Tab 1	**SB 46** by **Montford**; (Similar to CS/H 06521) Relief of Mary Mifflin-Gee by the City of Miami

252732	A	S	RCS	JU, Montford	Delete L.76 - 95:	03/28 05:55 PM

Tab 2	**CS/SB 340** by **BI, Brandes (CO-INTRODUCERS) Galvano, Simpson, Artiles, Young, Bracy**; (Similar to CS/H 00221) Transportation Network Companies

914002	A	S	RS	JU, Steube	Delete L.274:	03/28 05:55 PM
374516	SA	S	RCS	JU, Steube	Delete L.276:	03/28 05:55 PM

Tab 3	**CS/SB 582** by **RI, Latvala**; Regulatory Boards

686042	A	S	RCS	JU, Latvala	Delete L.31 - 96:	03/28 05:55 PM

Tab 4	**CS/SB 1588** by **MS, Latvala**; (Similar to CS/H 01235) Military and Veteran Support

Tab 5	**SB 590** by **Brandes (CO-INTRODUCERS) Stargel, Gibson**; (Similar to H 01337) Child Support and Parenting Time Plans

640504	A	S	RCS	JU, Brandes	Delete L.555 - 557:	03/28 05:55 PM

Tab 6	**SB 1094** by **Gainer**; (Identical to H 01051) Forensic Hospital Diversion Pilot Program

Tab 7	**SB 262** by **Steube**; (Identical to H 00675) Health Insurance

Tab 8	**SB 646** by **Steube**; (Similar to CS/H 00779) Weapons and Firearms

450366	D	S		JU, Steube	Delete everything after	03/27 02:52 PM
~~112386~~	A	S	WD	JU, Steube	Delete L.47 - 127:	03/07 06:47 PM
~~758516~~	SA	S	WD	JU, Steube	Delete L.47 - 82:	03/28 09:49 AM

Tab 9	**SB 748** by **Steube**; (Similar to CS/CS/H 00175) Florida Court Educational Council

412596	A	S	RCS	JU, Steube	Delete L.60 - 114:	03/28 05:55 PM

Tab 10	**SPB 7028** by **JU**; OGSR/Injunction for Protection Against Domestic Violence, Repeat Violence, Sexual Violence, and Dating Violence

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Steube, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Tuesday, March 28, 2017
TIME: 3:00—5:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Steube, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Flores, Garcia, Gibson, Mayfield, Powell, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 46** Montford (Similar CS/H 6521)	Relief of Mary Mifflin-Gee by the City of Miami ; Providing for the relief of Mary Mifflin-Gee by the City of Miami; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of employees of the City of Miami Department of Fire-Rescue, etc. SM JU 03/28/2017 Fav/CS CA RC	Fav/CS Yeas 9 Nays 0
2	**CS/SB 340** Banking and Insurance / Brandes (Similar CS/H 221)	Transportation Network Companies; Providing that a transportation network company (TNC) driver is not required to register certain vehicles as commercial motor vehicles or for-hire vehicles; providing requirements for a TNC's digital network; providing that specified automobile insurers have a right of contribution against other insurers that provide automobile insurance to the same TNC drivers in satisfaction of certain coverage requirements under certain circumstances, etc. BI 03/14/2017 Fav/CS JU 03/28/2017 Fav/CS RC	Fav/CS Yeas 9 Nays 0
3	**CS/SB 582** Regulated Industries / Latvala	Regulatory Boards; Requiring the Department of Business and Professional Regulation, the Department of Health, and the Department of Financial Services, respectively, to determine whether final board decisions constitute certain anticompetitive conduct; specifying that the departments' anticompetitive review constitutes a limited legal review and its resulting determination is subject only to certain legal challenges, etc. RI 03/21/2017 Fav/CS JU 03/28/2017 Fav/CS AP	Fav/CS Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 1588** Military and Veterans Affairs, Space, and Domestic Security / Latvala (Similar H 1235, Compare S 1594)	Military and Veteran Support; Requiring landlords, condominium associations, cooperative associations, and homeowners' associations that require a servicemember's spouse or certain adult dependents to submit a rental application to complete the processing of the application of within a specified timeframe; requiring the Department of Veterans' Affairs to create a website to streamline the procedure for businesses applying for certification as a veteran business enterprise; authorizing the Supreme Court to admit on motion a bar applicant who is the spouse of a servicemember stationed in this state under certain circumstances, etc. MS 03/22/2017 Fav/CS JU 03/28/2017 Favorable AP	Favorable Yeas 9 Nays 0
5	**SB 590** Brandes (Similar H 1337)	Child Support and Parenting Time Plans; Authorizing the Department of Revenue to establish parenting time plans agreed to by both parents in Title IV-D child support actions; providing the purpose and requirements for Title IV-D Standard Parenting Time Plans; requiring the department to refer parents who do not agree on a parenting time plan to a circuit court; authorizing the department to incorporate either an agreed-upon parenting time plan or a Title IV-D Standard Parenting Time Plan in a child support order, etc. CF 03/06/2017 Favorable JU 03/28/2017 Fav/CS AGG AP	Fav/CS Yeas 8 Nays 1
6	**SB 1094** Gainer (Identical H 1051)	Forensic Hospital Diversion Pilot Program; Authorizing the Department of Children and Families to implement a Forensic Hospital Diversion Pilot Program in Okaloosa County in conjunction with the First Judicial Circuit in Okaloosa County, etc. CF 03/21/2017 Favorable JU 03/28/2017 Favorable AP	Favorable Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 262** Steube (Identical H 675)	Health Insurance; Deleting a provision that provides that health maintenance organizations are not vicariously liable for certain medical negligence except under certain circumstances; authorizing specified persons to bring a civil action against a health maintenance organization for certain violations; specifying a health maintenance organization's liability for such violations, etc. BI 02/21/2017 Favorable JU 03/07/2017 Temporarily Postponed JU 03/14/2017 Temporarily Postponed JU 03/22/2017 Temporarily Postponed JU 03/28/2017 Temporarily Postponed RC	Temporarily Postponed
8	**SB 646** Steube (Similar CS/H 779, Compare H 803, S 908)	Weapons and Firearms; Providing that a person licensed to carry a concealed weapon or firearm who is lawfully carrying a firearm does not violate certain provisions if the firearm is temporarily and openly displayed; authorizing each member of the Florida Cabinet to carry a concealed weapon or firearm if he or she is licensed to carry a concealed weapon or firearm and does not have full-time security provided by the Department of Law Enforcement, etc. JU 03/07/2017 Temporarily Postponed JU 03/28/2017 Temporarily Postponed GO RC	Temporarily Postponed
9	**SB 748** Steube (Similar CS/CS/H 175)	Florida Court Educational Council; Specifying that the Court Education Trust Fund shall be administered by the Florida Court Educational Council; providing requirements for a certain comprehensive plan that provides for related education costs for judicial training programs; specifying the membership, voting procedures, and duties of the council, etc. JU 03/28/2017 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 4

Consideration of proposed bill:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**SPB 7028**	OGSR/Injunction for Protection Against Domestic Violence, Repeat Violence, Sexual Violence, and Dating Violence; Extending the repeal dates for exemptions from public records requirements for personal identifying and location information of a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, and dating violence and other court actions related to the injunction held by clerks of the court and law enforcement agencies, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
	Other Related Meeting Documents		

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
3/23/17	SM	Favorable
3/28/17	JU	**Fav/CS**
	CA	
	RC	

March 23, 2017

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

Re: **CS/SB 46** – Judiciary Committee and Senator Bill Montford
HB 6521 – Representative Evan Jenne
Relief of MARY MIFFLIN-GEE, an Incapacitated person, by and through MARILYN JELKS, as Guardian of the Person and Property of MARY MIFFLIN-GEE.

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM BASED ON A SETTLEMENT AGREEMENT WITH THE CITY OF MIAMI FOR $2,500,000 FOR PERMANENT INJURIES SUSTAINED BY MARY MIFFLIN-GEE DUE TO THE NEGLIGENT TRANSPORTATION OF MS. MIFFLIN-GEE BY CITY OF MIAMI, DEPARTMENT OF FIRE-RESCUE EMPLOYEES. THIS IS A LOCAL BILL WHICH REQUESTS $2,300,000 TO BE PAID TO MARILYN JELKS, AS LEGAL GUARDIAN OF MARY MIFFLIN-GEE.

FINDINGS OF FACT:

On October 25, 2012, at approximately 11:00 a.m., Ms. Mifflin-Gee was found in a vehicle, in a parking lot in Miami, Florida, unconscious, slumped over the steering wheel, and foaming from the mouth. A witness called 911 and the City of Miami, Department of Fire-Rescue, responded to assist Ms. Mifflin-Gee.

The City of Miami, Department of Fire-Rescue, records[1] reveal that paramedics/EMTs Eric Hough, Marc Alexandre, and Lt. Steve Mason responded to the call. Hough was driving, Mason was the officer in charge, and Alexandre was crew. They arrived at the scene at 11:15 a.m., and to Ms. Mifflin-Gee at 11:16 a.m.

Mason reached Ms. Mifflin-Gee first. He found her sitting in a vehicle, phone in her lap, eyes open, foaming at the mouth, and unconscious. He assessed her level of consciousness as a Glasgow Coma Scale of three.[2] She was not responsive to painful stimuli, her pupils were non-reactive, but her airway was open with shallow breath sounds.

At 11:20 a.m. Mason instructed Alexandre to check Ms. Mifflin-Gee's blood sugar, which was 196. At 11:22 a.m. Alexandre took her vital signs which were: Systolic Blood Pressure 240, Respirations 10, Pulse 126, and a SpO2 92%. Mason then made the decision to extricate Ms. Mifflin-Gee from the vehicle, and Hough brought the gurney from the Fire-Rescue truck.

Mason and Hough lowered the gurney to the low position, about 12 inches off the ground. Alexandre and Hough extricated Ms. Mifflin-Gee from the vehicle. Hough took Ms. Mifflin-Gee's torso by putting his arms under her armpits, and Alexandre took Ms. Mifflin-Gee's knees and feet. Hough and Alexandre then lifted Ms. Mifflin-Gee onto the gurney, put the head of the gurney up to a 45° angle, and put the side rails up.

None of the paramedics/EMTs remembered buckling the gurney lap belt prior to transporting Ms. Mifflin-Gee to the Fire-Rescue truck. All testified that it was standard practice for paramedics/EMTs to secure a patient with a lap belt before beginning to transport a patient on a gurney.

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[1]The City of Miami, Department of Fire and Rescue, reports for the events of October 25, 2012, include the Ambulance Report and the Incident Report. However, they are almost identical in content and are read in *pari materia*.

[2] The *Glasgow Coma Scale* is the most widely used neurological scale designed to give a reliable and objective way of recording the state of consciousness of a person. A score of 3 indicates the person does not open their eyes even in response to painful stimuli, does not verbally respond to commands or stimuli, and does not move in response to pressure stimuli. **Teasdale, Sir Graham**, *Forty years on: updating the Glasgow Coma Scale*, Nursing Times, October 15, 2014, Available at: https://www.nursingtimes.net/Journals/2014/10/10/n/p/l/141015Forty-years-on-updating-the-Glasgow-coma-scale.pdf, (last visited Feb. 22, 2017).

Alexandre and Hough rolled Ms. Mifflin-Gee toward the Fire-Rescue truck. They put the gurney in the high position, approximately 3 to 3-1/2 feet off the ground. Mason was at the back of Ms. Mifflin-Gee's vehicle taking witnesses' statements.

While at the foot of the gurney at the Fire-Rescue truck, Alexandre prepared to unlock the gurney to put the loading wheels onto the truck. Hough prepared to put Ms. Mifflin-Gee's head down in the low position. At this point Alexandre felt the angle of the gurney change, and Ms. Mifflin-Gee, while still with her head elevated to a 45 degree angle, came over the top of the side rail, rolled off the gurney, and hit her head on the ground. The gurney lap belt was not buckled. All three paramedics/EMTs confirm that Ms. Mifflin-Gee's head hit the ground, and that there was now an abrasion on her forehead, which was not present at the initial evaluation.

Hough and Alexandre then lifted Ms. Mifflin-Gee back on to the gurney in the flat position, and Mason buckled the lap belt. Ms. Mifflin-Gee was then lifted into the Fire-Rescue truck. According to the paramedic/EMT records, the transport to the Fire-Rescue truck and Ms. Mifflin-Gee's fall took place in the span of five minutes.

At 11:27 a.m., Ms. Mifflin-Gee was in the Fire-Rescue truck and Alexandre and Mason began to re-assess her condition. Her systolic blood presser had increased to 246 and pulse was up to 146, and SpO2 was down to 82%. At 11:28 a.m., an EKG was performed by Hough which showed a sinus tachycardia of 146.[3] Alexandre started an IV at 11:31 a.m. in an attempt to stabilize Ms. Mifflin-Gee's condition, but the fluids failed to produce any change to her condition.

At 11:31 a.m., the City of Miami Fire-Rescue truck left the scene, headed for Jackson Memorial Hospital in Miami, Florida. While in route at 11:32 a.m., Ms. Mifflin-Gee remained unconscious and respirations were insufficient. Alexandre administered Versed[4], and at 11:33 a.m., Mason attempted to intubate Ms. Mifflin-Gee. The records indicate that the

[3] Sinus tachycardia is a heart rate of greater than 100 beats per minute in an average adult. The normal resting heart rate is of the average adult is 60 to 100 beats per minute.
[4] Versed is the trade name for midazolam hydrochloride which is a sedative used for minor medical procedures. Versed (2010). In *Physicians' Desk Reference* (65th ed.), Montvale, NJ: PDR Network.

endotracheal tube was confirmed by Mason to have been successfully placed in the trachea.

Ms. Mifflin-Gee was admitted to the Jackson Memorial emergency room at 12:05 p.m. On admission, her blood pressure was 240/126 and blood sugar was 196. She was unresponsive and comatose. A small contusion and right frontal swelling were noted by emergency room personnel. Her pupils were fixed and dilated.

It was also noted by the emergency room physician that Ms. Mifflin-Gee had a distended abdomen and that her endotracheal tube had been improperly placed in her esophagus. The paramedics efforts to ventilate Ms. Mifflin-Gee during transport between 11:33 a.m. and 12:05 p.m. had actually been putting air in her stomach, not her lungs. The ER physician removed the endotracheal tube and properly placed a new one in the trachea. The abdomen was then decompressed with the placement of an NG tube.

An EKG, CT scan of the brain, lab work, and a neurosurgical consult were immediately ordered. All tests contained abnormal findings. The CT showed a brain midline shift to the right and a large left sided holohemispheric subdural hematoma and extension subarachnoid hemorrhage.

At 12:20 p.m., Ms. Mifflin-Gee was transitioned to the neurosurgery medical service and the care of Dr. M. Ross Bullock, M.D. At 12:40 p.m., Ms. Mifflin-Gee was taken for emergency neurosurgery. She underwent a lift frontal-parietal craniotomy to remove a large subdural hematoma and the placement of a ventriculostomy.

Ms. Mifflin-Gee was taken from surgery to the neuroscience intensive care in a deep coma and with the endotracheal tube still in place. Ms. Mifflin-Gee remained at Jackson Memorial Hospital in a near vegetative state until February 12, 2013. During that time, her endotracheal tube was replaced with a permanent tracheotomy tube (T-piece). A feeding tube (PEG tube) was inserted. She developed post-operative hydrocephalus and underwent the placement of a right occipital ventricular-peritoneal shunt which required a revision for blockage and she underwent a cranioplasty to cover her brain where the bone had been removed.

February 12, 2013, Ms. Mifflin-Gee was transferred to Jackson Memorial Long Term Care Facility in a persistent vegetative state, with a tracheostomy, a feeding tube, and was totally unresponsive to her external environment.

On March 19, 2013, Ms. Mifflin-Gee's sister, Marilyn Jelks, was appointed guardian of Ms. Mifflin-Gee's person and property. Ms. Mifflin-Gee was not married and had no children.

On April 29, 2013, Ms. Mifflin-Gee returned to Jackson Memorial Hospital with a urinary tract infection, acute renal failure, bedsores and subsequent respiratory distress. She was treated aggressively with antibiotics and fluids, but developed respiratory failure and was placed on a ventilator. She also developed significant rectal and gastric bleeding, and a deep venous thrombosis (DVT) for which they inserted an inferior vena cava filter.

On May 28, 2013, Ms. Mifflin-Gee returned to the Jackson Memorial Long Term Care Facility, and remains there in a persistent vegetative state with a feeding tube, tracheostomy, chronic respiratory failure, and with periodic skin breakdowns. Her family resides in Georgia and wishes to transport her to a facility near them but Claimant's dependency on the tracheostomy has complicated any such plans.

The record evidence shows that at no time has Ms. Mifflin-Gee ever regained conscious from the time she was found in the vehicle to the present.

No expert testimony was presented on the issue of whether it was a breach of duty, or the standard of care, for the paramedics/EMTs not to have buckled, the gurney's lap belt, prior to beginning to transport Ms. Mifflin-Gee to the Fire-Rescue truck. However, Hough, Mason and Alexandre, all trained paramedics/EMTs, testified that it was their understanding that buckling the gurney belt was part of proper procedure in transporting an unconscious patient and that it should have been done.

The record evidence also shows that Mason did not correctly insert Ms. Mifflin-Gee's endotracheal tube in the Fire-Rescue truck on the way to the hospital. This evidence does not require expert testimony to establish it as yet another breach

of the standard of care by City of Miami, Department of Fire-Rescue employees. It is within the realm of common knowledge and experience for one to know that if you are trained to perform a professional task, and you do it incorrectly without recognizing the error, you have breached the standard of care. This breach of the standard of care resulted in inadequate ventilation of Ms. Mifflin-Gee for at least 32 minutes during transport to the hospital. This inadequate ventilation more likely than not aggravated Ms. Mifflin-Gee's already compromised physical condition.

The affidavit of M. Ross Bullock, M.D., neurosurgeon, indicates that it is his opinion that Ms. Mifflin-Gee's large subdural hematoma was the result of trauma from her three-foot fall off the gurney, as there was no other history of prior trauma. He further concluded that her persistent vegetative state was caused by her traumatic subdural hematoma.

The report of Craig H. Lichtblau, M.D., a board certified physical medicine and rehabilitation specialist, was submitted as an expert opinion on the issues of Ms. Mifflin-Gee's life expectancy and future medical needs.[5] Dr. Lichtblau's report is based on his evaluation of Ms. Mifflin-Gee on November 16, 2014, and a review of her social and medical history reported by her sister, a review her medical records, and research on costs of long-term institutional care in Florida.

It is Dr. Lichtblau's opinion, within a reasonable degree of medical certainty, that Ms. Mifflin-Gee is in a persistent vegetative state[6] and that she will survive in that state for seven to 12 years. At the time of Ms. Mifflin-Gee's injury, she was a 64 years old, Afro-American, single, retired, with no prior history of debilitating health issues, and had a life expectancy of 21.0 years.[7] Dr. Lichtblau further included with

[5] There are no issues of pain and suffering or lost wages. Ms. Mifflin-Gee was unemployed at the time of her injury, and persons in a persistent vegetative state do not feel pain. *See footnote 6.*

[6] Dr. Lichtblau describes a persistent vegetative state as a clinical condition of complete unawareness of self in the environment, accompanied by sleep/awake cycles, along with either complete or partial preservation of the hypothalamic and brain stem autonomic functions. Patients in a persistent vegetative state do not feel pain and have a substantially reduced life expectancy. For most patients in this condition, life expectancy ranges from 2 to 5 years. Survival beyond 10 years is unusual. He cites as authority, The New England Journal of Medicine, *Medical Aspects of the Persistent Vegetative State*, Vol. 330, No. 22, pp. 1572 - 1579, published June 2, 1994, *available at* http://www.nejm.org/toc/nejm/330/22, (last visited March 1, 2017).

[7] U.S. Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics System, *National Vital Statistics Report, United States Live Tables, 2012*, Vol. 65, No.8,

his report two cost estimates for Ms. Mifflin-Gee's future care in a long term institutional setting. Based on his comprehensive medical evaluation of Ms. Mifflin-Gee, both institutions concluded that to provide Ms. Mifflin-Gee with room, board, appropriate therapies, and case management would cost $1,500 per day. Based on Dr. Lichtblau's life expectancy range for Ms. Mifflin-Gee, it is reasonable to calculate her future medical expenses as between $3,960,250.00 and $6,789,000.00.

August 13, 2013, a civil complaint for negligence was filed against the City of Miami, Department of Fire-Rescue by Marilyn Jelks, as Custodian of the person and property of Mary Mifflin-Gee, an incapacitated person.

A settlement was reached for $2,500,000, and the Settlement Agreement was signed December 21, 2016. The City of Miami requests the approval of a claim bill for $2,300,000, and Lloyds of London, the City of Miami's excess insurance company, will reimburse the City of Miami $2,000,000.

Ms. Mifflin-Gee's past medical expenses paid by Medicaid were $374,388.50, which were reduced to $128,164.37, and the Medicaid lien has been satisfied.

LEGISLATIVE HISTORY:

SB 46 by Senator Montford is the first time this claim has been introduced to the Legislature.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether the City of Miami is liable for the negligence of its employees, acting within the course and scope of their employment, as paramedics/EMTs with the City of Miami's Department of Fire-Rescue; and if so, whether the amount of the claim is reasonable. This report is based on the record evidence presented to the Special Master prior to, during, and after the hearing at the request of the Special Master.

To prevail in a negligence case, a plaintiff must establish by a preponderance of the evidence that there was a standard of care or duty owed by a defendant to the plaintiff, that the defendant breached that duty or standard of care, and that the

page 27, Published November 28, 2016, by Elizabeth Arias, Ph.D., Melonie Heron, Ph.D., and Jiaquan Xu, M.D., Division of Vital Statistics, *located at* https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_08.pdf, (last viewed Mar. 1, 2017).

breach was the cause of both the plaintiff's injuries and damages. The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that, more likely than not, the conduct of the defendant was a substantial factor in bringing about the injury and damages.[8]

The terms of the settlement agreement between the City of Miami and Ms. Mifflin-Gee's guardian, establish that paramedics/EMTs Eric Hough, Marc Alexandre, and Lt. Steve Mason were employees of the City of Miami and were acting within the course and scope of their employment as Department of Fire-Rescue paramedics/EMTs, at the time they responded to the 911 call for Ms. Mifflin-Gee.

Ms. Mifflin-Gee's representatives presented no expert testimony on what duty or standard of care was required by the paramedics/EMTs when transporting an unconscious patient. However, all three paramedics/EMTs testified that, although they put the gurney's side rails up, it was part of the routine transport procedure to buckle the lap belt before transporting a patient in Ms. Mifflin-Gee's condition.

Section 70.702, F.S., qualifies a witness as an expert by knowledge, skill, experience, training, or education. Their testimony thus established their duty and standard of care required. The gurney's lap belt should have been buckled before attempting to transport Ms. Mifflin-Gee to their Fire-Rescue truck. That duty was clearly breached in this case,

As a result of the paramedics/EMTs breach of their duty to apply the gurney lap belt when transporting Ms., Mifflin-Gee, when the "angle of the gurney changed," the side rails alone were insufficient to hold Ms. Mifflin-Gee to the gurney. Without the lap belt properly buckled, securing Ms. Mifflin-Gee to the gurney, she rolled off, fell to the ground and struck her head.

The affidavit of Dr. Bullock provides an expert opinion on the cause of Ms. Mifflin-Gee's large subdural hematoma. He clearly states that it was the result of trauma from her three-foot fall off the gurney. He further concludes that her persistent vegetative state was caused by her traumatic subdural hematoma from the fall.

[8] *Gooding v. University Hospital Bldg., Inc*., 445 So. 2d 1015, 1984 Fla. LEXIS 2545 (Fla. 1984).

The report of Dr. Lichtblau's provides, within a reasonable degree of medical certainty, evidence of Ms. Mifflin-Gee's life expectancy and estimated cost of her future medical care. It is Dr. Lichtblau's expert opinion that Ms. Mifflin-Gee, with reasonable medical certainty, has a life expectancy of seven to 12 years and that medical costs that will result are between $3,960,250 and $6,789,000. This clearly makes the settlement amount of $2,500,000 a reasonable compromise given the risks and cost of a jury trial.

After considering all of the facts in this case, I conclude that the defendant's employees had a duty to Ms. Mifflin-Gee to buckle the gurney lap belt before attempting to transport her, that they breached that duty, and that the breach caused her injuries and damages. The amount of the claim bill is reasonable and appropriate.

ATTORNEYS FEES:

Senate Bill 46 restricts the total amount of attorney fees, related to the claim to a maximum of 25 percent of the total amount awarded. The total attorney fees will be $625,000 of the $2.5 million dollar settlement.[9] The claimant's attorney has not retained a lobbyist, and outstanding costs total $17,110.39.

RECOMMENDATIONS:

The undersign recommends that Senate Bill 46 be amended to direct the Guardian for Mary Mifflin-Gee, Marilyn Jelks, establish a Special Needs Trust for the benefit of Mary Mifflin-Gee and that all payments of funds, after the deduction of attorney's fees, and costs, be made to the Mary Mifflin-Gee Special Needs Trust. Otherwise, the undersigned recommends that Senate Bill 46 (2017) be reported FAVORABLY.

[9] See affidavit of Attorney Jason D. Weissner, dated November 17, 2016; and Searcy, Denney, Scarola, Barnhart, &Shipley, v State of Florida, 194 So. 3d 349 (Fla. 2017).

Respectfully submitted,

Tari Rossitto-Van Winkle, R.N., J.D.
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
The CS provides for the proceeds of the claim bill to be placed in a special needs trust, which will protect Ms. Miffin-Gee's eligibility for means-tested government benefits. The CS also no longer includes references to the City's insurer, corrects an error in the whereas clauses, and revises the limit on fees to conform to a recent Supreme Court opinion.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/28/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 76 - 95
and insert:
Section 2. The City of Miami is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $2,300,000 payable to Marilyn Jelks, as legal guardian of Mary Mifflin-Gee. This sum shall be placed in the Special Needs Trust created for the exclusive use and benefit of Mary Mifflin-Gee, to compensate her for injuries and damages sustained as a result of the negligence of employees of

252732

the City of Miami.

Section 3. The amount paid by the City of Miami pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Mary Mifflin-Gee. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

And the title is amended as follows:

Delete lines 68 - 70

and insert:

An act for the relief of Mary Mifflin-Gee by the City of Miami; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of employees of the City of Miami Department of Fire-Rescue; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, on October 25, 2012, Mary Mifflin-Gee was in her vehicle located in a parking lot at 1498 NW 54th Street in Miami when, according to eyewitness statements, she exhibited seizure-like symptoms and foamed from the mouth, and

WHEREAS, a call was placed to 911, and paramedics Eric Hough, Marc Alexandre, and Steven Mason of the City of Miami Department of Fire-Rescue responded to treat Mary Mifflin-Gee, and

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WHEREAS, the fire rescue personnel removed Mary Mifflin-Gee from her vehicle, and, even though it is a basic Emergency Medical Technician (EMT) requirement to secure an unconscious patient to the gurney with the seatbelt, the fire rescue personnel placed Mary Mifflin-Gee on a gurney without securing her with the seatbelt and attempted to transfer her into the ambulance, and

WHEREAS, because of the fire personnel's failure to follow the basic EMT requirement, Mary Mifflin-Gee fell off the gurney and struck her head and, as a result, suffered a severe traumatic brain injury, and

WHEREAS, Mary Mifflin-Gee was transported to Jackson Memorial Hospital, where she underwent a left craniectomy and cranioplasty as well as a posttraumatic hydrocephalus ventriculoperitoneal shunt placement for her head injury, and

WHEREAS, Mary Mifflin-Gee became tracheostomy dependent and suffered numerous complications, such as dysphagia, hypertension, anemia of chronic disease, acute renal failure, respiratory distress, urinary tract infections, rectal bleeding, and deep vein thrombosis, and

WHEREAS, Mary Mifflin-Gee was transferred to Jackson Memorial Long-Term Care Center, where she now depends on nursing staff for all daily activities and all levels of care and remains in a persistent vegetative state, and

WHEREAS, Mary Mifflin-Gee was treated by Dr. Craig Lichtblau, a specialist certified by the American Board of Physical Medicine and Rehabilitation, who determined that she is 93 percent impaired as a result of the accident in question and that her future medical care will cost several million dollars,

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and

WHEREAS, additionally, Mary Mifflin-Gee's past medical expenses amount to $1,168,857.93, and

WHEREAS, before the accident, Mary Mifflin-Gee lived alone, had no significant health issues, and was completely independent, and

WHEREAS, Marilyn Jelks, as legal guardian of the person and property of Mary Mifflin-Gee, filed a claim and lawsuit against the City of Miami in the Circuit Court of the 11th Judicial Circuit of Florida, Case No. 13-026644 CA 01, for compensation for the injuries, alleging negligence in the care and treatment by the EMT workers who attended to Mary Mifflin-Gee, and

WHEREAS, mediation was conducted on February 6, 2015, and the case was settled for $2.5 million, and

WHEREAS, the insurance company of the City of Miami, Lloyd's of London, which has a policy that provides for a $500,000 self-insured retention before the company is responsible for any excess amount, has agreed to pay $2 million, and

WHEREAS, the City of Miami has agreed to pay $200,000 in satisfaction of the sovereign immunity limits under s. 768.28, Florida Statutes, NOW, THEREFORE,

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Chair*
Communications, Energy, and Public Utilities, *Vice Chair*
Appropriations
Appropriations Subcommittee on Pre-K - 12 Education
Health Policy
Rules

SENATOR BILL MONTFORD
3rd District

March 22, 2017

Senator Greg Steube, Chair
Senate Committee on Judiciary
515 Knott Building
Tallahassee Florida 32399-1100

Dear Senator Steube:

I respectfully request that the following Claim Bills be placed on the agenda for a hearing before the next Judiciary Committee Meeting:

SB 46 – Relief of Mary Mifflin-Gee by the City of Miami

Your consideration is greatly appreciated.

Sincerely,

William "Bill" Montford
Senate District 3

MD/WM

Cc: Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant

REPLY TO:
☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

46
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jason Wisser

Job Title Attorney

Address 1615 Forum Pl.
Street

West Palm Beach FL 33401
City *State* *Zip*

Phone 561-689-8180

Email jwisser@shutlaw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Mary Mifflin-Gee

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)

ClariThe 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 340
INTRODUCER:	Judiciary Committee; Banking and Insurance Committee; and Senator Brandes and others
SUBJECT:	Transportation Network Companies
DATE:	March 30, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Brown	Cibula	JU	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 340 creates statewide requirements for transportation network companies (TNCs). TNCs use smartphone technology to connect individuals who want to ride with private drivers for a fee.

Preemption

This bill specifies that its provisions preempt any local ordinances or rules on TNCs, so that TNCs will be governed exclusively by state law. Therefore, local governments are prohibited from imposing taxes, licensing requirements, or other restrictions on TNCs.

Insurance Requirements

The bill provides minimum insurance requirements for TNCs and TNC drivers. Insurance may be purchased by the TNC, TNC driver, or a combination of the two.

When a TNC driver is logged onto the digital network but not engaged in a prearranged ride, the bill requires:

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;

- Personal injury protection (PIP) benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law; and
- Uninsured and underinsured vehicle coverage as required by law.

When a TNC driver is engaged in a prearranged ride the bill requires:
- PIP coverage of at least $1 million for death, bodily injury, and property damage;
- PIP benefits that meet the minimum coverage amounts required of a limousine under Florida Motor Vehicle No-Fault Law; and
- Uninsured and underinsured vehicle coverage as required by law.

Limits on Insurance Coverage

The bill authorizes an automobile insurer to limit coverage provided to an owner or operator of a TNC vehicle to that afforded to the actual vehicle driven on a prearranged ride. Therefore, the coverage exclusion may not apply to other insurance policies that might otherwise provide coverage to the TNC driver, such as an umbrella policy or any stacking uninsured/underinsured motorist coverage on other vehicles in the TNC driver's household.

Background Checks on Drivers

The bill requires the TNC to conduct a local and national criminal background check on its drivers every 3 years, and a driving record check just once when the person applies as a TNC driver. Background checks may be conducted by the TNC or by a private third party. The bill prohibits the TNC from hiring a person as a TNC driver if he or she has been convicted of certain crimes or a certain number of moving violations. To ensure that the TNC has complied with the requirement of background checks, the bill requires the TNC to submit a procedures report prepared by an independent certified public accountant to the Department of Financial Services (DFS). If the DFS finds that the report indicates noncompliance, the DFS may impose fines on the TNC and seek injunctive relief.

Adoption of Policies by the TNC

The bill requires a TNC to implement a zero tolerance policy on the use of drugs and alcohol by its drivers, and to suspend a driver during the length of an investigation, if a rider registers a complaint of drug or alcohol use. Additionally, TNCs must adopt policies on nondiscrimination and disability access.

Miscellaneous

In addition, the bill:
- Requires a TNC to maintain an agent for service of process;
- Requires a TNC to disclose information on the collection of fares;
- Requires a TNC driver to carry proof of insurance;
- Requires a TNC's digital network to display a photograph of the TNC driver and the license plate number of the TNC vehicle;
- Provides that TNC drivers are independent contractors if certain conditions are met;

- Prohibits TNC drivers from accepting rides for compensation outside of the TNC's digital network and from soliciting or accepting street hail; and
- Requires TNCs to maintain records on riders and TNC drivers.

II. Present Situation:

Technological advances have led to new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. Ridesharing companies, such as Lyft, Uber, and SideCar, describe themselves as "transportation network companies" (TNCs), rather than as vehicles for hire.

Transportation Network Companies

TNCs use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application and indicates the driver is ready to accept passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and drives to pick up the passenger. Once at the destination, payment is made through the phone application. Some state and local governments have taken steps to recognize and regulate companies using these new technologies. Forty-five states have enacted legislation regarding transportation network companies.[1]

Insurance Requirements

Drivers generally use their personal vehicles and most personal automobile policies contain a "livery" exclusion that excludes coverage if the vehicle is carrying passengers for hire.[2] Consequently, most personal automobile insurance policies do not cover damage or loss when a car is being used for commercial ridesharing. Some ridesharing companies provide insurance for portions of the time when the driver is transporting passengers, but such insurance is not required. This could lead to situations where drivers and passengers are involved in accidents and there is no insurance coverage. In contrast, taxis and limousines must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, up to $250,000 per incident for bodily injury, and $50,000 for property damage.[3]

Background Checks

Background checks may involve a search locally, at the state level, or nationally. The Florida Department of Law Enforcement (FDLE) conducts background checks through criminal history checks and criminal history records checks. These background checks may include a search of the following databases:

- The Florida Computerized Criminal History Central Repository for Florida arrests for state checks;

[1] PCI, *Transportation Network Companies*, available at: http://www.pciaa.net/industry-issues/transportation-network-companies (last visited March 24, 2017).
[2] The exclusion in Florida law is mentioned in s. 627.041(8), F.S.
[3] Section 324.032(1)(a), F.S.

- The Florida Computerized Criminal History Central Repository for Florida arrests and the national criminal history database at the FBI for federal arrests and arrests from other states for state and national checks; and
- The Florida Crime Information Center for warrants and domestic violence injunctions.[4]

National criminal history record checks, as well as state checks, require the subject of the search to submit his or her fingerprints.[5] Similarly, a check of the national criminal history at the FBI, initiated through an appropriate state agency (the FDLE in Florida), requires fingerprinting.[6]

Chapter 435, F.S., governs employment screening for government agencies. A Level 1 and a Level 2 background screening are available. Level 1 screening, which does not require fingerprinting, may include a search of criminal history databases, the National Sex Offender Public Website,[7] and local criminal history checks through local law enforcement agencies. Level 1 screening is based on a state-only name search and an employment history check.[8] Level 2 screening requires fingerprinting as a precursor to a statewide criminal history records checks through the FDLE, a national criminal history records check through the Federal Bureau of Investigation, and a local criminal records check through local law enforcement agencies.[9]

Private entities also perform background checks. These entities search available public records throughout the country and compile information from those sources to provide criminal history information. These searches are generally conducted without fingerprinting.[10]

Local Regulation of TNCs

TNCs are not expressly regulated under state law. However, some local jurisdictions have enacted ordinances with different requirements in different jurisdictions[11] and other Florida counties and cities have considered local ordinances. Representatives of TNCs express concern that differing regulations in different jurisdictions can lead to confusion among drivers and riders.

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[4] FDLE, *Criminal History Record Checks/Background Checks Fact Sheet*, available at: http://www.fdle.state.fl.us/cms/Criminal-History-Records/Documents/BackgroundChecks_FAQ.aspx (last visited March 24, 2017).
[5] *Id*.
[6] *See* Florida Department of Law Enforcement, Criminal History Record Checks/Background Checks Fact Sheet (Feb. 14, 2017), http://www.fdle.state.fl.us/cms/Criminal-History-Records/Documents/BackgroundChecks_FAQ.aspx (last accessed March 9, 2017).
[7] The United States Department of Justice National Sex Offender Public Website (NSOPW); available at: https://www.nsopw.gov/ (last visited March 24, 2017). The site contains information from sex offender registries for all 50 states, the District of Columbia, U.S. territories, and Indian Country.
[8] Section 435.03(1), F.S.
[9] Section 435.04(1)(a), F.S.
[10] For a discussion of some of the problems involved with background checks performed by private entities, *see, i.e.*,Center for Community Change, National Employment Law Project, *"The 'Wild West' of Employment Background Checks"* (Aug. 2014); available at: http://www.nelp.org/content/uploads/2015/03/Wild-West-Employment-Background-Checks-Reform-Agenda.pdf (last visited March 24, 2017).
[11] For example, Miami-Dade, Broward, and Palm Beach counties require vehicle inspections. Uber website, available at: https://www.uber.com/drive/miami/inspections/ (Last visited march 24, 2017). An ordinance in Miami-Dade County requires background checks. Miami Herald website, available at: http://miami.cbslocal.com/2016/01/20/dade-takes-up-possible-restrictions-on-uber-lyft/ (last visited March 24, 2017).

III. Effect of Proposed Changes:

SB 340 creates s. 316.68, F.S., to govern transportation network companies (TNC), such as Lyft, Uber, and SideCar. A TNC is an entity that uses a digital network[12] to connect a rider[13] to a TNC driver[14] for a prearranged ride. A prearranged ride begins when a TNC driver accepts a ride requested by a rider through the digital network, continues while the TNC driver transports the rider, and ends when the last rider exits the TNC vehicle.[15]

The bill provides that a TNC does not own, control, operate, direct, or manage the TNC vehicles or TNC drivers except if a written contract provides otherwise.

Insurance Requirements

The bill provides uniform statewide minimum insurance requirements for TNCs and TNC drivers. Many of the provisions of this bill are found in the National Association of Insurance Commissioners (NAIC) TNC Insurance Compromise Model Bill.[16] The NAIC Model Bill requires a TNC or TNC driver to maintain primary automobile insurance that:

- Recognizes that the TNC driver is a TNC driver or otherwise uses a vehicle to transport riders for compensation; and
- Covers the TNC driver while the TNC driver is logged on to the digital network of the TNC or while the TNC driver is engaged in a prearranged ride.

The bill also requires a TNC driver or TNC on behalf of the driver to maintain primary automobile insurance that covers the TNC driver while logged on the digital network or while engaged in a prearranged ride.

When a TNC driver is logged on the digital network but not engaged in a prearranged ride, the bill requires:

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;
- PIP benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405, F.S.;[17] and

[12] The bill defines "digital network" as any online-enabled technology application service, website, or system offered or used by a TNC which enables the prearrangement of rides with TNC drivers.
[13] The bill defines rider as means an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver's TNC vehicle between points chosen by the rider.
[14] The bill defines a TNC driver as an individual who receives connections to potential riders and related services from a TNC and uses a TNC vehicle to offer or provide prearranged rides for compensation to riders upon connection to a digital network.
[15] The term does not include a taxicab, for-hire vehicle, or street hail service and does not include ridesharing as defined in s. 341.031, F.S., carpool as defined s. 450.28, F.S., or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.
[16] National Association of Insurance Commissioners (NAIC), http://www.naic.org/documents/committees_c_sharing_econ_wg_related_tnc_insurance_compromise_bill_package.pdf (last visited March 24, 2017).
[17] These provisions, known as the No-Fault Law, require coverage for personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits.

- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S. [18]

When a TNC driver is engaged in a prearranged ride, the following insurance requirements apply:

- Primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;
- PIP benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405, F.S.; and
- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.

Although the bill requires PIP coverage at the same amounts required of limousines, limousines are excluded from PIP requirements,[19] so the effect of this provision is to require no PIP coverage when a driver is engaged in a prearranged ride.

The coverage requirements of this bill may be satisfied by any of the following:

- Automobile insurance maintained by the TNC driver;
- Automobile insurance maintained by the TNC; or
- A combination of insurance maintained by the TNC and insurance maintained by the TNC driver.

If the TNC driver's insurance has lapsed or does not provide the required coverage, the insurance maintained by the TNC must provide coverage and defend against a claim. Coverage under an automobile insurance policy maintained by the TNC must not be dependent on a personal automobile insurer first denying a claim, and a personal automobile insurance policy is not required to first deny a claim. An insurer authorized to do business in Florida must provide the insurance required by the bill if it is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation. The bill provides that insurance required by the bill satisfies financial responsibility and security requirements for any period when the TNC driver is logged onto the digital network or engaged in a prearranged ride.

The bill requires a TNC driver to carry proof of insurance[20] and provide coverage information to parties directly involved in an accident, automobile insurers, and an investigating law enforcement officer at the scene of an accident. The TNC driver must also disclose to these parties whether he or she was logged on the application or engaged in a prearranged ride at the time of the accident.

If a TNC's insurer makes a payment for a claim covered under comprehensive or collision coverage, the insurer must directly pay the business repairing the vehicle or jointly pay the vehicle owner and the primary lienholder.

[18] Section 627.727(1), F.S.. requires uninsured motor vehicle coverage if a policy provides bodily injury coverage unless it is specifically rejected.
[19] Section 627.733(1)(a), F.S.
[20] Proof of insurance may be presented through an electronic device such as a phone application.

Insurance Disclosures

The TNC must disclose to the TNC driver:

- Details of the insurance coverage provided by the TNC while the TNC driver uses a TNC vehicle in connection with the TNC's digital network;
- That the TNC driver's own automobile insurance policy might not provide any coverage while the TNC driver is logged on to the digital network or is engaged in a prearranged ride, depending on the terms of the TNC driver's own policy; and
- That the provision of rides for compensation which are not prearranged rides subjects the driver to coverage requirements imposed under s. 324.032(1), F.S., and that failure to meet such coverage requirements subjects the TNC driver to criminal penalties.

These disclosures must be made before the TNC driver accepts a request for a prearranged ride.

Insurance Exclusions

An insurer that provides a personal automobile liability insurance policy may exclude coverage afforded under the policy issued to an owner or operator of a TNC vehicle for loss or injury that occurs while the driver is driving the TNC vehicle, meaning that the driver is logged on to the digital network or providing a prearranged ride. Therefore, a coverage exclusion may not apply to other insurance policies that might otherwise provide coverage to the TNC driver, such as an umbrella policy or any stacking uninsured/underinsured motorist coverage on other vehicles in the TNC driver's household.

Exclusions may apply to any coverage included in an automobile insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage;
- Collision physical damage coverage; and
- Personal injury protection.

Exclusions are limited to coverage while a TNC driver is logged on to a digital network or while the TNC driver provides a prearranged ride. The exclusions do not affect or diminish coverage otherwise available for permissive drivers or resident relatives under the personal automobile policy of the TNC driver or owner who are not occupying the TNC vehicle at the time of the loss.

The bill does not require coverage under a personal automobile insurance policy while the TNC driver is logged on to a digital network, while the TNC driver is engaged in a prearranged ride, or while the TNC driver otherwise uses a vehicle to transport riders for compensation. However, an insurer may provide primary or excess coverage for the TNC driver's vehicle by contract or endorsement.

If an automobile insurer excludes coverage when a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride, the insurer does not have a duty to defend or

indemnify any claim expressly excluded. The bill does not invalidate or limit an exclusion contained in a policy, including a policy in use or approved for use in this state before July 1, 2017, which excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public. If an automobile insurer defends or indemnifies a claim against a TNC driver which is excluded under the terms of its policy, the insurer has a right of contribution against other insurers that provide automobile insurance to the same TNC driver in satisfaction of the coverage requirements at the time of loss.

In a claims coverage investigation, a TNC must immediately provide, upon request by a directly involved party or any insurer of the TNC driver, the precise times that the TNC driver logged on and off the digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident. An insurer must disclose upon request by any other insurer involved in the particular claim, the applicable coverages, exclusions, and limits provided under any automobile insurance maintained in order to satisfy the bill requirements.

TNC Driver is an Independent Contractor

The bill provides that a TNC driver is an independent contractor and not an employee of the TNC if all of the following conditions are met:

- The TNC does not unilaterally prescribe specific hours during which the TNC driver must be logged on to the TNC's digital network;
- The TNC does not prohibit the TNC driver from using digital networks from other TNCs;
- The TNC does not restrict the TNC driver from engaging in any other occupation or business; and
- The TNC and TNC driver agree in writing that the TNC driver is an independent contractor of the TNC.

Although the status as an independent contractor is relevant in the area of who pays employment taxes, other issues may be affected. For example, the general rule is that an employer is liable for the torts of its employees but not liable for the torts of independent contractors. This rule is subject to an exception, which is that an employer may be held liable for negligent selecting, instructing, or supervising of an independent contractor, may be subject to a non-delegable duty arising out a of special relationship to the plaintiff or the public, or may be liable on the basis of work that is specially, peculiarly, or inherently dangerous.[21] Independent contractor status is important in unemployment compensation cases[22] and workers compensation cases. The bill does not address issues such as tort liability, workers compensation, or unemployment compensation.

Zero Tolerance for Drug and Alcohol Use

The bill requires a TNC to implement a zero-tolerance policy on the use of drugs and alcohol by a TNC driver while he or she provides a prearranged ride or is logged on to the digital network. The bill requires the TNC to provide notice of the policy on its website, as well as procedures to

[21] *McCall v. Alabama Bruno's Inc.*, 647 So. 2d 175, 177 (Fla. 1st DCA 1994).
[22] *McGillis v. Dept. of Econ. Opportunity*, 2017 Fla. App. Lexis 1114, 14 (Fla. 3d DCA 2017) (holding that a TNC driver is not an employee for purposes of reemployment assistance pursuant to ch. 443, F.S.).

report a complaint about a TNC driver whom a rider reasonably suspects was under the influence of drugs or alcohol during the course of the ride. Upon receipt of a rider's complaint alleging a violation of the zero-tolerance policy, the TNC must suspend a TNC driver's ability to accept any ride request through the TNC's digital network as soon as possible and investigate the incident. The suspension must last the duration of the investigation.

TNC Driver Background Check Requirements

The bill requires the TNC to do a criminal background check on its drivers. Before an individual may accept a ride request through a digital network:

- He or she must submit an application to the TNC which includes his or her address, age, driver license, motor vehicle registration, and other information required by the TNC; and
- The TNC must conduct or have a third party conduct a local and national criminal background check.

The local and national criminal background check must include:

- A search of the Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation of any records through a primary source search; and
- A search of the National Sex Offender Public Website maintained by the United States Department of Justice.

The TNC must conduct the required background check every 3 years. The background check required by this bill does not require fingerprinting. The bill allows the TNC or a third party to conduct a background check through private companies and does not require that the FDLE conduct the background check. Accordingly, the background check will not access the national criminal history records held by the FBI.

In addition, the bill requires the TNC to obtain and review, or have a third party obtain and review, a driving history research report for the applicant. The TNC may not authorize an individual to act as a TNC driver on its digital network if the report reveals that the individual has had more than three moving violations in the prior 3-year period. The bill does not require the TNC to obtain additional driving history research reports after the initial one.

The TNC may not authorize an individual to act as a TNC driver on its digital network if the background check conducted when the individual first seeks access to the digital network or any subsequent background check reveals that the individual has been convicted, within the past 5 years, of:

- A felony;
- A misdemeanor for driving under the influence of drugs or alcohol, for reckless driving, for hit and run, or for fleeing or attempting to elude a law enforcement officer;
- A misdemeanor for a violent offense[23] or sexual battery;[24] or
- A crime of lewdness or indecent exposure under chapter 800.

[23] The bill does not specify which misdemeanors would qualify as "violent offenses."
[24] There does not appear to be a misdemeanor for sexual battery in Florida law. Other states might have such a crime.

The TNC may not authorize an individual to act as a TNC driver on its digital network if the background check conducted when the individual first seeks access to the digital network or any subsequent background check reveals that the individual has been convicted in the past 3 years of driving with a suspended or revoked license.

The TNC may not authorize an individual to act as a TNC driver on its digital network if a background check reveals that the individual:

- Is a match in the National Sex Offender Public Website maintained by the United States Department of Justice;
- Does not possess a valid driver license; or
- Does not possess proof of registration for the motor vehicle used to provide prearranged rides.

The bill provides that no more than once every 2 years, the Department of Financial Services (DFS) shall direct a TNC to submit to the DFS an agreed-upon procedures report prepared by an independent certified public accountant for the sole purpose of verifying that the TNC is in compliance with the background check provisions of the bill. The report must be prepared in accordance with applicable attestation standards established by the American Institute of Certified Public Accountants. The TNC shall pay for the preparation and submission of the report.

Upon receipt of the report, the DFS may impose a fine of up to $250 for each violation of the background provisions of the bill and $500 for each repeat violation. The DFS may direct a TNC to address noncompliance with the background provisions of the bill identified in the report within a specified timeframe. The DFS may seek injunctive relief against a TNC that fails to comply with the DFS's direction and that poses an imminent threat to public safety. The bill does not extinguish any claim otherwise available under common law or another statute.

Preemption

The bill provides that it is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, and TNC vehicles. TNCs, TNC drivers, and TNC vehicles will be governed exclusively by state law, including jurisdictions that enacted a law or created rules governing TNCs, TNC drivers, or TNC vehicles before July 1, 2017.

The bill specifically provides that a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

- Impose a tax on, or require a license for, a TNC, a TNC driver, or a TNC vehicle if such tax or license relates to providing prearranged rides or subject a TNC, a TNC driver, or a TNC vehicle to any rate, entry, operational, or other requirement; or
- Require a TNC or a TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

The bill does not prohibit an airport from charging reasonable pickup fees consistent with any pickup fees charged to taxicab companies at that airport for their use of the airport's facilities or prohibit the airport from designating locations for staging, pickup, and other similar operations at the airport.

Other Provisions of the Bill

The bill provides that a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. A TNC driver is not required to register the vehicle that the driver uses to provide prearranged rides as a commercial motor vehicle or a for-hire vehicle.

The bill requires a TNC to designate and maintain an agent for service of process.

The bill requires the TNC to disclose to the rider the fare or fare calculation method on its website or within the online-enabled technology application service before the beginning of the prearranged ride. If the fare is not disclosed to the rider before the beginning of the prearranged ride, the bill requires the TNC to provide an estimated fare.

The bill requires a TNC's digital network to display a photograph of the TNC driver and the license plate number of the TNC vehicle used for providing the prearranged ride before the rider enters the TNC driver's vehicle.

Within a reasonable period after the completion of a ride, the bill requires the TNC to transmit an electronic receipt to the rider on behalf of the TNC driver which lists:

- The origin and destination of the ride;
- The total time and distance of the ride; and
- The total fare paid.

The bill provides that a TNC driver may not accept a ride for compensation other than a ride arranged through a digital network and may not solicit or accept street hails.

The bill requires a TNC to adopt and notify drivers of a policy of nondiscrimination. The TNC driver must also comply with all applicable laws relating to accommodation of service animals.

The bill provides that a TNC may not impose additional charges for providing services to a person who has a physical disability because of the person's disability. A TNC that contracts with a governmental entity to provide paratransit services must comply with all applicable state and federal laws related to individuals with disabilities.

The bill requires a TNC to reevaluate a decision to remove a TNC driver's authorization to access to its digital network due to a low quality rating by riders if the TNC driver alleges, and proof exists, that the low rating was motivated by discrimination.

The bill requires the TNC to maintain individual ride records for at least 1 year after the date each ride is provided and individual records of TNC drivers for at least 1 year after the date the TNC leaves the TNC.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent that this bill reduces the ability of a county or municipality to raise revenue, the mandates provision of Art. VII, s. 18 of the Florida Constitution may apply. However, as a mandate analysis is based on revenue reduced in the aggregate, any fiscal impact is expected to be insignificant.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

To the extent that local governments currently collect fees from TNCs, these local governments will lose this source of revenue. However, fiscal impact is unknown as this bill has not been reviewed by the Revenue Estimating Conference.

B. Private Sector Impact:

The bill will create uniform statewide requirements for TNCs. TNCs might see reductions in costs incurred from complying with different ordinances in different jurisdictions.

The TNCs will incur costs from establishing and implementing policies on drugs and alcohol, antidiscrimination, and accessibility. The TNC will also have to bear the cost of producing the report on background checks to the DFS, as well as the cost of conducting the background check, unless this is borne by the individual drivers.

Whether the TNCs will incur additional costs for complying with insurance requirements is unknown, as some TNCs already maintain insurance coverage on drivers.

C. Government Sector Impact:

The fiscal impact on the DFS is indeterminate. How many TNCs will be required to submit procedures reports is unknown. Also unknown is the volume of litigation the DFS will have to pursue based on noncompliance. Pursuant to Florida Rule of Civil Procedure 1.610(b), the DFS could be required to post a bond when seeking injunctive relief. The bond could be significant. If the DFS is not required to post a bond, the DFS could be

liable for damages to a TNC if courts ultimately determine the injunction should not have been issued.[25]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although the bill requires PIP coverage at the same amounts required of limousines, limousines are excluded from PIP requirements[26] so the effect of this provision is to require no PIP coverage when a driver is engaged in a prearranged ride. Therefore, the sponsor of the bill may wish to revise this provision.

The bill authorizes the TNC to order a criminal history record check through a third party company. However, the Department of Law Enforcement (FDLE) notes that in doing so, the TNCs runs the risk of receiving outdated criminal history information. The FDLE recommends that the sponsor may wish to revise the bill to require a Level 2 screening based on fingerprints, to provide the most accurate record check possible. Were the sponsor to amend the bill, a fiscal impact on the private sector would accrue at the rate of $36 per background check.[27] How much a third party would charge for a background check is unknown.

VIII. Statutes Affected:

This bill creates section 627.748, Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on March 28, 2017:
The CS authorizes an automobile insurer to limit coverage provided to an owner or operator of a TNC vehicle to that afforded to the actual vehicle driven on a prearranged ride. Therefore, a coverage exclusion may not apply to other insurance policies that might otherwise provide coverage to the TNC driver, such as an umbrella policy or any stacking uninsured/underinsured motorist coverage on other vehicles in the TNC driver's household.

CS by Banking and Insurance on March 14, 2017:
The CS:

- Authorizes seaports to collect pickup fees as long as they do not exceed what a seaport charges taxis;

[25] Department of Financial Services, *Analysis of CS/SB 340* (March 14, 2017)(on file with the Senate Judiciary Committee).
[26] Section 627.733(1)(a), F.S.
[27] Florida Department of Law Enforcement, *2017 FDLE Legislative Bill Analysis* (Jan. 29, 2017) (on file with the Senate Judiciary Committee).

- Requires TNCs to contract with an independent auditor to review their background check process. The DFS is established as the enforcement mechanism for compliance with the insurance and background screening requirements of the bill;
- Strikes retroactivity of the independent contractor language;
- Modifies the definition of prearranged ride in a way that will extend insurance coverage to any time that any rider is in the vehicle and not limited to the person who requested the ride;
- Requires uninsured or underinsured vehicle coverage as required by s. 627.727, F.S.;
- Provides coverage for other insureds and resident relatives under a TNC driver's personal auto policy are unaffected by exclusions for TNC use; and
- Provides that TNCs are not granted immunity from civil liability through compliance with background check requirements.

B. Amendments:

None.

914002

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/28/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment

Delete line 274
and insert:
insurance policy specifically identifying a TNC vehicle as an insured vehicle under part XI of chapter 627 may exclude any

374516

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/28/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Steube) recommended the following:

Senate Substitute for Amendment (914002)

Delete line 276

and insert:

operator of a TNC vehicle while driving that vehicle for any loss or injury that occurs

By the Committee on Banking and Insurance; and Senators Brandes, Galvano, Simpson, Artiles, Young, and Bracy

597-02420-17 2017340c1

A bill to be entitled

An act relating to transportation network companies; creating s. 627.748, F.S.; defining terms; providing for construction; providing that a transportation network company (TNC) driver is not required to register certain vehicles as commercial motor vehicles or for-hire vehicles; requiring a TNC to designate and maintain an agent for service of process in this state; providing fare requirements; providing requirements for a TNC's digital network; providing for an electronic receipt, subject to certain requirements; providing automobile insurance requirements for a TNC and a TNC driver; providing requirements for specified proof of coverage for a TNC driver under certain circumstances; providing certain disclosure requirements for a TNC driver in the event of an accident; requiring a TNC to cause its insurer to issue certain payments directly to certain parties; requiring a TNC to make specified disclosures in writing to TNC drivers under certain circumstances; authorizing specified insurers to exclude certain coverage, subject to certain limitations; providing that the right to exclude coverage applies to any coverage included in an automobile insurance policy; providing applicability; providing for construction; providing that specified automobile insurers have a right of contribution against other insurers that provide automobile insurance to the same TNC drivers in satisfaction of certain coverage requirements under

597-02420-17 2017340c1

certain circumstances; requiring a TNC to provide specified information upon request by certain parties during a claims coverage investigation; requiring certain insurers to disclose specified information upon request by any other insurer involved in the particular claim; providing that TNC drivers are independent contractors if specified conditions are met; requiring a TNC to implement a zero-tolerance policy for drug or alcohol use, subject to certain requirements; providing TNC driver requirements; requiring a TNC to conduct a certain background check for a TNC driver after a specified period; requiring the Department of Financial Services to direct a TNC to submit to the department an agreed-upon procedures report prepared by a certified public accountant, subject to certain restrictions and requirements; authorizing the department to impose specified fines for violations and repeat violations identified in the report; authorizing the department to direct a TNC to address noncompliance identified in the report within a timeframe prescribed by the department; authorizing injunctive relief under certain circumstances; specifying when a repeat violation occurs; providing applicability; prohibiting a TNC driver from accepting certain rides or soliciting or accepting street hails; requiring a TNC to adopt a policy of nondiscrimination with respect to riders and potential riders and to notify TNC drivers of such policy; requiring TNC drivers to comply with the nondiscrimination policy

and certain applicable laws regarding nondiscrimination and accommodation of service animals; prohibiting a TNC from imposing additional charges for providing services to persons who have physical disabilities; requiring a TNC that contracts with a governmental entity to provide paratransit services to comply with certain state and federal laws; requiring a TNC to reevaluate a decision to remove a TNC driver's authorization to access its digital network in certain instances; requiring a TNC to maintain specified records; providing legislative intent; specifying that TNCs, TNC drivers, and TNC vehicles are governed exclusively by state law; prohibiting local governmental entities and subdivisions from taking specified actions; providing applicability; providing an effective date.

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

Section 1. Section 627.748, Florida Statutes, is created to read:

627.748 Transportation network companies.—

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

(a) "Digital network" means any online-enabled technology application service, website, or system offered or used by a transportation network company which enables the prearrangement of rides with transportation network company drivers.

(b) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC

driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab, for-hire vehicle, or street hail service and does not include ridesharing as defined in s. 341.031, carpool as defined s. 450.28, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

(c) "Rider" means an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver's TNC vehicle between points chosen by the rider. A person may use a digital network to request a prearranged ride on behalf of a rider.

(d) "Street hail" means an immediate arrangement on a street with a driver by a person using any method other than a digital network to seek immediate transportation.

(e) "Transportation network company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association or for-hire vehicle owner. An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization is not a TNC. This section does not prohibit a TNC

from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this section.

(f) "Transportation network company driver" or "TNC driver" means an individual who:

1. Receives connections to potential riders and related services from a transportation network company; and

2. In return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network.

(g) "Transportation network company vehicle" or "TNC vehicle" means a vehicle that is not a taxicab, jitney, limousine, or for-hire vehicle as defined in s. 320.01(15) and that is:

1. Used by a TNC driver to offer or provide a prearranged ride; and

2. Owned, leased, or otherwise authorized to be used by the TNC driver.

Notwithstanding any other provision of law, a vehicle that is let or rented to another for consideration may be used as a TNC vehicle.

(2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. In addition, a TNC driver is not required to register the vehicle that the TNC driver uses to provide prearranged rides as a commercial motor vehicle or a for-hire vehicle.

(3) AGENT.—A TNC must designate and maintain an agent for

service of process in this state.

(4) FARE TRANSPARENCY.—If a fare is collected from a rider, the TNC must disclose to the rider the fare or fare calculation method on its website or within the online-enabled technology application service before the beginning of the prearranged ride. If the fare is not disclosed to the rider before the beginning of the prearranged ride, the rider must have the option to receive an estimated fare before the beginning of the prearranged ride.

(5) IDENTIFICATION OF TNC VEHICLES AND DRIVERS.—The TNC's digital network must display a photograph of the TNC driver and the license plate number of the TNC vehicle used for providing the prearranged ride before the rider enters the TNC driver's vehicle.

(6) ELECTRONIC RECEIPT.—Within a reasonable period after the completion of a ride, a TNC shall transmit an electronic receipt to the rider on behalf of the TNC driver which lists:

(a) The origin and destination of the ride;

(b) The total time and distance of the ride; and

(c) The total fare paid.

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

(a) Beginning July 1, 2017, a TNC driver or a TNC on behalf of the TNC driver shall maintain primary automobile insurance that:

1. Recognizes that the TNC driver is a TNC driver or otherwise uses a vehicle to transport riders for compensation; and

2. Covers the TNC driver while the TNC driver is logged on

to the digital network of the TNC or while the TNC driver is engaged in a prearranged ride.

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

1. Automobile insurance that provides:

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

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

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

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

a. Automobile insurance maintained by the TNC driver;

b. Automobile insurance maintained by the TNC; or

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

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

1. Automobile insurance that provides:

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

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

c. Uninsured and underinsured vehicle coverage as required

by s. 627.727.

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

a. Automobile insurance maintained by the TNC driver;

b. Automobile insurance maintained by the TNC; or

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

(d) If the TNC driver's insurance under paragraph (b) or paragraph (c) has lapsed or does not provide the required coverage, the insurance maintained by the TNC must provide the coverage required under this subsection, beginning with the first dollar of a claim, and have the duty to defend such claim.

(e) Coverage under an automobile insurance policy maintained by the TNC must not be dependent on a personal automobile insurer first denying a claim, and a personal automobile insurance policy is not required to first deny a claim.

(f) Insurance required under this subsection must be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation of the Financial Services Commission.

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

(h) A TNC driver shall carry proof of coverage satisfying paragraphs (b) and (c) with him or her at all times during his or her use of a TNC vehicle in connection with a digital network. In the event of an accident, a TNC driver shall provide this insurance coverage information to any party directly involved in the accident or the party's designated representative, automobile insurers, and investigating police officers. Proof of financial responsibility may be presented through an electronic device, such as a digital phone application, under s. 316.646. Upon request, a TNC driver shall also disclose to any party directly involved in the accident or the party's designated representative, automobile insurers, and investigating police officers whether he or she was logged on to a digital network or was engaged in a prearranged ride at the time of the accident.

(i) If a TNC's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the TNC shall cause its insurer to issue the payment directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.

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

(a) Before a TNC driver is allowed to accept a request for a prearranged ride on the digital network, the TNC must disclose in writing to the TNC driver:

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

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

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

(b)1. An insurer that provides an automobile liability insurance policy under part XI of chapter 627 may exclude any and all coverage afforded under the policy issued to an owner or operator of a TNC vehicle for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. Exclusions imposed under this subsection are limited to coverage while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy, including, but not limited to:

a. Liability coverage for bodily injury and property damage;

b. Uninsured and underinsured motorist coverage;

c. Medical payments coverage;

d. Comprehensive physical damage coverage;

e. Collision physical damage coverage; and

f. Personal injury protection.

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

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

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

(c)1. An automobile insurer that excludes the coverage described in subparagraph (b)1. does not have a duty to defend or indemnify any claim expressly excluded thereunder. This section does not invalidate or limit an exclusion contained in a policy, including a policy in use or approved for use in this state before July 1, 2017, which excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public.

2. An automobile insurer that defends or indemnifies a claim against a TNC driver which is excluded under the terms of

its policy has a right of contribution against other insurers that provide automobile insurance to the same TNC driver in satisfaction of the coverage requirements of subsection (7) at the time of loss.

(d) In a claims coverage investigation, a TNC shall immediately provide, upon request by a directly involved party or any insurer of the TNC driver, if applicable, the precise times that the TNC driver logged on and off the digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident. An insurer providing coverage under subsection (7) shall disclose, upon request by any other insurer involved in the particular claim, the applicable coverages, exclusions, and limits provided under any automobile insurance maintained in order to satisfy the requirements of subsection (7).

(9) LIMITATION ON TRANSPORTATION NETWORK COMPANIES.—A TNC driver is an independent contractor and not an employee of the TNC if all of the following conditions are met:

(a) The TNC does not unilaterally prescribe specific hours during which the TNC driver must be logged on to the TNC's digital network.

(b) The TNC does not prohibit the TNC driver from using digital networks from other TNCs.

(c) The TNC does not restrict the TNC driver from engaging in any other occupation or business.

(d) The TNC and TNC driver agree in writing that the TNC driver is an independent contractor with respect to the TNC.

(10) ZERO TOLERANCE FOR DRUG OR ALCOHOL USE.—

(a) The TNC shall implement a zero-tolerance policy

regarding a TNC driver's activities while accessing the TNC's digital network. The zero-tolerance policy must address the use of drugs or alcohol while a TNC driver is providing a prearranged ride or is logged on to the digital network.

(b) The TNC shall provide notice of this policy on its website, as well as procedures to report a complaint about a TNC driver who a rider reasonably suspects was under the influence of drugs or alcohol during the course of the ride.

(c) Upon receipt of a rider's complaint alleging a violation of the zero-tolerance policy, the TNC shall suspend a TNC driver's ability to accept any ride request through the TNC's digital network as soon as possible and shall conduct an investigation into the reported incident. The suspension must last the duration of the investigation.

(11) TRANSPORTATION NETWORK COMPANY DRIVER REQUIREMENTS.—

(a) Before an individual is authorized to accept a ride request through a digital network:

1. The individual must submit an application to the TNC which includes information regarding his or her address, age, driver license, motor vehicle registration, and other information required by the TNC;

2. The TNC must conduct, or have a third party conduct, a local and national criminal background check that includes:

a. A search of the Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation of any records through primary source search; and

b. A search of the National Sex Offender Public Website maintained by the United States Department of Justice; and

3. The TNC must obtain and review, or have a third party obtain and review, a driving history research report for the applicant.

(b) The TNC shall conduct the background check required under paragraph (a) for a TNC driver every 3 years.

(c) The TNC may not authorize an individual to act as a TNC driver on its digital network if the driving history research report conducted when the individual first seeks access to the digital network reveals that the individual has had more than three moving violations in the prior 3-year period.

(d) The TNC may not authorize an individual to act as a TNC driver on its digital network if the background check conducted when the individual first seeks access to the digital network or any subsequent background check required under paragraph (b) reveals that the individual:

1. Has been convicted, within the past 5 years, of:

a. A felony;

b. A misdemeanor for driving under the influence of drugs or alcohol, for reckless driving, for hit and run, or for fleeing or attempting to elude a law enforcement officer; or

c. A misdemeanor for a violent offense or sexual battery, or a crime of lewdness or indecent exposure under chapter 800;

2. Has been convicted, within the past 3 years, of driving with a suspended or revoked license;

3. Is a match in the National Sex Offender Public Website maintained by the United States Department of Justice;

4. Does not possess a valid driver license; or

5. Does not possess proof of registration for the motor vehicle used to provide prearranged rides.

(e) No more often than once every 2 years, the Department of Financial Services shall direct a TNC to submit to the department an agreed-upon procedures report prepared by an independent certified public accountant for the sole purpose of verifying that the TNC is in compliance with this subsection. The report must be prepared in accordance with applicable attestation standards established by the American Institute of Certified Public Accountants. The TNC shall bear all costs associated with the preparation and submission of the report.

(f) Upon receipt of the report pursuant to paragraph (e), the Department of Financial Services may impose a fine of up to $250 for each violation of this subsection identified in the report and $500 for each repeat violation. The department may also direct a TNC to address any noncompliance with this subsection identified in the report within a timeframe prescribed by the department. The department may, pursuant to the Florida Rules of Civil Procedure, seek injunctive relief against a TNC that fails to comply with the department's direction under this paragraph and that poses an imminent threat to public safety as a result of such noncompliance. For purposes of this subsection, a repeat violation occurs when two consecutive reports prepared for a TNC reveal noncompliance with the same requirement.

(g) Unless otherwise explicitly provided, this subsection does not extinguish any claim otherwise available under common law or any other statute.

(12) PROHIBITED CONDUCT.—

(a) A TNC driver may not accept a ride for compensation other than by a rider arranged through a digital network.

(b) A TNC driver may not solicit or accept street hails.

(13) NONDISCRIMINATION; ACCESSIBILITY.—

(a) A TNC shall adopt a policy of nondiscrimination with respect to riders and potential riders and shall notify TNC drivers of such policy.

(b) A TNC driver shall comply with the TNC's nondiscrimination policy.

(c) A TNC driver shall comply with all applicable laws regarding nondiscrimination against riders and potential riders.

(d) A TNC driver shall comply with all applicable laws relating to accommodation of service animals.

(e) A TNC may not impose additional charges for providing services to a person who has a physical disability because of the person's disability.

(f) A TNC that contracts with a governmental entity to provide paratransit services must comply with all applicable state and federal laws related to individuals with disabilities.

(g) A TNC shall reevaluate any decision to remove a TNC driver's authorization to access its digital network due to a low quality rating by riders if the TNC driver alleges that the low quality rating was because of a characteristic identified in the company's nondiscrimination policy and there is a plausible basis for such allegation.

(14) RECORDS.—A TNC shall maintain the following records:

(a) Individual ride records for at least 1 year after the date on which each ride is provided; and

(b) Individual records of TNC drivers for at least 1 year after the date on which the TNC driver's relationship with the TNC ends.

(15) PREEMPTION.—

(a) It is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, and TNC vehicles throughout the state. TNCs, TNC drivers, and TNC vehicles are governed exclusively by state law, including in any locality or other jurisdiction that enacted a law or created rules governing TNCs, TNC drivers, or TNC vehicles before July 1, 2017. A county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

1. Impose a tax on, or require a license for, a TNC, a TNC driver, or a TNC vehicle if such tax or license relates to providing prearranged rides;

2. Subject a TNC, a TNC driver, or a TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or

3. Require a TNC or a TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

(b) This subsection does not prohibit an airport or seaport from charging reasonable pickup fees consistent with any pickup fees charged to taxicab companies at that airport or seaport for their use of the airport's or seaport's facilities or prohibit the airport or seaport from designating locations for staging, pickup, and other similar operations at the airport or seaport.

Section 2. This act shall take effect July 1, 2017.

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 14, 2016

I respectfully request that **Senate Bill #340**, relating to **Transportation Network Companies,** be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-28-17
Meeting Date

340
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Andrew Hosek

Job Title Policy Analyst

Address 200 W College Ave
Street

Tallahassee FL
City *State* *Zip*

Phone _____

Email ahosek@afphq.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

SB340
Bill Number (if applicable)

Topic RIDESHARE

Amendment Barcode (if applicable)

Name RYAN PATINTRA

Job Title

Address 4300 W CYPRESS
Street

Phone

TAMPA FL 33607
City State Zip

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing TAMPA BAY PARTNERSHIP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

340
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Transportation Network Companies

Name Logan McFadden

Job Title

Address 215 S Monroe St
Street

Phone

City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Property Casualty Ins. of America

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-28-17
Meeting Date

340
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Andrew Vila

Job Title Spokesman

Address 200 W College AVE
Street

Tallahassee FL 32301
City *State* *Zip*

Phone _____

Email avila@genopp.org

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

Representing Generation Opportunity

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28
Meeting Date

340
Bill Number (if applicable)

Topic TNC

Amendment Barcode (if applicable)

Name Ellyn Bogdanoff

Job Title

Address 1 E Bfd Blvd
Street

Ft Laud
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FLORIDA TAXI ASSN.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date	Bill Number (if applicable)
	340

Topic TRANSPORTATION NETWORK COMPANIES — Amendment Barcode (if applicable)

Name CHRISTOPHER EMMANUEL

Job Title POLICY DIRECTOR

Address 136 S. BRONOUGH (Street) — Phone

TLH (City) FL (State) 32301 (Zip) — Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CHAMBER OF COMMERCE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

340
Bill Number (if applicable)

Topic TNC

Amendment Barcode (if applicable)

Name Teye Reeves

Job Title

Address 108 S Monroe St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850 681 0024

Email treeves@gapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AIF

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

340
Bill Number (if applicable)

Topic INC

Amendment Barcode (if applicable)

Name Samantha Sexton

Job Title VP of Legislative & Regulatory Affairs

Address 215 S Monroe St
Street

Phone 321-544-1577

Tallahassee FL 32301
City *State* *Zip*

Email Samantha.Sexton@pifl.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Personal Insurance Federation of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/28/2017
Meeting Date

340
Bill Number (if applicable)

Topic Transportation Network Companies

Amendment Barcode (if applicable)

Name Lisa Waters

Job Title President / CEO

Address _____ Phone _____
Street

Orlando FL 78
City *State* *Zip*

Email _____

Speaking: ☐ For ☑ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

SB 340
Bill Number (if applicable)

N/A
Amendment Barcode (if applicable)

Topic RIDESHARING

Name TIM ALBORG

Job Title PUBLIC POLICY MANAGER

Address 185 BERRY ST.
Street

SF CA 94107
City *State* *Zip*

Phone 770-595-0190

Email talborg@lyft.com

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

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

Representing LYFT

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Mar. 28, 2017
Meeting Date

SB 340
Bill Number (if applicable)

Topic Transportation Network Companies

Amendment Barcode (if applicable)

Name Liz Reynolds

Job Title State Affairs Director - Southeast Region

Address 3933 Victoria Lakes Drive South
Street

Jacksonville, FL 32226
City *State* *Zip*

Phone (317) 417-5618

Email lreynolds@nami.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Association of Mutual Insurance Companies

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

March 28 2017
Meeting Date

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

340
Bill Number (if applicable)

Topic Transportation Network Companies

Amendment Barcode (if applicable)

Name Justin Day

Job Title Director

Address 701 S Howard Ave, Suite 106-326
Street

Phone 850 222 8900

Tampa FL 33606
City *State* *Zip*

Email jd@cardenaspartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Hillsborough County Aviation Authority

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25
Meeting Date

340
Bill Number (if applicable)

Topic Transportation Network Companies

Amendment Barcode (if applicable)

Name JAMES TAYLOR

Job Title Executive Director

Address 215 E Park Ave
Street

Tallahassee FL
City *State* *Zip*

Phone 850 803-8324

Email James.Taylor@FLTechCouncil.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Technology Council

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/2017
Meeting Date

SB 340
Bill Number (if applicable)

Topic Transportation Network Services

Amendment Barcode (if applicable)

Name Leonard VinPando, PE

Job Title Deputy Director, Environmental Protection & Growth Management Dept.

Address 115 S. Andrews Ave, Room 329
Street

Phone 954-357-6677

Fort Lauderdale FL 33301
City *State* *Zip*

Email lvialpando@broward.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

340
Bill Number (if applicable)

Topic Transportation Network Companies

Amendment Barcode (if applicable)

Name Cesar Fernandez

Job Title Senior Public Policy Associate

Address 80 SW 8th ST, Suite 1830
Street

Phone 786 262 6092

Miami FL 33130
City *State* *Zip*

Email Fernandez@Uber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Uber

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

340
Bill Number (if applicable)

Topic TNCs (Transportation Network Cos)

Amendment Barcode (if applicable)

Name Rick Templin

Job Title

Address 135 S. Monroe
Street

Tallahassee FL 32301
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

SB 340
Bill Number (if applicable)

Topic TNC

Amendment Barcode (if applicable)

Name CHRSTIAN CAMARA

Job Title SE REGIONAL DIRECTOR

Address PO Box 10579
Street

TALLAHASSEE FL 32302
City *State* *Zip*

Phone 305-608-4300

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing R STREET INSTITUTE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-28-17
Meeting Date

SB 340
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Caroline Joiner

Job Title Interim Executive Director

Address 208 W. 14th Street
Street

Phone _____

Austin TX 78703
City *State* *Zip*

Email _____

Speaking: ☑ For ☐ Against ☐ Information

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

Representing TechNet

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3.27.17 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 340

Meeting Date *Bill Number (if applicable)*

Topic _____ *Amendment Barcode (if applicable)*

Name MEGAN SIRIANE-SAMPLES

Job Title LEGISLATIVE ADVOCATE

Address P.O. BOX 1757 Phone 850.701.3655

Street

TALLAHASSEE, FL Email _____

City *State* *Zip*

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

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

Representing FLORIDA LEAGUE OF CITIES

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date	Bill Number (if applicable)
	340

Topic INL

Amendment Barcode (if applicable)

Name SLATER BAILISS

Job Title

Address 204 S MONROE ST (Street)

Phone 222 8900

TLH FL 32301 (City / State / Zip)

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TECHNET

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/CS/SB 582
INTRODUCER:	Judiciary Committee; Regulated Industries Committee; and Senator Latvala
SUBJECT:	Regulatory Boards
DATE:	March 30, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	**Fav/CS**
2.	Brown	Cibula	JU	**Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 582 requires the Department of Business and Professional Regulation (DBPR), the Department of Health (DOH), and the Department of Financial Services (DFS) (as to the Board of Funeral, Cemetery, and Consumer Services) (departments) to review final decisions of all regulatory boards under their jurisdiction. Each department must determine if final regulatory board decisions constitute anticompetitive conduct that does not:

- Promote state policy;
- Comport with the standards established by the Legislature; or
- Comport with the authority delegated to a board by the Legislature.

The bill requires department officials who are not active market participants to review final disciplinary actions, rules, declaratory statements, actions concerning unlicensed activity, and licensure application denials. Each department must approve, modify, or void final board decisions and issue an order that will constitute state action. The review of a final board decision is a limited legal review and is not subject to a legal challenge.

Legal defense costs of a board or board members for antitrust actions must be paid from the:

- Professional Regulation Trust Fund, for boards within the DPBR;
- Regulatory Trust Fund, for the Board of Funeral, Cemetery, and Consumer Services within the DFS; and
- Medical Quality Assurance Trust Fund, for boards within the DOH.

In 2015, the United States Supreme Court held that a state board on which a "controlling number" of decisionmakers (i.e. regulatory board members) are "active market participants" (i.e., members of the profession or occupation being regulated) must be "actively supervised" in order to seek immunity from federal antitrust laws. The requirement for active supervision is intended to avoid a divergence from a valid state policy caused by implementation of the policy by a board in an anticompetitive manner.[1] The case did not address the liability of regulatory board members for money damages. However, the Court noted that the states "may provide for the defense and indemnification of [board] members in the event of litigation."[2]

The fiscal impact of the bill is unknown.

II. Present Situation:

Background

In 2015, the United States Supreme Court (Supreme Court) considered actions taken by the North Carolina State Board of Dental Examiners (*NC State Bd.*).[3] The Supreme Court said:

> In the 1990's, dentists in North Carolina started whitening teeth. Many of those who did so, including 8 of the Board's 10 members during the period at issue in this case, earned substantial fees for that service. By 2003, nondentists arrived on the scene. They charged lower prices for their services than the dentists did. Dentists soon began to complain to the Board about their new competitors. Few complaints warned of possible harm to consumers. Most expressed a principal concern with the low prices charged by nondentists.
>
> Responding to these filings, the Board opened an investigation into nondentist teeth whitening. A dentist member was placed in charge of the inquiry. Neither the Board's hygienist member nor its consumer member participated in this undertaking. The Board's chief operations officer remarked that the Board was 'going forth to do battle' with nondentists. [Citation omitted]. The Board's concern did not result in a formal rule or regulation reviewable by the independent [North Carolina] Rules Review Commission, even though the [North Carolina law] does not, by its terms, specify that teeth whitening is "the practice of dentistry."
>
> Starting in 2006, the Board issued at least 47 cease-and-desist letters on its official letterhead to nondentist teeth whitening service providers and product manufacturers. Many of those letters directed the recipient to cease 'all activity constituting the practice of dentistry'; warned that the unlicensed practice of dentistry is a crime; and strongly implied (or

[1] *See North Carolina State Bd. of Dental Exam'rs v. Fed. Trade Comm'n* (*NC State Bd.*), 135 S. Ct. 1101, 1117, (2015). *See also* E. Dylan Rivers, *Regulating Regulators: Active Supervision of State Regulatory Boards in the Wake of* North Carolina State Board of Dental Examiners v. FTC, Florida Bar Journal, Vol. 90, No. 10, at pp. 43-47 (Dec. 2016).
[2] *Id*. at page 1115.
[3] *NC State Bd.,* 135 S. Ct. at 1117.

> expressly stated) that teeth whitening constitutes 'the practice of dentistry.' [Citation omitted.] In early 2007, the Board persuaded the North Carolina Board of Cosmetic Art Examiners to warn cosmetologists against providing teeth whitening services. Later that year, the Board sent letters to mall operators, stating that kiosk teeth whiteners were violating the Dental Practice Act and advising that the malls consider expelling violators from their premises.
>
> These actions had the intended result. Nondentists ceased offering teeth whitening services in North Carolina.[4]

Federal Antitrust Laws

In *NC State Bd*., the Supreme Court noted that the federal antitrust laws, including the Sherman Act,[5] which safeguard the nation's free market structures, were interpreted in a 1943 case styled *Parker v. Brown*,[6] to confer immunity on anticompetitive conduct by the states when acting in their sovereign capacity (i.e. *Parker* state-action immunity). As stated by the Supreme Court, the federal antitrust laws "declare a considered and decisive prohibition by the Federal Government of cartels, price fixing, and other combinations or practices that undermine the free market."[7]

The Sherman Act imposes severe penalties for violations[8] and promotes robust competition to empower states and provide citizens with opportunities to pursue their own and the public's welfare.[9] The Supreme Court, noting that the states "need not adhere in all contexts to a model of unfettered competition," acknowledged that states may impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives.[10] The Supreme Court explained that:

> If every duly enacted state law or policy were required to conform to the mandates of the Sherman Act, thus promoting competition at the expense of other values a State may deem fundamental, federal antitrust law would impose an impermissible burden on the States' power to regulate.

The Supreme Court then addressed the requirements for a person to invoke *Parker* state-action immunity. The anticompetitive conduct of those authorized by a state to regulate their own

---

[4] *Id.* at 1108.
[5] 15 U.S.C. §1 *et seq.*
[6] *See Parker v. Brown*, 317 U. S. 341 (1943).
[7] *See NC State Bd.*, 135 S. Ct. at 1109.
[8] According to the Federal Trade Commission (FTC), the penalties for violating the Sherman Act can be severe. The FTC states that: (1) although most enforcement actions are civil, the Sherman Act is also a criminal law, and individuals and businesses that violate it may be prosecuted by the Department of Justice; (2) criminal prosecutions are typically limited to intentional and clear violations such as when competitors fix prices or rig bids; (3) the Sherman Act imposes criminal penalties of up to $100 million for a corporation and $1 million for an individual, along with up to 10 years in prison; and (4) under federal law, the maximum fine may be increased to twice the amount the conspirators gained from the illegal acts or twice the money lost by the victims of the crime, if either of those amounts is over $100 million. *See* https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws (last visited Mar. 25, 2017).
[9] *See NC State Bd.*,135 S. Ct. at 1109.
[10] *Id*.

profession must result from a procedure that causes the conduct to be deemed state conduct shielded from the federal antitrust laws.[11]

To determine whether the anticompetitive conduct is state conduct, the Supreme Court applied the two-part test set forth in *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, (*Midcal*), a 1980 case arising from the delegation of price-fixing authority by the State of California to wine merchants.[12] Under *Midcal*, antitrust immunity cannot be invoked unless the state (1) articulates a clear policy to allow the anticompetitive conduct, and (2) provides active supervision of anticompetitive conduct.[13]

Midcal's clear articulation requirement is satisfied, stated the Supreme Court, "where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals."[14]

Further, the Court noted the active supervision requirement demands "that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy,"[15] and that the rule "stems from the recognition that '[w]here a private party is engaging in anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State.'"[16]

Midcal's supervision mandate, stated the Supreme Court, demands "realistic assurance that a private party's anticompetitive conduct promotes state policy, rather than merely the party's individual interests."[17]

In October 2015, the Federal Trade Commission issued a document titled "FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants," which sets out the views of the Staff of the Bureau of Competition on the active supervision requirement addressed in *NC State Bd.*[18] The staff guidance indicates that even when the state Attorney General provides advice to the regulatory board on an ongoing basis (as occurs for various boards in Florida), that does not constitute active supervision of a state regulatory board that is controlled by active market participants**.**[19]

---

[11] *See NC State Bd.*, 135 S. Ct. at 1110.
[12] *See California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980).
[13] *See NC State Bd.*, 135 S. Ct. at 1112 (citing *FTC. Ticor Title Ins. Co.*, 504 U.S. 621, 631 (1992) (citing *Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum*, 445 U.S. 97, 105 (1980)).
[14] *See NC State Bd.*, 135 S. Ct. at 1112, (*citing FTC. V. Phoebe Putney Health Sys.*, 133 S. Ct. 1003, 1006 (2016)).
[15] *Id.* at 1112 (*citing Patrick v. Burget*, 486 U.S. 94, 101 (1988)).
[16] *Patrick*, 486 U.S. at 100 (citation omitted).
[17] *Id.* at 101.
[18] The document includes a statement that the Federal Trade Commission is not bound by the Staff guidance and reserves the right to rescind it at a later date. In addition, staff of the Federal Trade Commission reserves the right to reconsider the views expressed therein, and to modify, rescind, or revoke the document if such action would be in the public interest. *See* https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active_supervision_of_state_boards.pdf (last visited Mar. 25, 2017).
[19] *Id*. at page 13.

Delegation of Powers and Duties to Regulatory Agencies

The separation-of-powers doctrine prevents the Legislature from delegating its constitutional duties.[20] An invalid delegation of authority violates the principle of separation of powers mandated in the Florida Constitution.[21] When delegating a regulatory responsibility, the Legislature must provide the agency with adequate standards and guidelines.[22] The executive branch "must be limited and guided by an appropriately detailed legislative statement of the standards and policies to be followed."[23]

In *Askew v. Cross Key Waterways*,[24] the Florida Supreme Court acknowledged that "[w]here the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the [separation of powers] doctrine . . . ."[25] If legislation lacks guidelines, and "neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law."[26]

Agency Rulemaking

Florida's Administrative Procedure Act, chapter 120, F.S., (FAPA) provides that rulemaking by agencies is limited in nature and is not a matter of agency discretion. Each agency statement defined as a rule[27] must be adopted by rulemaking as soon as feasible and practicable. Rulemaking is presumed feasible, unless the agency proves that:

- The agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking; or
- Related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking.[28]

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[20] *See Board of Architecture v. Wasserman*, 377 So. 2d 653 (Fla. 1979).
[21] *See* FLA. CONST. art. II, s. 3, and *Gallagher v. Motors Insurance Corp.*, 605 So. 2d 62 (Fla. 1992).
[22] *Askew v. Cross Key Waterways*, 372 So. 2d. 913 (Fla. 1978); *Florida East Coast Industries, Inc. v. Dept. of Community Affairs*, 677 So. 2d 357 (Fla. 1st DCA 1996), review denied, 689 So. 2d 1069 (Fla. 1997).
[23] *Florida Home Builders Association v. Division of Labor*, 367 So. 219 (Fla. 1979).
[24] *Askew v. Cross Key Waterways*, 372 So. 2d 913 (Fla. 1978).
[25] *Id*. at 921 (quoting *CEEED v. California Coastal Zone Conservation Comm'n*, 43 Cal. App. 3d 306, 325 (Cal. App. 3 Dist. 1974)).
[26] *Id*. at 918-919. *See generally* James P. Rhea and Patrick L. "Booter" Imhof, *An Overview of the 1996 Administrative Procedure Act*, 48 U. Fla. L. Rev. 1 (1996); Dan R. Stengle and James P. Rhea, *Putting the Genie Back in the Bottle: The Legislature Struggles to Control Rulemaking by Executive Agencies*, 21 Fla. St. U. L. Rev. 415 (1993); Stephen T. Maher, *We're No Angels: Rulemaking and Judicial Review in Florida*, 18 Fla. St. U. L. Rev. 767 (1991).
[27] Under s. 120.52(16), F.S., the term "rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes an agency's procedure or practice requirements. Also included is any form that imposes any requirement or solicits any information not specifically required by statute or by an existing rule, and the amendment or repeal of a rule. The term does not include: (a) internal management memoranda of an agency that do not affect either the private interests of any person or any plan or procedure important to the public, and that no application outside the agency; (b) legal memoranda or opinions to an agency by the Attorney General, or agency legal opinions prior to their use in connection with an agency action; or (c) the preparation or modification of: agency budgets, memoranda or instructions issued by the Chief Financial Officer or Comptroller about agencies' submission of payment claims, collective bargaining contractual provisions, or memoranda issued by the Executive Office of the Governor relating to information resources management.
[28] *See* s. 120.54(1)(a)1., F.S.

Rulemaking is presumed practicable to the extent necessary to provide fair notice to affected persons of agency procedures and principles, criteria, or standards for agency decisions, unless the agency proves that:

- Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances; or
- The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication to determine the substantial interests of a party based on individual circumstances.[29]

An agency action that goes beyond the powers, functions, and duties delegated by the Legislature is an "invalid exercise of delegated legislative authority" under the FAPA,[30] including a proposed or existing rule, if:

- The agency has materially failed to follow the applicable rulemaking procedures or requirements in chapter 120, F.S.;
- The agency has exceeded its grant of rulemaking authority, which must be cited as required by s. 120.54(3)(a)1., F.S.;
- The rule enlarges, modifies, or contravenes the specific provisions of law implemented, which must be cited as required by s. 120.54(3)(a)1., F.S.;
- The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;
- The rule is arbitrary, if it is not supported by logic or the necessary facts; or capricious, if it is adopted without thought or reason or is irrational; or
- The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

In addition to a grant of rulemaking authority from the Legislature, for an agency to adopt a rule, there must be a specific law to be implemented. As such, an agency may adopt only rules that implement or interpret the specific powers and duties granted by statute.[31]

Agencies are not authorized to adopt a rule solely on the basis that the rule is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties.[32] Further, agencies are not authorized to implement statutory provisions setting forth general legislative intent or policy.[33] Statutory language granting rulemaking authority or generally describing an agency's powers and functions must "be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute."[34]

Rulemaking is a legislative function within the exclusive authority of the Legislature, and it is not sufficient that the rule is "within the agency's class of powers and duties;" there must be a

[29] *See* s. 120.54(1)(a)2., F.S.
[30] *See* s. 120.52(8), F.S.
[31] *Id*.
[32] *Id*.
[33] *Id*.
[34] *Id*.

specific grant of rulemaking authority.[35] The requirements for agency rulemaking in s. 120.52(8), F.S., are intended to restrict and narrow the scope of agency rulemaking.[36] As stated by the First District Court of Appeal in *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Ass'n, Inc.*:

> It is now clear, agencies have rulemaking authority only where the Legislature has enacted a specific statute, and authorized the agency to implement, and then only if the (proposed) rule implements or interprets specific powers or duties, as opposed to improvising in an area that can be said to fall only generally within some class or powers or duties the Legislature has conferred on the agency.[37]

Furthermore, in *Southwest Florida Water Management District,* the First District Court of Appeal concluded that "[i]t follows that the authority for an administrative rule is not a matter of degree. The question is whether the statute contains a specific grant of legislative authority for the rule, not whether the grant of authority is specific enough."[38]

Regulatory Boards within the Department of Business and Professional Regulation

Section 20.165(4)(a), F.S., establishes the following boards and programs within the Division of Professions, Department of Business and Professional Regulation (DBPR), which are noted along with the applicable implementing statute in the Florida Statutes:

- Board of Architecture and Interior Design, part I of ch. 481;
- Florida Board of Auctioneers, part VI of ch. 468;
- Barbers' Board, ch. 476;
- Florida Building Code Administrators and Inspectors Board, part XII of ch. 468;
- Construction Industry Licensing Board, part I of ch. 489;
- Board of Cosmetology, ch. 477;
- Electrical Contractors' Licensing Board, part II of ch. 489;
- Board of Employee Leasing Companies, part XI of ch. 468;
- Board of Landscape Architecture, part II of ch. 481;
- Board of Pilot Commissioners, ch. 310;
- Board of Professional Engineers, ch. 471;
- Board of Professional Geologists, ch. 492;
- Board of Veterinary Medicine, ch. 474;
- Home Inspection Services Licensing Program, part XV of ch. 468; and
- Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

Current law requires that for the boards under its jurisdiction, the DBPR must:[39]

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[35] *See S.W. Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, (*Southwest Florida Water Management District*), 773 So. 2d 594, 598-599 (Fla. 1st DCA 2000).
[36] *See Southwest Florida Water Management District*, 773 So. 2d at 597-600, and *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, (*Day Cruise*) 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[37] *See Day Cruise*, 794 So. 2d at 700.
[38] *See Southwest Florida Water Management District*, 773 So. 2d at 599.
[39] *See* s. 455.203, F.S.

- Adopt rules for biennial license renewal, and may issue to selected licensees up to a four-year license;
- Appoint an executive director of each board, subject to the board's approval;
- Submit an annual budget to the Legislature;
- Develop a training program for newly appointed members of a board relating to substantive and procedural laws and rules and fiscal information relating to the profession regulated by the board and the structure of the DBPR;
- Adopt rules to implement ch. 455, F.S., on Regulation of Professions and Occupations;
- Establish the procedures to be used by the DBPR for the use of a board's expert or technical advice for the purposes of investigation, inspection, evaluation of applications, other duties of the DBPR, or any other areas deemed appropriate by the DBPR;
- Require electronic recording of all board proceedings (or of any panel thereof) and all formal or informal proceedings conducted by the DBPR, an administrative law judge, or a hearing officer on licensing or discipline, in order to assure the accurate transcription of all recorded matters;
- Select only investigators, including consultants who undertake investigations, who meet criteria established with the advice of each of the boards; and
- Work cooperatively with the Department of Revenue to implement an automated method for disclosing DBPR licensee information to the Department of Revenue, for use in child support enforcement actions, including the denial, suspension, issuance, or reinstatement of a license after formal direction by a court or the Department of Revenue.

The DBPR also has authority to approve applications for professional licenses that meet all statutory and rule requirements and to close and terminate deficient license application files.[40]

Regulatory Boards within the Department of Health

Pursuant to s. 456.001, F.S., the term "board" includes any board or commission, or other statutorily created entity, to the extent the entity is authorized to exercise regulatory or rulemaking functions, within the Department of Health (DOH). In other contexts,[41] the term includes a board, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the Division of Medical Quality Assurance (DOH boards).

The 22 boards within the DOH are the:

- Board of Acupuncture;
- Board of Athletic Trainers
- Board of Chiropractic Physicians;
- Board of Clinical Laboratory Personnel;
- Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling
- Board of Dentistry;
- Board of Hearing Aid Specialists;
- Board of Massage Therapy;

[40] *See* s. 455.203(10), F.S.

[41] For ss. 456.003-456.018, 456.022, 456.023, 456.025-456.033, and 456.039-456.082, F.S., the term includes only those entities exercising regulatory or rulemaking functions that are within the Division of Medical Quality Assurance.

- Board of Medicine;
- Board of Nursing;
- Board of Nursing Home Administrators;
- Board of Occupational Therapy;
- Board of Opticianry;
- Board of Optometry;
- Board of Orthotists and Prosthetists;
- Board of Osteopathic Physicians;
- Board of Pharmacy;
- Board of Physical Therapy;
- Board of Podiatric Medicine;
- Board of Psychology;
- Board of Respiratory Care; and
- Board of Speech-Pathology and Audiology.[42]

Regulatory boards under the jurisdiction of the DOH must:

- Adopt rules for biennial license renewal and may issue to selected licensees up to a four-year license;
- Appoint an executive director of each board, subject to the board's approval;
- Submit an annual budget to the Legislature;
- Develop a training program for newly appointed members of a board relating to substantive and procedural laws and rules and fiscal information relating to the profession regulated by the board and the structure of the DOH;
- Adopt rules to implement ch. 456, F.S., on Regulation of Professions and Occupations;
- Establish the procedures to be used by the DOH for the use of a board's expert or technical advice for the purposes of investigation, inspection, evaluation of applications, other duties of the DBPR, or any other areas deemed appropriate by the DOH;
- Require electronic recording of all board proceedings (or of any panel thereof) and all formal or informal proceedings conducted by the DOH, an administrative law judge, or a hearing officer on licensing or discipline, in order to assure the accurate transcription of all recorded matters;
- Select only those investigators, or consultants who undertake investigations, who meet criteria established with the advice of each of the boards;
- Work cooperatively with the Department of Revenue to implement an automated method for disclosing DOH licensee information to the Department of Revenue, for use in child support enforcement actions, including the denial, suspension, issuance, or reinstatement of a license after formal direction by a court or the Department of Revenue;
- Set an examination fee that includes all costs to develop, purchase, validate, administer, and defend the examination, and that is certain to cover all administrative costs in addition to the actual per-applicant examination cost;

[42] Email from Tom Adams, Policy Chief, General Gov't Unit, Executive Office of the Governor, Office of Policy and Budget, to staff of the Senate Committee on Regulated Industries (Mar. 16, 2017) (on file with the Senate Committee on Regulated Industries and the Senate Committee on Judiciary); *see also* Florida Dep't of Health, *Division of Medical Quality Assurance Annual Report and Long-Range Plan for Fiscal Year 2015-2016*, http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1516.pdf (last visited Mar. 26, 2107).

- Work cooperatively with the Agency for Health Care Administration and the judicial system to recover Medicaid overpayments by the Medicaid program; and
- Investigate and prosecute health care practitioners who have not remitted amounts owed to the state for an overpayment from the Medicaid program pursuant to a final order, judgment, stipulation, or settlement. [43]

The Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services

The Board of Funeral, Cemetery, and Consumer Services (BFCCS) is housed within the Department of Financial Services.[44] Pursuant to s. 497.103, F.S., all authority expressly provided is vested solely in the BFCCS and all authority not expressly vested in the BFCCS is vested in the DFS,[45] such that:

- The DFS and the BFCCS each has standing to institute judicial or other proceedings against the other for the enforcement of s. 497.103, F.S.;
- The BFCCS has standing as a party litigant to challenge any rule proposed or adopted by the DFS under authority of ch. 497, F.S., upon any grounds enumerated in s. 120.52(8), F.S. concerning the invalid exercise of delegated legislative authority;
- The BFCCS must be represented by the Department of Legal Affairs in any such litigation by the BFCCS against the DFS, and the DFS must provide reasonable funds for the conduct of such litigation by the BFCCS; and
- No applicant, licensee, or person other than the BFCCS has standing in any proceeding under ch. 120, F.S., the Administrative Procedure Act, to assert that any rule adopted by the DFS under asserted authority of ch. 497, F.S., is invalid because it relates to a matter under the authority of the BFCCS.[46]

Letter from Attorney General to President of the Senate and Speaker of the House of Representatives

In a letter dated December 9, 2015 to the President of the Senate and the Speaker of the House of Representatives,[47] the Attorney General addressed the United States Supreme Court's decision in *NC State Bd.* The Attorney General concluded that if the actions of regulatory boards in Florida are not subject to active state supervision, "they now face potential antitrust liability for any actions they take that may unreasonably burden competition as a result of the [United States] Supreme Court decision.[48]

[43] *See* s. 456.004, F.S.
[44] *See* s. 497.101, F.S.
[45] *See* s. 497.103(2), F.S.
[46] See s. 497.103(7), F.S.
[47] Letter to Andy Gardiner, President of the Senate, and Steven Crisafulli, Speaker of the House of Representatives from Attorney General Pam Bondi (Dec. 9, 2015) (on file with the Senate Committee on Regulated Industries and the Senate Committee on Judiciary).
[48] *Id*. at page 2.

Florida Antitrust Laws

Chapter 542, F.S., the "Florida Antitrust Act of 1980," deals with combinations restricting trade or commerce. Such combinations and monopolizations of any trade or commerce are unlawful, unless the activity or conduct is exempt under Florida statutory or common law, or exempt under federal antitrust laws.[49] Penalties for violations include a civil penalty for natural persons of not more than $100,000, and for corporate or other entities, a civil penalty of not more than $1 million.[50] A person who "knowingly violates" the law by engaging in the unlawful conduct, or who "knowingly aids in or advises such violation," may be found guilty of a felony punishable by a fine not exceeding $100,000 (or a fine of $1 million if a corporation), or imprisonment not exceeding 3 years, or both.[51]

III. Effect of Proposed Changes:

CS/CS/SB 582 provides a framework for active supervision of certain final decisions by all regulatory boards under the jurisdiction of the Department of Business and Professional Regulation (DBPR) and the Department of Health, (DOH), and the Department of Financial Services (DFS) as to the Board of Funeral, Cemetery, and Consumer Services (BFCCS).[52]

The bill requires the DBPR, the DOH, and the DFS (as to the BFCCS) to review final decisions of regulatory boards under their jurisdiction and requires each department to determine if final regulatory board decisions constitute anticompetitive conduct that does not:

- Promote state policy;
- Comport with the standards established by the Legislature; or
- Comport with the authority delegated to a board by the Legislature.

Each department, by way of departmental officials who are not active market participants, must approve, modify, or void final board decisions and issue an order that constitutes state action. The final board decisions that require review include final disciplinary actions, rules, declaratory statements, actions concerning unlicensed activity, and licensure application denials. The review of a final board decision is a limited legal review and is not subject to legal challenge.

The bill requires that any legal defense costs of a board or board members for antitrust actions be paid from the:

- Professional Regulation Trust Fund, for boards within the DPBR;
- Regulatory Trust Fund, for the BFCCSA within the DFS; and
- Medical Quality Assurance Trust Fund, for boards within the DOH.

The bill takes effect upon becoming a law.

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[49] *See* ss. 542.18, 542.19, and 542.20, F.S.
[50] *See* s. 542.21(1), F.S.
[51] *See* s. 542.21(1), F.S.
[52] *NC State Bd.* conditions state immunity from antitrust actions, in part, upon, active supervision by state agency officials (i.e., "that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy"). *See NC State Bd. v. FTC*, 135 S. Ct. 1101, 1112 (2015) (*citing Patrick v. Burget*, 486 U.S. 94, 101 (1988)).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact of CS/CS/SB 582 is unknown.

The committee substitute requires that legal defense costs of a board or board members for antitrust actions be paid from the Professional Regulation Trust Fund for boards within the DBPR, from the Regulatory Trust Fund for boards within the DOH, and from the Medical Quality Assistance Trust Fund for the BFCCSA within the DFS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 455.203, 456.004, and 497.103.

IX. Additional Information:

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

CS by Judiciary on March 28, 2017:
The CS:

- Requires that reviews of final board decisions for anticompetitive conduct be made by departmental officials who are not active market participants;
- Provides that the review of a final board decision constitutes state action;
- Provides that an order issued pursuant to the review may approve, modify, or void a final board decision (rather than disapprove);
- Provides that the review by the Department of a final board decision is not subject to legal challenge;
- Revises the term "licensure application decisions" to "licensure application denials," thereby removing a requirement that a department review licensure application approvals; and
- Deletes the requirement that financial damages be paid from the State Risk Management Trust Fund by the Division of Risk Management in the Department of Financial Services.

CS by Regulated Industries on March 21, 2017:
The committee substitute:

- Removes the requirement that Department of Business and Professional Regulation (DBPR) indemnify,[53] defend, and hold harmless[54] current and former members (and their associated businesses) of the numerous regulatory boards under its jurisdiction, in certain circumstances; such indemnification was required from all claims, investigations, lawsuits, damages, and liability incurred by a regulatory board member related to any action or inaction taken in the course of providing service to a regulatory board, but only if the action was taken in good faith and upon a reasonable belief that it complied with state and federal law.
- Expands the state agencies affected by the bill to include the Department of Health (DOH) and the Department of Financial Services (DFS).
- Requires the DBPR, the DOH, and the DFS (as to the Board of Funeral, Cemetery, and Consumer Services) to review final decisions of all regulatory boards under their jurisdiction.
- Requires each department to determine if final regulatory board decisions constitute anticompetitive conduct that does not:
  - Promote state policy;
  - Comport with the standards established by the Legislature; or
  - Comport with the authority delegated to a board by the Legislature.

[53] The term "indemnify" means to compensate for loss or damage suffered by a person. *See* https://www.merriam-webster.com/dictionary/indemnify (last visited Mar. 26, 2017).
[54] The term "hold harmless" relates to an agreement between parties in which one party assumes the potential liability for injury that may arise from a situation and relieves the other party of that potential liability. *See* https://www.merriam-webster.com/legal/hold%20harmless (last visited Mar. 26, 2017).

- Requires each department, based on its findings, to approve, modify, or disapprove final board decisions.
- Provides that final board decisions requiring review include final disciplinary actions, rules, declaratory statements, actions concerning unlicensed activity, and licensure application decisions.
- Provides that the review of a final board decision is a limited legal review, and is subject to legal challenges only through state or federal antitrust legal actions.
- Requires any legal defense costs of a board or board members for antitrust actions be paid from the:
  - Professional Regulation Trust Fund, for boards within the DPBR;
  - Regulatory Trust Fund, for the Board of Funeral, Cemetery, and Consumer Services within the DFS; and
  - Medical Quality Assurance Trust Fund, for boards within the DOH.
- Requires financial damages resulting from antitrust litigation against a regulatory board or board member to be paid from the State Risk Management Trust Fund by the Division of Risk Management in the DFS.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/28/2017	.	
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The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 31 - 96

and insert:

the Legislature. The department, by way of departmental officials who are not active market participants, shall review each final board decision for anticompetitive conduct and, based on its findings, shall issue an order constituting state action approving, modifying, or voiding the decision. The department's anticompetitive review constitutes a limited legal review and its resulting determination is not subject to legal challenge.


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For purposes of this paragraph, the term "final board decisions" includes final orders for disciplinary actions, declaratory statements, actions concerning unlicensed activity, licensure application denials, and rulemaking.

(b) Legal costs for defense of antitrust actions brought against boards or board members shall be paid out of the Professional Regulation Trust Fund.

Section 2. Subsection (12) is added to section 456.004, Florida Statutes, to read:

456.004 Department; powers and duties.—The department, for the professions under its jurisdiction, shall:

(12)(a) Determine whether final board decisions constitute anticompetitive conduct that does not promote state policy, does not comport with the standards established by the Legislature, or does not comport with the authority delegated to a board by the Legislature. The department, by way of departmental officials who are not active market participants, shall review each final board decision for anticompetitive conduct and, based on its findings, shall issue an order constituting state action approving, modifying, or voiding the decision. The department's anticompetitive review constitutes a limited legal review and its resulting determination is not subject to legal challenge. For purposes of this paragraph, the term "final board decisions" includes final orders for disciplinary actions, declaratory statements, actions concerning unlicensed activity, licensure application denials, and rulemaking.

(b) Legal costs for defense of antitrust actions brought against boards or board members shall be paid out of the Medical Quality Assurance Trust Fund.

686042

Section 3. Paragraph (e) is added to subsection (7) of section 497.103, Florida Statutes, to read:

497.103 Authority of board and department; Chief Financial Officer recommendations.—

(7) ACTIONS BY BOARD AND DEPARTMENT.—

(e)1. The department shall determine whether final board decisions constitute anticompetitive conduct that does not promote state policy, does not comport with the standards established by the Legislature, or does not comport with the authority delegated to a board by the Legislature. The department, by way of departmental officials who are not active market participants, shall review each final board decision for anticompetitive conduct and, based on its findings, shall issue an order constituting state action approving, modifying, or voiding the decision. The department's anticompetitive review constitutes a limited legal review and its resulting determination is not subject to legal challenge. For purposes of this paragraph, the term "final board decisions" includes final orders for disciplinary actions, declaratory statements, actions concerning unlicensed activity, licensure application denials, and rulemaking.

2. Legal costs for defense of antitrust actions brought against boards or board members shall be paid out of the Regulatory Trust Fund.

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

And the title is amended as follows:

Delete lines 11 - 18

and insert:

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voiding each decision; specifying that the departments' anticompetitive review constitutes a limited legal review and its resulting determination is not subject to legal challenge; specifying actions that are considered final board decisions; requiring that legal costs for defense of antitrust actions and financial damages be paid from specified accounts; providing

By the Committee on Regulated Industries; and Senator Latvala

580-02659-17 2017582c1

A bill to be entitled

An act relating to regulatory boards; amending ss. 455.203, 456.004, and 497.103, F.S.; requiring the Department of Business and Professional Regulation, the Department of Health, and the Department of Financial Services, respectively, to determine whether final board decisions constitute certain anticompetitive conduct; requiring the departments to review final board decisions for anticompetitive conduct and issue orders approving, modifying, or disapproving each decision; specifying that the departments' anticompetitive review constitutes a limited legal review and its resulting determination is subject only to certain legal challenges; specifying actions that are considered final board decisions; requiring that legal costs for defense of antitrust actions and financial damages be paid from specified accounts or by a specified entity; providing an effective date.

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

Section 1. Subsection (11) is added to section 455.203, Florida Statutes, to read:

455.203 Department; powers and duties.—The department, for the boards under its jurisdiction, shall:

(11)(a) Determine whether final board decisions constitute anticompetitive conduct that does not promote state policy, does not comport with the standards established by the Legislature,

580-02659-17 2017582c1

or does not comport with the authority delegated to a board by the Legislature. The department shall review each final board decision for anticompetitive conduct and, based on its findings, shall issue an order approving, modifying, or disapproving the decision. The department's anticompetitive review constitutes a limited legal review and its resulting determination is subject to legal challenge only through state or federal antitrust causes of action. For purposes of this paragraph, the term "final board decisions" includes final disciplinary actions, rules, declaratory statements, actions concerning unlicensed activity, and licensure application decisions.

(b) Legal costs for defense of antitrust actions brought against boards or board members shall be paid out of the Professional Regulation Trust Fund. Financial damages resulting from antitrust litigation shall be paid from the State Risk Management Trust Fund by the Division of Risk Management within the Department of Financial Services.

Section 2. Subsection (12) is added to section 456.004, Florida Statutes, to read:

456.004 Department; powers and duties.—The department, for the professions under its jurisdiction, shall:

(12)(a) Determine whether final board decisions constitute anticompetitive conduct that does not promote state policy, does not comport with the standards established by the Legislature, or does not comport with the authority delegated to a board by the Legislature. The department shall review each final board decision for anticompetitive conduct and, based on its findings, shall issue an order approving, modifying, or disapproving the decision. The department's anticompetitive review constitutes a

limited legal review and its resulting determination is subject to legal challenge only through state or federal antitrust causes of action. For purposes of this paragraph, the term "final board decisions" includes final disciplinary actions, rules, declaratory statements, actions concerning unlicensed activity, and licensure application decisions.

(b) Legal costs for defense of antitrust actions brought against boards or board members shall be paid out of the Medical Quality Assurance Trust Fund. Financial damages resulting from antitrust litigation shall be paid from the State Risk Management Trust Fund by the Division of Risk Management within the Department of Financial Services.

Section 3. Paragraph (e) is added to subsection (7) of section 497.103, Florida Statutes, to read:

497.103 Authority of board and department; Chief Financial Officer recommendations.—

(7) ACTIONS BY BOARD AND DEPARTMENT.—

(e)1. The department shall determine whether final board decisions constitute anticompetitive conduct that does not promote state policy, does not comport with the standards established by the Legislature, or does not comport with the authority delegated to a board by the Legislature. The department shall review each final board decision for anticompetitive conduct and, based on its findings, shall issue an order approving, modifying, or disapproving the decision. The department's anticompetitive review constitutes a limited legal review and its resulting determination is subject to legal challenge only through state or federal antitrust causes of action. For purposes of this paragraph, the term "final board

decisions" includes final disciplinary actions, rules, declaratory statements, actions concerning unlicensed activity, and licensure application decisions.

2. Legal costs for defense of antitrust actions brought against boards or board members shall be paid out of the Regulatory Trust Fund. Financial damages resulting from antitrust litigation shall be paid from the State Risk Management Trust Fund by the Division of Risk Management within the Department of Financial Services.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Commerce and Tourism
Environmental Preservation and Conservation
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR JACK LATVALA
16th District

March 22, 2017

The Honorable Greg Steube
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Steube,

I respectfully request you place Committee Substitute for Senate Bill 582, relating to Regulatory Boards, on your Judiciary Committee agenda at your earliest convenience.

Should you have any questions or concerns regarding this legislation, please do not hesitate to contact me personally.

Sincerely,

Jack Latvala
Senator, 16th District

cc: Tom Cibula, Staff Director

REPLY TO:
❒ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
❒ 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

110 S
3:00 pm

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

582
Bill Number (if applicable)

Topic Regulatory Boards

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr.
Street

Phone 878-7364

Tallahassee FL 32301
City *State* *Zip*

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28
Meeting Date

SB 582
Bill Number (if applicable)

Topic Regulatory Boards

Amendment Barcode (if applicable)

Name Chris Hansen

Job Title Ballard Partners

Address
Street

Phone 577-0444

Tallahassee FL 32301
City *State* *Zip*

Email Chansen@ballardpl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Podiatric Medical Assoc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

SB 592

Meeting Date

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic PROFICIENCIES

Name JENNIFER GREEN

Job Title

Address 113 E. COLLEGE AVE

Street

TLH 32301

City *State* *Zip*

Phone 841-1726

Email OFFICE@LIBERTYPARTNERSFL.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing FLORIDA INSTITUTE OF CPAs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/17
Meeting Date

582
Bill Number (if applicable)

Topic ANTI TRUST LAWSUITS & REGULATORY BOARDS

Amendment Barcode (if applicable)

Name DAVID DANIEL

Job Title

Address 311 EAST PARK AVENUE
Street

Phone 224-5081

TALLAHASSEE FL 32301
City *State* *Zip*

Email d.daniel@smithbryanandmyers.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA ASSOCIATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

582
Bill Number (if applicable)

Topic Regulatory Boards

Amendment Barcode (if applicable)

Name Suzanne Graham

Job Title

Address 2600 Centennial Place
Street
Tallahassee FL 32308
City *State* *Zip*

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Email Sgraham@masseyservices.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Home Builders Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

28 Mch 17
Meeting Date

582
Bill Number (if applicable)

Topic Regulatory Boards

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall — FL — 32301
City — *State* — *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 1588
INTRODUCER:	Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Latvala
SUBJECT:	Military and Veteran Support
DATE:	March 27, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon/Sanders	Ryon	MS	**Fav/CS**
2.	Parks	Cibula	JU	**Favorable**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1588 contains provisions relating to rental housing for military servicemembers, veteran-owned businesses, employment of military spouses, and student veteran support. Specifically, the bill:

- Requires expedited processing of a housing rental application, if required, for a military servicemember's spouse and other adult dependents who plan to reside with the servicemember;
- Directs the Florida Department of Veterans Affairs to create a website to streamline the procedure for applying for certification as a veteran business enterprise;
- Provides that the Supreme Court of Florida may admit the spouse of a military servicemember to practice law in Florida, if the Florida Board of Bar Examiners certifies that the spouse meets certain requirements;
- Requires the Department of Education to expedite the processing of an application for educator certification submitted by the spouse of a military servicemember; and
- Provides legislative intent regarding academic credit for military training and coursework and collaboration between the State Board of Education and the Board of Governors on student veteran issues.

II. Present Situation:

Rental Housing Applications for Military Servicemembers

In 2016, the Legislature created s. 83.683, F.S., which provides that if a landlord requires a prospective tenant to complete a rental application before residing in a rental unit, the landlord must complete processing of such rental application within 7 days, if the prospective tenant is a military servicemember. This provision also applies to condominium associations, cooperative associations, and homeowners associations.

Florida Veteran Business Enterprise Opportunity Act

The Florida Veteran Business Enterprise Opportunity Act[1] exists to rectify the economic disadvantage of service-disabled veterans[2] and to recognize wartime veterans[3] for their sacrifices. The Department of Management Services' (DMS) Office of Supplier Diversity, in partnership with the Florida Department of Veterans' Affairs, is administering the Veteran Business Enterprises program. DMS is responsible for working with the Department of Veterans' Affairs to establish a certification procedure and either granting, denying, revoking the certification of a veteran business enterprise. Responsibilities of the Department of Veterans' Affairs include:

- Assisting DMS in establishing a certification procedure, which shall be reviewed biennially and updated as necessary;
- Identifying eligible veteran business enterprises by any electronic means (including email or website) or by any other reasonable means; and
- Encouraging and assisting eligible veteran business enterprises to apply for certification under this section.

The application process for a veteran business enterprise requires a business to register as a vendor on MyFloridaMarketPlace, which serves as the state's procurement website, and submit the required documentation to the Office of Supplier Diversity.[4] In order to be certified as a veteran business enterprise, a business enterprise must be an independently owned and operated business that:

- Employs 200 or fewer permanent full-time employees;
- Has a net worth of $5 million or less;
- Is domiciled in Florida;
- Is at least 51 percent owned by one or more wartime veterans or service-disabled veterans; and

[1] Section 295.187, F.S.
[2] A service-disabled veteran is defined as a veteran who is a permanent Florida resident with a service-connected disability as determined by the United States Department of Veterans Affairs or who has been terminated from military service by reason of disability by the United States Department of Defense. See s. 295.187(3)(b), F.S.
[3] A wartime veteran is a veteran that served in a campaign or expedition for which a campaign badge has been authorized or during a specified period of wartime service. *See* s. 295.187(3)(d), F.S.
[4] Department of Management Services (DMS), Office of Supplier Diversity (OSD), *Get Certified*, http://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd/get_certified (last visited Mar. 24, 2017).

- Is managed and controlled by one or more wartime veterans or service-disabled veterans or, for a service-disabled veteran with a permanent and total disability, by the spouse or permanent caregiver of the veteran.

Certification as a veteran business enterprise by the Office of Supplier Diversity is valid for a two-year period after which the business must renew its certification. Currently, a veteran business enterprise can renew its certification online through the DMS website.[5] During fiscal year 2015-2016, there were 440 Florida businesses with a current certification as a veteran business enterprise.[6]

Pursuant to s. 295.187, F.S., a veteran business enterprise is entitled to vendor preference. Vendor preference requires a state agency, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, at least one of which is from a certified veteran business enterprise, which are equal with respect to all relevant considerations including price, quality, and service, to award such procurement or contract to the certified veteran business enterprise.[7]

Admission to Practice Law in Florida

Article V, section 15 of the State Constitution provides that the Supreme Court of Florida has exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.[8] The requirements and procedures for admission to The Florida Bar are established in the Rules of the Supreme Court Relating to Admissions to the Bar (rules), which are administered by the Florida Board of Bar Examiners.[9]

Persons seeking admission to The Florida Bar must meet the character and fitness qualifications set forth by the rules, file the appropriate applications and fees, and comply with the rules governing background investigations and the bar examination.[10] To be qualified for admission to The Florida Bar, an applicant must produce satisfactory evidence of good moral character, an adequate knowledge of the standards and ideals of the profession, and proof that the applicant is otherwise fit to take the oath and to perform the obligations and responsibilities of an attorney.[11]

An applicant must also sit for the Florida Bar Examination (exam). The exam consists of two components to include the General Bar Examination and the Multistate Professional

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[5] DMS, Office of Supplier Diversity, *Recertification Information*, http://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd/get_certified/recertification_information (last visited Mar. 24, 2017).
[6] DMS, Office of Supplier Diversity, *Office of Supplier Diversity Annual Report Fiscal Year 2015-2016*, p. 7, http://www.dms.myflorida.com/content/download/130365/809851/OSD_15-16_annual_report_Final.pdf (last visited Mar. 18, 2017).
[7] Other benefits available to veteran business enterprises and other certified business enterprises, such as women and minority-owned businesses, include: first tier referrals to state agencies for contract opportunities; business development guidance from established corporations; participation at regional workshops, seminars, and corporate roundtables; and inclusion in an exclusive listing of state-certified minority business enterprises in an online directory.
[8] Fla. Const. art. V, section 15.
[9] Fla. Bar Admiss. R. 1-10.
[10] Fla. Bar Admiss. R. 2-10.
[11] Fla. Bar Admiss. R. 2-12.

Responsibility Examination (MPRE).[12] To be considered for admission to The Florida Bar, an applicant must produce satisfactory evidence of technical competence by passing all parts of the exam.[13] Additionally, the applicant must hold a Bachelor of Laws or Juris Doctor degree from an accredited law school.[14]

Currently, a spouse of a military servicemember is not permitted to practice law in Florida without meeting all of the requirements established in the Bar rules. On February 1, 2017, the Florida Board of Bar Examiners filed a petition with the Supreme Court of Florida to amend the rules by proposing a new subchapter authorizing military spouses to practice law in Florida under certain circumstances.[15]

Florida Educator Certification

In order for a person to serve as an educator in a traditional public school, charter school, virtual school, or other publicly operated school, the person must hold a certificate issued by the Florida Department of Education (DOE).[16] Persons seeking employment at a public school as a school supervisor, school principal, teacher, library media specialist, school counselor, athletic coach, or in another instructional capacity must be certified.[17] The purpose of certification is to require school-based personnel to "possess the credentials, knowledge, and skills necessary to allow the opportunity for a high-quality education in the public schools."[18]

The DOE issues three types of educator certificates:

- **Professional Certificate.** The professional certificate is Florida's highest type of full-time educator certification. The professional certificate is valid for five years and is renewable.[19]
- **Temporary Certificate.** The temporary certificate covers employment in full-time positions for which educator certification is required. The temporary certificate is valid for three years and is nonrenewable.[20]
- **Athletic Coaching Certificate.** The athletic coaching certificate covers full-time and part-time employment as a public school's athletic coach.[21]

A person seeking an educator certificate must submit an application to DOE and remit the required fee.[22] Within 90 calendar days of receiving a completed application, DOE must issue a professional or temporary certificate, depending on the applicant's qualifications. If the applicant does not meet the requirements for a professional or temporary certificate, DOE must provide a statement of eligibility that advises the applicant of any qualifications that must be completed to qualify for certification.

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[12] Fla. Bar Admiss. R. 4-11.
[13] Fla. Bar Admiss. R. 4-13.
[14] Fla. Bar Admiss. R. 4-13.1.a.
[15] *See* Supreme Court of Florida, *Petition to Amend the Rules Regulating the Florida Bar, SC17-156* (Feb. 1, 2017), http://jweb.flcourts.org/pls/docket/ds_docket?p_caseyear=2017&p_casenumber=156 (last visited Mar. 24, 2017).
[16] Sections 1012.55(1) and 1002.33(12)(f), F.S.
[17] Sections 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S.
[18] Section 1012.54, F.S.
[19] Section 1012.56(7)(a), F.S.
[20] Section 1012.56(7), F.S.
[21] Section 1012.55(2), F.S.
[22] Section 1012.56(1), F.S.

To be eligible for an educator certificate, a person must:[23]

- Be at least 18 years of age;
- Sign an affidavit attesting that the applicant will uphold the U.S. and State Constitutions;
- Earn a bachelor's or higher degree from an accredited institution of higher learning or from a non-accredited institution identified by DOE as having a quality program resulting in a bachelor's or higher degree;
- Submit to fingerprinting and background screening and not have a criminal history that requires the applicant's disqualification from certification or employment;
- Be of good moral character; and
- Be competent and capable of performing the duties, functions, and responsibilities of a teacher.

An applicant seeking a professional certificate must:

- Meet the basic eligibility requirements for certification;[24]
- Demonstrate mastery of general knowledge;[25]
- Demonstrate mastery of subject area knowledge;[26] and
- Demonstrate mastery of professional preparation and education competence.[27]

A three-year nonrenewable temporary certificate[28] may be issued to an applicant who does not qualify for the professional certificate, but meets the basic eligibility requirements for certification[29] and:

- Obtains full-time employment in a position that requires a Florida educator certificate by a school district or private school that has a professional education competence demonstration program;[30] and
- Demonstrates mastery of subject area knowledge.[31]

An educator who is employed under a temporary certificate must demonstrate mastery of general knowledge[32] within one calendar year after employment in order to remain employed in a position that requires a certificate.[33] The DOE may extend the validity period of a temporary certificate for two years if the requirements for the professional certificate (not including the

[23] Section 1012.56(2)(a)-(f), F.S.
[24] Section 1012.56(2)(a)-(f), F.S.
[25] Section 1012.56(2)(g), F.S. *See* Florida Department of Education, *General Knowledge*, http://www.fldoe.org/edcert/mast_gen.asp (last visited Feb. 23, 2017).
[26] Section 1012.56(2)(h), F.S.
[27] Section 1012.56(2)(i), F.S.; Florida Department of Education, *Professional Preparation and Education Competence*, http://www.fldoe.org/teaching/certification/general-cert-requirements/professional-preparation-edu-competenc.stml(last visited Mar. 24,, 2017).
[28] Section 1012.56 (7)(b), F.S.
[29] Section 1012.56(2)(a)-(f) and (7)(b), F.S.
[30] Section 1012.56(1)(b), F.S.
[31] Section 1012.56(5), F.S.
[32] Mastery of general knowledge may be demonstrated through several methods, including achieving a passing score on the Florida General Knowledge Test or achieving passing scores established in state board rule on national or international examinations that test comparable content and relevant standards in verbal, analytical writing, and quantitative reasoning skills (*e.g.*, the verbal, analytical writing, and quantitative reasoning portions of the Graduate Record Examination). See s. 1012.56(3), F.S.
[33] Section 1012.56(7), F.S.

mastery of general knowledge requirement) are not completed due to serious illness or injury of the applicant or other extraordinary extenuating circumstances.[34]

Veterans' Training and Coursework

State Board of Education – Florida College System

The State Board of Education is the chief implementing and coordinating body of public education in Florida, except for the State University System.[35] In accordance with Article IX, Section 2, of the State Constitution, the State Board of Education is responsible for supervising the system of free public education as provided by law and appoints the Commissioner of the Department of Education.

There are 28 locally-governed public colleges in the Florida College System. While governed by local boards, the colleges are coordinated under the jurisdiction of the State Board of Education. Administratively, the Chancellor of Florida Colleges is the chief executive officer of the system, reporting to the Commissioner of Education who serves as the chief executive officer of Florida's K-20 System.[36]

Board of Governors - State University System

The Board of Governors is the governing body for the State University System of Florida. In accordance with Article IX, Section 7(d), of the State Constitution, it is required to "operate, regulate, control, and be fully responsible for the management of the whole university system." Currently, there are 12 institutions within the State University System (SUS).[37] The SUS enrolls more than 337,000 students, offers nearly 1,800 degree programs at the baccalaureate, graduate, and professional levels, and annually awards more than 81,000 degrees at all levels.[38]

College Credit for Military Training and Education

Section 1004.096, F.S., requires the Board of Governors to adopt regulations and the State Board of Education to adopt rules that enable eligible members of the U.S. Armed Forces to earn academic college credit at public postsecondary educational institutions for college-level training and education acquired in the military.[39] Accordingly, Board of Governors Regulation 6.013 and Rule 6A-14.0302 of the Florida Administrative Code, require all Florida universities and colleges, respectively, to have an established policy and process in place for evaluating military training and education. Pursuant to both the rule and regulation, such military training and education must be recognized by the American Council on Education (ACE).

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[34] *Id.*
[35] Section 1001.02(1), F.S.
[36] Florida Department of Education, *About Us*, http://www.fldoe.org/schools/higher-ed/fl-college-system/about-us (last visited Mar. 24, 2017).
[37] State University System of Florida, Board of Governors, *2025 System Strategic Plan*, 5 (Mar. 2016), http://www.flbog.edu/pressroom/_doc/2025_System_Strategic_Plan_Revised_FINAL.pdf.
[38] *Id.*
[39] Chapter 2012-169, Laws of Fla.

Priority Course Registration for Veterans

Section 1004.075, F.S., requires each Florida College System institution and state university to provide priority course registration for veterans receiving GI Bill benefits if the institution offers priority course registration for any segment of the student population.[40] Additionally, a spouse or dependent child of a veteran to whom GI Bill benefits have been transferred are also entitled to priority course registration until the expiration of their GI Bill benefits.[41]

III. Effect of Proposed Changes:

Section 1 amends s. 83.683, F.S., to provide that the current requirement for a landlord to process a housing rental application from a military servicemember within seven days also applies to the servicemember's spouse or any adult dependents of the servicemember who are to reside in the same rental unit. The extension of this provision also applies to condominium associations, cooperative associations, and homeowners associations.

Section 2 amends s. 295.187, F.S., to direct the Florida Department of Veterans' Affairs to create a website to streamline the procedure for applying for certification as a veteran business enterprise.

Section 3 amends s. 454.021, F.S., to provide that the Supreme Court of Florida may admit the spouse of a military servicemember, as defined in s. 250.01, F.S., to practice law in Florida given that he or she is certified by the Florida Board of Bar Examiners. Certification by the board is contingent on the applicant:

- Registering in the Defense Enrollment Eligibility Report System established by the U. S. Department of Defense;
- Holding a Juris Doctor or Bachelor of Laws degree from a law school accredited by the American Bar Association;
- Being licensed to practice law in another state, the District of Columbia, or a territory of the U.S. after having passed a written exam;
- Establishing that he or she is a member in good standing in all jurisdictions where licensed to practice law and that he or she is not currently subject to discipline or a pending disciplinary matter relating to the practice of law;
- Demonstrating his or her presence in Florida as the spouse of a servicemember; and
- Otherwise fulfilling all requirements for admission to practice law in Florida.

The Supreme Court of Florida may specify circumstances under which the license and authorization for a military spouse to practice law in Florida terminates.

Section 4 amends s. 1012.56, F.S., to require the DOE to expedite the processing of an application for an educator certificate submitted by the spouse of a military servicemember.[42] DOE must process the application and issue a professional or temporary educator certificate or a statement of status of eligibility within 60 calendar days after receiving the completed

[40] Chapter 2012-159, Laws of Fla.
[41] *Id.*
[42] The term servicemember is defined in section 250.01, F.S., as any person serving as a member of the United States Armed forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.

application. Current law requires DOE to process an application for an educator certificate within 90 calendar days for all applicants.

The bill also requires the State Board of Education to adopt rules to allow DOE to extend the validity period of a temporary educator certificate for two years if an applicant fails to meet the requirements for the professional certificate due to the fact that the applicant is the spouse of a servicemember stationed in Florida. Current law allows DOE to extend the validity period of a temporary educator certificate for two years because of serious illness or injury or other extraordinary extenuating circumstances.

Section 5 provides legislative intent regarding the provision of college credit for military training and coursework and other services to student veterans. The bill provides that it is the intent of the Legislature that the State Board of Education and the Board of Governors work collaboratively to do the following:

- Align existing degree programs with applicable military training and experience to maximize academic credit awarded for such training and experience;
- Appoint and train specific faculty within each degree program at each institution as liaisons and contacts for veterans;
- Incorporate outreach services tailored to disabled veterans to inform disabled veterans of disability services provided by the U.S. Department of Veterans Affairs, and other federal and state agencies, and private entities.
- Facilitate statewide meetings for campus personnel to discuss and develop best practices, exchange ideas and experiences, and hear presentations by individuals with expertise in the unique needs of veterans; and
- Provide veterans with sufficient courses required for graduation, including but not limited to giving priority registration for veterans.

Section 6 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Under Article V, section 15 of the State Constitution, the Supreme Court of Florida has exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted. The bill states that the Supreme Court may admit the

spouse of a military servicemember, as defined in section 250.01, F.S., to practice law in Florida if the Florida Board of Bar Examiners certifies that he or she meets certain requirements. Because the bill does not require the Supreme Court to admit any person to the practice of law in Florida, the bill does not intrude on the Supreme Court's authority.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will enable spouses of military servicemembers to find employment more quickly by minimizing some of the impediments to obtaining any required licenses and certifications.

C. Government Sector Impact:

Section 2 of the bill requires the Florida Department of Veterans' Affairs to create a website for businesses to apply for certification as a Veteran Business Enterprise. The cost to create website is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 83.683, 295.187, 454.021, and 1012.56. The bill also creates undesignated sections of Florida law.

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 Military and Veterans Affairs, Space, and Domestic Security on March 22, 2017:
The CS provides that the requirement for a landlord, condominium association, cooperative association, and homeowners association to process a housing rental application from a military servicemember within seven days of submission also applies to the servicemember's spouse or any adult dependents of the servicemember who are to reside in the same rental unit.

B. Amendments:

None.

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Latvala

583-02710-17 20171588c1

A bill to be entitled

An act relating to military and veteran support; amending s. 83.683, F.S.; requiring landlords, condominium associations, cooperative associations, and homeowners' associations that require a servicemember's spouse or certain adult dependents to submit a rental application to complete the processing of the application of within a specified timeframe; amending s. 295.187, F.S.; requiring the Department of Veterans' Affairs to create a website to streamline the procedure for businesses applying for certification as a veteran business enterprise; amending s. 454.021, F.S.; authorizing the Supreme Court to admit on motion a bar applicant who is the spouse of a servicemember stationed in this state under certain circumstances; amending s. 1012.56, F.S.; requiring the Department of Education to expedite the processing of an application for educator certification submitted by a spouse of a servicemember stationed in this state; requiring the State Board of Education to adopt rules regarding extending validity of a temporary certificate if the applicant is a spouse of a servicemember stationed in this state; providing legislative findings and intent regarding continuing education for veterans of the United States Armed Forces; providing legislative intent to require collaboration between the State Board of Education and the Board of Governors of the State University System in achieving specified goals regarding educational

583-02710-17 20171588c1

opportunities for veterans; providing an effective date.

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

Section 1. Section 83.683, Florida Statutes, is amended to read:

83.683 Rental application by a servicemember.—

(1) If a landlord requires a prospective tenant to complete a rental application before residing in a rental unit, the landlord must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. If the landlord requires the servicemember's spouse or any adult dependents of the servicemember who are to reside in the same rental unit to submit a rental application, the landlord must process those applications within the same 7-day period. Absent a timely denial of the rental application, the landlord must lease the rental unit to the servicemember if all other terms of the application and lease are complied with.

(2) If a condominium association, as defined in chapter 718, a cooperative association, as defined in chapter 719, or a homeowners' association, as defined in chapter 720, requires a prospective tenant of a condominium unit, cooperative unit, or parcel within the association's control to complete a rental application before residing in a rental unit or parcel, the association must complete processing of a rental application

submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. If the association requires the servicemember's spouse or any adult dependents of the servicemember who are to reside in the same unit or parcel to submit a rental application, the association must process those applications within the same 7-day period. Absent a timely denial of the rental application, the association must allow the unit or parcel owner to lease the rental unit or parcel to the servicemember and the landlord must lease the rental unit or parcel to the servicemember if all other terms of the application and lease are complied with.

(3) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

Section 2. Present paragraph (d) of subsection (6) of section 295.187, Florida Statutes, is redesignated as paragraph (e), and a new paragraph (d) is added to that subsection, to read:

295.187 Florida Veteran Business Enterprise Opportunity Act.—

(6) DUTIES OF THE DEPARTMENT OF VETERANS' AFFAIRS.—The department shall:

(d) Create a website to streamline the procedure for applying for certification as a veteran business enterprise.

Section 3. Subsection (4) is added to section 454.021, Florida Statutes, to read:

454.021 Attorneys; admission to practice law; Supreme Court

to govern and regulate.—

(4)(a) The Supreme Court of Florida may admit on motion an applicant as an attorney at law authorized to practice in this state if the applicant is a spouse of a servicemember, as defined in s. 250.01, stationed in this state and upon certification by the Florida Board of Bar Examiners that the applicant meets the following requirements:

1. The applicant has registered in the Defense Enrollment Eligibility Reporting System established by the United States Department of Defense;

2. The applicant holds a Juris Doctor or Bachelor of Laws from a law school accredited by the American Bar Association;

3. The applicant is licensed to practice law in another state, the District of Columbia, or a territory of the United States after having passed a written exam;

4. The applicant can establish that he or she is a member in good standing in all jurisdictions where licensed to practice law and that he or she is not currently subject to discipline or a pending disciplinary matter relating to the practice of law;

5. The applicant can demonstrate his or her presence in this state as a spouse of a servicemember; and

6. The applicant has otherwise fulfilled all requirements for admission to practice law in this state.

(b) The Supreme Court of Florida may specify circumstances under which the license and authorization to practice law in this state of an attorney licensed in accordance with paragraph (a) terminates.

Section 4. Subsections (1) and (7) of section 1012.56, Florida Statutes, are amended to read:

1012.56 Educator certification requirements.—

(1) APPLICATION.—Each person seeking certification pursuant to this chapter shall submit a completed application containing the applicant's social security number to the Department of Education and remit the fee required pursuant to s. 1012.59 and rules of the State Board of Education. Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. Disclosure of social security numbers obtained through this requirement is limited to the purpose of administration of the Title IV-D program of the Social Security Act for child support enforcement. Pursuant to s. 120.60, the department shall issue within 90 calendar days after the stamped receipted date of the completed application:

(a) If the applicant meets the requirements, a professional certificate covering the classification, level, and area for which the applicant is deemed qualified and a document explaining the requirements for renewal of the professional certificate;

(b) If the applicant meets the requirements and if requested by an employing school district or an employing private school with a professional education competence demonstration program pursuant to paragraphs (6)(f) and (8)(b), a temporary certificate covering the classification, level, and area for which the applicant is deemed qualified and an official statement of status of eligibility; or

(c) If the ~~an~~ applicant does not meet the requirements for either certificate, an official statement of status of

eligibility. The statement of status of eligibility must advise the applicant of any qualifications that must be completed to qualify for certification. Each statement of status of eligibility is valid for 3 years after its date of issuance, except as provided in paragraph (2)(d).

If the applicant is the spouse of a servicemember, as defined in s. 250.01, stationed in this state and if the applicant holds a current professional standard teaching certificate issued by another state, the department shall expedite the processing of the application and issue a certificate or statement as provided under paragraphs (a)-(c) within 60 calendar days after the stamped receipted date of the completed application.

(7) TYPES AND TERMS OF CERTIFICATION.—

(a) The Department of Education shall issue a professional certificate for a period not to exceed 5 years to any applicant who meets all the requirements outlined in subsection (2) or, for a professional certificate covering grades 6 through 12, any applicant who:

1. Meets the requirements of paragraphs (2)(a)-(h).

2. Holds a master's or higher degree in the area of science, technology, engineering, or mathematics.

3. Teaches a high school course in the subject of the advanced degree.

4. Is rated highly effective as determined by the teacher's performance evaluation under s. 1012.34, based in part on student performance as measured by a statewide, standardized assessment or an Advanced Placement, Advanced International Certificate of Education, or International Baccalaureate

examination.

5. Achieves a passing score on the Florida professional education competency examination required by state board rule.

(b) The department shall issue a temporary certificate to any applicant who completes the requirements outlined in paragraphs (2)(a)-(f) and completes the subject area content requirements specified in state board rule or demonstrates mastery of subject area knowledge pursuant to subsection (5) and holds an accredited degree or a degree approved by the Department of Education at the level required for the subject area specialization in state board rule.

(c) The department shall issue one nonrenewable 2-year temporary certificate and one nonrenewable 5-year professional certificate to a qualified applicant who holds a bachelor's degree in the area of speech-language impairment to allow for completion of a master's degree program in speech-language impairment.

Each temporary certificate is valid for 3 school fiscal years and is nonrenewable. However, the requirement in paragraph (2)(g) must be met within 1 calendar year of the date of employment under the temporary certificate. Individuals who are employed under contract at the end of the 1 calendar year time period may continue to be employed through the end of the school year in which they have been contracted. A school district shall not employ, or continue the employment of, an individual in a position for which a temporary certificate is required beyond this time period if the individual has not met the requirement of paragraph (2)(g). The State Board of Education shall adopt

rules to allow the department to extend the validity period of a temporary certificate for 2 years when the requirements for the professional certificate, not including the requirement in paragraph (2)(g), were not completed due to the serious illness or injury of the applicant, due to the fact that the applicant is the spouse of a servicemember stationed in this state, or due to other extraordinary extenuating circumstances. The department shall reissue the temporary certificate for 2 additional years upon approval by the Commissioner of Education. A written request for reissuance of the certificate shall be submitted by the district school superintendent, the governing authority of a university lab school, the governing authority of a state-supported school, or the governing authority of a private school.

Section 5. Legislative findings and intent; continuing education of veterans of the United States Armed Forces.—The Legislature finds that many veterans of the United States Armed Forces in this state have completed training and coursework during their military service, including overseas deployments, resulting in tangible and quantifiable strides in their pursuit of a postsecondary degree. The Legislature further finds that the State Board of Education and the Board of Governors of the State University System must work together to ensure that military training and coursework are granted academic credit in order to assist veterans in continuing their education. Therefore, it is the intent of the Legislature that the State Board of Education and the Board of Governors work collaboratively to:

(1) Align existing degree programs, including, but not

limited to, vocational and technical degrees, at each state university and Florida College System institution with applicable military training and experience to maximize academic credit awarded for such training and experience.

(2) Appoint and train specific faculty within each degree program at each state university and Florida College System institution as liaisons and contacts for veterans.

(3) Incorporate outreach services tailored to disabled veterans into existing disability services on the campus of each state university and Florida College System institution to make available to such veterans information on disability services provided by the United States Department of Veterans Affairs, other federal and state agencies, and private entities.

(4) Facilitate statewide meetings for personnel at state universities and Florida College System institutions who provide student services for veterans to discuss and develop best practices, exchange ideas and experiences, and attend presentations by individuals with expertise in the unique needs of veterans.

(5) Make every effort to provide veterans with sufficient courses required for graduation, including, but not limited to, giving priority registration to veterans.

Section 6. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Commerce and Tourism
Environmental Preservation and Conservation
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR JACK LATVALA
16th District

March 22, 2017

The Honorable Greg Steube
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Steube,

I respectfully request you place Committee Substitute for Senate Bill 1588, relating to Military and Veteran Support, on your Judiciary agenda at your earliest convenience.

Should you have any questions or concerns regarding this legislation, please do not hesitate to contact me personally.

Sincerely,

Jack Latvala
Senator, 16th District

cc: Tom Cibula, Staff Director

REPLY TO:
❒ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
❒ 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 590
INTRODUCER:	Judiciary Committee and Senators Brandes and Stargel
SUBJECT:	Child Support and Parenting Time Plans
DATE:	March 28, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Favorable**
2.	Stallard	Cibula	JU	**Fav/CS**
3.			AGG	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 590 authorizes the Department of Revenue, in certain child support cases, to offer the parents a standard parenting time plan, and to incorporate the plan into an administrative child support order if the parents agree to be bound by the plan. However, if the parents cannot agree to be bound by either the standard parenting time plan or an alternative plan, the Department must refer the parents to the circuit court for resolution of the matter.

The content of the standard parenting time plan changes depending on the circumstances of each case. However, under what is presumably the most common set of circumstances set forth in the bill—the child is at least 3 years of age and the parents live with 100 miles of each other—the parent who owes support must have parenting time with the child every other weekend, one evening per week, every other Thanksgiving break, part of each winter break, every other spring break, and for 2 weeks during the summer.

The bill does not authorize to the Department or the Division of Administrative Hearings to change existing child support or timesharing orders, such as those entered by a circuit court.

II. Present Situation:

Child Support and Parenting Time Plans

Cases of Divorcing Parents of Children Uninvolved in the Welfare System

Perhaps divorce is the circumstance that most often comes to mind when contemplating the determination of child support and parenting time plans. And the laws pertaining to divorce, as well as to the matters that are resolved through a divorce proceeding—e.g., child support and parenting time—are set forth in ch. 61, F.S.

Cases Involving Welfare Recipients Who May Never have Married or are not Divorced

However, it is often the case that support is owed for a child who is on welfare and whose mother and father were never married, or who are married and separated. Because these parents never went through the ch. 61, F.S. process, child support was never determined or ordered, and for that matter, neither was parenting time. And in these cases—referred to as Title IV-D[1] cases—the state and federal governments take a particular interest in compelling child support payment because the government is having to spend taxpayer dollars to support a child who should be supported by (both) of his or her parents.

Title IV-D cases are so called because they fall under the child-support-enforcement program named for Title IV-D of the federal Social Security Act. Under Title IV-D, the federal government covers the bulk of costs incurred by states in administering the program. But, among several other requirements for receiving this federal money, each state must designate a Title IV-D agency. In this state, the Title IV-D agency is the Department of Revenue (Department).[2] The Department's authority in this regard is set forth in statute:

> The department in its capacity as the state Title IV-D agency shall have the authority to take actions necessary to carry out the public policy of ensuring that children are maintained from the resources of their parents to the extent possible. The department's authority shall include, but not be limited to, the establishment of paternity or support obligations, as well as the modification, enforcement, and collection of support obligations.[3]

As such, the Department is not (expressly) granted the authority to determine parenting time under state or federal law. Accordingly, the statute that sets forth the detailed process for the Department, in conjunction with the Division of Administrative Hearings (DOAH), to determine and enforce child support in Title IV-D cases[4] makes no mention of the Department (or DOAH) also determining parenting time.

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[1] That is, Title IV-D of the Social Security Act, 42 USC. ss. 651 et seq., pertaining to the enforcement of child support in cases where a child is on welfare.
[2] Section 409.2557(1), F.S.
[3] Section 409.2557(2), F.S.
[4] Section 409.2563, F.S. However, this section is not intended to limit the jurisdiction of the circuit courts to hear and determine issues regarding child support. The intent, rather, is to provide the Department with an alternative procedure to establish child support obligations in Title IV-D cases in a fair and expeditious manner when there is no court order of support.

Therefore, a non-custodial parent may be forced by the Department to pay child support by way of the statutory proceeding, but this parent must undertake a separate proceeding in court if he or she wants an order determining his or her right to parenting time with the child. Naturally, this additional proceeding can be costly to all involved, considering the filing fee, time, and potential attorneys' fees and costs involved in petitioning the court. Some question why, if the parents agree as to a parenting plan, this could not or should not be established simultaneously with the proceeding to determine child support.

Process for Title IV-D Child Support Action

If a circuit court has not already entered an order of child support, the Department may initiate a Title IV-D case to determine child support. To initiate the proceeding, the Department sends notice to both parents. This notice must include, among other things, that:[5]

- The Department intends to establish an administrative child support order;
- Both parents must submit a financial affidavit within 20 days;
- The Department will calculate child support obligations and incorporate these into a proposed administrative order;
- The parent from whom support is sought will have 20 days from the service of the proposed administrative order to request a hearing, which will occur at DOAH, and that if this hearing is not requested, the proposed order will be entered;
- Either parent may choose instead to proceed in circuit court, and that the circuit court's order supersedes the administrative order; and
- The Department or DOAH do not have the jurisdiction to establish or change custody, time-sharing, or parental contact rights.

After the notice is sent, and after any hearing requested is complete, the Department (or DOAH, if there was a hearing) will enter an administrative support order,[6] which the Department has the authority to enforce.

Alternatively, as mentioned in the notice requirements, the parent from whom support is sought may forego the entire administrative process to proceed instead in circuit court.

III. Effect of Proposed Changes:

Overview

The bill authorizes the Department of Revenue, in certain child support cases, to offer the parents a standard parenting time plan, and to incorporate the plan into the administrative child support order if the parents agree to be bound by the plan.[7] However, if the parents cannot agree to the

[5] *See* s. 409.2563(4), F.S.

[6] Of course, DOAH, may also enter a final order denying an administrative support order, if forced child support is not legally justified.

[7] Texas has been setting parenting time responsibilities at the same time as child support for nearly 30 years. There, the standard time plan is presumed to be in the child's best interests. The particular guidelines have been in place, virtually unchanged, since 1989. And this system has gained the support of both the Texas judicial system and the family bar in Texas. *Child Support and Parenting Time Orders*, NCSL.org, http://www.ncsl.org/research/human-services/child-support-and-parenting-time-orders.aspx (last visited Mar. 26, 2017).

standard plan or an alternative plan, the Department must refer the parents to the circuit court for resolution.

The bill does not authorize the Department or DOAH to change existing child support or timesharing orders, such as those entered by a circuit court.

Standard Title IV-D Parenting Time Plan

The bill requires the Department to offer the standard parenting time plan to the parents in any administrative action taken by the Title IV-D program to determine paternity or to establish or modify support. Then, if the parents agree on the standard parenting time plan or another parenting time plan, the Department must incorporate the plan into the administrative order resolving the action. If no parenting time plan (standard or otherwise) is agreed to in the case, the Department must refer the parents to the circuit court for resolution.

Contents of Parenting Time Plan

The standard plan contents vary depending on whether the parents live within 100 miles of each other and whether the child is under 3 years of age.

If the parents live within 100 miles of each other and the child is at least 3 years of age, the parent who owes support must have parenting time with the child every other weekend, one evening per week, every other Thanksgiving break, part of winter break, every other spring break, and for 2 weeks during the summer.

If the parents do not live within 100 miles of each other and the child is at least 3 years of age, the parents may agree to the previous arrangement, or the parent who owes support may have parenting time with the child as follows: one weekend per month and 42 days during summer break.

If the child is under 3 years of age, the parents may agree to a plan that includes more frequent, but shorter visits, leading into overnight visits, and then into the standard plan or another agreed plan.

How the Standard Parenting Time Plan or Other Parenting Time Plan is Established

A parenting time plan—whether the standard plan or another agreed-to plan—is established as part of the Department of Revenue's existing Title IV-D child support proceeding. As such, the process to establish a parenting time plan is worked into the existing process of a Title IV-D child support action as follows.

As in current law, if a circuit court has not already entered an order of child support, the Department may initiate a Title IV-D case to determine child support. To initiate the proceeding, the Department sends notice, along with a copy of the standard parenting plan, to both parents. This notice must include the child support components, as under current law, but must also

incorporate information regarding the parenting time plans. Specifically, the notice must include, among other things, that:[8]

- The Department intends to establish an administrative child support order;
- The Department will incorporate a parenting time plan or the standard time plan, if agreed to by both parents, into the administrative support order;
- Both parents must submit a financial affidavit within 20 days;
- The Department will calculate child support obligations and incorporate these into a proposed administrative order;
- The parent from whom support is sought will have 20 days from the service of the proposed administrative order to request a hearing, which will occur at DOAH, and that if this hearing is not requested, the proposed order will be entered and will include any *agreed-upon* parenting time plan;
- The Department does not have jurisdiction to enforce any parenting time plan;
- Either parent may choose instead to proceed in circuit court, and that the circuit court's order supersedes the administrative order; and
- The Department or DOAH do not have the jurisdiction to establish or change custody, time-sharing, or parental contact rights.

As under current law, after this notice is sent, and after any hearing requested is complete, the Department (or DOAH, if there was a hearing) will enter an administrative support order,[9] which the Department has the authority to enforce.[10] Under the bill, the order will include any agreed-to parenting time plan, but the Department does *not* have jurisdiction to enforce any parenting time plan.

However, if the parents in a Title IV-D proceeding do not agree to a parenting time plan, the parents will be referred to the circuit court for the establishment of a plan.

Limitations on the Use of the Standard Parenting Time Plan

The standard parenting time plan may not be included in a Title IV-D administrative support order if the parents do not agree to abide by the plan. Also, the plan may not be included in the order if the parents already have a judicially-established parenting time plan.

Additionally, the bill includes language intended to exclude the use of the plan when necessary to protect the safety of the child. Specifically, it states that the standard plan is "not intended" for use by parents and families with domestic violence "concerns." Also, if a parent becomes concerned about the safety of the child after the entry of the administrative support order, the parent may petition a court of appropriate jurisdiction to modify the plan.

Effective Date

The bill takes effect January 1, 2018.

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[8] *See* s. 409.2563(4), F.S.

[9] Of course, DOAH may also enter a final order denying an administrative support order, if child support is not legally justified.

[10] Alternatively, as mentioned in the notice requirements, the parent from whom support is sought may forego the entire administrative process to proceed instead in circuit court.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill provides separated or never-married parents who are generally low-income with what appears to be a simple and cost-effective means of determining parenting time plans. If the parents can agree on the standard parenting time plan or another parenting time plan, they will not need to proceed in circuit court, and incur the related costs, in order to acquire a parenting time order.

C. Government Sector Impact:

The Department's Legislative Bill Analysis states that the "the current appropriation in the bill is not sufficient to cover estimated costs." The Department states that it needs a one-time expenditure of $690,650 to update its Child Support Automated Management System to meet the requirements in the bill, which is $270,000 more than the bill appropriates as a one-time expenditure. Also, the Department states that the $111,856 that the bill appropriates in recurring general revenue funds is approximately $590,000 short of what will be required.

The bill's fiscal impact on the courts is unknown. The bill waives the filing fee for parents who go through the Title IV-D administrative action but who cannot agree on a parenting time plan, and who then proceed in circuit court. Currently, the parent who files an action in circuit court presumably must pay the filing fee. However, the number of these cases currently filed each year, as well as the number that will be filed under the bill, is unknown.

VI. Technical Deficiencies:

The first sentence of new s. 409.25633, F.S., is unclear, and may be missing a word or a comma.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.2551, 409.2554, 409.2557, 409.2563, 409.2564, 409.256, and 409.2572.

This bill creates section 409.25633, Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on March 28, 2017:
Clarifies that the parents in a Title IV-D action to determine paternity or to establish or modify child support must be presented with a Title IV-D Standard Parenting Time Plan, and that the standard plan or another parenting time plan must be incorporated in the administrative order resulting from the action if the parents agree to one of the plans.

B. Amendments:

None.

640504

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/28/2017	.	
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	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment

Delete lines 555 - 557
and insert:
presented to the parents in any administrative action taken by the Title IV-D program to establish or modify child support or to determine paternity. If the parents agree to the Title IV-D Standard Parenting Time Plan or to another parenting time plan, the plan must be incorporated into the administrative order. If the

By Senator Brandes

24-00597B-17 2017590__

A bill to be entitled

An act relating to child support and parenting time plans; amending s. 409.2551, F.S.; stating legislative intent to encourage frequent contact between a child and each parent; amending s. 409.2554, F.S.; defining terms; amending s. 409.2557, F.S.; authorizing the Department of Revenue to establish parenting time plans agreed to by both parents in Title IV-D child support actions; amending s. 409.2563, F.S.; requiring the department to mail Title IV-D Standard Parenting Time Plans with proposed administrative support orders; providing requirements for including parenting time plans in certain administrative orders; creating s. 409.25633, F.S.; providing the purpose and requirements for Title IV-D Standard Parenting Time Plans; requiring the department to refer parents who do not agree on a parenting time plan to a circuit court; requiring the department to create and provide a form for a petition to establish a parenting time plan under certain circumstances; specifying that the parents are not required to pay a fee to file the petition; authorizing the department to adopt rules; amending s. 409.2564, F.S.; authorizing the department to incorporate either an agreed-upon parenting time plan or a Title IV-D Standard Parenting Time Plan in a child support order; amending ss. 409.256 and 409.2572, F.S.; conforming cross-references; providing an appropriation; providing an effective date.

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

24-00597B-17 2017590__

Section 1. Section 409.2551, Florida Statutes, is amended to read:

409.2551 Legislative intent.—Common-law and statutory procedures governing the remedies for enforcement of support for financially dependent children by persons responsible for their support have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the Attorney General has resulted in a growing burden on the financial resources of the state, which is constrained to provide public assistance for basic maintenance requirements when parents fail to meet their primary obligations. The state, therefore, exercising its police and sovereign powers, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of dependent children shall be augmented by additional remedies directed to the resources of the responsible parents. In order to render resources more immediately available to meet the needs of dependent children, it is the legislative intent that the remedies provided herein are in addition to, and not in lieu of, existing remedies. It is declared to be the public policy of this state that this act be construed and administered to the end that children shall be maintained from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs. It is also the public policy of this state to encourage frequent contact between a child and each parent to optimize the development of a close and continuing relationship between each parent and the child. There is no presumption for or against the father or

mother of the child or for or against any specific time-sharing schedule when a parenting time plan is created.

Section 2. Section 409.2554, Florida Statutes, is reordered and amended to read:

409.2554 Definitions; ss. 409.2551-409.2598.—As used in ss. 409.2551-409.2598, the term:

(5)~~(1)~~ "Department" means the Department of Revenue.

(6)~~(2)~~ "Dependent child" means any unemancipated person under the age of 18, any person under the age of 21 and still in school, or any person who is mentally or physically incapacitated when such incapacity began before ~~prior to~~ such person reaching the age of 18. This definition may ~~shall~~ not be construed to impose an obligation for child support beyond the child's attainment of majority except as imposed in s. 409.2561.

(3) "Court" means the circuit court.

(4) "Court order" means any judgment or order of any court of appropriate jurisdiction of the state, or an order of a court of competent jurisdiction of another state, ordering payment of a set or determinable amount of support money.

(7)~~(5)~~ "Health insurance" means coverage under a fee-for-service arrangement, health maintenance organization, or preferred provider organization, and other types of coverage available to either parent, under which medical services could be provided to a dependent child.

(8)~~(6)~~ "Obligee" means the person to whom support payments are made pursuant to an alimony or child support order.

(9)~~(7)~~ "Obligor" means a person who is responsible for making support payments pursuant to an alimony or child support order.

(12)~~(8)~~ "Public assistance" means money assistance paid on the basis of Title IV-E and Title XIX of the Social Security Act, temporary cash assistance, or food assistance benefits received on behalf of a child under 18 years of age who has an absent parent.

(10)~~(9)~~ "Program attorney" means an attorney employed by the department, under contract with the department, or employed by a contractor of the department, to provide legal representation for the department in a proceeding related to the determination of paternity or the establishment, modification, or enforcement of support brought pursuant to law.

(11)~~(10)~~ "Prosecuting attorney" means any private attorney, county attorney, city attorney, state attorney, program attorney, or an attorney employed by an entity of a local political subdivision who engages in legal action related to the determination of paternity or the establishment, modification, or enforcement of support brought pursuant to this act.

(13) "State Case Registry" means the automated registry maintained by the Title IV-D agency, containing records of each Title IV-D case and of each support order established or modified in the state on or after October 1, 1998. Such records must consist of data elements as required by the United States Secretary of Health and Human Services.

(14) "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the department pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the department in which the support order was

initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.

(16) "Title IV-D Standard Parenting Time Plan" means a document which may be agreed to by the parents to govern the relationship between the parents and to provide the parent who owes support a reasonable minimum amount of time with his or her child. The plans set forth in s. 409.25633 include timetables that specify the time, including overnights and holidays, that a minor child 3 years of age or older may spend with each parent.

(15) ~~(11)~~ "Support," unless otherwise specified, means:

(a) Child support, and, when the child support obligation is being enforced by the Department of Revenue, spousal support or alimony for the spouse or former spouse of the obligor with whom the child is living.

(b) Child support only in cases not being enforced by the Department of Revenue.

(1) ~~(12)~~ "Administrative costs" means any costs, including attorney's fees, clerk's filing fees, recording fees and other expenses incurred by the clerk of the circuit court, service of process fees, or mediation costs, incurred by the Title IV-D agency in its effort to administer the Title IV-D program. The administrative costs that ~~which~~ must be collected by the department shall be assessed on a case-by-case basis based upon a method for determining costs approved by the Federal Government. The administrative costs shall be assessed periodically by the department. The methodology for determining administrative costs shall be made available to the judge or any party who requests it. Only those amounts ordered independent of

current support, arrears, or past public assistance obligation shall be considered and applied toward administrative costs.

(2) ~~(13)~~ "Child support services" includes any civil, criminal, or administrative action taken by the Title IV-D program to determine paternity, establish, modify, enforce, or collect support.

(17) ~~(14)~~ "Undistributable collection" means a support payment received by the department which the department determines cannot be distributed to the final intended recipient.

(18) ~~(15)~~ "Unidentifiable collection" means a payment received by the department for which a parent, depository or circuit civil numbers, or source of the payment cannot be identified.

Section 3. Subsection (2) of section 409.2557, Florida Statutes, is amended to read:

409.2557 State agency for administering child support enforcement program.—

(2) The department in its capacity as the state Title IV-D agency has ~~shall have~~ the authority to take actions necessary to carry out the public policy of ensuring that children are maintained from the resources of their parents to the extent possible. The department's authority includes ~~shall include~~, but is not ~~be~~ limited to, the establishment of paternity or support obligations, the establishment of a Title IV-D Standard Parenting Time Plan or any other parenting time plan agreed to by the parents, and ~~as well as~~ the modification, enforcement, and collection of support obligations.

Section 4. Subsections (2), (4), (5), and (7) of section

409.2563, Florida Statutes, are amended to read:

409.2563 Administrative establishment of child support obligations.—

(2) PURPOSE AND SCOPE.—

(a) It is not the Legislature's intent to limit the jurisdiction of the circuit courts to hear and determine issues regarding child support or parenting time. This section is intended to provide the department with an alternative procedure for establishing child support obligations and establishing a parenting time plan only if the parents are in agreement, in Title IV-D cases in a fair and expeditious manner when there is no court order of support. The procedures in this section are effective throughout the state and shall be implemented statewide.

(b) If the parents do not have an existing time sharing schedule or parenting time plan and do not agree to a parenting time plan, a parenting time plan will not be included in the initial administrative order, only a statement explaining its absence.

(c) If the parents have a judicially established parenting time plan, the plan will not be included in the administrative or initial judicial order.

(d) Any notification provided by the department will not include Title IV-D Standard Parenting Time Plans if Florida is not the child's home state, when one parent does not reside in Florida, if either parent has requested nondisclosure for fear of harm from the other parent, or when the parent who owes support is incarcerated.

(e) ~~(b)~~ The administrative procedure set forth in this

section concerns only the establishment of child support obligations and, if agreed to by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan. This section does not grant jurisdiction to the department or the Division of Administrative Hearings to hear or determine issues of dissolution of marriage, separation, alimony or spousal support, termination of parental rights, dependency, disputed paternity, except for a determination of paternity as provided in s. 409.256, ~~or award of~~ or change of time-sharing. If both parents have agreed to a parenting time plan before the establishment of the administrative support order, the department or the Division of Administrative Hearings will incorporate the agreed-upon parenting time plan into the administrative support order. This paragraph notwithstanding, the department and the Division of Administrative Hearings may make findings of fact that are necessary for a proper determination of a parent's support obligation as authorized by this section.

(f) ~~(c)~~ If there is no support order for a child in a Title IV-D case whose paternity has been established or is presumed by law, or whose paternity is the subject of a proceeding under s. 409.256, the department may establish a parent's child support obligation pursuant to this section, s. 61.30, and other relevant provisions of state law. The administrative support order will include a parenting time plan or Title IV-D Standard Parenting Time Plan as agreed to by both parents. The parent's obligation determined by the department may include any obligation to pay retroactive support and any obligation to provide for health care for a child, whether through insurance coverage, reimbursement of expenses, or both. The department may

proceed on behalf of:

1. An applicant or recipient of public assistance, as provided by ss. 409.2561 and 409.2567;

2. A former recipient of public assistance, as provided by s. 409.2569;

3. An individual who has applied for services as provided by s. 409.2567;

4. Itself or the child, as provided by s. 409.2561; or

5. A state or local government of another state, as provided by chapter 88.

(g) ~~(d)~~ Either parent, or a caregiver if applicable, may at any time file a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any. A support order issued by a circuit court prospectively supersedes an administrative support order rendered by the department.

(h) ~~(c)~~ Pursuant to paragraph (e) ~~(b)~~, neither the department nor the Division of Administrative Hearings has jurisdiction to ~~award or~~ change child custody or rights of parental contact. The department or the Division of Administrative Hearings will incorporate a parenting time plan or Title IV-D Standard Parenting Time Plan as agreed to by both parents into the administrative support order. Either parent may at any time file a civil action in a circuit having jurisdiction and proper venue for a determination of child custody and rights of parental contact.

(i) ~~(f)~~ The department shall terminate the administrative proceeding and file an action in circuit court to determine support if within 20 days after receipt of the initial notice

the parent from whom support is being sought requests in writing that the department proceed in circuit court or states in writing his or her intention to address issues concerning time-sharing or rights to parental contact in court and if within 10 days after receipt of the department's petition and waiver of service the parent from whom support is being sought signs and returns the waiver of service form to the department.

(j) ~~(g)~~ The notices and orders issued by the department under this section shall be written clearly and plainly.

(4) NOTICE OF PROCEEDING TO ESTABLISH ADMINISTRATIVE SUPPORT ORDER.—To commence a proceeding under this section, the department shall provide to the parent from whom support is not being sought and serve the parent from whom support is being sought with a notice of proceeding to establish administrative support order, a copy of the Title IV-D Standard Parenting Time Plans, and a blank financial affidavit form. The notice must state:

(a) The names of both parents, the name of the caregiver, if any, and the name and date of birth of the child or children;

(b) That the department intends to establish an administrative support order as defined in this section;

(c) That the department will incorporate a parenting time plan or Title IV-D Standard Parenting Time Plan, as agreed to by both parents, into the administrative support order;

(d) ~~(c)~~ That both parents must submit a completed financial affidavit to the department within 20 days after receiving the notice, as provided by paragraph (13)(a);

(e) ~~(d)~~ That both parents, or parent and caregiver if applicable, are required to furnish to the department

information regarding their identities and locations, as provided by paragraph (13)(b);

(f) ~~(e)~~ That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses to ensure receipt of all subsequent pleadings, notices, and orders, as provided by paragraph (13)(c);

(g) ~~(f)~~ That the department will calculate support obligations based on the child support guidelines schedule in s. 61.30 and using all available information, as provided by paragraph (5)(a), and will incorporate such obligations into a proposed administrative support order;

(h) ~~(g)~~ That the department will send by regular mail to both parents, or parent and caregiver if applicable, a copy of the proposed administrative support order, the department's child support worksheet, and any financial affidavits submitted by a parent or prepared by the department;

(i) ~~(h)~~ That the parent from whom support is being sought may file a request for a hearing in writing within 20 days after the date of mailing or other service of the proposed administrative support order or will be deemed to have waived the right to request a hearing;

(j) ~~(i)~~ That if the parent from whom support is being sought does not file a timely request for hearing after service of the proposed administrative support order, the department will issue an administrative support order that incorporates the findings of the proposed administrative support order, and any agreed-upon parenting time plan. The department will send by regular mail a copy of the administrative support order and any

incorporated parenting time plan to both parents, or parent and caregiver if applicable;

(k) ~~(j)~~ That after an administrative support order is rendered incorporating any agreed-upon parenting time plan, the department will file a copy of the order with the clerk of the circuit court;

(l) ~~(k)~~ That after an administrative support order is rendered, the department may enforce the administrative support order by any lawful means. The department does not have jurisdiction to enforce any parenting time plan that is incorporated into an administrative support order;

(m) ~~(l)~~ That either parent, or caregiver if applicable, may file at any time a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any, and that a support order issued by a circuit court supersedes an administrative support order rendered by the department;

(n) ~~(m)~~ That neither the department nor the Division of Administrative Hearings has jurisdiction to ~~award or~~ change child custody or rights of parental contact or time-sharing, and these issues may be addressed only in circuit court. The department or the Division of Administrative Hearings may incorporate, if agreed to by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan when the administrative support order is established.

1. The parent from whom support is being sought may request in writing that the department proceed in circuit court to determine his or her support obligations.

2. The parent from whom support is being sought may state

in writing to the department his or her intention to address issues concerning custody or rights to parental contact in circuit court.

3. If the parent from whom support is being sought submits the request authorized in subparagraph 1., or the statement authorized in subparagraph 2. to the department within 20 days after the receipt of the initial notice, the department shall file a petition in circuit court for the determination of the parent's child support obligations, and shall send to the parent from whom support is being sought a copy of its petition, a notice of commencement of action, and a request for waiver of service of process as provided in the Florida Rules of Civil Procedure.

4. If, within 10 days after receipt of the department's petition and waiver of service, the parent from whom support is being sought signs and returns the waiver of service form to the department, the department shall terminate the administrative proceeding without prejudice and proceed in circuit court.

5. In any circuit court action filed by the department pursuant to this paragraph or filed by a parent from whom support is being sought or other person pursuant to paragraph (m) ~~(l)~~ or paragraph (o) ~~(n)~~, the department shall be a party only with respect to those issues of support allowed and reimbursable under Title IV-D of the Social Security Act. It is the responsibility of the parent from whom support is being sought or other person to take the necessary steps to present other issues for the court to consider; ~~.~~

(o) ~~(n)~~ That if the parent from whom support is being sought files an action in circuit court and serves the department with

a copy of the petition within 20 days after being served notice under this subsection, the administrative process ends without prejudice and the action must proceed in circuit court;

(p) ~~(o)~~ Information provided by the Office of State Courts Administrator concerning the availability and location of self-help programs for those who wish to file an action in circuit court but who cannot afford an attorney.

The department may serve the notice of proceeding to establish an administrative support order and Title IV-D Standard Parenting Time Plans by certified mail, restricted delivery, return receipt requested. Alternatively, the department may serve the notice by any means permitted for service of process in a civil action. For purposes of this section, an authorized employee of the department may serve the notice and execute an affidavit of service. Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. The department shall provide the parent from whom support is not being sought or the caregiver with a copy of the notice by regular mail to the last

known address of the parent from whom support is not being sought or caregiver.

(5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

(a) After serving notice upon a parent in accordance with subsection (4), the department shall calculate that parent's child support obligation under the child support guidelines schedule as provided by s. 61.30, based on any timely financial affidavits received and other information available to the department. If either parent fails to comply with the requirement to furnish a financial affidavit, the department may proceed on the basis of information available from any source, if such information is sufficiently reliable and detailed to allow calculation of guideline schedule amounts under s. 61.30. If a parent receives public assistance and fails to submit a financial affidavit, the department may submit a financial affidavit or written declaration for that parent pursuant to s. 61.30(15). If there is a lack of sufficient reliable information concerning a parent's actual earnings for a current or past period, it shall be presumed for the purpose of establishing a support obligation that the parent had an earning capacity equal to the federal minimum wage during the applicable period.

(b) The department shall send by regular mail to both parents, or to a parent and caregiver if applicable, copies of the proposed administrative support order, a copy of the Title IV-D Standard Parenting Time Plans, its completed child support worksheet, and any financial affidavits submitted by a parent or prepared by the department. The proposed administrative support order must contain the same elements as required for an administrative support order under paragraph (7)(e).

(c) The department shall provide a notice of rights with the proposed administrative support order, which notice must inform the parent from whom support is being sought that:

1. The parent from whom support is being sought may, within 20 days after the date of mailing or other service of the proposed administrative support order, request a hearing by filing a written request for hearing in a form and manner specified by the department;

2. If the parent from whom support is being sought files a timely request for a hearing, the case shall be transferred to the Division of Administrative Hearings, which shall conduct further proceedings and may enter an administrative support order;

3. A parent from whom support is being sought who fails to file a timely request for a hearing shall be deemed to have waived the right to a hearing, and the department may render an administrative support order pursuant to paragraph (7)(b);

4. The parent from whom support is being sought may consent in writing to entry of an administrative support order without a hearing;

5. The parent from whom support is being sought may, within 10 days after the date of mailing or other service of the proposed administrative support order, contact a department representative, at the address or telephone number specified in the notice, to informally discuss the proposed administrative support order and, if informal discussions are requested timely, the time for requesting a hearing will be extended until 10 days after the department notifies the parent that the informal discussions have been concluded; and

6. If an administrative support order that establishes a parent's support obligation and incorporates either a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents is rendered, whether after a hearing or without a hearing, the department may enforce the administrative support order by any lawful means. The department does not have the jurisdiction or authority to enforce a parenting time plan.

(d) If, after serving the proposed administrative support order but before a final administrative support order is rendered, the department receives additional information that makes it necessary to amend the proposed administrative support order, it shall prepare an amended proposed administrative support order, with accompanying amended child support worksheets and other material necessary to explain the changes, and follow the same procedures set forth in paragraphs (b) and (c).

(7) ADMINISTRATIVE SUPPORT ORDER.—

(a) If a hearing is held, the administrative law judge of the Division of Administrative Hearings shall issue an administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents, or a final order denying an administrative support order, which constitutes final agency action by the department. The Division of Administrative Hearings shall transmit any such order to the department for filing and rendering.

(b) If the parent from whom support is being sought does not file a timely request for a hearing, the parent will be deemed to have waived the right to request a hearing.

(c) If the parent from whom support is being sought waives

the right to a hearing, or consents in writing to the entry of an order without a hearing, the department may render an administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents.

(d) The department shall send by regular mail a copy of the administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents, or the final order denying an administrative support order, to both parents, or a parent and caregiver if applicable. The parent from whom support is being sought shall be notified of the right to seek judicial review of the administrative support order in accordance with s. 120.68.

(e) An administrative support order must comply with ss. 61.13(1) and 61.30. The department shall develop a standard form or forms for administrative support orders. An administrative support order must provide and state findings, if applicable, concerning:

1. The full name and date of birth of the child or children;

2. The name of the parent from whom support is being sought and the other parent or caregiver;

3. The parent's duty and ability to provide support;

4. The amount of the parent's monthly support obligation;

5. Any obligation to pay retroactive support;

6. The parent's obligation to provide for the health care needs of each child, whether through health insurance, contribution toward the cost of health insurance, payment or reimbursement of health care expenses for the child, or any

combination thereof;

7. The beginning date of any required monthly payments and health insurance;

8. That all support payments ordered must be paid to the ~~Florida~~ State Disbursement Unit as provided by s. 61.1824;

9. That the parents, or caregiver if applicable, must file with the department when the administrative support order is rendered, if they have not already done so, and update as appropriate the information required pursuant to paragraph (13)(b);

10. That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses pursuant to paragraph (13)(c); and

11. That if the parent ordered to pay support receives reemployment assistance or unemployment compensation benefits, the payor shall withhold, and transmit to the department, 40 percent of the benefits for payment of support, not to exceed the amount owed.

An income deduction order as provided by s. 61.1301 must be incorporated into the administrative support order or, if not incorporated into the administrative support order, the department or the Division of Administrative Hearings shall render a separate income deduction order.

Section 5. Section 409.25633, Florida Statutes, is created to read:

409.25633. Title IV-D Standard Parenting Time Plans.—

(1) A Title IV-D Standard Parenting Time Plan must be

included in any administrative action to establish child support taken by the Title IV-D program to determine paternity, establish or modify support if the parents agree upon it. If the parents do not agree to a Title IV-D Standard Parenting Time Plan or if an agreed-upon parenting time plan is not included, the Department of Revenue must enter an administrative support order and refer the parents to the court of appropriate jurisdiction to establish a parenting time plan. The department must note on the referral that an administrative support order has been entered. If a parenting time plan is not included in the administrative support order entered under s. 409.2563, the department must provide information to the parents on the process to establish such plan.

(2) If the parents live within 100 miles of each other and the child is 3 years of age or older, the parent who owes support shall have parenting time with the child:

(a) *Every other weekend.*—The second and fourth full weekend of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The weekends may begin upon the child's release from school on Friday and end on Sunday at 6 p.m. or when the child returns to school on Monday morning. The weekend time may be extended by holidays that fall on Friday or Monday;

(b) *One evening per week.*—One weekday beginning at 6 p.m. and ending at 8 p.m. or if both parents agree, from when the child is released from school until 8 p.m.;

(c) *Thanksgiving break.*—In even-numbered years, the Thanksgiving break from 6 p.m. on the Wednesday before Thanksgiving until 6 p.m. on the Sunday following Thanksgiving. If both parents agree, the Thanksgiving break parenting time may

begin upon the child's release from school and end upon the child's return to school the following Monday;

(d) *Winter break.*—In odd-numbered years, the first half of winter break, from the day school is released, beginning at 6 p.m. or, if both parents agree, upon the child's release from school, until noon on December 26. In even-numbered years, the second half of winter break from noon on December 26 until 6 p.m. on the day before school resumes or, if both parents agree, upon the child's return to school;

(e) *Spring break.*—In even-numbered years, the week of spring break from 6 p.m. the day that school is released until 6 p.m. the night before school resumes. If both parents agree, the spring break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday; and

(f) *Summer break.*—For 2 weeks in the summer beginning at 6 p.m. the first Sunday following the last day of school.

(3) If the parents live more than 100 miles from each other and the child is 3 years of age or older, the parties may agree to follow the schedule set forth in subsection (2), or else the parent who owes child support has parenting time with the child:

(a) *One weekend per month.*—The second or fourth full weekend of the month throughout the year beginning Friday at 6 p.m. through Sunday at 6 p.m. The parent who owes child support can choose the one weekend per month within 90 days after the parents begin to live more than 100 miles apart; and

(b) *Summer break.*—Forty-two days of parenting time during the summer months. The parent who is owed child support will have parenting time one weekend beginning on Friday at 6 p.m.

through Sunday at 6 p.m. during any one extended period during the summer.

(4) If the child is under 3 years of age, the parents may agree on a parenting time plan that includes more frequent visitation with shorter timeframes, gradually leading into overnight visits and either a parenting time plan agreed to by both parents or the Title IV-D Standard Parenting Time Plan set out in this section.

(5) In the event the parents have not agreed on a parenting schedule at the time of the child support hearing, the department will enter an administrative support order and refer the parents to a court of appropriate jurisdiction for the establishment of a parenting time plan.

(6) The Title IV-D Standard Parenting Time Plans are not intended for use by parents and families with domestic or family violence concerns.

(7) If after the incorporation of an agreed-upon parenting time plan into an administrative support order, a parent becomes concerned about the safety of the child during the child's time with the other parent, a modification of the parenting time plan may be sought through a court of appropriate jurisdiction.

(8) The department will create and provide a form for a petition to establish a parenting time plan for parents who have not agreed on a parenting schedule at the time of the child support hearing. The department will provide the form to the parents but will not file the petition or represent either parent at the hearing.

(9) The parents will not be required to pay a fee to file the petition to establish a parenting plan.

(10) The department may adopt rules to implement and administer this section.

Section 6. Subsections (1) and (2) of section 409.2564, Florida Statutes, are amended to read:

409.2564 Actions for support.—

(1) In each case in which regular support payments are not being made as provided herein, the department shall institute, within 30 days after determination of the obligor's reasonable ability to pay, action as is necessary to secure the obligor's payment of current support, ~~and~~ any arrearage that ~~which~~ may have accrued under an existing order of support, and if a parenting time plan was not incorporated into the existing order of support and is appropriate, include either an agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan. The department shall notify the program attorney in the judicial circuit in which the recipient resides setting forth the facts in the case, including the obligor's address, if known, and the public assistance case number. Whenever applicable, the procedures established under ~~the provisions of~~ chapter 88, Uniform Interstate Family Support Act, chapter 61, Dissolution of Marriage; Support; Time-sharing, chapter 39, Proceedings Relating to Children, chapter 984, Children and Families in Need of Services, and chapter 985, Delinquency; Interstate Compact on Juveniles, may govern actions instituted under ~~the provisions of~~ this act, except that actions for support under chapter 39, chapter 984, or chapter 985 brought pursuant to this act shall not require any additional investigation or supervision by the department.

(2) The order for support entered pursuant to an action

instituted by the department under ~~the provisions of~~ subsection (1) shall require that the support payments be made periodically to the department through the depository. An order for support entered under the provisions of subsection (1) must include either an agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan, if appropriate. Upon receipt of a payment made by the obligor pursuant to any order of the court, the depository shall transmit the payment to the department within 2 working days, except those payments made by personal check which shall be disbursed in accordance with s. 61.181. Upon request, the depository shall furnish to the department a certified statement of all payments made by the obligor. Such statement shall be provided by the depository at no cost to the department.

Section 7. Paragraph (g) of subsection (2) and paragraph (a) of subsection (4) of section 409.256, Florida Statutes, are amended to read:

409.256 Administrative proceeding to establish paternity or paternity and child support; order to appear for genetic testing.—

(2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO THE COURTS.—

(g) Section 409.2563(2)(h), (i), and (j) ~~409.2563(2)(e), (f), and (g)~~ apply to a proceeding under this section.

(4) NOTICE OF PROCEEDING TO ESTABLISH PATERNITY OR PATERNITY AND CHILD SUPPORT; ORDER TO APPEAR FOR GENETIC TESTING; MANNER OF SERVICE; CONTENTS.—The Department of Revenue shall commence a proceeding to determine paternity, or a proceeding to determine both paternity and child support, by

serving the respondent with a notice as provided in this section. An order to appear for genetic testing may be served at the same time as a notice of the proceeding or may be served separately. A copy of the affidavit or written declaration upon which the proceeding is based shall be provided to the respondent when notice is served. A notice or order to appear for genetic testing shall be served by certified mail, restricted delivery, return receipt requested, or in accordance with the requirements for service of process in a civil action. Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. For purposes of this section, an employee or an authorized agent of the department may serve the notice or order to appear for genetic testing and execute an affidavit of service. The department may serve an order to appear for genetic testing on a caregiver. The department shall provide a copy of the notice or order to appear by regular mail to the mother and caregiver, if they are not respondents.

(a) A notice of proceeding to establish paternity must state:

1. That the department has commenced an administrative proceeding to establish whether the putative father is the biological father of the child named in the notice.

2. The name and date of birth of the child and the name of the child's mother.

3. That the putative father has been named in an affidavit or written declaration that states the putative father is or may be the child's biological father.

4. That the respondent is required to submit to genetic testing.

5. That genetic testing will establish either a high degree of probability that the putative father is the biological father of the child or that the putative father cannot be the biological father of the child.

6. That if the results of the genetic test do not indicate a statistical probability of paternity that equals or exceeds 99 percent, the paternity proceeding in connection with that child shall cease unless a second or subsequent test is required.

7. That if the results of the genetic test indicate a statistical probability of paternity that equals or exceeds 99 percent, the department may:

a. Issue a proposed order of paternity that the respondent may consent to or contest at an administrative hearing; or

b. Commence a proceeding, as provided in s. 409.2563, to establish an administrative support order for the child. Notice of the proceeding shall be provided to the respondent by regular mail.

8. That, if the genetic test results indicate a statistical probability of paternity that equals or exceeds 99 percent and a

proceeding to establish an administrative support order is commenced, the department shall issue a proposed order that addresses paternity and child support. The respondent may consent to or contest the proposed order at an administrative hearing.

9. That if a proposed order of paternity or proposed order of both paternity and child support is not contested, the department shall adopt the proposed order and render a final order that establishes paternity and, if appropriate, an administrative support order for the child.

10. That, until the proceeding is ended, the respondent shall notify the department in writing of any change in the respondent's mailing address and that the respondent shall be deemed to have received any subsequent order, notice, or other paper mailed to the most recent address provided or, if a more recent address is not provided, to the address at which the respondent was served, and that this requirement continues if the department renders a final order that establishes paternity and a support order for the child.

11. That the respondent may file an action in circuit court for a determination of paternity, child support obligations, or both.

12. That if the respondent files an action in circuit court and serves the department with a copy of the petition or complaint within 20 days after being served notice under this subsection, the administrative process ends without prejudice and the action must proceed in circuit court.

13. That, if paternity is established, the putative father may file a petition in circuit court for a determination of

matters relating to custody and rights of parental contact.

A notice under this paragraph must also notify the respondent of the provisions in s. 409.2563(4)(n) and (p) ~~s. 409.2563(4)(m) and (o)~~.

Section 8. Subsection (5) of section 409.2572, Florida Statutes, is amended to read:

409.2572 Cooperation.—

(5) As used in this section only, the term "applicant for or recipient of public assistance for a dependent child" refers to such applicants and recipients of public assistance as defined in s. 409.2554(12) ~~s. 409.2554(8)~~, with the exception of applicants for or recipients of Medicaid solely for the benefit of a dependent child.

Section 9. The sum of $419,520 in nonrecurring general revenue is appropriated for contracted services to the Department of Revenue for the fiscal year 2017-2018 for the purpose of implementing this act. The sum of $20,729 in recurring general revenue is appropriated for expenses, and the sum of $91,127 in recurring general revenue is appropriated for salaries and benefits to the Department of Revenue for the fiscal year 2017-2018 for the purpose of implementing this act.

Section 10. This act shall take effect January 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube,
Appropriation Subcommittee on
Judiciary

Subject: Committee Agenda Request

Date: March 6th, 2017

I respectfully request that **Senate Bill #590**, relating to **Child Support and Parenting Time Plans**, be placed on the:

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

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-28-17
Meeting Date

590
Bill Number (if applicable)

Topic Child Support/Timeshares

Amendment Barcode (if applicable)

Name Andrea Reid

Job Title Attorney

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City *State* *Zip*

Email AReid@IsaacsReidLaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing The FLORIDA BAR Family law section

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

SB 590
Bill Number (if applicable)

Topic SB 590

Amendment Barcode (if applicable)

Name Mark Anderson

Job Title

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Street

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Email: Mark@Consultanderson.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Non-Custodial Parent Employment Program

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

The Florida Senate

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 1094
INTRODUCER:	Senator Gainer
SUBJECT:	Forensic Hospital Diversion Pilot Program
DATE:	March 27, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Favorable**
2.	Stallard	Cibula	JU	**Favorable**
3.			AP	

I. Summary:

SB 1094 authorizes the Department of Children and Families to include Okaloosa County in an existing pilot program, the Forensic Hospital Diversion Pilot Program. The program is aimed at diverting mental health treatment of criminally accused or at-risk persons from state forensic treatment facilities to community-based programs. Since July 1, 2016, the Department has been authorized to implement the program in Broward, Duval, and Miami-Dade counties to restore competency to persons found incompetent to proceed to trial and to treat those at risk for returning to the criminal justice system. As provided in existing law, the program must be modeled after the Miami-Dade Alternative Treatment Center, which has been in operation since 2009.

II. Present Situation:

In 2016, the Legislature created the Forensic Hospital Diversion Pilot Program to serve certain offenders who have mental illnesses or co-occurring mental illnesses and substance use disorders. Particularly, the program is intended to serve those offenders who are involved in the criminal justice system or at risk of re-entering state forensic mental health treatment facilities,[1] prisons, jails, or state civil mental health treatment facilities.[2, 3]

[1] "Forensic facility" means "a separate and secure facility established within the department or agency to serve forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to this chapter from nonforensic residents." Section 916.106(10), F.S.

[2] Section 916.185(1), F.S.

[3] "Civil facility" means "[a] mental health facility established within the department or by contract with the department to serve individuals committed pursuant to chapter 394 and those defendants committed pursuant to this chapter who do not require the security provided in a forensic facility; or [a]n intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting, as defined in s. 393.063, designated by the agency to serve those defendants who do not require the security provided in a forensic facility." Section 916.106(4), F.S.

The 2016 legislation was based on findings regarding two main categories of inmates, those who needed competency restored before standing trial and those who had been released from a forensic mental health treatment facility following treatment. Regarding the first group, the Legislature found that jail inmates who were incompetent to proceed[4] could be served more effectively and with less cost than in community-based alternative programs. As to the second group, the Legislature found that persons who have serious mental health illnesses could avoid returning to the criminal justice and forensic mental health systems if they received specialized treatment in the community.[5]

The Department of Children and Families is authorized to implement the pilot program in Duval, Broward, and Miami-Dade counties, in conjunction with each county's Judicial Circuit.[6]

Participation in the pilot program is limited to offenders who:

- Are 18 years of age or older;
- Are charged with a felony of the second or third degree felony;[7]
- Do not have a significant history of violent criminal offenses;
- Are adjudicated incompetent to proceed to trial or not guilty by reason of insanity;[8]
- Meet public safety and treatment criteria established by the department for placement in a community setting; and
- Otherwise would be admitted to a state mental health treatment facility.[9]

The legislation creating the pilot program directs the Department to model it after the Miami-Dade Forensic Alternative Center (MDFAC), which opened in 2009 as a community-based, forensic commitment program. The MDFAC serves adults who have lesser felony offenses and are not considered a danger to the community.[10] The MDFAC provides competency restoration and a continuum of care during commitment and after re-entry to the community.[11] The MDFAC currently operates a 16-bed facility at a daily cost of $284.81 per bed, or approximately $1.6 million per year.[12]

[4] "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against him or her." Section 916.12(1), F.S.
[5] *Id*.
[6] Section 916.185(3)(a), F.S.
[7] The intent of the program includes treating persons who have been released from a state forensic facility, in order to prevent them from becoming re-involved with the criminal justice system. However, this criterion does not seem applicable to these persons.
[8] See previous note.
[9] Section 916.185(4), F.S.
[10] Department of Children and Families, *2016 Agency Legislative Bill Analysis* (Nov. 13, 2015) (on file with the Senate Committee on Judiciary).
[11] Budget Subcommittee on Health and Human Services Appropriations, The Florida Senate, *Interim Report 2012-18, The Forensic Mental Health System* (September 2011).
[12] Department of Children and Families, *2017 Agency Legislative Bill Analysis* (Feb 28, 2017) (on file with the Senate Committee on Judiciary).

III. Effect of Proposed Changes:

The bill authorizes the Department of Children and Families to expand the Forensic Hospital Diversion Pilot Program to into Okaloosa County, in conjunction with the First Judicial Circuit in Okaloosa County. And if the program is implemented in Okaloosa County, it is subject to the same requirements governing the pilot program in the three counties where it is currently authorized.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact is unknown. First, the Department is not required to implement the program, and the Department has not indicated in its Legislative Bill Analysis for this bill whether it will do so. Under the 2016 statute creating the pilot program, the Department and the corresponding judicial circuits are authorized to implement the program if "existing resources are available to do so on a recurring basis. The department may request budget amendments pursuant to chapter 216 to realign funds between mental health services in order to implement [the] pilot program."

But if the Department does implement the program in Okaloosa County, it is not clear what the fiscal impact will be. The Department's Analysis indicates that the Miami-Dade

Forensic Alternative Center costs $284.81 per bed, per day.[13] Program costs also include case management services at $35,000 per year and incidental funds at the annual rate of $15,000.[14]

The Department's analysis also indicates that if it were to redirect existing resources to the pilot program, the redirection "could impact the availability of resources to provide services in both community and forensic mental health programs."[15] However, the Department did not include current data on the per-day cost of treating persons who would be eligible for treatment under the pilot program at a forensic facility.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 916.185, 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.

[13] *Id*.
[14] *Id*.
[15] *Id*.

By Senator Gainer

2-01341-17 20171094__

A bill to be entitled

An act relating to the Forensic Hospital Diversion Pilot Program; amending s. 916.185, F.S.; authorizing the Department of Children and Families to implement a Forensic Hospital Diversion Pilot Program in Okaloosa County in conjunction with the First Judicial Circuit in Okaloosa County; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 916.185, Florida Statutes, is amended to read:

916.185 Forensic Hospital Diversion Pilot Program.—

(3) CREATION.—There is authorized a Forensic Hospital Diversion Pilot Program to provide competency-restoration and community-reintegration services in either a locked residential treatment facility when appropriate or a community-based facility based on considerations of public safety, the needs of the individual, and available resources.

(a) The department may implement a Forensic Hospital Diversion Pilot Program modeled after the Miami-Dade Forensic Alternative Center, taking into account local needs and resources <u>in Okaloosa County, in conjunction with the First Judicial Circuit in Okaloosa County;</u> in Duval County, in conjunction with the Fourth Judicial Circuit in Duval County; in Broward County, in conjunction with the Seventeenth Judicial Circuit in Broward County; and in Miami-Dade County, in conjunction with the Eleventh Judicial Circuit in Miami-Dade County.

Florida Senate - 2017 **SB 1094**

2-01341-17 20171094__

Section 2. This act shall take effect July 1, 2017.

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Commerce and Tourism, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR GEORGE B. GAINER
2nd District

March 22, 2017

Re: SB 1094

Dear Chairman Steube,

I am respectfully requesting Senate Bill 1094, a bill related to Forensic Hospital Diversion Pilot Program, be placed on the agenda for your committee on Judiciary.

I appreciate your consideration of this bill and I look forward to working with you and the Judiciary committee. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank You,

Senator George Gainer
District 2

Cc: Tom Cibula, Joyce Butler, Alex Blair, Rita, Faulkner, Libby Bolles

REPLY TO:
☐ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

SB 1094
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Carolyn Ketchel

Job Title Commissioner and Chairman Okaloosa County

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Street

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Email www.co.okaloosa.fl.us

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Okaloosa County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 262
INTRODUCER:	Senator Steube
SUBJECT:	Health Insurance
DATE:	March 6, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Favorable**
2.	Davis	Cibula	JU	**Pre-meeting**
3.			RC	

I. Summary:

SB 262 increases the liability exposure of Health Maintenance Organizations for the negligence of health care providers who are not employees of the HMO and creates causes of action for other misconduct by an HMO.

The bill repeals several provisions of statute which expressly provide that HMOs, health insurers, prepaid health clinics, and prepaid health service organizations are not vicariously liable for the negligence non-employee health care providers. As a result, these organizations may be liable for the negligence of non-employee health care providers under theories of agency or apparent agency.

Additionally, the bill amends the Health Maintenance Organization Act to provide civil causes of action against HMOs for violations of the act and for acting in bad faith when failing to provide a covered service. The bill provides that any person may bring a civil action against a health maintenance organization if the HMO fails to provide a covered service when the HMO in good faith should have provided the service had it acted fairly and reasonably toward the person and with due regard for his or her interests. The covered service must be medically reasonable or necessary in the independent medical judgment of the treating physician.

The bill creates individual causes of action against HMOs for violations of specified provisions of the HMO Act such as the prompt pay statute, statutes relating to unfair trade practices, and statutes relating to quality assurance.

II. Present Situation:

Health maintenance organizations ("HMOs") provide, either directly or through arrangements with other persons, comprehensive health care services that subscribers are entitled to receive pursuant to a contract. Services may include emergency care, inpatient hospital services,

physician care, ambulatory diagnostic treatment, and preventive health care services. Service providers, such as physicians, may be employees or partners in the HMO or they may contract with the HMO to provide services.[1] HMOs are regulated by parts I and III of chapter 641, F.S.[2]

Civil Liability of HMOs

Civil Remedies Against Insurers

Section 624.155, F.S., authorizes various individual causes of action against insurers, including health insurers. It provides that any person may bring an action against an insurer when the person is damaged when the insurer does not attempt "in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests."[3] However, s. 641.201, F.S., which broadly exempts HMOs from many provisions of the Florida Insurance Code, effectively exempts HMOs from the requirement under s. 624.155, F.S., to act in good faith.

Legislative History

In the late 1990s and early 2000s, the Legislature considered creating individual causes of actions for misconduct by HMOs similar to the causes of action that may be brought against insurers under s. 624.155, F.S. Specifically, in 1996, the Legislature passed CS/HB 1853, which created civil causes of action against HMOs, created a bad faith cause of action similar to the cause of action for bad faith against insurers in s. 624.155, F.S., and provided for plaintiff attorney fees in certain situations. The Governor vetoed that bill. The Legislature considered similar bills providing for causes of action against HMOs in 1997-2001 but those bills did not pass.[4]

Litigation History

In *Greene v. Well Care HMO, Inc.*,[5] the court considered whether a patient could bring an action against her HMO under the HMO Act[6] and whether a patient could bring a bad faith action. In that case, the patient's physician recommended treatment, but the HMO denied coverage. The patient sought a second opinion and that physician agreed with the first doctor's recommendation. The HMO denied coverage in violation of the policy terms.[7] The court held that the HMO Act did not provide for a private cause of action against an HMO. The court also held that s. 624.155, F.S., which generally authorizes private causes of actions against insurers who engage in prohibited practices, did not apply to HMOs.[8]

[1] Section 641.19(12), F.S.
[2] Section 641.201, F.S.
[3] Section 624.155(1)(b)1., F.S.
[4] *See, e.g.*, HB 1547 (1997 Regular Session), SB 490 (1998 Regular Session), SB 216 (1999 Regular Session), SB 2154 (2000), and SB 2292 (2001 Regular Session).
[5] *Greene v. Well Care HMO, Inc*., 778 So. 2d 1037 (Fla. 4th DCA 2001).
[6] Section 641.17, F.S., names part I of ch. 641, F.S., the "Health Maintenance Organization Act."
[7] *Greene*, 778 So. 2d at 1039.
[8] *Id.* at 1039-1041.

In 2003, the Florida Supreme Court issued a decision in *Villazon v. Prudential Helath Care Plan*,[9] and agreed with the *Greene* court. The Court held that the HMO Act does not provide a private cause of action for violation of the Act's requirements. However, the Court held that the fact that there is no statutory cause of action does not preclude a common law negligence claim based on the same facts.[10] In *Villazon*, the plaintiff alleged that the physicians who had contracted with the HMO were agents or apparent agents of the HMO and, therefore, the HMO was responsible for the physicians' negligence and vicariously liable[11] for the death of his wife.[12] The Court held that the existence of an agency relationship is generally a question to be determined by the trier of fact.[13] As a result, the Court reversed the lower court's summary judgment that the HMO was not vicariously liable for the negligence of the plaintiff's treating physician.

Legislative Response

In response to *Villazon*, the Legislature amended ss. 641.19 and 641.51, F.S., to provide that the HMO is not vicariously liable for the negligence of health care providers unless the provider is an employee of the HMO. The statutory amendments prohibited causes of action based on agency or apparent agency relationships.[14] The Legislature also created s. 768.0981, F.S., which provides:

> An entity licensed or certified under chapter 624, chapter 636, or chapter 641 shall not be liable for the medical negligence of a health care provider with whom the licensed or certified entity has entered into a contract, other than an employee of such licensed or certified entity, unless the licensed or certified entity expressly directs or exercises actual control over the specific conduct that caused injury.[15]

ERISA Preemption

The Employee Retirement Income Security Act of 1974 (ERISA), limits the remedies available to persons covered under private sector employer plans and preempts certain state laws. ERISA may preempt civil remedies in state courts, whether pursued under common law theories of liability or pursuant to a statutory cause of action.

Most employer-sponsored health insurance and HMO plans are ERISA plans. However, ERISA does not apply to governmental plans and church plans and has no application to individual health insurance plans. ERISA has a civil enforcement clause that provides a remedy in federal court for denied employee benefits. Employees and enrollees have a federal cause of action to either obtain the actual benefit that was denied, payment for the benefit, or a decree granting the

[9] *Villazon v. Prudential Health Care Plan*, 843 So. 2d 842, 852 (Fla. 2003).
[10] *Id.* at 852.
[11] Vicarious liability occurs when one person, although entirely innocent of any wrongdoing, is held responsible for the wrongful act of another. *See* 38 Florida Jurisprudence 2d s. 101. For example, an employer can be held vicariously liable for a tort committed by an employee.
[12] *Villazon*, 843 So. 2d at 845.
[13] *Id.*, at 853.
[14] *See* 2003-416, Laws of Fla.
[15] Chapter 624 is the Insurance Code, chapter 636 pertains to prepaid limited health service organizations and discount medical plan organizations, and chapter 641 pertains to health care service programs.

administration of future benefits.[16] State tort remedies, on the other hand, allow for the recovery of pain and suffering, lost wages, and cost of future medical services.

In *Villazon*, the Florida Supreme Court held that ERISA did not preempt an action against an HMO alleging common law negligence and violations of the HMO Act.[17] A year after *Villazon*, the United States Supreme Court considered whether a Texas statute imposing liability on HMOs for failure to exercise ordinary care in making coverage decision was preempted by ERISA.[18] The court held that federal preemption applied and the remedies were limited to federal remedies.

Whether a claim against an ERISA plan is preempted is a fact-specific question. In *Badal v. Hinsdale Mem. Hosp.*,[19] the court held that the claim was not preempted when the HMO was a defendant in the case under a theory of vicarious liability where the plaintiff alleged the HMO was responsible for the acts of its employees or agent. In determining whether ERISA preemption applies in medical malpractice cases, courts seem to look to see whether the malpractice is based on actions of a treating physician versus whether the injury was caused by a denial of coverage. In *Land v. Cigna Healthcare of Fla.*,[20] the court found ERISA preemption in a case where the treating physician ordered hospital admission for a patient, but the HMO nurse did not approve a hospital stay.

III. Effect of Proposed Changes:

Vicarious Liability

The bill repeals provisions in ss. 641.19 and 641.51, F.S., providing that an HMO arranging the provision of heath care services does not create an actual agency, apparent agency, or employer-employee relationship for purposes of vicarious liability except when the provider is an actual employee of the HMO.

The bill also repeals s. 768.0981, F.S. That statute provides that an entity such as an insurer, prepaid limited health service organization, HMO, or prepaid health clinic[21] is not liable for the medical negligence of a health care provider with whom the entity has entered into a contract unless the entity expressly directs or exercises actual control over the specific conduct that caused injury.

As a result repeal of provisions limiting actions based on theories of vicarious liablity, an HMO will be liable for the negligence of a treating physician who is not an employee of the HMO if the specific facts of the case show that an actual agency or apparent agency relationship existed between the HMO and the treating physician.

[16] 29 U.S.C. s. 1132(a)(1).
[17] *Villazon*, 843 So. 2d at 850-851.
[18] *Aetna Health v. Davila*, 542 U.S. 200 (2004).
[19] *Badal v. Hinsdale Mem. Hosp.,* 2007 U.S. Dist. LEXIS 34713 (N.D. Ill. May 8, 2007).
[20] *Land v. Cigna Health Care of Fla.,* 381 F.3d 1274 (11th Cir. 2004).
[21] Section 768.0981, F.S., specifically refers to entities licensed or certified under ch. 624, F.S., ch. 636, F.S., or ch. 641, F.S.

In effect, the bill revives the effect of the Florida Supreme Court's opinion in *Villazon v. Prudential Health Care Plan*, which was superseded by statute. Contracts between an HMO and a treating physician which label the physician as an independent contractor will not be sufficient to make an HMO immune from liability for the physician's negligence. The nature of the relationship and the HMO's liability will be based on whether the HMO had the right to control the activities of the physician in light of the totality of the circumstances.

HMO Bad Faith Liability

The bill creates a cause of action for bad faith against HMOs in specified situations. Specifically, it provides that a person may bring a civil action against an HMO if a person to whom a duty is owed suffers damage because of an HMO's failure to provide a covered service. The covered service must be one that the HMO should have been provided had the HMO acted in good faith and had acted fairly and reasonably toward the person with due regard for his or her interests. The service must have been medically reasonable or necessary in the independent medical judgment of a treating physician under contract with, or another physician authorized by, the HMO.

The court may award damages, including damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages. In a bad faith action brought pursuant to the provisions of this bill, the court must award a prevailing plaintiff reasonable attorney fees as part of the costs.

Causes of Action for Violations of the HMO Act

The bill creates an individual cause of action against an HMO if a person to whom a duty is owed suffers damage as a result of an HMO's violation of specified statutes: s. 641.3155, s. 641.3903(5), (10), (12), (13), or (14), and s. 641.51, F.S. In an action alleging violations of these statutes, the court must award a prevailing plaintiff reasonable attorney fees as part of the costs.

Section 641.3155, F.S., is known as the "prompt pay" law. It requires the HMO to provide notice of receipt of provider claims within specified times, to deny or contest provider claims within specified times, and to pay provider claims within specified times.

Subsection 641.3903(5), F.S., prohibits certain unfair claim settlement practices by HMOs. An HMO may not:

- Attempt to settle claims on the basis of an application or any other material document which was altered without notice to, or knowledge or consent of, the subscriber or group of subscribers to a health maintenance organization; or
- Make a material misrepresentation to the subscriber for the purpose and with the intent of effecting settlement of claims, loss, or damage under a health maintenance contract on less favorable terms than those provided in, and contemplated by, the contract.
- Engage in the practices below with such frequency as to indicate a general business practice of engaging in a unfair settlement practice:
    - Failing to adopt and implement standards for the proper investigation of claims;
    - Misrepresenting pertinent facts or contract provisions relating to coverage at issue;

- Failing to acknowledge and act promptly upon communications with respect to claims;
- Denying claims without conducting reasonable investigations based upon available information;
- Failing to affirm or deny coverage of claims upon written request of the subscriber within a reasonable time not to exceed 30 days after a claim or proof-of-loss statements have been completed and documents pertinent to the claim have been requested in a timely manner and received by the health maintenance organization;
- Failing to promptly provide a reasonable explanation in writing to the subscriber of the basis in the health maintenance contract in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;
- Failing to provide, upon written request of a subscriber, itemized statements verifying that services and supplies were furnished, where such statement is necessary for the submission of other insurance claims covered by individual specified disease or limited benefit policies;
- Failing to provide any subscriber with services, care, or treatment contracted for pursuant to any health maintenance contract without a reasonable basis to believe that a legitimate defense exists for not providing such services, care, or treatment; or
- Engaging in systematic down coding with the intent to deny reimbursement otherwise due.

Subsection 641.3903(10), F.S., prohibits an HMO from knowingly collecting any sum as a premium or charge for health maintenance coverage, which is not then provided or is not in due course to be provided. An HMO may not knowingly collect as a premium or charge for health maintenance coverage any sum in excess of or less than the premium or charge applicable to health maintenance coverage, in accordance with the applicable classifications and rates as filed with the Office of Insurance Regulation.

Subsection 641.3903(12), F.S., prohibits an HMO from engaging in or attempting to engage in discriminatory practices that discourage participation on the basis of the actual or perceived health status of Medicaid recipients. The statute also prohibits an HMO from refusing to provide services or care to a subscriber solely because medical services may be or have been sought for injuries resulting from an assault, battery, sexual assault, sexual battery, or any other offense by a family or household member or by another who is or was residing in the same dwelling unit.

Subsection 641.3903(13), F.S., prohibits an HMO from knowingly misleading potential enrollees as to the availability of providers.

Subsection 641.3903(14), F.S., prohibits any retaliatory action by an HMO against a contracted provider on the basis that the provider communicated information to the provider's patient regarding care or treatment options when the provider deems knowledge of such information by the patient to be in the best interest of the patient.

Section 641.51, F.S., requires an HMO to establish a quality assurance program and creates a requirement for second medical opinions in some cases. The HMO:

- Shall ensure that the health care services provided to subscribers shall be rendered under reasonable standards of quality of care consistent with the prevailing standards of medical practice in the community;

- Shall have an ongoing internal quality assurance program for its health care services;
- Shall not have the right to control the professional judgment of a physician;
- Shall ensure that only a physician holding an active, unencumbered license may render an adverse determination regarding a service provided by a physician licensed in Florida;
- Shall give the subscriber the right to a second medical opinion in any instance in which the subscriber disputes the organization's or the physician's opinion of the reasonableness or necessity of surgical procedures or is subject to a serious injury or illness;
- Shall develop and maintain a policy to determine when exceptional referrals to out-of-network specially qualified providers should be provided to address the unique medical needs of a subscriber;
- Shall develop and maintain written policies and procedures for the provision of standing referrals to subscribers with chronic and disabling conditions which require ongoing specialty care;
- Shall allow subscribers undergoing active treatment to continue coverage and care when medically necessary, through completion of treatment of a condition for which the subscriber was receiving care at the time of the termination of a provider contract;
- Release specified data to the Agency for Health Care Administration;
- Adopt recommendations for preventive pediatric health care which are consistent with the requirements for health checkups for children developed for the Medicaid program;
- Allow, without prior authorization, a female subscriber, to visit a contracted obstetrician/gynecologist for one annual visit and for medically necessary follow-up care; and
- Allow a contracted primary care physician to send a subscriber to a contracted licensed ophthalmologist under specified circumstances.

The bill provides that a person bringing an action for these violations of the HMO Act need not prove that the violation was committed with such frequency as to indicate a general business practice.

The bill provides that an HMO is liable for all of the claimant's damages or $500 per violation, whichever is greater, for violations of the above-cited statutes. The court may award damages, including damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages.

ERISA Preemption

Federal preemption may limit this bill's application in situations where an ERISA plan makes a decision to deny coverage. As discussed in *Davila* and subsequent cases, courts will have to review the facts of each case to determine whether preemption applies in cases related to coverage decisions. In addition to cases related to denial of coverage, courts have found ERISA preemption in cases related to a prompt pay law[22] and related to payment to medical providers.[23]

The provisions of the bill will apply to non-ERISA plans. It is not known how many persons covered under HMO plans are covered under plans that would be excluded from portions of this

[22] *America's Health Ins. v. Hudgens*, 742 F.3d 1319 (11th Cir. 2014).
[23] *Gables Ins. Recovery, Inc. v. Blue Cross & Blue Shield of Fla., Inc.*, 813 F.3d 1333 (11th Cir. 2015).

bill and how many persons are covered under plans that would be subject to all the provisions of the bill. A court noted that there is a trend in Georgia for employers to provide self-funded ERISA plans to their employees.[24] Subsequent to *Davila*, Texas passed a law to specifically exclude ERISA plans from the Texas Health Care Liability Act.[25] A 2005 bill analysis of the Texas legislation noted that there are only a few non-ERISA group health plans offered in Texas.[26]

Effective Date

The bill has an effective date of October 1, 2017.

Retroactivity

This bill provides that the repeal of s. 768.0981, F.S., and amendments to ss. 641.19, 641.51, and 641.3917, F.S., apply to causes of action accruing on or after October 1, 2017. The bill is not retroactive and does not apply to ongoing litigation or to causes of action accruing before October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Office of Insurance Regulation, the bill increases the exposure to lawsuits for health insurers, HMOs, prepaid health clinics, and prepaid limited health service organizations. This increased exposure may lead to more expensive premiums for consumers.[27]

[24] *America's Health Ins. v. Hudgens*, 742 F.3d at 1324-1325.
[25] Texas Civil Practice and Remedies Code s. 88.0015.
[26] SB 554 Bill Analysis, Texas, March 17, 2005 (on file with the Committee on Banking and Insurance).
[27] Office of Insurance Regulation, *2017 Agency Legislative Bill Analysis for SB 262*, (Feb. 17, 2017) (on file with the Senate Committee on Judiciary).

C. Government Sector Impact:

According to the Office of Insurance Regulation, the increased exposure to the above mentioned groups may lead to higher premiums under the state group health insurance plan.[28]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 641.19, 641.51, and 641.3917, Florida Statutes.
This bill repeals section 768.0981, 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.

[28] *Id*.

By Senator Steube

23-00399B-17 2017262__

A bill to be entitled

An act relating to health insurance; amending s. 641.19, F.S.; revising definitions; amending s. 641.51, F.S.; deleting a provision that provides that health maintenance organizations are not vicariously liable for certain medical negligence except under certain circumstances; amending s. 641.3917, F.S.; authorizing specified persons to bring a civil action against a health maintenance organization for certain violations; providing for construction; specifying a health maintenance organization's liability for such violations; repealing s. 768.0981, F.S., relating to a limitation on actions against insurers, prepaid limited health service organizations, health maintenance organizations, or prepaid health clinics; providing applicability; providing an effective date.

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

Section 1. Subsections (11), (12), and (18) of section 641.19, Florida Statutes, are amended to read:

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

(11) "Health maintenance contract" means any contract entered into by a health maintenance organization with a subscriber or group of subscribers to provide ~~coverage for~~ comprehensive health care services in exchange for a prepaid per capita or prepaid aggregate fixed sum.

(12) "Health maintenance organization" means any organization authorized under this part which:

(a) Provides~~, through arrangements with other persons,~~ emergency care~~;~~ inpatient hospital services~~;~~ physician care, including care provided by physicians licensed under chapters

23-00399B-17 2017262__

458, 459, 460, and 461~~;~~ ambulatory diagnostic treatment~~;~~ and preventive health care services.

(b) Provides, either directly or through arrangements with other persons, health care services to persons enrolled with such organization, on a prepaid per capita or prepaid aggregate fixed-sum basis.

(c) Provides, either directly or through arrangements with other persons, comprehensive health care services which subscribers are entitled to receive pursuant to a contract.

(d) Provides physician services, by physicians licensed under chapters 458, 459, 460, and 461, directly through physicians who are either employees or partners of such organization or under arrangements with a physician or any group of physicians.

(e) If offering services through a managed care system, has a system in which a primary physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 is designated for each subscriber upon request of a subscriber requesting service by a physician licensed under any of those chapters, and is responsible for coordinating the health care of the subscriber of the respectively requested service and for referring the subscriber to other providers of the same discipline when necessary. Each female subscriber may select as her primary physician an obstetrician/gynecologist who has agreed to serve as a primary physician and is in the health maintenance organization's provider network.

~~Except in cases in which the health care provider is an employee of the health maintenance organization, the fact that the health~~

~~maintenance organization arranges for the provision of health care services under this chapter does not create an actual agency, apparent agency, or employer-employee relationship between the health care provider and the health maintenance organization for purposes of vicarious liability for the medical negligence of the health care provider.~~

(18) "Subscriber" means an entity or individual who has contracted, or on whose behalf a contract has been entered into, with a health maintenance organization for health care services ~~coverage~~ or other persons who also receive health care services ~~coverage~~ as a result of the contract.

Section 2. Subsection (3) of section 641.51, Florida Statutes, is amended to read:

641.51 Quality assurance program; second medical opinion requirement.—

(3) The health maintenance organization shall not have the right to control the professional judgment of a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 concerning the proper course of treatment of a subscriber. However, this subsection shall not be considered to restrict a utilization management program established by an organization or to affect an organization's decision as to payment for covered services. ~~Except in cases in which the health care provider is an employee of the health maintenance organization, the health maintenance organization shall not be vicariously liable for the medical negligence of the health care provider, whether such claim is alleged under a theory of actual agency, apparent agency, or employer-employee relationship.~~

Section 3. Section 641.3917, Florida Statutes, is amended

to read:

641.3917 Civil liability.—

(1) The provisions of this part are cumulative to rights under the general civil and common law, and no action of the department or office shall abrogate such rights to damage or other relief in any court.

(2) Any person to whom a duty is owed may bring a civil action against a health maintenance organization when such person suffers damages as a result of the health maintenance organization's:

(a) Violation of s. 641.3155, s. 641.3903(5), (10), (12), (13), or (14), or s. 641.51; or

(b) Failure to provide a covered service, when the health maintenance organization in good faith should have provided such service had it acted fairly and reasonably toward the subscriber or enrollee and with due regard for his or her interests, and such service is medically reasonable or necessary in the independent medical judgment of a treating physician under contract with, or another physician authorized by, the health maintenance organization.

A person bringing an action under this subsection need not prove that such act was committed or performed with such frequency as to indicate a general business practice.

(3) The health maintenance organization is liable for all of the claimant's damages or $500 per violation, whichever is greater. The court may also award compensatory damages, including, but not limited to, damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive

damages. In an action or proceeding brought under this subsection, the court shall award a prevailing plaintiff reasonable attorney fees as part of the costs.

Section 4. Section 768.0981, Florida Statutes, is repealed.

Section 5. The amendments to ss. 641.19, 641.51, and 641.3917, Florida Statutes, made by this act and the repeal of s. 768.0981, Florida Statutes, by this act apply to causes of action accruing on or after the effective date of this act.

Section 6. This act shall take effect October 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

262
Bill Number (if applicable)

Topic Vicarious Liability

Amendment Barcode (if applicable)

Name Chris Chaney

Job Title Lobbyist

Address 204 South Monroe St
Street

Tallahassee
City *State* *Zip*

Phone 222-8900

Email cc@cardenaspartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

262
Bill Number (if applicable)

Topic Health Ins

Amendment Barcode (if applicable)

Name Mary Thomas

Job Title Assistant Gen. Counsel

Address 1430 Piedmont Dr E
Street

Phone 8502246496

Tlh FL 32308
City *State* *Zip*

Email MThomas@flmedical.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☑ 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)

1105
3:00pm

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

262
Bill Number (if applicable)

Topic Health Insurance

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr.
Street

Phone 878-7364

Tallahassee FL 32301
City *State* *Zip*

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/12
Meeting Date

SB 262
Bill Number (if applicable)

Topic Health Insurance

Amendment Barcode (if applicable)

Name Wences Troncoso

Job Title Vice president & General Counsel

Address _____ Phone 850-396-2904
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/2017
Meeting Date

SB262
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB262

Name Allison MacInnis

Job Title Attorney

Address 201 S. Bronough St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone (850) 577-9090

Email Allison.MacInnis@GRAY-ROBINSON.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

SB 262
Bill Number (if applicable)

Topic Health Insurance

Amendment Barcode (if applicable)

Name Dorene Baker

Job Title Associate State Director

Address 200 W. College Ave, Ste 304 (*Street*)

Phone 850-228-6387

Tall (*City*) Fla (*State*) 32301 (*Zip*)

Email dobaker@aarp.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AARP

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 646
INTRODUCER:	Senator Steube
SUBJECT:	Weapons and Firearms
DATE:	March 6, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	**Pre-meeting**
2.			GO	
3.			RC	

I. Summary:

SB 646 revises several statutes in chapter 790, F.S., that regulate concealed weapons and firearms.

Two of these revisions reduce the penalties for two non-violent offenses involving a firearm or weapon to a noncriminal offense with a $25 penalty. One offense to which the reduced penalty applies is the unlawful and open carry of a firearm. The other offense is the knowing and willful carry of a concealed weapon by a concealed weapon or firearm licensee into a place prohibited by statute. Currently, these offenses are second degree misdemeanors, punishable by up to 60 days in jail and a fine not to exceed $500.

Also, the bill expands the authority under a concealed weapon or firearm license that is held by a member of the Florida Cabinet who does not have full-time security provided by the Department of Law Enforcement. These Cabinet members are authorized to carry a concealed weapon anywhere not prohibited by federal law.

Finally, relating to the general ban on openly carrying firearms, the bill revises the exemption from this ban for a concealed carry licensee who briefly displays a firearm. The language of this exemption in current law does not clearly indicate whether the exemption applies to inadvertent displays or only to only displays that are necessary for self-defense. The bill deletes language in current law that implies that the protections from prosecution apply only to displays made in self-defense.

II. Present Situation:

Open Carry of Firearms

Open Carry Generally Prohibited

As a general matter, carrying a firearm openly is a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed $500.[1]

Lawful for Concealed Carry Licensee to Briefly and Openly Display Firearm

The statute banning open carry of firearms exempts a concealed carry licensee who is lawfully carrying concealed if he or she "briefly and openly displays the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense."[2]

The language of the exemption is not completely clear. It does not indicate how long a *brief* display of a firearm may be. Also, this language might be read to require that a display of a firearm be in necessary self-defense. As a result of this narrow reading, the inadvertent display of a concealed firearm might subject a person to arrest for violating the open carry ban.

Concealed Carry of Weapons and Firearms

Concealed Carry Generally Prohibited

As a general matter, the unlicensed carrying of a concealed weapon, or electric weapon or device, is a first degree misdemeanor[3] and the carrying of a concealed firearm is a third degree felony.[4] This prohibition on persons carrying concealed weapons or firearms is subject to exceptions, including this state's concealed carry licensing scheme.[5]

---

[1] Sections 775.082(4)(b) and 775.083(1)(e), F.S. Neither "openly carrying," "open carry," nor any derivation of these terms is defined in the Florida Statutes. The ban on open carrying of firearms is subject to exceptions. Specifically, s. 790.25(3), F.S. sets forth a long and diverse list of persons who are not subject to the ban on openly carrying a firearm, including on-duty law enforcement officers, persons who are hunting, fishing or camping, and investigators of a public defender or state attorney, just to name a few.

[2] Section 790.053(1), F.S. To be precise, this provision does not affirmatively state that this conduct is legal, just that it does not violate s. 790.053, F.S. Also, this is the extent to which a concealed carry license permits a licensee to carry a firearm openly, and there is no provision for an open carry license in the Florida Statutes.

[3] A first degree misdemeanor is punishable by a jail sentence not to exceed 1 year and a $1,000 fine. Sections 775.082(4)(a), 775.083(1)(d), F.S.

[4] A third degree felony is punishable by a prison sentence not to exceed 5 years and a $5,000 fine. Sections 775.082(9)(a)3.d., 775.083(1)(c), F.S. Section 790.02, F.S., provides that the carrying of a concealed firearm in violation of section 790.01, F.S., constitutes a breach of peace, for which an officer may make a warrantless arrest if the officer has "reasonable grounds or probable cause to believe that the offense of carrying a concealed weapon is being committed."

[5] Section 790.25(3), F.S., sets forth a long and diverse list of persons who are not subject to the licensing scheme, and who apparently may carry concealed without a license, including on-duty law enforcement officers, persons who are hunting, fishing or camping, and investigators of a public defender or state attorney, just to name a few.

Licensed Concealed Carry

Florida's concealed carry licensing scheme is set forth at s. 790.06, F.S. The license only permits the concealed carry of handguns and certain non-firearm weapons.[6] Currently, there are roughly 1.7 million Floridians holding a standard concealed carry license. [7]

To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services. The Department *must* grant this license to each applicant who:[8]

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm;[9]
- Has not been adjudicated an incapacitated person in a guardianship proceeding, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years before the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and

[6] "For the purposes of this section, concealed firearms and concealed weapons are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined" elsewhere in statute. Section 790.06(1), F.S.

[7] As of February 28, 2017, 1,721,862 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited March 2, 2017).

[8] Section 790.06(2), F.S. Accordingly, Florida is referred to as a "shall-issue" state, as opposed to a "may-issue" state. Also, the Department must deny a license to an applicant who meets criteria set forth in s. 790.06(3), F.S.

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

- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

The licensing statute states that a "person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding the [ban on carrying concealed weapons]."[10] As a result, the statute suggests that licensees may carry concealed weapons and firearms throughout the state, as a general matter.

However, the statute also expressly states that the license does not permit a licensee to carry into any of a long list of places set forth in the statute, including K-12 facilities, college or university facilities, courthouses, bars, airport terminals, several types of government meetings, and any place prohibited by federal law.[11] And if a licensee carries into any of these places without independent justification,[12] he or she commits a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed $500.[13]

III. Effect of Proposed Changes:

Violation of the Prohibition on Open Carry of Firearms is Non-Criminal

Under current law, as a general matter, carrying a firearm openly is a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed $500.[14]

The bill modifies the nature and consequence of violating the statute prohibiting open carry of firearms. Specifically, the bill changes this violation to a non-criminal offense, punishable by a $25 fine payable to the clerk of the court.

Carrying Firearms into Prohibited Places by Concealed Carry Licensees is Non-Criminal

In short, the bill changes the nature and consequence of the offense of a concealed weapons and firearms licensee carrying a concealed weapon or firearm into a place prohibited by the licensing statute. Specifically, the bill changes this violation from a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed $500, to a non-criminal violation, punishable by a $25 fine payable to the clerk of the court.

[10] Section 790.06(1), F.S.
[11] Section 790.06(12)(a), F.S.
[12] For example, s. 790.25(3), F.S. authorizes the persons there listed to carry concealed without a license, and expressly exempts these persons from the licensing statute. Therefore, apparently a licensee who is also one of the persons listed at section 790.25(3), F.S. could carry into the places listed in the licensing statute as place into which a license not authorize carrying a weapon or firearm.
[13] Note that this does not appear to be the type of crime that would be grounds for the revocation of the license pursuant to s. 790.06(3), F.S.
[14] Sections 775.082(4)(b), 775.083(1)(e), F.S. Neither "openly carrying," "open carry," nor any derivation of these terms is defined in the Florida Statutes.

Lawful Temporary and Open Display of Firearm by Concealed Carry Licensees

The bill, like current law, specifies that a concealed carry licensee who is lawfully carrying concealed, then briefly displays a firearm, does not violate the statute banning the open carry of firearms. However, the bill modifies this exemption from the open carry ban in several ways.

First, in current law, this provision prohibits displaying the firearm in an "angry or threatening manner." The bill removes this language. However, this change does not necessarily mean that, under the bill, a licensee may display his or her weapon in any manner he or she chooses. For instance, by displaying a firearm in an angry and threatening manner, one may commit an aggravated assault. Indeed, "displaying a firearm in an angry or threatening manner" is a fair, plain-language description of a type of aggravated assault.[15]

Second, the bill clarifies that the brief display of a firearm by a licensee no longer needs to be in self-defense. Thus, licensees will be free of fear that their inadvertent, short, non-self-defense display of their firearms will result in an arrest or a criminal penalty.

Carry Rights for Licensees Who Are Members of the Florida Cabinet

Article IV, Section 4 of the Florida Constitution states that the Florida Cabinet is comprised of the Commissioner of Agriculture, the Attorney General, and the Chief Financial Officer. The bill authorizes any member of the Cabinet who is a licensee and who does not have full-time security provided by the Florida Department of Law Enforcement to carry a concealed weapon or firearm anywhere not prohibited by federal law.

Effective Date

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[15] *See* ss. 784.011 and 784.021, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill reduces penalties for certain non-violent offenses with a firearm from a second degree misdemeanor to a non-criminal offense, punishable by a $25 fine.

C. Government Sector Impact:

By reducing penalties for non-violent offences with a firearm, the bill may reduce burden on the court system, as well as on prosecutors and public defenders.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 790.053 and 790.06 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.

450366

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 790.053, Florida Statutes, is amended to read:

790.053 Open carrying of weapons.—

(1) Except as otherwise provided by law and in subsection (2), it is unlawful for any person to openly carry on or about his or her person any firearm or electric weapon or device. ~~It is not a violation of this section for a person licensed to~~

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~~carry a concealed firearm as provided in s. 790.06(1), and who is lawfully carrying a firearm in a concealed manner, to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.~~

(2) A person may openly carry, for purposes of lawful self-defense:

(a) A self-defense chemical spray.

(b) A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

(3)(a) A ~~Any~~ person violating this section who is not licensed under s. 790.06 commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person violating this section who is licensed under s. 790.06 commits:

1. A noncriminal violation with a penalty of:

a. Twenty-five dollars, payable to the clerk of the court, for a first violation; or

b. Five hundred dollars, payable to the clerk of court, for a second violation.

2. A misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for a third or subsequent violation.

Section 2. Subsection (1) of section 790.06, Florida Statutes, is amended to read:

790.06 License to carry concealed weapon or firearm.—

(1) The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or

concealed firearms to persons qualified as provided in this section. Each such license must bear a color photograph of the licensee. For the purposes of this section, concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9). Such licenses shall be valid throughout the state for a period of 7 years after ~~from~~ the date of issuance. Any person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding the provisions of s. 790.01. The licensee must carry the license, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer. A person licensed to carry a concealed firearm under this section whose firearm is temporarily and openly displayed to the ordinary sight of another person does not violate s. 790.053 and may not be arrested or charged with a noncriminal or criminal violation of s. 790.053. Violations of the provisions of this subsection shall constitute a noncriminal violation with a penalty of $25, payable to the clerk of the court.

Section 3. For the purpose of incorporating the amendment made by this act to section 790.053, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 943.051, Florida Statutes, is reenacted to read:

943.051 Criminal justice information; collection and storage; fingerprinting.—

(3)

(b) A minor who is charged with or found to have committed the following offenses shall be fingerprinted and the fingerprints shall be submitted electronically to the department, unless the minor is issued a civil citation pursuant to s. 985.12:

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014(3).

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property, as provided in s. 790.115.

Section 4. For the purpose of incorporating the amendment made by this act to section 790.053, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 985.11, Florida Statutes, is reenacted to read:

985.11 Fingerprinting and photographing.—

450366

(1)

(b) Unless the child is issued a civil citation or is participating in a similar diversion program pursuant to s. 985.12, a child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014.

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, resulting in bodily harm to a firefighter, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has

450366

committed any other violation of law, as the agency deems appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and these records and all copies thereof must be marked "Juvenile Confidential." These records are not available for public disclosure and inspection under s. 119.07(1) except as provided in ss. 943.053 and 985.04(2), but shall be available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice purposes. These records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

Section 5. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to weapons and firearms; amending s.

450366

790.053, F.S.; deleting a statement of applicability relating to violations of carrying a concealed weapon or firearm; reducing the penalties applicable to a person licensed to carry a concealed weapon or firearm for a first or second violation of specified provisions relating to openly carrying weapons; making a fine payable to the clerk of the court; amending s. 790.06, F.S.; providing that a person licensed to carry a concealed weapon or firearm does not violate certain provisions if the firearm is temporarily and openly displayed; reenacting ss. 943.051(3)(b) and 985.11(1)(b), F.S., both relating to fingerprinting of a minor for violating specified provisions, to incorporate the amendment made to s. 790.053, F.S., in references thereto; providing an effective date.

112386

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/07/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete lines 47 - 127

and insert:

(3) A ~~Any~~ person who violates ~~violating~~ this section:

(a) For a first violation, commits a noncriminal violation with a penalty of $25, payable to the clerk of the court.

(b) For a second violation, commits a noncriminal violation with a penalty of $500, payable to the clerk of court.

(c) For a third or subsequent violation, commits a misdemeanor of the second degree, punishable as provided in s.

775.082 or s. 775.083.

Section 2. Subsections (1) and (12) of section 790.06, Florida Statutes, are amended to read:

790.06 License to carry concealed weapon or firearm.—

(1) The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or concealed firearms to persons qualified as provided in this section. Each such license must bear a color photograph of the licensee. For the purposes of this section, concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9). Such licenses shall be valid throughout the state for a period of 7 years from the date of issuance. Any person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding the provisions of s. 790.01. The licensee must carry the license, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer. A person licensed to carry a concealed firearm under this section who is lawfully carrying a firearm in a concealed manner and whose firearm is briefly or inadvertently displayed to the ordinary sight of another person does not violate s. 790.053 and may not be arrested or charged with a crime. Violations of the provisions of this subsection shall constitute a noncriminal violation with a penalty of $25, payable to the clerk of the court. Notwithstanding any other provision of this section, an elected constitutional officer identified in Art.

112386

III or Art. IV of the State Constitution who is licensed to carry a concealed weapon or firearm and who does not have full-time security provided by the Department of Law Enforcement may carry a concealed weapon or firearm anywhere they are not prohibited by federal law.

(12)(a) A license issued under this section does not authorize any person to openly carry a handgun or carry a concealed weapon or firearm into:

1. Any place of nuisance as defined in s. 823.05;

2. Any police, sheriff, or highway patrol station;

3. Any detention facility, prison, or jail;

4. Any courthouse;

5. Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;

6. Any polling place;

7. Any meeting of the governing body of a county, public school district, municipality, or special district;

8. Any meeting of the Legislature or a committee thereof;

9. Any school, college, or professional athletic event not related to firearms;

10. Any elementary or secondary school facility or administration building;

11. Any career center;

12. Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;

13. Any college or university facility unless the licensee

112386

is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;

14. The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or

15. Any place where the carrying of firearms is prohibited by federal law.

(b) A person licensed under this section may ~~shall~~ not be prohibited from carrying or storing a firearm in a vehicle for lawful purposes.

(c) This section does not modify the terms or conditions of s. 790.251(7).

(d) Any person who knowingly and willfully violates any provision of this subsection:

1. For a first violation, commits a noncriminal violation with a penalty of $25, payable to the clerk of the court.

2. For a second violation, committs a noncriminal violation with a penalty of $500, payable to the clerk of court.

3. For a third or subsequent violation, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

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

And the title is amended as follows:

Delete lines 5 - 17

and insert:

112386

or firearm; revising the penalty for a violation of specified provisions relating to openly carrying weapons; making a fine payable to the clerk of the court; amending s. 790.06, F.S.; providing that a person licensed to carry a concealed weapon or firearm who is lawfully carrying a firearm does not violate certain provisions if the firearm is briefly or inadvertently displayed; authorizing certain elected constitutional officers to carry a concealed weapon or firearm if he or she is licensed to carry a concealed weapon or firearm and does not have full-time security provided by the Department of Law Enforcement; revising the penalty for a violation of specified

758516

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/28/2017	.	
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The Committee on Judiciary (Steube) recommended the following:

Senate Substitute for Amendment (112386) (with title amendment)

Delete lines 47 - 82
and insert:
(3) A ~~Any~~ person who violates ~~violating~~ this section:
(a) For a first violation, commits a noncriminal violation with a penalty of $25, payable to the clerk of the court.
(b) For a second violation, commits a noncriminal violation with a penalty of $500, payable to the clerk of court.
(c) For a third or subsequent violation, commits a

misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Subsections (1) and (12) of section 790.06, Florida Statutes, are amended to read:

790.06 License to carry concealed weapon or firearm.—

(1) The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or concealed firearms to persons qualified as provided in this section. Each such license must bear a color photograph of the licensee. For the purposes of this section, concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9). Such licenses shall be valid throughout the state for a period of 7 years from the date of issuance. Any person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding the provisions of s. 790.01. The licensee must carry the license, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer. A person licensed to carry a concealed firearm under this section whose firearm is temporarily or inadvertently displayed to the ordinary sight of another person does not violate s. 790.053 and may not be arrested or charged with a crime. Violations of the provisions of this subsection shall constitute a noncriminal violation with a penalty of $25, payable to the clerk of the court. Notwithstanding any other provision of this section, an elected constitutional officer

758516

identified in Art. III or Art. IV of the State Constitution who is licensed to carry a concealed weapon or firearm and who does not have full-time security provided by the Department of Law Enforcement may carry a concealed weapon or firearm anywhere they are not prohibited by federal law.

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

And the title is amended as follows:

Delete lines 5 - 16

and insert:

or firearm; revising the penalty for a violation of specified provisions relating to openly carrying weapons; making a fine payable to the clerk of the court; amending s. 790.06, F.S.; providing that a person licensed to carry a concealed weapon or firearm who is lawfully carrying a firearm does not violate certain provisions if the firearm is briefly or inadvertently displayed; authorizing certain elected constitutional officers to carry a concealed weapon or firearm if he or she is licensed to carry a concealed weapon or firearm and does not have full-time security provided by the Department of Law Enforcement;

By Senator Steube

23-00719-17 2017646__

A bill to be entitled

An act relating to weapons and firearms; amending s. 790.053, F.S.; deleting a statement of applicability relating to violations of carrying a concealed weapon or firearm; reducing the penalty for a violation of specified provisions relating to openly carrying weapons; making a fine payable to the clerk of the court; amending s. 790.06, F.S.; providing that a person licensed to carry a concealed weapon or firearm who is lawfully carrying a firearm does not violate certain provisions if the firearm is temporarily and openly displayed; authorizing each member of the Florida Cabinet to carry a concealed weapon or firearm if he or she is licensed to carry a concealed weapon or firearm and does not have full-time security provided by the Department of Law Enforcement; reducing the penalty for a violation of specified provisions relating to carrying concealed weapons or firearms in prohibited places; making a fine payable to the clerk of the court; reenacting ss. 943.051(3)(b) and 985.11(1)(b), F.S., both relating to fingerprinting of a minor for violating specified provisions, to incorporate the amendment made to s. 790.053, F.S., in references thereto; providing an effective date.

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

Section 1. Section 790.053, Florida Statutes, is amended to read:

790.053 Open carrying of weapons.—

(1) Except as otherwise provided by law and in subsection

23-00719-17 2017646__

(2), it is unlawful for any person to openly carry on or about his or her person any firearm or electric weapon or device. ~~It is not a violation of this section for a person licensed to carry a concealed firearm as provided in s. 790.06(1), and who is lawfully carrying a firearm in a concealed manner, to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.~~

(2) A person may openly carry, for purposes of lawful self-defense:

(a) A self-defense chemical spray.

(b) A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

(3) A ~~Any~~ person who violates ~~violating~~ this section commits a noncriminal violation with a penalty of $25, payable to the clerk of the court ~~misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 2. Subsections (1) and (12) of section 790.06, Florida Statutes, are amended to read:

790.06 License to carry concealed weapon or firearm.—

(1) The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or concealed firearms to persons qualified as provided in this section. Each such license must bear a color photograph of the licensee. For the purposes of this section, concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9). Such licenses

shall be valid throughout the state for a period of 7 years from the date of issuance. Any person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding the provisions of s. 790.01. The licensee must carry the license, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer. A person licensed to carry a concealed firearm under this section who is lawfully carrying a firearm in a concealed manner and whose firearm is temporarily and openly displayed to the ordinary sight of another person does not violate s. 790.053 and may not be arrested or charged with a crime. Violations of the provisions of this subsection shall constitute a noncriminal violation with a penalty of $25, payable to the clerk of the court. Notwithstanding any other provision of this section, a member of the Florida Cabinet who is licensed to carry a concealed weapon or firearm and who does not have full-time security provided by the Department of Law Enforcement may carry a concealed weapon or firearm anywhere they are not prohibited by federal law.

(12)(a) A license issued under this section does not authorize any person to openly carry a handgun or carry a concealed weapon or firearm into:

1. Any place of nuisance as defined in s. 823.05;

2. Any police, sheriff, or highway patrol station;

3. Any detention facility, prison, or jail;

4. Any courthouse;

5. Any courtroom, except that nothing in this section would

preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;

6. Any polling place;

7. Any meeting of the governing body of a county, public school district, municipality, or special district;

8. Any meeting of the Legislature or a committee thereof;

9. Any school, college, or professional athletic event not related to firearms;

10. Any elementary or secondary school facility or administration building;

11. Any career center;

12. Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;

13. Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;

14. The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or

15. Any place where the carrying of firearms is prohibited by federal law.

(b) A person licensed under this section may ~~shall~~ not be prohibited from carrying or storing a firearm in a vehicle for

lawful purposes.

(c) This section does not modify the terms or conditions of s. 790.251(7).

(d) Any person who knowingly and willfully violates any provision of this subsection commits a noncriminal violation with a penalty of $25, payable to the clerk of the court ~~misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 3. For the purpose of incorporating the amendment made by this act to section 790.053, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 943.051, Florida Statutes, is reenacted to read:

943.051 Criminal justice information; collection and storage; fingerprinting.—

(3)

(b) A minor who is charged with or found to have committed the following offenses shall be fingerprinted and the fingerprints shall be submitted electronically to the department, unless the minor is issued a civil citation pursuant to s. 985.12:

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014(3).

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property, as provided in s. 790.115.

Section 4. For the purpose of incorporating the amendment made by this act to section 790.053, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 985.11, Florida Statutes, is reenacted to read:

985.11 Fingerprinting and photographing.—

(1)

(b) Unless the child is issued a civil citation or is participating in a similar diversion program pursuant to s. 985.12, a child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault on a law enforcement officer, a firefighter, or

other specified officers, as defined in s. 784.07(2)(a).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014.

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, resulting in bodily harm to a firefighter, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has committed any other violation of law, as the agency deems appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and these records and all copies thereof must be marked "Juvenile Confidential." These records are not available for public disclosure and inspection under s. 119.07(1) except as provided in ss. 943.053 and 985.04(2), but shall be available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice

purposes. These records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

Section 5. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/28/2016
Meeting Date

SB646
Bill Number (if applicable)

Topic Weapons and Firearms

Amendment Barcode (if applicable)

Name Erek Culbreath

Job Title

Address 319 Bermuda Rd
Street

Phone 9412244744

Tallahassee FL 32312
City *State* *Zip*

Email etc09@my.fsu.edu

Speaking: ☑ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

6446
~~748~~

March 28, 2017
Meeting Date

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Sheriff Bob Gualtieri

Job Title Pinellas Sheriff

Address 10750 Ulmerton Rd
Street

Phone 727-582-6200

Largo FL 33778
City *State* *Zip*

Email _____

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 28, 2017
Meeting Date

SB 646
Bill Number (if applicable)

Topic Weapons and Firearms

Amendment Barcode (if applicable)

Name Chief Stephan Dembinsky

Job Title Chief of Police

Address 2630 Mitcham Drive
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850-219-3631

Email bhoward@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

1046
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jamie Ito

Job Title Attorney

Address _____ Phone _____

Street

Tallahassee Email _____

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

SB 646
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Peter Butzin (But seen)

Job Title _____

Address 1628 Woodgate Way
Street

Phone _____

TLH 32308
City *State* *Zip*

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28
Meeting Date

SB646
Bill Number (if applicable)

Topic SB646 Weapons & Firearms

Amendment Barcode (if applicable)

Name Shayna Lopez-Rivas

Job Title

Address 319 Bermuda Rd
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 941-763-0977

Email spl12@my.fsu.edu

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

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

Representing

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

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 748
INTRODUCER:	Judiciary Committee and Senator Steube
SUBJECT:	Florida Court Educational Council
DATE:	March 29, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 748 establishes the composition and duties of the Florida Court Educational Council in statute. The Council was originally established in 1978 by an administrative order of the Florida Supreme Court and has operated at the discretion of the Court.

The Council, as established by the bill, will be composed of 17 active judges who are elected by the Florida Conference of District Court of Appeal Judges, the Florida Conference of Circuit Court Judge, or the Florida Conference of County Court Judges.. The Council will adopt a comprehensive plan for operating the Court Education Trust Fund and the expenditure of moneys deposited into the trust fund for education and training programs for judges and other court personnel.

The bill requires the Council to adopt guidelines for administrative expenses and to describe in an annual report its efforts to reduce administrative expenses below 44 percent. The Council may not employ more than 15 full-time employees and must be headquartered at the First District Court of Appeal in Tallahassee.

The Council must submit an annual report to the Legislature detailing the number of judges and court personnel who attend training or education programs and provide specifics about the programs. The report must also detail the amount of moneys deposited into the trust fund and the balance at the end of the fiscal year.

If any provisions of the bill are declared invalid, the bill provides that the current fees that support the trust fund may not be assessed and that the remaining unencumbered funds will revert to the General Revenue Fund and the trust fund will be terminated.

II. Present Situation:

The Florida Court Educational Council

The Florida Supreme Court established the Florida Court Educational Council by administrative order in 1978. It has operated under the direction of the Supreme Court since its inception. The Council was given the responsibility to develop and maintain a comprehensive educational program for judges and court personnel. It was also tasked with making budget, program, and policy recommendations to the Supreme Court for continuing education for judges and some court professionals.[1]

Education and Training

Today, the Council and the Office of State Courts Administrator provide training to judges and court staff through a variety of courses on legal issues, ethics, and administrative skills.[2] The Court's judicial education program has grown substantially over the years to meet the needs of the states almost 1,000 judges.[3] In 2016, more than 3,245 judges and court staff received training funded through Court Education Trust Fund,[4] which is discussed below. An additional 142 people attended distance learning sessions, and many publications are provided online.

Council Membership

The Council is composed of 20 members who are appointed by the Chief Justice of the Supreme Court in an administrative order. The current members are justices or judges from each of the four court levels, the Supreme Court, district courts of appeal, circuit court, and county court, as well as one trial court administrator, and a magistrate.[5] The current number of members and area of responsibility are:

- Florida Supreme Court – Chief Justice (1).
- District Court of Appeal (2).
- Circuit Courts (4).
- County Courts (4).
- Deans and Associate Deans (4).
- Trial Court Administrators (1).
- Florida Court Personnel (2).
- Universal Planning Committee (2).

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[1] *In Re: Florida Court Educational Council*, Fla. Admin. Order No. AOSC14-35. (July 1, 2014).
[2] Office of Program Policy Analysis & Government Accountability, Report No. 15-13, (December 2015) available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1513rpt.pdf.
[3] Office of the State Court Administrator, Florida, *Short History of Florida State Courts System Processes, Programs, and Initiatives* (2016) available at http://www.flcourts.org/core/fileparse.php/646/urlt/Short-History_2016.pdf.
[4] Office of the State Courts Administrator, *2017 Judicial Impact Statement for SB 748* (March 23, 2017) (on file with the Senate Committee on Judiciary).
[5] *In Re: Florida Court Education Council*, Fla. Admin. Order No AOSC16-42 (June 30, 2016) (on file with the Senate Committee on Judiciary).

The Court Education Section, within the Office of State Courts Administrator, provides staffing needs for the Council. The Court Education Section assists in managing the trust fund discussed below and oversees budgeting, record keeping, and travel reimbursements. They also assist with planning and developing training and help judges meet the continuing education requirements.[6] According to the Office of the State Courts Administrator, there are currently 15 full-time employees who create and administer court education in the state.[7]

Court Education Trust Fund

The Supreme Court, through the Florida Court Education Council, administers the Court Education Trust Fund, which was established by the Legislature in 1982.[8] The trust fund moneys are used to provide education and training for judges and other court personnel, as determined by the Council.[9] The Council is responsible for developing a comprehensive plan for the operation of the trust fund and for the expenditure of the moneys deposited into the trust fund. The plan provides for travel, per diem, tuition, educational materials, and other costs incurred for the educational programs, both in and out of state, for the benefit of the judiciary of the state.[10]

The trust fund is funded from two sources: a portion of the filing fees for trial and appellate proceedings[11] and service charges in probate matters.[12] These fees or service charges amount to $3.50 per applicable filing.

On July 1, 2015, the Court Education Trust Fund had a cash balance of $1,204,003. During Fiscal Year 2015-16, the trust fund accrued $2,585,091 in total revenues and had $2,019,300 in total disbursements. The ending cash balance on June 30, 2016, was $1,769,794.

The Supreme Court, operating through the Council, is required to submit an annual report by October 1 to the President of the Senate and Speaker of the House of Representatives. The report must include the number of judges and court personnel who attend each training and educational program, the program attended and its location, and the costs incurred. The report must also identify which judges and personnel attended out-of-state programs and the costs incurred. Finally, the report must show the total dollars deposited into the fund for each fiscal year and the balance at the end of the fiscal year.

III. Effect of Proposed Changes:

Court Education Trust Fund

The bill removes the Supreme Court as the administrator of the Court Education Trust Fund and names the Florida Court Educational Council as the administrator. The Council is required to adopt a comprehensive plan for operating the Court Education Trust Fund and for the

[6] *See supra* note 2.
[7] *See supra* note 4.
[8] Ch. 82-168, s. 1, Laws of Fla. and s. 25.384, F.S.
[9] Section 25.384(2)(a), F.S.
[10] *Id*.
[11] Sections 28.241(1)(a)l.c., and 34.041(1)(b), F.S.
[12] Section 28.2401(3), F.S.

expenditure of the moneys in the trust fund. The responsibilities transferred to the Council are almost identical to those required under current law. The comprehensive plan must provide for travel, per diem, tuition, educational materials, and other related costs incurred for in-state and out-of-state education and training programs for judges and court personnel to benefit the judiciary. The programs will be determined by the Council.

Florida Court Educational Council

Appointment and Composition

The bill significantly changes the method of appointment and composition of the Council. The Chief Justice of the Supreme Court will not make the appointments to the Council. Instead, the members will be elected to staggered 2-year terms by other judges. Specifically, two members of the council will be elected by the Florida Conference of District Court of Appeal Judges from among its members. Ten members will be elected by the Florida Conference of Circuit Court Judges from among its members. And five members will be elected by the Florida Conference of County Court Judges from among its members. The Council will elect its chair for a 1-year term and also elect other officers from the membership when it deems necessary.

Duties

The administrative duties of the council include:

- Adopting guidelines on permissible administrative expenses;
- Adopting policies and guidelines relative to the selection of education and training programs, the approval of courses and the selection of participants as well as developing and funding programs for new judges, hearing officers, and magistrates;
- Adopting reporting formats; and
- Employing and supervising up to 15 council employees.

New Location

The Council and its employees will be headquartered at the First District Court of Appeal in Tallahassee.

Annual Report

The annual report required under the bill is virtually identical to the annual report required under current law. It must be submitted by October 1 to the President of the Senate and the Speaker of House and include the number of judges and court personnel who attend in-state training or educational programs, the program attended and its location, and the costs involved. The report must also include the judges and court personnel who attend out-of-state programs and the costs incurred with those programs. The annual report must identify the total dollars deposited into the trust fund for each fiscal year and the balance remaining in the trust fund at the end of the fiscal year.

The report must also provide a description of the efforts the council makes to reduce its administrative expenses below 44 percent of the previous year's gross receipts on administrative expenses. However, the report does not need to address the council's efforts to minimize its

administrative expenses if the council's administrative expenses fall below 25 percent of the previous year's gross receipts.

Invalidity and Reversion

The bill provides that if any of its substantive provisions relating to the Court Education Trust Fund or the Florida Court Educational Council are declared invalid, all of the substantive provisions are invalid. Additionally, upon the finding of invalidity, at least some of the fees funding the Court Education Trust Fund may not be assessed and the funds in the trust fund revert to the General Revenue Fund.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

There are two constitutional provisions that are relevant to this bill. Article V, s. 2(a) of the State Constitution states that "The supreme court shall adopt rules for the practice and procedure in all courts including . . . the administrative supervision of all courts." Article V, s. 14(d) of State Constitution states that "The judiciary shall have no power to fix appropriations." There is no case law indicating that the Court's authority to provide administrative supervision of all courts includes the exclusive authority to direct funding for court education programs or determine who is eligible to participate in an education program.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If a substantive provision of the bill is declared invalid, the additional filing fee or surcharge of $3.50 that funds the Court Education Trust Fund is not to be collected. Additionally, at the time of the finding of invalidity, any remaining unencumbered funds in the trust fund are to revert to the General Revenue Fund.

B. Private Sector Impact:

The bill does not appear to have an impact on the private sector.

C. Government Sector Impact:

The Florida Court Education Council is required to establish its operations in the ninth judicial circuit.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 25.384 and 25.385.

IX. Additional Information:

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

CS by Judiciary on March 28, 2017:
The committee substitute differs from the original bill in three ways. First, the committee substitute provides for the election of the members of the Florida Court Education Council. Second, the committee substitute increases number of employees that the council may employ to 15. Lastly, the committee substitute no longer limits the administrative expenses of the council. Instead, the council is generally required to report on its efforts to reduce its administrative expenses.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/28/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete lines 60 - 114
and insert:
(1)(a) The membership of the Florida Court Educational Council, as it was constituted before January 1, 2018, is terminated and replaced as provided in this section. The Florida Court Educational Council shall consist of 17 members. All of the members must be active judges.
1. Two members of the council shall be elected to staggered terms by the Florida Conference of District Court of Appeal

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Judges from its membership pursuant to conference adopted procedures. One council member shall be elected for a term ending December 31, 2019, and subsequently for 2-year terms ending on December 31 of each odd-numbered year and the other council member shall be elected for a term ending on December 31, 2020, and subsequently for 2-year terms ending on December 31 of each even-numbered year.

2. Ten members of the council shall be elected to staggered terms by the Florida Conference of Circuit Court Judges from its membership pursuant to conference adopted procedures. Five council members shall each be elected for a term ending December 31, 2019, and subsequently for 2-year terms ending on December 31 of each odd-numbered year. The five remaining council members shall each be elected for a term ending on December 31, 2020, and subsequently for 2-year terms ending on December 31 of each even-numbered year.

3. Five members of the council shall be elected to staggered terms by the Florida Conference of County Court Judges from its membership pursuant to conference adopted procedures. Three council members shall each be elected for a term ending December 31, 2019, and subsequently for 2-year terms ending on December 31 of each odd-numbered year. The two remaining council members shall each be elected for a term ending on December 31, 2020, and subsequently for 2-year terms ending on December 31 of each even-numbered year.

4. Each vacancy shall be filled for the remainder of an unexpired term in the same manner as the original appointment.

5. Council members may serve consecutive terms.

6. The council shall elect a chair from its membership for

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a 1-year term to preside at all council meetings. The council shall also elect other officers from its membership as it deems necessary.

(b) A majority of the council members shall constitute a quorum, and the affirmative vote of a majority of the members present shall be necessary for any action to be taken by the council.

(c) The administrative duties of the council include:

1. Adopting guidelines on permissible administrative expenses. The council shall minimize administrative expenses and maximize educational opportunities for judges and judicial staff.

a. Administrative expenses include office space expenses; salaries for full-time employees, or the equivalent, unless such employees teach judges or judicial staff on a full-time basis; compensation for part-time assistance, unless such individuals are retained to teach judges or judicial staff; and equipment and supplies purchased or leased by the council. Upon approval of the council, any employee who documents time spent teaching judges or judicial staff on less than a full-time basis may have the pro-rata portion of his or her salary deducted from the calculation of administrative expenses.

b. As part of the report required by subsection (3), the council shall provide a description of all efforts the council has made to reduce administrative expenses below 44 percent. This part of the report is not required for any year in which the council spends less than 25 percent of the previous year's gross receipts on administrative expenses.

2. Adopting policies and guidelines related to the

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selection of continuing judicial and judicial staff education and training programs, approval of courses for such programs, and selection of participants. The council shall also develop and fund appropriate education and training programs for new trial judges, appellate judges, child support hearing officers, and magistrates.

3. Adopting reporting formats.

4. Employing and supervising all council employees. Council employees shall report only to the chair of the council and may not be assigned any duties except those dealing directly with court education. It is unlawful to require a council employee to perform duties unrelated to judicial or judicial staff education if such duties are not authorized by the council. The council may not employ more than 15 full-time employees. The council must employ less than 15 full-time employees if the council determines that the judicial and judicial staff education training objectives of the council can be accomplished with fewer than 15 employees.

(d) The council and its employees shall be headquartered at the First District Court of Appeal.

(2)(a) ~~(1)~~ The ~~Florida Court Educational~~ council shall establish standards for instruction of circuit and county court judges who have responsibility for domestic violence cases, and the council shall provide such instruction on a periodic and timely basis.

(b) ~~(2)~~ As used in this subsection, ~~section:~~

~~(a)~~ the term "domestic violence" has the meaning set forth in s. 741.28.

~~(b) "Family or household member" has the meaning set forth~~

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~~in s. 741.28.~~

(3) The council shall submit a report each year, on October 1, to the President of the Senate and the Speaker of the House of Representatives that includes the total number of judges and other court personnel attending each in-state training or educational program, the training or educational program attended and the location of the program, and the costs incurred. The report shall also identify the judges and other court personnel attending out-of-state training or educational programs and the costs associated with such programs. The report shall identify the total dollars deposited into the trust fund for the fiscal year and the balance in the trust fund at the end of the fiscal year.

Section 3. If any provision contained in section 1 or section 2 of this act is declared invalid for any reason, then sections 1 and 2 of this act shall be declared invalid, the fees that would be directed to the Court Education Trust Fund may not be assessed pursuant to ss. 28.2401(3), 28.241(1)(a)1.c., 28.241(1)(a)2.e., and 34.041(1)(b), the remaining unencumbered funds in the Court Education Trust Fund shall revert to the General Revenue Fund, and the trust fund shall be terminated.

Section 4. This act shall take effect January 1, 2018.

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

And the title is amended as follows:

Delete lines 5 - 13

and insert:

the Florida Court Educational Council; deleting a provision requiring the council to provide an annual

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report; amending s. 25.385, F.S.; specifying the membership, voting procedures, and duties of the council; specifying the location of the council headquarters; requiring the council to submit an annual report concerning educational and training programs for judges and other personnel; providing for

By Senator Steube

23-00978-17 2017748__

A bill to be entitled

An act relating to the Florida Court Educational Council; amending s. 25.384, F.S.; specifying that the Court Education Trust Fund shall be administered by the Florida Court Educational Council; providing requirements for a certain comprehensive plan that provides for related education costs for judicial training programs; deleting a provision requiring the council to provide an annual report; amending s. 25.385, F.S.; specifying the membership, voting procedures, and duties of the council; specifying the location of the council headquarters; requiring the council to submit an annual report; providing for nonseverability; providing an effective date.

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

Section 1. Subsections (1), (2), and (4) of section 25.384, Florida Statutes, are amended to read:

25.384 Court Education Trust Fund.—

(1) There is created a Court Education Trust Fund to be administered by ~~the Supreme Court through~~ the Florida Court Educational Council as set forth in s. 25.385.

(2)(a) The Florida Court Educational Council shall adopt a comprehensive plan for the operation of the Court Education Trust Fund and the expenditure of the moneys deposited in the trust fund.

(b) The plan shall provide for travel, per diem, tuition, educational materials, and other related costs incurred for in-state and out-of-state education and training programs for judges and other court personnel to benefit the judiciary of the state. Such ~~The trust fund moneys shall be used to provide~~

23-00978-17 2017748__

education and training programs shall be ~~for judges and other court personnel as defined and~~ determined by the ~~Florida Court Educational~~ council as set forth in s. 25.385.

~~(b) The Supreme Court, through its Florida Court Educational Council, shall adopt a comprehensive plan for the operation of the trust fund and the expenditure of the moneys deposited in the trust fund. The plan shall provide for travel, per diem, tuition, educational materials, and other related costs incurred for educational programs, in and out of state, which will be of benefit to the judiciary of the state.~~

~~(4) The Supreme Court, through the Florida Court Educational Council, shall submit a report each year, on October 1, to the President of the Senate and the Speaker of the House of Representatives, which report shall include the total number of judges and other court personnel attending each training or educational program, the educational program attended and the location of the program, and the costs incurred. In addition, the report shall identify the judges and other court personnel attending out-of-state programs and the costs associated with such programs. The report shall also show the total dollars deposited in the fund for the fiscal year and the balance at the end of the fiscal year.~~

Section 2. Section 25.385, Florida Statutes, is amended to read:

25.385 Florida Court Educational Council; composition; duties; reports ~~standards for instruction of circuit and county court judges in handling domestic violence cases~~.—

(1)(a) The Florida Court Educational Council shall consist of the chief judge of each district court of appeal and the

chief judge of each judicial circuit. The council shall elect a chair from its membership for a 1-year term to preside at all council meetings. The council shall also elect other officers from its membership as it deems necessary.

(b) A majority of the council members shall constitute a quorum, and the affirmative vote of a majority of the members present shall be necessary for any action to be taken by the council.

(c) The administrative duties of the council include:

1. Adopting guidelines on permissible administrative expenses, which may not exceed 15 percent of the funds deposited into the previous fiscal year's Court Education Trust Fund.

2. Adopting policies and guidelines related to the selection of education and training programs, approval of courses for such programs, and selection of participants. The council shall also develop and fund appropriate education and training programs for new trial judges, appellate judges, child support hearing officers, and magistrates.

3. Adopting reporting formats.

4. Supervising council employs. However, the council may not employ more than three full-time employees.

(d) The council and its employees shall be headquartered in the ninth circuit.

(2)(a) ~~(1)~~ The ~~Florida Court Educational~~ council shall establish standards for instruction of circuit and county court judges who have responsibility for domestic violence cases, and the council shall provide such instruction on a periodic and timely basis.

(b) ~~(2)~~ As used in this subsection, ~~section:~~

~~(a)~~ the term "domestic violence" has the meaning set forth in s. 741.28.

~~(b) "Family or household member" has the meaning set forth in s. 741.28.~~

(3) The council shall submit a report each year, on October 1, to the President of the Senate and the Speaker of the House of Representatives that includes the total number of judges and other court personnel attending each in-state training or educational program, the training or educational program attended and the location of the program, and the costs incurred. The report shall also identify the judges and other court personnel attending out-of-state training or educational programs and the costs associated with such programs. The report shall identify the total dollars deposited into the trust fund for the fiscal year and the balance in the trust fund at the end of the fiscal year.

Section 3. If any provision contained in sections 1 or 2 of this act is declared invalid for any reason, then sections 1 and 2 of this act shall be declared invalid and fees may not be assessed pursuant to ss. 28.2401(3) and 28.241(1). The remaining unencumbered funds in the Court Education Trust Fund shall revert to the General Revenue Fund and the trust fund shall be terminated.

Section 4. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/17
Meeting Date

748
Bill Number (if applicable)

[redacted]
Amendment Barcode (if applicable)

Topic Florida Court Education Council

Name Judge Scott Bernstein

Job Title Circuit Judge, 11th Judicial Circuit

Address 175 NW 1st Ave.
Street

Phone 305-349-5744

Miami FL 33128
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Conference of Circuit Judges of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SPB 7028
INTRODUCER:	Judiciary Committee
SUBJECT:	OGSR/Injunction for Protection Against Domestic Violence, Repeat Violence, Sexual Violence, and Dating Violence
DATE:	March 27, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula		**JU Submitted as Committee Bill**

I. Summary:

SPB 7028 is based on an Open Government Sunset Review of public records exemptions by the staff of the Senate Judiciary Committee. The reviewed exemptions generally prohibit the disclosure of contact information for a petitioner who is granted an injunction for protection against domestic violence or repeat, sexual, or dating violence. These exemptions are scheduled for repeal on October 2, 2017.

This information protected from disclosure will be stored on a database that will send an automated notice to the petitioner within 12 hours after the respondent is served with the injunction.

Because the system has not yet been fully developed or activated, the need for the exemptions cannot be fully evaluated at this time consistent with the requirements of the Open Government Sunset Review Act. Accordingly, the bill delays the scheduled repeal of the exemptions by 2 years so that they may be evaluated after the automated system is in place.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] The records of the legislative, executive, and judicial branches are specifically included within this right of access.[2]

[1] FLA. CONST., Art. I, s. 24(a).
[2] *Id*.

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

Only the Legislature may create an exemption to public records requirements.[6] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[7] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[8] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[9]

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[10] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after the Legislature creates or substantially amends it. In order to save an exemption from repeal, the Legislature must reenact the exemption.[11]

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[12] An exemption serves an identifiable purpose if it meets one of the following purposes and the

[3] Chapter 119, F.S.

[4] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "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 Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992)).

[5] Section 119.07(1)(a), F.S.

[6] FLA. CONST., Art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).

[7] FLA. CONST., Art. I, s. 24(c).

[8] The bill may, however, contain multiple exemptions that relate to one subject.

[9] FLA. CONST., Art. I, s. 24(c).

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

[11] Section 119.15(3), F.S.

[12] Section 119.15(6)(b), F.S.

Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[13]
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety;[14] or
- It protects trade or business secrets.[15]

The OGSR also requires specified questions to be considered during the review process.[16] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[17] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.[18]

Injunction for Protection

A person may file a petition for an injunction for protection against domestic violence,[19] or repeat, sexual, or dating violence.[20]
Filing a petition for a protective injunction is a civil cause of action.[21]

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[13] Section 119.15(6)(b)1., F.S.
[14] If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt. Section 119.15(6)(b)2., F.S.
[15] Section 119.15(6)(b)3., F.S.
[16] 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?

[17] FLA. CONST., Art. I, s. 24(c).
[18] Section 119.15(7), F.S.
[19] Section 741.30(1), F.S., creates a cause of action for an injunction for protection against domestic violence. Section 741.30(1)(a), F.S., requires a petitioner to either be the victim of domestic violence or reasonably believe he or she is in imminent danger of becoming a victim.
[20] Section 784.046(2), F.S., creates a cause of action for an injunction for protection individually against repeat violence, dating violence, and sexual violence. Section 784.046(2)(a), F.S., requires a petitioner to either be the victim or the parent or guardian of a minor child who is a victim of repeat violence. Section 784.046(2)(b), F.S., requires a petitioner to either have reasonable cause to believe he or she is in imminent danger to another act of dating violence, whether or not he or she has previously been the victim of dating violence, or if a minor, be the parent or guardian of the minor. Section 784.046(2)(c), F.S., requires the petitioner to either be the victim of sexual violence, or a parent or legal guardian of a child victim living at home provided that the petitioner reported the sexual violence to a law enforcement agency and is cooperating in a criminal proceeding against the respondent or that the respondent was sentenced to prison for the sexual violence and the term of imprisonment has, or is about to expire within 90 days after the filing of the petition.
[21] *H.K. by & Through Colton v. Vocelle*, 667 So. 2d 892 (Fla. 4th DCA 1996).

Process for Injunction for Petition

Filing of the Petition

A person wishing to initiate an injunction for protection against domestic violence must file a sworn petition for the injunction at the clerk's office for the circuit court.[22] Clerks' offices must provide a simplified petition form for the injunction for protection, including instructions for the petitioner to follow.[23] A sample form for a petition for injunction for protection against domestic violence is provided in statute and requires:

- A detailed description of the respondent;
- The residential and employment address of the respondent;
- The relationship between the respondent and the petitioner;
- A detailed description of the violence or threat of violence;
- An indication of prior or pending attempts by the petitioner to obtain an injunction;
- An indication that minor children reside with the petitioner or that the petitioner needs the exclusive use and possession of the dwelling that is shared with the respondent; and
- The address of the petitioner.[24]

The form addresses whether the petitioner seeks an injunction providing a temporary parenting plan, including a temporary time-sharing schedule and temporary support for minor children.[25]

The form for the petition for injunction provides language authorizing a petitioner to provide his or her address to the court in a separate confidential filing, if necessary for safety reasons.[26] The clerk of the court must, to the extent possible, ensure the petitioner's privacy while completing the form for injunction for protection against domestic violence.[27]

A similar form, though more streamlined, is authorized for a petition for injunction for protection against repeat violence, sexual violence, or dating violence.[28] A petitioner may file a separate confidential filing of his or her address, just as for petitions based on domestic violence.[29]

Service of the Petition

The clerk of the court must furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or law enforcement agency of the county where the respondent resides or can be found.[30] The sheriff or other law enforcement agency must then personally serve the respondent the petition and other documents as soon as possible.[31]

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[22] Sections 741.30(1) and 784.046(2), F.S.
[23] Sections 741.30(2)(c)2, and 784.046(3)(a), F.S.
[24] Section 741.30(3)(b), F.S.
[25] *Id*.
[26] *Id*.
[27] Section 741.30(2)(c)4., F.S.
[28] Section 784.046(4)(b), F.S., requires the petition to include the residential address of the respondent, a description of the violence perpetrated by the respondent, and an affirmation that the petitioner genuinely fears repeat violence by the respondent.
[29] *Id*.
[30] Sections 741.30(8)(a)1., and 784.046(8)(a)1., F.S.
[31] Section 741.30(4), F.S.

The Court Process

Upon the filing of the petition, the court must hold a hearing as soon as possible.[32] If the court determines that an immediate and present danger of violence exists, the court may grant a temporary injunction. The temporary injunction may be granted in an ex parte hearing, pending a full hearing.[33] A temporary injunction is effective only for a period of up to 15 days, during which time the court generally must hold a full hearing.[34]

Service of the Injunction for Petition

Within 24 hours after the court issues an injunction for protection, the clerk of the court must forward a copy of the injunction to the sheriff to serve the petitioner.[35] Within 24 hours after the injunction is served on the respondent, the law enforcement officer must forward the written proof of service of process to the sheriff who has jurisdiction over the residence of the petitioner.[36]

Public Records Exemptions and Protections from Disclosure of Contact Information

A general public records exemption protects from disclosure any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime.[37] In addition to this general exemption, other public records exemptions protect the contact information of a petitioner who files a petition for an injunction for protection.

Separate Confidential Filing of Address with Injunction for Protective

The exemption that protects the contact information of a petitioner seeking an injunction applies if the person, for safety reasons, submits his or her address to the court in a separate confidential filing.[38]

Address Confidentiality Program

The Legislature enacted the Address Confidentiality Program (Program) to protect a victim of domestic violence by keeping his or her address confidential.[39] The program allows

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[32] Sections 741.30(4) and 784.046(5), F.S.
[33] Sections 741.30(5)(a) and 784.046(6)(a), F.S. A temporary injunction is authorized in instances in which it appears to the court that an immediate and present danger of violence exists. If so, the court, may grant a temporary injunction at an ex parte hearing. Sections 741.30(5)(a) and 784.046(6)(a), F.S.
[34] Sections 741.30(5)(c) and 784.046(5)(c), F.S.
[35] Sections 741.30(8)(c)1., and 784.046(8)(c)1., F.S. The Legislature created both a Domestic and Repeat Violence Injunction Statewide Verification System and a Domestic, Dating, Sexual and Repeat Violence Injunction Statewide System (Systems) within the Florida Department of Law Enforcement (FDLE). The Systems require the FDLE to maintain a statewide communication system to electronically transmit information on protective injunctions to and between criminal justice agencies. Sections 741.30(8)(b), and 784.046(80(b), F.S.
[36] Sections 741.30(8)(c)2., and 784.046(8)(c)2., F.S.
[37] Section 119.071(2)(j)1., F.S.
[38] The language authorizing a petitioner to submit his or her address in a separate confidential filing is contained in the actual petition form provided in sections 741.30(3)(b) and 784.046(4)(b), F.S.
[39] Section 741.403, F.S. Victims of stalking or aggravated stalking are also eligible to receive the benefit of the Address Confidentiality Program (s. 741.4651, F.S.).

> [a]n adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated [to] apply to the Attorney General to have an address designated by the Attorney General serve as the person's address or the address of the minor or incapacitated person.[40]

An application must include all of the following:

- A sworn statement by the applicant that the applicant has good reason to believe that the applicant, minor, or incapacitated person is a victim of domestic violence in fear of his or her safety.
- A designation of the Attorney General as agent for purposes of service of process and receipt of mail.
- The mailing address where the applicant can be contacted by the Attorney General and the phone number or numbers where the applicant can be called by the Attorney General.
- A statement that the new address that the applicant requests must not be disclosed as disclosure will increase the risk of domestic violence.
- The signature of the applicant and any person who assisted with the application, including the date of signature.[41]

A public records exemption for the Address Confidentiality Program makes exempt from disclosure addresses, telephone numbers, and social security numbers of program participants.[42] A limited exception authorizes disclosure of the information:

- To a law enforcement agency to assist in executing a valid arrest warrant;
- If directed by a court order, including to a person identified in the order; or
- After the exemption has been cancelled.[43]

The public records exemption under the Program also protects contact information for participants maintained by the supervisor of elections in voter registration and voting records. An exception is provided for disclosure to:

- A law enforcement agency to assist in serving an arrest warrant; or
- A person identified in a court order, if directed by the court order.[44]

The Office of the Attorney General provides training on the availability of the Address Confidentiality Program to local governments and non-profit organizations. The office estimates that it has trained individuals from approximately 100 local entities or organizations.[45]

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[40] Section 741.403(1), F.S.
[41] Section 741.403(1)(a) through (e), F.S.
[42] Section 741.465(1), F.S.
[43] *Id*.
[44] Section 741.465(2), F.S.
[45] The Office of the Attorney General notes that 1,274 victims of domestic violence, stalking, or aggravated stalking have participated in the Program. Under the Program, participants may use a mailing address established by the office. Mail received at the office for a participant is diverted to the Office of Victim Services, which then forwards the mail to an address of the participant. Once a person qualifies to participate, based on the office finding a reasonable belief that domestic violence, stalking, or aggravated stalking has occurred, the person may receive services for up to 4 years. After that time, the person may reapply for another 4-year eligibility. Phone conference with Rob Johnson and Andrew Fay, Office of the Attorney General (Nov. 28, 2016).

Automated Process for the Clerk of the Court

In 2011, the Legislature required the Florida Association of Court Clerks and Comptrollers to establish, subject to available funding, an automated process to provide notice to a petitioner that the injunction for protection has been served on the respondent.[46] Once the automated process is established, the petitioner may request an automated notice that that protective injunction has been served on the respondent. The notice will be sent within 12 hours after service and will include the date, time, and location where the officer served the injunction.

In 2012, the Legislature created a public records exemption relating to the automated process to protect the petitioner's contact information listed on the request to receive an automated notice.[47] The specific information protected from disclosure includes the petitioner's:

- Home or telephone number;
- Home or employment address;
- Electronic mail address; or
- Other electronic means of identification.[48]

The exemption protects the contact information from disclosure for 5 years.

In its statement of public necessity justifying the exemption, the Legislature explained that the contact information,

> if publicly available, could expose the victims of domestic violence, repeat violence, sexual violence, and dating violence to public humiliation and shame and could inhibit the victim from availing herself or himself of relief provided under state law. Additionally … it could be used by the partner or former partner of the victim of domestic violence, repeat violence, sexual violence, or dating violence to determine the location of the victim, thus placing the victim in jeopardy.[49]

In keeping with the required Open Government Sunset Review Act, the public records exemption will repeal on October 2, 2017, unless the Legislature saves the exemption through reenactment before that time.[50]

III. Effect of Proposed Changes:

This bill is based on a review by the staff of the Senate Judiciary Committee of public records exemptions that are scheduled to repeal on October 2, 2017. The exemptions protect from public disclosure the contact information of a petitioner who requests an automated notice of the service of an injunction for protection against domestic violence, or repeat, sexual, or dating violence.

Because the Florida Association of Court Clerks and Comptrollers has not fully developed and implemented the automated notification system, the need for the exemptions cannot be fully

[46] Chapter 2011-187 (CS/CS HB 563); Sections 741.30(8)(c)5.a., and 784.046(8)(c)5.a., F.S.
[47] Chapter 2012-154, L.O.F. (HB 1193).
[48] Sections 741.30(8)(c)5.b., and 784.046(8)(c)5.b., F.S.
[49] Chapter 2012-154, L.O.F.
[50] Section 119.15(3), F.S.

evaluated at this time consistent with the requirements of the Open Government Sunset Review Act. Accordingly, the bill extends by 2 years the repeal date of the public records exemptions provided in ss. 741.30(8)(c)5.b. and 784.046(8)(c)5.b., F.S., which are scheduled to repeal on October 2, 2017.

By extending the repeal of the exemptions for 2 years, the continued need for the exemptions will be reviewed again before the 2019 Legislative Session.

The bill takes effect October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

This bill continues a current exemption but does not expand the scope of an existing public records exemption. Therefore, a simple majority vote of the members present and voting in each house of the Legislature is required for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Current law requires automated notice to be provided to a petitioner who has requested notification within 12 hours after the law enforcement officer has served the injunction upon the respondent.[51] Representatives from the clerks of the court and the Sheriffs Association indicate that the 12-hour requirement may be impossible to meet, given that a delay exists between the time a law enforcement officer serves a respondent and delivers a copy of the served petition to the clerk. Moreover, if a law enforcement officer serves an injunction just before the weekend, a clerk may not be able to input the information on the Comprehensive Case Information System until the following week. These potential causes of delays in providing notifications may be resolved with the activation of the CCIS, particularly if law enforcement agencies are granted access to the system to upload notice that an injunction has been served, which will then cause an automated notice to be sent to the petitioner. If law enforcement agencies are not given access to CCIS, the Legislature may wish to revise the 12-hour requirement after the CCIS is implemented.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 741.30 and 784.046.

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.

[51] Sections 741.30(8)(c)5.a., and 784.046(8)(c)5.a., F.S., provide, "The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent."

FOR CONSIDERATION By the Committee on Judiciary

590-02630-17 20177028pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending ss. 741.30 and 784.046, F.S.; extending the repeal dates for exemptions from public records requirements for personal identifying and location information of a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, and dating violence and other court actions related to the injunction held by clerks of the court and law enforcement agencies; providing an effective date.

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

Section 1. Paragraph (c) of subsection (8) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5.a. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. When a petitioner makes a request for notification, the clerk must apprise the petitioner of her or his right to request in writing that the information specified in sub-subparagraph b. be held

exempt from public records requirements for 5 years. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

b. Upon implementation of the automated process, information held by clerks and law enforcement agencies in conjunction with the automated process developed under sub-subparagraph a. which reveals the home or employment telephone number, cellular telephone number, home or employment address, electronic mail address, or other electronic means of identification of a petitioner requesting notification of service of an injunction for protection against domestic violence and other court actions related to the injunction for protection is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, upon written request by the petitioner. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this sub-subparagraph. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, <u>2019</u> ~~2017~~, unless reviewed and saved from repeal through reenactment by the Legislature.

6. Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2.

That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 2. Paragraph (c) of subsection (8) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence or changes or vacates an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court must forward a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner.

2. Within 24 hours after service of process of an injunction for protection against repeat violence, sexual violence, or dating violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence, sexual violence, or dating violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5.a. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against repeat violence, sexual violence, or dating violence was served. When a petitioner makes a request for notification, the clerk must apprise the petitioner of her or his right to request in writing that the information specified in sub-subparagraph b. be held exempt from public records requirements for 5 years. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

b. Upon implementation of the automated process, information held by clerks and law enforcement agencies in conjunction with the automated process developed under sub-subparagraph a. which reveals the home or employment telephone number, cellular telephone number, home or employment address,

electronic mail address, or other electronic means of identification of a petitioner requesting notification of service of an injunction for protection against repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, upon written request by the petitioner. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this sub-subparagraph. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019 ~~2017~~, unless reviewed and saved from repeal through reenactment by the Legislature.

6. Within 24 hours after an injunction for protection against repeat violence, sexual violence, or dating violence is lifted, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff or local law enforcement agency receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 3. This act shall take effect July 1, 2017.

CourtSmart Tag Report

Room: EL 110 **Case No.:** **Type:**
Caption: Senate Judiciary Committee **Judge:**

Started: **3/28/2017 3:04:15 PM**
Ends: **3/28/2017 4:19:16 PM** **Length: 01:15:02**

3:04:14 PM Meeting called to order by Chair Steube
3:04:18 PM Roll call by Administrative Assistant Joyce Butler
3:04:21 PM Quorum present
3:04:47 PM SB 1094 presented by Senator Gainer
3:06:10 PM Carolyn Ketchel, Okaloosa County Board of Commissioners waives in support
3:06:24 PM Comment by Senator Benacquisto
3:07:03 PM Senator Gainer waives closure
3:07:10 PM Roll call on SB 1094 by Administrative Assistant Joyce Butler
3:07:23 PM SB 1094 reported favorably
3:07:37 PM SB 46 presented by Senator Montford
3:07:59 PM Amendment Barcode No. 252732 presented
3:09:13 PM Amendment Barcode No. 252732 adopted
3:09:18 PM Jason Weisser, Attorney waives in support
3:09:27 PM Senator Montford waives closure
3:09:31 PM Roll call on CS/SB 46 by Administrative Assistant Joyce Butler
3:09:38 PM CS/SB 46 reported favorably
3:09:55 PM CS/SB 340 presented by Senator Brandes
3:10:30 PM Chair Benacquisto calls Amendment Barcode No. 914002
3:11:12 PM Substitute Amendment Barcode No. 374516 presented
3:11:36 PM Amendment Barcode No. 374516 adopted
3:11:55 PM Andrew Hosek, Americans for Prosperity waives in support
3:12:02 PM Ryan Patmintra, Tampa Bay Partnership waives in support
3:12:13 PM Logan McFaddin waives in support
3:12:19 PM Andrew Vila waives in support
3:12:27 PM Speaker Senator Ellyn Bogdanoff, Florida Taxi Association
3:14:16 PM Christopher Emmanuel, Florida Chamber of Commerce waives in support
3:14:23 PM Teye Reeves, AIF waives in support
3:14:26 PM Samantha Sexton, Personal Insurance Federation of Florida waives in support
3:14:29 PM Lisa Waters waives in opposition
3:14:42 PM Tim Auborg, LYFT waives in support
3:14:51 PM Liz Reynolds, National Association of Mutual Insurance Companies waives in support
3:14:56 PM Justin Day, Hillsborough County Aviation Authority waives in support
3:15:01 PM James Taylor, Florida Technology Council waives in support
3:15:09 PM Speaker Leonard VinaPando, Broward County
3:16:32 PM Cesar Fernandez, Uber waives in support
3:16:37 PM Speaker Rick Templin, Florida AFL-CIO
3:19:04 PM Christian Camara, R Street Institute waives in support
3:19:10 PM Caroline Joiner, TechNet waives in support
3:19:18 PM Speaker Megan Sirjane-Samples, Florida League of Cities
3:19:51 PM Slater Bayliss, TechNet waives in support
3:20:29 PM Senator Brandes waives closure
3:20:36 PM Roll call on CS/SB 340 by Administrative Assistant Joyce Butler

3:20:47 PM CS/CS/SB 340 reported favorably
3:21:03 PM SB 590 presented by Senator Brandes
3:23:13 PM Question from Senator Powell
3:23:19 PM Response by Senator Brandes
3:24:01 PM Follow-up question from Senator Powell
3:24:13 PM Response by Senator Brandes
3:24:46 PM Follow-up question from Senator Powell
3:24:51 PM Response by Senator Brandes
3:25:50 PM Question from Senator Gibson
3:25:57 PM Response by Senator Brandes
3:26:33 PM Follow-up question from Senator Gibson
3:26:45 PM Response by Senator Brandes
3:26:59 PM Speaker Andrea Reid, The Florida Bar Family Law Section
3:30:46 PM Question from Senator Thurston
3:31:47 PM Response by Ms. Reid
3:31:50 PM Follow-up question from Senator Thurston
3:31:55 PM Response by Ms. Reid
3:32:01 PM Question from Senator Gibson
3:32:31 PM Response by Ms. Reid
3:33:22 PM Follow-up question from Senator Gibson
3:34:42 PM Response by speaker Andrea Reid
3:35:44 PM Follow-up question from Senator Gibson
3:36:40 PM Response by speaker Andrea Reid
3:37:16 PM Follow-up question from Senator Gibson
3:37:39 PM Response by Ms. Reid
3:38:29 PM Question from Senator Benacquisto
3:38:42 PM Response by Ms. Reid
3:38:46 PM Follow-up question from Senator Benacquisto
3:38:57 PM Question from Senator Mayfield
3:39:20 PM Response by Ms. Reid
3:39:55 PM Question from Senator Gibson
3:40:57 PM Response by Ms. Reid
3:41:47 PM Mark Anderson, Non-Custodial Parent Employment Program waives in support
3:42:35 PM Debate by Senator Flores
3:43:13 PM Debate by Senator Thurston
3:44:35 PM Debate by Senator Mayfield
3:45:11 PM Senator Brandes closes on CS/SB 590
3:46:14 PM Roll call on CS/SB 590 by Administrative Assistant Joyce Butler
3:47:14 PM CS/SB 590 reported favorably
3:47:34 PM CS/SB 582 presented by Senator Latvala
3:49:03 PM Amendment Barcode No. 686042 presented
3:50:44 PM Amendment Barcode No. 686042 adopted
3:50:54 PM Stephen Winn, Florida Osteopathic Medication Association waives in support
3:50:59 PM Chris Hansen, Florida Podiatric Medical Association waives in support
3:51:07 PM Jennifer Green, Florida Institute of CPAs waives in support
3:51:18 PM David Daniel, Florida Association of Professional Employer Organizations waives in support
3:51:26 PM Suzanne Graham. Florida Home Builders Association waives in support
3:51:32 PM Barney Bishop, Florida Smart Justice Alliance waives in support
3:51:46 PM Senator Latvala waives close on CS/SB 582
3:51:56 PM Roll call on CS/SB 582 by Administrative Assistant Joyce Butler
3:52:00 PM CS/SB 582 reported favorably

3:52:21 PM CS/SB 1588 presented by Senator Latvala
3:53:31 PM Senator Latvala waives close on CS/SB 1588
3:53:38 PM Roll call on CS/SB 1588 by Administrative Assistant Joyce Butler
3:53:48 PM CS/SB 1588 reported favorably
3:54:11 PM SPB 7028 presented by Cindy Brown, Committee Analyst
3:55:37 PM Senator Benacquisto moves that SPB 7028 be reported as Committee Bill
3:55:51 PM Roll call on SPB 7028 by Administrative Assistant Joyce Butler
3:56:02 PM SPB 7028 reported favorably as Committee Bill
3:56:17 PM SB 748 presented by Senator Steube
3:56:57 PM Question from Senator Gibson
3:57:26 PM Response by Senator Steube
3:58:03 PM Follow-up question from Senator Gibson
3:59:03 PM Response by Senator Steube
3:59:26 PM Follow-up question from Senator Gibson
3:59:44 PM Response by Senator Steube
4:00:43 PM Amendment Barcode No. 412596 presented by Senator Steube
4:01:09 PM Amendment Barcode No. 412596 adopted
4:01:19 PM Question from Senator Thurston
4:01:26 PM Response by Senator Steube
4:01:35 PM Follow-up question from Senator Thurston
4:01:52 PM Response by Senator Steube
4:02:10 PM Follow-up question from Senator Thurston
4:02:34 PM Response by Senator Steube
4:03:35 PM Question from Senator Powell
4:03:42 PM Response by Senator Steube
4:04:04 PM Follow-up question from Senator Powell
4:04:10 PM Response by Senator Steube
4:05:05 PM Question from Senator Gibson
4:05:38 PM Response by Senator Steube
4:06:51 PM Follow-up question from Senator Gibson
4:07:51 PM Response by Senator Steube
4:09:12 PM Speaker Honorable Scott Bernstein, Conference of Circuit Judges of Florida in opposition
4:13:59 PM Debate by Senator Thurston
4:15:59 PM Debate by Senator Gibson
4:16:13 PM Senator Steube closes on CS/SB 748
4:16:34 PM Roll call on CS/SB 748 by Administrative Assistant Joyce Butler
4:17:35 PM CS/SB 748 reported favorably
4:18:20 PM SB 262 Temporarily Postponed
4:18:35 PM SB 646 Temporarily Postponed
4:18:45 PM Senator Mayfield shows in the affirmative on CS/SB 46 and SB 1094
4:19:00 PM Senator Garcia shows in the affirmative on CS/SB46, CS/CS/SB 340 and SB 1094
4:19:08 PM Senator Benacquisto moves to adjourn