration certificate and registration license plate or decal shall be issued under a fictitious name only for a motor vehicle or vessel owned or operated by a law enforcement agency of state, county, municipal, or federal government; the Attorney General's Medicaid Fraud Control Unit; or any state public defender's office; or any criminal conflict and civil regional counsel office. The requesting agency shall file a written application with the department, on forms furnished by the department, including ~~which includes~~ a statement that the license plate or decal will be used for certain activities by the Attorney General's Medicaid Fraud Control Unit; any ~~or~~ law enforcement or ~~any~~ state public defender's office; or a criminal conflict and civil regional counsel office which requires the activities requiring concealment of publicly leased or owned motor vehicles or vessels and a statement of the position classifications of the individuals who are authorized to use the license plate or decal. The department may modify its records to reflect the fictitious identity of the owner or lessee until such time as the license plate or decal and registration certificate are surrendered to it.

Section 9. Paragraph (a) of subsection (5) of section 393.12, Florida Statutes, is amended to read:



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393.12 Capacity; appointment of guardian advocate.—

(5) COUNSEL.—Within 3 days after a petition has been filed, the court shall appoint an attorney to represent a person with a developmental disability who is the subject of a petition to appoint a guardian advocate. The person with a developmental disability may substitute his or her own attorney for the attorney appointed by the court.

(a) The court shall initially appoint a private attorney who shall be selected from the attorney registry compiled pursuant to s. 27.40. Such attorney must have completed a minimum of 8 hours of education in guardianship. The court may waive this requirement for an attorney who has served as a court-appointed attorney in guardian advocate proceedings or as an attorney of record for guardian advocates for at least 3 years. This education requirement does not apply to a court-appointed attorney who is employed by an office of criminal conflict and civil regional counsel.

Section 10. Subsection (3) of section 394.916, Florida Statutes, is amended to read:

394.916 Trial; counsel and experts; indigent persons; jury.—

(3) At all adversarial proceedings under this act, the person subject to this act is entitled to the assistance of counsel, and, if the person is indigent, the court must ~~shall~~ appoint the public defender or, if a conflict exists, the court must appoint a criminal conflict and civil regional counsel or other counsel to assist the person.

Section 11. Paragraph (d) of subsection (2) of section 744.331, Florida Statutes, is amended to read:



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744.331 Procedures to determine incapacity.—

(2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.—

(d) An attorney seeking to be appointed by a court for incapacity and guardianship proceedings must have completed a minimum of 8 hours of education in guardianship. A court may waive the initial training requirement for an attorney who has served as a court-appointed attorney in incapacity proceedings or as an attorney of record for guardians for not less than 3 years. This training requirement does not apply to a court-appointed attorney employed by an office of criminal conflict and civil regional counsel.

Section 12. Paragraph (e) of subsection (3) and subsection (7) of section 943.053, Florida Statutes, are amended to read:

943.053 Dissemination of criminal justice information; fees.—

(3)

(e) The fee per record for criminal history information provided pursuant to this subsection and s. 943.0542 is \$24 per name submitted, except that the fee for the guardian ad litem program and vendors of the Department of Children and Families, the Department of Juvenile Justice, the Agency for Persons with Disabilities, and the Department of Elderly Affairs is ~~shall be~~ \$8 for each name submitted; the fee for a state criminal history provided for application processing as required by law to be performed by the Department of Agriculture and Consumer Services is ~~shall be~~ \$15 for each name submitted; and the fee for requests under s. 943.0542, which implements the National Child Protection Act, is ~~shall be~~ \$18 for each volunteer name submitted. An office ~~The state offices~~ of the public defender or



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an office of criminal conflict and civil regional counsel may
~~shall~~ not be assessed a fee for Florida criminal history
information or wanted person information.

(7) Notwithstanding any other provision of law, the
department shall provide to each office of the public defender
and each office of criminal conflict and civil regional counsel
online access to criminal records of this state which are not
exempt from disclosure under chapter 119 or confidential under
law. Such access shall be used solely in support of the duties
of a public defender as provided in s. 27.51, a criminal
conflict and civil regional counsel as provided in s. 27.511, or
~~of~~ any attorney specially assigned as authorized in s. 27.53 in
the representation of any person who is determined indigent as
provided in s. 27.52. The costs of establishing and maintaining
such online access must ~~shall~~ be borne by the office to which
the access has been provided.

Section 13. Paragraph (d) of subsection (2) of section
945.10, Florida Statutes, is amended to read:

945.10 Confidential information.—

(2) The records and information specified in paragraphs
(1)(a)-(i) may be released as follows unless expressly
prohibited by federal law:

(d) Information specified in paragraph (1)(b) to a public
defender or a criminal conflict and civil regional counsel
representing a defendant, except those portions of the records
containing a victim's statement or address, or the statement or
address of a relative of the victim. A request for records or
information pursuant to this paragraph need not be in writing.



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Records and information released under this subsection remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution when held by the receiving person or entity.

Section 14. Subsection (3) of section 945.48, Florida Statutes, is amended to read:

945.48 Rights of inmates provided mental health treatment; procedure for involuntary treatment.—

(3) PROCEDURE FOR INVOLUNTARY TREATMENT OF INMATES.—
Involuntary mental health treatment of an inmate who refuses treatment that is deemed to be necessary for the appropriate care of the inmate and the safety of the inmate or others may be provided at a mental health treatment facility. The warden of the institution containing the mental health treatment facility shall petition the circuit court serving the county in which the mental health treatment facility is located for an order authorizing the treatment of the inmate. The inmate shall be provided with a copy of the petition along with the proposed treatment; the basis for the proposed treatment; the names of the examining experts; and the date, time, and location of the hearing. The inmate may have an attorney represent him or her at the hearing, and, if the inmate is indigent, the court must ~~shall~~ appoint the office of the public defender to represent the inmate at the hearing. If the office of the public defender withdraws from the appointment due to a conflict, the court must appoint a criminal conflict and civil regional counsel or private counsel pursuant to s. 27.40(1) to represent the inmate ~~at the hearing~~. An attorney representing the inmate shall have access to the inmate and any records, including medical or



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mental health records, which are relevant to the representation of the inmate.

Section 15. Subsection (2) of section 985.045, Florida Statutes, is amended to read:

985.045 Court records.—

(2) The clerk shall keep all official records required by this section separate from other records of the circuit court, except those records pertaining to motor vehicle violations, which shall be forwarded to the Department of Highway Safety and Motor Vehicles. Except as provided in ss. 943.053 and 985.04(6)(b) and (7), official records required by this chapter are not open to inspection by the public, but may be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that a child and the parents, guardians, or legal custodians of the child and their attorneys, law enforcement agencies, the Department of Juvenile Justice and its designees, the Florida Commission on Offender Review, the Department of Corrections, and the Justice Administrative Commission shall always have the right to inspect and copy any official record pertaining to the child. Offices of the public defender and criminal conflict and civil regional counsel ~~offices~~ shall have access to official records of juveniles on whose behalf they are expected to appear in detention or other hearings before an appointment of representation. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect, and make abstracts from, official records under whatever conditions upon the use and disposition of such records the court may deem proper and may punish by contempt



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proceedings any violation of those conditions.

Section 16. This act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete lines 8 - 70

and insert:

27.511, F.S.; removing the requirement that regional
counsel employees be governed by Justice
Administrative Commission classification and salary
and benefits plans; modifying procedures for the
Supreme Court Judicial Nominating Commission to
nominate candidates to the Governor for regional
counsel positions; specifying that the nomination and
appointment process applies retroactively; prohibiting
the court from appointing a regional counsel to
represent a defendant who has retained private
counsel; specifying requirements for the manner of
access to court facilities for regional counsels;
amending s. 27.53, F.S.; revising requirements for the
classification and pay plan jointly developed by the
regional counsels; amending s. 39.0132, F.S.;
authorizing regional counsels to access certain
confidential information relating to proceedings
involving children under specified circumstances;
authorizing the release to regional counsels of
certain confidential information relating to
proceedings involving children under specified
circumstances; amending s. 92.153, F.S.; providing a



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limit on costs for documents produced in response to a subpoena or records request by a regional counsel; amending s. 112.19, F.S.; revising the definition of the term "law enforcement, correctional, or correctional probation officer" to include regional counsel investigators for purposes of eligibility for certain death benefits; amending s. 320.025, F.S.; authorizing regional counsel offices to obtain fictitious names for motor vehicle and vessel plates or decals; amending s. 393.12, F.S.; waiving an education requirement for the appointment of attorneys from regional counsel offices to represent a person with a developmental disability; amending s. 394.916, F.S.; requiring a court to appoint a regional counsel or other counsel to represent an alleged sexually violent predator in the event of a conflict; amending s. 744.331, F.S.; waiving a certain training requirement for the appointment of attorneys from regional counsel offices to represent an alleged incapacitated person; amending s. 943.053, F.S.; specifying that a regional counsel office may not be charged a fee for accessing certain criminal justice information; requiring the Department of Law Enforcement to provide regional counsel offices online access to certain information; amending s. 945.10, F.S.; authorizing the release of certain records and information to regional counsels; amending s. 945.48, F.S.; authorizing the appointment of a regional counsel to represent an inmate subject to involuntary



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418 mental health treatment if certain conditions exist;
419 amending s. 985.045, F.S.; requiring that regional
420 counsel offices have access to official records of
421 juveniles whom they represent; providing an effective
422 date.

By Senator Baxley

12-00603A-22

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1 A bill to be entitled
 2 An act relating to criminal conflict and civil
 3 regional counsels; amending s. 27.0065, F.S.;
 4 specifying the responsibilities of regional counsels
 5 regarding witness coordination; amending s. 27.341,
 6 F.S.; revising legislative intent regarding electronic
 7 filing and receipt of court documents; amending s.
 8 27.51, F.S.; prohibiting the court from appointing a
 9 regional counsel to represent certain defendants;
 10 amending s. 27.511, F.S.; removing the requirement
 11 that regional counsel employees be governed by Justice
 12 Administrative Commission classification and salary
 13 and benefits plans; modifying procedures for the
 14 Supreme Court Judicial Nominating Commission to
 15 nominate candidates to the Governor for regional
 16 counsel positions; specifying that the nomination and
 17 appointment process applies retroactively; specifying
 18 requirements for the manner of access to court
 19 facilities for regional counsels; amending s. 27.53,
 20 F.S.; revising requirements for the classification and
 21 pay plan jointly developed by the regional counsels;
 22 amending s. 39.0132, F.S.; providing that regional
 23 counsels can access certain confidential information
 24 relating to proceedings involving children under
 25 specified circumstances; authorizing the release to
 26 regional counsels of certain confidential information
 27 relating to proceedings involving children under
 28 specified circumstances; amending s. 92.153, F.S.;
 29 providing a limit on costs for documents produced in

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

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30 response to a subpoena or records request by a
 31 regional counsel; reenacting s. 110.123(4)(e), F.S.,
 32 relating to the payment of health insurance premiums
 33 by state agencies for certain employees and surviving
 34 spouses, to incorporate the amendment made to s.
 35 112.19, F.S., in a reference thereto; amending s.
 36 112.19, F.S.; revising the definition of the term "law
 37 enforcement, correctional, or correctional probation
 38 officer" to include regional counsel investigators for
 39 purposes of eligibility for certain death benefits;
 40 reenacting s. 112.1912(1), F.S., relating to death
 41 benefits for educational expenses for survivors of
 42 first responders, to incorporate the amendment made to
 43 s. 112.19, F.S., in a reference thereto; amending s.
 44 320.025, F.S.; authorizing regional counsel offices to
 45 obtain fictitious names for motor vehicle and vessel
 46 plates or decals; amending s. 393.12, F.S.; waiving an
 47 education requirement for the appointment of attorneys
 48 from regional counsel offices to represent a person
 49 with a developmental disability; amending s. 394.916,
 50 F.S.; requiring a court to appoint a regional counsel
 51 or other counsel to represent an alleged sexually
 52 violent predator in the event of a conflict; amending
 53 s. 744.331, F.S.; waiving a certain training
 54 requirement for the appointment of attorneys from
 55 regional counsel offices to represent an alleged
 56 incapacitated person; amending s. 943.053, F.S.;
 57 specifying that a regional counsel office may not be
 58 charged a fee for accessing certain criminal justice

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information; requiring the Department of Law Enforcement to provide regional counsels online access to certain information; amending s. 945.10, F.S.; authorizing the release of certain records and information to regional counsels; amending s. 945.48, F.S.; authorizing the appointment of a regional counsel to represent an inmate subject to involuntary mental health treatment if certain conditions exist; amending s. 985.045, F.S.; requiring that regional counsel offices have access to official records of juveniles whom they represent; providing effective dates.

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

Section 1. Section 27.0065, Florida Statutes, is amended to read:

27.0065 Witness coordination.—Each state attorney, ~~and~~ public defender, and criminal conflict and civil regional counsel is shall be responsible for:

(1) Coordinating court appearances, including pretrial conferences and depositions, for all witnesses who are subpoenaed in criminal cases, including law enforcement personnel.

(2) Contacting witnesses and securing information necessary to place a witness on an on-call status with regard to his or her court appearance.

(3) Contacting witnesses to advise them not to report to court in the event the case for which they have been subpoenaed

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has been continued or has had a plea entered, or in the event there is any other reason why their attendance is not required on the dates they have been ordered to report.

(4) Contacting the employer of a witness, when necessary, to confirm that the employee has been subpoenaed to appear in court as a witness.

In addition, the state attorney, ~~or~~ public defender, or criminal conflict and civil regional counsel may provide additional services to reduce time and wage losses to a minimum for all witnesses.

Section 2. Subsection (2) of section 27.341, Florida Statutes, is amended to read:

27.341 Electronic filing and receipt of court documents.—

(2) It is further the expectation of the Legislature that each office of the state attorney consult with the office of the public defender for the same circuit served by the office of the state attorney, the office of criminal conflict and civil regional counsel assigned to that circuit, the clerks of court for the circuit, the Florida Court Technology Commission, and any authority that governs the operation of a statewide portal for the electronic filing and receipt of court documents.

Section 3. Subsection (2) of section 27.51, Florida Statutes, is amended to read:

27.51 Duties of public defender.—

(2) The court may not appoint the public defender or a regional counsel to represent, even on a temporary basis, any person who is not indigent. If a defendant has retained private counsel, the court may not appoint the public defender or

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

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117 regional counsel to represent that defendant simultaneously on
 118 the same case. The court, however, may appoint private counsel
 119 in capital cases as provided in ss. 27.40 and 27.5303.

120 Section 4. Subsections (2) and (3) of section 27.511,
 121 Florida Statutes, are amended, and subsection (10) is added to
 122 that section, to read:

123 27.511 Offices of criminal conflict and civil regional
 124 counsel; legislative intent; qualifications; appointment;
 125 duties.—

126 (2) Each office of criminal conflict and civil regional
 127 counsel shall be assigned to the Justice Administrative
 128 Commission for administrative purposes. The commission shall
 129 provide administrative support and service to the offices to the
 130 extent requested by each regional counsel within the available
 131 resources of the commission. The regional counsel and the
 132 offices are not subject to control, supervision, or direction by
 133 the commission in the performance of their duties, ~~but the~~
 134 ~~employees of the offices shall be governed by the classification~~
 135 ~~plan and the salary and benefits plan for the commission.~~

136 (3) (a) Each regional counsel must be, and must have been
 137 for the preceding 5 years, a member in good standing of The
 138 Florida Bar. Each regional counsel shall be appointed by the
 139 Governor and is subject to confirmation by the Senate. The
 140 Supreme Court Judicial Nominating Commission, ~~in addition to the~~
 141 ~~current regional counsel,~~ shall nominate ~~recommend~~ to the
 142 Governor the currently serving regional counsel, if he or she
 143 seeks reappointment, and may also nominate, for consideration by
 144 the Governor, up to three not fewer than two or more than five
 145 additional qualified candidates for appointment to each of the

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146 five regional counsel positions. The Governor shall appoint the
 147 regional counsel for the five regions from among the Supreme
 148 Court Judicial Nominating Commission's nominations
 149 ~~recommendations~~, or, if it is in the best interest of the fair
 150 administration of justice, the Governor may reject the
 151 nominations and request that the Supreme Court Judicial
 152 Nominating Commission submit three new nominees. The regional
 153 counsel shall be appointed to a term of 4 years, the term
 154 beginning on October 1, 2015, with each successive term
 155 beginning on October 1 every 4 years thereafter. The nomination
 156 and appointment process under this paragraph applies
 157 retroactively to the term beginning on October 1, 2020.
 158 Vacancies shall be filled in the manner provided in paragraph
 159 (b).

160 (b) If for any reason a regional counsel is unable to
 161 complete a full term in office, the Governor may immediately
 162 appoint an interim regional counsel who meets the qualifications
 163 to be a regional counsel to serve as regional counsel for that
 164 region district until a new regional counsel is appointed in the
 165 manner provided in paragraph (a). The ~~Florida~~ Supreme Court
 166 Judicial Nominating Commission shall provide the Governor with a
 167 list of nominees for appointment within 6 months after the date
 168 of the vacancy. A temporary vacancy in office does not affect
 169 the validity of any matters or activities of the office of
 170 regional counsel.

171 (10) Each court shall allow for ingress and egress to its
 172 facilities for regional counsels and assistant regional counsels
 173 in the same manner as is provided to public defenders and
 174 assistant public defenders, subject to the security requirements

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of each courthouse.

Section 5. Subsection (4) of section 27.53, Florida Statutes, is amended to read:

27.53 Appointment of assistants and other staff; method of payment.—

(4) The five criminal conflict and civil regional counsels ~~counsel~~ may employ and establish, in the numbers authorized by the General Appropriations Act, assistant regional counsels ~~counsel~~ and other staff and personnel in each judicial district pursuant to s. 29.006, who shall be paid from funds appropriated for that purpose. Notwithstanding s. 790.01, s. 790.02, or s. 790.25(2)(a), an investigator employed by an office of criminal conflict and civil regional counsel, while actually carrying out official duties, is authorized to carry concealed weapons if the investigator complies with s. 790.25(3)(o). However, such investigators are not eligible for membership in the Special Risk Class of the Florida Retirement System. The five regional counsels ~~counsel~~ shall jointly develop a coordinated recommended ~~recommended~~ modifications to the classification and pay plan for submission ~~modifications to the classification and pay plan for submission~~ to and the salary and benefits plan for ~~to and the salary and benefits plan for~~ the Justice Administrative Commission, the President of the Senate, and the Speaker of the House of Representatives by January 1 of each ~~the President of the Senate, and the Speaker of the House of Representatives by January 1 of each~~ year. The plan must recommendations shall be submitted to the ~~commission, the office of the President of the Senate, and the office of the Speaker of the House of Representatives before~~ January 1 of each year. Such recommendations shall ~~Such recommendations shall~~ be developed in accordance with policies and procedures of the Executive Office of the Governor established in s. 216.181. Each assistant regional counsel appointed by the regional counsel under this

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section shall serve at the pleasure of the regional counsel. Each investigator employed by the regional counsel shall have full authority to serve any witness subpoena or court order issued by any court or judge in a criminal case in which the regional counsel has been appointed to represent the accused.

Section 6. Subsection (3) and paragraph (a) of subsection (4) of section 39.0132, Florida Statutes, are amended to read:

39.0132 Oaths, records, and confidential information.—

(3) The clerk shall keep all court records required by this chapter separate from other records of the circuit court. All court records required by this chapter shall not be open to inspection by the public. All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, subject to the provisions of s. 63.162, a child and the parents of the child and their attorneys, the guardian ad litem, criminal conflict and civil ~~the guardian ad litem, criminal conflict and civil~~ regional counsels, law enforcement agencies, and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child. The Justice Administrative Commission may inspect court dockets required by this chapter as necessary to audit compensation of court-appointed attorneys. If the docket is insufficient for purposes of the audit, the commission may petition the court for additional documentation as necessary and appropriate. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of

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those conditions.

(4)(a)1. All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, authorized agent of the department, correctional probation officer, or law enforcement agent is confidential and exempt from s. 119.07(1) and may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, the guardian ad litem, criminal conflict and civil regional counsels, and others entitled under this chapter to receive that information, except upon order of the court.

2.a. The following information held by a guardian ad litem is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(I) Medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records.

(II) Any other information maintained by a guardian ad litem which is identified as confidential information under this chapter.

b. Such confidential and exempt information may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, guardians ad litem, and others entitled under this chapter to receive that information, except upon order of the court.

Section 7. Paragraph (a) of subsection (2) of section 92.153, Florida Statutes, is amended to read:

92.153 Production of documents by witnesses; reimbursement

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of costs.—

(2) REIMBURSEMENT OF A DISINTERESTED WITNESS.—

(a) In any proceeding, a disinterested witness shall be paid for any costs the witness reasonably incurs either directly or indirectly in producing, searching for, reproducing, or transporting documents pursuant to a summons; however, the cost of documents produced pursuant to a subpoena or records request by a state attorney, a ~~or~~ public defender, or a criminal conflict and civil regional counsel may not exceed 15 cents per page and \$10 per hour for research or retrieval.

Section 8. For the purpose of incorporating the amendment made by this act to section 112.19, Florida Statutes, in a reference thereto, paragraph (e) of subsection (4) of section 110.123, Florida Statutes, is reenacted to read:

110.123 State group insurance program.—

(4) PAYMENT OF PREMIUMS; CONTRIBUTION BY STATE; LIMITATION ON ACTIONS TO PAY AND COLLECT PREMIUMS.—

(e) No state contribution for the cost of any part of the premium shall be made for retirees or surviving spouses for any type of coverage under the state group insurance program. However, any state agency that employs a full-time law enforcement officer, correctional officer, or correctional probation officer who is killed or suffers catastrophic injury in the line of duty as provided in s. 112.19, or a full-time firefighter who is killed or suffers catastrophic injury in the line of duty as provided in s. 112.191, shall pay the entire premium of the state group health insurance plan selected for the employee's surviving spouse until remarried, and for each dependent child of the employee, subject to the conditions and

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limitations set forth in s. 112.19 or s. 112.191, as applicable.

Section 9. Paragraph (b) of subsection (1) of section 112.19, Florida Statutes, is amended to read:

112.19 Law enforcement, correctional, and correctional probation officers; death benefits.—

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

(b) "Law enforcement, correctional, or correctional probation officer" means any officer as defined in s. 943.10(14) or employee of the state or any political subdivision of the state, including any law enforcement officer, correctional officer, correctional probation officer, state attorney investigator, ~~or~~ public defender investigator, or criminal conflict and civil regional counsel investigator, whose duties require such officer or employee to investigate, pursue, apprehend, arrest, transport, or maintain custody of persons who are charged with, suspected of committing, or convicted of a crime; and the term includes any member of a bomb disposal unit whose primary responsibility is the location, handling, and disposal of explosive devices. The term also includes any full-time officer or employee of the state or any political subdivision of the state, certified pursuant to chapter 943, whose duties require such officer to serve process or to attend a session of a circuit or county court as bailiff.

Section 10. For the purpose of incorporating the amendment made by this act to section 112.19, Florida Statutes, in a reference thereto, subsection (1) of section 112.1912, Florida Statutes, is reenacted to read:

112.1912 First responders; death benefits for educational expenses.—

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(1) As used in this section, the term "first responder" means:

(a) A law enforcement, correctional, or correctional probation officer as defined in s. 112.19(1) who is killed as provided in s. 112.19(2) on or after July 1, 2019;

(b) A firefighter as defined in s. 112.191(1) who is killed as provided in s. 112.191(2) on or after July 1, 2019; or

(c) An emergency medical technician or a paramedic, as defined in s. 112.1911(1), who is killed as provided in s. 112.1911(2) on or after July 1, 2019.

Section 11. Contingent upon SB ___ or similar legislation amending the public records exemption in section 320.025(3), Florida Statutes, taking effect, subsection (1) of that section is amended to read:

320.025 Registration certificate and license plate or decal issued under fictitious name; application.—

(1) A confidential registration certificate and registration license plate or decal shall be issued under a fictitious name only for a motor vehicle or vessel owned or operated by a law enforcement agency of state, county, municipal, or federal government; ~~the~~ the Attorney General's Medicaid Fraud Control Unit; ~~or any state public defender's office; or any criminal conflict and civil regional counsel office.~~ The requesting agency shall file a written application with the department, on forms furnished by the department, including which includes a statement that the license plate or decal will be used for certain activities by the Attorney General's Medicaid Fraud Control Unit; any ~~or~~ law enforcement or any state public defender's office; or a regional counsel office

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which requires the ~~activities requiring~~ concealment of publicly leased or owned motor vehicles or vessels and a statement of the position classifications of the individuals who are authorized to use the license plate or decal. The department may modify its records to reflect the fictitious identity of the owner or lessee until such time as the license plate or decal and registration certificate are surrendered to it.

Section 12. Paragraph (a) of subsection (5) of section 393.12, Florida Statutes, is amended to read:

393.12 Capacity; appointment of guardian advocate.—

(5) COUNSEL.—Within 3 days after a petition has been filed, the court shall appoint an attorney to represent a person with a developmental disability who is the subject of a petition to appoint a guardian advocate. The person with a developmental disability may substitute his or her own attorney for the attorney appointed by the court.

(a) The court shall initially appoint a private attorney who shall be selected from the attorney registry compiled pursuant to s. 27.40. Such attorney must have completed a minimum of 8 hours of education in guardianship. The court may waive this requirement for an attorney who has served as a court-appointed attorney in guardian advocate proceedings or as an attorney of record for guardian advocates for at least 3 years. This education requirement does not apply to a court-appointed attorney who is employed by an office of criminal conflict and civil regional counsel.

Section 13. Subsection (3) of section 394.916, Florida Statutes, is amended to read:

394.916 Trial; counsel and experts; indigent persons;

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jury.—

(3) At all adversarial proceedings under this act, the person subject to this act is entitled to the assistance of counsel, and, if the person is indigent, the court ~~must shall~~ appoint the public defender or, if a conflict exists, the court must appoint a criminal conflict and civil regional counsel or other counsel to assist the person.

Section 14. Paragraph (d) of subsection (2) of section 744.331, Florida Statutes, is amended to read:

744.331 Procedures to determine incapacity.—

(2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.—

(d) An attorney seeking to be appointed by a court for incapacity and guardianship proceedings must have completed a minimum of 8 hours of education in guardianship. A court may waive the initial training requirement for an attorney who has served as a court-appointed attorney in incapacity proceedings or as an attorney of record for guardians for not less than 3 years. This training requirement does not apply to a court-appointed attorney employed by an office of criminal conflict and civil regional counsel.

Section 15. Paragraph (e) of subsection (3) and subsection (7) of section 943.053, Florida Statutes, are amended to read:

943.053 Dissemination of criminal justice information; fees.—

(3)

(e) The fee per record for criminal history information provided pursuant to this subsection and s. 943.0542 is \$24 per name submitted, except that the fee for the guardian ad litem program and vendors of the Department of Children and Families,

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the Department of Juvenile Justice, the Agency for Persons with Disabilities, and the Department of Elderly Affairs ~~is shall be~~ \$8 for each name submitted; the fee for a state criminal history provided for application processing as required by law to be performed by the Department of Agriculture and Consumer Services ~~is shall be~~ \$15 for each name submitted; and the fee for requests under s. 943.0542, which implements the National Child Protection Act, ~~is shall be~~ \$18 for each volunteer name submitted. An office ~~The state offices~~ of the public defender or an office of criminal conflict and civil regional counsel may ~~shall~~ not be assessed a fee for Florida criminal history information or wanted person information.

(7) Notwithstanding any other provision of law, the department shall provide to each office of the public defender and each office of the criminal conflict and civil regional counsel online access to criminal records of this state which are not exempt from disclosure under chapter 119 or confidential under law. Such access shall be used solely in support of the duties of a public defender as provided in s. 27.51, a criminal conflict and civil regional counsel as provided in s. 27.511, or ~~of~~ any attorney specially assigned as authorized in s. 27.53 in the representation of any person who is determined indigent as provided in s. 27.52. The costs of establishing and maintaining such online access ~~must shall~~ be borne by the office to which the access has been provided.

Section 16. Paragraph (d) of subsection (2) of section 945.10, Florida Statutes, is amended to read:

945.10 Confidential information.—

(2) The records and information specified in paragraphs

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(1)(a)-(i) may be released as follows unless expressly prohibited by federal law:

(d) Information specified in paragraph (1)(b) to a public defender or a criminal conflict and civil regional counsel representing a defendant, except those portions of the records containing a victim's statement or address, or the statement or address of a relative of the victim. A request for records or information pursuant to this paragraph need not be in writing.

Records and information released under this subsection remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution when held by the receiving person or entity.

Section 17. Subsection (3) of section 945.48, Florida Statutes, is amended to read:

945.48 Rights of inmates provided mental health treatment; procedure for involuntary treatment.—

(3) PROCEDURE FOR INVOLUNTARY TREATMENT OF INMATES.— Involuntary mental health treatment of an inmate who refuses treatment that is deemed to be necessary for the appropriate care of the inmate and the safety of the inmate or others may be provided at a mental health treatment facility. The warden of the institution containing the mental health treatment facility shall petition the circuit court serving the county in which the mental health treatment facility is located for an order authorizing the treatment of the inmate. The inmate shall be provided with a copy of the petition along with the proposed treatment; the basis for the proposed treatment; the names of the examining experts; and the date, time, and location of the

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465 hearing. The inmate may have an attorney represent him or her at
 466 the hearing, and, if the inmate is indigent, the court must
 467 ~~shall~~ appoint the office of the public defender to represent the
 468 inmate at the hearing. If the office of the public defender
 469 withdraws from the appointment due to a conflict, the court must
 470 appoint a criminal conflict and civil regional counsel or
 471 private counsel pursuant to s. 27.40(1) to represent the inmate
 472 ~~at the hearing~~. An attorney representing the inmate shall have
 473 access to the inmate and any records, including medical or
 474 mental health records, which are relevant to the representation
 475 of the inmate.

476 Section 18. Subsection (2) of section 985.045, Florida
 477 Statutes, is amended to read:

478 985.045 Court records.—

479 (2) The clerk shall keep all official records required by
 480 this section separate from other records of the circuit court,
 481 except those records pertaining to motor vehicle violations,
 482 which shall be forwarded to the Department of Highway Safety and
 483 Motor Vehicles. Except as provided in ss. 943.053 and
 484 985.04(6)(b) and (7), official records required by this chapter
 485 are not open to inspection by the public, but may be inspected
 486 only upon order of the court by persons deemed by the court to
 487 have a proper interest therein, except that a child and the
 488 parents, guardians, or legal custodians of the child and their
 489 attorneys, law enforcement agencies, the Department of Juvenile
 490 Justice and its designees, the Florida Commission on Offender
 491 Review, the Department of Corrections, and the Justice
 492 Administrative Commission shall always have the right to inspect
 493 and copy any official record pertaining to the child. Offices of

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494 the public defender and criminal conflict and civil regional
 495 counsel offices shall have access to official records of
 496 juveniles on whose behalf they are expected to appear in
 497 detention or other hearings before an appointment of
 498 representation. The court may permit authorized representatives
 499 of recognized organizations compiling statistics for proper
 500 purposes to inspect, and make abstracts from, official records
 501 under whatever conditions upon the use and disposition of such
 502 records the court may deem proper and may punish by contempt
 503 proceedings any violation of those conditions.

504 Section 19. Except as otherwise expressly provided in this
 505 act, this act shall take effect July 1, 2022.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:

Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Alternating Chair*

November 15, 2021

The Honorable Chair Danny Burgess
308 Senate Office Building
400 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Burgess,

I would like to request that SB 596 Criminal Conflict & Civil Regional Councils and SB 598 Public Records Exemption/Criminal Conflict & Civil Regional Councils be heard in the next Judiciary Committee meeting.

In 2007, the Regional Councils were created to contain rapidly increasing costs of the state's obligation for defense counsel. They serve in a closely similar role as the Public Defender and these bills bring the statutes up to date.

This legislation aims to clarify the Regional Councils role in parts the Florida justice system and to provide much needed clarification on many operational facets of the Regional Councils. And, SB 598 allows for Regional Counsel state owned vehicles used by investigators to have a confidential license plate just as the investigators of similar offices.

I appreciate your favorable consideration.

Onward & Upward,

A handwritten signature in black ink that reads "Dennis Baxley".

Senator Dennis Baxley
Senate District 12

cc: Tom Cibula, Staff Director

DKB/dd

REPLY TO:

- ☐ 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- ☐ 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- ☐ 412 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

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

1/10/22

Meeting Date

Judiciary

Committee

516

Bill Number or Topic

516458

Amendment Barcode (if applicable)

offices of Criminal Control
+ Civil Regional Counsel

Name Candice Brower Phone

Address 227 N. Bronough St Email

Street

Tallahassee

City

FL

State

32301

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 596

Bill Number or Topic

1/10/22

Meeting Date

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

Judiciary

Committee

Amendment Barcode (if applicable)

Name

Candice Brower

Offices of Criminal
Conflict + Civil Regional Counsel

Phone

Address

227 N. Bronough St.

Email

Street

Tallahassee FL

32301

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
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While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 598

INTRODUCER: Judiciary Committee and Senator Baxley

SUBJECT: Public Records/Criminal Conflict and Civil Regional Counsel Office

DATE: January 11, 2022

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 - Technical Changes

I. Summary:

CS/SB 598 is the public records exemption linked to CS/SB 596. The bill exempts the records necessary to conceal that the owner or operator of a motor vehicle or vessel is an Office of Criminal Conflict and Civil Regional Counsel.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from the repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

This bill takes effect on the same date that CS/SB 596 or similar legislation takes effect. The bill is effective on July 1, 2021.

II. Present Situation:

The five Offices of Criminal Conflict and Civil Regional Counsel represent defendants in criminal cases where the office of a public defender has a conflict of interest. In the process of defending their clients, an Office of Criminal Conflict and Civil Regional Counsel, just like a public defender, may use the services of an investigator. Investigators are safer and more effective when their identity is confidential. One means that investigators have to maintain

confidentiality is through the use of false motor vehicle registrations. Currently, the records of the Department of Highway Safety and Motor Vehicles showing that the owner of a motor vehicle is a law enforcement agency, a state public defender, or the Attorney General's Medicaid Fraud Control Unit are exempt from public records law.¹

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.² 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.³

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 adopted in the rules of each house of the Legislature.⁴ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁵ Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

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.⁶

Section 119.011(12), F.S., defines “public records” to include:

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 connections with the transaction of official business by any agency.

¹ Section 320.025(3), F.S.

² FLA. CONST. art. I, s. 24(a).

³ *Id.*

⁴ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁵ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁶ 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.”

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁷

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.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹⁴ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁵ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁶

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

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 *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Id.*

¹⁶ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁷ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁸ public records or open meetings exemptions, with specified exceptions.¹⁹ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²⁰

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.²¹ 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;²²
- 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;²³ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²⁴

The Act also requires specified questions to be considered during the review process.²⁵ In examining an exemption, the Act directs the Legislature to 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.²⁶ 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

¹⁷ Section 119.15, F.S.

¹⁸ 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.

¹⁹ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²⁰ Section 119.15(3), F.S.

²¹ Section 119.15(6)(b), F.S.

²² Section 119.15(6)(b)1., F.S.

²³ Section 119.15(6)(b)2., F.S.

²⁴ Section 119.15(6)(b)3., F.S.

²⁵ 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?

²⁶ See generally s. 119.15, F.S.

for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁷

III. Effect of Proposed Changes:

CS/SB 598 adds Criminal Conflict and Civil Regional Counsels to the list of entities that may be issued confidential motor vehicle or vessel registration certificates and license plates or decals under a fictitious name.

This bill provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that all records relating to the application for a confidential registration certificate and registration license plate or decal submitted by an office of criminal conflict and civil regional counsel, and any other records necessary to carry out the intended purpose of s. 320.025, Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Investigations by an office of criminal conflict and civil regional counsel may be jeopardized by the registration of motor vehicles under the office's name or under the names of the office's investigators in that persons under investigation may acquire such registration information in order to seek retaliation against the office or its investigators. Authorizing offices of criminal conflict and civil regional counsel to obtain confidential registration certificates and registration license plates or decals in the same manner as other law enforcement agencies would better ensure the safety of the regional counsel offices' investigators in performing their official duties.

The bill is subject to the Open Government Sunset Review Act and is repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature

The bill takes effect on the same date as CS/SB 596 or similar legislation takes effect. The bill is effective on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁷ Section 119.15(7), F.S.

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 enacts a new exemption for certain motor vehicle and vessel registration records, 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, s. 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 investigators who work for an office of criminal conflict and civil regional counsel. This bill exempts only certain motor vehicle and vessel registration records from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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:

CS/SB 598 does not appear to have a fiscal impact on state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 320.025, 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 January 10, 2022:

The committee substitute references CS/SB 596, a linked substantive bill.

B. Amendments:

None.



281032

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Baxley) recommended the following:

Senate Amendment

Delete line 57
and insert:
SB 596 or similar legislation takes effect, if such legislation

By Senator Baxley

12-00604-22

2022598__

A bill to be entitled

An act relating to public records; amending s.

320.025, F.S.; expanding a public records exemption to include all records pertaining to a registration application submitted by any criminal conflict and civil regional counsel office; providing for future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (3) of section 320.025, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

320.025 Registration certificate and license plate or decal issued under fictitious name; application.—

(3) This section constitutes an exception to other statutes relating to falsification of public records, false swearing, and similar matters. All records relating to the registration application of the Attorney General's Medicaid Fraud Control Unit, a law enforcement agency, ~~or any state public defender's office,~~ or any office of criminal conflict and civil regional counsel, and records necessary to carry out the intended purpose of this section, are exempt from ~~the provisions of~~ s. 119.07(1), and s. 24(a), Art. I of the State Constitution as long as the information is retained by the department. This section does not prohibit other personations, fabrications, or creations of false identifications by the Attorney General's Medicaid Fraud Control

Page 1 of 3

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

12-00604-22

2022598__

Unit, ~~or~~ law enforcement or public defender's officers, or a regional counsel office in the official performance of covert operations.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all records relating to the application for a confidential registration certificate and registration license plate or decal submitted by an office of criminal conflict and civil regional counsel, and any other records necessary to carry out the intended purpose of s. 320.025, Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Investigations by an office of criminal conflict and civil regional counsel may be jeopardized by the registration of motor vehicles under the office's name or under the names of the office's investigators in that persons under investigation may acquire such registration information in order to seek retaliation against the office or its investigators. Authorizing offices of criminal conflict and civil regional counsel to obtain confidential registration certificates and registration license plates or decals in the same manner as other law enforcement agencies would better ensure the safety of the regional counsel offices' investigators in performing their official duties.

Section 3. This act shall take effect on the same date that SB ____ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension

Page 2 of 3

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

12-00604-22

2022598__

59 | thereof and becomes a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:

Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Alternating Chair*

November 15, 2021

The Honorable Chair Danny Burgess
308 Senate Office Building
400 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Burgess,

I would like to request that SB 596 Criminal Conflict & Civil Regional Counsels and SB 598 Public Records Exemption/Criminal Conflict & Civil Regional Counsels be heard in the next Judiciary Committee meeting.

In 2007, the Regional Counsels were created to contain rapidly increasing costs of the state's obligation for defense counsel. They serve in a closely similar role as the Public Defender and these bills bring the statutes up to date.

This legislation aims to clarify the Regional Counsels role in parts the Florida justice system and to provide much needed clarification on many operational facets of the Regional Counsels. And, SB 598 allows for Regional Counsel state owned vehicles used by investigators to have a confidential license plate just as the investigators of similar offices.

I appreciate your favorable consideration.

Onward & Upward,

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

Senator Dennis Baxley
Senate District 12

cc: Tom Cibula, Staff Director

DKB/dd

REPLY TO:

- ☐ 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- ☐ 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- ☐ 412 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

598

Bill Number or Topic

281032

Amendment Barcode (if applicable)

Meeting Date

1/10/22

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

Committee

Judiciary

Name

Gandice Brower - offices of Criminal Conflict & Civil Regional Council

Phone

Address

227 N. Bronough St

Email

Street

Tallahassee FL 32301

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

SB 598
Bill Number or Topic

1/10/22
Meeting Date
Judiciary
Committee

Name Candice Brower - offices of Criminal Conflict - civil Regional Counsel Phone _____
Amendment Barcode (if applicable)

Address 227 N. Bronough St Email _____
Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11,045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 360

INTRODUCER: Senator Harrell

SUBJECT: Traveling Across County Lines to Commit a Burglary

DATE: January 7, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones	CJ	Favorable
2. Davis	Cibula	JU	Favorable
3. _____	_____	RC	_____

I. Summary:

SB 360 amends s. 843.22, F.S., which provides an enhanced penalty for persons who travel across county lines with the intent to commit a burglary. This bill removes the requirement that the purpose of the travel must have been to thwart law enforcement attempts to track the items stolen in the burglary.

This bill may have a positive indeterminate prison bed impact. See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2022.

II. Present Situation:

Organized theft is a growing problem across the country. Offenders who travel for the purpose of committing theft, fraud, and ID theft are often referred to as “felony lane gangs.” The term “felony lane gang” was given to the groups of thieves because they often cash stolen checks using stolen driver licenses in a bank’s drive through lane located farthest from video cameras and tellers to avoid detection.¹ Felony lane gangs originated in south Florida, and according to the FBI, these gangs often commit bank fraud after smash-and-grab theft of identity documents.² This type of crime scheme has not only occurred throughout Florida, but has become an interstate criminal organization. Recently, several members of a felony lane gang based in

¹ U.S. Immigration and Customs Enforcement, *Leader of Florida’s Million Dollar ‘Felony Lane Gang’ Sentenced to More Than 15 Years in Prison* (March 10, 2014) <https://www.ice.gov/news/releases/leader-floridas-million-dollar-felony-lane-gang-sentenced-more-15-years-prison>.

² South Florida Sun Sentinel, *Is the Felony Lane Gang at it again? Man held in ID theft heist*, Mario Ariza, September 17, 2019, available at <https://www.sun-sentinel.com/news/crime/fl-ne-felony-lane-gang-again-20190917-xnbass6zhbbvdpdb4hhcw5qui-story.html> (last visited Jan. 5, 2022).

Florida were arrested and indicted in Oregon after they traveled there for the purpose of burgling vehicles and committing bank fraud and identity theft.³

Similarly, organized retail theft continues to be a problem. A crime and safety analyst for News4Jax has stated that it is difficult to track down retail theft suspects because “they’re always in motion. They’re always moving. . . . You have to have a defined suspect, basically, have them on surveillance more than once.”⁴ In 2019, Florida Department of Law Enforcement (FDLE) agents arrested three individuals who were suspected of an elaborate scheme that stole merchandise worth thousands of dollars from retailers across the southeast, the suspects printed and affixed false UPC barcodes in the place of valid barcodes in Target and Home Depot stores, completing more than 100 thefts in 23 Florida counties. Grand theft was among the charges filed against at least one of the suspects.⁵

Burglary

Section 810.02(1), F.S., provides that a person commits burglary by:

- Entering a dwelling,⁶ structure,⁷ or conveyance⁸ with the intent to commit an offense therein, unless the premises are open to the public or the person’s entry is licensed or invited; or
- Notwithstanding a licensed or invited entry, remaining in a dwelling, structure, or conveyance:
 - Surreptitiously, with the intent to commit an offense therein;
 - After permission to remain is withdrawn, with the intent to commit an offense therein; or

³ The Department of Justice, United States Attorney’s Office, District of Oregon, *Felony Lane Gang Member Sentenced in Bank Fraud Scheme*, May 3, 2021, available at <https://www.justice.gov/usao-or/pr/felony-lane-gang-member-sentenced-bank-fraud-scheme> (last visited Jan. 5, 2022).

⁴ News4Jax, *Theft ring stole at least \$83K in merchandise from home improvement stores*, Allyson Henning, June 20, 2019, available at [https://www.news4jax.com/news/2019/06/21/theft-ring-stole-at-least-83k-in-merchandise-from-home-improvement-stores/#:~:text=Theft%20ring%20stole%20at%20least%20\\$83K%20in%20merchandise,stores%20between%202017%20and%202019,%20police%20reports%20show](https://www.news4jax.com/news/2019/06/21/theft-ring-stole-at-least-83k-in-merchandise-from-home-improvement-stores/#:~:text=Theft%20ring%20stole%20at%20least%20$83K%20in%20merchandise,stores%20between%202017%20and%202019,%20police%20reports%20show) (last visited Jan. 5, 2022).

⁵ News4Jax, *FDLE busts multi-state organized retail theft ring*, Steve Patrick, November 25, 2019, available at <https://www.news4jax.com/news/2019/11/25/fdle-arrests-3-for-multi-state-organized-theft-ring/> (last visited Jan. 5, 2022).

⁶ Section 810.011(2), F.S., defines “dwelling,” to mean a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under chapter 252 and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08 only, the term includes such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

⁷ Section 810.011(1), F.S., defines “structure,” to mean a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under chapter 252 and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08 only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

⁸ Section 810.011(3), F.S., defines “conveyance,” to mean any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and “to enter a conveyance” includes taking apart any portion of the conveyance. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under chapter 252 and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08 only, the term “conveyance” means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist.

- To commit or attempt to commit a forcible felony.⁹

A burglary is a felony offense classified according to the offense's specific circumstances, as follows:

- Unarmed burglary of an unoccupied structure or unoccupied conveyance (no assault or battery) is a Level 4 third degree felony.¹⁰
- Unarmed burglary of an occupied structure (no assault or battery) is a Level 6 second degree felony.¹¹
- Unarmed burglary of a dwelling, an occupied conveyance, or an authorized emergency vehicle (no assault or battery) is a Level 7 second degree felony.¹²
- Burglary is a Level 8 first degree felony punishable by a terms of years not exceeding life imprisonment if, in the course of committing the offense, the offender:
 - Makes an assault or battery upon any person;
 - Is or becomes armed within the dwelling, structure, or conveyance, with explosives or a dangerous weapon; or
 - Enters an occupied or unoccupied dwelling or structure, and:
 - Uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense, and thereby damages the dwelling or structure; or
 - Causes damage to the dwelling or structure, or to property within the dwelling or structure in excess of \$1,000.¹³

Traveling Across County Lines

In 2014, as a response to a “wave” of burglaries in Florida, the Legislature enacted laws to reclassify the crime of burglary to a higher degree when the offender traveled to commit the crime. The Sheriff of Martin County in 2013 stated that traditional law enforcement methods, “such as using local pawn shop databases . . . , confidential informants . . . proactive police patrols, . . . or targeted patrols,” become less effective with these crimes. According to the Sheriff, it is difficult for law enforcement to establish a pattern and track criminals when they travel from their home county to neighboring counties to commit crimes.¹⁴

Section 843.22, F.S., provides that if a person who commits a burglary travels any distance with the intent to commit the burglary in a county in this state other than the person's county of residence, the degree of the burglary is reclassified to the next higher degree if the purpose of the person's travel is to thwart law enforcement attempts to track the items stolen in the burglary.¹⁵

⁹ A “forcible felony” is treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. Section 776.08, F.S.

¹⁰ Sections 810.02(4)(a) and (b) and 921.0022(3)(d), F.S.

¹¹ Sections 810.02(3)(c) and 921.0022(3)(f), F.S.

¹² Sections 810.02(3)(a), (b), (d), and (e) and 921.0022(3)(g), F.S.

¹³ Sections 810.02(2)(a)2. and 921.0022(3)(h), F.S.

¹⁴ WFSU News, *Sheriff Enlists Legislative Help to Crack Down on Growing Problem: ‘Pillowcase Burglars,’* Sascha Cordner, December 18, 2013, available at <https://news.wfsu.org/state-news/2013-12-18/sheriff-enlists-legislative-help-to-crack-down-on-growing-problem-pillowcase-burglars> (last visited Jan. 5, 2022).

¹⁵ Section 843.22(2), F.S.

County of residence is the county within this state that a person resides. Evidence of a person's county of residence includes, but is not limited to:

- The address on a person's driver license or state identification card;
- Records of real property or mobile home ownership;
- Records of a lease agreement for residential property;
- The county in which a person's motor vehicle is registered;
- The county in which a person is enrolled in an educational institution; and
- The county in which a person is employed.¹⁶

For purposes of sentencing, a burglary that is reclassified under this section is ranked one level above the ranking specified in s. 921.0022 or s. 921.0023, F.S., for the offense committed.¹⁷

Severity Ranking Chart

Section 921.0022(1) and (2), F.S., provides the offense severity ranking chart that must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998. The chart has 10 offense levels, ranked from least severe to most severe.

Section 921.0023, F.S., provides that until the Legislature specifically assigns an offense to a severity level in the offense severity ranking chart, the severity level is within the following parameters:

- A third degree felony is within offense level 1;
- A second degree felony is within offense level 4;
- A first degree felony is within offense level 7;
- A first degree punishable by life felony is within offense level 9; and
- A life felony is within offense level 10.

Reclassification

Florida currently has various statutes that reclassify criminal offenses under specified circumstances. Generally, criminal laws provide for reclassification to the next highest degree. Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony. These are the maximum sentences provided in statute:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.¹⁸

¹⁶ Section 843.22(1)(a), F.S.

¹⁷ Section 843.22(2), F.S.

¹⁸ Section 775.082, F.S. (maximum penalties). Fines may also be imposed, and those fines escalate based on the degree of the offense. Section 775.082, F.S., provides the following maximum fines: \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

Examples of criminal offenses that provide for such reclassification include, in part:

- A violation of driving while a license is suspended is a second degree misdemeanor for a first offense.¹⁹ A second or subsequent conviction is reclassified from a second degree misdemeanor to a first degree misdemeanor.²⁰ Further, a third or subsequent conviction is reclassified to a third degree felony if the violation or the most recent prior conviction is related to a violation of specified driving offenses.²¹
- A violation of the theft statute under s. 812.014, F.S., for petit theft offenses are reclassified when a person has prior theft convictions.²² For example, a petit theft where the property is valued at \$100 or more, but less than \$750, is a first degree misdemeanor²³ but a person who commits petit theft and who previously was convicted two or more times for a theft commits a third degree felony.²⁴

III. Effect of Proposed Changes:

This bill amends s. 843.22, F.S., which provides an enhancement for persons who travel across county lines with the intent to commit a burglary. This bill removes the requirement that the purpose of the travel must have been to thwart law enforcement attempts to track the items stolen in the burglary.

This bill is effective October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

¹⁹ Section 322.34(2)(a), F.S.

²⁰ Section 322.34(2)(b), F.S.

²¹ Section 322.34(2)(c), F.S. The enumerated specified offenses include driving under the influence; refusal to submit to a urine, breath-alcohol, or blood alcohol test; a traffic offense causing death or serious bodily injury; or fleeing and eluding.

²² Sections 812.014(3)(b), and (c), F.S.

²³ Section 812.014(2)(e), F.S.

²⁴ Section 812.04(3)(c), F.S.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not reviewed this legislation. However, SB 360 may have a positive indeterminate prison bed impact due to the increased number of offenders who may be sentenced to prison under this enhancement. Removing the requirement to prove that purpose of the travel must have been to thwart law enforcement attempts to track the items stolen may increase the number of offenders who qualify for this enhancement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 843.22 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

By Senator Harrell

25-00578-22

2022360__

A bill to be entitled

An act relating to traveling across county lines to commit a burglary; amending s. 843.22, F.S.; deleting a requirement that travel across county lines be for a specified purpose in order to reclassify a burglary offense; providing an effective date.

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

Section 1. Subsection (2) of section 843.22, Florida Statutes, is amended to read:

843.22 Traveling across county lines with intent to commit a burglary.—

(2) If a person who commits a burglary travels any distance with the intent to commit the burglary in a county in this state other than the person's county of residence, the degree of the burglary shall be reclassified to the next higher degree ~~if the purpose of the person's travel is to thwart law enforcement attempts to track the items stolen in the burglary.~~ For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a burglary that is reclassified under this section is ranked one level above the ranking specified in s. 921.0022 or s. 921.0023 for the burglary committed.

Section 2. This act shall take effect October 1, 2022.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GAYLE HARRELL
25th District

COMMITTEES:
Transportation, *Chair*
Military and Veterans Affairs, Space,
and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Children, Families, and Elder Affairs
Finance and Tax
Reapportionment

SELECT SUBCOMMITTEE:
Select Subcommittee on Congressional
Reapportionment

November 30, 2021

Senator Danny Burgess
308 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Burgess,

I respectfully request that **SB 360 – Traveling Across County Lines** be placed on the next available agenda for the Judiciary Committee Meeting.

SB 360 passed Criminal Justice Committee unanimously.

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

Thank you,

A handwritten signature in blue ink that reads "Gayle".

Senator Gayle Harrell
Senate District 25

Cc: Tom Cibula, Staff Director
Celia Georgiades, Committee Administrative Assistant

REPLY TO:

- ☐ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
- ☐ 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

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

1/10/22
Meeting Date

Judiciary
Committee

360

Bill Number or Topic

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Phone _____

Address 134 E Colonial Dr
Street

Email _____

Orlando FL 32801
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

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

Florida Rising + Florida Immigrant Coalition

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

1-30022

360

Meeting Date

Bill Number or Topic

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

Amendment Barcode (if applicable)

Name Judiciary
Barbara Devane

Phone 850-251-4280

Address 425 E. Broadway St

Email barbadevane1@yahoo.com

Tallahassee FL 32308
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing: FL NOW

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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1/10/22
Meeting Date

Judiciary
Committee

SB 360
Bill Number or Topic

Amendment Barcode (if applicable)

Name Letitia Harmon Phone _____

Address 1010 N. Davis St Email Letitia@floridarisings.org
Street

Jacksonville, FL
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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1/10/22
Meeting Date

360
Bill Number or Topic

Judiciary
Committee

Amendment Barcode (if applicable)

Name

SEN. DWIGHT BURTON

Phone

Address

10800 Biscayne Blvd.

Email

Street

MIAMI

City

FL

State

33161

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

1/10/22

Meeting Date

SB 360

Bill Number or Topic

JULIANY

Committee

Amendment Barcode (if applicable)

Name REV DR RUSSELL MEYER

Phone 813 763 3610

Address 1308 WINDSOR PL

Street

Email russellmeyer@att.net

JACKSONVILLE

City

State

32205

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

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

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 336

INTRODUCER: Judiciary Committee and Senator Berman

SUBJECT: Uniform Commercial Code

DATE: January 11, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Favorable
2. <u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3. _____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 336 amends Florida's Uniform Commercial Code. The bill addresses a potential conflict between Florida's Uniform Commercial Code and statutes that govern the transferability of ownership interests in three business entities: general partnerships, limited partnerships, and limited liability companies.

Florida's UCC currently supports the free transferability of intangible rights, such as ownership rights, by providing "override" provisions that would override or prohibit any restrictions on the transferability of those rights. However, when the override provisions are applied to these three business entities, the statutes seem to interfere with what is referred to as the "pick-your-partner" principle.

The "pick-your-partner" principle recognizes that owners of small businesses have the right to "pick" who their co-owners will be. In general terms, the principle protects members and partners in these businesses ventures from being forced, by law, into business relationships with a stranger or someone they never wanted to do business with. This situation occurs when someone pledges his or her ownership interest as collateral for a loan and defaults on the loan. The creditor then seeks to enforce his or her secured interest in the business and exercise ownership rights. The bill clarifies that the override provisions do not apply to limits on the transferability of ownership interests found in general partnerships, limited partnerships, or limited liability companies.

The bill amends ss. 679.4061 and 679.4081, F.S., of the Florida Uniform Commercial Code to reflect updates made to Article 9 of the UCC in 2018. These amendments are designed to simplify the interaction of a general partnership's, a limited partnership's, or a limited liability company's ownership interest with that of a creditor who seeks to enforce its secured interest in the entity.

The Florida Business Law Section recommends these changes to clarify applicable law and reduce the potential for litigation over these issues.¹

II. Present Situation:

The Uniform Commercial Code and Article 9

The model Uniform Commercial Code (UCC) is a comprehensive group of laws that govern commercial transactions throughout the country. The UCC is not a federal law, but rather a “uniformly adopted state law.”² This uniformity among state laws is necessary for businesses to conduct interstate transactions and gives them the confidence that commercial terms will be interpreted and enforced consistently by courts in different states.³ The UCC was created to simplify the law that governs commercial transactions—especially contracts.⁴ Florida's UCC substantially reflects the model UCC. The Legislature has periodically amended Florida's UCC in accordance with updates made to the model UCC.

Florida's UCC, codified in chs. 670-680, F.S., is based on the model UCC that was drafted, and is periodically updated, by a joint committee of the American Law Institute and the Uniform Law Commission.⁵ The UCC governs specific contracts and commercial transactions that are based on the effect of a contract.

Article 9 of the UCC creates a framework of laws that govern items known as secured transactions. A secured transaction is an agreement in which one party gives property to the other party as security, or collateral, for a loan.⁶ This transaction creates a security interest.⁷ Article 9 of the UCC, Secured Transactions, was created to protect a secured creditor's interest from being destroyed by a third person. The article specifically governs transfers of personal property (security interests) to secure loans, but also applies to outright sales of certain personal property.

¹ Florida Business Law Section, *Proposed Amendments to Fla. Stat. §§679.4061 and 679.4081 Executive Summary*, p. 2, available at <http://www.flabizlaw.org/files/Summary%20and%20Materials%20-%20UCC%209-406%20and%209-408%20Amendments%20%28v2%29.pdf> (last visited Jan. 3, 2022).

² Uniform Law Commission, *Uniform Commercial Code, Summary*, <https://www.uniformlaws.org/acts/ucc>.

³ *Id.*

⁴ 47 FLA. JUR 2D SECURED TRANSACTIONS s. 1 (Sept. 2021), Uniform Commercial Code, generally; Article 9. *See also*, s. 671.102, F.S.

⁵ The American Law Institute, *Uniform Commercial Code UCC*, <https://www.ali.org/publications/show/uniform-commercial-code/> (last visited Jan. 3, 2022). Forty-nine states have adopted language based on the model UCC; Louisiana has adopted most of the model UCC, but deviates to maintain certain provisions of its civil code.

⁶ U.S. Department of the Interior, *Indian Affairs, Why Secured Transactions are Important*, <https://www.indianaffairs.gov/service/running-business/why-are-secured-transactions-important>.

⁷ 47 FLA. JUR 2D SECURED TRANSACTIONS s. 21 *Transactions or Interests Subject to Article 9, Generally* (2021).

For example, a transaction that creates a debt in exchange for an interest in a debtor's personal property is subject to Article 9. If the debtor in such a transaction defaults, the creditor may repossess and sell the property (collateral) to satisfy the debt. The creditor's interest, if recorded (perfected) in accordance with the protocols required by Article 9, is called a "security interest." Article 9 is codified in Florida law mainly in ch. 679, F.S., "Uniform Commercial Code—Secured Transactions."

Article 9: Anti-Assignment Override Provisions

Sections 679.4061 and 679.4081, F.S., mirror the *former* anti-assignment override provisions of Article 9 of the model UCC.⁸ Those provisions voided legal or contractual provisions that restricted the transfer of ownership interests, including the grant or enforcement of security interests. The anti-assignment override provisions were drafted to ensure the transferability of property interests and other security interests subject to Article 9. However, the model UCC has since been updated to clarify that the override provisions do not apply to general partnerships, limited partnerships, or limited liability companies.

Section 679.4061, F.S., applies to restrictions created by agreement that require an account debtor's⁹ consent to transfer a security interest in a payment intangible (but not the outright sale of a payment intangible), an account, a chattel paper, and a promissory note.

Section 679.1021(1)(iii), F.S., defines a payment intangible as "a general intangible under which the account debtor's principal obligation is a monetary obligation." For purposes of this legislation—a payment intangible is the economic interest portion, and not the governance interest portion, of a member or partner's ownership interest in a general partnership, limited partnership, or a limited liability company (LLC). Stated simply—it is the monetary interest in the business entity.¹⁰ An important distinction in this section is that the restriction must be found in an agreement with an entity, such as the limited liability company or general partnership (the account debtor)—not an individual person, such as the co-owner.

Section 679.4081, F.S., prohibits restrictions on the transfer of general intangibles. It further invalidates laws or rules that restrict such transfers. Section 679.1021(1)(pp), F.S., defines a general intangible as "any personal property, including . . . payment intangibles." Therefore, s. 679.4081, F.S., prohibits specific restrictions on the following transactions:

- The outright sale of a payment intangible;
- The outright sale of ordinary security interests in general intangibles that are not payment intangibles (i.e., most complete ownership interests, as well as an interest in the member's governance interest alone); and
- The outright sale of economic rights.

⁸ Sections 9-406 and 9-408 of the U.C.C.

⁹ Section 679.1021(1)(c), F.S., defines an "account debtor" as a person who is obligated on an account, chattel paper, or general intangible. For purposes of this analysis, an account debtor is usually the business entity itself, rather than a member of the LLC, or a partner in a general partnership.

¹⁰ Carl Bjerre, Daniel Kleinberger, Edwin Smith, and Steven Weise, *LLC and Partnership Transfer Restrictions Excluded From UCC Article 9 Overrides* (Feb. 7, 2019), <https://businesslawtoday.org/2019/02/llc-partnership-transfer-restrictions-excluded-ucc-article-9-overrides/> (last visited Jan. 3, 2022).

Again, however; s. 679.4081, F.S., applies only in transactions where the restriction comes from the account debtor—or business entity—not a co-owner or fellow partner.

In 2018, the National Conference of Commissioners on Uniform State Laws and the American Law Institute revised Article 9 to provide that the anti-assignment override provisions “do not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.” These amendments are designed to eliminate potential conflicts between Article 9 and the pick-your-partner principle within partnership and LLC law.¹¹ As of November 2021, Colorado, Delaware, Texas, North Carolina, and Virginia had at least partially adopted language similar in effect to the ALI’s 2018 Article 9 revisions. Seven other states, Alabama, Kansas, Kentucky, Maine, Mississippi, New Hampshire, and Ohio have amended their limited liability company, limited partnership, and partnership statutes to address these potential conflicts.¹²

Business Organizations and the “Pick-Your-Partner” Principle

The pick your partner principle allows a co-owner of a privately held business to determine who else may serve as a co-owner, usually by requiring express permission or a related action from a co-owner or the business entity to transfer his or her ownership interest to another party.¹³ A partner or member’s ownership interest in the business organization consists of governance rights and economic rights.¹⁴ Most LLC or partnership interests are classified as a general intangible under ch. 679, F.S. However, the economic interest portion of a member’s ownership interest is classified as a payment intangible.¹⁵

In conflict with ss. 679.4061 and 679.4081, F.S., Florida LLC law states that a member cannot transfer his or her full ownership interest in the LLC, but may transfer his or her economic interest. Additionally, s. 605.0502 F.S., permits co-owners of an LLC or partnership to contractually add additional restrictions to the transfer of an ownership interest, including a restriction on the transfer of any of the ownership interest. These limitations reduce the economic value of a member’s interest and help to ensure that the LLC or partnership continues to exist in its original form—a closely held business operated with a known individual or group.¹⁶

The Florida Business Law Section illustrates the conflict as follows:

Two individuals go into business together and form an LLC. Each owner is a 50/50 member in the LLC. Their operating agreement (like most operating agreements) restricts the ability of one member to convey or encumber their

¹¹ Florida Business Law Section, *Proposed Amendments to Fla. Stat. §§679.4061 and 679.4081 Executive Summary*, p. 2, available at <http://www.flabizlaw.org/files/Summary%20and%20Materials%20-%20UCC%209-406%20and%209-408%20Amendments%20%28v2%29.pdf> (last visited Jan. 3, 2022).

¹² Uniform Law Commission, *State Overrides of UCC 9-406 and 9-408*, (November 2021) (on file with the Senate Committee on Judiciary).

¹³ Bjerre, et al., *supra* note 10.

¹⁴ Bjerre, et al., *supra* note 10, at 2.

¹⁵ Florida Business Law Section, *supra* note 11 at 1.

¹⁶ See Hank Jackson, *Anatomy of a Business Divorce: Florida LLCs*, FLA. BAR JOURNAL, Vol. 95, No. 3, p. 8 (May/June 2021), available at <https://www.floridabar.org/the-florida-bar-journal/anatomy-of-a-business-divorce-florida-llcs/#u6a6b> (last visited Jan. 3, 2022).

membership interest without the consent of the other member, in keeping with the “pick your partner” principle engrained in LLC and partnership law. If one partner unilaterally encumbered their 50% membership interest to secure a personal loan from a bank (in violation of the operating agreement), then arguably, Section 9-406 and 9-408 would “override” the restriction in the operation agreement. If the member defaulted on the loan, the lender could foreclose on its security interest in the LLC membership interest and take ownership of the membership interest. The other member would now be saddled with a bank as its new business partner, a result not contemplated or permitted by the members’ contract (the operating agreement).

Some firms attempt to transact their way out of the anti-assignment override provision by creating their ownership interests in the business entity as an investment security, which is subject to Article 8 of the model UCC instead of Article 9. However, this requires additional legal structuring at the outset, and does not shield the interest from litigation over its classification.¹⁷

III. Effect of Proposed Changes:

Sections 1 and 2 of the bill exclude ownership interests in a general partnership, a limited partnership, or an LLC from the “anti-assignment override” provisions found in ss. 679.4061 and 679.4081, F.S., respectively. Therefore, the bill gives priority to a statute or agreement that restricts the transfer of a general intangible (ownership interest) and a security interest in a payment intangible (the monetary interest portion of an ownership interest) within the context of a general partnership, limited partnership, or LLC.

The bill will conform Florida’s version of the UCC to reflect the 2018 updates made to Article 9 of the model UCC by the National Conference of Commissioners on Uniform State Laws and the American Law Institute to void the “anti-assignment override” provisions in the context of a general partnership, a limited partnership, or a limited liability company.

The bill takes effect January 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁷ Bjerre, et al., *supra* note 10, at 6.

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:

This clarification may reduce transaction costs incurred when establishing specific business entities by removing the need to “opt-in” to Article 8 by defining the underlying ownership interests as a security, which is not subject to ch. 679, F.S. Additionally, this clarification may reduce litigation costs related to disputes of the character of an ownership interest in a general partnership, limited partnership, or limited liability company.¹⁸

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: 679.4061 and 679.4081.

¹⁸ Florida Business Law Section, *Proposed Amendments to Fla. Stat. §§679.4061 and 679.4081 Executive Summary*, p. 2, available at <http://www.flabizlaw.org/files/Summary%20and%20Materials%20-%20UCC%209-406%20and%209-408%20Amendments%20%28v2%29.pdf> (last visited Jan. 4, 2022).

IX. Additional Information:

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

CS by Judiciary on January 10, 2022:

The committee substitute changes the effective date of the bill from July 1, 2022 to January 1, 2023.

- B. **Amendments:**

None.



296532

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/10/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Berman) recommended the following:

Senate Amendment

Delete line 110
and insert:
Section 3. This act shall take effect January 1, 2023.

By Senator Berman

31-00115-22

2022336__

A bill to be entitled

An act relating to the Uniform Commercial Code; amending ss. 679.4061 and 679.4081, F.S.; providing that certain restrictions on the effectiveness of terms in specified agreements and the effectiveness of certain rules of law, statutes, or regulations related to the discharge of account debtors and certain restrictions on the assignment of promissory notes, health-care-insurance receivables, and certain general intangibles, respectively, do not apply to a security interest in an ownership interest in a general partnership, a limited partnership, or a limited liability company; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (4) and (6) of section 679.4061, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

679.4061 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.—

(4) Except as otherwise provided in subsections (5) and (12) ~~subsection (5)~~ and ss. 680.303 and 679.4071, and subject to subsection (8), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

Page 1 of 4

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

31-00115-22

2022336__

(a) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(6) Except as otherwise provided in subsection (12) and ss. 680.303 and 679.4071, and subject to subsections (8) and (9), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(a) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination,

Page 2 of 4

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

31-00115-22

2022336__

or remedy under the account or chattel paper.

(12) Subsections (4), (6), and (11) do not apply to a security interest in an ownership interest in a general partnership, a limited partnership, or a limited liability company.

Section 2. Subsections (1) and (3) of section 679.4081, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

679.4081 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.—

(1) Except as otherwise provided in subsections (2) and (8) ~~subsection (2)~~, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(a) Would impair the creation, attachment, or perfection of a security interest; or

(b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general

31-00115-22

2022336__

intangible.

(3) Except as otherwise provided in subsection (8), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(a) Would impair the creation, attachment, or perfection of a security interest; or

(b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(8) This section does not apply to a security interest in an ownership interest in a general partnership, a limited partnership, or a limited liability company.

Section 3. This act shall take effect July 1, 2022.



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: November 2, 2021

I respectfully request that **Senate Bill #336**, relating to Uniform Commercial Code, be placed on the:

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

A handwritten signature in cursive script, reading "Lori Berman", is written over a horizontal line.

Senator Lori Berman
Florida Senate, District 31

cc: Senator Audrey Gibson, Vice Chair
Tom Cibula, Staff Director

State Adoptions of 2018 Amendments to UCC Sections 9-406 and 9-408

Last Updated 11/1/21

State	Amend §9-406	Comments	Amend §9-408	Comments	Amend LLC Act	Comments	Amend LP Act	Comments	Amend Partnership Act	Comments
Alabama	No		No		Yes. Ala. Code § 10A-5A-1.06	“(e) Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto, do not apply to any interest in a limited liability company, including all rights, powers, and interests arising under a limited liability company agreement or this chapter. This provision prevails over Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto, and is expressly intended to permit the enforcement of the provisions of a limited liability company agreement that would otherwise be ineffective under sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto.”	Yes Ala. Code § 10A-9A-1.07	“(f) Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto, do not apply to any interest in a limited partnership, including all rights, powers, and interests arising under a partnership agreement or this chapter. This provision prevails over Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto, and is expressly intended to permit the enforcement of the provisions of a partnership agreement that would otherwise be ineffective under sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto.”	Yes Ala. Code § 10A-8A-1.07	“(f) Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto, do not apply to any interest in a partnership, including all rights, powers, and interests arising under a partnership agreement or this chapter. This provision prevails over Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto, and is expressly intended to permit the enforcement of the provisions of a partnership agreement that would otherwise be ineffective under Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto.”
Alaska	No		No		No		No		No	
Arizona	No		No		No		No		No	
Arkansas	No		No		No		No		No	
California	No		No		No		No		No	
Colorado	Yes Colo. Rev. Stat. § 4-9-406	“(l) As specified in section 7-90-104, C.R.S., subsections (d) to (f) of this section do not apply to the assignment or the transfer of, or the creation of a security interest in, an owner’s interest as defined in section 7-90-102(44), C.R.S.”	Yes Colo. Rev. Stat. § 4-9-408	“(g) As specified in section 7-90-104, C.R.S., this section does not apply to the assignment or the transfer of, or the creation of a security interest in, an owner’s interest as defined in section 7-90-102(44), C.R.S.”	Yes Colo. Rev. Stat. § 7-90-104 (2015)	“Sections 4-9-406 and 4-9-408, C.R.S., shall not apply to an owner’s interest.”	Yes Colo. Rev. Stat. § 7-90-104 (2015)	“Sections 4-9-406 and 4-9-408, C.R.S., shall not apply to an owner’s interest.”	Yes Colo. Rev. Stat. § 7-90-104 (2015)	“Sections 4-9-406 and 4-9-408, C.R.S., shall not apply to an owner’s interest.”
Connecticut	No		No		No		No		No	

State Adoptions of 2018 Amendments to UCC Sections 9-406 and 9-408

Last Updated 11/1/21

State	Amend §9-406	Comments	Amend §9-408	Comments	Amend LLC Act	Comments	Amend LP Act	Comments	Amend Partnership Act	Comments
Delaware	Yes De. Code. Ann. Tit. 6, § 9-406 (West 2015)	Specific provision subsection (i)(5)	Yes De. Code. Ann. tit. 6, § 9-408 (West 2015)	Specific provision subsection (e)	Yes Del. Code. Ann. tit. 6, § 18-1101 (West 2015)	“(g) Sections 9-406 and 9-408 of this title do not apply to any interest in a limited liability company, including all rights, powers and interests arising under a limited liability agreement or this chapter. This provision prevails over §§ 9-406 and 9-408 of this title.”	Yes Del. Code Ann. tit. 6, § 17-1101 (West 2015)	“(g) Sections 9-406 and 9-408 of this title do not apply to any interest in a limited partnership, including all rights, powers and interests arising under a partnership agreement or this chapter. This provision prevails over §§ 9-406 and 9-408 of this title.”	Yes Del. Code Ann. tit. 6, § 15-104 (West 2015)	“(c) Sections 9-406 and 9-408 of this title do not apply to any interest in a domestic partnership, including all rights, powers and interests arising under a partnership agreement or this chapter. This provision prevails over §§ 9-406 and 9-408 of this title.”
DC	No		No		No		No		No	
Florida	Bill introduced	Florida SB 336 (2021) – Introduced Sept. 23, 2021 Hearing scheduled 11/2/21	Bill introduced	Florida SB 336 (2021) – Introduced Sept. 23, 2021 Hearing scheduled 11/2/21	No		No		No	
Georgia	No		No		No		No		No	
Hawaii	No		No		No		No		No	
Idaho	No		No		No		No		No	
Illinois	No		No		No		No		No	
Indiana	No		No		No		No		No	
Iowa	No		No		No		No		No	
Kansas	No		No		Yes K.S.A. § 17-76, 134	“(g) K.S.A. 84-9-406 and 84-9-408, and amendments thereto, do not apply to any interest in a limited liability company, including all rights, powers and interests arising under an operating agreement or this act. This provision prevails over K.S.A. 84-9-406 and 84-9-408, and amendments thereto.”	No		No	
Kentucky	No		No		Yes Ky. Rev. Stat. Ann. § 275.255	“(4) Limitations upon the assignment or pledge of a membership interest set forth or adopted in accordance with this section shall be enforced notwithstanding KRS 355.9-406 and 355.9-408.”	Yes Ky. Rev. Stat. Ann. § 362.2-702 (West 2015)	“(8) Limitations upon transfer set forth in KRS 362.2-701 to 362.2-704 or adopted by the partners in accordance with this subchapter are enforceable notwithstanding KRS 355.9-406 and 355.9-408.”	Yes Ky. Rev. Stat. Ann. § 362.1-503 (West 2015)	“(7) Limitations upon transfer set forth in KRS 362.1-501 to 362.1-504 or adopted by the partners in accordance with this subchapter are enforceable notwithstanding KRS 355.9-406 and 355.9-408.”
Louisiana	No		No		No		No		No	

State Adoptions of 2018 Amendments to UCC Sections 9-406 and 9-408

Last Updated 11/1/21

State	Amend §9-406	Comments	Amend §9-408	Comments	Amend LLC Act	Comments	Amend LP Act	Comments	Amend Partnership Act	Comments
Maine	No		No		Yes Maine Stat. tit. 31 § 1507	"5. Assignments. Title 11, sections 9-1406 and 9-1408 do not apply to any interest in a limited liability company, including all rights, powers and interests arising under a limited liability company agreement or this chapter. This subsection prevails over Title 11, sections 9-1406 and 9-1408 and is intended to permit the enforcement of the provisions of a limited liability company agreement that would otherwise be ineffective under Title 11, sections 9-1406 and 9-1408."	No		No	
Maryland	No		No		No		No		No	
Massachusetts	Bill introduced	Mass. HB 1172 (2021) – Introduced March 29, 2021 Hearing held 10/26/21	Bill introduced	Mass. HB 1172 (2021) – Introduced March 29, 2021 Hearing held 10/26/21	No		No		No	
Michigan	No		No		No		No		No	
Minnesota	No		No		No		No		No	

State Adoptions of 2018 Amendments to UCC Sections 9-406 and 9-408

Last Updated 11/1/21

State	Amend §9-406	Comments	Amend §9-408	Comments	Amend LLC Act	Comments	Amend LP Act	Comments	Amend Partnership Act	Comments
Mississippi	No		No		Yes Miss. Code Ann. § 79-29-711 (West 2015)	“Sections 75-9-406 and 75-9-408 do not apply to a member’s financial interest in a domestic limited liability company, including the rights, powers and interests arising under the limited liability company’s certificate of formation or operating agreement or under this chapter. To the extent of any conflict or inconsistency between this section and Sections 75-9-406 and 75-9-408, this section prevails. It is the express intent of this section to permit the enforcement, as an agreement among the members of a limited liability company, of any provision of an operating agreement that would otherwise be ineffective under Sections 75-9-406 and 75-9-408.”	Yes Miss. Code Ann. § 79-14-706 (West 2015)	“Sections 75-9-406 and 75-9-408 do not apply to a limited partnership interest in a limited partnership formed under the laws of Mississippi, including the rights, powers and interests arising under the certificate of limited partnership or limited partnership agreement or under this chapter. To the extent of any conflict or inconsistency between this section and Sections 75-9-406 and 75-9-408, this section prevails. It is the express intent of this section to permit the enforcement, as a contract among the partners of a limited partnership, of any provision of a limited partnership agreement that would otherwise be ineffective under Sections 75-9-406 and 75-9-408.”	Yes Miss. Code Ann. § 79-13-505 (West 2015)	“Sections 75-9-406 and 75-9-408 do not apply to a partnership interest in a partnership formed under the laws of Mississippi, including the rights, powers and interests arising under the certificate of partnership or partnership agreement or under this chapter. To the extent of any conflict or inconsistency between this section and Sections 75-9-406 and 75-9-408, this section prevails. It is the express intent of this section to permit the enforcement, as a contract among the partners of a partnership, of any provision of a partnership agreement that would otherwise be ineffective under Sections 75-9-406 and 75-9-408.”
Missouri	No		No		No		No		No	
Montana	No		No		No		No		No	
Nebraska	No		No		No		No		No	
Nevada	No		No		No		No		No	
New Hampshire	No		No		Yes N.H. Rev. Stat. Ann. § 304-C:202 (2015)	“The provisions of RSA 382-A:9-406 and RSA 382-A:9-408 shall not apply to any interest in a limited liability company, including all rights, powers, and interests arising under an operating agreement or under this act. The provisions of this section shall prevail over the provisions of RSA 382-A:9-406 and RSA 382-A:9-408.”	No		No	
New Jersey	No		No		No		No		No	

State Adoptions of 2018 Amendments to UCC Sections 9-406 and 9-408

Last Updated 11/1/21

State	Amend §9-406	Comments	Amend §9-408	Comments	Amend LLC Act	Comments	Amend LP Act	Comments	Amend Partnership Act	Comments
New Mexico	No	NM HB 191 (2019) – Introduced Jan. 17, 2019 Died	No	NM HB 191 (2019) – Introduced Jan. 17, 2019 Died	No		No		No	
New York	No		No		No		No		No	
North Carolina	Yes N.C. Gen. Stat. Ann. § 25-9-406 (West 2014)	“This section does not apply to an assignment of a health-care-insurance receivable or an interest in a partnership or limited liability company.”	Yes N.C. Gen. Stat. Ann. § 25-9-408 (West 2014)	“This section does not apply to an assignment of an interest in a partnership or limited liability company.”	Yes N.C. Gen. Stat. Ann. § 57D-10-02 (West 2015)	“(d) G.S. 25-9-406 and G.S. 25-9-408 do not apply to any ownership interest or any portion thereof, including any economic interest. To the extent of any conflict or inconsistency between this subsection and G.S. 25-9-406 and G.S. 25-9-408, this subsection prevails. Accordingly, neither G.S. 25-9-406 nor G.S. 25-9-408 will render invalid, unenforceable, or ineffective any contrary or inconsistent provision contained in an operating agreement.”	No		No	
North Dakota	No		No		No		No		No	
Ohio	No		No		Yes Ohio Rev. Code Ann. § 1706.06 (2020)	“(D) Sections 1309.406 and 1309.408 of the Revised Code do not apply to any interest in a limited liability company, including all rights, powers, and interests arising under an operating agreement or this chapter. This division prevails over those sections, and is expressly intended to permit the enforcement of the provisions of an operating agreement that would otherwise be ineffective under those sections.”	No		Yes Ohio Rev. Code Ann. § 1776.49 (2015)	“(G) Sections 1309.406 and 1309.408 of the Revised Code do not apply to any partnership interest in a partnership formed under this chapter.”
Oklahoma	No		No		No		No		No	
Oregon	No		No		No		No		No	
Pennsylvania	No		No		No		No		No	
Puerto Rico	No		No		No		No		No	
Rhode Island	No		No		No		No		No	
South Carolina	No		No		No		No		No	
South Dakota	No		No		No		No		No	
Tennessee	No		No		No		No		No	

State Adoptions of 2018 Amendments to UCC Sections 9-406 and 9-408

Last Updated 11/1/21

State	Amend §9-406	Comments	Amend §9-408	Comments	Amend LLC Act	Comments	Amend LP Act	Comments	Amend Partnership Act	Comments
Texas	Yes Tex. Bus. & Com. Code Ann. § 9.406 (Vernon 2013)	“(j) This section does not apply to an interest in a partnership or limited liability company.”	Yes. Tex. Bus. & Com. Code Ann. § 9.408 (Vernon 2013)	“(e) This section does not apply to an interest in a partnership or limited liability company.”	Yes Tex. Bus. Orgs. Code Ann. § 101.106 (Vernon 2013)	“(c) Sections 9.406 and 9.408, Business & Commerce Code, do not apply to a membership interest in a limited liability company, including the rights, powers, and interests arising under the company’s certificate of formation or company agreement under this code. To the extent of any conflict between this subsection and Section 9.406 or 9.408, Business & Commerce Code, this subsection controls. It is the express intent of this subsection to permit the enforcement, as a contract among the members of a limited liability company, of any provision of a company agreement that would otherwise be ineffective under Section 9.406 or 9.408, Business & Commerce Code.”	Yes Tex. Bus. Orgs. Code Ann. § 154.001 (Vernon 2013)	“(d) Sections 9.406 and 9.408, Business & Commerce Code, do not apply to a partnership interest in a partnership, including the rights, powers, and interests arising under the governing documents of the partnership or under this code. To the extent of any conflict between this subsection and Section 9.406 or 9.408, Business & Commerce Code, this subsection controls. It is the express intent of this subsection to permit the enforcement, as a contract among the partners of a partnership, of any provision of a partnership agreement that would otherwise be ineffective under Section 9.406 or 9.408, Business & Commerce Code.”	Yes Tex. Bus. Orgs. Code Ann. § 154.001 (Vernon 2013)	“(d) Sections 9.406 and 9.408, Business & Commerce Code, do not apply to a partnership interest in a partnership, including the rights, powers, and interests arising under the governing documents of the partnership or under this code. To the extent of any conflict between this subsection and Section 9.406 or 9.408, Business & Commerce Code, this subsection controls. It is the express intent of this subsection to permit the enforcement, as a contract among the partners of a partnership, of any provision of a partnership agreement that would otherwise be ineffective under Section 9.406 or 9.408, Business & Commerce Code.”
Utah	No		No		No		No		No	
USVI	No		No		No		No		No	
Vermont	No		No		No		No		No	

State Adoptions of 2018 Amendments to UCC Sections 9-406 and 9-408

Last Updated 11/1/21

State	Amend §9-406	Comments	Amend §9-408	Comments	Amend LLC Act	Comments	Amend LP Act	Comments	Amend Partnership Act	Comments
Virginia	Yes Va. Code Ann. § 8.9A-406 (West)	“(k) Inapplicability to partnership and limited liability company interests. This section does not apply to an interest in a partnership or limited liability company.”	Yes Va. Code Ann. § 8.9A-408 (West)	“(g) Inapplicability to partnership and limited liability company interests. This section does not apply to an interest in a partnership or limited liability company.”	Yes Va. Code Ann. § 13.1-1001.1 (West 2015)	“B. Sections 9-406 and 9-408 of the Uniform Commercial Code, including §§ 8.9A-406 and 8.9A-408, do not apply to any interest in a limited liability company, including all rights, powers and interests arising under the articles of organization or operating agreement of a limited liability company or this chapter. This provision prevails over §§ 8.9A-406 and 8.9A-408, and is expressly intended to permit the enforcement as a fundamental matter of contract among the members of a limited liability company of any provision of an operating agreement that would otherwise be ineffective under § 9-406 or § 9-408 of the Uniform Commercial Code.”	Yes Va. Code Ann. § 50-73.84 (West 2015)	“C. Sections 9-406 and 9-408 of the Uniform Commercial Code, including §§ 8.9A-406 and 8.9A-408, do not apply to any interest in a partnership, including all rights, powers and interests arising under the partnership agreement of a partnership, Chapter 2.1 (§ 50-73.1 et seq.) of this title, or this chapter. This provision prevails over §§ 8.9A-406 and 8.9A-408, and is expressly intended to permit the enforcement as a fundamental matter of contract among the partners of a partnership of any provision of a partnership agreement that would otherwise be ineffective under § 9-406 or § 9-408 of the Uniform Commercial Code.”	Yes Va. Code Ann. § 50-73.84 (West 2015)	“C. Sections 9-406 and 9-408 of the Uniform Commercial Code, including §§ 8.9A-406 and 8.9A-408, do not apply to any interest in a partnership, including all rights, powers and interests arising under the partnership agreement of a partnership, Chapter 2.1 (§ 50-73.1 et seq.) of this title, or this chapter. This provision prevails over §§ 8.9A-406 and 8.9A-408, and is expressly intended to permit the enforcement as a fundamental matter of contract among the partners of a partnership of any provision of a partnership agreement that would otherwise be ineffective under § 9-406 or § 9-408 of the Uniform Commercial Code.”
Washington	No		No		No		No		No	
West Virginia	No		No		No		No		No	
Wisconsin	No		No		No		No		No	
Wyoming	No		No		No		No		No	

The Florida Senate

APPEARANCE RECORD

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

336

Bill Number or Topic

1/10/22

Meeting Date

Judiciary

Committee

Amendment Barcode (if applicable)

Name

Robert Barron

Phone

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Address

201 East Las Olas Blvd; Suite 1500

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Street

Ft. Lauderdale, FL

State

33301

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



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

Business Law Section, Florida Bar

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

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

S-001 (08/10/2021)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/10/22
Meeting Date

SB 336
Bill Number (if applicable)
296532
Amendment Barcode (if applicable)

Topic Uniform Commercial Code

Name Kenneth Pratt

Job Title Senior VP of Government Relations

Address 1001 Thomasville Rd Ste 201
Street
Tallahassee FL 32301
City State Zip

Phone 850-509-8020

Email kcpratt@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 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 868

INTRODUCER: Senator Stewart

SUBJECT: Sexual Battery on a Mentally Incapacitated Person

DATE: January 10, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2. _____	_____	<u>CJ</u>	_____
3. _____	_____	<u>RC</u>	_____

I. Summary:

SB 868 expands the actions that constitute the offense of sexual battery of a mentally incapacitated person. As a result, an offender who commits sexual battery on a voluntarily intoxicated victim is subject to the same penalties that apply to the sexual battery of a victim who is involuntarily intoxicated.

Under existing law, sexual battery on a mentally incapacitated person is committed when the offender commits sexual battery on a victim who the offender knows has become intoxicated by the administration of a narcotic, anesthetic, or other intoxicating substance *without the victim's consent*. Under the bill, the victim's lack of consent to intoxication is not relevant to the offense and need not be proven by the prosecution at trial.

Under existing law, absent other grounds for an increased penalty, sexual battery on a victim who voluntarily becomes intoxicated is a second degree felony, punishable by up to 15 years' imprisonment. Under the bill, the offense of sexual battery on a victim who the offender knows is intoxicated, voluntarily or involuntarily, is a first degree felony, punishable by up to 30 years' imprisonment.

The bill does not change the laws relating to the ability of an intoxicated person to consent to sexual activity.

The bill takes effect October 1, 2022.

II. Present Situation:

Sexual battery means nonconsensual oral, anal, or vaginal penetration by, or union with, the sexual organ of another, or the anal or vaginal penetration of another by any other object.¹ The offense is categorized as a second, first, or capital felony depending on certain factors such as the offender's age, the victim's age, and certain aggravating circumstances as shown in the table below:

794.011 Subsection	Offender's Age	Victim's Age	Special Circumstances Present	Felony Level
(2)(a)	≥ 18 yrs.	< 12 yrs.	Injures the victim's sexual organs	Capital
(2)(b)	< 18 yrs.	< 12 yrs.	Injures the victim's sexual organs	Life
(3)	No age requirement	≥ 12 yrs.	Uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury	Life
(4)(a)	≥ 18 yrs.	≥ 12 yrs., but < 18 yrs.	Any circumstance listed in s. 794.011(4)(e), F.S.	First
(4)(b)	≥ 18 yrs.	≥ 18 yrs.	Any circumstance listed in s. 794.011(4)(e), F.S.	First
(4)(c)	< 18 yrs.	≥ 12 yrs.	Any circumstance listed in s. 794.011(4)(e), F.S.	First
(4)(d)	No age requirement	≥ 12 yrs.	Any circumstance listed in s. 794.011(4)(e), F.S., and offender was previously convicted of an enumerated sexually motivated offense against a minor	First
(5)(a)	≥ 18 yrs.	≥ 12 yrs., but < 18 yrs.	No physical force or violence likely to cause serious personal injury	First
(5)(b)	≥ 18 yrs.	≥ 18 yrs.	No physical force or violence likely to cause serious personal injury	Second
(5)(c)	< 18 yrs.	≥ 12 yrs.	No physical force or violence likely to cause serious personal injury	Second
(5)(d)	No age requirement	≥ 12 yrs.	No physical force or violence likely to cause serious personal injury but offender was previously convicted of an enumerated sexually motivated offense against a minor	First

Section 794.011(4)(e), F.S., lists the following aggravating factors that may enhance a sexual battery offense to a felony of the first degree:

- The victim is physically helpless to resist;
- The offender coerces the victim to submit by threatening the use of force or violence likely to cause serious personal injury to the victim, and the victim reasonably believes that the offender has the present ability to execute the threat;
- The offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future;
- The offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim;

¹ Section 794.011(1)(h), F.S.

- The victim is mentally defective, and the offender has reason to believe this or has actual knowledge of the fact;
- The victim is physically incapacitated; or
- The offender is a law enforcement officer, correctional officer, or correctional probation officer, or is an elected official exempt from such certification,² or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of the government.

The statutory maximum sentence for a first-degree felony is 30 years' imprisonment, and the maximum sentence for a second-degree felony is 15 years' imprisonment.³ A person convicted of a capital felony is eligible for a sentence of death.⁴

The focus of SB 868 is on the sexual battery of a “mentally incapacitated” person. A mentally incapacitated person is “temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.”⁵ The sexual battery of a mentally incapacitated person is a first degree felony, but the sexual battery of a voluntarily intoxicated person, absent other aggravating circumstances, is a second degree felony. Accordingly, “the Florida sexual battery statute does not place voluntary drug or alcohol consumption on the same footing as involuntary consumption; if they were to be treated as equivalent, the statute would say so.”⁶

With respect to the issue of consent to sexual activity, “[t]he prevailing view is that voluntary consumption of drugs or alcohol, does not, without more, render consent involuntary.”⁷

However, evidence of the victim’s mental incapacity is admissible to prove that the consent to sexual activity was not intelligent, knowing, or voluntary; and the court must instruct the jury accordingly.⁸

III. Effect of Proposed Changes:

The bill eliminates the distinction in criminal penalties for the sexual battery of a voluntarily intoxicated victim and the sexual battery of a victim who the offender knows to be involuntarily intoxicated. Involuntary intoxication occurs when “the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim.”

² Under s. 943.253, F.S.

³ Section 775.082(3)(b) and (d), F.S.

⁴ Section 775.082(1)(a), F.S.

⁵ Section 794.011(1)(c), F.S.

⁶ *Coley v. State*, 616 So. 2d 1017, 1023 (Fla. 3d DCA 1993).

⁷ *Id.*

⁸ See s. 794.022(4), F.S.

By eliminating the distinction in penalties, the penalty for the sexual battery of a voluntarily intoxicated victim is increased to the penalties of a first degree felony, which include up to 30 years' imprisonment. Under existing law, the offense of sexual battery of a voluntarily intoxicated person, absent aggravating circumstances, is a second degree felony, punishable by up to 15 years' imprisonment. Likewise, the victim's lack of consent to intoxication will no longer need to be proven at trial to satisfy the elements of a first degree felony offense.

The bill does not change the laws relating to the ability of an intoxicated person to consent to sexual activity.

The bill takes effect October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 868 will likely result in a positive impact on prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 794.011.

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 Stewart

13-01049-22

2022868__

A bill to be entitled

An act relating to sexual battery on a mentally incapacitated person; amending s. 794.011, F.S.; revising the definition of the term "mentally incapacitated"; revising provisions concerning sexual battery upon a person who is mentally incapacitated; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) and subsection (4) of section 794.011, Florida Statutes, are amended to read: 794.011 Sexual battery.—

(1) As used in this chapter:

(c) "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, an anesthetic, or an intoxicating substance ~~administered without his or her consent or due to any other act committed upon that person without his or her consent.~~

(4) (a) A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(b) A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older without that person's consent, under any of the circumstances listed in

Page 1 of 4

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

13-01049-22

2022868__

paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(c) A person younger than 18 years of age who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(d) A person commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115 if the person commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), and such person was previously convicted of a violation of:

1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5);

2. Section 787.01(3)(a)2. or 3.;

3. Section 787.02(3)(a)2. or 3.;

4. Section 800.04;

5. Section 825.1025;

6. Section 847.0135(5); or

7. This chapter, excluding subsection (10) of this section.

(e) The following circumstances apply to paragraphs (a)–

(d):

Page 2 of 4

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

13-01049-22

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- 59 1. The victim is physically helpless to resist.
- 60 2. The offender coerces the victim to submit by threatening
- 61 to use force or violence likely to cause serious personal injury
- 62 on the victim, and the victim reasonably believes that the
- 63 offender has the present ability to execute the threat.
- 64 3. The offender coerces the victim to submit by threatening
- 65 to retaliate against the victim, or any other person, and the
- 66 victim reasonably believes that the offender has the ability to
- 67 execute the threat in the future.
- 68 4. The victim is mentally incapacitated, and the offender
- 69 has reason to believe this or has actual knowledge of this fact
- 70 offender, without the prior knowledge or consent of the victim,
- 71 administers or has knowledge of someone else administering to
- 72 the victim any narcotic, anesthetic, or other intoxicating
- 73 substance that mentally or physically incapacitates the victim.
- 74 5. The victim is mentally defective, and the offender has
- 75 reason to believe this or has actual knowledge of this fact.
- 76 6. The victim is physically incapacitated.
- 77 7. The offender is a law enforcement officer, correctional
- 78 officer, or correctional probation officer as defined in s.
- 79 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified
- 80 under s. 943.1395 or is an elected official exempt from such
- 81 certification by virtue of s. 943.253, or any other person in a
- 82 position of control or authority in a probation, community
- 83 control, controlled release, detention, custodial, or similar
- 84 setting, and such officer, official, or person is acting in such
- 85 a manner as to lead the victim to reasonably believe that the
- 86 offender is in a position of control or authority as an agent or
- 87 employee of government.

Page 3 of 4

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13-01049-22

2022868__

- 88 Section 2. This act shall take effect October 1, 2022.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: November 16, 2021

I respectfully request that **Senate Bill #868**, relating to Sexual Battery on a Mentally Incapacitated Person, be placed on the:

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

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

The Florida Senate

APPEARANCE RECORD

1/10/2022

Meeting Date

868

Bill Number or Topic

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

Judiciary

Committee

Amendment Barcode (if applicable)

Name Katrina "Kat" Duesterhaus

Phone 772.267.6353

Address 10220 SW 4th St.
Street

Email katforflorida@gmail.com

Miami

City

FL

State

33174

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 848

Bill Number or Topic

1-10-22

Meeting Date

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

Amendment Barcode (if applicable)

Judiciary

Committee

Name

Barbara DeVane

Phone

850-251-4280

Address

625 E. Brevard St

Email

barbdevane1@yahoo.com

Street

Tallahassee

City

FL

State

32308

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

FL NOW

National Organization for Women

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

Jan 10, 2022
Meeting Date

SB 868
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name LEAGUE OF WOMEN VOTERS
(META CALDER)

Phone 850-228-8900

Address 3740 RAVINE DR.
Street

Email metaorleans@gmail.com

TALL, FL 32312
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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1/10/2022

Meeting Date

Judiciary

Committee

SB 868

Bill Number or Topic

Amendment Barcode (if applicable)

Name Sara Smith-Paez

Phone 352-286-5898

Address 1359 E Evans Cir Apt B

Email sarasmithnow@gmail.com

Street

Defton

City

FL

State

32725

Zip

Speaking:

☒

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

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

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

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

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

Meeting Date

Committee

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Phone

Address

Street

Email

City

State

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:

RAINN



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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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SB 868

Bill Number or Topic

1/18/22

Meeting Date

Judiciary

Committee

Amendment Barcode (if applicable)

Name

Stefan Turkheimer

Phone

404 406 2639

Address

2227 12th Pl NW

Email

stefant@rainn.org

Street

Washington

City

DC

State

20009

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:

RAINN



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

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

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S-001 (08/10/2021)

01/10/2022

Meeting Date

Judiciary

Committee

The Florida Senate

APPEARANCE RECORD

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

SB 0868

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Jennifer L. Dritt**

Phone **(850) 297-2000**

Address **1820 E. Park Avenue, Suite 100**

Email **ed@fcasv.org**

Street

Tallahassee

FL

32301

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

**The Florida Council Against
Sexual Violence**

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 82

INTRODUCER: Senator Torres

SUBJECT: Relief of Kareem Hawari by the Osceola County School Board

DATE: January 10, 2022

REVISED: _____

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

I. Summary:

SB 82, a claim bill, alleges that 13-year-old Kareem Hawari was injured while participating in athletic competition on behalf of his school due to the negligence of employees of the Osceola County School Board. Mr. Hawari, now an adult, settled the claim with the school board for \$3.6 million, of which \$100,000 has been paid in accordance with the state's sovereign immunity waiver. The bill authorizes and directs the Osceola County School Board to pay the remaining \$3.5 million.

The bill is effective upon becoming law.

II. Present Situation:

Doctrine of Sovereign Immunity: Overview

Sovereign immunity is defined as: "A government's immunity from being sued in its own courts without its consent."¹ The doctrine had its origin with the judge-made law of England. During English feudal times, the King was the sovereign. Today, for the purposes of this discussion, the term "sovereign" refers to Florida state agencies and subdivisions including local governments.

Article X, section 13 of the State Constitution authorizes the Legislature to enact laws that allow suits against the state. The Legislature has, to some extent, allowed tort suits against the state and has limited the collectability of judgments against the state to \$200,000 per person and \$300,000 per incident (the caps applicable at the time of this incident giving rise to SB 82 were \$100,000 and \$200,000 respectively).² A person seeking to recover amounts in excess of the limits may request that the Legislature enact a claim bill.

¹ BLACK'S LAW DICTIONARY (8th ed. 2004).

² Section 768.28, F.S.

In medieval England “one could not sue the king in his own courts; hence the phrase ‘the king can do no wrong.’”³ The basis of the existence of the doctrine of sovereign immunity in the United States was explained as follows:

A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.⁴

Although one could not sue the king, one could petition the king for relief.⁵

Under s. 2.01, F.S., Florida has adopted the common law of England as it existed on July 4, 1776.⁶ This adoption of English common law included adoption of the doctrine of sovereign immunity. The doctrine of sovereign immunity was in existence centuries before the Declaration of Independence.⁷

The Legislature was first expressly authorized to waive the state’s sovereign immunity under Article IV, section 19 of the Constitution of 1868.⁸ The Legislature again was expressly authorized to waive the state’s sovereign immunity under Article X, section 13 of the Constitution of 1968. This authorization to waive sovereign immunity states:

Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

Although the first general waiver of the state’s sovereign immunity was not adopted until 1969, “one . . . could always petition for legislative relief by means of a claims bill.”⁹ The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833.¹⁰ The claim bill authorized payment to a person who supplied labor and building materials for the first permanent Capitol building.¹¹

Florida’s Current Statutory Sovereign Immunity Waiver

Section 768.28(1), F.S., allows for suits in tort against the State and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct. Section 768.28 applies only to “injury or loss of property, personal injury, or death

³ *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981).

⁴ *Id.* (quoting *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907)).

⁵ *Id.*

⁶ English common law that is inconsistent with state or federal law is not included.

⁷ *North Carolina Dept. of Transp. v. Davenport*, 432 S.E.2d 303, 305 (N.C. 1993).

⁸ Section 19, Art. VI, State Const. (1868), states, “Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating.”

⁹ *Cauley*, 403 So. 2d at note 5.

¹⁰ D. Stephen Kahn, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, THE FLORIDA BAR JOURNAL, 23 (April, 1988).

¹¹ *Id.*

caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment.”¹²

Section 768.28(5), F.S., currently caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per incident. Although an ‘excess’ judgment may be entered, “the statutory caps make it impossible, absent a special claim bill passed by the legislature, for a claimant to collect more than the caps provide.”¹³

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee's acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.¹⁴ A government entity is not liable for any damages resulting for actions by an employee outside the scope of his or her employment, and is not liable for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.¹⁵

Claim Bills

A plaintiff may recover an amount in excess of the caps described in s. 768.28(5), F.S., by way of a claim bill. “A claim bill is not an action at law, but rather is a legislative measure that directs the Chief Financial Officer of Florida, or if appropriate, a unit of local government, to pay a specific sum of money to a claimant to satisfy an equitable or moral obligation.”¹⁶ Such obligations typically arise from the negligence of officers or employees of the State or a local governmental agency.¹⁷

Legislative claim bills are used either after procurement of a judgment in an action at law or as a mechanism to avoid an action at law altogether.¹⁸ The amount awarded is based on the Legislature's concept of fair treatment of a person who has been injured or damaged but who is without a complete judicial remedy or who is not otherwise compensable.¹⁹ “Unlike civil judgments, private relief acts are not obtainable by right upon the claimant's proof of his entitlement. Private relief acts are granted strictly as a matter of legislative grace.”²⁰

The beneficiary of a claim bill recovers by virtue of its enactment, regardless of whether the governmental tortfeasor purchased liability insurance for the purpose of paying an excess judgment.²¹ However, where the governmental tortfeasor has liability insurance in excess of the

¹² *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).

¹³ *Breaux v. City of Miami Beach*, 899 So. 2d 1059, n. 2 (Fla. 2005).

¹⁴ Section 768.28(9)(a), F.S.

¹⁵ *Id.*

¹⁶ *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007).

¹⁷ *Id.*

¹⁸ *City of Miami v. Valdez*, 847 So. 2d 1005 (Fla. 3d DCA 2003).

¹⁹ *Wagner*, 960 So. 2d at 788 (citing Kahn, *Legislative Claim Bills*, Fla. B. Journal (April 1988)).

²⁰ *United Servs. Auto. Ass'n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

²¹ *Servs. Auto Ass'n v. Phillips*, 740 So. 2d 1205 (Fla. 2d DCA 1999).

statutory cap, and the claimant receives compensation in excess of that statutory cap through a claim bill, the claim bill is paid with funds of the insured, not general revenue.²²

A government entity may, without a claim bill, settle claim against it for an amount in excess of the caps in s. 768.28, F.S., if that amount is within the limits of insurance coverage.²³

Negligence Law

Negligence is the failure to use due care. The failure may be by commission or omission. There are four elements to a negligence claim: (1) duty—where the defendant has a legal obligation to protect others against unreasonable risk; (2) breach—which occurs when the defendant has failed to conform to the required standard of conduct of that duty; (3) causation—where the defendant’s conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages—actual harm.²⁴ A local government is liable in tort for the negligent act of an employee acting within the scope of his or her employment.²⁵

The Injury to Kareem Hawari

According to the bill, on March 5, 2010, claimant Kareem Hawari was a 13-year-old student attending middle school in Osceola County. Prior to his injury, he was a normal and active teenager who was a member of the school wrestling team. On March 5, 2010, he was severely injured during a wrestling meet.

The bill sets forth the facts of the case: The negligence is alleged to have occurred when the wrestling team coach, employed by the school board, directed Mr. Hawari to engage in a wrestling match against a vastly superior opponent. The allegation is that the coach knew or should have known that this match could cause injury to Mr. Hawari. The match was over quickly, as the opponent immediately grabbed Mr. Hawari, lifted him up, and forcibly slammed him into the mat. The force of the collision with the mat caused a brain stem hemorrhage that resulted in a traumatic brain injury. Mr. Hawari has incurred \$708,309.92 in medical expenses and is permanently and totally disabled because of his injuries.

The claimant timely filed suit against the school board. After extensive discovery and pretrial preparation, the parties settled in the amount of \$3.6 million.

III. Effect of Proposed Changes:

The bill authorizes and directs the Osceola County School Board to pay \$3.5 million to Kareem Hawari in full compensation for his injuries sustained due to the negligence of the school board. Attorney fees may not exceed 25 percent of the award.

The bill is effective upon becoming law.

²² *Fla. Mun. Ins. Trust v. Village of Golf*, 850 So. 2d 544 (Fla. 4th DCA 2003).

²³ *Michigan Millers Mut. Ins. Co. v. Burke*, 607 So. 2d 418, 421-22 (Fla. 1992); Section 768.28(5), F.S.

²⁴ *Saunders v. Dickens*, 151 So. 3d 434, 441 (Fla. 2014); *Williams v. Davis*, 974 So.2d 1052, at 1056-1057 (Fla. 2007).

²⁵ *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).

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 82 authorizes and directs the Osceola County School Board to pay \$3.5 million to Kareem Hawari. The bill does not appear to have a fiscal impact on the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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.



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: December 28, 2021

I respectfully request that **Senate Bill #82**, relating to Relief of Kareem Hawari by the Osceola County School Board, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

A handwritten signature in black ink, appearing to read "Victor M. Torres, Jr.", is written above a horizontal line.

Senator Victor M. Torres, Jr.
Florida Senate, District 15

The Florida Senate

APPEARANCE RECORD

SB 82

1/10/22

Meeting Date

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name

RICHARD COATES

Phone

850 681 6400

Address

115 EAST PARK AVE #1

Email

rcoates@tidewaterinc.com

Street

TLH

City

FL

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without compensation or sponsorship.

☒

I am a registered lobbyist, representing:

Kareem HAWARI

☐

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

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

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

S-001 (08/10/2021)

CourtSmart Tag Report

Room: KB 412

Case No.: -

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 1/10/2022 4:02:07 PM

Ends: 1/10/2022 5:16:27 PM **Length:** 01:14:21

4:02:05 PM Meeting called to order by Chair Burgess
4:02:09 PM Roll call by CAA Celia Georgiades
4:02:19 PM Quorum present
4:02:33 PM Comments from Chair Burgess
4:02:52 PM Introduction of Tab 1, SB 190 by Chair Burgess
4:03:09 PM Explanation of SB 190, Controlled Substances by Senator Brodeur
4:06:55 PM Comments from Chair Burgess
4:07:02 PM Introduction of Amendment Barcode No. 103162 by Chair Burgess
4:07:14 PM Explanation of Amendment by Senator Brodeur
4:07:20 PM Comments from Chair Burgess
4:07:27 PM Buddy Jacobs, General Counsel, State Attorneys of Florida waives in support
4:07:31 PM Comments from Chair Burgess
4:07:34 PM Closure waived
4:07:36 PM Amendment adopted
4:07:45 PM Comments from Chair Burgess
4:07:47 PM Question from Senator Rouson
4:07:53 PM Response from Senator Brodeur
4:08:28 PM Follow-up question from Senator Rouson
4:08:35 PM Response from Senator Brodeur
4:09:37 PM Follow-up question from Senator Rouson
4:09:45 PM Response from Senator Brodeur
4:09:55 PM Follow-up question from Senator Rouson
4:10:01 PM Response from Senator Brodeur
4:10:41 PM Follow-up question from Senator Rouson
4:10:49 PM Response from Senator Brodeur
4:11:45 PM Question from Senator Gibson
4:11:51 PM Response from Senator Brodeur
4:12:21 PM Follow-up question from Senator Gibson
4:12:28 PM Response from Senator Brodeur
4:12:37 PM Buddy Jacobs, General Counsel, State Attorney's Office waives in support
4:12:45 PM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in opposition
4:12:50 PM Lauren Jackson, Seminole County Sheriff's Office waives in support
4:12:56 PM Nancy Daniels, Florida Public Defender Association waives in opposition
4:13:03 PM Bob Cortez, Seminole County Sheriff's Office waives in support
4:13:08 PM Ida Eskamani, Florida Rising & Florida Immigrant Coalition waives in opposition
4:13:13 PM Matt Dunagan, Florida Sheriffs Association waives in support
4:13:20 PM Letitia Harmon waives in opposition
4:13:34 PM Speaker Senator Dwight Bullard in opposition
4:15:42 PM Rev. Dr. Russell Meyer waives in opposition
4:15:56 PM Senator Broxson in debate
4:16:26 PM Speaker Nancy Daniels, Florida Public Defender Association in opposition
4:18:25 PM Senator Boyd in debate

4:18:58 PM Senator Rouson in debate
4:21:09 PM Comments from Chair Burgess
4:21:24 PM Roll call by CAA
4:22:23 PM CS/SB 190 reported favorably
4:22:46 PM Introduction of Tab 5, SB 542 by Chair Burgess
4:23:10 PM Explanation of SB 542, Evidentiary Standards for Actions Arising During and Emergency by Senator Rodriguez
4:24:59 PM Comments from Chair Burgess
4:25:04 PM Phillip Suderman, Americans for Prosperity waives in support
4:25:13 PM Comments from Chair Burgess
4:25:17 PM Closure waived
4:25:19 PM Roll call by CAA
4:25:25 PM SB 542 reported favorably
4:25:42 PM Introduction of Tab 9, SB 336 by Chair Burgess
4:25:58 PM Explanation of SB 336, Uniform Commercial Code by Senator Berman
4:27:06 PM Introduction of Amendment Barcode No. 296532 by Chair Burgess
4:27:10 PM Explanation of Amendment by Senator Berman
4:27:22 PM Comments from Chair Burgess
4:27:28 PM Kenneth Pratt, Florida Bankers Association waives in support
4:27:40 PM Comments from Chair Burgess
4:27:42 PM Closure waived
4:27:47 PM Amendment adopted
4:27:57 PM Comments from Chair Burgess
4:28:08 PM Speaker Robert Barron, Business Law Section, Florida Bar waives in support
4:28:23 PM Comments from Chair Burgess
4:28:25 PM Closure waived
4:28:28 PM Roll call by CAA
4:28:33 PM CS/SB 336 reported favorably
4:28:49 PM Introduction of Tab 8, SB 360 by Chair Burgess
4:29:10 PM Explanation of SB 360, Traveling Across County Lines to Commit a Burglary by Senator Harrell
4:31:07 PM Comments from Chair Burgess
4:31:10 PM Ida Eskamani, Florida Rising & Florida Immigrant Coalition waives in opposition
4:31:13 PM Barbara DeVane, FL NOW waives in opposition
4:31:16 PM Letitia Harmon waives in opposition
4:31:22 PM Speaker Senator Dwight Bullard in opposition
4:33:28 PM Rev. Dr. Russell Meyer waives in opposition
4:33:40 PM Comments from Chair Burgess
4:33:43 PM Senator Harrell in closure
4:34:38 PM Roll call by CAA
4:34:43 PM SB 360 reported favorably
4:35:03 PM Introduction of Tab 2, SB 634 by Chair Burgess
4:35:29 PM Explanation of SB 634, Judicial Notice by Senator Bradley
4:37:04 PM Introduction of Amendment Barcode No. 271884 by Chair Bradley
4:37:10 PM Explanation of Amendment by Senator Bradley
4:38:01 PM Amendment Barcode No. 271884 is withdrawn
4:38:28 PM Comments from Chair Burgess
4:38:55 PM Speaker Curry Pajcic in support
4:41:07 PM Comments from Chair Burgess
4:41:16 PM Senator Bradley in closure
4:41:23 PM Roll call by CAA
4:41:33 PM SB 634 reported favorably

4:41:49 PM Introduction of Tab 3, SB 1062 by Chair Burgess
4:42:03 PM Explanation of SB 1062, Service of Process by Senator Bradley
4:42:59 PM Introduction of Amendment Barcode No. 501522 by Chair Burgess
4:43:12 PM Explanation of Amendment by Senator Bradley
4:43:26 PM Comments from Chair Burgess
4:43:34 PM Closure waived
4:43:36 PM Amendment adopted
4:43:40 PM Introduction of Amendment Barcode No. 496864 by Chair Burgess
4:43:52 PM Explanation of Amendment by Senator Bradley
4:43:57 PM Comments from Chair Burgess
4:44:04 PM Closure waived
4:44:06 PM Amendment adopted
4:44:10 PM Introduction of Amendment Barcode No. 773144 by Chair Burgess
4:44:20 PM Explanation of Amendment by Senator Bradley
4:44:27 PM Comments from Chair Burgess
4:44:32 PM Closure waived
4:44:36 PM Introduction of Amendment Barcode No. 456766 by Chair Burgess
4:44:47 PM Explanation of Amendment by Senator Bradley
4:44:54 PM Comments from Chair Burgess
4:45:00 PM Closure waived
4:45:03 PM Amendment adopted
4:45:07 PM Introduction of Amendment Barcode No. 877968 by Chair Burgess
4:45:19 PM Explanation of Amendment by Senator Bradley
4:45:31 PM Comments from Chair Burgess
4:45:38 PM Closure waived
4:45:39 PM Amendment adopted
4:45:43 PM Introduction of Amendment Barcode No. 397986, Substitute Amendment Barcode No. 631374 introduced by Chair Burgess
4:46:06 PM Explanation of Substitute Amendment by Senator Bradley
4:46:10 PM Comments from Chair Burgess
4:46:16 PM Closure waived
4:46:18 PM Amendment adopted
4:46:22 PM Introduction of Amendment Barcode No. 107756 by Chair Burgess
4:46:35 PM Explanation of Amendment by Senator Bradley
4:46:37 PM Comments from Chair Burgess
4:46:41 PM Closure waived
4:46:59 PM Comments from Chair Burgess
4:47:09 PM Speaker James Murphy, Jr., Business Law Section of the Florida Bar waives in support
4:47:17 PM Speaker Bill Cotterall, FJA in support
4:48:42 PM French Brown, The Real Property, Probate, and Trust Law Section of the Florida Bar waives in support
4:48:52 PM Comments from Chair Burgess
4:48:57 PM Closure by Senator Bradley
4:49:01 PM Roll call by CAA
4:49:06 PM CS/SB 1062 reported favorably
4:49:21 PM Introduction of Tab 11, SB 82 by Chair Burgess
4:49:42 PM Explanation of SB 82, Relief of Kareem Hawari by the Osceola County School Board by Senator Torres
4:50:47 PM Comments from Chair Burgess
4:50:55 PM Richard Coates waives in support
4:51:03 PM Comments from Chair Burgess
4:51:05 PM Closure waived

4:51:08 PM Roll call by CAA
4:51:12 PM SB 82 reported favorably
4:51:28 PM Introduction of Tab 10, SB 868 by Chair Burgess
4:51:42 PM Explanation of SB 868, Sexual Battery on a Mentally Incapacitated Person by Senator Stewart
4:52:31 PM Comments from Chair Burgess
4:52:41 PM Barbara DeVane, FL NOW, National Organization for Women in support
4:52:48 PM Meta Calder, League of Women Voters in support
4:53:08 PM Speaker Katrina Duesterhaus in support
4:56:17 PM Speaker Sara Smith-Paez in support
4:58:49 PM Ellyn Bogdanoff, RAINN waives in support
4:58:58 PM Speaker Stefan Turkheimer, RAINN in support
4:59:59 PM Speaker Jennifer Dritt, The Florida Council Against Sexual Violence in support
5:02:24 PM Comments from Chair Burgess
5:02:31 PM Senator Stewart in closure
5:02:38 PM Roll call by CAA
5:03:20 PM SB 868 reported favorably
5:03:35 PM Introduction of Tab4, CS/SB 468 by Chair Burgess
5:03:56 PM Explanation of CS/SB 468, Insurance by Senator Baxley
5:04:47 PM Introduction of Amendment Barcode No. 174624 by Chair Burgess
5:04:50 PM Explanation of Amendment by Senator Baxley
5:05:11 PM Comments from Chair Burgess
5:05:25 PM Bill Cotterall, FJA waives in support
5:05:37 PM Comments from Chair Burgess
5:05:39 PM Closure waived
5:05:41 PM Amendment adopted
5:05:48 PM Comments from Chair Burgess
5:05:56 PM Dan Olson, Florida Service Agreement Association waives in support
5:06:03 PM Josh Aubuchon, State Farm waives in support
5:06:15 PM Comments from Chair Burgess
5:06:18 PM Closure waived from Senator Perry
5:06:23 PM Roll call by CAA
5:06:27 PM CS/SB 468 reported favorably
5:06:41 PM Introduction of Tab 6, SB 596 by Chair Burgess
5:07:01 PM Explanation of SB 596, Criminal Conflict and Civil Regional Counsels by Senator Baxley
5:09:14 PM Introduction of Amendment Barcode No. 516458 by Chair Burgess
5:09:20 PM Explanation of Amendment by Senator Baxley
5:09:57 PM Comments from Chair Burgess
5:10:07 PM Candace Brower, Offices of Criminal Conflict & Civil Regional Counsel waives in support
5:10:17 PM Comments from Chair Burgess
5:10:21 PM Closure waived
5:10:23 PM Amendment adopted
5:10:26 PM Comments from Chair Burgess
5:10:32 PM Senator Gibson in debate
5:11:03 PM Response from Senator Baxley
5:12:01 PM Comments from Chair Burgess
5:12:06 PM Candice Brower, Offices of Criminal Conflict & Civil Regional Counsel waives in support
5:12:12 PM Comments from Chair Burgess
5:12:17 PM Closure waived
5:12:18 PM Roll call by CAA
5:12:25 PM CS/SB 596 reported favorably

5:12:46 PM Introduction of Tab 7, SB 598 by Chair Burgess
5:12:55 PM Explanation of SB 598, Public Records/Criminal Conflict and Civil Regional Counsel Office by Senator Baxley
5:13:37 PM Introduction of Late-filed Amendment Barcode No. 281032 by Chair Burgess
5:13:55 PM Explanation of Late-filed Amendment by Senator Baxley
5:14:11 PM Comments from Chair Burgess
5:14:14 PM Candace Brower, Offices of Criminal Conflict & Civil Regional Counsel waives in support
5:14:24 PM Closure waived
5:14:27 PM Amendment adopted
5:14:38 PM Comments from Chair Burgess
5:14:44 PM Candice Brower, Offices of Criminal Conflict & Civil Regional Counsel waives in support
5:14:53 PM Comments from Chair Burgess
5:14:58 PM Closure by Senator Baxley
5:15:19 PM Roll call by CAA
5:15:42 PM CS/SB 598 reported favorably
5:16:00 PM Comments from Chair Burgess
5:16:09 PM Senator Gibson moves to adjourn
5:16:17 PM Meeting adjourned