

Tab 1	SB 12 by Steube; (Similar to CS/CS/H 06519) Relief of O'Brien and Stephenson by Department of Transportation					
Tab 2	CS/CS/SJR 134 by EE, CA, Artiles; (Similar to CS/CS/CS/H 00721) Selection and Duties of County Sheriff					
Tab 3	CS/SB 200 by CF, Passidomo (CO-INTRODUCERS) Torres; (Similar to CS/CS/H 00363) Temporary Respite Care of a Child					
596794	D	S	RCS	JU, Passidomo	Delete everything after	04/19 06:47 PM
Tab 4	CS/SB 744 by RI, Passidomo; (Compare to CS/CS/H 00653) Community Associations					
845968	D	S	RCS	JU, Passidomo	Delete everything after	04/19 06:47 PM
432334	AA	S	RCS	JU, Passidomo	Delete L.756 - 785:	04/19 06:47 PM
484612	AA	S	RCS	JU, Passidomo	Delete L.1278 - 1740.	04/19 06:47 PM
Tab 5	CS/SB 1046 by CA, Passidomo; (Similar to CS/CS/CS/H 00735) Covenants and Restrictions					
Tab 6	SB 1164 by Passidomo; (Similar to CS/H 01271) Construction					
Tab 7	SB 634 by Campbell (CO-INTRODUCERS) Garcia, Mayfield; (Identical to H 00645) Involuntary Examinations Under the Baker Act					
Tab 8	SB 1160 by Bradley (CO-INTRODUCERS) Passidomo; (Similar to CS/CS/H 01325) Elections					
Tab 9	CS/SB 1352 by GO, Young; (Similar to CS/CS/H 01225) Division of Administrative Hearings					
655586	A	S	RCS	JU, Young	Delete L.146 - 179:	04/19 06:47 PM
Tab 10	CS/SB 1520 by RI, Latvala; (Similar to CS/H 07055) Termination of a Condominium Association					
Tab 11	CS/SB 1044 by CF, Garcia (CO-INTRODUCERS) Campbell; (Similar to CS/CS/H 01121) Child Welfare					
819136	D	S	RCS	JU, Garcia	Delete everything after	04/19 06:47 PM
Tab 12	SB 1370 by Perry; (Similar to CS/CS/H 00937) Lottery Games					
665466	A	S	RCS	JU, Perry	Delete L.15 - 28:	04/19 06:47 PM
Tab 13	SB 294 by Bracy; (Compare to CS/CS/H 00653) Condominium, Cooperative, and Homeowners' Associations					
740772	D	S	RCS	JU, Bracy	Delete everything after	04/19 06:47 PM
Tab 14	CS/SB 970 by CJ, Bracy; (Similar to CS/CS/CS/H 01167) Trust Fund for Victims of Human Trafficking and Prevention/Department of Legal Affairs					
Tab 15	CS/SB 972 by CJ, Bracy; (Similar to CS/CS/CS/H 01165) Victims of Human Trafficking					
271152	A	S	RCS	JU, Bracy	btw L.141 - 142:	04/19 06:47 PM
273830	A	S	RCS	JU, Steube	btw L.154 - 155:	04/19 06:47 PM
Tab 16	CS/SB 150 by CJ, Steube (CO-INTRODUCERS) Baxley, Passidomo, Artiles, Mayfield; (Similar to CS/H 00477) Controlled Substances					
152060	A	S	RCS	JU, Bracy	Delete L.2233 - 2234:	04/19 06:47 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Steube, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Wednesday, April 19, 2017

TIME: 1:30—3:30 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 12 Artilles (Similar CS/CS/H 6519)	Relief of O'Brien and Stephenson by Department of Transportation ; Providing for the relief of Amie Draiemann O'Brien, individually and as personal representative of the Estate of Christian Darby Stephenson, deceased, and for the relief of Hailey Morgan Stephenson and Christian Darby Stephenson II, as surviving minor children of the decedent; providing an appropriation to compensate them for the wrongful death of Christian Darby Stephenson, which was due in part to the negligence of the Department of Transportation, etc. SM JU 04/19/2017 Favorable ATD AP	Favorable Yeas 7 Nays 0
2	CS/CS/SJR 134 Ethics and Elections / Community Affairs / Artilles (Similar CS/CS/HJR 721, Compare HJR 87, CS/HJR 187, HJR 271, HJR 571, HJR 1129, SJR 130, SJR 132, CS/SJR 136, SJR 138)	Selection and Duties of County Sheriff; Proposing an amendment to the State Constitution to remove authority for a county charter or special law to provide for choosing a sheriff in a manner other than by election or to alter the duties of the sheriff or abolish the office of the sheriff, etc. CA 02/21/2017 Fav/CS EE 03/28/2017 Fav/CS JU 04/04/2017 Temporarily Postponed JU 04/19/2017 Temporarily Postponed RC	Temporarily Postponed
3	CS/SB 200 Children, Families, and Elder Affairs / Passidomo (Similar CS/CS/H 363)	Temporary Respite Care of a Child; Authorizing qualified nonprofit organizations to establish programs to provide temporary respite care for children; authorizing a volunteer respite family to enter into a contract for care to provide temporary respite care for a child, etc. CF 04/03/2017 Fav/CS JU 04/19/2017 Fav/CS RC	Fav/CS Yeas 6 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, April 19, 2017, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 744 Regulated Industries / Passidomo (Compare CS/CS/H 653, H 6027, S 294)	Community Associations; Authorizing an association to adopt rules for posting certain notices on a website; revising voting requirements relating to alterations and additions to certain common elements or association property; revising provisions relating to required condominium and cooperative association bylaws; prohibiting a board member from voting via e-mail, etc. RI 03/28/2017 Fav/CS JU 04/19/2017 Fav/CS RC	Fav/CS Yeas 7 Nays 0
5	CS/SB 1046 Community Affairs / Passidomo (Similar CS/CS/H 735, S 318)	Covenants and Restrictions; Citing specified provisions as the "Marketable Record Title Act"; revising the notice filing requirements for a person claiming an interest in land and other rights; authorizing the parcel owners of a community not subject to a homeowners' association to use specified procedures to revive certain covenants or restrictions, subject to certain exceptions and requirements; providing recording requirements for an association, etc. CA 04/03/2017 Fav/CS JU 04/19/2017 Favorable RC	Favorable Yeas 7 Nays 0
6	SB 1164 Passidomo (Similar CS/H 1271)	Construction; Providing that a right of action founded on the design, planning, or construction of an improvement to real property does not pass to subsequent purchasers of the real property when purchased as-is; requiring a claimant and not the claimant's attorney or agent to sign the notice of claim; specifying mediation requirements under certain circumstances before a claimant may reject a settlement offer, etc. JU 04/19/2017 Temporarily Postponed CA RC	Temporarily Postponed
7	SB 634 Campbell (Identical H 645, Compare H 7011, CS/S 1756)	Involuntary Examinations Under the Baker Act; Authorizing physician assistants and advanced registered nurse practitioners to execute a certificate under certain conditions stating that he or she has examined a person and finds the person appears to meet the criteria for involuntary examination, etc. HP 03/14/2017 Favorable CF 04/03/2017 Favorable JU 04/19/2017 Favorable RC	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, April 19, 2017, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1160 Bradley (Similar CS/H 1325, Compare CS/H 105, S 954)	Elections; Requiring a candidate to provide a money order or cashier's check drawn upon his or her campaign account to the filing officer if not qualifying by petition; prohibiting an elected official from being designated as a poll watcher; modifying and clarifying provisions governing the canvassing of vote-by-mail ballots, etc. EE 04/04/2017 Favorable JU 04/19/2017 Favorable RC	Favorable Yeas 6 Nays 0
9	CS/SB 1352 Governmental Oversight and Accountability / Young (Similar CS/H 1225, Compare H 1389)	Division of Administrative Hearings; Revising positions at the division that are exempt from the Career Service System; requiring the chief administrative law judge to appoint administrative law judges; requiring the chief administrative law judge to appoint administrative law judges from nominees recommended by a statewide nominating commission, etc. GO 04/03/2017 Fav/CS JU 04/19/2017 Fav/CS AP	Fav/CS Yeas 6 Nays 2
10	CS/SB 1520 Regulated Industries / Latvala (Similar CS/H 7055, Compare CS/CS/H 653)	Termination of a Condominium Association; Requiring a plan of termination to be approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation and meet specified requirements for a condominium form of ownership to be terminated for all or a portion of the condominium property under certain circumstances; specifying that a plan of termination is presumed to be accepted if notice is not provided within the specified timeframe, etc. RI 04/04/2017 Fav/CS JU 04/19/2017 Favorable RC	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, April 19, 2017, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	CS/SB 1044 Children, Families, and Elder Affairs / Garcia (Similar CS/CS/H 1121, Compare CS/CS/H 23, CS/CS/S 570, S 1400)	Child Welfare; Providing that central abuse hotline information may be used for employment screening of residential group home caregivers; requiring a court to inquire as to the identity and location of a child's legal father at the shelter hearing; requiring a court to consider maltreatment allegations against a parent in an evidentiary hearing relating to a dependency petition; requiring a court to conduct under oath the inquiry to determine the identity or location of an unknown parent after the filing of a termination of parental rights petition; providing a requirement for an identification card for certified unaccompanied or homeless youth, etc. CF 03/13/2017 Fav/CS JU 04/19/2017 Fav/CS AP	Fav/CS Yeas 8 Nays 0
12	SB 1370 Perry (Similar CS/H 937)	Lottery Games; Requiring contracts entered into between the Department of the Lottery and a vendor or retailer of lottery tickets to include a provision that requires the vendor or retailer place or print a specified warning on all lottery tickets, etc. RI 04/04/2017 Favorable JU 04/19/2017 Fav/CS RC	Fav/CS Yeas 5 Nays 3
13	SB 294 Bracy (Compare CS/CS/H 653, H 6027, CS/S 744)	Condominium, Cooperative, and Homeowners' Associations; Requiring associations to meet specified financial reporting requirements if they fail to provide unit owners or members with requested financial information; providing that associations that fail to provide such information may not exercise a specified reporting option for a specified period, etc. RI 04/04/2017 Favorable RI 04/06/2017 JU 04/19/2017 Fav/CS RC	Fav/CS Yeas 7 Nays 0
14	CS/SB 970 Criminal Justice / Bracy (Similar CS/CS/CS/H 1167, Compare CS/CS/CS/H 1165, Linked CS/S 972)	Trust Fund for Victims of Human Trafficking and Prevention/Department of Legal Affairs ; Creating the Trust Fund for Victims of Human Trafficking and Prevention within the Department of Legal Affairs; providing for future review and termination or re- creation of the trust fund, etc. CJ 04/03/2017 Temporarily Postponed CJ 04/17/2017 Fav/CS JU 04/19/2017 Favorable AP	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, April 19, 2017, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	CS/SB 972 Criminal Justice / Bracy (Similar CS/CS/CS/H 1165, Compare CS/CS/CS/H 1167, CS/H 1417, Linked CS/S 970, CS/S 1788)	Victims of Human Trafficking; Creating the "Civil Action for Victims of Human Trafficking and Prevention of Human Trafficking Act"; creating a civil cause of action for victims of human trafficking, or for the Statewide Council on Human Trafficking on their behalfes, against a trafficker or facilitator; requiring the council to issue an annual report to the Legislature which includes specified information, by a specified date, etc. CJ 04/03/2017 Temporarily Postponed CJ 04/17/2017 Fav/CS JU 04/19/2017 Fav/CS AP	Fav/CS Yeas 7 Nays 0
16	CS/SB 150 Criminal Justice / Steube (Similar CS/H 477, Compare CS/H 505, CS/H 641, CS/S 290, CS/S 1002)	Controlled Substances; Providing that certain emergency responders and crime laboratory personnel may possess, store, and administer emergency opioid antagonists; adding certain synthetic opioid substitute compounds to the list of Schedule I controlled substances; revising the substances that constitute the offenses of trafficking and capital trafficking in, and capital importation of, hydrocodone and oxycodone; revising the mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified, etc. CJ 04/03/2017 Fav/CS JU 04/19/2017 Fav/CS AP	Fav/CS Yeas 7 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
2/1/17	SM	Favorable
4/19/17	JU	Favorable
	ATD	
	AP	

February 1, 2017

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

Re: **SB 12** – Senator Frank Artiles
HB 6519 – Representative Bob Cortes
Relief of Amie Draiemann O'Brien

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$1,116,940 AGAINST THE DEPARTMENT OF TRANSPORTATION ARISING OUT OF A MOTOR VEHICLE CRASH IN JACKSONVILLE IN 2000 THAT KILLED CHRIS STEPHENSON.

CURRENT STATUS:

On December 11, 2006, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 34 (2007). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with an amendment. That report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, James Knudson. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have

significantly altered the findings or recommendation in the previous report.

According to counsel for the claimant, no substantial changes have occurred since the hearing. Counsel for the claimant, in a letter dated December 13, 2016, detailed the current status of Amie Draiemann (Stephenson) O'Brian and the two surviving children, Hailey and Christian, II. They reside in Knoxville, Tennessee where Amie Draiemann O'Brien works as a teacher's assistant tutoring children with disabilities at the school her children attend. Amie is also attending Tusculum College to attain her bachelor's degree in Psychology. Hailey Stephenson, age 18, is a freshman at Tusculum College and has a part-time job at Dick's Sporting Goods. Christian Stephenson, age 16, is a high-school sophomore and plays high-school basketball. Counsel for the claimants' asserts that the family members continue to need therapy.

The prior claim bill, SB 34 (2007) had provided an appropriation from the General Revenue Fund to the Department of Transportation to Amie Draiemann Stephenson of \$1,092,040, plus taxable costs. On December 2, 2011, a subsequent Senate special master issued a Final Report that adopted the findings of the 2006 Final Report and recommended two amendments to a subsequent version of this claim bill, SB 62 (2012), which were not adopted because that bill was not heard in a Senate committee. These amendments, are incorporated into the claim bill filed for the 2017 Legislative Session.

The bill apportions damages between Mr. Stephenson's estate, his wife, and two children in the amounts awarded in the jury verdict. The jury verdict specifically apportioned damages of \$404,575.65 to Mr. Stephenson's estate (36.22 percent of the award), \$237,454.78 to Amie Draiemann O'Brien (21.26 percent), \$311,212.04 to Hailey Stephenson (27.86 percent), and \$163,697.53 to Christian Stephenson, II. (14.66 percent). The claim bill limits attorney fees, lobbying fees, costs, and other similar expenses to 25 percent of the award, which is \$279,253.00.

Based on the forgoing and the absence of new developments that might justify altering the prior special master's findings, I recommend SB 12 FAVORABLY.

SPECIAL MASTER'S FINAL REPORT – SB 12

February 1, 2017

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Respectfully submitted,

James Knudson
Senate Special Master

cc: Secretary of the Senate

Attachment



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

DATE	COMM	ACTION
12/2/11	SM	Fav/1 amendment

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 70** – Senator Michael S. Bennett
Relief of Amie Draiemann Stephenson (O'Brien)

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$1,092,040 AGAINST THE DEPARTMENT OF TRANSPORTATION ARISING OUT OF A MOTOR VEHICLE CRASH IN JACKSONVILLE IN 2000 THAT KILLED CHRIS STEPHENSON.

FINDINGS OF FACT:

On August 12, 2000, 29-year-old Christian D. Stephenson was killed when he lost control of the gas tanker that he was driving and crashed on the Hart Bridge Expressway in Jacksonville. The truck exploded in the crash, and Mr. Stephenson burned to death in the fire.

The posted speed limit on the portion of the expressway where the crash occurred was 45 MPH. Mr. Stephenson was traveling in excess of the speed limit (perhaps as fast as 60 MPH) at the time of the crash, according to the eye witnesses and experts who testified at the trial.

The road was wet, and it was raining at the time of the crash. However, it was not raining as heavily at the time of the crash as it had been in the hour or so preceding the crash.

Mr. Stephenson was traveling in the left lane of the road, following closely behind a jeep driven by Jason Keiffer.

Unbeknown to Mr. Keiffer or Mr. Stephenson, there was a large pool of standing water in the left lane of the road. The water was estimated to be 300 feet long and 6 to 9 inches deep at its deepest point. The cause of the standing water was a clogged drainage basin in the median.

Mr. Keiffer hit the water and lost control of his jeep. Mr. Stephenson swerved to the right to miss Mr. Keiffer's jeep. That maneuver sent him in the direction of the safety zone in which three other vehicles were sitting. In order to miss those vehicles, Mr. Stephenson steered further to the right down an exit ramp where his truck hit a guardrail, flipped over, and burst into flames.

The three vehicles sitting in the safety zone were a City of Jacksonville police car, a car driven by Shana Williams, and a news van driven by Douglas Lockwood. Ms. Williams and Mr. Lockwood had each hit the water and lost control of their vehicles shortly before the crash involving Mr. Stephenson. The police car was driven by Lt. David Vanaman, who had just responded to the scene to assist Ms. Williams and Mr. Lockwood about the time that Mr. Stephenson lost control of his truck.

The Department of Transportation (DOT) is responsible for maintaining the drainage basins along the Hart Bridge Expressway. After the crash, DOT maintenance supervisor Alex Slaughter was called to the scene.

Mr. Slaughter called for the assistance of a vacuum truck to suck up the standing water and clean up the drainage basin. The vacuum truck was able to suck up all of the water on the road, but it was unable to unclog the drainage basin. As a result, it was necessary for Mr. Slaughter and three other DOT maintenance employees to climb down into the drainage basin and remove by hand the materials clogging the drain. The materials removed from the drainage basin included various items of trash and what was described at trial as a large rubber or plastic flap. It took the four DOT employees two hours to remove all of the materials in the drainage basin. Approximately one cubic yard of debris was removed.

No evidence was presented as to when DOT had last inspected and/or cleaned out the drainage basin. Mr. Slaughter testified that the materials removed from the

drainage basin had likely accumulated over 6 to 8 months. The plaintiffs' expert, Jerome Thomas, testified that the debris had likely been accumulating for several years. Mr. Thomas's estimate is more reasonable in light of the length of time that it took the DOT employees to unclog the drainage basin after the crash, the amount of debris removed, and the evidence of prior flooding at the site.

This was not the first time that the water had accumulated on the road in this location as a result of the clogged drainage basin. Several witnesses testified about seeing standing water at that location, and there had been several prior crashes, including one involving a City of Jacksonville fire truck, in which drivers lost control of their vehicles after hitting the water. However, there was no evidence that these accidents were reported to DOT, or that DOT had actual knowledge of the flooding caused by the clogged drain at this location.

Mr. Stephenson was survived by his wife, Amie, and two children, Hailey and Christian, II. Hailey (now 13) was 2 years old at the time of Mr. Stephenson's death. Christian, II (now 11), was born several months after Mr. Stephenson's death. Amie and Hailey both spent time in counseling after Mr. Stephenson's death. Christian is reportedly experiencing behavioral and emotional problems as a consequence of never having met his father.

Amie is a stay-at-home mom. She last worked outside the home in 1998, which was about the time that Hailey was born. Amie has moved on with her life. She married Kevin O'Brien, Mr. Stephenson's best friend, in October 2005. They have a daughter together.

Amie received approximately \$325,000 from various sources after Mr. Stephenson's death. That amount included \$104,581.34 in workers' compensation death benefits; a \$5,000 funeral benefit from Mr. Stephenson's insurer, State Farm; a \$100,000 uninsured motorist settlement from State Farm; a \$10,000 settlement of a suit against Mr. Keiffer; a \$10,000 settlement of a suit against the City of Jacksonville; \$22,000 in donations through a charity fund established by a local hospital where Mr. Stephenson's mother worked; and \$75,000 in life insurance. These funds are in addition to the \$175,100 paid by DOT in satisfaction of its legal liability for the

judgment in this case, as discussed below. Amie used the money from the charity fund to pay off the family's debts and purchase furniture for a new home. There is a statutory lien on the workers' compensation benefits, which will be paid from the proceeds of the claim bill.

In addition to the lump sum payments referenced above, Amie received Social Security survivor benefits of approximately \$700 per month until the time that she married Mr. O'Brien. Hailey and Chris, II, continue to receive survivor benefits. It was reported at the Special Master hearing that each child receives benefits of \$917 per month, and that the benefits will continue until the children turn 18.

Amie testified at the Special Master hearing that any money she receives from the claim bill will ultimately pass to her children, and not Mr. O'Brien. She confirmed that intent in writing after the hearing. Additionally, Mr. O'Brien submitted a written statement waiving his right to any of the money received by Amie from the claim bill.

DOT reported that it has sufficient funds available in its "unappropriated trust fund balances" to pay the claim, and those funds were suggested by DOT as the appropriate source for payment of this claim if the bill is approved over its objection. Payment of the claim from those funds will not adversely impact DOT's operations or any particular work program.

LEGAL PROCEEDINGS:

In 2001, Amie, as personal representative of Mr. Stephenson's estate, filed suit against DOT, the City of Jacksonville, Multimedia Holdings Corporation (Mr. Lockwood's employer), Ms. Williams, and Mr. Keiffer, in circuit court in Jacksonville. A two-week jury trial was held in March 2005.

Prior to trial, the court entered summary judgment in favor of Multimedia and Ms. Williams. Those rulings were affirmed on appeal, and judgments were subsequently entered in favor of Ms. Williams (\$21,599 in attorney's fees and \$1,887.07 in costs) and Multimedia (\$5,148 in attorney's fees). Those judgments remain unsatisfied and are against Mr. Stephenson's estate, which has not yet been closed. It is

expected that the judgments will be paid out of the proceeds from the claim bill that are paid to the estate.

Summary judgment was also entered in favor of Mr. Keiffer prior to the trial. The claimants' appeal of that ruling was dismissed after Mr. Keiffer agreed to pay \$10,000 to settle the suit against him. A \$10,000 pre-trial settlement was also reached with the City of Jacksonville.

As a result of the pre-trial rulings and settlements, the case proceeded to trial with DOT as the only defendant. The jury found DOT negligent and apportioned 36 percent of the negligence for Mr. Stephenson's death to DOT. The jury apportioned the remaining 64 percent of the negligence to Mr. Stephenson. The jury awarded a total of \$3,589,000, broken down as follows:

Damages to Mr. Stephenson's estate	\$1,300,000
Damages to Amie	\$763,000
Damages to Hailey	\$1,000,000
Damages to Chris, II	\$526,000

After the award was reduced to reflect Mr. Stephenson's comparative fault, a final judgment was entered against DOT for \$1,292,040.

The final judgment reserved jurisdiction to award costs against DOT. A cost judgment was never entered because the parties agreed that the amount of trial-related costs was roughly equivalent to the amount that would be offset against the judgment for the collateral sources received by Amie after Mr. Stephenson's death.

DOT did not appeal the final judgment. Amie appealed the final judgment, but the appeal was voluntarily dismissed because according to the claimants' attorney, Amie would not have been able emotionally to go through another trial in the event that the judgment was reversed on appeal.

DOT paid \$175,100 to the claimants in satisfaction of its legal liability under the judgment. The remainder of the \$200,000 available under the sovereign immunity cap was paid to the company that owned the truck Mr. Stephenson was driving which was destroyed in the crash. The "outstanding balance" of the judgment against DOT is \$1,117,940.

The claimants only received approximately \$26,000 of the \$175,100 paid by DOT, with approximately \$8,500 going to Amie, approximately \$11,300 going to Hailey, and approximately \$5,900 going to Christian, II. None of the initial payment went to Mr. Stephenson's estate. The remainder of the initial payment went to attorney's fees, costs, and the repayment of a loan taken out by the claimants.

The claimants' attorney reports that there are approximately \$320,000 of billed and unbilled costs and expenses which remain outstanding. Some of those expenses relate to post-trial matters, but the bulk of the expenses relate to the investigation and trial of the case.

CLAIMANT'S ARGUEMENTS:

DOT was negligent by failing to keep the drainage basin free of debris, which caused water to overflow onto the road creating an unsafe condition that led to Mr. Stephenson's death.

DOT had at least constructive notice of the dangerous condition created by the clogged drainage basin as a result of prior crashes at the location caused by standing water.

The jury verdict against DOT should be given full effect.

RESPONDENT'S ARGUMENTS:

DOT did not have actual notice of the clogged drainage basin or the resulting dangerous roadway condition.

The clogged drain was not caused by months or years of accumulated debris, but rather by the large rubber or plastic flap that somehow got into the drainage basin.

The primary cause of the crash that killed Mr. Stephenson was his own negligence, namely his excessive speed for the wet road conditions that existed at the time of the crash.

CONCLUSIONS OF LAW:

DOT had a duty to maintain the drainage basin so that it did not become clogged and create an unsafe roadway condition. Although DOT argued that its decisions as to where drainage basins are located and how and when they are inspected are planning level decisions entitled to sovereign immunity, it conceded that its duty to properly maintain a particular drainage basin is an operational level decision for which

sovereign immunity has been partially waived by section 768.28, Florida Statutes.

DOT breached its duty, as evidenced by the fact that there was no evidence when the drainage basin was last cleaned out, and the fact that it took four DOT employees a total of two hours to remove the cubic yard of debris that had accumulated in the drainage basin. DOT's argument that the drainage basin became clogged because of a "freak event" (i.e., the rubber or plastic flap) was not persuasive in light of the amount of debris removed from the drainage basin after the crash and the evidence of prior crashes caused by standing water in the same location.

DOT's negligence was a proximate cause of Mr. Stephenson's death because but for the standing water in the roadway caused by the clogged drainage basin, Mr. Keiffer would not have lost control of his jeep causing Mr. Stephenson to take the evasive action that ultimately led to his death.

Mr. Stephenson's own negligence also contributed to his death because he was speeding at the time of his crash despite the wet road conditions, and he may have also been following Mr. Keiffer's jeep too closely. Accordingly, the jury's apportionment of fault between DOT and Mr. Stephenson is reasonable and appropriate.

The damages awarded by the jury are reasonable as well. Dr. Patricia Pacey, the expert who testified at trial for the claimants, calculated the economic damages of Mr. Stephenson's death to be approximately \$1.8 million. DOT's expert came to a similar amount. The jury awarded \$1.3 million to Mr. Stephenson's estate for economic damages. The remaining \$2.2 million of the verdict were non-economic damages apportioned amongst Amie, Hailey, and Christian, II.

The trial court did not enter a cost judgment against DOT, and it did not adjust the jury verdict to take into account collateral sources of recovery by Mr. Stephenson's family.

The evidence presented at the Special Master hearing establishes that, consistent with the agreement of the parties at the trial level, the costs incurred by the claimants are

roughly equivalent to, and off-set, the collateral-source payments received by the claimants.

LEGISLATIVE HISTORY:

This is the sixth year that this claim has been presented to the Legislature. The bills filed in 2007 (SB 34), 2008 (SB 62), 2009 (SB 22), 2010 (SB 32), and 2011 (SB 30) were not referred to committee.

ATTORNEYS FEES:

The bill states that "attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act." (Emphasis supplied). This limitation is within the authority and discretion of the Legislature. See *Gamble v. Wells*, 450 So. 2d 850 (Fla. 1984); *Noel v. Schlesinger*, 984 So. 2d 1265 (Fla. 4th DCA 2008).

The claimants' attorney provided an affidavit stating that in accordance with s. 768.28(8), F.S., attorney's fees related to this claim will be capped at 25 percent of the amount awarded in the bill. The lobbyist's fee is 6 percent of amount awarded in the bill, and according to lobbyist's affidavit, the lobbyist's fee is "included within the 25 percent attorney fee cap."

There are approximately \$320,000 of outstanding costs and expenses. Those costs will not come out of the claimants' portion of the bill as a result of the bill language quoted above.

SPECIAL ISSUES:

This Final Report was written by Special Master T. Kent Wetherell, II, who conducted the claim bill hearing on this matter in December 2006. Having reviewed the case, the undersigned has elected to adopt Special Master Wetherell's report and recommendations, with minor editorial changes to the text.

One amendment to the bill is needed. The fourth whereas clause erroneously states that the jeep was traveling towards Mr. Stephenson's tanker truck. This clause should be amended to conform to the undisputed evidence that Mr. Stephenson's tanker truck was following the jeep.

Other amendments might be desirable. First, the last "whereas" clause in the bill states that the amount subject to being awarded pursuant to this act is \$1,092,040, which will be the unpaid balance of the final judgment after DOT has paid the claimants \$200,000 under the sovereign immunity

cap. To date, DOT has not paid the claimants the full \$200,000. Instead, DOT paid \$25,000 to the company that owned the truck which was destroyed in the fire and \$175,000 to the claimants. Given that the bill seeks payment of \$1,092,040, which is the amount of the judgment less \$200,000, it appears that the claimants anticipate DOT will pay them the \$25,000 balance due under the cap without the compulsion of this legislation—or that they have abandoned the pursuit of this sum. If these assumptions are incorrect, the claimants should seek to amend the bill, to reflect that the "outstanding balance" against DOT is \$1,117,940, and to correct the "whereas" clause accordingly.

Second, the bill contemplates a single lump sum payment to Amie, as personal representative of Mr. Stephenson's estate, even though the jury verdict specifically apportioned damages between Mr. Stephenson's estate (36.22 percent of the award), Amie (21.26 percent), Hailey (27.86 percent), and Christian, II. (14.66 percent). Amie testified at the Special Master hearing (and the claimants' attorney confirmed in a written submittal this year) that she has no objection to the children's shares of the claim bill being specifically earmarked for them. It was suggested, however, that the children's shares of the claim bill should be paid into a trust since they are minors. The claimants should consider seeking an amendment to the bill that would provide for the allocation of the proceeds as follows: \$404,575.65 to Mr. Stephenson's estate; \$237,454.78 to Amie; \$311,212.04 in trust for Hailey; and \$163,697.53 in trust for Christian, II.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 62 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Michael S. Bennett
Debbie Brown, Interim Secretary of the Senate
Counsel of Record



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location

402 Senate Office Building

Mailing Address

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

DATE	COMM	ACTION
12/2/11	SM	Fav/1 amendment

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 70** – Senator Michael S. Bennett
Relief of Amie Draiemann Stephenson (O'Brien)

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$1,092,040 AGAINST THE DEPARTMENT OF TRANSPORTATION ARISING OUT OF A MOTOR VEHICLE CRASH IN JACKSONVILLE IN 2000 THAT KILLED CHRIS STEPHENSON.

FINDINGS OF FACT:

On August 12, 2000, 29-year-old Christian D. Stephenson was killed when he lost control of the gas tanker that he was driving and crashed on the Hart Bridge Expressway in Jacksonville. The truck exploded in the crash, and Mr. Stephenson burned to death in the fire.

The posted speed limit on the portion of the expressway where the crash occurred was 45 MPH. Mr. Stephenson was traveling in excess of the speed limit (perhaps as fast as 60 MPH) at the time of the crash, according to the eye witnesses and experts who testified at the trial.

The road was wet, and it was raining at the time of the crash. However, it was not raining as heavily at the time of the crash as it had been in the hour or so preceding the crash.

Mr. Stephenson was traveling in the left lane of the road, following closely behind a jeep driven by Jason Keiffer. Unbeknown to Mr. Keiffer or Mr. Stephenson, there was a large pool of standing water in the left lane of the road. The water was estimated to be 300 feet long and 6 to 9 inches deep at its deepest point. The cause of the standing water was a clogged drainage basin in the median.

Mr. Keiffer hit the water and lost control of his jeep. Mr. Stephenson swerved to the right to miss Mr. Keiffer's jeep. That maneuver sent him in the direction of the safety zone in which three other vehicles were sitting. In order to miss those vehicles, Mr. Stephenson steered further to the right down an exit ramp where his truck hit a guardrail, flipped over, and burst into flames.

The three vehicles sitting in the safety zone were a City of Jacksonville police car, a car driven by Shana Williams, and a news van driven by Douglas Lockwood. Ms. Williams and Mr. Lockwood had each hit the water and lost control of their vehicles shortly before the crash involving Mr. Stephenson. The police car was driven by Lt. David Vanaman, who had just responded to the scene to assist Ms. Williams and Mr. Lockwood about the time that Mr. Stephenson lost control of his truck.

The Department of Transportation (DOT) is responsible for maintaining the drainage basins along the Hart Bridge Expressway. After the crash, DOT maintenance supervisor Alex Slaughter was called to the scene.

Mr. Slaughter called for the assistance of a vacuum truck to suck up the standing water and clean up the drainage basin. The vacuum truck was able to suck up all of the water on the road, but it was unable to unclog the drainage basin. As a result, it was necessary for Mr. Slaughter and three other DOT maintenance employees to climb down into the drainage basin and remove by hand the materials clogging the drain. The materials removed from the drainage basin included various items of trash and what was described at trial as a large rubber or plastic flap. It took the four DOT employees

two hours to remove all of the materials in the drainage basin. Approximately one cubic yard of debris was removed.

No evidence was presented as to when DOT had last inspected and/or cleaned out the drainage basin. Mr. Slaughter testified that the materials removed from the drainage basin had likely accumulated over 6 to 8 months. The plaintiffs' expert, Jerome Thomas, testified that the debris had likely been accumulating for several years. Mr. Thomas's estimate is more reasonable in light of the length of time that it took the DOT employees to unclog the drainage basin after the crash, the amount of debris removed, and the evidence of prior flooding at the site.

This was not the first time that the water had accumulated on the road in this location as a result of the clogged drainage basin. Several witnesses testified about seeing standing water at that location, and there had been several prior crashes, including one involving a City of Jacksonville fire truck, in which drivers lost control of their vehicles after hitting the water. However, there was no evidence that these accidents were reported to DOT, or that DOT had actual knowledge of the flooding caused by the clogged drain at this location.

Mr. Stephenson was survived by his wife, Amie, and two children, Hailey and Christian, II. Hailey (now 13) was 2 years old at the time of Mr. Stephenson's death. Christian, II (now 11), was born several months after Mr. Stephenson's death. Amie and Hailey both spent time in counseling after Mr. Stephenson's death. Christian is reportedly experiencing behavioral and emotional problems as a consequence of never having met his father.

Amie is a stay-at-home mom. She last worked outside the home in 1998, which was about the time that Hailey was born. Amie has moved on with her life. She married Kevin O'Brien, Mr. Stephenson's best friend, in October 2005. They have a daughter together.

Amie received approximately \$325,000 from various sources after Mr. Stephenson's death. That amount included \$104,581.34 in workers' compensation death benefits; a \$5,000 funeral benefit from Mr. Stephenson's insurer, State Farm; a \$100,000 uninsured motorist settlement from State

Farm; a \$10,000 settlement of a suit against Mr. Keiffer; a \$10,000 settlement of a suit against the City of Jacksonville; \$22,000 in donations through a charity fund established by a local hospital where Mr. Stephenson's mother worked; and \$75,000 in life insurance. These funds are in addition to the \$175,100 paid by DOT in satisfaction of its legal liability for the judgment in this case, as discussed below. Amie used the money from the charity fund to pay off the family's debts and purchase furniture for a new home. There is a statutory lien on the workers' compensation benefits, which will be paid from the proceeds of the claim bill.

In addition to the lump sum payments referenced above, Amie received Social Security survivor benefits of approximately \$700 per month until the time that she married Mr. O'Brien. Hailey and Chris, II, continue to receive survivor benefits. It was reported at the Special Master hearing that each child receives benefits of \$917 per month, and that the benefits will continue until the children turn 18.

Amie testified at the Special Master hearing that any money she receives from the claim bill will ultimately pass to her children, and not Mr. O'Brien. She confirmed that intent in writing after the hearing. Additionally, Mr. O'Brien submitted a written statement waiving his right to any of the money received by Amie from the claim bill.

DOT reported that it has sufficient funds available in its "unappropriated trust fund balances" to pay the claim, and those funds were suggested by DOT as the appropriate source for payment of this claim if the bill is approved over its objection. Payment of the claim from those funds will not adversely impact DOT's operations or any particular work program.

LEGAL PROCEEDINGS:

In 2001, Amie, as personal representative of Mr. Stephenson's estate, filed suit against DOT, the City of Jacksonville, Multimedia Holdings Corporation (Mr. Lockwood's employer), Ms. Williams, and Mr. Keiffer, in circuit court in Jacksonville. A two-week jury trial was held in March 2005.

Prior to trial, the court entered summary judgment in favor of Multimedia and Ms. Williams. Those rulings were affirmed on appeal, and judgments were subsequently entered in favor of

Ms. Williams (\$21,599 in attorney's fees and \$1,887.07 in costs) and Multimedia (\$5,148 in attorney's fees). Those judgments remain unsatisfied and are against Mr. Stephenson's estate, which has not yet been closed. It is expected that the judgments will be paid out of the proceeds from the claim bill that are paid to the estate.

Summary judgment was also entered in favor of Mr. Keiffer prior to the trial. The claimants' appeal of that ruling was dismissed after Mr. Keiffer agreed to pay \$10,000 to settle the suit against him. A \$10,000 pre-trial settlement was also reached with the City of Jacksonville.

As a result of the pre-trial rulings and settlements, the case proceeded to trial with DOT as the only defendant. The jury found DOT negligent and apportioned 36 percent of the negligence for Mr. Stephenson's death to DOT. The jury apportioned the remaining 64 percent of the negligence to Mr. Stephenson. The jury awarded a total of \$3,589,000, broken down as follows:

Damages to Mr. Stephenson's estate	\$1,300,000
Damages to Amie	\$763,000
Damages to Hailey	\$1,000,000
Damages to Chris, II	\$526,000

After the award was reduced to reflect Mr. Stephenson's comparative fault, a final judgment was entered against DOT for \$1,292,040.

The final judgment reserved jurisdiction to award costs against DOT. A cost judgment was never entered because the parties agreed that the amount of trial-related costs was roughly equivalent to the amount that would be offset against the judgment for the collateral sources received by Amie after Mr. Stephenson's death.

DOT did not appeal the final judgment. Amie appealed the final judgment, but the appeal was voluntarily dismissed because according to the claimants' attorney, Amie would not have been able emotionally to go through another trial in the event that the judgment was reversed on appeal.

DOT paid \$175,100 to the claimants in satisfaction of its legal liability under the judgment. The remainder of the \$200,000

available under the sovereign immunity cap was paid to the company that owned the truck Mr. Stephenson was driving which was destroyed in the crash. The "outstanding balance" of the judgment against DOT is \$1,117,940.

The claimants only received approximately \$26,000 of the \$175,100 paid by DOT, with approximately \$8,500 going to Amie, approximately \$11,300 going to Hailey, and approximately \$5,900 going to Christian, II. None of the initial payment went to Mr. Stephenson's estate. The remainder of the initial payment went to attorney's fees, costs, and the repayment of a loan taken out by the claimants.

The claimants' attorney reports that there are approximately \$320,000 of billed and unbilled costs and expenses which remain outstanding. Some of those expenses relate to post-trial matters, but the bulk of the expenses relate to the investigation and trial of the case.

CLAIMANT'S ARGUEMENTS:

DOT was negligent by failing to keep the drainage basin free of debris, which caused water to overflow onto the road creating an unsafe condition that led to Mr. Stephenson's death.

DOT had at least constructive notice of the dangerous condition created by the clogged drainage basin as a result of prior crashes at the location caused by standing water.

The jury verdict against DOT should be given full effect.

RESPONDENT'S ARGUMENTS: DOT did not have actual notice of the clogged drainage basin or the resulting dangerous roadway condition.

The clogged drain was not caused by months or years of accumulated debris, but rather by the large rubber or plastic flap that somehow got into the drainage basin.

The primary cause of the crash that killed Mr. Stephenson was his own negligence, namely his excessive speed for the wet road conditions that existed at the time of the crash.

CONCLUSIONS OF LAW:

DOT had a duty to maintain the drainage basin so that it did not become clogged and create an unsafe roadway condition. Although DOT argued that its decisions as to where drainage basins are located and how and when they are inspected are

planning level decisions entitled to sovereign immunity, it conceded that its duty to properly maintain a particular drainage basin is an operational level decision for which sovereign immunity has been partially waived by section 768.28, Florida Statutes.

DOT breached its duty, as evidenced by the fact that there was no evidence when the drainage basin was last cleaned out, and the fact that it took four DOT employees a total of two hours to remove the cubic yard of debris that had accumulated in the drainage basin. DOT's argument that the drainage basin became clogged because of a "freak event" (i.e., the rubber or plastic flap) was not persuasive in light of the amount of debris removed from the drainage basin after the crash and the evidence of prior crashes caused by standing water in the same location.

DOT's negligence was a proximate cause of Mr. Stephenson's death because but for the standing water in the roadway caused by the clogged drainage basin, Mr. Keiffer would not have lost control of his jeep causing Mr. Stephenson to take the evasive action that ultimately led to his death.

Mr. Stephenson's own negligence also contributed to his death because he was speeding at the time of his crash despite the wet road conditions, and he may have also been following Mr. Keiffer's jeep too closely. Accordingly, the jury's apportionment of fault between DOT and Mr. Stephenson is reasonable and appropriate.

The damages awarded by the jury are reasonable as well. Dr. Patricia Pacey, the expert who testified at trial for the claimants, calculated the economic damages of Mr. Stephenson's death to be approximately \$1.8 million. DOT's expert came to a similar amount. The jury awarded \$1.3 million to Mr. Stephenson's estate for economic damages. The remaining \$2.2 million of the verdict were non-economic damages apportioned amongst Amie, Hailey, and Christian, II.

The trial court did not enter a cost judgment against DOT, and it did not adjust the jury verdict to take into account collateral sources of recovery by Mr. Stephenson's family.

The evidence presented at the Special Master hearing establishes that, consistent with the agreement of the parties at the trial level, the costs incurred by the claimants are roughly equivalent to, and off-set, the collateral-source payments received by the claimants.

LEGISLATIVE HISTORY:

This is the sixth year that this claim has been presented to the Legislature. The bills filed in 2007 (SB 34), 2008 (SB 62), 2009 (SB 22), 2010 (SB 32), and 2011 (SB 30) were not referred to committee.

ATTORNEYS FEES:

The bill states that "attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act." (Emphasis supplied). This limitation is within the authority and discretion of the Legislature. See *Gamble v. Wells*, 450 So. 2d 850 (Fla. 1984); *Noel v. Schlesinger*, 984 So. 2d 1265 (Fla. 4th DCA 2008).

The claimants' attorney provided an affidavit stating that in accordance with s. 768.28(8), F.S., attorney's fees related to this claim will be capped at 25 percent of the amount awarded in the bill. The lobbyist's fee is 6 percent of amount awarded in the bill, and according to lobbyist's affidavit, the lobbyist's fee is "included within the 25 percent attorney fee cap."

There are approximately \$320,000 of outstanding costs and expenses. Those costs will not come out of the claimants' portion of the bill as a result of the bill language quoted above.

SPECIAL ISSUES:

This Final Report was written by Special Master T. Kent Wetherell, II, who conducted the claim bill hearing on this matter in December 2006. Having reviewed the case, the undersigned has elected to adopt Special Master Wetherell's report and recommendations, with minor editorial changes to the text.

One amendment to the bill is needed. The fourth whereas clause erroneously states that the jeep was traveling towards Mr. Stephenson's tanker truck. This clause should be amended to conform to the undisputed evidence that Mr. Stephenson's tanker truck was following the jeep.

Other amendments might be desirable. First, the last "whereas" clause in the bill states that the amount subject to being awarded pursuant to this act is \$1,092,040, which will be the unpaid balance of the final judgment after DOT has paid the claimants \$200,000 under the sovereign immunity cap. To date, DOT has not paid the claimants the full \$200,000. Instead, DOT paid \$25,000 to the company that owned the truck which was destroyed in the fire and \$175,000 to the claimants. Given that the bill seeks payment of \$1,092,040, which is the amount of the judgment less \$200,000, it appears that the claimants anticipate DOT will pay them the \$25,000 balance due under the cap without the compulsion of this legislation—or that they have abandoned the pursuit of this sum. If these assumptions are incorrect, the claimants should seek to amend the bill, to reflect that the "outstanding balance" against DOT is \$1,117,940, and to correct the "whereas" clause accordingly.

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RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 62 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Michael S. Bennett
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

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402 South Monroe Street
Tallahassee, FL 32399
850-487-5040

**Florida Senate
Office of Senator Frank Artiles- District 40**

Thursday, February 23, 2017

The Honorable Greg Steube
Chairman, Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: SB 12 – Relief of O’Brien and Stephenson by the Department of Transportation

Dear Senator Steube,

I hope this correspondence finds you well.

Please have this letter serve as my formal request to have **SB 12: Relief of O’Brien and Stephenson by the Department of Transportation**, be heard during the next Judiciary Committee Meeting.

The purpose of this legislation is to provide relief for the Estate and named survivors of Christian Darby Stephenson from the Department of Transportation following his death.

Should you have any questions or concerns, please feel free to reach out to my office at any time.

Respectfully,

A handwritten signature in cursive script, appearing to read "Frank Artiles".

Senator Frank Artiles, District 40

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/17

Meeting Date

SB 12

Bill Number (if applicable)

Topic OBrian / Stephensen

Amendment Barcode (if applicable)

Name ~~Attn: Bill~~ Lance Block

Job Title Attorney

Address 5189 Wicketfield

Phone 850-599-1980

Street

Tallahassee FL

City

State

Zip

Email lance@lanceblocklaw.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing

Questions only

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

April 19, 2017

Meeting Date

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

12

Bill Number (if applicable)

Topic Relief of O'Brien & Stephenson by FDOT

Amendment Barcode (if applicable)

Name Mat Forrest

Job Title _____

Address 403 E. Park Ave.

Phone 850-577-0444

Street

Tallahassee

FL

32301

Email mat@ballardfl.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Estate of Christian Stephenson & Amie Stephenson O'Brien

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)

4 / 19 / 2017

Meeting Date

Topic _____

Bill Number 12
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

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/SJR 134

INTRODUCER: Ethics and Elections Committee; Community Affairs Committee; and Senator Artiles and others

SUBJECT: Selection and Duties of County Sheriff

DATE: March 30, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Present	Yeatman	CA	Fav/CS
2. Carlton	Ulrich	EE	Fav/CS
3. Parks	Cibula	JU	Pre-meeting
4. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SJR 134 proposes to amend the Florida Constitution to remove authority for a county charter or special law to provide for choosing a sheriff in a manner other than by election or to alter the duties of the sheriff or abolish the office of the sheriff.

If the joint resolution is adopted and the proposed amendment is approved by the voters, the office of the sheriff will be filled only by vote of the county electors and for terms of 4 years.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The joint resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

II. Present Situation:

Article VIII of the Florida Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties¹ and has the authority to choose to create municipalities.²

¹ Art. VIII, s. 1(a), Fla. Const.

² Art. VIII, s. 2(a), Fla. Const.

Pursuant either to general³ or special law, a consolidated county government may be adopted by charter approved by the county voters. Any county not having a chartered form of consolidated government may, pursuant to the provisions of ss. 125.60-125.64, F.S., locally initiate and adopt by a majority vote of the qualified electors of the county a county home rule charter.⁴ A special constitutional provision provides unique authorization for the Miami-Dade County home rule charter.⁵ Currently, 20 Florida counties have adopted charters.⁶

Charter Commission

Creation of Charter Commission

A charter commission shall be appointed within 30 days after either (a) the adoption of a resolution by the board of county commissioners creating the commission, or (b) the submission of a petition to the county commission signed by at least 15 percent of the qualified electors of a county requesting that a charter commission be established.⁷ The charter commission must be composed of an odd number of not less than 11 nor more than 15 members.⁸ The members of the commission must be appointed by the board of county commissioners of the county or, if so directed in the initiative petition, by the legislative delegation. No member of the Legislature or the board of county commissioners may be a member of the charter commission.⁹

Duties of Charter Commission

The charter commission must meet within 30 days after appointment for organization purposes and must elect a chair and vice chair from its membership.¹⁰ The charter commission must conduct a comprehensive study of county government operations and of the ways in which the county government might be improved or reorganized.¹¹ Within 18 months after its initial meeting, unless such time is extended by resolution of the board of county commissioners, the

³ Section 125.60, F.S.

⁴ *Id.*

⁵ In 1956, an amendment to the 1885 Florida Constitution provided Dade County with the authority to adopt, revise, and amend from time to time a home rule charter government for the county. The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, s. 11(5) of the 1885 State Constitution, now incorporated by reference in art. VIII, s. 6(e), Fla. Const. (1968), further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami-Dade Charter can only be altered through constitutional amendment, general law, or county actions approved by referendum, *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).

⁶ Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. <http://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf>.

⁷ Section 125.61(1), F.S.

⁸ Section 125.61(2), F.S.

⁹ *Id.*

¹⁰ Section 125.62, F.S.

¹¹ Section 125.63, F.S.

charter commission must present a proposed charter to the board of county commissioners.¹² The charter commission must conduct three public hearings at intervals of not less than 10 nor more than 20 days regarding the proposed charter. At the final hearing, the charter commission must incorporate any amendments it deems desirable, vote upon the proposed charter, and forward the charter to the board of county commissioners for the holding of a referendum.¹³

Submission of the Charter to the Voters

Upon submission of the charter to the board of county commissioners, the board must call a special election to determine whether the qualified electors approve the proposed charter.¹⁴ The referendum election must be held not more than 90 nor less than 45 days after the receipt of the proposed charter.¹⁵

If a majority of voters favor the adoption of the proposals in the new charter, the charter becomes effective on January 1 of the next year or at such other time as provided by the charter.¹⁶ Once adopted by the electors, the charter may be amended only by a vote of the county electors.¹⁷ If a majority of voters reject the adoption of the proposals in the new charter, a new referendum may not be held for 2 years following the date of the referendum.¹⁸

After the acceptance or rejection of the proposed charter by the qualified electors, the charter commission is dissolved, and all property of the charter commission becomes property of the county.¹⁹

Differences between Charter Counties and Non-Charter Counties²⁰

Structure

The structure of the government of a non-charter county is specified in the Florida Constitution and in the Florida Statutes. As a result, non-charter counties may only change the structure of county government through amendments to the Florida Constitution or the Florida Statutes. In contrast, the structure of a charter county is specified in the charter as approved by the county's electorate. This flexibility allows a charter county to alter its structure in order to meet the needs of the county.

¹² *Id.*

¹³ *Id.*

¹⁴ Section 125.64(1), F.S.

¹⁵ *Id.*

¹⁶ Section 125.64(2), F.S.

¹⁷ *Id.*

¹⁸ Section 125.64(3), F.S.

¹⁹ Section 125.64(4), F.S.

²⁰ The Florida Association of Counties, *Basic Differences between Charter and Non-Charter Counties* (Mar. 2008), http://www.fl-counties.com/themes/bootstrap_subtheme/sitefinity/documents/basic-differences-between-charter-and-non-charter-counties-pdf-.pdf (last visited Jan. 26, 2017).

Powers of Self-Government

A non-charter county has such powers of self-government as provided by general²¹ or special law.²² Alternatively, a charter county has all powers of self-government *not inconsistent* with general law or special law approved by the county voters.²³ Accordingly, charter counties may take any action as long as it does not conflict with state law, whereas non-charter counties may only do what state law allows them to do.

Initiative, Referendum, and Recall of County Officers

The Florida Statutes do not provide for initiative,²⁴ referendum,²⁵ or recall²⁶ of county officers in a non-charter county. As a result, non-charter counties do not have the power to take these actions. On the other hand, a charter county may provide for initiative, referendum, and recall of county officers in its charter.

Administrative Code

The Florida Statutes do not require an administrative code for non-charter counties. As a result, a non-charter county may not require an administrative code. Conversely, charter counties may require an administrative code in its charter which details all regulations, policies, and procedures.

Utility Taxation

A non-charter county may not levy a utility tax in an unincorporated area of the county. However, a charter county may provide for the levying of such a tax in an unincorporated area of the county.

Special Acts

In a non-charter county, the Legislature can adopt a special act, and it is effective without the approval of the electors. However, in a charter county, a special act adopted by the Legislature is not effective unless the special act is also approved by a vote of the local electorate.

Municipal Ordinances

In a non-charter county, if there is a conflict between a municipal ordinance and a county ordinance, the municipal ordinance prevails within that municipality. On the contrary, an ordinance from a charter county will prevail over a conflicting municipal ordinance if such an instance is provided for in the county charter.

²¹ Ch. 125, Part I, F.S.

²² Art. VIII, s. 1(f), Fla. Const.

²³ Art. VIII, s. 1(g), Fla. Const.

²⁴ Initiative is the ability of citizens to petition to call for a referendum to consider charter revisions.

²⁵ Referendum is the ability of citizens to review and make periodic recommendations for revisions to the charter which are consistent with the petition and charter review requirements stipulated by the charter.

²⁶ Recall is the ability of citizens to remove a county commissioner from office for those reasons consistent with the Florida Statutes and the petition requirements stipulated in the charter.

County Officers Under the Florida Constitution

The Florida Constitution creates five specific county officers: sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court (collectively, the five constitutional offices/officers).²⁷ The clerk of the circuit court also serves as the ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of county funds. Each officer is elected separately by the voters of the county for terms of 4 years. These officers have prescribed duties provided for in general law.²⁸

The five constitutional offices can only be altered through charter provision or by special act approved by the voters of the county.²⁹ All non-charter counties have the five constitutional officers with statutorily prescribed duties. Eight charter counties have changed the manner of selection of at least one of the five constitutional officers or restructured or abolished at least one of the five constitutional offices and transferred the powers to another county office.³⁰

Brevard County (sheriff affected)

Brevard County “expressly preserved” the offices of the sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court as departments of county government, rather than constitutional offices.³¹ The county reiterated the ability to transfer or add to the powers of each of the county officers.³² The county has transferred the powers of the clerk of circuit court as auditor, and custodian of county funds to the county manager.³³ Each officer remains elected for a 4-year term.³⁴

Miami-Dade County (sheriff affected)

Miami-Dade County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections,³⁵ and property appraiser,³⁶ transferred these powers to the mayor, and granted the

²⁷ Art. VIII, s. 1(d), Fla. Const. In a separate subsection, the constitution provides for counties to be governed by a board of county commissioners unless otherwise provided in their respective charters, if any. Art. VIII, s. 1(e), Fla. Const., which is not affected by the joint resolution.

²⁸ See ch. 30, F.S. (setting forth certain duties of the sheriff as a constitutional officer); ch. 197, F.S. (setting forth certain duties of the tax collector as a constitutional officer); ch. 193, Part I, F.S. (setting forth certain duties of the property appraiser as a constitutional officer); ch. 102, F.S. (setting forth certain duties of the supervisor of elections as a constitutional officer); ch. 28, F.S. (setting forth certain duties of the clerk of the circuit court as a constitutional officer).

²⁹ Art. VIII, s. 1(d), Fla. Const.

³⁰ Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia Counties.

³¹ BREVARD COUNTY FLORIDA, Code of Ordinances, Charter, Art. 4, s. 4.1, https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances.

³² BREVARD COUNTY FLORIDA, Code of Ordinances, Charter, Art. 4, ss. 4.2.1, 4.2.2, 4.2.3, 4.2.4 & 4.2.5, https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances.

³³ BREVARD COUNTY FLORIDA, Code of Ordinances, Charter, Art. 2, s. 2.9.4, and Art. 4, s. 4.2.1, and Code of Ordinances, ch. 2, ss. 2-68 & 2-73, https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances.

³⁴ BREVARD COUNTY FLORIDA, Code of Ordinances, Charter, Art. 4, s. 4.1.1, https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances.

³⁵ Referred to in the Miami-Dade Charter as the “supervisor of registration.” See MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.01, https://www.municode.com/library/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

³⁶ Referred to in the Miami-Dade Charter as the “county surveyor.” See MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.01, https://www.municode.com/library/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

mayor the discretion to sub-delegate the powers.³⁷ The duties of the sheriff were transferred to the police department, the director of which is appointed by the mayor.³⁸ The duties of the tax collector were transferred to the department of finance,³⁹ the director of which is jointly appointed by the mayor and the clerk of court.⁴⁰ The county property appraiser, although not retained as a constitutional office, remains an elected position.⁴¹ The duties of the supervisor of elections were transferred to the elections department, the director of which is appointed by the mayor.⁴² The clerk of the circuit court remains a constitutional, elected officer with some changes in duties.⁴³ Although the clerk is still the clerk of the county commission, the clerk's financial recorder and custodian duties were transferred to the department of financial services, and the clerk's auditing duties were transferred to the commission auditor.⁴⁴

Volusia County (sheriff affected)

Volusia County established its charter by special law in 1970,⁴⁵ and the voters of Volusia County subsequently approved it in a special countywide election the same year. Volusia County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections, and property appraiser. The county transferred these offices' powers to new charter offices. The duties of the sheriff were transferred to and divided between the department of public safety and the department of corrections.⁴⁶ The duties of the tax collector were transferred to the department of finance.⁴⁷ The duties of the property appraiser were transferred to the department of property appraisal.⁴⁸ The duties of the supervisor of elections were transferred to the department of elections.⁴⁹ The sheriff, property appraiser, and supervisor of elections are elected directors of

³⁷ MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.01,

https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

³⁸ Historically, the Miami-Dade Police Director was appointed by the county manager. This appointment power was subsequently reallocated to the mayor when the office of county manager was abolished. See Miami-Dade County Florida, Code of Ordinances, ss. 2-91, 2-92 & 1-4.4 https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTXIIMIDEPODE.

³⁹ MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 5.03, Nov. 4, 2014, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH. See also MIAMIDADE.GOV, Miami-Dade County Finance Department, <http://www.miamidade.gov/finance>.

⁴⁰ MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 5.03, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

⁴¹ MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments>.

⁴² Though the Miami-Dade charter and ordinances do not expressly so state, the supervisor of elections is an appointed official. See MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments>.

⁴³ MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments>.

⁴⁴ MIAMIDADE.GOV, Miami-Dade County Finance Department, <http://www.miamidade.gov/finance/>; MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.10, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

⁴⁵ Chapter 70-966, Laws of Fla.

⁴⁶ VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(2), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.

⁴⁷ VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(1), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.

⁴⁸ VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(3), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.

⁴⁹ VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(4), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.

their respective offices.⁵⁰ The tax collector is appointed by the county manager and confirmed by the county council.⁵¹ The clerk of the circuit court remains a constitutionally elected officer except that the clerk's constitutional duties as clerk of the county commission were transferred to and divided between the department of central services and the department of finance.⁵²

Broward County

Broward County has not altered the constitutionally elected offices and duties of the sheriff, property appraiser, and supervisor of elections.⁵³ However, the office of the tax collector was abolished and the duties were transferred to the department of finance and administrative services, headed by the finance and administrative services director appointed by the county administrator.⁵⁴ Though the clerk of the circuit court also retains the status of constitutional officer, the clerk's constitutional duties as clerk of the county commission were transferred to the county administrator.⁵⁵

Clay County

Clay County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.⁵⁶ Although the clerk of the circuit court also retains the status of constitutional officer, the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county administrator.⁵⁷

Duval County

Duval County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.⁵⁸ The clerk of the circuit court retains the status of constitutional officer but the clerk's duties as clerk of the county commission were

⁵⁰ VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 602.1,

https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.

⁵¹ VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 2-111(a),

https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.

VOLUSIA.ORG, Revenue Division-Tax Collection, <http://www.volusia.org/services/financial-and-administrative-services/revenue-services/>.

⁵² CLERK OF THE CIRCUIT COURT, VOLUSIA COUNTY FLORIDA, Overview, <https://www.clerk.org/html/about.aspx#Overview>;

VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1 (1)(b) & (5),

https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.

⁵³ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter, "Definitions,"

https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.

⁵⁴ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter ss. 3.05 & 3.06,

https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.

⁵⁵ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter, "Definitions" & s. 3.03G.,

https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.

⁵⁶ CLAY COUNTY FLORIDA, Home Rule Charter, Article III, s. 3.1, 2014 Edition, <http://www.claycountygov.com/about-us>.

⁵⁷ CLAY COUNTY FLORIDA, Home Rule Charter, Article III, ss. 3.1 & 2.3A.(1)(f), 2014 Edition,

<http://www.claycountygov.com/about-us>.

⁵⁸ JACKSONVILLE FLORIDA, Charter and Related Laws, Part A. ss. 8.01, 9.01, 10.01 & 11.01,

https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA. Duval County currently lacks the authority to alter the methods by which the clerk of the circuit court or the sheriff are elected, nor can the County abolish the offices. Art. VIII, s. 6(e), Fla. Const., (1968), incorporating by reference Art. VIII, s. 9, Fla. Const. (1885, as amended in 1934). The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Florida, adopted pursuant to Art. VIII, s. 9, Fla. Const. (1885).

transferred to the council secretary and the constitutional duties as auditor were transferred to the council auditor.⁵⁹

Orange County

Orange County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser,⁶⁰ and supervisor of elections.⁶¹ Although the clerk of the circuit court also retains the status of constitutional officer,⁶² the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county comptroller.⁶³

Osceola County

Osceola County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.⁶⁴ The clerk of the circuit court retains the status of constitutional officer, but the clerk's duties as clerk of the county commission, auditor, and custodian of funds were transferred to the county manager.

Existing Selection and Removal Procedures for Constitutional Officers in Charter Counties

In addition to whether the five constitutional officers are elected or appointed, some counties provide in their charters for term limits, recall procedures, or the non-partisan election of these officers. While not expressly identified in Art. VIII, s. 1(d) of the Florida Constitution, these additional "selection and removal procedures" could be interpreted as affecting the selection of the five constitutional officers.

There is no constitutional or statutory prohibition limiting the ability of charter counties to impose additional selection and removal procedures on the five constitutional officers. The broad home rule power of counties allows them to act so long as the action taken is not "inconsistent with general law, or . . . special law."⁶⁵ This suggests that counties can currently modify their selection or removal procedures within the existing Art. VIII, s. 1(d), Florida Constitution, framework through charter amendment or special law.⁶⁶

⁵⁹ JACKSONVILLE FLORIDA, Charter and Related Laws, Part A. s. 12.06, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA; JACKSONVILLE FLORIDA, Code of Ordinances, Title II ss. 11.103 & 13.103, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA.

⁶⁰ At one point the county abolished the constitutional offices of sheriff, tax collector, and property appraiser but ultimately reconstituted the constitutional offices. ORANGE COUNTY FLORIDA, Charter, s. 703, https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

⁶¹ ORANGE COUNTY FLORIDA SUPERVISOR OF ELECTIONS, *About the Supervisor*, <http://www.ocfelections.com/aboutbillcowles.aspx>.

⁶² ORANGE COUNTY FLORIDA, Code of Ordinances, Part I s. 2-66, https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

⁶³ ORANGE COUNTY FLORIDA, Code of Ordinances, Part I s. 2-67, https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

⁶⁴ OSCEOLA COUNTY FLORIDA, Home Rule Charter, Article III s. 3.1, https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534.

⁶⁵ Art. VIII, s. 1(g), Fla. Const.

⁶⁶ Current statute and case law also supports this principle. See s. 100.361, F.S. (providing that whether or not a charter county adopts a recall provision, the county may exercise recall authority); *Telli v. Broward County*, 94 So. 3d 504, 512-13.

Term Limits

Three charter counties have imposed term limits on one or more of the five constitutional officers.⁶⁷ Although the imposition of term limits on the five constitutional officers is not constitutionally or statutorily prohibited, or expressly endorsed, the imposition of term limits currently is interpreted to be within the broad home rule power of the charter.⁶⁸

Recall

Five counties have charters expressly providing for the recall of one or more of the five constitutional officers.⁶⁹ Regardless of whether a county charter includes a recall provision, counties have independent statutory authority to conduct a recall of any of the five constitutional officers.⁷⁰

Non-partisan Elections

Seven counties require non-partisan elections for some or all elections of the five constitutional officers.⁷¹ Non-partisan election of the five constitutional officers is neither constitutionally nor statutorily prohibited and is therefore within the broad home rule power of charter counties.⁷²

III. Effect of Proposed Changes:

If the joint resolution is adopted and the proposed amendment is approved by the voters, the resulting limitation on revising the status of the sheriff will have no impact on non-charter counties⁷³ and those charter counties that retained the sheriff without any changes to its selection or authority.⁷⁴ Charter counties that changed the selection or authority of the sheriff will be required to revise their charters and ordinances to conform to the revised constitutional requirement.⁷⁵

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The joint resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

(Fla. 2012) (allowing charter counties to adopt term limits on county commissioners and explicitly overruling a prior case which barred this in the case of the five constitutional officers).

⁶⁷ Duval, Orange, and Sarasota Counties.

⁶⁸ *Telli v. Broward County*, supra at n. 65.

⁶⁹ Brevard, Clay, Duval, Miami-Dade, and Sarasota Counties.

⁷⁰ Section 100.361, F.S.

⁷¹ Lee, Leon, Miami-Dade, Orange, Palm Beach, Polk, and Volusia Counties.

⁷² See Art. III s. 11(a)(1), Fla. Const. (prohibiting the Legislature from enacting special laws which alter local election procedure but excepting charter counties); Ch. 105, F.S. (providing for non-partisan elections and procedure).

⁷³ Baker, Bay, Bradford, Calhoun, Citrus, Collier, DeSoto, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Pasco, Putnam, Santa Rosa, St. Johns, St. Lucie, Sumter, Suwannee, Taylor, Union, Walton, and Washington Counties.

⁷⁴ Alachua, Charlotte, Columbia, Hillsborough, Lee, Leon, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Wakulla Counties.

⁷⁵ Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia Counties.

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

The mandate provisions in Article VII, section 18 of the Florida Constitution do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, section 1 of the Florida Constitution authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

Article XI, section 5(a) of the Florida Constitution and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts use a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”⁷⁶

Article XI, section 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

⁷⁶ *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

C. Government Sector Impact:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

According to the Division, the cost to advertise constitutional amendments for the 2016 primary and general election cycle was \$117.56 per word. Using 2016 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2018 general election could be \$84,643.20, at a minimum. This cost estimate is contingent on multiple amendments needing advertising, as there is an inverse relationship between the price per word and the length of the advertisements. If no other amendments needed to be advertised, the price per word would be significantly higher. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. Total expenses related to constitutional amendment advertising for the 2018 election cycle are likely to be significant, as the 2018 ballot will include amendments placed there by the Constitutional Revision Commission (when the Commission last met in 1998, 13 amendments were placed on the ballot). Amendments can also be placed on the ballot via the initiative petition process, or by a joint resolution of the Florida Legislature, but so far, no amendments have yet made it to the 2018 ballot.

The proposed constitutional amendment would require the affected counties to expend funds to (a) provide for election of a sheriff, and (b) reorganize their governments to accommodate the sheriff's office and responsibilities. The cost to these counties is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If adopted by the Legislature, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose. The next general election in Florida is the gubernatorial election scheduled for November 6, 2018. If approved by the voters, the amendment takes effect on January 8, 2019. As a result, affected charter counties will have just over 2 months to revise their charters and ordinances to conform to this amendment.

VIII. Statutes Affected:

The amendment proposed by this joint resolution, if approved by the electorate and implemented by the Legislature, amends Article VIII, section 1 of the Florida Constitution.

IX. Additional Information:

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

CS/CS by Ethics and Elections on March 28, 2017:

While the committee substitute contains a substantial rewrite of the new language being added as the last sentence of Article VIII, s. 8(1)(d), Fla. Const., there do not appear to be any changes to the legal effect of the bill made by this committee substitute.

CS by Community Affairs on February 21, 2017:

Requires the sheriff to be an elected officer in all counties and retains the charter county and special law options to change the office and duties of the tax collector, the property appraiser, the supervisor of elections, and the clerk of the circuit court.

- B. **Amendments:**

None.

By the Committees on Ethics and Elections; and Community Affairs; and Senators Artiles and Powell

582-03001-17

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Senate Joint Resolution

A joint resolution proposing an amendment to Section 1 of Article VIII of the State Constitution to remove authority for a county charter or special law to provide for choosing a sheriff in a manner other than by election or to alter the duties of the sheriff or abolish the office of the sheriff.

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

That the following amendment to Section 1 of Article VIII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 1. Counties.—

(a) POLITICAL SUBDIVISIONS. The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

(b) COUNTY FUNDS. The care, custody and method of disbursing county funds shall be provided by general law.

(c) GOVERNMENT. Pursuant to general or special law, a county government may be established by charter which shall be adopted, amended or repealed only upon vote of the electors of the county in a special election called for that purpose.

(d) COUNTY OFFICERS. There shall be elected by the electors

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of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, the tax collector, the property appraiser, the supervisor of elections, and the clerk of the circuit court ~~any county officer~~ may be chosen in another manner therein specified, or ~~any county office~~ may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. Notwithstanding subsection (e) of section 6 of this article, a county charter may not abolish the office of the sheriff, transfer the duties of the office of the sheriff to another office, change the length of the term of a sheriff, or establish any manner of selection of a sheriff other than election by the electors of the county.

(e) COMMISSIONERS. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

(f) NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have such power of self-government as is

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provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

(g) CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

(h) TAXES; LIMITATION. Property situate within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas.

(i) COUNTY ORDINANCES. Each county ordinance shall be filed with the custodian of state records and shall become effective at such time thereafter as is provided by general law.

(j) VIOLATION OF ORDINANCES. Persons violating county ordinances shall be prosecuted and punished as provided by law.

(k) COUNTY SEAT. In every county there shall be a county seat at which shall be located the principal offices and permanent records of all county officers. The county seat may not be moved except as provided by general law. Branch offices for the conduct of county business may be established elsewhere in the county by resolution of the governing body of the county

582-03001-17

2017134c2

in the manner prescribed by law. No instrument shall be deemed recorded until filed at the county seat, or a branch office designated by the governing body of the county for the recording of instruments, according to law.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VIII, SECTION 1

SELECTION AND DUTIES OF COUNTY SHERIFF.—Proposing an amendment to the State Constitution to remove authority for a county charter or a special law to provide for choosing a sheriff in a manner other than by election or to alter the duties of the sheriff or abolish the office of the sheriff. The amendment is applicable to all counties and takes effect January 8, 2019, if approved.



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 29, 2017

I respectfully request that **Senate Joint Resolution #134**, relating to the Selection and Duties of County Officers/Sheriff, be placed on the:

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



Senator Frank Artiles
Florida Senate, District 40

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/2017

Meeting Date

CS/CJ
15JR 134

Bill Number (if applicable)

Topic Selection ^{of Duties} of ~~County~~ Sheriff

Amendment Barcode (if applicable)

Name Edward G. Labrador

Job Title Director, Intergovernmental Affairs

Address 115 S. Andrews Avenue, Room 426

Phone (954) 826-1155

Fort Lauderdale FL 33301

City

State

Zip

Email elabrador@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

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

4/19/17

Meeting Date

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

134

Bill Number (if applicable)

Topic Constitutional Officer-Sheriff

Amendment Barcode (if applicable)

Name Arlene Smith

Job Title Legislative Affairs

Address 123 W Indiana Ave
Deland, FL 32720

Phone 386-405-1552

Email asmith@volusia.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing County of Volusia

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

4-19-17

Meeting Date

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

134

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASST COUNTY ATTORNEY

Address 111 NW 1st St 2816

Street

MIAMI

33128

City

State

Zip

Phone 305-979-7110

Email JESS.McCARTY@

MIAMI-DADE.GOV

Speaking: ☐ For ☒ Against ☐ Information

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

Representing MIAMI-DADE 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.

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)

4-19-18

Meeting Date

134

Bill Number (if applicable)

Topic COUNTY OFFICERS-SHERIFF

Amendment Barcode (if applicable)

Name LAURA YOUNANS

Job Title ASSOCIATE DIR. OF PUBLIC POLICY

Address 600 N MONROE ST

Phone _____

Street

TAL

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 ASSOCIATION OF COUNTIES

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)

4/19/2017

Meeting Date

Topic _____

Bill Number 134
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

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 200

INTRODUCER: Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Passidomo and others

SUBJECT: Temporary Respite Care of a Child

DATE: April 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 200 authorizes a qualified, private nonprofit organization (organization) to establish a program, through agreement or certification with a qualified association (association), to assist parents in providing respite care of a child for up to 90 days. Only children who are not part of the child welfare system are eligible for care under this program. The association must develop best practice standards for operating a program that facilitates temporary respite care for children, while the organization will administer the program by matching parents and their children with a volunteer respite family.

The organization must, among other requirements:

- Verify that the Department of Children and Families has conducted required background screenings of persons who will have direct contact with the child, which is a full Level 2 screening for adults and a Level 2 screening without fingerprinting for children who are between 12 to 18 years of age;
- Supervise the volunteer respite family environment;
- Maintain records on each volunteer respite family involved in providing care of children;
- Immediately notify the Department of abuse, neglect, or other maltreatment; and
- Train volunteer respite families.

Contract for Care

The bill authorizes the parent of a minor child to enter into a contract for care with a volunteer respite family. Through signing a contract for care, the parent agrees to delegate certain powers to the volunteer respite family. While both parents (if neither parent has had his or her rights terminated) generally must sign the contract for care before a child may be placed, 1 parent may sign if the parents do not have shared parental responsibility and timesharing of the child. Still, the parent entering into the contract for care must send notice to the other parent's last known address by certified mail with return receipt requested within 5 days after the contract for care is signed.

II. Present Situation:

Safe Families Model

A type of program that matches parents in crisis with a volunteer respite family has been in existence since 2002. The Safe Families for Children (SFFC) program, established by a religious organization, created a model in which parents in crisis without family or other support had a place to go for temporary help without entering the child welfare system.¹ The model involves placing a child with an unpaid volunteer host family, thereby enabling a parent the time and space to deal with a crisis. By temporarily placing the child with a host family, SFFC hopes to reduce the risk of child abuse and neglect, as well as provide a safe place for a child.²

SFFC states that it has three main objectives: child welfare deflection, child abuse prevention, and family support and stabilization.³

Programs based on the SFFC model are active in 70 cities in the U.S., Canada, and the U.K.⁴ SFFC models operate in three Florida areas: Naples, Orlando, and Tampa Bay.⁵ Florida law does not regulate this sort of program.

Liability and Insurance

Should a child become ill or injured while in the care of a SFFC volunteer host family, the host family may have limited personal liability pursuant to the federal Volunteer Protection Act⁶ (VPA) and the Florida Volunteer Protection Act⁷ (FVPA). The VPA provides that a volunteer of a nonprofit organization is not liable for harm caused by his or her act or omission if:

- The volunteer is acting within the scope of his or her responsibilities for the organization; and

¹ Safe Families for Children, available at: <http://safe-families.org/> (last visited April 11, 2017).

² *Id.*

³ Safe Families for Children, Who we help, available at: <http://safe-families.org/about/how-safe-families-works/> (last visited April 11, 2017).

⁴ Safe Families for Children, About Us, available at: <http://safe-families.org/about/> (last visited April 11, 2017).

⁵ Safe Families for Children, Locations, available at: <http://safe-families.org/about/locations> (last visited April 11, 2017).

⁶ Volunteer Protection Act of 1997, 42 U.S.C. s. 14501 et seq.

⁷ Section 768.1355, F.S.

- The harm is not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.⁸

The FVPA also provides immunity from civil liability if the volunteer was acting in good faith within the scope of his or her duties, as an ordinary reasonable person would have acted under the same or similar circumstances, and the harm was not caused by wanton or willful misconduct.⁹ Neither the VPA nor the FVPA provide immunity to the nonprofit organization itself.

Licensure of Out-of-Home Placements

The Department of Children and Families (Department) licenses most out-of-home placements, including family foster homes, residential child-caring agencies (residential group care), and child-placing agencies.¹⁰ The following placements, however, do not require licensure:

- Relative caregivers;
- Non-relative caregivers providing care for up to 90 days¹¹;
- An adoptive home that has been approved by the Department or by a licensed child-placing agency for children placed for adoption; and
- Persons or neighbors who care for children in their homes for less than 90 days.¹²

A licensed out-of-home provider must meet rules and regulations pertaining to:

- The good moral character of personnel and foster parents based on background screening, education, training, and experience requirements;
- Operation, conduct, and maintenance of a home or agency;
- The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served;
- The appropriateness, safety, cleanliness, and general adequacy of the premises, including fire prevention and health standards, to provide physical comfort, care, and well-being of the children served;
- The ratio of staff to children required to provide adequate care and supervision of the children served; and
- In the case of foster homes, the maximum number of children in the home.¹³

These licensure standards are the minimum requirements that must be met to care for children within the child welfare system. The Department must issue a license for those homes and agencies that meet minimum licensure standards.¹⁴

⁸ Volunteer Protection Act of 1997, 42 U.S.C. s. 14503.

⁹ Section 768.1355(1), F.S.

¹⁰ Section 409.175, F.S.

¹¹ Section 409.175(2)(e), F.S.

¹² Section 409.175(1)(d), F.S.

¹³ Section 409.175(5)(a), F.S.

¹⁴ Section 409.176(6)(b), F.S.

Background Screening

Volunteer and Employee Criminal History System

The Volunteer and Employee Criminal History System (VECHS) program, implemented in 1999, is authorized by the National Child Protection Act (NCPA) and s. 943.0542, F.S. The VECHS program provides a means to background screen the employees and volunteers of organizations who work with vulnerable individuals but are not required by law to be background screened. Examples of organizations that may use VECHS are churches and volunteer organizations that are not licensed or contracted by the state but serve children, the elderly, or persons with disabilities.

Through the VECHS program, the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) provide state and national criminal history record information on applicants, employees, and volunteers to qualified organizations (not individuals or state agencies) in Florida. With this criminal history information, the organizations can more effectively screen out those current and prospective volunteers and employees who are not suitable for contact with vulnerable persons.¹⁵

Unlike screenings under the Care Provider Background Screening Clearinghouse in chapter 435, F.S., individuals who are screened through the VECHS program are not actively monitored. The screenings provide a snapshot in time of that particular employee or volunteer's criminal record at the time the screen is completed. Organizations that request a background screening of an individual are not notified of any subsequent arrests or judicial actions.

Level 2 Background Screening

A Level 2 background screening includes but is not limited to fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI).¹⁶ And a Level 2 background screening may include local criminal records checks through local law enforcement agencies.¹⁷ The applicant has fingerprints taken by a vendor that submits the electronic fingerprints to FDLE for the Department. FDLE then runs statewide checks and submits the electronic file to the FBI for national checks.

Once the background screening is completed, and FDLE receives the information from the FBI, the criminal history information is transmitted to the Department. The Department then determines if the screening contains any disqualifying information for employment by ensuring that the applicant has not been arrested for, found guilty, or entered a plea of nolo contendere to a prohibited offense. Prohibited offenses include crimes involving sexual misconduct, murder, assault, kidnapping, arson, exploitation, lewd and lascivious behavior, drugs, and domestic violence.¹⁸ If the person has any of these offenses in his or her history, the Department must disqualify him or her from employment under chapter 435, F.S.

¹⁵ Florida Department of Law Enforcement, Volunteer and Employee Background checks, *available at*: <http://www.fdle.state.fl.us/cms/Background-Checks/VECHS-Home.aspx> (last visited April 11, 2017).

¹⁶ Section 435.04, F.S.

¹⁷ *Id.*

¹⁸ Section 435.04(2), F.S.

III. Effect of Proposed Changes:

This bill would apply to programs such as the Safe Families for Children Program (SFCC). The bill authorizes a qualified, nonprofit organization (organization) to establish a program, through agreement or certification with a qualified association, to assist parents in providing respite care of a child for up to 90 days. Only children who are not part of the child welfare system are eligible for care under this program.

Qualified Association

A qualified association (association) is an association that establishes minimum best practice standards for operating a qualified, nonprofit organization that provides temporary respite care for children. The association must also establish and require compliance with the best practice standards.

Qualified, Nonprofit Organization

A qualified, nonprofit organization is a Florida private nonprofit organization that helps parents find a volunteer respite family to provide temporary child care in their home.

The qualified, nonprofit organization (organization) must:

- Establish its program through agreement or certification with a qualified association;
- Verify that the Department has conducted required background screenings of certain persons;
- Provide supervision of the volunteer respite family environment;
- Maintain records on each volunteer respite family;
- Annually provide information to the Department and make available to the Department or association its records for inspection at any time;
- Provide information to the association showing compliance with best practices;
- Immediately notify the Department of abuse, neglect, or other maltreatment; and
- Train volunteer respite families.

Regarding training, the bill requires a qualified, nonprofit organization to provide training to volunteer respite families on rights, duties, and limits in providing temporary respite care; working with third-party service providers; safety requirements; constructive disciplinary practices; abuse and maltreatment reporting requirements; confidentiality; and engaging in a healthy relationship with the child's parents.

Eligibility of Children

A child is eligible for placement in a temporary respite care program if he or she:

- Has not been removed from the child's parent due to abuse or neglect;
- Is not the subject of an ongoing investigation by the Department for abuse, abandonment, or neglect;
- Has not been the subject of a verified report of abuse, abandonment, or neglect; or
- Is not in the protective supervision of the Department and part of an open court in-home dependency case.

Contract for Care

The bill authorizes the parent of a minor child to enter into a contract for care with a volunteer respite family. Through signing a contract for care, the parent agrees to delegate certain powers regarding the care and custody of the child to the volunteer respite family. The delegation does not change parental rights, obligations, or authority regarding custody, visitation, or support unless determined by a court to be in the best interests of the child. However, parent(s) may separately consent to delegating to the volunteer respite family routine and emergency medical care decisions for the child.

The contract for care must contain:

- A statement that the contract does not deprive the parent any parental rights;
- A statement that the contract may be revoked or withdrawn by a parent at any time;
- Statements addressing basic services and accommodations provided to the child and the needs of the child;
- Identifying and contact information on the child, parent(s), organization, and volunteer respite family;
- A statement on disciplinary procedures;
- A statement on the minimum expected contact between the parent and the child; and
- An expiration date for the contract for care, not to exceed 90 days in duration.

The bill generally requires both parents (if neither parent has had his or her rights terminated) to sign the contract for care with the volunteer respite family before a child may be placed. However, if the parents do not have shared responsibility and timesharing of the child, the parent having sole parental responsibility may enter into the contract without consent of the other parent. Still, the parent entering into the contract for care must send notice to the other parent's last known address by certified mail, return receipt requested, within 5 days after the contract for care is signed.

Other persons who must sign the contract for care are: all members of the volunteer respite family who are 18 years of age or older; the organization representative, and two subscribing witnesses.

Background Screening

Among its other duties, prior to placing a child, a respite care organization must verify that the Department has conducted required background screenings. The bill requires background screening of certain persons with whom a child may come in contact after temporary placement with a volunteer respite family.

The bill requires Level 2 background screening for:

- Employees of the organization who will have direct contact with children; and
- Members of the volunteer respite family who are older than 18 years of age.

Persons residing with, and members of the volunteer respite family who are between 12 and 18 years of age must undergo the heightened checks of a Level 2 background screening, but do not

need to be fingerprinted. This requirement is identical to that required for family members and persons who are between 12 and 18 years of age and living in a foster care home.¹⁹

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The proposed legislation requires a qualified nonprofit organization to complete a criminal history record check on certain individuals. The initial screening will cost \$38.75 per individual, and the retention of fingerprints will cost an annual fee of \$6 per individual.

C. Government Sector Impact:

The Department of Children and Families indicates that the fiscal impact is unknown. However, the fiscal impact of the bill on the Department will be based on the number of background screenings that will result from the bill.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁹ Section 409.175(2)(i), F.S.

²⁰ Department of Children and Families, *2017 Agency Legislative Bill Analysis* (Jan. 6, 2017) (On file with the Senate Judiciary Committee).

VIII. Statutes Affected:

The bill creates s. 409.1761, 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 Committee on April 19, 2017:

The CS:

- Removes a requirement that a temporary respite care organization personally serve a petition for dependency on the parent who does not sign a contract for care.
- Provides that if a parent has sole parental responsibility of a child, he or she may enter into the contract for care but must notify the other parent (if his or her rights have not been terminated) in writing of the name and address of the volunteer respite family.
- Requires the parent entering into the contract for care to send notice to the other parent's last known address by certified mail, return receipt requested, within 5 days after the contract for care is signed.
- Removes the requirement that the standards developed by the association substantially comply with published minimum standards issued by the Department which similar licensed child-caring agencies or family foster homes must meet.
- Specifies that a Level 2 background screening is required for employees of the organization who have direct contact with the children and all members of and persons residing with the volunteer respite family who are 12 years of age and older.
- Requires the contract for care to be made between a child's parents and the respite family rather than the parents and the organization;
- Clarifies that a qualified, nonprofit organization must be in compliance with the best practice standards of the qualified association.
- Removes language that provided that placement of a child with a volunteer respite family without evidence otherwise does not constitute abuse, neglect, or abandonment and is not considered to be a placement of the child in foster care.

CS by Children, Families, and Elder Affairs Committee on April 3, 2017:

- Limits the length of time a child may be in temporary respite care to 90 days;
- Specifies the criteria making a child ineligible for care under this program;
- Expands and clarifies the duties of the qualified nonprofit organization;
- Removes the ability of legal guardians to contract for the care of a child;
- Expands and clarifies contents of a contract for care; and
- Provides for notification to a parent who does not sign a contract for care.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment

Delete everything after the enacting clause
and insert:

Section 1. Section 409.1761, Florida Statutes, is created
to read:

409.1761 Organizations providing temporary respite care for
children not in the child welfare system.—The Legislature finds
that in circumstances in which a parent of a minor child is
temporarily unable to provide care for the child, but does not



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11 need the full support of the child welfare system, a less
12 intrusive alternative to supervision by the department or
13 involvement by the judiciary should be available.

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

15 (a) "Qualified association" means an association that
16 publishes minimum best practice standards for operating a
17 qualified nonprofit organization and establishes and requires
18 compliance with those best practice standards.

19 (b) "Qualified nonprofit organization" or "organization"
20 means a Florida private nonprofit organization that:

21 1. Is in compliance with the best practice standards of a
22 qualified association.

23 2. Assists parents by providing temporary respite care for
24 children through the use of volunteer respite families who are
25 under a contract for care.

26 3. Provides assistance and support to parents and training
27 and support for volunteer respite families.

28 (c) "Temporary respite care" means care provided to a child
29 by a volunteer respite family in their home for a period of time
30 that is not to exceed 90 days in order to provide temporary
31 relief to parents who are unable to care for a child.

32 (d) "Volunteer respite family" means an individual or a
33 family who voluntarily agrees to provide, without compensation,
34 temporary care for a period of time no longer than 90 days for a
35 child under a contract for care with the child's parent with the
36 assistance of a qualified nonprofit organization.

37 (2) ESTABLISHMENT OF THE PROGRAM.—A qualified nonprofit
38 organization may establish a program that assists parents in
39 providing temporary respite care for a child by a volunteer



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respite family.

(a) A child is eligible for the program if he or she:

1. Has not been removed from the child's parent due to abuse or neglect and placed in the custody of the department;

2. Is not the subject of an ongoing department investigation of abuse, abandonment, or neglect;

3. Has not been the subject of a verified report of abuse, abandonment or neglect; or

4. Is not the subject of an open court in-home dependency case and under protective supervision of the department.

(b) The department may refer a child to an organization's program if the department determines that the needs of the child or the needs of the child's parent do not require an out-of-home safety plan pursuant to s. 39.301(9) or other formal involvement of the department and that the child and the child's family may benefit from the temporary respite care and services provided by the organization.

(3) DUTIES OF A QUALIFIED NONPROFIT ORGANIZATION.—A qualified nonprofit organization that provides temporary respite care to children under this section shall:

(a) Establish its program under an agreement or certification with a qualified association.

(b) Verify that the department has conducted background screenings using the level 2 standards for screening under s. 409.175 and chapter 435 of the following persons before such persons have contact with a child:

1. Employees of the organization who will have direct contact with children while assisting parents in providing temporary respite care.



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2. Members of the volunteer respite family and persons residing in the volunteer respite home who are 12 years of age or older. However, members of a volunteer respite family and persons residing in the volunteer respite home who are between the ages of 12 years and 18 years are not required to be fingerprinted but must be screened for delinquency records.

(c) Train all volunteer respite families. The training must include:

1. A discussion of the rights, duties, and limitations in providing temporary respite care for a child;

2. An overview of program processes, including intake triage processes;

3. Working with third-party service providers, including schools and medical professionals;

4. General safety requirements, including the prevention of sudden unexpected death syndrome, proper supervision of children, and water and pool safety;

5. Instruction on appropriate and constructive disciplinary practices, including the prohibition of physical punishment and discipline that is severe, humiliating, or frightening, or is associated with the deprivation of food, rest, or toileting;

6. Abuse and maltreatment reporting requirements, including proper cooperation with the department;

7. Confidentiality; and

8. Building a healthy relationship with a child's parents.

(d) Be solely responsible for ongoing supervision of each child placed with a volunteer respite family.

(e) Maintain records on each volunteer respite family and child served, including, but not limited to:



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1. The name and age of the child;
2. The name, address, telephone number, e-mail address, and
other contact information for the child's parents;
3. The name, address, telephone number, e-mail address, and
other contact information for the child's volunteer respite
family;
4. A copy of the contract for care executed pursuant to
this section; and
5. Proof that the volunteer respite family has met all the
personnel screening requirements conducted by the department
under this section.
(f) Provide the following information to the department on
an annual basis:
1. The name, address, telephone number, e-mail address, and
other contact information of the organization.
2. The name of the organization's director.
3. The names and addresses of the officers and members of
the governing body.
4. The total number of volunteer respite families currently
working with the organization and the total number of children
who were provided temporary respite care in the previous fiscal
year.
5. A copy of its agreement or certification with a
qualified association for the purpose of providing volunteer
respite services pursuant to this section.
(g) Provide the qualified association with data and other
information as required by the qualified association to
demonstrate that the qualified nonprofit organization is in
substantial compliance with the minimum best practice standards



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published by the qualified association.

(h) Immediately notify the department of any suspected or confirmed incident of abuse, neglect, or other maltreatment of a child while in the care of a volunteer respite family.

(i) Make available to the department or qualified association at any time for inspection all records relating to the program and children cared for by the organization's volunteer respite families to ensure compliance with this section and standards established by any entity with which the organization is affiliated.

(4) CONTRACT FOR CARE.—All parents of a child must enter into a written contract with the volunteer respite family for the provision of temporary respite care of the child under this section. The contract for care may not exceed 90 days in duration and may not be extended.

(a) The contract must be executed before a volunteer respite family cares for a child. Under a contract for care, the parent may delegate to the volunteer respite family any of the powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion on the child, or the termination of parental rights regarding the child.

Authorization for the volunteer respite family to consent to routine and emergency medical care on behalf of the parent shall be granted only upon the separate consent of the parent pursuant to s. 743.0645. The contract for care must at a minimum be signed by:

1. The parent or both parents if both parents are living and have shared responsibility and timesharing of the child



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pursuant to law or a court order. If the parents do not have shared responsibility and timesharing of the child, the parent having sole parental responsibility of the child has the authority to enter into the contract for care but shall notify the other parent in writing of the name and address of the volunteer respite family. Such notification must be provided by certified mail, return receipt requested, to the parent without parental responsibility at his or her last known address within 5 days after the contract for care is signed. Notification to a parent whose parental rights have been terminated is not required.

2. All members of the volunteer respite family who are 18 years of age or older.

3. The representative of the organization who assisted with the child's placement with the volunteer respite family.

4. Two subscribing witnesses.

(b) The contract for care must include:

1. A statement that the contract does not deprive the parent of any parental or legal authority regarding the care and custody of the child or supersede a court order regarding the care and custody of the child.

2. A statement that the contract may be revoked or withdrawn at any time by the parent and that custody of the child shall be returned to the parent as soon as reasonably possible.

3. The basic services and accommodations provided by the volunteer respite family and organization.

4. Identification of the child, the parent, and the members of the volunteer respite family, including contact information



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for all parties.

5. Identification of the organization, including contact information for the organization and the representative who assisted with the child's placement.

6. A statement regarding disciplinary procedures that are used by the volunteer respite family and expectations regarding interactions between the volunteer respite family and the child. The statement must identify the child's known behavioral or emotional issues and how such issues are addressed by the child's parent.

7. A statement of the minimum expected frequency of contact between the parent and the child, expectations for the volunteer respite family to facilitate any reasonable request for contact with the child outside of the established schedule, and the minimum expected frequency of contact between the parent and the volunteer respite family to discuss the child's well-being and health.

8. A statement regarding the child's educational needs, including the name and address of the child's school and the names of the child's teachers.

9. A list of extracurricular, religious, or community activities and programs in which the child participates.

10. A list of any special dietary or nutritional requirements of the child.

11. A description of the child's medical needs, including any diagnoses, allergies, therapies, treatments, or medications prescribed to the child and the expectations for the volunteer respite family to address such medical needs.

12. A statement that the volunteer respite family agrees to



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act in the best interests of the child and to consider all
reasonable wishes and expectations of the parent concerning the
care and comfort of the child.

13. A statement that all appropriate members of the
volunteer respite family have successfully met the personnel
screening requirements pursuant to paragraph (3)(b).

14. An expiration date for each contract for care, which
may not exceed 90 days in duration.

15. A statement that the goal of the organization,
volunteer respite family, and parent is to return the child
receiving temporary respite care to the parent as soon as the
situation requiring such care has been resolved.

16. A requirement that the volunteer respite family
immediately notify the parent of the child's need for medical
care.

(c) The parent may revoke or withdraw the contract for care
at any time, and the child shall be returned immediately to the
custody of the parent. A contract for care executed under this
section expires automatically after 90 days and may not operate
to deprive a parent of any parental or legal authority regarding
the care and custody of the child or supersede a court order
regarding the care and custody of the child.

(5) NOTIFICATION REQUIREMENTS.—Any organization that is
registered with a qualified association shall immediately notify
the department if it has in its care:

(a) A child with a serious developmental disability or a
physical, emotional, or mental handicap for which the
organization is not qualified or able to provide care; or

(b) A child who has not been returned to a parent when the



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contract expires.

(6) APPLICABILITY.—Placement of a child under this section without additional evidence does not constitute abandonment, abuse, or neglect, as defined in s. 39.01, and is not considered to be placement of the child in foster care. However, this section does not prevent the department or a law enforcement agency from investigating allegations of abandonment, abuse, neglect, unlawful desertion of a child, or human trafficking.

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

By the Committee on Children, Families, and Elder Affairs; and
Senators Passidomo and Torres

586-03329-17

2017200c1

A bill to be entitled

An act relating to the temporary respite care of a child; creating s. 409.1761, F.S.; providing legislative findings; providing definitions; authorizing qualified nonprofit organizations to establish programs to provide temporary respite care for children; providing duties and recordkeeping requirements for such organizations; providing screening requirements for certain persons; requiring notification to the Department of Children and Families under certain circumstances; authorizing a volunteer respite family to enter into a contract for care to provide temporary respite care for a child; specifying the duration of a contract for care; specifying the form and execution of the contract; authorizing inspection of documents by the department; providing eligibility; authorizing the department to refer a child for such care; providing applicability; providing an effective date.

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

Section 1. Section 409.1761, Florida Statutes, is created to read:

409.1761 Organizations providing temporary respite care for children not in the child welfare system.—The Legislature finds that in circumstances in which a parent of a minor child is temporarily unable to provide care for the child, but does not need the full support of the child welfare system, a less

Page 1 of 10

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

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intrusive alternative to supervision by the department or involvement by the judiciary should be available.

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

(a) "Qualified association" means an association that:

1. Publishes and requires compliance with its standards and files copies thereof with the department as provided in s. 409.176(5)(b); and

2. Establishes, publishes, and requires compliance with best practice standards for operating a program that assists parents in providing temporary respite care for a child by a volunteer respite family.

(b) "Qualified nonprofit organization" or "organization" means a Florida private nonprofit organization that assists parents in providing temporary respite care for a child by a volunteer respite family under an agreement with a qualified association.

(c) "Temporary respite care" means care provided to a child by a volunteer respite family in their home for a period of time that is not to exceed 90 days in order to provide temporary relief to parents who are unable to care for a child.

(d) "Volunteer respite family" means an individual or a family who voluntarily agrees to provide, without compensation, temporary care for a period of time no longer than 90 days for a child under a contract for care with the child's parent with the assistance of a qualified nonprofit organization.

(2) ESTABLISHMENT OF THE PROGRAM.—A qualified nonprofit organization may establish a program that assists parents in providing temporary respite care for a child by a volunteer respite family.

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

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(a) A child is eligible for the program if he or she:
 1. Has not been removed from the child's parent due to abuse or neglect and placed in the custody of the department;
 2. Is not the subject of an ongoing department investigation of abuse, abandonment, or neglect;
 3. Has not been the subject of a verified report of abuse, abandonment or neglect; or
 4. Is not the subject of an open court in-home dependency case and under protective supervision of the department.
 (b) Placement of a child under this section, in the absence of evidence to the contrary, does not constitute abuse, neglect, or abandonment as defined in s. 39.01 and is not considered to be placement of the child in foster care. However, the department may refer a child to an organization's program if the department determines that the needs of the child or the needs of the child's parent do not require an out-of-home safety plan pursuant to s. 39.301(9) or other formal involvement of the department and that the child and the child's family may benefit from the temporary respite care and services provided by the organization.
 (3) DUTIES OF A QUALIFIED NONPROFIT ORGANIZATION.—A qualified nonprofit organization that provides temporary respite care to children under this section shall:
 (a) Establish its program under an agreement or certification with a qualified association.
 (b) Verify that the department has conducted background screenings under s. 409.175 and chapter 435 of the following persons before such persons have contact with a child:
 1. Employees of the organization who will have direct

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contact with children while assisting parents in providing temporary respite care.
 2. Members of the volunteer respite family and persons residing in the volunteer respite home who are 12 years of age or older. However, members of a volunteer respite family and persons residing in the volunteer respite home who are between the ages of 12 years and 18 years are not required to be fingerprinted but must be screened for delinquency records.
 (c) Train all volunteer respite families. The training must include:
 1. A discussion of the rights, duties, and limitations in providing temporary respite care for a child;
 2. An overview of program processes, including intake triage processes;
 3. Working with third-party service providers, including schools and medical professionals;
 4. General safety requirements, including the prevention of sudden unexpected death syndrome, proper supervision of children, and water and pool safety;
 5. Instruction on appropriate and constructive disciplinary practices, including the prohibition of physical punishment and discipline that is severe, humiliating, or frightening, or is associated with the deprivation of food, rest, or toileting;
 6. Abuse and maltreatment reporting requirements, including proper cooperation with the department;
 7. Confidentiality; and
 8. Building a healthy relationship with a child's parents.
 (d) Be solely responsible for ongoing supervision of each child placed with a volunteer respite family.

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(e) Maintain records on each volunteer respite family and child served, including, but not limited to:

1. The name and age of the child;
2. The name, address, telephone number, e-mail address, and other contact information for the child's parents;
3. The name, address, telephone number, e-mail address, and other contact information for the child's volunteer respite family;

4. A copy of the contract for care executed pursuant to this section; and

5. Proof that the volunteer respite family has met all the personnel screening requirements conducted by the department under this section.

(f) Provide the following information to the department on an annual basis:

1. The name, address, telephone number, e-mail address, and other contact information of the organization.

2. The name of the organization's director.

3. The names and addresses of the officers and members of the governing body.

4. The total number of volunteer respite families currently working with the organization and the total number of children who were provided temporary respite care in the previous fiscal year.

5. A copy of its agreement or certification with a qualified association for the purpose of providing volunteer respite services pursuant to this section.

(g) Provide the qualified association with data and other information as required by the qualified association to

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demonstrate that the qualified nonprofit organization is in substantial compliance with the minimum best practice standards published by the qualified association.

(h) Immediately notify the department of any suspected or confirmed incident of abuse, neglect, or other maltreatment of a child while in the care of a volunteer respite family.

(i) Make available to the department or qualified association at any time for inspection all records relating to the program and children cared for by the organization's volunteer respite families to ensure compliance with this section and standards established by any entity with which the organization is affiliated.

(4) CONTRACT FOR CARE.—All parents of a child must enter into a written contract with the qualified association for the provision of temporary respite care of the child under this section. The contract for care may not exceed 90 days in duration and may not be extended.

(a) The contract must be executed before, or at the time, the child is placed with a volunteer respite family and organization. Through the contract for care, the parent may delegate to the volunteer respite family any of the powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion on the child, or the termination of parental rights regarding the child. Authorization for the volunteer respite family to consent to routine and emergency medical care on behalf of the parent shall be granted only upon the separate consent of the parent pursuant to s. 743.0645. The contract for care must at a minimum be

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signed by:

1. The parent or both parents if both parents are living and have shared responsibility and timesharing of the child pursuant to law or a court order. Notification to a parent whose parental rights have been terminated is not required.

2. All members of the volunteer respite family who are 18 years of age or older.

3. The representative of the organization who assisted with the child's placement with the volunteer respite family.

4. Two subscribing witnesses.

(b) The contract for care must include:

1. A statement that the contract does not deprive the parent of any parental or legal authority regarding the care and custody of the child or supersede a court order regarding the care and custody of the child.

2. A statement that the contract may be revoked or withdrawn at any time by the parent and that custody of the child shall be returned to the parent as soon as reasonably possible.

3. The basic services and accommodations provided by the volunteer respite family and organization.

4. Identification of the child, the parent, and the members of the volunteer respite family, including contact information for all parties.

5. Identification of the organization, including contact information for the organization and the representative who assisted with the child's placement.

6. A statement regarding disciplinary procedures that are used by the volunteer respite family and expectations regarding

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interactions between the volunteer respite family and the child. The statement must identify the child's known behavioral or emotional issues and how such issues are addressed by the child's parent.

7. A statement of the minimum expected frequency of contact between the parent and the child, expectations for the volunteer respite family to facilitate any reasonable request for contact with the child outside of the established schedule, and the minimum expected frequency of contact between the parent and the volunteer respite family to discuss the child's well-being and health.

8. A statement regarding the child's educational needs, including the name and address of the child's school and the names of the child's teachers.

9. A list of extracurricular, religious, or community activities and programs in which the child participates.

10. A list of any special dietary or nutritional requirements of the child.

11. A description of the child's medical needs, including any diagnoses, allergies, therapies, treatments, or medications prescribed to the child and the expectations for the volunteer respite family to address such medical needs.

12. A statement that the volunteer respite family agrees to act in the best interests of the child and to consider all reasonable wishes and expectations of the parent concerning the care and comfort of the child.

13. A statement that all appropriate members of the volunteer respite family have successfully met the personnel screening requirements pursuant to paragraph (3)(b).

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233 14. An expiration date for each contract for care, which
 234 may not exceed 90 days in duration.

235 15. A statement that the goal of the organization,
 236 volunteer respite family, and parent is to return the child
 237 receiving temporary respite care to the parent as soon as the
 238 situation requiring such care has been resolved.

239 16. A requirement that the volunteer respite family
 240 immediately notify the parent of the child's need for medical
 241 care.

242 (c) The parent may revoke or withdraw the contract for care
 243 at any time, and the child shall be returned immediately to the
 244 custody of the parent. A contract for care executed under this
 245 section expires automatically after 90 days and may not operate
 246 to deprive a parent of any parental or legal authority regarding
 247 the care and custody of the child or supersede a court order
 248 regarding the care and custody of the child.

249 (d) If all parents do not sign the contract for care, the
 250 organization must, prior to the child's placement with a
 251 voluntary respite family:

252 1. Secure a notarized consent for placement with a
 253 volunteer respite family executed by the parent who did not sign
 254 the contract for care. The Consent for Placement with Volunteer
 255 Respite Family must contain each term set forth in the contract
 256 for care as required in this subsection and an advisory that the
 257 parent may elect to object to the contract for care and take
 258 custody of the child pursuant to the provision of Florida law;
 259 or

260 2. Personally serve the parent who did not sign the
 261 contract for care with a petition for dependency pursuant to

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262 chapter 39 setting forth grounds to establish that the parent
 263 has abandoned, abused, or neglected the child.

264 (5) NOTIFICATION REQUIREMENTS.—Any organization that is
 265 registered with a qualified association shall immediately notify
 266 the department if it has in its care;

267 (a) A child with a serious developmental disability or a
 268 physical, emotional, or mental handicap for which the
 269 organization is not qualified or able to provide care; or

270 (b) A child who has not been returned to a parent when the
 271 contract expires.

272 (6) APPLICABILITY.—Placement of a child under this section
 273 without additional evidence does not constitute abandonment,
 274 abuse, or neglect, as defined in s. 39.01, and is not considered
 275 to be placement of the child in foster care. However, this
 276 section does not prevent the department or a law enforcement
 277 agency from investigating allegations of abandonment, abuse,
 278 neglect, unlawful desertion of a child, or human trafficking.

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



**SENATOR KATHLEEN
PASSIDOMO**
28th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Healthy Policy, *Vice Chair*
Appropriations Subcommittee on Health
and
Human Services
Appropriations Subcommittee on
Transportation,
Tourism, and Economic Development
Commerce and Tourism

SELECT COMMITTEE:
Joint Select Committee on Collective
Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

April 4, 2017

The Honorable Greg Steube, Chair
Committee on Judiciary
Florida Senate
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Steube:

CS/Senate Bill 200, Temporary Respite Care of a Child, has been referred to the Committee on Judiciary. I would appreciate the placing of this bill on the committee agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Passidomo", followed by a horizontal line.

Kathleen C. Passidomo

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

REPLY TO:

- ☐ 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
- ☐ 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

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)

4-19-17
Meeting Date

200
Bill Number (if applicable)

Topic Temporary Respite care of a child

596794
Amendment Barcode (if applicable)

Name Andrew Reid

Job Title Attorney

Address 2300 Gladys Rd Ste 203 E
Street
Boca Raton FL 33431
City State Zip

Phone 561-703-6047

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing 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)

4/19/17
Meeting Date

200
Bill Number (if applicable)

Topic Safe Family Program

Amendment Barcode (if applicable)

Name Mike Cwik

Job Title Pres. Int'l CEO

Address 200 West College Ave
Street

Phone 850-222-5820

Tallahassee FL 32301
City State Zip

Email mike@michaelcwik.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Safe Family Program South West Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4.19.17
Meeting Date

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

200
Bill Number (if applicable)

Topic Respite

Amendment Barcode (if applicable)

Name Victoria Zepp

Job Title Executive Dir, Gov't Affairs

Address 121 N. Monroe St #9007
Street

Phone 888.241.6309

TLH FL 32301
City State Zip

Email Victoria@CLARITY-1.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Coalition for Children

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)

4/19/17
Meeting Date

200
Bill Number (if applicable)

Topic TEMPORARY RESpite CARE of A child

Amendment Barcode (if applicable)

Name AMBER KELLY

Job Title DIRECTOR of POLICY & COMMUNICATION

Address 4853 S ORANGE Ave Phone _____
Street

ORLANDO FL 32806 Email _____
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA FAMILY ~~ACTION~~ ACTION

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)

4/19/17
Meeting Date

200
Bill Number (if applicable)

Topic TEMP RESPIR CANE for a child

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO Box 241644

Phone 813-264-2977

Street
Tampa FL 33694

City State Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA ETHICS & RELIGIOUS LIBERTY COMMISSION

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)

5-19-17

Meeting Date

200

Bill Number (if applicable)

Topic State Family / Repite Care

Amendment Barcode (if applicable)

Name ALAN ABRAMOWITZ

Job Title Director

Address 2574 Colonial Way

Street

Phone 852 41-3232

City

Tallahassee

State

FL

Zip

32311

Email ~~Alan.Abramowitz@msn.com~~ & jadid@msn.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing GAL Program

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)

4/19/2017

Meeting Date

Topic _____

Bill Number 200
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

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 744

INTRODUCER: Judiciary Committee; Regulated Industries Committee; and Senator Passidomo

SUBJECT: Community Associations

DATE: April 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	Fav/CS
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 744 revises requirements for the governance and operation of condominium, cooperative, and homeowners' associations, with the most significant changes pertaining to fire safety systems in condominium and cooperative buildings and financial reporting by condominium and cooperative associations.

The bill no longer automatically permits a condominium or cooperative association having fewer than 50 units to prepare an annual report of cash receipts and expenditures instead of a more thorough type of financial statement. However, the option remains for the associations to vote to do so.

Additionally, the bill no longer requires a condominium or cooperative association having a building 75 feet or less in height to vote to forego retrofitting the building with fire safety systems, such as fire sprinklers. As to taller buildings, two-thirds of the voting interests must vote to forego retrofitting. The bill clarifies that if an association, whether by vote or by statute, is permitted to forego retrofitting a building with a fire sprinkler system, it may also forego retrofitting with an engineered lifesafety system.

Regarding homeowners' and cooperative associations, the bill specifies that the board members of each type of association may communicate by e-mail, but not vote by e-mail. Condominium law already includes a similar provision.

The bill makes several changes affecting the optional termination of a condominium. Specifically, the bill:

- Requires that an optional termination of a condominium be approved by at least 80 percent of a condominium's voting interests, regardless of what the condominium's governing documents would require;
- Decreases the threshold to veto a termination from 10 percent to 5 percent of the voting interests;
- Also, the bill prohibits an optional termination of a condominium created by conversion (such as from an apartment complex) until 10 years after conversion; and
- Increases consumer protections in terminations of condominiums 80-percent-owned by a "bulk owner."

The bill makes several changes that relate only to cooperative associations. The bill strips a director or officer of the board of a cooperative association of his or her post if he or she is more than 90 days delinquent in paying any money due the association. As to associations having more than 10 units, the bill prohibits co-owners of a unit from serving simultaneously on the association's board, unless the co-owners own more than one unit or there are not enough eligible candidates.

II. Present Situation:

Condominiums, Cooperatives, and Homeowners' Associations in General

Condominiums

A condominium is a "form of ownership of real property created pursuant to [chapter 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, [as part of the ownership of] each unit, an undivided share in common [portion of the condominium property]." ¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located. ² The declaration must include the condominium's bylaws, and the declaration functions as the condominium's "constitution," subject to applicable laws. ³ A condominium is administered by a board of directors referred to as a "board of administration." ⁴

Cooperatives

A cooperative is similar to a condominium in many ways. However, a key distinction between the two is the sense in which a person may "own" a unit in a condominium or a cooperative. In a cooperative, a "unit owner" owns a share in the cooperative association, and he or she leases, instead of owns, a unit. ⁵ The cooperative association is the corporation or other legal entity that

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁴ Section 718.103(4), F.S.

⁵ See s. 719.103(26), F.S.

owns the record interest or leasehold of the cooperative's property.⁶ The cooperative association may assess costs for the maintenance of common elements.⁷

Homeowners' Associations

Another legal relationship that may exist between the members of a community is membership in a homeowners' association. A homeowner's association, unlike a condominium association or cooperative, generally exists in a subdivision of single-family homes or in a mobile home community. However, a key legal distinction between homeowners' associations and the other arrangements is that members of a homeowners' association do not necessarily own a share in the common areas of the community, though they will often have to pay to maintain these areas. Indeed, the Florida Statutes authorize homeowners' associations to impose assessments that, if unpaid, may become a lien on the homeowner's property.⁸

Homeowners' associations are administered by an elected board of directors.⁹ The officers and directors of a homeowners' association have a fiduciary relationship to the members who are served by the association.¹⁰ The powers and duties of homeowners' associations include the powers and duties provided in statute¹¹ and in the governing documents of the association, which include the recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.¹²

Statutes Governing Condominiums, Cooperatives, and Homeowner's Associations

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, regulate these associations, along with each association's governing documents. For example, these chapters describe requirements for notices of meetings,¹³ recordkeeping requirements, requirements to make certain records of an association accessible to its members,¹⁴ and financial reporting requirements.¹⁵ Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

Official Records

The Florida Statutes specify those official records that must be maintained by these condominium, cooperative, and homeowners' associations.¹⁶ As a general matter, these records

⁶ Section 719.103(12), F.S.

⁷ See ss. 719.106(1)(g) and 719.107, F.S.

⁸ Section 720.301(9), F.S.

⁹ See ss. 720.303 and 720.307, F.S.

¹⁰ Section 720.303(1), F.S.

¹¹ Chapter 720, Florida Statutes.

¹² See ss. 720.301 and 720.303, F.S.

¹³ See s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.

¹⁴ See s. 718.111(12), F.S., relating to condominiums, s. 719.104(2), F.S., relating to cooperatives, and s. 720.303(4), F.S., relating to homeowners' associations.

¹⁵ See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners' associations.

¹⁶ See s. 718.111(12), F.S., relating to condominium associations, s. 719.104(2), F.S., relating to cooperative associations, and s. 720.303(5), F.S., relating to homeowners' associations.

must be maintained in this state for at least 7 years.¹⁷ Certain of these records must be accessible to the members of an association.

One type of record—bids and contracts—must be maintained for 1 year by cooperative and homeowners' associations¹⁸ but for 7 years by condominium associations.¹⁹

Condominium and cooperative associations, but not homeowners' associations, must maintain as an official record the ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners. And these records must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates.²⁰

Financial Reporting

These associations must also prepare and produce annual financial reports for the preceding fiscal year.²¹

The type of financial reporting that an association must perform differs based on the association's total annual revenue. From the least stringent to the most stringent, an association that has a total annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.
- At least \$150,000 but less than \$300,000 must prepare *compiled* financial statements.²²
- At least \$300,000 but less than \$500,000 must prepare *reviewed* financial statements.²³
- \$500,000 or more must prepare *audited* financial statements.²⁴

An association having fewer than 50 units or parcels, regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures.²⁵

¹⁷ See s. 718.111(13)(b), F.S., for condominiums, s. 719.104(2)(b), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners' associations.

¹⁸ See ss. 719.104(2)(a)9.d., and 720.303(4)(i), F.S.

¹⁹ Section 718.111(12)(a)11.d., F.S.

²⁰ Sections 718.111(12)(a)12., and 719.104(2)(a)10., F.S.

²¹ See ss. 718.111(13), 719.104(4), and 720.303(7), F.S. However, both the condominium and the cooperative statute include the following language, "An association may not waive the financial reporting requirements of this section for more than 3 consecutive years." This strongly implies that these associations may waive the reporting requirement for up to three years, though the statute nowhere says this.

²² A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).

²³ A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

²⁴ An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

²⁵ Sections 718.111(13)(b)2., 719.104(4)(c)2., and 720.303(7)(b)2., F.S.

The type of report or statement required may often be adjusted to a more or less stringent type if approved by vote of the association.²⁶

Notice of Board Meetings

Condominium and cooperative associations must post notice of all board meetings in a conspicuous place on the property for at least the 48 hours prior to the meeting, except in emergencies. However, 14 days' notice is required for a meeting at which a nonemergency special assessment or an amendment to any rule regarding unit use will be considered.²⁷ This notice apparently does not need to state that a special assessment or rule change regarding unit use will be considered at the meeting.

Similarly, homeowners' associations must post notice of a board meeting in a conspicuous place in the community for the 48 hours prior to the meeting, except in emergencies. Alternatively, if notice is not posted in a conspicuous place, then it must be mailed or delivered to each member 7 days prior to the meeting, except in emergencies. Notice of a meeting at which assessments might be levied must include a statement to that effect.²⁸ Moreover, for any meeting at which a special assessment or a change to a rule regarding parcel use will be considered, notice must be provided at least 14 days prior to the meeting.²⁹

Fire Prevention in Condominium and Cooperative Buildings

Retrofitting a condominium or cooperative building with a fire sprinkler system is not required if an association votes to forego it, even if other provisions of law or rules³⁰ may otherwise require retrofitting condominium or cooperative buildings with fire sprinkler systems or an engineered lifesafety system (ELSS).³¹

If an association has previously voted to forego this retrofitting, the matter may be brought up for a vote to undo the prior decision as often as once every 3 years.

A condominium or cooperative association that was not in compliance with the requirements regarding a fire sprinkler system and had not voted to forego these requirements had until December 31, 2016, to apply for a building permit to undergo retrofitting. This application was required to demonstrate that the association would become compliant by December 31, 2019.³²

²⁶ See, e.g., 720.303(7)(c)-(d), F.S.

²⁷ In addition to being conspicuously posted, this notice must be mailed, delivered, or electronically transmitted to the unit owners. Sections 718.112(2)(c)1. and 719.106(1)(c), F.S.

²⁸ Section 720.303(2)(c)1., F.S.

²⁹ *Id.*

³⁰ See ch. 633, F.S., and the Florida Fire Prevention Code, <http://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/free-access?mode=view> (last visited April 11, 2017).

³¹ An ELSS consists of a combination of partial automatic sprinkler protection, smoke detection alarms, smoke control, or compartmentation or other approved systems or both. See ss. 31.3.5.11.4 and 31.3.5.11.1, Florida Fire Prevention Code, 5th Edition, 2012.

³² Sections 718.112(2)(l) and 719.1055(5)(a)1., F.S.

Condominiums and cooperatives that complete retrofitting must receive a certificate of compliance from a licensed electrical contractor or electrician as evidence of compliance with the applicable fire and life safety code.³³

The Chief Financial Officer, acting in his capacity as the State Fire Marshal, adopts by rule the Florida Fire Prevention Code (FFPC),³⁴ which contains all fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety rules.³⁵ The State Fire Marshal adopts a new edition of the FFPC every 3 years.

The FFPC requires all existing high-rise buildings,³⁶ including condominiums and cooperatives, to be retrofitted with fire sprinkler system or with an engineered lifesafety system (ELSS).³⁷ Florida adopted the requirement to retrofit high-rise, existing multi-family structures after 87 people died in the MGM Grand Hotel Fire in 1980 and 97 people died in the San Juan DuPont Plaza fire in 1986.³⁸

In a report published in 2009, the Department of Business and Professional Regulation presented the estimated per-unit cost of retrofitting a sample of condominium buildings from Clearwater to the Keys. The per-unit cost varied widely, from \$595 to \$8,633. The factors said to account for this variation included the extent of sprinkler coverage in the building, the age of the building, the size and number of the units, and type of construction.³⁹

Termination of a Condominium

The termination of a condominium is authorized under two circumstances.⁴⁰ One circumstance is that in which the continued operation of the condominium would constitute economic waste or the ability to continue the condominium is impossible because of laws or regulations. The second circumstance is that in which a sufficient percentage of the voting interests of the condominium approve a plan of termination. A termination that occurs under the second circumstance is referred to as an optional termination.

³³ *Id.*

³⁴ A copy of the Florida Fire Prevention Code is available at: <http://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/free-access?mode=view> (last visited Apr. 13, 2017).

³⁵ Ch. 69A-60, F.A.C.

³⁶ A high-rise building is a building where the floor of an occupied story is greater than 75 feet (23 meters) above the lowest level of fire department vehicle access. Section 3.3.30.6, Florida Fire Prevention Code, 5th ed., 2012.

³⁷ Section 31.3.5.11.2, Florida Fire Prevention Code, 5th ed., 2012.

³⁸ Florida Fire and Sprinkler Association, High-rise Sprinkler retrofit requirement frequently asked questions, http://www.floridafiresprinkler.com/files/4714/7122/2210/Hi_Rise_Retrofit_-_FAQ_Final.pdf (last visited Apr. 13, 2017).

³⁹ Department of Business and Professional Regulation, *Condominium Sprinkler Retrofit Report, A Review of Retrofit Costs and the Impact of Retrofitting on Insurance Premiums*, October 2009, available at: <http://www.myfloridalicense.com/dbpr/lsc/documents/CondominiumSprinklerRetrofitReportOctober2009.pdf> (last visited Apr. 13, 2017).

⁴⁰ Section 718.117, F.S. This section's termination provisions apply to all condominiums in this state in existence on or after July 1, 2007.

Optional Termination

Unless the declaration of condominium provides a lower percentage, a condominium may be terminated at any time if, in a vote on a plan of termination, at least 80 percent of the condominium's total voting interests vote for termination and less than 10 percent of the total voting interests reject the termination.⁴¹ If 10 percent or more of the voting interests reject the plan of termination, another termination may not be considered for 18 months after the date of rejection.⁴²

If a "bulk owner" owns 80 percent of the total voting interests of a condominium, the optional termination of the condominium is subject to additional limitations and requirements. These limitations and requirements are meant to protect the non-bulk owners.⁴³ A bulk owner is defined as a single holder of an association's voting interests or an owner together with a related entity or entities that would be considered an insider⁴⁴ holding these voting interests.⁴⁵

The plan of termination must make the following disclosures to unit owners in a sworn statement before a plan of termination may be presented for consideration:

- The identity of any person who owns or controls 50 percent or more of the condominium units or, if owned by an artificial entity, the person who owns or controls it and the person who owns or controls 20 percent of the entity that constitutes the bulk owner;
- The units acquired by the bulk owner, the date of acquisition and the price of each unit; and
- The relationship of any board member to the bulk owner.⁴⁶

The unit owners, other than the bulk owner or owners, are entitled to elect at least one-third of the board before approval of any plan of termination.⁴⁷

If a plan goes forward, all unit owners other than the bulk owner must be compensated in an amount equal to at least 100 percent of the fair market value of their units, as determined by an independent appraiser selected by the termination trustee.⁴⁸ An original purchaser from the developer who rejects the plan of termination and whose unit was granted a homestead exemption and who is current in payment of assessments, other monetary obligations to the association, and any mortgage encumbering the unit on the date of recording of the plan of termination must receive the original purchase price paid for the unit or current fair market value, whichever is greater.⁴⁹ The plan of termination must provide for the payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien.⁵⁰ The payment may not exceed the unit's share of the proceeds of termination under the plan.⁵¹

⁴¹ Section 718.117(3), F.S.

⁴² Section 718.117(3)(a)2., F.S.

⁴³ Section 718.117(3)(c), F.S.

⁴⁴ See s. 726.102(8), F.S., for the definition of "insider."

⁴⁵ *Id.*

⁴⁶ Section 718.117(3)(c)5., F.S.

⁴⁷ Section 718.117(3)(d), F.S.

⁴⁸ Section 718.117(3)(c)3., F.S.

⁴⁹ *Id.*

⁵⁰ Section 718.117(3)(c)4., F.S.

⁵¹ *Id.*

Additionally, former unit owners are allowed to lease their units if the former condominium units are offered for lease to the public⁵² and a relocation fee must be paid to former unit owners who had a homestead exemption on their units.⁵³

Number of Condominium Terminations

The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation furnished the numbers of condominium terminations for the previous 5 calendar years, which are shown in the chart below:⁵⁴

Calendar Year	Total Terminations	Optional Terminations
2012	30	28
2013	37	35
2014	38	37
2015	33	33
2016	29	26

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes may enforce and ensure compliance with the provisions of the condominium chapter of the Florida Statutes, as well as with the rules relating to the development, construction, sale, lease, ownership, and operation, and management of residential condominium units.⁵⁵ The Division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control. The Division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association. After control of the condominium or cooperative is transferred from the developer to the unit owners, the Division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.⁵⁶

As part of the Division's authority to investigate complaints, the Division is authorized to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.⁵⁷

⁵² Section 718.117(3)(c)1., F.S.

⁵³ Section 718.117(3)(c)2. F.S.

⁵⁴ E-mail from Colton Madill, DBPR, March 28, 2017, on file with the Senate Committee on Regulated Industries.

⁵⁵ Section 718.501(1), F.S.

⁵⁶ Sections 718.501(1) and 719.501(1), F.S.

⁵⁷ *Id.*

III. Effect of Proposed Changes:

Changes Common to Condominium and Cooperative Associations

Financial Reporting Requirements for Associations of Cooperatives and Condominiums

Under the bill, the associations of condominiums and cooperatives having fewer than 50 units are no longer required to prepare a report of cash receipts and expenditures, which they were required to do unless their governing documents provided otherwise. In effect, this means that these smaller associations are required to prepare financial statements in accordance with their annual revenue, just as the associations of larger condominiums and cooperatives must. As such, regardless of the number of units, the association of a condominium or cooperative having annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.
- Between \$150,000 and less than \$300,000 must prepare *compiled* financial statements.⁵⁸
- At least \$300,000 but less than \$500,000 must prepare *reviewed* financial statements.⁵⁹
- \$500,000 or more must prepare *audited* financial statements.⁶⁰

However, the type of report or statement required may be adjusted by vote of the association.

Also, the bill strikes the following language from current law: “An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.” However, the effect of this deletion is uncertain because nowhere in the statute does it expressly permit an association to waive financial reporting requirements for any length of time.

When a Vote is Necessary to Opt Out of Retrofitting with Fire-Prevention Systems

Under current law, retrofitting with a fire sprinkler system is not required if a mere majority of an association votes to forego it. Under the bill, however, no vote by the association is necessary to forego retrofitting in buildings that are 75 feet or less in height; as to taller buildings a vote to forego retrofitting must be approved by a two-thirds vote of the association.

Current law only permits an association to forego required retrofitting with a fire sprinkler system. However, even if an association votes to forego retrofitting with a fire sprinkler system, retrofitting with an engineered lifesafety system (ELSS) may still be required. The bill addresses this issue, clarifying that when an association is permitted to forego retrofitting with a fire sprinkler system, it is also permitted to forego retrofitting with an ELSS.

⁵⁸ A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant’s (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron’s Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron’s 2000).

⁵⁹ A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

⁶⁰ An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

The bill specifies that these provisions on retrofitting do not apply to “timeshare condominiums.”⁶¹

Procedural Matters Relating to a Vote to Opt Out of Retrofitting

In addition to the several ways provided in current law to vote as to whether to forego retrofitting, the bill also permits “electronic voting.” The bill further provides that an association’s failure to provide timely notice to unit owners of a vote to forego retrofitting requirements does not invalidate the vote if notice of the results is provided to the owners.

Under the bill, as under current law, a vote to forego retrofitting may be reversed by a subsequent vote. Current law permits this subsequent vote if at least 10 percent of the voting interests call for it, but the bill also permits a majority of the board to call for a vote to reconsider retrofitting. These votes to reconsider retrofitting can occur at any time because the bill repeals the prohibition on these reconsideration votes happening more often than once every 3 years. Also, the bill requires two thirds of an association to vote in favor of retrofitting, but current law requires a mere majority.

Required Sign or Symbol to Indicate a Lack of Sprinkler System

The bill requires a condominium or cooperative association that operates a building having at least three stories but lacking a fire sprinkler system in the common areas of the building to mark the building with a sign or symbol approved by the State Fire Marshal. The sign or symbol must sufficiently indicate the lack of a sprinkler system in the common areas to persons conducting fire control and other emergency operations. The State Fire Marshal must ensure that the dimensions and placement of the sign or symbol do not diminish the aesthetic value of the building. Moreover, the State Fire Marshal must adopt rules regarding the appearance, use, and location of the sign or symbol.

Other Fire Safety System Provisions

Under current law, a condominium or cooperative association that was not in compliance with the requirements regarding a fire sprinkler system and that did not vote to forego these requirements had until December 31, 2016, to apply for a building permit. Under the bill, these associations now have until December 31, 2018. Under current law, the application for a building permit must demonstrate that the association will become compliant by December 31, 2019, a date which the bill changes to December 31, 2021.

Lastly, the bill provides that a local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system *or other ELSS* before January 1, 2022, instead of the compliance date set forth in current law, which is December 31, 2019.

Notice of Board Meetings

Under the bill, notice of a meeting of the board of a condominium or cooperative association may be posted to a website. However, for this notice to be sufficient, an association must have adopted, by rule, a procedure for posting notice in this manner and the association must provide

⁶¹ Timeshare condominiums are governed by s. 721.24, F.S.

unit owners with an electronic notice with a hyperlink to the website containing the meeting notice. Nonetheless, boards may still post notice of meetings in the ways permitted under current law.

Electronic Records

The bill adds *electronic* records relating to voting to the list of official records that a condominium or cooperative association must maintain.

Changes Common to Cooperative and Homeowners' Associations

The bill expressly permits members of a cooperative or homeowners' association board to communicate using e-mail but it prohibits these persons from casting a vote in this manner. Condominium law already includes a similar provision.

Changes Relating Only to Condominium Associations

Optional Terminations of Condominiums

For an optional condominium termination plan to proceed, the bill requires that at least 80 percent of the total voting interests of a condominium vote for termination. However, the bill prohibits a termination plan from proceeding if it is rejected by 5 percent of the condominium's voting interests. In contrast, current law prohibits the progress of a termination plan if at least 10 percent of the voting interests vote against termination.

Moreover, under current law, the approval percentage is a default threshold that may be supplanted by the terms of a condominium's declaration to make it easier or more difficult to terminate a condominium. The threshold in the bill, however, will supplant any approval threshold in a condominium's declaration.

The bill also increases the minimum time periods between successive votes on a termination plan. If 5 percent or more of the voting interests of a condominium reject a plan of termination, a subsequent plan may not be considered for 24 months, instead of 18 months as under current law.

Optional Terminations of Condominiums Created by Conversion of Other Form of Property

Some condominiums are created by the conversion of non-condominium property, such as apartment buildings. The bill extends the time between the date that a condominium is created by conversion and the date that the condominium association may vote for optional termination to 10 years from 5 years.

Optional Termination of Condominiums that are At Least 80-percent-owned by Bulk Owners

Compared to other condominium terminations, current law places more restrictions on the termination of a condominium if a bulk owner owns at least 80 percent of the condominium's total voting interests.

The bill broadens the requirement to disclose to the unit owners anyone who owns a significant portion of the condominium before a plan of termination is presented to the unit owners. Specifically, the plan must include written, sworn disclosures of the identity of any person or entity that owns or controls at least 25 percent (instead of 50 percent, as in current law) of the condominium units. Moreover, if it is an artificial entity that owns at least 25 percent of the units, then the following must also be disclosed in the same manner:

- The natural person or persons who directly or indirectly manage or control the artificial entity or entities; and
- The natural person or persons who directly or indirectly own or control 10 percent (instead of 20 percent as under current law) or more of the artificial entity or entities that constitute the bulk owner.

The written and sworn disclosure must also include the factual circumstances that show that the plan complies with the requirements of s. 718.117, F.S., the statute amended by the bill, and shows that the plan supports the expressed public policies of the statute.

As under current law, each unit owner other than the bulk owner must be compensated at least 100 percent of the fair market value of his or her unit. Additionally, current law requires that a unit owner receive at least the original purchase price paid for his or her unit if he or she:

- Was an original purchaser;
- Rejected the plan of termination; and
- Received a homestead exemption on the unit.

The bill, in contrast, requires only that a person's unit have been granted homestead-exemption status for the person to be guaranteed at least the original purchase price.

Official Records of Associations of Condominiums

The bill requires condominium associations to maintain as an official record all bids and contracts for work performed for 1 year instead of the current law's 7-year requirement. This conforms condominium law in this regard to the laws regulating homeowners' associations and cooperative associations.

Changes Relating Only to Cooperative Associations

Regarding cooperative associations, the bill strips a director or officer of the board of a cooperative association of his or her post if he or she is more than 90 days delinquent in paying any money due the association. The bill also prohibits co-owners of a unit from serving simultaneously on the board of a cooperative association that has more than 10 units unless the co-owners own more than one unit or unless there are not enough eligible candidates.

Effective Date

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.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may have a positive impact on property owners in condominium or cooperative buildings that are 75 feet or less in height, as these property owners are now exempt from the requirement that their buildings be retrofitted with fire safety systems.

The bill may cause a negative impact on homeowners' associations that have fewer than 50 parcels, as well as condominium and cooperative associations that have fewer than 50 units, both of which, under current law, must prepare a statement of cash receipts and expenditures, instead of a more-rigorous type of financial report. Depending on these associations' revenues, they may now be required to engage more-costly accounting services to prepare their financial reports.

However, the bill may also reduce costs to condominium associations to prepare financial statements. Current law allows associations to opt for a less thorough, and therefore less costly, reporting option, but not for more than 3 consecutive years. Under the bill, an association may opt for a less thorough reporting for unlimited consecutive years.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 633.2225, 718.111, 718.112, 718.113, 718.117, 719.104, 719.1055, 719.106, 719.107, and 720.303.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 19, 2017:

The committee substitute:

- Requires a condominium or cooperative association to post a sign or symbol on a building that has three or more stories if the building lacks a fire sprinkler system.
- Requires that a condominium or cooperative association having a building taller than 75 feet may forego retrofitting with a fire sprinkler system or engineered lifesafety system only upon two-thirds of the association's total voting interests vote to do so. In contrast, the bill required only a mere majority to vote to forego retrofitting.
- Requires two-thirds of a condominium or cooperative association to vote to retrofit a building if the association has previously voted not to retrofit the building; in contrast, current law requires a mere majority.
- Omits a provision of the underlying bill that would have deleted the current law's requirement that in order for a person to receive the favorable "bulk buyer" or "bulk assignee" legal status, he or she must have acquired 8 or more condominium units *by July 1, 2018*.
- Removes a provision of the underlying bill that required the board of a homeowners' association, if requested by 10 percent of the voting interests, to reconsider an annual budget that includes assessments that are at least 115 percent of those in the previous year's budget.
- Requires that an optional termination of a condominium be approved by at least 80 percent of a condominium's voting interests, regardless of what the condominium's governing documents would require.
- Reduces the percentage of a condominium's voting interests necessary to veto an optional termination from 10 percent to 5 percent.
- Prohibits an optional termination of a condominium that was created by conversion (such as from an apartment complex) until 10 years after conversion; current law requires only 5 years to have passed since conversion.
- Increases consumer protections in the process to terminate a condominium that is at least 80-percent-owned by a "bulk owner."

CS by Regulated Industries on March 28, 2017:

The committee substitute:

- Amends s. 718.113(2), F.S., to clarify that approval by the voting interests is required before any material alterations or substantial additions to common elements or association property is commenced.
- Repeals ss. 719.104(4)(c)2. and 720.303(7)(b)2., F.S., the provisions that require cooperative and homeowners' associations of fewer than 50 units or parcels,

regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures.

- Amends s. 719.1055(5), F.S., to retain the requirement that a licensed contractor or electrician must provide the certificate of compliance for a cooperative association.
- Replaces the term "life safety" with the term "lifesafety."
- Amends s. 719.106(1)(a)1., F.S., to prohibit co-owners of a unit in a residential cooperative association of more than 10 units from serving on the board at the same time, unless the co-owners own more than one unit or there are not enough eligible candidates.
- Creates s. 719.106(1)(m), F.S., to provide that an officer or director of a cooperative association is deemed to have abandoned the office if he or she is more than 90 days delinquent in a monetary obligation due to the association.
- Amends s. 719.106(1), F.S., to provide that, if provided in the cooperative association's bylaws, the cost of bulk contracts for communication services, information services, or internet services are deemed a common expense of the cooperative association, and that such contracts may be canceled by a majority vote of the voting interests.
- Amends s. 720.303(2), F.S., to permit homeowners' associations to provide meeting notices to members by facsimile number or e-mail.
- Removes revisions in the bill to s. 720.303(6), F.S., relating to the maintenance and funding of reserve accounts in the budget of a homeowners' association.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 633.2225, Florida Statutes is created to
read:

633.2225 Condominium and cooperative buildings without
sprinkler systems; notice requirements; enforcement.—

(1) The board of a condominium or cooperative association



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that operates a building of three stories or more that has not installed a sprinkler system in the common areas of the building shall mark the building with a sign or symbol approved by the State Fire Marshal in a manner sufficient to warn persons conducting fire control and other emergency operations of the lack of a sprinkler system in the common areas.

(2) The State Fire Marshal shall ensure that the dimensions and placement of the sign or symbol do not diminish the aesthetic value of the building and shall adopt rules necessary to implement this section. Among other things, the rules must address:

(a) The dimensions and color of such sign or symbol.

(b) The time within which the condominium or cooperative buildings without sprinkler systems shall be marked as required by this section.

(c) The location on each condominium or cooperative building without a sprinkler system where such sign or symbol must be posted.

(3) The State Fire Marshal, and local fire officials in accordance with s. 633.118, shall enforce this section. An owner who fails to comply with the requirements of this section is subject to penalties as provided in s. 633.228.

Section 2. Subsections (12) and (13) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:



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39 1. A copy of the plans, permits, warranties, and other
40 items provided by the developer pursuant to s. 718.301(4).

41 2. A photocopy of the recorded declaration of condominium
42 of each condominium operated by the association and each
43 amendment to each declaration.

44 3. A photocopy of the recorded bylaws of the association
45 and each amendment to the bylaws.

46 4. A certified copy of the articles of incorporation of the
47 association, or other documents creating the association, and
48 each amendment thereto.

49 5. A copy of the current rules of the association.

50 6. A book or books that contain the minutes of all meetings
51 of the association, the board of administration, and the unit
52 owners, which minutes must be retained for at least 7 years.

53 7. A current roster of all unit owners and their mailing
54 addresses, unit identifications, and voting certifications, and,
55 if known, telephone numbers. The association shall also maintain
56 the electronic mailing addresses and facsimile numbers of unit
57 owners consenting to receive notice by electronic transmission.
58 The electronic mailing addresses and facsimile numbers are not
59 accessible to unit owners if consent to receive notice by
60 electronic transmission is not provided in accordance with
61 subparagraph (c)5. However, the association is not liable for an
62 inadvertent disclosure of the electronic mail address or
63 facsimile number for receiving electronic transmission of
64 notices.

65 8. All current insurance policies of the association and
66 condominiums operated by the association.

67 9. A current copy of any management agreement, lease, or



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other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. All accounting records must be maintained for at least 7 years. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for 1 year.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the



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election, vote, or meeting to which the document relates,
notwithstanding paragraph (b).

13. All rental records if the association is acting as
agent for the rental of condominium units.

14. A copy of the current question and answer sheet as
described in s. 718.504.

15. All other written records of the association not
specifically included in the foregoing which are related to the
operation of the association.

16. A copy of the inspection report as described in s.
718.301(4) (p).

(b) The official records of the association must be
maintained within the state for at least 7 years. The records of
the association shall be made available to a unit owner within
45 miles of the condominium property or within the county in
which the condominium property is located within 10 ~~5~~ working
days after receipt of a written request by the board or its
designee. However, such distance requirement does not apply to
an association governing a timeshare condominium. This paragraph
may be complied with by having a copy of the official records of
the association available for inspection or copying on the
condominium property or association property, or the association
may offer the option of making the records available to a unit
owner electronically via the Internet or by allowing the records
to be viewed in electronic format on a computer screen and
printed upon request. The association is not responsible for the
use or misuse of the information provided to an association
member or his or her authorized representative pursuant to the
compliance requirements of this chapter unless the association



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has an affirmative duty not to disclose such information pursuant to this chapter.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are \$50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The association



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shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection



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with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily



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provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(d) The association shall prepare a question and answer sheet as described in s. 718.504, and shall update it annually.

(e)1. The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

2. An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or



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her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the



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division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).~~

~~2.3.~~ A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation



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facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the



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fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4) (e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association. ~~An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.~~

Section 3. Paragraphs (c) and (1) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of



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administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. Notice of any meeting in which a regular or special assessment against unit owners is to be considered must specifically state that assessments will be considered and provide the estimated amount and a description of the purposes for such assessments. ~~However,~~ Written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the



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condominium property at least 14 days before the meeting.
Evidence of compliance with this 14-day notice requirement must
be made by an affidavit executed by the person providing the
notice and filed with the official records of the association.
Upon notice to the unit owners, the board shall, by duly adopted
rule, designate a specific location on the condominium or
association property where all notices of board meetings must be
posted. If there is no condominium property or association
property where notices can be posted, notices shall be mailed,
delivered, or electronically transmitted to each unit owner at
least 14 days before the meeting. In lieu of or in addition to
the physical posting of the notice on the condominium property,
the association may, by reasonable rule, adopt a procedure for
conspicuously posting and repeatedly broadcasting the notice and
the agenda on a closed-circuit cable television system serving
the condominium association. However, if broadcast notice is
used in lieu of a notice physically posted on condominium
property, the notice and agenda must be broadcast at least four
times every broadcast hour of each day that a posted notice is
otherwise required under this section. If broadcast notice is
provided, the notice and agenda must be broadcast in a manner
and for a sufficient continuous length of time so as to allow an
average reader to observe the notice and read and comprehend the
entire content of the notice and the agenda. In addition to any
of the authorized means of providing notice of a meeting of the
board, the association may, by rule, adopt a procedure for
conspicuously posting the meeting notice and the agenda on a
website serving the condominium association for at least the
minimum period of time for which a notice of a meeting is also



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required to be physically posted on the condominium property.
Any rule adopted shall, in addition to other matters, include a
requirement that the association send an electronic notice
providing a hypertext link to the website where the notice is
posted. ~~Notice of any meeting in which regular or special
assessments against unit owners are to be considered must
specifically state that assessments will be considered and
provide the nature, estimated cost, and description of the
purposes for such assessments.~~

2. Meetings of a committee to take final action on behalf
of the board or make recommendations to the board regarding the
association budget are subject to this paragraph. Meetings of a
committee that does not take final action on behalf of the board
or make recommendations to the board regarding the association
budget are subject to this section, unless those meetings are
exempted from this section by the bylaws of the association.

3. Notwithstanding any other law, the requirement that
board meetings and committee meetings be open to the unit owners
does not apply to:

a. Meetings between the board or a committee and the
association's attorney, with respect to proposed or pending
litigation, if the meeting is held for the purpose of seeking or
rendering legal advice; or

b. Board meetings held for the purpose of discussing
personnel matters.

(1) *Certificate of compliance.*—A provision that a
certificate of compliance from a licensed electrical contractor
or electrician may be accepted by the association's board as
evidence of compliance ~~of the condominium units~~ with the



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applicable fire and life safety code must be included.
Notwithstanding chapter 633, s. 509.215, s. 553.895(1), or ~~of~~
any other code, statute, ordinance, administrative rule, or
regulation, or any interpretation of the foregoing, an
association, ~~residential condominium~~, or unit owner is not
obligated to retrofit the common elements, association property,
or units of a residential condominium with a fire sprinkler
system or other engineered lifesafety system in a building that
is 75 feet or less in height. There is no obligation to retrofit
for a building greater than 75 feet in height, calculated from
the lowest level of fire department vehicle access to the floor
of the highest occupiable story ~~has been certified for occupancy~~
~~by the applicable governmental entity~~ if the unit owners have
voted to forego such retrofitting by the affirmative vote of
two-thirds ~~a majority~~ of all voting interests in the affected
condominium. There is no requirement that owners in condominiums
of 75 feet or less conduct an opt-out vote and such condominiums
are exempt from fire sprinkler or other engineered lifesafety
retrofitting. The preceding sentence is intended to clarify
existing law. The local authority having jurisdiction may not
require completion of retrofitting with a fire sprinkler system
or other engineered lifesafety system before January 1, 2022
~~2020~~. By December 31, 2018 ~~2016~~, an ~~a residential condominium~~
association that operates a residential condominium that is not
in compliance with the requirements for a fire sprinkler system
or other engineered lifesafety system and has not voted to
forego retrofitting of such a system must initiate an
application for a building permit for the required installation
with the local government having jurisdiction demonstrating that



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the association will become compliant by December 31, 2021 ~~2019~~.

1. A vote to forego required retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, or by electronic voting, and is effective upon recording a certificate executed by an officer or agent of the association attesting to such vote in the public records of the county where the condominium is located. When an opt-out vote is to be conducted at a meeting, the association shall mail or ~~hand~~ deliver to each unit owner, at each physical and electronic address of record, written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system or other engineered lifesafety system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote must be mailed or ~~hand~~ delivered to all unit owners at each physical and electronic address of record. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the association. Failure to provide timely notice to unit owners does not invalidate an otherwise valid opt-out vote if notice of the results is provided to the owners. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.

2. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of at



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least 10 percent of the voting interests or by a majority of the
board of directors. The vote to require retrofitting requires a
two-thirds vote of the total voting interest. ~~Such a vote may~~
~~only be called once every 3 years.~~ Notice shall be provided as
required for any regularly called meeting of the unit owners,
and must state the purpose of the meeting. ~~Electronic~~
~~transmission may not be used to provide notice of a meeting~~
~~called in whole or in part for this purpose.~~

3. As part of the information collected annually from
condominiums, the division shall require condominium
associations to report the membership vote and recording of a
certificate under this subsection and, if retrofitting has been
undertaken, the per-unit cost of such work. The division shall
annually report to the Division of State Fire Marshal of the
Department of Financial Services the number of condominiums that
have elected to forego retrofitting. Compliance with this
administrative reporting requirement does not affect the
validity of an opt-out vote.

4. Notwithstanding s. 553.509, a residential association
may not be obligated to, and may forego the retrofitting of, any
improvements required by s. 553.509(2) upon an affirmative vote
of two-thirds ~~a majority~~ of the voting interests in the affected
condominium.

5. The provisions of this paragraph do not apply to
timeshare condominium associations, which shall be governed by
s. 721.24.

Section 4. Subsection (2) of section 718.113, Florida
Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display



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of flag; hurricane shutters and protection; display of religious decorations.—

(2)(a) Except as otherwise provided in this section, there shall be no material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided therein. If the declaration as originally recorded or as amended under the procedures provided therein does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions before the material alterations or substantial additions are commenced.

This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act ~~October 1, 2008.~~

(b) There shall not be any material alteration of, or substantial addition to, the common elements of any condominium operated by a multicondominium association unless approved in the manner provided in the declaration of the affected condominium or condominiums as originally recorded or as amended under the procedures provided therein. If a declaration as originally recorded or as amended under the procedures provided therein does not specify a procedure for approving such an alteration or addition, the approval of 75 percent of the total voting interests of each affected condominium is required before the material alterations or substantial additions are commenced.

This subsection does not prohibit a provision in any declaration, articles of incorporation, or bylaws as originally



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recorded or as amended under the procedures provided therein requiring the approval of unit owners in any condominium operated by the same association or requiring board approval before a material alteration or substantial addition to the common elements is permitted. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

(c) There shall not be any material alteration or substantial addition made to association real property operated by a multicondominium association, except as provided in the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein. If the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein do not specify the procedure for approving an alteration or addition to association real property, the approval of 75 percent of the total voting interests of the association is required before the material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

Section 5. Subsections (1) and (3) of section 718.117, Florida Statutes, are amended, and subsection (21) is added to that section, to read:

718.117 Termination of condominium.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Condominiums are created as authorized by statute and are subject to covenants that encumber the land and restrict the use of the use of real property.



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590 (b) In some circumstances, the continued enforcement of
591 those covenants ~~that~~ may create economic waste, areas of
592 disrepair that threaten the safety and welfare of the public, or
593 cause obsolescence of the ~~a condominium~~ property for its
594 intended use and thereby lower property tax values, and the
595 ~~Legislature further finds that~~ it is the public policy of this
596 state to provide by statute a method to preserve the value of
597 the property interests and the rights of alienation thereof that
598 owners have in the condominium property before and after
599 termination.

600 (c) The Legislature further finds that It is contrary to
601 the public policy of this state to require the continued
602 operation of a condominium when to do so constitutes economic
603 waste or when the ability to do so is made impossible by law or
604 regulation.

605 (d) It is in the best interest of the state to provide for
606 termination of the covenants of a declaration of condominium in
607 certain circumstances, in order to:

608 1. Ensure the continued maintenance, management, and repair
609 of stormwater management systems, conservation areas, and
610 conservation easements.

611 2. Avoid transferring the expense of maintaining
612 infrastructure serving the condominium property, including, but
613 not limited to, stormwater systems and conservation areas, to
614 the general tax bases of the state and local governments.

615 3. Prevent covenants from impairing the continued
616 productive use of the property.

617 4. Protect state residents from health and safety hazards
618 created by derelict, damaged, obsolete, or abandoned condominium



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properties.

5. Provide for fair treatment and just compensation for individuals, preserve property values, and preserve the local property tax base.

6. Preserve the state's long history of protecting homestead property and homestead property rights by ensuring that such protection is extended to homestead property owners in the context of a termination of the covenants of a declaration of condominium. This section applies to all condominiums in this state in existence on or after July 1, 2007.

(3) OPTIONAL TERMINATION. ~~Except as provided in subsection (2) or unless the declaration provides for a lower percentage,~~
The condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination meeting the requirements of this section and approved by the division. Before a residential association submits a plan to the division, the plan must be approved by at least 80 percent of the total voting interests of the condominium. However, if 5 ~~10~~ percent or more of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections, the plan of termination may not proceed.

(a) The termination of the condominium form of ownership is subject to the following conditions:

1. The total voting interests of the condominium must include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.



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2. If 5 ~~10~~ percent or more of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 24 ~~18~~ months after the date of the rejection.

(b) This subsection does not apply to any condominium created pursuant to part VI of this chapter until 10 ~~5~~ years after the recording of the declaration of condominium, unless there is no objection to the plan of termination.

(c) For purposes of this subsection, the term "bulk owner" means the single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner's former unit, the unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is



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recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and shall be required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

2. Any former unit owner whose unit was granted homestead exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner's former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment shall be in addition to the termination proceeds for such owner's former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

3. For their respective units, all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. The fair market value shall be determined as of a date that is no earlier than 90 days before the date that the plan of termination is recorded and shall be determined by an independent appraiser selected by the termination trustee. ~~For a person an original purchaser from the developer who rejects the plan of termination and~~ whose unit was granted homestead exemption status by the applicable county property appraiser, or was an owner-occupied operating business, as of the date that the plan of termination is recorded and who



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is current in payment of both assessments and other monetary obligations to the association ~~and any mortgage encumbering the unit~~ as of the date the plan of termination is recorded, the fair market value for the unit owner rejecting the plan shall be at least the original purchase price paid for the unit. For purposes of this subparagraph, the term "fair market value" means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure shall not be considered for purposes of determining fair market value.

4. The plan of termination must provide for payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit's share of the proceeds of termination under the plan. If the unit owner is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit as of the date the plan of termination is recorded, the receipt by the holder of the unit's share of the proceeds of termination under the plan or the outstanding balance of the mortgage, whichever is less, shall be deemed to have satisfied the first mortgage in full.

5. Before a plan of termination is presented to the unit owners for consideration pursuant to this paragraph, the plan must include the following written disclosures in a sworn statement:

a. The identity of any person or entity that owns or



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controls 25 ~~50~~ percent or more of the units in the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the natural person or persons who, directly or indirectly, manage or control the entity or entities and the natural person or persons who, directly or indirectly, own or control 10 ~~20~~ percent or more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

d. The factual circumstances that show that the plan complies with the requirements of this section and that the plan supports the expressed public policies of this section.

(d) If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination.

(e) Upon approval of a plan of termination by the unit owners in a residential condominium, the plan shall be filed with the division. The division shall review the plan to determine its sufficiency under the Condominium Act and must, within 45 days after receipt of the initial filing, notify the association by mail of any procedural deficiencies or that the filing is accepted. If the notice is not provided to the association within 45 days after receipt of the filing, the



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filing is presumed to be accepted. If the division determines that the conditions required by this section have been met and the plan complies with the procedural requirements of this section, the division shall authorize the termination and the termination may proceed pursuant to this section.

(f) The provisions of subsection (2) do not apply to optional termination pursuant to this subsection.

(21) APPLICABILITY.—This section applies to all condominiums in this state in existence on or after July 1, 2007.

Section 6. The amendments made by Section 5 of this act are intended to clarify existing law, are remedial in nature and intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.

Section 7. For the 2017-2018 fiscal year, the sums of \$85,006 in recurring funds and \$4,046 in nonrecurring funds from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund are appropriated to the Department of Business and Professional Regulation, and one full-time equivalent position with associated salary rate of 56,791 is authorized, for the purpose of implementing Section 5 of this act.

Section 8. Paragraphs (a) and (b) of subsection (2) and paragraphs (b) and (c) of subsection (4) of section 719.104, Florida Statutes, are amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association



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shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners, which minutes shall be retained for a period of not less than 7 years.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.



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8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.



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(b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the cooperative property or within the county in which the cooperative property is located within 10 ~~5~~ working days after receipt of written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the cooperative property or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in an electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(4) FINANCIAL REPORT.—

(b) Except as provided in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:

1. An association with total annual revenues between \$150,000 and \$299,999 shall prepare a compiled financial statement.

2. An association with total annual revenues between



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\$300,000 and \$499,999 shall prepare a reviewed financial statement.

3. An association with total annual revenues of \$500,000 or more shall prepare an audited financial statement.

4. The requirement to have the financial statement compiled, reviewed, or audited does not apply to an association if a majority of the voting interests of the association present at a duly called meeting of the association have voted to waive this requirement for the fiscal year. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. ~~An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.~~

(c)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the financial statements required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.~~

~~2.3.~~ A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt



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classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association.

Section 9. Subsection (5) of section 719.1055, Florida Statutes, is amended to read:

719.1055 Amendment of cooperative documents; alteration and acquisition of property.—

(5) The bylaws must include a provision whereby a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance ~~of the cooperative units~~ with the applicable fire and life safety code.

(a)1. Notwithstanding chapter 633, s. 509.215, s. 553.895(1), or any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association ~~a cooperative~~ or unit owner is not obligated to retrofit the common elements or units of a residential cooperative with a fire sprinkler system or other engineered lifesafety system in a building that is 75 feet or less in height. There is no obligation to retrofit for a building greater than 75 feet in height, calculated from the lowest level of fire department vehicle access to the floor of the highest occupiable story ~~has been certified for occupancy by the applicable governmental entity~~ if the unit owners have voted



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to forego such retrofitting by the affirmative vote of two-thirds ~~a majority~~ of all voting interests in the affected cooperative. There is no requirement that owners in cooperatives of 75 feet or less conduct an opt-out vote and such cooperatives are exempt from fire sprinkler or other engineered life safety retrofitting. The preceding sentence is intended to clarify existing law. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or other engineered life safety system before January 1, 2022 ~~the end of 2019~~. By December 31, 2018 ~~2016~~, a cooperative that is not in compliance with the requirements for a fire sprinkler system or other engineered lifesafety system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the cooperative will become compliant by December 31, 2021 ~~2019~~.

2. A vote to forego required retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, or by electronic voting, and is effective upon recording a certificate executed by an officer or agent of the association attesting to such vote in the public records of the county where the cooperative is located. When the opt-out vote is to be conducted at a meeting, the cooperative shall mail or ~~hand~~ deliver to each unit owner, at each physical and electronic address of record, written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system or other engineered lifesafety system is to take place. Within 30 days after the



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cooperative's opt-out vote, notice of the results of the opt-out vote must be mailed or ~~hand~~ delivered to all unit owners at each physical and electronic address of record. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the cooperative. Failure to provide timely notice to unit owners does not invalidate an otherwise valid opt-out vote if notice of the results is provided to the owners. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.

(b) If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests or by a majority of the board of directors. The vote to require retrofitting requires a two-thirds vote of the total voting interest. ~~Such vote may only be called once every 3 years~~. Notice must be provided as required for any regularly called meeting of the unit owners, and the notice must state the purpose of the meeting. ~~Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose~~.

(c) As part of the information collected annually from cooperatives, the division shall require associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of



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Financial Services the number of cooperatives that have elected to forego retrofitting. Compliance with this administrative reporting requirement does not affect the validity of an opt-out vote.

Section 10. Paragraphs (a) and (c) of subsection (1) of section 719.106, Florida Statutes, are amended, and paragraph (m) is added to that subsection, to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(a) *Administration.*—

1. The form of administration of the association shall be described, indicating the titles of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of cooperatives having five or fewer units, in which case in not-for-profit corporations, the board shall consist of not fewer than three members. In a residential cooperative association of more than 10 units, co-owners of a unit may not serve as members of the board of directors at the same time unless the co-owners own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. In the absence of provisions to the contrary, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of those offices customarily performed by officers of



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corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them those duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property is suspended from office. The board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer. A person who has been convicted of any felony in this state or in any United States District Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not



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affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony.

3. When a unit owner files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days of receipt of the inquiry. The board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may, through its board of administration, adopt reasonable rules and regulations regarding the frequency and manner of responding to the unit owners' inquiries, one of which may be that the association is obligated to respond to only one written inquiry per unit in any given 30-day period. In such case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

(c) Board of administration meetings.—Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.



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1083 Meetings of the board of administration at which a quorum of the
1084 members is present shall be open to all unit owners. Any unit
1085 owner may tape record or videotape meetings of the board of
1086 administration. The right to attend such meetings includes the
1087 right to speak at such meetings with reference to all designated
1088 agenda items. The division shall adopt reasonable rules
1089 governing the tape recording and videotaping of the meeting. The
1090 association may adopt reasonable written rules governing the
1091 frequency, duration, and manner of unit owner statements.
1092 Adequate notice of all meetings shall be posted in a conspicuous
1093 place upon the cooperative property at least 48 continuous hours
1094 preceding the meeting, except in an emergency. Any item not
1095 included on the notice may be taken up on an emergency basis by
1096 at least a majority plus one of the members of the board. Such
1097 emergency action shall be noticed and ratified at the next
1098 regular meeting of the board. Notice of any meeting in which
1099 regular or special assessments against unit owners are to be
1100 considered must specifically state that assessments will be
1101 considered and provide the estimated amount and description of
1102 the purposes for such assessments. ~~However,~~ Written notice of
1103 any meeting at which nonemergency special assessments, or at
1104 which amendment to rules regarding unit use, will be considered
1105 shall be mailed, delivered, or electronically transmitted to the
1106 unit owners and posted conspicuously on the cooperative property
1107 not less than 14 days before the meeting. Evidence of compliance
1108 with this 14-day notice shall be made by an affidavit executed
1109 by the person providing the notice and filed among the official
1110 records of the association. Upon notice to the unit owners, the
1111 board shall by duly adopted rule designate a specific location



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on the cooperative property upon which all notices of board meetings shall be posted. In lieu of or in addition to the physical posting of notice of any meeting of the board of administration on the cooperative property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the cooperative association. However, if broadcast notice is used in lieu of a notice posted physically on the cooperative property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the cooperative association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the cooperative property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice providing a hypertext link to the website where the notice is posted. ~~Notice of any meeting in which regular assessments against unit owners are to be considered for any reason shall specifically contain a statement that~~
~~assessments will be considered and the nature of any such~~



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~~assessments.~~ Meetings of a committee to take final action on behalf of the board or to make recommendations to the board regarding the association budget are subject to the provisions of this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this section, unless those meetings are exempted from this section by the bylaws of the association.

Notwithstanding any other law to the contrary, the requirement that board meetings and committee meetings be open to the unit owners does not apply to board or committee meetings held for the purpose of discussing personnel matters or meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice.

(m) Director or officer delinquencies.—A director or officer more than 90 days delinquent in the payment of any monetary obligation due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

Section 11. Paragraph (b) of subsection (1) of section 719.107, Florida Statutes, is amended to read:

719.107 Common expenses; assessment.—

(1)

(b) If so provided in the bylaws, the cost of communications services as defined in chapter 202, information services, or Internet services ~~a master antenna television system or duly franchised cable television service~~ obtained pursuant to a bulk contract shall be deemed a common expense,



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and if not obtained pursuant to a bulk contract, such cost shall be considered common expense if it is designated as such in a written contract between the board of administration and the company providing the communications services as defined in chapter 202, information services, or Internet services ~~master television antenna system or the cable television service~~. The contract shall be for a term of not less than 2 years.

1. Any contract made by the board after April 2, 1992, for a community antenna system or duly franchised cable television service, communications services as defined in chapter 202, information services, or Internet services may be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel the contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever is sooner, following the making of the contract, then such contract shall be deemed ratified for the term therein expressed.

2. Any such contract shall provide, and shall be deemed to provide if not expressly set forth, that any hearing impaired or legally blind unit owner who does not occupy the unit with a nonhearing impaired or sighted person may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such units, the owners shall not be required to pay any common expenses charge related to such service. If less than all members of an association share the expenses of cable television, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 719.108 to enforce payment of the



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shares of such costs by the unit owners receiving cable television.

Section 12. Paragraphs (a) and (c) of subsection (2) and subsections (6) and (7) of section 720.303, Florida Statutes, are amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; budget meetings; financial reporting; association funds; recalls.—

(2) BOARD MEETINGS.—

(a) Members of the board of administration may use e-mail as a means of communication, but may not cast a vote on an association matter via e-mail. A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. Meetings of the board must be open to all members, except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. A meeting of the board must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has a right to attend the meeting. The provisions of this subsection shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(c) The bylaws shall provide the following for giving



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notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to include ~~provide~~ the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the association bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. The association may provide notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members to any member who has provided a facsimile number or e-mail address to the association



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to be used for such purposes; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(6) BUDGETS; BUDGET MEETINGS.—

(a) The association shall prepare an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person. The



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association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

(b) In addition to annual operating expenses, for all associations incorporated after July 1, 2017, and any association incorporated before that date which, by a majority vote of the members of the association present, in person or by proxy, at a meeting of the association at which a quorum is present, affirmatively votes to be bound by the provisions of this subsection as amended effective July 1, 2017, the budget must ~~may~~ include a disclosure of reserves ~~reserve accounts~~ for capital expenditures and deferred maintenance ~~for~~ which are obligations of the association under is responsible. If reserve accounts are not established pursuant to paragraph (d), funding of such reserves is limited to the extent that the governing documents for any item that has a deferred maintenance expense greater than \$100,000. The amount to be reserved must be computed using a formula based upon the estimated deferred maintenance expense of each reserve item divided by the estimated remaining useful life of that item. However, and notwithstanding the amount disclosed as being the total required reserve amount, each parcel which is obligated to pay reserves to the association each year shall be assessed for reserves only the amount determined by dividing the total annual reserve amount disclosed in the budget by the total number of parcels that will ultimately be operated by the association. Therefore, the assessments actually collected will be less than the full



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1315 amount of required reserves as disclosed in the proposed annual
1316 budget until all parcels are obligated to pay assessments for
1317 reserves. The association may adjust the deferred maintenance
1318 reserve limit increases in assessments annually to take into
1319 account any changes in estimates or extension of the useful life
1320 of a reserve item, the anticipated cost of the deferred
1321 maintenance and any changes in the number of parcels that will
1322 ultimately be operated by the association. This subsection does
1323 not apply to an adopted budget for which members of an
1324 association have determined, by a majority vote of the members
1325 of the association present, in person or by proxy, and voting at
1326 a meeting, including reserves. If the budget of the association,
1327 at which a quorum is present, to provide no reserves or less
1328 reserves than required by this subsection includes reserve
1329 accounts established pursuant to paragraph (d), such reserves
1330 shall be determined, maintained, and waived in the manner
1331 provided in this subsection. Once an association provides for
1332 reserve accounts pursuant to paragraph (d), the association
1333 shall thereafter determine, maintain, and waive reserves in
1334 compliance with this subsection. This section does not preclude
1335 an association from ceasing to add amounts to the termination of
1336 a reserve account established pursuant to this paragraph upon
1337 approval of a majority of the total voting interests present in
1338 person or by proxy and voting at a meeting of the association at
1339 which a quorum is present of the association. Upon such
1340 approval, no reserves shall be included in the terminating
1341 reserve account shall be removed from the budget for that year.
1342 Amounts in the reserve account may be used only for deferred
1343 maintenance and for no other purpose. Only parcels with



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completed improvements as evidenced by certificates of occupancy for such improvements are obligated to pay assessments for reserves. A developer that subsidizes the association's budget pursuant to s. 720.308(1) is not obligated to include reserve contributions in any such subsidy payments. If a developer establishes a guarantee under s. 720.308(2) or otherwise subsidizes the association budget, the developer is not obligated to include reserve contributions in any such guarantee or subsidy payments.

(c)1. ~~The developer may vote the voting interests allocated to its parcels with completed improvements, as evidenced by certificates of occupancy for such improvements, to waive the reserves or reduce the funding of reserves If the budget of the association does not provide for reserve accounts pursuant to paragraph (d) and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year required by subsection (7) must contain the following statement in conspicuous type:~~
~~THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.~~

2. ~~If the budget of the association does provide for funding accounts for deferred expenditures, including, but not limited to, funds for capital expenditures and deferred~~



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~~maintenance, but such accounts are not created or established pursuant to paragraph (d), each financial report for the preceding fiscal year required under subsection (7) must also contain the following statement in conspicuous type:~~

~~THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.~~

~~(d) An association is deemed to have provided for reserve accounts if reserve accounts have been initially established by the developer or if the membership of the association affirmatively elects to provide for reserves. If reserve accounts are established by the developer, the budget must designate the components for which the reserve accounts may be used. If reserve accounts are not initially provided by the developer, the membership of the association may elect to do so upon the affirmative approval of a majority of the total voting interests of the association. Such approval may be obtained by vote of the members at a duly called meeting of the membership or by the written consent of a majority of the total voting interests of the association. The approval action of the membership must state that reserve accounts shall be provided for in the budget and must designate the components for which the reserve accounts are to be established. Upon approval by the membership, the board of directors shall include the required~~



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~~reserve accounts in the budget in the next fiscal year following the approval and each year thereafter. Once established as provided in this subsection, the reserve accounts must be funded or maintained or have their funding waived in the manner provided in paragraph (f).~~

~~(c) The amount to be reserved in any account established shall be computed by means of a formula that is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates of cost or useful life of a reserve item.~~

~~(f) After one or more reserve accounts are established, the membership of the association, upon a majority vote at a meeting at which a quorum is present, may provide for no reserves or less reserves than required by this section. If a meeting of the parcel unit owners has been called to determine whether to waive or reduce the funding of reserves and such result is not achieved or a quorum is not present, the reserves as included in the budget go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves. Any vote taken pursuant to this subsection to waive or reduce reserves is applicable only to one budget year.~~

(d) Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and may be used only for authorized reserve expenditures and may not be used for any other purpose.

(e) The only voting interests eligible to vote on questions that involve waiving or reducing the funding of reserves are the



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voting interests of the parcels subject to assessment to fund
the reserves in question. Any vote taken pursuant to this
subsection to waive or reduce reserves is applicable only to one
budget year. Proxy questions relating to waiving or reducing the
funding of reserves must contain the following statement in
capitalized, bold letters in a font size larger than any other
used on the face of the proxy ballot: WAIVING OF RESERVES, IN
WHOLE OR IN PART, MAY RESULT IN PARCEL OWNER LIABILITY FOR
PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE
ITEMS.

(f) Funding formulas for reserves required by this section
shall be based on a pooled analysis of two or more of the items
for which reserves are required to be accrued pursuant to this
subsection. The projected annual cash inflows may include
estimated earnings from investment of principal. The reserve
funding formula shall have constant funding each year. However,
each parcel which is obligated to pay reserves to the
association each year shall be assessed for reserves only the
amount determined by dividing the total annual reserve amount
disclosed in the budget by the total number of parcels that will
ultimately be operated by the association. The assessments
actually collected shall be less than the full amount of
required reserves as disclosed in the proposed annual budget
until all parcels are obligated to pay assessments for reserves.

(g) As alternative to the pooled analysis method described
in paragraph (f) and, if approved by a majority vote of the
members present, in person or by proxy, at a meeting of the
members of the association at which a quorum is present, the
funding formulas for reserves ~~authorized~~ required by this



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section may ~~must~~ be based on a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.

~~1.~~ If the association maintains separate reserve accounts for each of the required assets, the amount of the contribution to each reserve account is the sum of the following two calculations:

~~1.a.~~ The total amount necessary, if any, to bring a negative component balance to zero.

~~2.b.~~ The total estimated deferred maintenance expense or estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the component.

The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may include factors such as inflation and earnings on invested funds. An association may convert its funding formulas from a component method to a pooled method, as described in paragraph (f), at any time if approved by a majority vote of the members present, in person or by proxy, at a meeting at which a quorum is present.

~~2. If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget may not be less than that required to ensure that the balance on hand at the beginning of the period the~~



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~~budget will go into effect plus the projected annual cash inflows over the remaining estimated useful life of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all the assets that make up the reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal and accounts receivable minus the allowance for doubtful accounts. The reserve funding formula may not include any type of balloon payments.~~

~~(h) 1. Reserve funds and Any interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a meeting at which a proposed annual budget of an association will be considered by the board or a quorum is present. Prior to turnover of control of an association by a developer to parcel owners shall be open to all parcel owners, the developer-controlled association shall not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association.~~

2.a. If a board adopts in any fiscal year an annual budget which requires assessments against parcel owners which exceed 115 percent of assessments for the preceding fiscal year, the board shall conduct a special meeting of the parcel owners to consider a substitute budget if the board receives, within 21 days after adoption of the annual budget, a written request for



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a special meeting from at least 10 percent of all voting interests. The special meeting shall be conducted within 60 days after adoption of the annual budget. At least 14 days before such special meeting, the board shall hand deliver to each parcel owner, or mail to each parcel owner at the address last furnished to the association, a notice of the meeting. An officer or manager of the association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement, and such affidavit shall be filed among the official records of the association. Parcel owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests unless the governing documents require adoption by a greater percentage of voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the board shall take effect as scheduled.

b. Any determination of whether assessments exceed 115 percent of assessments for the prior fiscal year shall exclude any provision for reasonable reserves for repair or deferred maintenance of items which are the obligations of the association under the governing documents, anticipated expenses of the association which the board does not expect to be incurred on a regular or annual basis, or assessments for betterments to the common areas, association property, or other items which are the obligation of the association under the governing documents.

(i) The provisions of paragraphs (b)-(h) do not apply to mandatory reserve accounts required to be established and



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maintained by an association at the direction of a county or
municipal government, water or drainage management district,
community development district, or other political subdivision
that has the authority to approve and control subdivision
infrastructure which is entrusted to the care of an association
on the condition that the association establish and maintain one
or more mandatory reserve accounts for the deferred maintenance
of the infrastructure in accordance with the requirements of
that entrusting authority.

(j) Reserve funds must be held in a separate bank account
established for such funds.

(7) FINANCIAL REPORTING.—Within 90 days after the end of
the fiscal year, or annually on the date provided in the bylaws,
the association shall prepare and complete, or contract with a
third party for the preparation and completion of, a financial
report for the preceding fiscal year. Within 21 days after the
final financial report is completed by the association or
received from the third party, but not later than 120 days after
the end of the fiscal year or other date as provided in the
bylaws, the association shall, within the time limits set forth
in subsection (5), provide each member with a copy of the annual
financial report or a written notice that a copy of the
financial report is available upon request at no charge to the
member. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this
paragraph shall prepare or cause to be prepared a complete set
of financial statements in accordance with generally accepted
accounting principles as adopted by the Board of Accountancy.
The financial statements shall be based upon the association's



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total annual revenues, as follows:

1. An association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.~~

~~2.3.~~ A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by



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this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.



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Section 13. Paragraph (a) of subsection (9) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(9) ELECTIONS AND BOARD VACANCIES.—

(a) Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. Except as provided in paragraph (b), all members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held; provided, however, that if the election process allows candidates to be nominated in advance of the meeting, the association is not required to allow nominations at the meeting. An election is not required unless more candidates are nominated than vacancies exist. If an election is not required because there are either an equal number or fewer qualified candidates than vacancies exist, and if nominations from the floor are not required pursuant to this section or the bylaws, write-in nominations are not permitted and such candidates shall commence service on the board of directors, regardless of whether a quorum is attained at the annual meeting. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. Any challenge to the election process must be commenced within 60 days after the election results are announced.

Section 14. Paragraph (b) of subsection (3) of section 720.3085, Florida Statutes, is amended to read:

720.3085 Payment for assessments; lien claims.—



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(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(b) Any payment received by an association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of chapter 687 and is not a fine. The foregoing is applicable notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law.

Section 15. Paragraph (a) of subsection (1) of section 720.401, Florida Statutes, is amended to read:

720.401 Prospective purchasers subject to association membership requirement; disclosure required; covenants; assessments; contract cancellation.—

(1)(a) A prospective parcel owner in a community must be presented a disclosure summary before executing the contract for sale. The disclosure summary must be in a form substantially similar to the following form:

DISCLOSURE SUMMARY

FOR



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(NAME OF COMMUNITY)

1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL
BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE
COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS
COMMUNITY.

3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE
ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF
APPLICABLE, THE CURRENT AMOUNT IS \$.... PER, YOU WILL ALSO
BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE
ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE.
IF APPLICABLE, THE CURRENT AMOUNT IS \$.... PER

4. YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE
RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL
ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

5. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS
LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION COULD RESULT IN A
LIEN ON YOUR PROPERTY.

6. THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES
FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN
OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF
APPLICABLE, THE CURRENT AMOUNT IS \$.... PER

7. THE BUDGET OF THE ASSOCIATION MAY NOT INCLUDE RESERVE
FUNDS FOR DEFERRED MAINTENANCE SUFFICIENT TO COVER THE FULL COST
OF DEFERRED MAINTENANCE OF COMMON AREAS. YOU SHOULD REVIEW THE
BUDGET TO DETERMINE THE LEVEL OF RESERVE FUNDING, IF ANY.

8.7- THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE
RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION
MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.



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~~9.8.~~ THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.

~~10.9.~~ THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED FROM THE DEVELOPER.

DATE:

PURCHASER:

PURCHASER:

The disclosure must be supplied by the developer, or by the parcel owner if the sale is by an owner that is not the developer. Any contract or agreement for sale shall refer to and incorporate the disclosure summary and shall include, in prominent language, a statement that the potential buyer should not execute the contract or agreement until they have received and read the disclosure summary required by this section.

Section 16. 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 community associations; creating s.
633.2225, F.S.; requiring certain condominium or



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1750 cooperative associations to post certain signs or
1751 symbols on buildings; requiring the State Fire Marshal
1752 to ensure that the dimensions and placement of the
1753 signs or symbols do not diminish the aesthetic value
1754 of the buildings on which they are placed and to adopt
1755 rules governing such signs or symbols; providing for
1756 enforcement; providing penalties; amending s. 718.111,
1757 F.S.; revising reporting requirements; amending s.
1758 718.112, F.S.; authorizing an association to adopt
1759 rules for posting certain notices on a website;
1760 revising provisions relating to required condominium
1761 and cooperative association bylaws; revising
1762 provisions relating to evidence of condominium and
1763 cooperative association compliance with the fire and
1764 life safety code; revising unit and common elements
1765 required to be retrofitted; revising provisions
1766 relating to an association vote to forego
1767 retrofitting; providing applicability; amending s.
1768 718.113, F.S.; revising voting requirements relating
1769 to alterations and additions to certain common
1770 elements or association property; amending s. 718.117,
1771 F.S.; providing legislative findings; revising voting
1772 requirements for the rejection of a plan of
1773 termination; increasing the amount of time to consider
1774 a plan of termination under certain conditions;
1775 revising applicability; revising the requirements to
1776 qualify for payment as a homestead owner if the owner
1777 has rejected a plan of termination; revising and
1778 providing notice requirements; requiring the



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1779 Department of Business and Professional Regulation to
1780 review and approve a plan of termination; providing
1781 applicability; providing an appropriation and
1782 authorizing a position; amending s. 719.104, F.S.;
1783 revising recordkeeping and reporting requirements;
1784 amending s. 719.1055, F.S.; revising provisions
1785 relating to required condominium and cooperative
1786 association bylaws; revising provisions relating to
1787 evidence of condominium and cooperative association
1788 compliance with the fire and life safety code;
1789 revising unit and common elements required to be
1790 retrofitted; revising provisions relating to an
1791 association vote to forego retrofitting; providing
1792 applicability; amending s. 719.106, F.S.; revising
1793 requirements to serve as a board member; prohibiting a
1794 board member from voting via e-mail; requiring that
1795 directors who are delinquent in certain payments owed
1796 in excess of certain periods of time be deemed to have
1797 abandoned their offices; authorizing an association to
1798 adopt rules for posting certain notices on a website;
1799 amending s. 719.107, F.S.; specifying certain services
1800 which are obtained pursuant to a bulk contract to be
1801 deemed a common expense; amending s. 720.303, F.S.;
1802 prohibiting a board member from voting via e-mail;
1803 revising certain notice requirements relating to board
1804 meetings; revising and providing budget requirements;
1805 providing an exemption to certain requirements;
1806 revising financial reporting requirements; authorizing
1807 an association to adopt rules for posting certain



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1808 notices on a website; amending s. 720.306, F.S.;
1809 revising election requirements; amending s. 720.3085,
1810 F.S.; providing applicability; amending s. 720.401,
1811 F.S.; revising the disclosure summary form; providing
1812 an effective date.



432334

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment to Amendment (845968) (with directory and title amendments)

Delete lines 756 - 785
and insert:

Section 6. The amendments made by Section 5 of this act are intended to clarify existing law, are remedial in nature and intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.



432334

11
12 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====
13 And the directory clause is amended as follows:
14 Delete lines 583 - 584
15 and insert:
16 Florida Statutes, are amended to read:
17
18 ===== T I T L E A M E N D M E N T =====
19 And the title is amended as follows:
20 Delete lines 1778 - 1782
21 and insert:
22 providing notice requirements; providing
23 applicability; amending s. 719.104, F.S.;



484612

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment to Amendment (845968) (with directory and title amendments)

Delete lines 1278 - 1740.

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

And the directory clause is amended as follows:

Delete lines 1201 - 1202

and insert:

Section 1. Paragraphs (a) and (c) of subsection (2) of



484612

11 section 720.303, Florida Statutes,
12
13 ===== T I T L E A M E N D M E N T =====
14 And the title is amended as follows:
15 Delete lines 1804 - 1811
16 and insert:
17 meetings; providing

By the Committee on Regulated Industries; and Senator Passidomo

580-02979-17

2017744c1

1 A bill to be entitled
 2 An act relating to community associations; amending s.
 3 718.111, F.S.; revising reporting and record
 4 requirements; amending s. 718.112, F.S.; authorizing
 5 an association to adopt rules for posting certain
 6 notices on a website; revising provisions relating to
 7 required condominium and cooperative association
 8 bylaws; revising provisions relating to evidence of
 9 condominium and cooperative association compliance
 10 with the applicable fire and life safety code;
 11 revising unit and common elements required to be
 12 retrofitted; revising provisions relating to an
 13 association vote to forego retrofitting; providing
 14 applicability; amending s. 718.113, F.S.; revising
 15 voting requirements relating to alterations and
 16 additions to certain common elements or association
 17 property; amending s. 718.707, F.S.; revising the time
 18 period for classification as bulk assignee or bulk
 19 buyer; amending s. 719.104, F.S.; revising
 20 recordkeeping and reporting requirements; amending s.
 21 719.1055, F.S.; revising provisions relating to
 22 required condominium and cooperative association
 23 bylaws; revising provisions relating to evidence of
 24 condominium and cooperative association compliance
 25 with the fire and life safety code; revising unit and
 26 common elements required to be retrofitted; revising
 27 provisions relating to an association vote to forego
 28 retrofitting; providing applicability; amending s.
 29 719.106, F.S.; revising requirements to serve as a

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

580-02979-17

2017744c1

30 board member; prohibiting a board member from voting
 31 via e-mail; requiring that directors who are
 32 delinquent in certain payments owed in excess of
 33 certain periods of time be deemed to have abandoned
 34 their offices; authorizing an association to adopt
 35 rules for posting certain notices on a website;
 36 amending s. 719.107, F.S.; specifying certain services
 37 that are obtained pursuant to a bulk contract are
 38 deemed a common expense; amending s. 720.303, F.S.;
 39 prohibiting a board member from voting via e-mail;
 40 revising certain notice requirements relating to board
 41 meetings; specifying requirements relating to the
 42 adoption of assessments; revising financial reporting
 43 requirements; amending s. 720.306, F.S.; providing
 44 elections requirements; amending s. 720.3085, F.S.;
 45 providing applicability; providing an effective date.

46
 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Subsections (12) and (13) of section 718.111,
 50 Florida Statutes, are amended to read:

51 718.111 The association.—

52 (12) OFFICIAL RECORDS.—

53 (a) From the inception of the association, the association
 54 shall maintain each of the following items, if applicable, which
 55 constitutes the official records of the association:

56 1. A copy of the plans, permits, warranties, and other
 57 items provided by the developer pursuant to s. 718.301(4).

58 2. A photocopy of the recorded declaration of condominium

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of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners, which minutes must be retained for at least 7 years.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with subparagraph (c)5. However, the association is not liable for an inadvertent disclosure of the electronic mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

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10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. All accounting records must be maintained for at least 7 years. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for 1 year.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as

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agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

16. A copy of the inspection report as described in s. 718.301(4) (p).

(b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 5 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(c) The official records of the association are open to

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inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are \$50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer

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sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company

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employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

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233 7. The software and operating system used by the
 234 association which allow the manipulation of data, even if the
 235 owner owns a copy of the same software used by the association.
 236 The data is part of the official records of the association.

237 (d) The association shall prepare a question and answer
 238 sheet as described in s. 718.504, and shall update it annually.

239 (e)1. The association or its authorized agent is not
 240 required to provide a prospective purchaser or lienholder with
 241 information about the condominium or the association other than
 242 information or documents required by this chapter to be made
 243 available or disclosed. The association or its authorized agent
 244 may charge a reasonable fee to the prospective purchaser,
 245 lienholder, or the current unit owner for providing good faith
 246 responses to requests for information by or on behalf of a
 247 prospective purchaser or lienholder, other than that required by
 248 law, if the fee does not exceed \$150 plus the reasonable cost of
 249 photocopying and any attorney's fees incurred by the association
 250 in connection with the response.

251 2. An association and its authorized agent are not liable
 252 for providing such information in good faith pursuant to a
 253 written request if the person providing the information includes
 254 a written statement in substantially the following form: "The
 255 responses herein are made in good faith and to the best of my
 256 ability as to their accuracy."

257 (f) An outgoing board or committee member must relinquish
 258 all official records and property of the association in his or
 259 her possession or under his or her control to the incoming board
 260 within 5 days after the election. The division shall impose a
 261 civil penalty as set forth in s. 718.501(1)(d)6. against an

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262 outgoing board or committee member who willfully and knowingly
 263 fails to relinquish such records and property.

264 (13) FINANCIAL REPORTING.—Within 90 days after the end of
 265 the fiscal year, or annually on a date provided in the bylaws,
 266 the association shall prepare and complete, or contract for the
 267 preparation and completion of, a financial report for the
 268 preceding fiscal year. Within 21 days after the final financial
 269 report is completed by the association or received from the
 270 third party, but not later than 120 days after the end of the
 271 fiscal year or other date as provided in the bylaws, the
 272 association shall mail to each unit owner at the address last
 273 furnished to the association by the unit owner, or hand deliver
 274 to each unit owner, a copy of the financial report or a notice
 275 that a copy of the financial report will be mailed or hand
 276 delivered to the unit owner, without charge, upon receipt of a
 277 written request from the unit owner. The division shall adopt
 278 rules setting forth uniform accounting principles and standards
 279 to be used by all associations and addressing the financial
 280 reporting requirements for multicondominium associations. The
 281 rules must include, but not be limited to, standards for
 282 presenting a summary of association reserves, including a good
 283 faith estimate disclosing the annual amount of reserve funds
 284 that would be necessary for the association to fully fund
 285 reserves for each reserve item based on the straight-line
 286 accounting method. This disclosure is not applicable to reserves
 287 funded via the pooling method. In adopting such rules, the
 288 division shall consider the number of members and annual
 289 revenues of an association. Financial reports shall be prepared
 290 as follows:

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291 (a) An association that meets the criteria of this
 292 paragraph shall prepare a complete set of financial statements
 293 in accordance with generally accepted accounting principles. The
 294 financial statements must be based upon the association's total
 295 annual revenues, as follows:

296 1. An association with total annual revenues of \$150,000 or
 297 more, but less than \$300,000, shall prepare compiled financial
 298 statements.

299 2. An association with total annual revenues of at least
 300 \$300,000, but less than \$500,000, shall prepare reviewed
 301 financial statements.

302 3. An association with total annual revenues of \$500,000 or
 303 more shall prepare audited financial statements.

304 (b)1. An association with total annual revenues of less
 305 than \$150,000 shall prepare a report of cash receipts and
 306 expenditures.

307 ~~2. An association that operates fewer than 50 units,~~
 308 ~~regardless of the association's annual revenues, shall prepare a~~
 309 ~~report of cash receipts and expenditures in lieu of financial~~
 310 ~~statements required by paragraph (a).~~

311 2.3- A report of cash receipts and disbursements must
 312 disclose the amount of receipts by accounts and receipt
 313 classifications and the amount of expenses by accounts and
 314 expense classifications, including, but not limited to, the
 315 following, as applicable: costs for security, professional and
 316 management fees and expenses, taxes, costs for recreation
 317 facilities, expenses for refuse collection and utility services,
 318 expenses for lawn care, costs for building maintenance and
 319 repair, insurance costs, administration and salary expenses, and

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320 reserves accumulated and expended for capital expenditures,
 321 deferred maintenance, and any other category for which the
 322 association maintains reserves.

323 (c) An association may prepare, without a meeting of or
 324 approval by the unit owners:

325 1. Compiled, reviewed, or audited financial statements, if
 326 the association is required to prepare a report of cash receipts
 327 and expenditures;

328 2. Reviewed or audited financial statements, if the
 329 association is required to prepare compiled financial
 330 statements; or

331 3. Audited financial statements if the association is
 332 required to prepare reviewed financial statements.

333 (d) If approved by a majority of the voting interests
 334 present at a properly called meeting of the association, an
 335 association may prepare:

336 1. A report of cash receipts and expenditures in lieu of a
 337 compiled, reviewed, or audited financial statement;

338 2. A report of cash receipts and expenditures or a compiled
 339 financial statement in lieu of a reviewed or audited financial
 340 statement; or

341 3. A report of cash receipts and expenditures, a compiled
 342 financial statement, or a reviewed financial statement in lieu
 343 of an audited financial statement.

344
 345 Such meeting and approval must occur before the end of the
 346 fiscal year and is effective only for the fiscal year in which
 347 the vote is taken, except that the approval may also be
 348 effective for the following fiscal year. If the developer has

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not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association. ~~An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.~~

Section 2. Paragraphs (c) and (1) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to

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attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. Notice of any meeting in which a regular or special assessment against unit owners is to be considered must specifically state that assessments will be considered and provide the estimated amount and a description of the purposes for such assessments. However, Written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the

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407 notice and filed with the official records of the association.
 408 Upon notice to the unit owners, the board shall, by duly adopted
 409 rule, designate a specific location on the condominium or
 410 association property where all notices of board meetings must be
 411 posted. If there is no condominium property or association
 412 property where notices can be posted, notices shall be mailed,
 413 delivered, or electronically transmitted to each unit owner at
 414 least 14 days before the meeting. In lieu of or in addition to
 415 the physical posting of the notice on the condominium property,
 416 the association may, by reasonable rule, adopt a procedure for
 417 conspicuously posting and repeatedly broadcasting the notice and
 418 the agenda on a closed-circuit cable television system serving
 419 the condominium association. However, if broadcast notice is
 420 used in lieu of a notice physically posted on condominium
 421 property, the notice and agenda must be broadcast at least four
 422 times every broadcast hour of each day that a posted notice is
 423 otherwise required under this section. If broadcast notice is
 424 provided, the notice and agenda must be broadcast in a manner
 425 and for a sufficient continuous length of time so as to allow an
 426 average reader to observe the notice and read and comprehend the
 427 entire content of the notice and the agenda. In addition to any
 428 of the authorized means of providing notice of a meeting of the
 429 board, the association may, by rule, adopt a procedure for
 430 conspicuously posting the meeting notice and the agenda on a
 431 website serving the condominium association for at least the
 432 minimum period of time for which a notice of a meeting is also
 433 required to be physically posted on the condominium property.
 434 Any rule adopted shall, in addition to other matters, include a
 435 requirement that the association send an electronic notice

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436 providing a hypertext link to the website where the notice is
 437 posted ~~Notice of any meeting in which regular or special~~
 438 ~~assessments against unit owners are to be considered must~~
 439 ~~specifically state that assessments will be considered and~~
 440 ~~provide the nature, estimated cost, and description of the~~
 441 ~~purposes for such assessments.~~

442 2. Meetings of a committee to take final action on behalf
 443 of the board or make recommendations to the board regarding the
 444 association budget are subject to this paragraph. Meetings of a
 445 committee that does not take final action on behalf of the board
 446 or make recommendations to the board regarding the association
 447 budget are subject to this section, unless those meetings are
 448 exempted from this section by the bylaws of the association.

449 3. Notwithstanding any other law, the requirement that
 450 board meetings and committee meetings be open to the unit owners
 451 does not apply to:

452 a. Meetings between the board or a committee and the
 453 association's attorney, with respect to proposed or pending
 454 litigation, if the meeting is held for the purpose of seeking or
 455 rendering legal advice; or

456 b. Board meetings held for the purpose of discussing
 457 personnel matters.

458 (1) *Certificate of compliance.*—A provision that a
 459 certificate of compliance from a licensed professional engineer
 460 ~~electrical contractor or electrician~~ may be accepted by the
 461 association's board as evidence of compliance ~~of the condominium~~
 462 ~~units~~ with the applicable fire and life safety code must be
 463 included. Notwithstanding chapter 633, s. 509.215, s.
 464 553.895(1), or ~~of~~ any other code, statute, ordinance,

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administrative rule, or regulation, or any interpretation of the foregoing, an association, ~~residential condominium~~, or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system or other engineered lifesafety system in a building that is 75 feet or less in height. There is no obligation to retrofit for a building greater than 75 feet in height, calculated from the lowest level of fire department vehicle access to the floor of the highest occupiable story, has been certified for occupancy by the applicable governmental entity if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium. There is no requirement that owners in condominiums of 75 feet or less conduct an opt-out vote; such condominiums are exempt from fire sprinkler or other engineered lifesafety retrofitting. The preceding sentence is intended to clarify existing law. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or other engineered lifesafety system before January 1, 2022 ~~2020~~. By December 31, 2018 ~~2016~~, an a residential condominium association that operates a residential condominium that is not in compliance with the requirements for a fire sprinkler system or other engineered lifesafety system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2021 ~~2019~~.

1. A vote to forego required retrofitting may be obtained

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by limited proxy or by a ballot personally cast at a duly called membership meeting, ~~or~~ by execution of a written consent by the member, or by electronic voting, and is effective upon recording a certificate executed by an officer or agent of the association attesting to such vote in the public records of the county where the condominium is located. When an opt-out vote is to be conducted at a meeting, the association shall mail or ~~hand~~ deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system or other engineered lifesafety system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote must be mailed or ~~hand~~ delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the association. Failure to provide timely notice to unit owners does not invalidate an otherwise valid opt-out vote if notice of the results is provided to the owners ~~After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.~~

2. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of at least 10 percent of the voting interests or by a majority of the board of directors. ~~Such a vote may only be called once every 3 years.~~ Notice shall be provided as required for any regularly called meeting of the unit owners, and must state the purpose of the meeting. ~~Electronic transmission may not be used to provide~~

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~~notice of a meeting called in whole or in part for this purpose.~~

3. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting. Compliance with this administrative reporting requirement does not affect the validity of an opt-out vote.

4. Notwithstanding s. 553.509, a residential association may not be obligated to, and may forego the retrofitting of, any improvements required by s. 553.509(2) upon an affirmative vote of a majority of the voting interests in the affected condominium.

Section 3. Subsection (2) of section 718.113, Florida Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.—

(2) (a) Except as otherwise provided in this section, there shall be no material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided therein. If the declaration as originally recorded or as amended under the procedures provided therein does not specify the procedure for approval of material alterations or substantial

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additions, 75 percent of the total voting interests of the association must approve the alterations or additions before the material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act ~~October 1, 2008.~~

(b) There shall not be any material alteration of, or substantial addition to, the common elements of any condominium operated by a multicondominium association unless approved in the manner provided in the declaration of the affected condominium or condominiums as originally recorded or as amended under the procedures provided therein. If a declaration as originally recorded or as amended under the procedures provided therein does not specify a procedure for approving such an alteration or addition, the approval of 75 percent of the total voting interests of each affected condominium is required before the material alterations or substantial additions are commenced. This subsection does not prohibit a provision in any declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein requiring the approval of unit owners in any condominium operated by the same association or requiring board approval before a material alteration or substantial addition to the common elements is permitted. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

(c) There shall not be any material alteration or substantial addition made to association real property operated by a multicondominium association, except as provided in the

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581 declaration, articles of incorporation, or bylaws as originally
 582 recorded or as amended under the procedures provided therein. If
 583 the declaration, articles of incorporation, or bylaws as
 584 originally recorded or as amended under the procedures provided
 585 therein do not specify the procedure for approving an alteration
 586 or addition to association real property, the approval of 75
 587 percent of the total voting interests of the association is
 588 required before the material alterations or substantial
 589 additions are commenced. This paragraph is intended to clarify
 590 existing law and applies to associations existing on the
 591 effective date of this act.

592 Section 4. Section 718.707, Florida Statutes, is amended to
 593 read:

594 718.707 Time limitation for classification as bulk assignee
 595 or bulk buyer.—A person acquiring condominium parcels may not be
 596 classified as a bulk assignee or bulk buyer unless the
 597 condominium parcels were acquired on or after July 1, 2010, ~~but~~
 598 ~~before July 1, 2018~~. The date of such acquisition shall be
 599 determined by the date of recording a deed or other instrument
 600 of conveyance for such parcels in the public records of the
 601 county in which the condominium is located, or by the date of
 602 issuing a certificate of title in a foreclosure proceeding with
 603 respect to such condominium parcels.

604 Section 5. Paragraphs (a) and (b) of subsection (2) and
 605 paragraph (c) of subsection (4) of section 719.104, Florida
 606 Statutes, are amended to read:

607 719.104 Cooperatives; access to units; records; financial
 608 reports; assessments; purchase of leases.—

609 (2) OFFICIAL RECORDS.—

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610 (a) From the inception of the association, the association
 611 shall maintain a copy of each of the following, where
 612 applicable, which shall constitute the official records of the
 613 association:

614 1. The plans, permits, warranties, and other items provided
 615 by the developer pursuant to s. 719.301(4).

616 2. A photocopy of the cooperative documents.

617 3. A copy of the current rules of the association.

618 4. A book or books containing the minutes of all meetings
 619 of the association, of the board of directors, and of the unit
 620 owners, which minutes shall be retained for a period of not less
 621 than 7 years.

622 5. A current roster of all unit owners and their mailing
 623 addresses, unit identifications, voting certifications, and, if
 624 known, telephone numbers. The association shall also maintain
 625 the electronic mailing addresses and the numbers designated by
 626 unit owners for receiving notice sent by electronic transmission
 627 of those unit owners consenting to receive notice by electronic
 628 transmission. The electronic mailing addresses and numbers
 629 provided by unit owners to receive notice by electronic
 630 transmission shall be removed from association records when
 631 consent to receive notice by electronic transmission is revoked.
 632 However, the association is not liable for an erroneous
 633 disclosure of the electronic mail address or the number for
 634 receiving electronic transmission of notices.

635 6. All current insurance policies of the association.

636 7. A current copy of any management agreement, lease, or
 637 other contract to which the association is a party or under
 638 which the association or the unit owners have an obligation or

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responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All other written records of the association not specifically included in the foregoing which are related to the

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operation of the association.

(b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the cooperative property or within the county in which the cooperative property is located within 10 ~~5~~ working days after receipt of written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the cooperative property or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in an electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(4) FINANCIAL REPORT.—

(c)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the financial statements required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.~~

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697 ~~2.3-~~ A report of cash receipts and expenditures must
 698 disclose the amount of receipts by accounts and receipt
 699 classifications and the amount of expenses by accounts and
 700 expense classifications, including the following, as applicable:
 701 costs for security, professional, and management fees and
 702 expenses; taxes; costs for recreation facilities; expenses for
 703 refuse collection and utility services; expenses for lawn care;
 704 costs for building maintenance and repair; insurance costs;
 705 administration and salary expenses; and reserves, if maintained
 706 by the association.

707 Section 6. Subsection (5) of section 719.1055, Florida
 708 Statutes, is amended to read:

709 719.1055 Amendment of cooperative documents; alteration and
 710 acquisition of property.—

711 (5) The bylaws must include a provision whereby a
 712 certificate of compliance from a licensed electrical contractor
 713 or electrician may be accepted by the association's board as
 714 evidence of compliance ~~of the cooperative units~~ with the
 715 applicable fire and life safety code.

716 (a)1. Notwithstanding chapter 633, s. 509.215, s.
 717 553.895(1), or any other code, statute, ordinance,
 718 administrative rule, or regulation, or any interpretation of the
 719 foregoing, ~~an association a cooperative~~ or unit owner is not
 720 obligated to retrofit the common elements or units of a
 721 residential cooperative with a fire sprinkler system or other
 722 engineered lifesafety system in a building that is 75 feet or
 723 less in height. There is no obligation to retrofit for a
 724 building greater than 75 feet in height, calculated from the
 725 lowest level of fire department vehicle access to the floor of

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726 ~~the highest occupiable story has been certified for occupancy by~~
 727 ~~the applicable governmental entity~~ if the unit owners have voted
 728 to forego such retrofitting by the affirmative vote of a
 729 majority of all voting interests in the affected cooperative.
 730 There is no requirement that owners in cooperatives of 75 feet
 731 or less conduct an opt-out vote, and such cooperatives are
 732 exempt from fire sprinkler or other engineered lifesafety
 733 retrofitting. The preceding sentence is intended to clarify
 734 existing law. The local authority having jurisdiction may not
 735 require completion of retrofitting with a fire sprinkler system
 736 or other engineered lifesafety system before January 1, 2022 ~~the~~
 737 ~~end of 2019~~. By December 31, 2018 ~~2016~~, a cooperative that is
 738 not in compliance with the requirements for a fire sprinkler
 739 system or other engineered lifesafety system and has not voted
 740 to forego retrofitting of such a system must initiate an
 741 application for a building permit for the required installation
 742 with the local government having jurisdiction demonstrating that
 743 the cooperative will become compliant by December 31, 2021 ~~2019~~.

744 2. A vote to forego required retrofitting may be obtained
 745 by limited proxy or by a ballot personally cast at a duly called
 746 membership meeting, ~~or~~ by execution of a written consent by the
 747 member, or by electronic voting, and is effective upon recording
 748 a certificate executed by an officer or agent of the association
 749 attesting to such vote in the public records of the county where
 750 the cooperative is located. When the opt-out vote is to be
 751 conducted at a meeting, the cooperative shall mail or ~~hand~~
 752 deliver to each unit owner written notice at least 14 days
 753 before the membership meeting in which the vote to forego
 754 retrofitting of the required fire sprinkler system or other

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engineered lifesafety system is to take place. Within 30 days after the cooperative's opt-out vote, notice of the results of the opt-out vote must be mailed or ~~hand~~ delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the cooperative. Failure to provide timely notice to unit owners does not invalidate an otherwise valid opt-out vote if notice of the results is provided to the owners After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.

(b) If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests or by a majority of the board of directors. ~~Such vote may only be called once every 3 years.~~ Notice must be provided as required for any regularly called meeting of the unit owners, and the notice must state the purpose of the meeting. ~~Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.~~

(c) As part of the information collected annually from cooperatives, the division shall require associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of cooperatives that have elected to forego retrofitting. Compliance with this administrative

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reporting requirement does not affect the validity of an opt-out vote.

Section 7. Paragraphs (a) and (c) of subsection (1) of section 719.106, Florida Statutes, are amended, and paragraph (m) is added to that subsection, to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(a) *Administration.*—

1. The form of administration of the association shall be described, indicating the titles of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of cooperatives having five or fewer units, in which case in not-for-profit corporations, the board shall consist of not fewer than three members. In a residential cooperative association of more than 10 units, coowners of a unit may not serve as members of the board of directors at the same time unless the coowners own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. In the absence of provisions to the contrary, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of those offices customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them those

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813 duties it deems appropriate. Unless otherwise provided in the
 814 bylaws, the officers shall serve without compensation and at the
 815 pleasure of the board. Unless otherwise provided in the bylaws,
 816 the members of the board shall serve without compensation.

817 2. A person who has been suspended or removed by the
 818 division under this chapter, or who is delinquent in the payment
 819 of any monetary obligation due to the association, is not
 820 eligible to be a candidate for board membership and may not be
 821 listed on the ballot. A director or officer charged by
 822 information or indictment with a felony theft or embezzlement
 823 offense involving the association's funds or property is
 824 suspended from office. The board shall fill the vacancy
 825 according to general law until the end of the period of the
 826 suspension or the end of the director's term of office,
 827 whichever occurs first. However, if the charges are resolved
 828 without a finding of guilt or without acceptance of a plea of
 829 guilty or nolo contendere, the director or officer shall be
 830 reinstated for any remainder of his or her term of office. A
 831 member who has such criminal charges pending may not be
 832 appointed or elected to a position as a director or officer. A
 833 person who has been convicted of any felony in this state or in
 834 any United States District Court, or who has been convicted of
 835 any offense in another jurisdiction which would be considered a
 836 felony if committed in this state, is not eligible for board
 837 membership unless such felon's civil rights have been restored
 838 for at least 5 years as of the date such person seeks election
 839 to the board. The validity of an action by the board is not
 840 affected if it is later determined that a board member is
 841 ineligible for board membership due to having been convicted of

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842 a felony.

843 3. When a unit owner files a written inquiry by certified
 844 mail with the board of administration, the board shall respond
 845 in writing to the unit owner within 30 days of receipt of the
 846 inquiry. The board's response shall either give a substantive
 847 response to the inquirer, notify the inquirer that a legal
 848 opinion has been requested, or notify the inquirer that advice
 849 has been requested from the division. If the board requests
 850 advice from the division, the board shall, within 10 days of its
 851 receipt of the advice, provide in writing a substantive response
 852 to the inquirer. If a legal opinion is requested, the board
 853 shall, within 60 days after the receipt of the inquiry, provide
 854 in writing a substantive response to the inquirer. The failure
 855 to provide a substantive response to the inquirer as provided
 856 herein precludes the board from recovering attorney's fees and
 857 costs in any subsequent litigation, administrative proceeding,
 858 or arbitration arising out of the inquiry. The association may,
 859 through its board of administration, adopt reasonable rules and
 860 regulations regarding the frequency and manner of responding to
 861 the unit owners' inquiries, one of which may be that the
 862 association is obligated to respond to only one written inquiry
 863 per unit in any given 30-day period. In such case, any
 864 additional inquiry or inquiries must be responded to in the
 865 subsequent 30-day period, or periods, as applicable.

866 (c) Board of administration meetings.~~Members of the board~~
 867 of administration may use e-mail as a means of communication but
 868 may not cast a vote on an association matter via e-mail.
 869 Meetings of the board of administration at which a quorum of the
 870 members is present shall be open to all unit owners. Any unit

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871 owner may tape record or videotape meetings of the board of
 872 administration. The right to attend such meetings includes the
 873 right to speak at such meetings with reference to all designated
 874 agenda items. The division shall adopt reasonable rules
 875 governing the tape recording and videotaping of the meeting. The
 876 association may adopt reasonable written rules governing the
 877 frequency, duration, and manner of unit owner statements.
 878 Adequate notice of all meetings shall be posted in a conspicuous
 879 place upon the cooperative property at least 48 continuous hours
 880 preceding the meeting, except in an emergency. Any item not
 881 included on the notice may be taken up on an emergency basis by
 882 at least a majority plus one of the members of the board. Such
 883 emergency action shall be noticed and ratified at the next
 884 regular meeting of the board. Notice of any meeting in which
 885 regular or special assessments against unit owners are to be
 886 considered must specifically state that assessments will be
 887 considered and provide the estimated amount and description of
 888 the purposes for such assessments. ~~However,~~ Written notice of
 889 any meeting at which nonemergency special assessments, or at
 890 which amendment to rules regarding unit use, will be considered
 891 shall be mailed, delivered, or electronically transmitted to the
 892 unit owners and posted conspicuously on the cooperative property
 893 not less than 14 days before the meeting. Evidence of compliance
 894 with this 14-day notice shall be made by an affidavit executed
 895 by the person providing the notice and filed among the official
 896 records of the association. Upon notice to the unit owners, the
 897 board shall by duly adopted rule designate a specific location
 898 on the cooperative property upon which all notices of board
 899 meetings shall be posted. In lieu of or in addition to the

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900 physical posting of notice of any meeting of the board of
 901 administration on the cooperative property, the association may,
 902 by reasonable rule, adopt a procedure for conspicuously posting
 903 and repeatedly broadcasting the notice and the agenda on a
 904 closed-circuit cable television system serving the cooperative
 905 association. However, if broadcast notice is used in lieu of a
 906 notice posted physically on the cooperative property, the notice
 907 and agenda must be broadcast at least four times every broadcast
 908 hour of each day that a posted notice is otherwise required
 909 under this section. When broadcast notice is provided, the
 910 notice and agenda must be broadcast in a manner and for a
 911 sufficient continuous length of time so as to allow an average
 912 reader to observe the notice and read and comprehend the entire
 913 content of the notice and the agenda. In addition to any of the
 914 authorized means of providing notice of a meeting of the board,
 915 the association may, by rule, adopt a procedure for
 916 conspicuously posting the meeting notice and the agenda on a
 917 website serving the cooperative association for at least the
 918 minimum period of time for which a notice of a meeting is also
 919 required to be physically posted on the cooperative property.
 920 Any rule adopted shall, in addition to other matters, include a
 921 requirement that the association send an electronic notice
 922 providing a hypertext link to the website where the notice is
 923 posted ~~Notice of any meeting in which regular assessments~~
 924 ~~against unit owners are to be considered for any reason shall~~
 925 ~~specifically contain a statement that assessments will be~~
 926 ~~considered and the nature of any such assessments.~~ Meetings of a
 927 committee to take final action on behalf of the board or to make
 928 recommendations to the board regarding the association budget

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are subject to the provisions of this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this section, unless those meetings are exempted from this section by the bylaws of the association. Notwithstanding any other law to the contrary, the requirement that board meetings and committee meetings be open to the unit owners does not apply to board or committee meetings held for the purpose of discussing personnel matters or meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice.

(m) Director or officer delinquencies.—A director or officer more than 90 days delinquent in the payment of any monetary obligation due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

Section 8. Paragraph (b) of subsection (1) of section 719.107, Florida Statutes, is amended to read:

719.107 Common expenses; assessment.—

(1)

(b) If so provided in the bylaws, the cost of a master antenna television system or duly franchised cable television service, communications services as defined in chapter 202, information services, or Internet services obtained pursuant to a bulk contract shall be deemed a common expense, and if not obtained pursuant to a bulk contract, such cost shall be considered common expense if it is designated as such in a

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written contract between the board of administration and the company providing the master television antenna system or the cable television service, communications services as defined in chapter 202, information services, or Internet services. The contract shall be for a term of not less than 2 years.

1. Any contract made by the board after April 2, 1992, for a community antenna system or duly franchised cable television service, communications services as defined in chapter 202, information services, or Internet services may be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel the contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever is sooner, following the making of the contract, then such contract shall be deemed ratified for the term therein expressed.

2. Any such contract shall provide, and shall be deemed to provide if not expressly set forth, that any hearing impaired or legally blind unit owner who does not occupy the unit with a nonhearing impaired or sighted person may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such units, the owners shall not be required to pay any common expenses charge related to such service. If less than all members of an association share the expenses of cable television, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 719.108 to enforce payment of the shares of such costs by the unit owners receiving cable television.

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Section 9. Paragraphs (a) and (c) of subsection (2) and subsection (7) of section 720.303, Florida Statutes, are amended, and paragraph (i) is added to subsection (6) of that section, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; budget meetings; financial reporting; association funds; recalls.—

(2) BOARD MEETINGS.—

(a) Members of the board of administration may use e-mail as a means of communication, but may not cast a vote on an association matter via e-mail. A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. Meetings of the board must be open to all members, except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. A meeting of the board must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has a right to attend the meeting. The provisions of this subsection shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(c) The bylaws shall provide the following for giving notice to parcel owners and members of all board meetings and,

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if they do not do so, shall be deemed to include ~~provide~~ the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the association bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. The association may provide notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members to any member who has provided a facsimile number or e-mail address to the association to be used for such purposes; however, a member must consent in

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writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(6) BUDGETS; BUDGET MEETINGS.—

(i)1. If a board adopts in any fiscal year an annual budget that requires assessments against parcel owners which exceed 115 percent of assessments for the preceding fiscal year, the board shall conduct a special meeting of the parcel owners to consider a substitute budget if the board receives, within 21 days after adoption of the annual budget, a written request for a special meeting from at least 10 percent of all voting interests. The special meeting shall be conducted within 60 days after adoption

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of the annual budget. At least 14 days before such special meeting, the board shall hand deliver to each parcel owner, or mail to each parcel owner at the address last furnished to the association, a notice of the meeting. An officer or manager of the association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with this notice requirement, and such affidavit shall be filed among the official records of the association. Parcel owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests unless the bylaws require adoption by a greater percentage of voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the board shall take effect as scheduled.

2. Any determination of whether assessments exceed 115 percent of assessments for the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the association property, anticipated expenses of the association which the board does not expect to be incurred on a regular or annual basis, or assessments for betterments to the condominium property.

3. If the developer controls the board, assessments may not exceed 115 percent of assessments for the prior fiscal year unless approved by a majority of all voting interests.

(7) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial

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report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall, within the time limits set forth in subsection (5), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy. The financial statements shall be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial~~

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~~statements required by paragraph (a) unless the governing documents provide otherwise.~~

~~2.3-~~ A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial

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statements; or

3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Section 10. Paragraph (a) of subsection (9) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(9) ELECTIONS AND BOARD VACANCIES.—

(a) Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. Except as provided in paragraph (b), all members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held; provided, however, that if the election process allows candidates to be nominated in advance of the meeting, the association is not required to allow nominations at the meeting. An election is not required unless more candidates are nominated

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than vacancies exist. If an election is not required because there are either an equal number or fewer qualified candidates than vacancies exist, and if nominations from the floor are not required pursuant to this section or the bylaws, write-in nominations are not permitted, and such candidates shall commence service on the board of directors, regardless of whether a quorum is attained at the annual meeting. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. Any challenge to the election process must be commenced within 60 days after the election results are announced.

Section 11. Paragraph (b) of subsection (3) of section 720.3085, Florida Statutes, is amended to read:

720.3085 Payment for assessments; lien claims.—

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(b) Any payment received by an association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of chapter 687 and is not a fine. The foregoing is

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1219 applicable notwithstanding s. 673.3111, any purported accord and
1220 satisfaction, or any restrictive endorsement, designation, or
1221 instruction placed on or accompanying a payment. The preceding
1222 sentence is intended to clarify existing law.

1223 Section 12. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 28, 2017

I respectfully request that **Senate Bill #744**, relating to Community Associations, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Senator Kathleen Passidomo
Florida Senate, District 28

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/17

Meeting Date

744

Bill Number (if applicable)

Topic Community Associations ~~Inst.~~

Amendment Barcode (if applicable)

Name Travis Moore

Job Title

Address P.O. Box 2020

Street

St. Petersburg

City

FL

State

33731

Zip

Phone travis@moore-relations.com

Email 727.421.6902

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Community Associations 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)

4/19/17

Meeting Date

SB 744

Bill Number (if applicable)

Topic Fire Safety

Amendment Barcode (if applicable)

Name Buddy Dewar

Job Title _____

Address 5501 Touraine Drive

Phone 850-566-8733

Street

Tallahassee

FL

32308

City

State

Zip

Email CR8Bud@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Fire Sprinklers 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.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

April 19, 2017
Meeting Date

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

CS/CS 744
Bill Number (if applicable)

Topic Community Association

845968
Amendment Barcode (if applicable)

Name FRED DUDLEY

Job Title ATTORNEY

Address 2522 THOMASVILLE RD. SUITE 301
Street

Phone (850) 294-3471

TALLAHASSEE, FL
City State

32309
Zip

Email DUDLEY@MYLICENSELAW.COM

Speaking: ☐ For ☐ Against ☒ Information

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

Representing ASSOCIATION OF CONSTRUCTION CONSUMERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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)

4/17/17

Meeting Date

744

Bill Number (if applicable)

Topic FIRE SAFETY- COMMUNITY ASSOCIATIONS

Amendment Barcode (if applicable)

Name JOE PASQUA LOPE

Job Title EXECUTIVE DIRECTOR

Address PO BOX 325

Phone 772-249-1507

Street

HORR SOUND FL 33475

City

State

Zip

Email JOE.PASQUA@FLFIRE.ORG

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL FIRE MARSHALS & INSPECTORS & FL FIRE 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

4-19-17

Meeting Date

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

744

Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name Yeline Goin

Job Title Attorney / Executive Director

Address 111 N. Orange Ave Ste 1400

Phone 407-875-0955

Street

Orlando FL 32801

City

State

Zip

Email Yeline.goin@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Community Association Leadership Lobby (CAL)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/17

Meeting Date

744

Bill Number (if applicable)

Topic Hi-Rise Sprinkler Retrofit

Amendment Barcode (if applicable)

Name William Stander

Job Title

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Street

Tallahassee, FL 32302

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State

Zip

Phone 850-212-3250

Email william@williamstander.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing American Fire Sprinkler Association - FL Chapter

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)

4/19/2017

Meeting Date

744

Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name Melanie Bostick

Job Title Vice President

Address 113 E. College Ave

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Street

Tallahassee

FL

32301

City

State

Zip

Email melanie@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

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 1046

INTRODUCER: Community Affairs Committee and Senator Passidomo

SUBJECT: Covenants and Restrictions

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	Fav/CS
2.	Davis	Cibula	JU	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1046 addresses the covenants and restrictions of property owners' associations and makes the following changes:

- Provides updated definitions and replaces the term "homeowners' association" with "property owners' association," which extends statutes authorizing the preservation and revival of covenants and restrictions to a broader range of associations, notably commercial property owners' associations;
- Updates the process for a homeowners' association to timely renew its covenants, and lowers the vote requirement from a two-thirds vote to a majority vote for preservation of existing covenants and restrictions;
- Authorizes parcel owners who were subject to covenants and restrictions, but who do not have a homeowners' association, to use the same mechanisms as a homeowners' association to revitalize extinguished covenants and restrictions;
- Requires a homeowners' association to annually consider preservation of the covenants and restrictions and requires that the association file a summary preservation every 5 years; and
- Conforms statutory and definitional cross-references.

II. Present Situation:

The Marketable Record Title Act

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.¹ In general terms, MRTA provides that any person who has been vested with any estate in land of record for 30 years or more has a marketable record title, free and clear of most claims or encumbrances against the land. In essence, MRTA serves as the ultimate land statute of limitations.² The statutes contain nine exceptions in which MRTA does not apply.³

One unintended effect of MRTA, however, is that covenants and restrictions are extinguished 30 years after their creation. Therefore, homeowner associations' covenants and restrictions can expire and become unenforceable. In order to protect the covenants, MRTA has long provided a method for renewing the covenants. Even so, many homeowners' associations still fail to timely file a renewal of their covenants. In 2004, laws were enacted to provide a method for reviving the covenants and restrictions of a mandatory homeowners' association.⁴ In 2007, nonmandatory homeowners' associations became eligible for revitalization.⁵ Revitalization requires the creation of an organizing committee, notice to all affected property owners, approval by a majority of the homeowners, approval by the Department of Economic Opportunity, and the recording of notice in the public records.⁶

Two categories of property owners impacted by MRTA have not been included in the laws permitting renewal or revival of their covenants and restrictions: commercial landowners in office parks, industrial parks, and other commercial districts and neighborhoods with enforceable covenants but no formal homeowners' association. These property owners both enact and enforce covenants and restrictions regarding their property and that of their neighbors.

Due to the disparate issues in the bill, the present situation for each section is discussed in more detail below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Preservation of Existing Covenants

Present Situation

Sections 712.05 and 712.06, F.S., provide that a homeowners' association may timely renew its covenants by complying with the following conditions:

- The board must give written notice to every parcel owner of the impending preservation of the covenants;⁷

¹ *Blanton v. City of Pinellas Park*, 887 So. 2d 1224, 1227 (Fla. 2004).

² Gregory M. Cook, *The Marketable Record Title Act Made Easy*, The Florida Bar Journal, (Oct. 1992) available at <https://www.floridabar.org/divcom/jn/jnjournal01.nsf/Author/E3897C8163A7258285256BD80071EED5>.

³ Section 712.03, F.S.

⁴ Ch. 2004-345, s. 11, Laws of Fla.

⁵ Ch. 2007-173, s. 1, Laws of Fla.

⁶ Sections 720.403, 720.404, 720.405, 720.406, and 720.407, F.S.

⁷ Section 712.06(1)(b), F.S.

- The board must give written notice to every parcel owner of a meeting of the board of directors where the directors will decide whether to renew the covenants;⁸
- The board of directors of the association must approve the renewal by a two-thirds vote;⁹ and
- Notice of the renewal must be recorded in the official records of the county.¹⁰

Sections 3 and 4 of the bill change this procedure to:

- Provide that compliance by a homeowners' association with newly created s. 720.3032, F.S. (see discussion below) may substitute for the requirements of ss. 712.05 and 712.06, F.S.;
- Repeal the requirement that the board achieve a two-thirds vote; and
- Repeal the requirement that affected property owners be furnished notice of the board meeting to vote on preservation.

These sections also contain conforming language.

Preservation and Revitalization of Covenants by a Commercial Property Owners' Association

Present Situation

Current law provides for the preservation and revitalization of covenants by a homeowners association.

Effect of the Bill

Section 2 provides a definition for the term “community covenant or restriction” and substitutes the term “property owners’ association” for “homeowners’ association.” A property owners’ association includes a homeowners’ association as defined in s. 720.301, F.S., a corporation or entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, as well as an association of parcel owners authorized to enforce a community covenant or restriction. The bill also makes conforming changes for these new terms.

The bill replaces all uses of the term “homeowners’ association” found in chapter 712, F.S., with the term “property owners’ association.” The effect is to expand MRTA laws on preservation and revitalization of covenants or restrictions to cover commercial associations.

Section 12 inserts language to provide that part III of chapter 720, F.S., Covenant Revitalization,¹¹ is intended to provide mechanisms for revitalization of covenants or restrictions by all types of communities and property associations, not just residential communities. This section also includes conforming changes.

⁸ Section 712.05(1), F.S.

⁹ *Id.*

¹⁰ Section 712.06(2), F.S.

¹¹ Part III is comprised of sections 720.403 – 720.407, F.S.

Revitalization by an Owner Not Subject to Homeowners' Association

Present Situation

Some residential communities have recorded covenants and restrictions similar to those found in a homeowners' association, but never created an association. Current law permits individual owners to file a notice of preservation of covenants before they expire¹² but there are no means of revitalizing those covenants and restrictions.

Effect of the Bill

Section 6 provides for covenant or restriction revitalization by parcel owners who are not subject to a homeowners' association. The bill provides the following definitions:

- “Community” means the real property that is subject to a covenant or restriction that is recorded in the county where the property is located.
- “Covenant or restriction” means any agreement or limitation imposed by a private party and not required by a governmental agency as a condition of a development permit, as defined in s. 163.3164, F.S., which is contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction that may be enforced by a parcel owner.
- “Parcel” means real property that is used for residential purposes and that is subject to exclusive ownership and any covenant or restriction that may be enforced by a parcel owner.
- “Parcel owner” means the record owner of legal title to a parcel.

Under this section, parcel owners may use the process available to a homeowners' association¹³ to revive covenants or restrictions that have lapsed under MRTA. The parcel owners do not need to provide articles of incorporation or bylaws to revive the covenants or restrictions and only need the approval of a majority of the affected parcel owners in writing. The organizing committee of the community may execute the revived covenants or restrictions in the name of the community and the community name can be indexed as the grantee of the covenants with the parcel owners listed as grantors.

A parcel owner who has ceased to be subject to covenants or restrictions as of October 1, 2017, may commence an action by October 1, 2018, to determine if revitalization would unconstitutionally deprive the parcel owner of right or property. Revived covenants or restrictions do not affect the rights of a parcel owner that are recognized by a court order in an action commenced by October 1, 2018, and may not be subsequently altered without the consent of the affected parcel owner. Although a parcel owner has from October 1, 2017, to October 1, 2018, to file a legal action objecting to the revitalization of a covenant or restriction, the bill does not provide any mechanism to inform parcel owners of this right. Moreover, the bill allows parcel owners seeking to revitalize an extinguished covenant or restriction to proceed after October 1, 2018.

¹² See sections 712.05 and 712.06, F.S.

¹³ See sections 720.403- 720.407, F.S.

Requirements on the Board of Directors of a Homeowners' Association

Present Situation

While it is probably good practice for a homeowners' association to regularly consider the need for preservation of the covenants and restrictions of their neighborhood, there is no statutory requirement that a board of directors of a homeowners' association do so.

Effect of the Bill

Section 7 amends s. 720.303(2), F.S., to require that the board of directors for a homeowners' association must consider whether to file a notice to preserve the covenants and restrictions affecting the community from extinguishment pursuant to MRTA. This must be considered at the first board meeting after the annual meeting of the members.

Section 8 creates s. 720.3032, F.S., to require that, at least once every 5 years, a homeowners' association must file in the official records of the county in which it is located a notice detailing:

- The legal name of the association;
- The mailing and physical addresses of the association;
- The names of the affected subdivision plats and condominiums, or the common name of the community;
- The name, address, and telephone number for the current community association management company or manager, if any;
- An indication as to whether the association desires to preserve the covenants or restrictions affecting the community from extinguishment pursuant to MRTA;
- The name and recording information of those covenants or restrictions affecting the community which the association wishes to preserve;
- A legal description of the community affected by the covenants or restrictions; and
- The signature of a duly authorized officer of the association.

The section creates a statutory form for the information. The bill further provides that the filing of the completed form is considered a substitute for the notice required for preservation of the covenants pursuant to ss. 712.05 and 712.06, F.S. As such, every 5-year filing of the form will have the effect of starting the MRTA 30-year period anew.

The failure to file this notice does not affect the validity or enforceability of any covenant or restriction. A copy of this notice must be included as a part of the next notice of meeting or other mailing sent to all members of the association. The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

Other Changes Made by the Bill

Section 1 provides a short title of the "Marketable Record Title Act" for chapter 712, F.S.

Sections 5, 9, 10, 11, 13, 14, and 15 make changes to conform various statutory and definitional cross references.

Section 16 provides an effective date of 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:

A person who believes that the revitalization of an expired covenant or restriction is a taking of a vested property right or other constitutional violation may be required to spend substantial funds to vindicate his or her rights in court.

Section 8 of the bill requires associations to prepare and record a notice every 5 years. The recording fee is nominal (\$10 for the first page, \$8.50 for additional pages). Because the form is in statute, associations may be able to complete the task without assistance, or a community association manager can assist an association with preparation and filing without reference to a licensed attorney.

C. Government Sector Impact:

The bill requires the recording of documents in the public records of the county. Recording is subject to a fee of \$10.00 for the first page and \$8.50 for every subsequent page, payable to the recording department (in most counties, the clerk of the court).¹⁴ The net revenues to county recorders, after deductions for incremental costs of recording and indexing documents, are unknown.

D. Constitutional Issues:

The State Constitution addresses the property rights of citizens in two pertinent provisions. Article 1, section 2 provides that all natural person have the right to acquire, possess and protect property. Article 1, section 9 provides that “No person shall be deprived of life, liberty or property without due process of law” Additionally, the

¹⁴ Section 28.24(12), F.S.

State Constitution, in Article 1, section 10, also prohibits any law that impairs the obligation of contracts.

Because of these constitutional property rights protections, two issues arise from the bill. The first is whether the expiration of covenants and restrictions vests additional property rights in the owner of a property. A vested right is defined as “an immediate, fixed right of present or future enjoyment.”¹⁵ For example, the expiration of covenants and restrictions might allow a property owner to build a nonconforming structure on the property or to use the property in a manner not allowed under the covenants and restrictions. The second issue is whether the bill, by allowing the reinstatement of expired covenants and restrictions, allows property rights to be taken in violation of the State Constitution.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 712.01, 712.05, 712.06, 712.11, 720.303, 702.09, 702.10, 712.095, 720.403, 720.404, 720.405, and 720.407. This bill creates the following sections of the Florida Statutes: 712.001, 712.12, and 720.3032.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 3, 2017:

- Removed sections of the bill that authorized counties and municipalities to amend, release, or terminate a restriction or covenant that they imposed or accepted during the approval of a development permit.
- Removed retroactivity clauses pertaining to existing restrictions and covenants.
- Removed a section that added that a marketable record title is also free and clear of all zoning requirements or building or development permits that occurred before the effective date of the root of title.

¹⁵ *Coral Lakes Cmty. Ass’n v. Busey Bank, N.A.*, 30 So. 3d 579, 583 (Fla. 2nd DCA 2010) quoting *Pearsall v. Great N. Ry. Co.*, 161 U.S. 646, 673, (1896).

B. Amendments:

None.

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

By the Committee on Community Affairs; and Senator Passidomo

578-03386-17

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1 A bill to be entitled
 2 An act relating to covenants and restrictions;
 3 creating s. 712.001, F.S.; providing a short title;
 4 amending s. 712.01, F.S.; defining and redefining
 5 terms; amending s. 712.05, F.S.; revising the notice
 6 filing requirements for a person claiming an interest
 7 in land and other rights; authorizing a property
 8 owners' association to preserve and protect certain
 9 covenants or restrictions from extinguishment, subject
 10 to specified requirements; providing that a failure in
 11 indexing does not affect the validity of the notice;
 12 extending the length of time certain covenants or
 13 restrictions are preserved; deleting a provision
 14 requiring a two-thirds vote by members of an
 15 incorporated homeowners' association to file certain
 16 notices; conforming provisions to changes made by the
 17 act; amending s. 712.06, F.S.; exempting a specified
 18 summary notice from certain notice content
 19 requirements; revising the contents required to be
 20 specified by certain notices; conforming provisions to
 21 changes made by the act; amending s. 712.11, F.S.;
 22 conforming provisions to changes made by the act;
 23 creating s. 712.12, F.S.; defining terms; authorizing
 24 the parcel owners of a community not subject to a
 25 homeowners' association to use specified procedures to
 26 revive certain covenants or restrictions, subject to
 27 certain exceptions and requirements; authorizing a
 28 parcel owner to commence an action by a specified date
 29 under certain circumstances for a judicial

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

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30 determination that the covenants or restrictions did
 31 not govern that parcel as of a specified date and that
 32 any revitalization of such covenants or restrictions
 33 as to that parcel would unconstitutionally deprive the
 34 parcel owner of rights or property; providing
 35 applicability; amending s. 720.303, F.S.; requiring a
 36 board to take up certain provisions relating to notice
 37 filings at the first board meeting; creating s.
 38 720.3032, F.S.; providing recording requirements for
 39 an association; providing a document form for
 40 recording by an association to preserve certain
 41 covenants or restrictions; providing that failure to
 42 file one or more notices does not affect the validity
 43 or enforceability of a covenant or restriction or
 44 alter the time before extinguishment under certain
 45 circumstances; requiring a copy of the filed notice to
 46 be sent to all members; requiring the original signed
 47 notice to be recorded with the clerk of the circuit
 48 court or other recorder; amending ss. 702.09 and
 49 702.10, F.S.; conforming provisions to changes made by
 50 the act; amending s. 712.095, F.S.; conforming a
 51 cross-reference; amending ss. 720.403, 720.404,
 52 720.405, and 720.407, F.S.; conforming provisions to
 53 changes made by the act; providing an effective date.

54
 55 Be It Enacted by the Legislature of the State of Florida:

56
 57 Section 1. Section 712.001, Florida Statutes, is created to
 58 read:

Page 2 of 24

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

578-03386-17

20171046c1

712.001 Short title.—This chapter may be cited as the
"Marketable Record Title Act."

Section 2. Section 712.01, Florida Statutes, is reordered
 and amended to read:

712.01 Definitions.—As used in this chapter, the term ~~law~~:

(1) "Community covenant or restriction" means any agreement
or limitation contained in a document recorded in the public
records of the county in which a parcel is located which:

(a) Subjects the parcel to any use restriction that may be
enforced by a property owners' association; or

(b) Authorizes a property owners' association to impose a
charge or assessment against the parcel or the parcel owner.

(4)(1) ~~The term "Person" includes the as used herein~~
~~denotes~~ singular or plural, natural or corporate, private or
 governmental, including the state and any political subdivision
 or agency thereof as the context for the use thereof requires or
 denotes and including any property owners' homeowners'
 association.

(6)(2) "Root of title" means any title transaction
 purporting to create or transfer the estate claimed by any
 person ~~and~~ which is the last title transaction to have been
 recorded at least 30 years before ~~prior to~~ the time when
 marketability is being determined. The effective date of the
 root of title is the date on which it was recorded.

(7)(3) "Title transaction" means any recorded instrument or
 court proceeding that ~~which~~ affects title to any estate or
 interest in land and that ~~which~~ describes the land sufficiently
 to identify its location and boundaries.

(5)(4) "Property owners' association" ~~The term "homeowners'~~

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~~association~~" means a homeowners' association as defined in s.

720.301, a corporation or other entity responsible for the
operation of property in which the voting membership is made up
of the owners of the property or their agents, or a combination
thereof, and in which membership is a mandatory condition of
property ownership, or an association of parcel owners which is
 authorized to enforce a community covenant or restriction ~~use~~
~~restrictions~~ that is ~~are~~ imposed on the parcels.

(3)(5) ~~The term "Parcel"~~ means real property that ~~which~~ is
 used for residential purposes and that is subject to exclusive
 ownership and ~~which is subject to~~ any covenant or restriction of
 a property owners' homeowners' association.

(2)(6) ~~The term "Covenant or restriction"~~ means any
 agreement or limitation contained in a document recorded in the
 public records of the county in which a parcel is located which
 subjects the parcel to any use or other restriction or
obligation ~~which may be enforced by a homeowners' association or~~
~~which authorizes a homeowners' association to impose a charge or~~
~~assessment against the parcel or the owner of the parcel or~~
~~which may be enforced by the Florida Department of Environmental~~
~~Protection pursuant to chapter 376 or chapter 403.~~

Section 3. Section 712.05, Florida Statutes, is amended to
 read:

712.05 Effect of filing notice.—

(1) A person claiming an interest in land or other right
subject to extinguishment under this chapter ~~a homeowners'~~
~~association desiring to preserve a covenant or restriction~~ may
 preserve and protect such interest or right ~~the same~~ from
 extinguishment by the operation of this chapter ~~act~~ by filing

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for record, at any time during the 30-year period immediately following the effective date of the root of title, a written notice in accordance with s. 712.06 ~~this chapter~~.

(2) A property owners' association may preserve and protect a community covenant or restriction from extinguishment by the operation of this chapter by filing for record, at any time during the 30-year period immediately following the effective date of the root of title:

(a) A written notice in accordance with s. 712.06; or

(b) A summary notice in substantial form and content as required under s. 720.3032(2). Failure of a summary notice to be indexed to the current owners of the affected property does not affect the validity of the notice or vitiate the effect of the filing of such notice.

(3) A ~~such~~ notice under subsection (1) or subsection (2) preserves an interest in land or other ~~such claim of right~~ subject to extinguishment under this chapter, or a ~~such~~ covenant or restriction or portion of such covenant or restriction, for not less than ~~up to~~ 30 years after filing the notice unless the notice is filed again as required in this chapter. A person's disability or lack of knowledge of any kind may not delay the commencement of or suspend the running of the 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of a claimant who is:

(a) Under a disability;

(b) Unable to assert a claim on his or her behalf; or

(c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

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~~Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of such covenant or restriction is approved by at least two-thirds of the members of the board of directors of an incorporated homeowners' association at a meeting for which a notice, stating the meeting's time and place and containing the statement of marketable title action described in s. 712.06(1)(b), was mailed or hand delivered to members of the homeowners' association at least 7 days before such meeting. The property owners' homeowners' association or clerk of the circuit court is not required to provide additional notice pursuant to s. 712.06(3). The preceding sentence is intended to clarify existing law.~~

(4)(2) It is ~~shall~~ not be necessary for the owner of the marketable record title, as described in s. 712.02 ~~herein~~ defined, to file a notice to protect his or her marketable record title.

Section 4. Subsections (1) and (3) of section 712.06, Florida Statutes, are amended to read:

712.06 Contents of notice; recording and indexing.—

(1) To be effective, the notice referred to in s. 712.05, other than the summary notice referred to in s. 712.05(2)(b), must ~~shall~~ contain:

(a) The name or description and mailing address of the claimant or the property owners' ~~homeowners'~~ association desiring to preserve any covenant or restriction and the name and particular post office address of the person filing the claim or the homeowners' association.

(b) The name and mailing ~~post office~~ address of an owner,

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or the name and mailing ~~post-office~~ address of the person in whose name ~~the said~~ property is assessed on the last completed tax assessment roll of the county at the time of filing, who, for purpose of such notice, shall be deemed to be an owner; ~~provided,~~ however, if a property owners' ~~homeowners'~~ association is filing the notice, ~~then~~ the requirements of this paragraph may be satisfied by attaching to and recording with the notice an affidavit executed by the appropriate member of the board of directors of the property owners' ~~homeowners'~~ association affirming that the board of directors of the property owners' ~~homeowners'~~ association caused a statement in substantially the following form to be mailed or hand delivered to the members of that property owners' ~~homeowners'~~ association:

STATEMENT OF MARKETABLE TITLE ACTION

The [name of property owners' ~~homeowners'~~ association] (the "Association") has taken action to ensure that the [name of declaration, covenant, or restriction], recorded in Official Records Book, Page, of the public records of County, Florida, as may be amended from time to time, currently burdening the property of each and every member of the Association, retains its status ~~as the source of marketable title with regard to the affected real property the transfer of a member's residence~~. To this end, the Association shall cause the notice required by chapter 712, Florida Statutes, to be recorded in the public records of County, Florida. Copies of this notice and its attachments are available through the Association pursuant to the Association's governing documents

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regarding official records of the Association.

(c) A full and complete description of all land affected by such notice, which description shall be set forth in particular terms and not by general reference, but if said claim is founded upon a recorded instrument or a covenant or a restriction, ~~then~~ the description in such notice may be the same as that contained in such recorded instrument or covenant or restriction, provided the same shall be sufficient to identify the property.

(d) A statement of the claim showing the nature, description, and extent of such claim or other right subject to extinguishment under this chapter or, in the case of a covenant or restriction, a copy of the covenant or restriction, except that it is ~~shall~~ not be necessary to show the amount of any claim for money or the terms of payment.

(e) If such claim or other right subject to extinguishment under this chapter is based upon an instrument of record or a recorded covenant or restriction, such instrument of record or recorded covenant or restriction shall be deemed sufficiently described to identify the same if the notice includes a reference to the book and page in which the same is recorded.

(f) Such notice shall be acknowledged in the same manner as deeds are acknowledged for record.

(3) The person providing the notice referred to in s. 712.05, other than a notice for preservation of a community covenant or restriction, shall:

(a) Cause the clerk of the circuit court to mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall

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enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(8) and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(12). If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this . . . , mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

... (Clerk of the circuit court) ...
of . . . County, Florida,
By... (Deputy clerk) ...

The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction; or

(b) Publish once a week, for 2 consecutive weeks, the notice referred to in s. 712.05, with the official record book and page number in which such notice was recorded, in a newspaper as defined in chapter 50 in the county in which the property is located.

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Section 5. Section 712.11, Florida Statutes, is amended to read:

712.11 Covenant revitalization.—~~A property owners' homeowners'~~ association not otherwise subject to chapter 720 may use the procedures set forth in ss. 720.403-720.407 to revive covenants that have lapsed under the terms of this chapter.

Section 6. Section 712.12, Florida Statutes, is created to read:

712.12 Covenant or restriction revitalization by parcel owners not subject to a homeowners' association.—

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

(a) "Community" means the real property that is subject to a covenant or restriction that is recorded in the county where the property is located.

(b) "Covenant or restriction" means any agreement or limitation imposed by a private party and not required by a governmental agency as a condition of a development permit, as defined in s. 163.3164, which is contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction that may be enforced by a parcel owner.

(c) "Parcel" means real property that is used for residential purposes and that is subject to exclusive ownership and any covenant or restriction that may be enforced by a parcel owner.

(d) "Parcel owner" means the record owner of legal title to a parcel.

(2) The parcel owners of a community not subject to a homeowners' association may use the procedures set forth in ss.

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291 720.403-720.407 to revive covenants or restrictions that have
 292 lapsed under the terms of this chapter, except:

293 (a) A reference to a homeowners' association or articles of
 294 incorporation or bylaws of a homeowners' association under ss.
 295 720.403-720.407 is not required to revive the covenants or
 296 restrictions.

297 (b) The approval required under s. 720.405(6) must be in
 298 writing, and not at a meeting.

299 (c) The requirements under s. 720.407(2) may be satisfied
 300 by having the organizing committee execute the revived covenants
 301 or restrictions in the name of the community.

302 (d) The indexing requirements under s. 720.407(3) may be
 303 satisfied by indexing the community name in the covenants or
 304 restrictions as the grantee and the parcel owners as the
 305 grantors.

306 (3) With respect to any parcel that has ceased to be
 307 governed by covenants or restrictions as of October 1, 2017, the
 308 parcel owner may commence an action by October 1, 2018, for a
 309 judicial determination that the covenants or restrictions did
 310 not govern that parcel as of October 1, 2017, and that any
 311 revitalization of such covenants or restrictions as to that
 312 parcel would unconstitutionally deprive the parcel owner of
 313 rights or property.

314 (4) Revived covenants or restrictions that are implemented
 315 pursuant to this section do not apply to or affect the rights of
 316 the parcel owner which are recognized by any court order or
 317 judgment in any action commenced by October 1, 2018, and any
 318 such rights so recognized may not be subsequently altered by
 319 revived covenants or restrictions implemented under this section

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320 without the consent of the affected parcel owner.

321 Section 7. Paragraph (e) is added to subsection (2) of
 322 section 720.303, Florida Statutes, to read:

323 720.303 Association powers and duties; meetings of board;
 324 official records; budgets; financial reporting; association
 325 funds; recalls.—

326 (2) BOARD MEETINGS.—

327 (e) At the first board meeting, excluding the
 328 organizational meeting, which follows the annual meeting of the
 329 members, the board shall consider the desirability of filing
 330 notices to preserve the covenants or restrictions affecting the
 331 community or association from extinguishment under the
 332 Marketable Record Title Act, chapter 712, and to authorize and
 333 direct the appropriate officer to file notice in accordance with
 334 s. 720.3032.

335 Section 8. Section 720.3032, Florida Statutes, is created
 336 to read:

337 720.3032 Notice of association information; preservation
 338 from Marketable Record Title Act.—

339 (1) Not less than once every 5 years, each association
 340 shall record in the official records of each county in which the
 341 community is located a notice specifying:

342 (a) The legal name of the association.

343 (b) The mailing and physical addresses of the association.

344 (c) The names of the affected subdivision plats and
 345 condominiums or, if not applicable, the common name of the
 346 community.

347 (d) The name, address, and telephone number for the current
 348 community association management company or community

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association manager, if any.

(e) Indication as to whether the association desires to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712.

(f) A listing by name and recording information of those covenants or restrictions affecting the community which the association desires to be preserved from extinguishment.

(g) The legal description of the community affected by the covenants or restrictions, which may be satisfied by a reference to a recorded plat.

(h) The signature of a duly authorized officer of the association, acknowledged in the same manner as deeds are acknowledged for record.

(2) Recording a document in substantially the following form satisfies the notice obligation and constitutes a summary notice as specified in s. 712.05(2)(b) sufficient to preserve and protect the referenced covenants and restrictions from extinguishment under the Marketable Record Title Act, chapter 712.

Notice of ...(name of association)... under s. 720.3032, Florida Statutes, and notice to preserve and protect covenants and restrictions from extinguishment under the Marketable Record Title Act, chapter 712, Florida Statutes.

Instructions to recorder: Please index both the legal name of the association and the names shown in item 3.

1. Legal name of association:

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2. Mailing and physical addresses of association:

3. Names of the subdivision plats, or, if none, common name of community:

4. Name, address, and telephone number for management company, if any:

5. This notice does does not constitute a notice to preserve and protect covenants or restrictions from extinguishment under the Marketable Record Title Act.

6. The following covenants or restrictions affecting the community which the association desires to be preserved from extinguishment:

...(Name of instrument)...

...(Official Records Book where recorded & page)...

...(List of instruments)...

...(List of recording information)...

7. The legal description of the community affected by the listed covenants or restrictions is: ...(Legal description, which may be satisfied by reference to a recorded plat)...

This notice is filed on behalf of ...(Name of association)... as of ...(Date)....

...(Name of association)...

By:

...(Name of individual officer)...

...(Title of officer)...

...(Notary acknowledgment)...

(3) The failure to file one or more notices does not affect the validity or enforceability of any covenant or restriction

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nor in any way alter the remaining time before extinguishment by the Marketable Record Title Act, chapter 712.

(4) A copy of the notice, as filed, must be included as part of the next notice of meeting or other mailing sent to all members.

(5) The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

Section 9. Section 702.09, Florida Statutes, is amended to read:

702.09 Definitions.—For the purposes of ss. 702.07 and 702.08, the words “decree of foreclosure” shall include a judgment or order rendered or passed in the foreclosure proceedings in which the decree of foreclosure shall be rescinded, vacated, and set aside; the word “mortgage” shall mean any written instrument securing the payment of money or advances and includes liens to secure payment of assessments arising under chapters 718 and 719 and liens created pursuant to the recorded covenants of a property owners’ ~~homeowners’~~ association as defined in s. 712.01; the word “debt” shall include promissory notes, bonds, and all other written obligations given for the payment of money; the words “foreclosure proceedings” shall embrace every action in the circuit or county courts of this state wherein it is sought to foreclose a mortgage and sell the property covered by the same; and the word “property” shall mean and include both real and personal property.

Section 10. Subsection (1) of section 702.10, Florida Statutes, is amended to read:

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702.10 Order to show cause; entry of final judgment of foreclosure; payment during foreclosure.—

(1) A lienholder may request an order to show cause for the entry of final judgment in a foreclosure action. For purposes of this section, the term “lienholder” includes the plaintiff and a defendant to the action who holds a lien encumbering the property or a defendant who, by virtue of its status as a condominium association, cooperative association, or property owners’ ~~homeowners’~~ association, may file a lien against the real property subject to foreclosure. Upon filing, the court shall immediately review the request and the court file in chambers and without a hearing. If, upon examination of the court file, the court finds that the complaint is verified, complies with s. 702.015, and alleges a cause of action to foreclose on real property, the court shall promptly issue an order directed to the other parties named in the action to show cause why a final judgment of foreclosure should not be entered.

(a) The order shall:

1. Set the date and time for a hearing to show cause. The date for the hearing may not occur sooner than the later of 20 days after service of the order to show cause or 45 days after service of the initial complaint. When service is obtained by publication, the date for the hearing may not be set sooner than 30 days after the first publication.

2. Direct the time within which service of the order to show cause and the complaint must be made upon the defendant.

3. State that the filing of defenses by a motion, a responsive pleading, an affidavit, or other papers before the hearing to show cause that raise a genuine issue of material

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fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to foreclosure shall constitute cause for the court not to enter final judgment.

4. State that a defendant has the right to file affidavits or other papers before the time of the hearing to show cause and may appear personally or by way of an attorney at the hearing.

5. State that, if a defendant files defenses by a motion, a verified or sworn answer, affidavits, or other papers or appears personally or by way of an attorney at the time of the hearing, the hearing time will be used to hear and consider whether the defendant's motion, answer, affidavits, other papers, and other evidence and argument as may be presented by the defendant or the defendant's attorney raise a genuine issue of material fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to foreclosure. The order shall also state that the court may enter an order of final judgment of foreclosure at the hearing and order the clerk of the court to conduct a foreclosure sale.

6. State that, if a defendant fails to appear at the hearing to show cause or fails to file defenses by a motion or by a verified or sworn answer or files an answer not contesting the foreclosure, such defendant may be considered to have waived the right to a hearing, and in such case, the court may enter a default against such defendant and, if appropriate, a final judgment of foreclosure ordering the clerk of the court to conduct a foreclosure sale.

7. State that if the mortgage provides for reasonable attorney fees and the requested attorney fees do not exceed 3 percent of the principal amount owed at the time of filing the

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complaint, it is unnecessary for the court to hold a hearing or adjudge the requested attorney fees to be reasonable.

8. Attach the form of the proposed final judgment of foreclosure which the movant requests the court to enter at the hearing on the order to show cause.

9. Require the party seeking final judgment to serve a copy of the order to show cause on the other parties in the following manner:

a. If a party has been served pursuant to chapter 48 with the complaint and original process, or the other party is the plaintiff in the action, service of the order to show cause on that party may be made in the manner provided in the Florida Rules of Civil Procedure.

b. If a defendant has not been served pursuant to chapter 48 with the complaint and original process, the order to show cause, together with the summons and a copy of the complaint, shall be served on the party in the same manner as provided by law for original process.

Any final judgment of foreclosure entered under this subsection is for in rem relief only. This subsection does not preclude the entry of a deficiency judgment where otherwise allowed by law. The Legislature intends that this alternative procedure may run simultaneously with other court procedures.

(b) The right to be heard at the hearing to show cause is waived if a defendant, after being served as provided by law with an order to show cause, engages in conduct that clearly shows that the defendant has relinquished the right to be heard on that order. The defendant's failure to file defenses by a

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523 motion or by a sworn or verified answer, affidavits, or other
 524 papers or to appear personally or by way of an attorney at the
 525 hearing duly scheduled on the order to show cause presumptively
 526 constitutes conduct that clearly shows that the defendant has
 527 relinquished the right to be heard. If a defendant files
 528 defenses by a motion, a verified answer, affidavits, or other
 529 papers or presents evidence at or before the hearing which raise
 530 a genuine issue of material fact which would preclude entry of
 531 summary judgment or otherwise constitute a legal defense to
 532 foreclosure, such action constitutes cause and precludes the
 533 entry of a final judgment at the hearing to show cause.

534 (c) In a mortgage foreclosure proceeding, when a final
 535 judgment of foreclosure has been entered against the mortgagor
 536 and the note or mortgage provides for the award of reasonable
 537 attorney fees, it is unnecessary for the court to hold a hearing
 538 or adjudge the requested attorney fees to be reasonable if the
 539 fees do not exceed 3 percent of the principal amount owed on the
 540 note or mortgage at the time of filing, even if the note or
 541 mortgage does not specify the percentage of the original amount
 542 that would be paid as liquidated damages.

543 (d) If the court finds that all defendants have waived the
 544 right to be heard as provided in paragraph (b), the court shall
 545 promptly enter a final judgment of foreclosure without the need
 546 for further hearing if the plaintiff has shown entitlement to a
 547 final judgment and upon the filing with the court of the
 548 original note, satisfaction of the conditions for establishment
 549 of a lost note, or upon a showing to the court that the
 550 obligation to be foreclosed is not evidenced by a promissory
 551 note or other negotiable instrument. If the court finds that a

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552 defendant has not waived the right to be heard on the order to
 553 show cause, the court shall determine whether there is cause not
 554 to enter a final judgment of foreclosure. If the court finds
 555 that the defendant has not shown cause, the court shall promptly
 556 enter a judgment of foreclosure. If the time allotted for the
 557 hearing is insufficient, the court may announce at the hearing a
 558 date and time for the continued hearing. Only the parties who
 559 appear, individually or through an attorney, at the initial
 560 hearing must be notified of the date and time of the continued
 561 hearing.

562 Section 11. Section 712.095, Florida Statutes, is amended
 563 to read:

564 712.095 Notice required by July 1, 1983.—Any person whose
 565 interest in land is derived from an instrument or court
 566 proceeding recorded subsequent to the root of title, which
 567 instrument or proceeding did not contain a description of the
 568 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose
 569 interest had not been extinguished prior to July 1, 1981, shall
 570 have until July 1, 1983, to file a notice in accordance with s.
 571 712.06 to preserve the interest.

572 Section 12. Section 720.403, Florida Statutes, is amended
 573 to read:

574 720.403 Preservation of ~~residential~~ communities; revival of
 575 declaration of covenants.—

576 (1) Consistent with required and optional elements of local
 577 comprehensive plans and other applicable provisions of the
 578 Community Planning Act, property owners ~~homeowners~~ are
 579 encouraged to preserve existing residential and other
 580 communities, promote available and affordable housing, protect

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581 structural and aesthetic elements of their ~~residential~~
 582 community, and, as applicable, maintain roads and streets,
 583 easements, water and sewer systems, utilities, drainage
 584 improvements, conservation and open areas, recreational
 585 amenities, and other infrastructure and common areas that serve
 586 and support the ~~residential~~ community by the revival of a
 587 previous declaration of covenants and other governing documents
 588 that may have ceased to govern some or all parcels in the
 589 community.

590 (2) In order to preserve a ~~residential~~ community and the
 591 associated infrastructure and common areas for the purposes
 592 described in this section, the parcel owners in a community that
 593 was previously subject to a declaration of covenants that has
 594 ceased to govern one or more parcels in the community may revive
 595 the declaration and the ~~homeowners'~~ association for the
 596 community upon approval by the parcel owners to be governed
 597 thereby as provided in this act, and upon approval of the
 598 declaration and the other governing documents for the
 599 association by the Department of Economic Opportunity in a
 600 manner consistent with this act.

601 (3) Part III of this chapter is intended to provide
 602 mechanisms for the revitalization of covenants or restrictions
 603 for all types of communities and property associations and is
 604 not limited to residential communities.

605 Section 13. Section 720.404, Florida Statutes, is amended
 606 to read:

607 720.404 Eligible ~~residential~~ communities; requirements for
 608 revival of declaration.—Parcel owners in a community are
 609 eligible to seek approval from the Department of Economic

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610 Opportunity to revive a declaration of covenants under this act
 611 if all of the following requirements are met:

612 (1) All parcels to be governed by the revived declaration
 613 must have been once governed by a previous declaration that has
 614 ceased to govern some or all of the parcels in the community;

615 (2) The revived declaration must be approved in the manner
 616 provided in s. 720.405(6); and

617 (3) The revived declaration may not contain covenants that
 618 are more restrictive on the parcel owners than the covenants
 619 contained in the previous declaration, except that the
 620 declaration may:

621 (a) Have an effective term of longer duration than the term
 622 of the previous declaration;

623 (b) Omit restrictions contained in the previous
 624 declaration;

625 (c) Govern fewer than all of the parcels governed by the
 626 previous declaration;

627 (d) Provide for amendments to the declaration and other
 628 governing documents; and

629 (e) Contain provisions required by this chapter for new
 630 declarations that were not contained in the previous
 631 declaration.

632 Section 14. Subsections (1), (3), (5), and (6) of section
 633 720.405, Florida Statutes, are amended to read:

634 720.405 Organizing committee; parcel owner approval.—

635 (1) The proposal to revive a declaration of covenants and
 636 an a ~~homeowners'~~ association for a community under the terms of
 637 this act shall be initiated by an organizing committee
 638 consisting of not less than three parcel owners located in the

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community that is proposed to be governed by the revived declaration. The name, address, and telephone number of each member of the organizing committee must be included in any notice or other document provided by the committee to parcel owners to be affected by the proposed revived declaration.

(3) The organizing committee shall prepare the full text of the proposed articles of incorporation and bylaws of the revived ~~homeowners'~~ association to be submitted to the parcel owners for approval, unless the association is then an existing corporation, in which case the organizing committee shall prepare the existing articles of incorporation and bylaws to be submitted to the parcel owners.

(5) A copy of the complete text of the proposed revised declaration of covenants, the proposed new or existing articles of incorporation and bylaws of the ~~homeowners'~~ association, and a graphic depiction of the property to be governed by the revived declaration shall be presented to all of the affected parcel owners by mail or hand delivery not less than 14 days before the time that the consent of the affected parcel owners to the proposed governing documents is sought by the organizing committee.

(6) A majority of the affected parcel owners must agree in writing to the revived declaration of covenants and governing documents of the ~~homeowners'~~ association or approve the revived declaration and governing documents by a vote at a meeting of the affected parcel owners noticed and conducted in the manner prescribed by s. 720.306. Proof of notice of the meeting to all affected owners of the meeting and the minutes of the meeting recording the votes of the property owners shall be certified by

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a court reporter or an attorney licensed to practice in the state.

Section 15. Subsection (3) of section 720.407, Florida Statutes, is amended to read:

720.407 Recording; notice of recording; applicability and effective date.—

(3) The recorded documents shall include the full text of the approved declaration of covenants, the articles of incorporation and bylaws of the ~~homeowners'~~ association, the letter of approval by the department, and the legal description of each affected parcel of property. For purposes of chapter 712, the association is deemed to be and shall be indexed as the grantee in a title transaction and the parcel owners named in the revived declaration are deemed to be and shall be indexed as the grantors in the title transaction.

Section 16. This act shall take effect October 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: April 3, 2017

I respectfully request that **Senate Bill #1046**, relating to Covenants and Restrictions, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Senator Kathleen Passidomo
Florida Senate, District 28

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 1164

INTRODUCER: Senator Passidomo

SUBJECT: Construction

DATE: April 18, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Cibula	JU	Pre-meeting
2. _____	_____	CA	_____
3. _____	_____	RC	_____

I. Summary:

SB 1164 revises the requirements for pre-suit notice and pre-suit settlement negotiations regarding claims based on construction defects. As to these claims, the bill:

- Bars all claims by a person who purchases a property “as-is”;
- Requires the claimant or the claimant’s agent, as well as any retained experts, to join the respondent for an inspection of the allegedly defective property;
- Requires mediation before a claimant may reject a settlement offer;
- Specifies the time and place of mediation;
- Requires the respondent to pay for mediation unless the sides cannot agree on a mediator; and
- Requires the mediation to be conducted by an independent, certified circuit court mediator, pursuant to the Florida Supreme Court’s rules and procedures for circuit court mediation and pursuant to ss. 44.401-44.406, F.S.

II. Present Situation:

Overview of the Pre-suit Notice Requirement in Construction-Defect Disputes

Before a person may file a lawsuit based on a construction defect, he or she must first follow the pre-suit notice procedure set forth in the Florida Statutes.¹ Very generally, the law requires a property owner who asserts that his or her property has a construction defect to give notice to the contractor and then engage in settlement discussions before filing a lawsuit. This requirement is intended to reduce the need for costly litigation in those cases where litigation is not necessary for those involved to reach a resolution.²

¹ See ch. 558, F.S.

² See s. 558.001, F.S.

A property owner may find that the property has several distinct construction defects. And some of these might not be discovered until the settlement discussions fail and the matter of the other claimed defects has proceeded to trial. However, any defect for pre-suit notice that was not given to the defendant may not be raised at this trial.

Although, chapter 558, F.S., the chapter setting forth the pre-suit notice requirements regarding construction defects does much to govern these disputes, the chapter does not:³

- Bar or limit any rights, including the right of specific performance to the extent the right would be available in the absence of the chapter, any causes of action, or any theories on which liability may be based, except as specifically provided in the chapter;
- Bar or limit any defense, or create any new defense, except as specifically provided in the chapter; or
- Create any new rights, causes of action, or theories on which liability may be based.

Pre-suit notice requirements are not unique to construction-defect disputes. Similar pre-suit requirements exist in other areas of law, including for claims relating to medical negligence, nursing homes, and eminent domain.⁴

Substance and Procedure of the Pre-Suit Notice Requirement

Notice of Claim

A claimant must provide pre-suit notice of an alleged construction defect to the contractor, subcontractor, supplier, or designer at least 60 days before filing any action.^{5, 6} However, a claimant must provide notice 120 days before filing an action involving an association representing more than 20 parcels.⁷

The notice of claim must describe in reasonable detail the nature of each alleged construction defect and, if known, the damage or loss resulting from the defect. The notice must also identify the location of each alleged construction defect well enough to enable the responding parties to locate the alleged defect without undue burden.⁸ And the claimant must attempt to serve the notice of claim within 15 days after discovery of the defect, though failing to do so does not bar a claim.⁹

Within 10 days after service with the notice, or within 30 days after service if the claimant is an association representing more than 20 parcels, the recipient *may* serve a copy of the notice on other contractors, subcontractors, suppliers or design professionals whom the recipient reasonably believes to be responsible. In passing on the notice to these other, potentially

³ Section 558.004(12), F.S.

⁴ See s. 720.311, F.S., regarding homeowners' association disputes; ch. 766, regarding medical negligence claims; s. 429.293(3), F.S., regarding assisted care communities; s. 400.0233(3), F.S. regarding nursing homes; and s. 73.015, F.S., regarding eminent domain.

⁵ Section 558.004(1)(a), F.S.

⁶ However, if the claim is based on work performed under a contract, the written notice of claim must be served on the person with whom the claimant contracted. Section 558.004(1)(a), F.S.

⁷ *Id.*

⁸ Section 558.004(1)(b), F.S.

⁹ Section 558.004(1)(c), F.S.

responsible, persons, the recipient must note the specific defect for which the recipient believes each person is responsible.

Reasonable Inspection

Once the recipient is served with notice, the recipient has 30 days to inspect the property or each unit subject to the claim in order to assess each alleged construction defect. However, a recipient has 50 days to perform this inspection if the claimant is an association representing more than 20 parcels.¹⁰ The claimant must provide the recipient or the recipient's agents access to the property during normal working hours in order to perform the inspection, the purpose of which is to determine the nature and cause of each alleged construction defect and nature and extent of any repairs or replacements necessary to remedy each defect.

As for scheduling the inspections, a notice recipient is required to coordinate with the claimant, but need not coordinate with other recipients.

Settlement Offers

If the recipient desires to make a settlement offer, the recipient must do so within 45 days after being served with the notice of claim. However, if the notice of claim is served by an association representing more than 20 parcels, the recipient has 75 days to make a settlement offer. A claimant who receives a timely settlement offer must accept or reject the offer by serving written notice on the person making the offer within 45 days after receiving the offer.¹¹

Statute of Limitations

Service of written notice of claim tolls the applicable statute of limitations¹² for those persons covered under the chapter of law at issue or any bond surety until the later of:

- Ninety days, or 120 days,¹³ as applicable, after service of the notice of claim; or
- Thirty days after the end of the repair period or payment period stated in the offer, if the claimant has accepted the offer.

However, these periods may be extended by stipulation of the parties.

III. Effect of Proposed Changes:

As-Is Purchasers Barred from Bringing Action Based on Construction Defect

The bill expressly states that “a right of action based on the design, planning, or construction of an improvement to real property does not pass to subsequent purchasers of the real property if purchased as-is.” In contrast, current law does not appear to include any similar restriction.

¹⁰ Section 558.004(2), F.S.

¹¹ Section 558.004(7), F.S.

¹² Section 95.11(3), F.S., is the applicable statute of limitations provision.

¹³ A claimant that is an association representing more than 20 parcels has 120 days to serve a notice of claim. Section 558.04(1)(a), F.S.

Notice of Claim

The bill specifies that the notice of claim alleging a construction defect must be signed by the claimant, not by the claimant's attorney or agent. The bill also requires the recipient of the claim, within 10 days after the day on which the recipient is served, to serve any other person whom the recipient reasonably believes is responsible for a defect specified in the notice of claim. Under current law, the notice recipient is merely *permitted* to serve any contractor, subcontractor, supplier, or design professional whom it reasonably believes is responsible for the claimed defect.

Reasonable Inspection

As under current law, the bill entitles a recipient of a notice of claim to perform a reasonable inspection of the property or of each unit subject to the claim in order to assess the alleged defects. However, the bill requires the claimant or claimant's agent, as well as any experts the claimant has retained with respect to the claim to be present for the inspection. These additional persons must point out the location of the alleged construction defects.

The bill also requires the recipient to coordinate the inspection with the claimant, as under current law, but also with all parties served with a copy of the notice of claim.

Settlement Offers and Mediation

Before filing a lawsuit, current law requires a claimant to serve the recipient with written notice of acceptance or rejection of any settlement offer.

Under the bill, before the claimant may reject the offer, he or she must serve a written demand for mediation on the recipient(s) of the notice, explaining why the claimant considers the offer inadequate. Unless mediation is waived in writing by the person making the settlement offer, the mediation must be scheduled in the county where the property is located. The mediator must be an independent, certified circuit court mediator. This mediator must choose a mutually convenient date, time, and place for the mediation.

The cost of mediation must be paid by the person making the settlement offer, unless this person and the claimant do not agree on a mediator. In this case, each party bears the costs of its own mediator and must split any other mediation costs.

The mediation must be conducted pursuant to the mediation rules of practice and procedures for circuit court adopted by the Florida Supreme Court and pursuant to ss. 44.401-44.406, F.S., unless otherwise agreed by the parties. During mediation, the time to respond to the settlement offer at issue is tolled. The mediation also tolls the time for the statute of limitations for the claim itself. Specifically, the bill authorizes the claimant to file a lawsuit within 30 days after the termination or conclusion of mediation.

This appears to mean that if the claim was not time-barred before mediation began, then claimant has until 30 days after mediation concludes to file suit, even if the filing date would otherwise be outside of the statute of the limitations.

However, serving a notice of claim does not toll any applicable statute of repose.

Attorney Fees

The bill states that “Unless such a contract exists and entitles the claimant to recover attorney fees, the claimant must bear its own attorney fees and may not recover such fees under this chapter.” This provision appears to be a restatement of the common law American Rule on attorney fees. This rule provides that a “court may award attorney fees only when authorized by statute or by agreement of the parties.”¹⁴ Nothing in chapter 558, F.S., expressly authorizes attorney fee awards, and the bill does not appear to preclude the award of attorney fees under laws outside of chapter 558, F.S.

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.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill could encourage settlement of claims based on construction defects, thus saving all involved the costs of taking these claims to trial. The bill could have a positive impact on the construction industry as the bill bars all claims for construction defects by purchasers of properties “as-is.” On the other hand, a purchaser of a building “as-is” may have no recourse for construction defects that are otherwise actionable. However, real estate attorneys may respond to the bill by drafting contracts for the sale of real property to include any causes of action that the seller may have.

¹⁴ *Florida Patient’s Compensation Fund v. Rowe*, 472 So. 2d 1145, 1148 (Fla. 1985) (citing *Hampton’s Estate v. Fairchild-Florida Construction Co.*, 341 So. 2d 759 (Fla. 1976); *Webb v. Scott*, 176 So. 442 (1936); *State v. Barrs*, 99 So. 668 (1924); *Zinn v. Dzialynski*, 14 Fla. 187 (1872)).

C. Government Sector Impact:

The bill could encourage settlement of claims before they enter the court system, thus reducing costs to the court system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 95.11, 558.004, and 627.441.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Passidomo

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A bill to be entitled

An act relating to construction; amending s. 95.11, F.S.; providing that a right of action founded on the design, planning, or construction of an improvement to real property does not pass to subsequent purchasers of the real property when purchased as-is; providing applicability; amending s. 558.004, F.S.; requiring a claimant and not the claimant's attorney or agent to sign the notice of claim; requiring a claimant to bear its own attorney fees under certain circumstances; providing that a notice of claim is invalid and insufficient under certain circumstances; requiring a claimant or his or her agent and any experts he or she retains to be present for an inspection to identify the location of the alleged construction defects; revising with whom a person served with certain notice is required to coordinate regarding inspections; requiring rather than authorizing a person served with notice to serve a copy of such notice to specified entities; requiring a claimant and not the claimant's attorney or agent to sign the notice of acceptance or rejection; specifying mediation requirements under certain circumstances before a claimant may reject a settlement offer; revising when a claimant's service of written notice of claim tolls the applicable statute of limitations and any bond surety; reenacting s. 627.441(2), F.S., relating to commercial general liability policies and coverage to contractors for completed operations, to incorporate the amendment

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made by the act to s. 95.11, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 95.11, Florida Statutes, is amended to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(3) WITHIN FOUR YEARS.—

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. A right of action founded on

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the design, planning, or construction of an improvement to real property does not pass to subsequent purchasers of the real property if purchased as-is.

Section 2. The amendment made by this act to s. 95.11(3)(c), Florida Statutes, applies to any action commenced on or after July 1, 2017, regardless of when the cause of action accrued, except that any action that would not have been barred on July 1, 2018, under s. 95.11(3)(c), Florida Statutes, before the amendment made by this act may be commenced before July 1, 2018, and if it is not commenced by that date and would be barred by the amendment made by this act to s. 95.11(3)(c), Florida Statutes, it shall be barred.

Section 3. Paragraphs (a) and (b) of subsection (1) and subsections (2), (3), (7), and (10) of section 558.004, Florida Statutes, are amended to read:

558.004 Notice and opportunity to repair.—

(1)(a) In actions brought alleging a construction defect, the claimant shall, at least 60 days before filing any action, or at least 120 days before filing an action involving an association representing more than 20 parcels, serve written notice of claim on the contractor, subcontractor, supplier, or design professional, as applicable, which notice shall refer to this chapter. The notice of claim must be signed by the claimant, not by the claimant's attorney or agent. If the construction defect claim arises from work performed under a contract, the ~~written~~ notice of claim must be served on the person with whom the claimant contracted. Unless such a contract exists and entitles the claimant to recover attorney fees, the claimant must bear its own attorney fees and may not recover

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such fees under this chapter.

(b) The notice of claim must describe in reasonable detail the nature of each alleged construction defect and, if known, the damage or loss resulting from the defect. Based upon at least a visual inspection by the claimant or its agents, the notice of claim must identify the location of each alleged construction defect sufficiently to enable the responding parties to locate the alleged defect without undue burden. The claimant has no obligation to perform destructive or other testing for purposes of this notice. A notice of claim that fails to satisfy the requirements of this paragraph and paragraph (a) is invalid and is insufficient for the claimant to commence the process described in this chapter.

(2) Within 30 days after service of the notice of claim, or within 50 days after service of the notice of claim involving an association representing more than 20 parcels, the person served with the notice of claim under subsection (1) is entitled to perform a reasonable inspection of the property or of each unit subject to the claim to assess each alleged construction defect. An association's right to access property for either maintenance or repair includes the authority to grant access for the inspection. The claimant shall provide the person served with notice under subsection (1) and such person's contractors or agents reasonable access to the property during normal working hours to inspect the property to determine the nature and cause of each alleged construction defect and the nature and extent of any repairs or replacements necessary to remedy each defect. The claimant or his or her agent and any experts he or she has retained with respect to the claim must be present for the

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117 inspection to identify the location of the alleged construction
 118 defects. The person served with notice under subsection (1)
 119 shall reasonably coordinate the timing and manner of any and all
 120 inspections with the claimant and all parties served with a copy
 121 of the notice of claim under subsection (3) in order to minimize
 122 the number of inspections. The inspection may include
 123 destructive testing by mutual agreement under the following
 124 reasonable terms and conditions:

125 (a) If the person served with notice under subsection (1)
 126 determines that destructive testing is necessary to determine
 127 the nature and cause of the alleged defects, such person shall
 128 notify the claimant in writing.

129 (b) The notice shall describe the destructive testing to be
 130 performed, the person selected to do the testing, the estimated
 131 anticipated damage and repairs to or restoration of the property
 132 resulting from the testing, the estimated amount of time
 133 necessary for the testing and to complete the repairs or
 134 restoration, and the financial responsibility offered for
 135 covering the costs of repairs or restoration.

136 (c) If the claimant promptly objects to the person selected
 137 to perform the destructive testing, the person served with
 138 notice under subsection (1) shall provide the claimant with a
 139 list of three qualified persons from which the claimant may
 140 select one such person to perform the testing. The person
 141 selected to perform the testing shall operate as an agent or
 142 subcontractor of the person served with notice under subsection
 143 (1) and shall communicate with, submit any reports to, and be
 144 solely responsible to the person served with notice.

145 (d) The testing shall be done at a mutually agreeable time.

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146 (e) The claimant or a representative of the claimant may be
 147 present to observe the destructive testing.

148 (f) The destructive testing shall not render the property
 149 uninhabitable.

150 (g) There shall be no construction lien rights under part I
 151 of chapter 713 for the destructive testing caused by a person
 152 served with notice under subsection (1) or for restoring the
 153 area destructively tested to the condition existing prior to
 154 testing, except to the extent the owner contracts for the
 155 destructive testing or restoration.

156
 157 If the claimant refuses to agree and thereafter permit
 158 reasonable destructive testing, the claimant shall have no claim
 159 for damages which could have been avoided or mitigated had
 160 destructive testing been allowed when requested and had a
 161 feasible remedy been promptly implemented.

162 (3) Within 10 days after service of the notice of claim, or
 163 within 30 days after service of the notice of claim involving an
 164 association representing more than 20 parcels, the person served
 165 with notice under subsection (1) shall ~~may~~ serve a copy of the
 166 notice of claim to each contractor, subcontractor, supplier, or
 167 design professional whom it reasonably believes is responsible
 168 for each defect specified in the notice of claim and shall note
 169 the specific defect for which it believes the particular
 170 contractor, subcontractor, supplier, or design professional is
 171 responsible. The notice described in this subsection may not be
 172 construed as an admission of any kind. Each such contractor,
 173 subcontractor, supplier, and design professional may inspect the
 174 property as provided in subsection (2).

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175 (7) (a) A claimant who receives a timely settlement offer
 176 must accept or reject the offer by serving written notice of
 177 such acceptance or rejection on the person making the offer
 178 within 45 days after receiving the settlement offer. The notice
 179 of acceptance or rejection must be signed by the claimant, not
 180 by the claimant's attorney or agent. If a claimant initiates an
 181 action without first accepting or rejecting the offer, the court
 182 shall stay the action upon timely motion until the claimant
 183 complies with this subsection.

184 (b) Before rejecting the offer, the claimant must serve a
 185 written demand for mediation on the person making the offer,
 186 explaining why the claimant considers the offer inadequate.
 187 Unless mediation is waived in writing by the person making the
 188 offer, the parties must, within 20 days after service of the
 189 demand for mediation, mutually select an independent certified
 190 mediator and meet with the mediator for the purpose of
 191 attempting to resolve the dispute. The meeting must take place
 192 in the county in which the subject real property is located, at
 193 a mutually convenient date, time, and location to be selected by
 194 the mediator, unless otherwise agreed by the parties. The
 195 mediator may extend the date of the meeting for good cause shown
 196 by either party or upon stipulation of both parties. The person
 197 making the offer shall bear the costs of mediation, unless the
 198 parties are unable to mutually select a mediator, in which case
 199 each party shall select and bear the cost of its own mediator
 200 and split any other mediation costs. Mediation will be conducted
 201 by a certified circuit court mediator, pursuant to the mediation
 202 rules of practice and procedures for circuit court adopted by
 203 the Florida Supreme Court and pursuant to ss. 44.401-44.406,

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204 unless otherwise agreed by the parties. The time for serving
 205 written notice under paragraph (a) is tolled until the mediation
 206 is concluded or terminated, or an impasse is declared.

207 (10) A claimant's service of the ~~written~~ notice of claim
 208 satisfying the requirements of ~~under~~ subsection (1) tolls the
 209 applicable statute of limitations relating to any person covered
 210 by this chapter and any bond surety until the later of:

211 (a) Ninety days, or 120 days, as applicable, after service
 212 of the notice of claim pursuant to subsection (1); ~~or~~

213 (b) Thirty days after the mediation pursuant to paragraph
 214 (7) (b) is concluded or terminated, or an impasse is declared; or

215 (c) ~~(b)~~ Thirty days after the end of the repair period or
 216 payment period stated in the offer, if the claimant has accepted
 217 the offer. By stipulation of the parties, the period may be
 218 extended and the statute of limitations is tolled during the
 219 extension.

220
 221 However, a claimant's service of a notice of claim under
 222 subsection (1) shall not toll any applicable statute of repose
 223 relating to any person covered by this chapter or any bond
 224 surety.

225 Section 4. For the purpose of incorporating the amendment
 226 made by this act to section 95.11, Florida Statutes, in a
 227 reference thereto, subsection (2) of section 627.441, Florida
 228 Statutes, is reenacted to read:

229 627.441 Commercial general liability policies; coverage to
 230 contractors for completed operations.—

231 (2) A liability insurer must offer coverage at an
 232 appropriate additional premium for liability arising out of

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233 current or completed operations under an owner-controlled
234 insurance program for any period beyond the period for which the
235 program provides liability coverage, as specified in s.
236 255.0517(2)(b). The period of such coverage must be sufficient
237 to protect against liability arising out of an action brought
238 within the time limits provided in s. 95.11(3)(c).

239 Section 5. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 6, 2017

I respectfully request that **Senate Bill #1164**, relating to Construction, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", followed by a horizontal line.

Senator Kathleen Passidomo
Florida Senate, District 28

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 19, 2017

Meeting Date

1164

Bill Number (if applicable)

Topic CONSTRUCTION DEFECTS

Amendment Barcode (if applicable)

Name FRED R DUDLEY

Job Title ATTORNEY

Address 3522 THORNTON RD. SUITE #301

Phone (850) 294-3471

Street

TALIAWATER

City

FL.

State

32304

Zip

Email DUDLEY@MYLICENSELAW.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing ASSOCIATION OF CONSTRUCTION CONSUMERS INC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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)

4 / 19 / 2017

Meeting Date

Topic _____

Bill Number 1164
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 634

INTRODUCER: Senator Campbell

SUBJECT: Involuntary Examinations Under the Baker Act

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Favorable
2.	Crosier	Hendon	CF	Favorable
3.	Davis	Cibula	JU	Favorable
4.			RC	

I. Summary:

SB 634 adds advanced registered nurse practitioners (ARNPs) and physician assistants (PAs) to the list of health care practitioners who may initiate an involuntary mental examination of a person under the Florida Mental Health Act, also known as the Baker Act.

When an involuntary examination is initiated, the person to be examined may be taken into custody by a law enforcement officer and delivered to a receiving facility. The person must be examined by a physician, clinical psychologist, or psychiatric nurse at the facility within 72 hours. The facility generally must release the person within that time period, but the person may be detained longer if a petition for involuntary inpatient placement is filed with a court.

The bill takes effect July 1, 2017.

II. Present Situation:

Involuntary Examination Under the Baker Act

Overview

In 1971, the Legislature passed the Florida Mental Health Act, also known as the Baker Act, to address mental health needs in the state.¹ The Baker Act provides the authority and process for the voluntary and involuntary examination of persons who meet certain criteria, and the subsequent inpatient or outpatient placement of those individuals for treatment.

¹ Ch. 71-131, s. 1, Laws of Fla. This is codified in part I of ch. 394, F.S.

The Department of Children and Families (DCF) administers the Baker Act through receiving facilities, which are designated by DCF. The facilities that provide the examination and short-term treatment of persons who meet the criteria under the Baker Act may be public or private.² If, after an examination at a receiving facility,³ a person requires further treatment he or she may be transported to a treatment facility. Treatment facilities are state hospitals that provide extended treatment and hospitalization beyond what is provided in a receiving facility.⁴

A person who is subject to an involuntary examination generally may not be held longer than 72 hours in a receiving facility.⁵

Criteria

A person may be subjected to an involuntary examination if there is reason to believe he or she has a mental illness, and because of the illness, that person:

- Has refused a voluntary examination after the purpose of the exam has been explained, or
- Is unable to determine for himself or herself that an examination is needed; and
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that the harm may be avoided through the help of willing family members or friends or the provision of other services; or
- There is a substantial likelihood that without care or treatment, the person will cause serious bodily harm to himself, herself, or others in the near future, as evidenced by recent behavior.⁶

Who May Initiate an Involuntary Exam

A circuit or county court, law enforcement officers, and certain health care practitioners may initiate an involuntary examination of a person.⁷

A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. A law enforcement officer may take into custody a person who appears to meet the criteria for involuntary examination and transport that person to a receiving facility for examination.

Health care practitioners may initiate an involuntary examination if the health care practitioner has examined the person within the last 48 hours and finds that the person meets the criteria for an involuntary examination. The practitioner must state on a DCF form,⁸ the observations upon which that conclusion is based.⁹ The form contains information related to the person's diagnosis

² Section 394.455(39), F.S.

³ *Id.*

⁴ Section 394.55(47), F.S.

⁵ Section 394.463(2)(g), F.S.

⁶ Section 394.463(1), F.S.

⁷ Section 394.463(2), F.S.

⁸ The form is a Certificate of Professional Initiating Involuntary Examination. See Florida Department of Children and Families, *CF-MH 3052b*, incorporated by reference in Rule 65E-5.280, F.A.C.

<http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/3052b.pdf>. (last visited Apr. 13, 2017).

⁹ Section 394.463(2)(a), F.S.

and the health care practitioner's personal observations of statements and behaviors that support the involuntary examination of the person.¹⁰

The Baker Act currently authorizes the following health care practitioners to initiate an involuntary examination:

- A physician licensed under chs. 458 or 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders;
- A physician employed by a facility operated by the U.S. Department of Veterans Affairs or the United States Department of Defense;
- A clinical psychologist, as defined in s. 490.003(7), F.S., who has 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure;
- A psychologist employed by a facility operated by the U.S. Department of Veterans Affairs or the U.S. Department of Defense that qualifies as a receiving or treatment facility;
- A psychiatric nurse, who is an ARNP, with a master's degree or doctoral degree in psychiatric nursing, who holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and who has 2 years of post-master's clinical experience under the supervision of a physician;
- A mental health counselor licensed under ch. 491, F.S.;
- A marriage and family therapist licensed under ch. 491, F.S.; and
- A clinical social worker licensed under ch. 491, F.S.¹¹

Detention and Delivery of a Person for an Involuntary Examination

Once an involuntary examination is initiated by a court or health care practitioner, a law enforcement officer "shall" take the person into custody and deliver or have the person delivered to the appropriate or nearest facility for the examination.¹² A law enforcement officer executing an ex parte order for an involuntary examination, issued by a court, may take the person into custody "on any day of the week, at any time of day or night."¹³ The law enforcement officer is further authorized to use "reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and to take custody of the person who is the subject of the ex parte order."¹⁴

Physician Assistants

Overview

The Department of Health (DOH) licenses physician assistants in Florida, either under s. 458.347(7), if the physician assistant works with a physician, or s. 459.022(7), F.S., if the he or she works with an osteopathic physician. PAs are regulated by the Florida Board of Medicine if licensed under ch. 458, F.S., or the Florida Board of Osteopathic Medicine if licensed under ch. 459, F.S., and the Florida Council on Physician Assistants. The board makes disciplinary

¹⁰ See supra note 8.

¹¹ Sections 394.463(2)(a)3., and 394.455, F.S.

¹² Section 394.463(2), F.S.

¹³ Section 394.463(2)(c), F.S.

¹⁴ Section 394.463(2)(d), F.S.

decisions as to whether a doctor or PA has violated the provisions of his or her practice act. In 2016, there were 7,015 PAs holding active licenses in Florida.¹⁵

Scope of Practice

PAs may practice only under the direct or indirect supervision of a medical doctor or doctor of osteopathic medicine with whom they have a clinical relationship.¹⁶ A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.¹⁷ The supervising physician is responsible and liable for any acts or omissions of the PA¹⁸ and may not supervise more than four PAs at a time.¹⁹

Licensure

To be licensed as a PA in Florida, an applicant must:

- Pass the exam established by the National Commission on Certification of Physician Assistants;
- Complete the application and submit the application fee;²⁰
- Complete an approved PA training program;
- Acknowledge any prior felony convictions;
- Acknowledge any previous revocation or denial of licensure in any state; and
- If the applicant wishes to apply for prescribing authority, submit a copy of course transcripts and a copy of the course description from a PA training program describing the course content in pharmacotherapy.²¹

Licenses are renewed biennially.²² At the time of renewal, a PA must demonstrate that he or she has met the continuing education requirements and must submit an acknowledgement that he or she has not been convicted of any felony in the previous 2 years.²³

Authorization

Current Florida law does not expressly allow PAs to refer for, or initiate, an involuntary examination of a person under the Baker Act; however, in 2008, Attorney General Bill McCollum issued an opinion stating:

¹⁵ Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2015-2016*, <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html>, (last visited Apr. 14, 2017).

¹⁶ Sections 458.347(2)(f) and 459.022(2)(f), F.S., are identical and define "supervision" as "responsible supervision" and control which requires the easy availability or physical presence of the licensed physician for consultation and direction of the PA.

¹⁷ Sections 458.347(12) and 459.022(12), F.S.

¹⁸ Rules 64B8-30.012(1) and 64B15-6.010(1), F.A.C.

¹⁹ Section 458.347(3) and 459.022(3), F.S.

²⁰ The application fee is \$100 and the initial license fee is \$205. See <http://flboardofmedicine.gov/licensing/physician-assistant-licensure/> (last visited Apr. 14, 2017).

²¹ Sections 458.347(7) and 459.022(7), F.S.

²² For timely renewed licenses, the renewal fee is \$280 and the prescribing registration is \$150. An applicant may be charged an additional fee if the license is renewed after expiration or is more than 120 days delinquent. Florida Board of Medicine, *Renewals, Physician Assistants*, <http://flboardofmedicine.gov/renewals/physician-assistants/> (last visited Apr. 14, 2017).

²³ Sections 458.347(7)(b)-(c) and 459.022(7)(b)-(c), F.S.

. . . [A] physician assistant licensed pursuant to Chapter 458 or 459, Florida Statutes, may refer a patient for involuntary evaluation pursuant to section 394.463, Florida Statutes, provided that the physician assistant has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks are within the supervising physician's scope of practice.²⁴

Legislation was enacted in 2016 that authorizes a licensed PA to perform services delegated by the supervising physician. The service must be in the physician assistant's practice in accordance with his or her education and training unless expressly prohibited under chs. 458 or 459, or rules adopted under those chapters.²⁵

Curriculum

According to the American Academy of Physician Assistants, most PA programs last approximately 26 months, or 3 academic years, and award master's degrees. They include classroom instruction and clinical rotations.

PA students complete more than 2,000 hours of clinical rotations, with an emphasis on primary care in ambulatory clinics, physician offices and acute or long-term care facilities. PA rotations can include:

- Family medicine;
- Internal medicine;
- Obstetrics and gynecology;
- Pediatrics;
- General surgery;
- Emergency medicine; and
- Psychiatry.²⁶

Additional Requirements

PAs are not currently required under Florida law to have any specific education, training, or experience in the diagnosis or treatment of mental health or nervous disorders for licensure or renewal. However, a PA working under the supervision of a physician who has experience in the diagnosis and treatment of mental and nervous disorders, or a physician employed by a facility operated by the U.S. Department of Veterans Affairs or the United States Department of Defense might obtain training or experience in these areas.

²⁴ Op. Att'y Gen. Fla. 08-31 (2008) at p. 4 <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf> (last visited Apr. 14, 2017).

²⁵ Ch. 2016-125, Laws of Fla. (codified as ss. 458.347(4)(h) and 459.022(4)(g), F.S.).

²⁶ American Association of Physician Assistants, *Attend a PA Program*, <https://www.aapa.org/career-central/become-a-pa/> (last visited Apr. 14, 2017).

Advanced Registered Nurse Practitioners

Licensure

Nurses are licensed by the DOH and regulated by the Board of Nursing.²⁷ To be licensed, a nurse must complete an approved educational program, pass a DOH approved exam, pass a criminal background screening, and pay the applicable fees.²⁸ In 2016, there were 20,388 advanced registered nurse practitioners in Florida.

A licensed nurse may apply to be certified as an Advanced Registered Nurse Practitioner (ARNP) if the nurse meets one or more of the following requirements:

- Satisfactory completion of a formal post-basic educational program of at least 1 academic year that prepares nurses for advanced or specialized practice;
- Certification by a specialty board; or
- Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.²⁹

Categories of ARNPs and Scope of Practice

Current law defines four categories of ARNPs: certified registered nurse anesthetists; certified nurse midwives; a nurse practitioner,³⁰ and a psychiatric nurse.³¹ All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of someone licensed as a physician under ch. 458, an osteopathic physician licensed under ch. 459, or a dentist licensed under ch. 466.³² ARNPs may carry out treatments as specified in statute, including:³³

- Prescribing, dispensing, administering, or ordering any drug;³⁴
- Initiating appropriate therapies for certain conditions;
- Ordering diagnostic tests and physical and occupational therapy;
- Ordering any medication for administration to patients in certain facilities; and
- Performing additional functions as maybe determined by rule in accordance with s. 464.003(2), F.S.³⁵

²⁷ See Part I, Chapter 464, F.S.

²⁸ Sections 464.008 and 464.009, F.S. As an alternative to licensure by examination, a nurse may also be eligible for licensure by endorsement.

²⁹ Section 464.012, F.S.

³⁰ Sections 464.003(3) and 464.012(2), F.S.

³¹ Section 394.455(35), F.S., defines a "psychiatric nurse" as an ARNP certified under s. 464.012, F.S., who has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.

³² Section 464.012(3), F.S.

³³ *Id.*

³⁴ An ARNP may only prescribe controlled substances if he or she has graduated from a program leading to a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills. An ARNP is limited to prescribing a 7-day supply of Schedule II controlled substances. Only a psychiatric nurse may prescribe psychotropic controlled substances for the treatment of mental disorders and psychiatric mental health controlled substances for children younger than 18. See s. 464.012(3)(a) and (7)(a), F.S.

³⁵ Section 464.003(2), F.S., defines "advanced or specialized nursing practice" to include additional activities that an ARNP may perform as approved by the Board of Nursing.

In addition to these acts, an ARNP may also perform other acts as authorized by statute and within his or her specialty.³⁶ Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.³⁷

Currently, only ARNPs who are "psychiatric nurses" may initiate involuntary examinations under the Baker Act.³⁸ To qualify as a psychiatric nurse, an ARNP must have a master's or doctoral degree in psychiatric nursing, hold a national advance practice certification as a psychiatric mental health advanced practice nurse, and two years post-master's clinical experience.³⁹

III. Effect of Proposed Changes:

The bill specifically authorizes PAs and ARNPs to initiate involuntary examinations under the Baker Act. The PA or ARNP must execute a certificate stating that a person he or she examined within the preceding 48 hours appears to meet the criteria for an involuntary examination for mental illness. Under current law, only a physician with experience in the diagnosis and treatment of mental and nervous disorders, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may initiate an involuntary examination by executing the certificate.

When an involuntary examination is initiated, the person to be examined may be taken into custody by a law enforcement officer and delivered to a receiving facility for the examination. The receiving facility generally may not detain the person for longer than 72 hours.

The bill also makes necessary conforming changes due to the substantive changes made by the bill.

The bill has 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.

³⁶ Section 464.012(4), F.S.

³⁷ Section 464.012(4)(c)5., F.S.

³⁸ Section 394.463(2)(a), F.S.

³⁹ Section 394.455(35), F.S.

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:

The bill defines a “physician assistant” and an “advanced registered nurse practitioner” in the same manner as their respective practice acts.⁴⁰ The bill does not direct any additional training, clinical or continuing education requirements for either the PA or the ARNP to be qualified to perform the examination and execute the certificate in order to subject a person to an involuntary mental health examination. All other health care providers authorized to initiate an involuntary examination have additional professional specialized training in psychiatric mental health.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.455, 394.463, 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.2007.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

⁴⁰ See ss. 458.347, 459.022, and 464.003, F.S.

By Senator Campbell

38-00760-17

2017634__

A bill to be entitled

An act relating to involuntary examinations under the Baker Act; amending s. 394.455, F.S.; defining terms; amending s. 394.463, F.S.; authorizing physician assistants and advanced registered nurse practitioners to execute a certificate under certain conditions stating that he or she has examined a person and finds the person appears to meet the criteria for involuntary examination; amending ss. 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.2007, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (5) through (48) of section 394.455, Florida Statutes, are redesignated as subsections (6) through (49), respectively, a new subsection (5) is added to that section, and present subsection (33) is amended, to read:

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

(5) "Advanced registered nurse practitioner" means a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, as defined in s. 464.003.

~~(34)(33) "Physician assistant" has the same meaning as defined in s. 458.347(2)(e) means a person licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental disorders.~~

Section 2. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

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

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(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department the next working day. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. The

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officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. Any facility accepting the patient based on this report must send a copy of the report to the department the next working day.

3. A physician, physician assistant, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, ~~or~~ clinical social worker, or an advanced registered nurse practitioner may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department the next working day. The document may be submitted electronically through existing data systems, if applicable.

Section 3. Paragraph (a) of subsection (3) of section 39.407, Florida Statutes, is amended to read:

39.407 Medical, psychiatric, and psychological examination

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and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.-

(3) (a) 1. Except as otherwise provided in subparagraph (b) 1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician shall attempt to obtain express and informed consent, as defined in s. 394.455(16) ~~s. 394.455(15)~~ and as described in s. 394.459(3) (a), from the child's parent or legal guardian. The department must take steps necessary to facilitate the inclusion of the parent in the child's consultation with the physician. However, if the parental rights of the parent have been terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician, seek court authorization to provide the psychotropic medications to the child. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent in the decisionmaking process regarding the provision of psychotropic medications. If, at any time, a parent whose parental rights have not been terminated provides express and informed consent to the provision of a psychotropic medication, the requirements of this section that the department seek court authorization do not apply to that medication until such time as the parent no longer consents.

2. Any time the department seeks a medical evaluation to determine the need to initiate or continue a psychotropic medication for a child, the department must provide to the evaluating physician all pertinent medical information known to

38-00760-17

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the department concerning that child.

Section 4. Paragraphs (a) and (c) of subsection (3) of section 394.495, Florida Statutes, are amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(3) Assessments must be performed by:

(a) A professional as defined in s. 394.455(6), (8), (33), (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~;

(c) A person who is under the direct supervision of a qualified professional as defined in s. 394.455(6), (8), (33), (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~ or a professional licensed under chapter 491.

Section 5. Subsection (5) of section 394.496, Florida Statutes, is amended to read:

394.496 Service planning.—

(5) A professional as defined in s. 394.455(6), (8), (33), (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 6. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(25)(a)4., 397.311(25)(a)1., and 394.455(40) ~~394.455(39)~~, respectively.

Section 7. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

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2017634__

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or a treatment facility as defined in s. 394.455(48) ~~s. 394.455(47)~~.

Section 8. Subsection (7) of section 744.2007, Florida Statutes, is amended to read:

744.2007 Powers and duties.—

(7) A public guardian may not commit a ward to a treatment facility, as defined in s. 394.455(48) ~~s. 394.455(47)~~, without an involuntary placement proceeding as provided by law.

Section 9. This act shall take effect July 1, 2017.

Page 6 of 6

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR DAPHNE CAMPBELL
38th District

April 3, 2017

The Honorable Senator Greg Steube
Chair, Committee on Judiciary
326 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

The Honorable Senator Daphne Campbell
District 38, Florida Senate
218 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Steube,

Please consider this letter my formal request to have SB 634, relating to Involuntary Examinations Under the Baker Act, placed on the agenda for the next scheduled meeting of the Committee on Health Policy.

SB 634 authorizes physician assistants and advanced registered nurse practitioners to execute a certificate under certain conditions stating that he or she has examined a person and finds the person appears to meet the criteria for involuntary examination.

If you have any questions, please feel free to contact my office at 850-487-5038.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Campbell".

Senator Daphne Campbell
District 38, Florida Senate

REPLY TO:

- ☐ 633 N.E. 167th Street, Suite 1101, North Miami Beach, Florida 33162 (305) 493-6009
- ☐ 218 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

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)

4/19/19

Meeting Date

~~634~~ 634

Bill Number (if applicable)

Topic Involuntary Exams

Amendment Barcode (if applicable)

Name Corinne Mixon

Job Title Lobbyist

Address 119 S. Monroe St

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Academy of Physician Assistants

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)

19 Apr 17

Meeting Date

634

Bill Number (if applicable)

Topic Baher Act

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Street

Phone 850.510.9922

Tall

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.

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)

4/19/17

Meeting Date

634
Bill Number (if applicable)

Topic Baker Act

Amendment Barcode (if applicable)

Name Alisa LaPoLT

Job Title Lobbyist

Address PO Box 1344

Phone 850-443-1319

Street

TLH

City

State

Zip

Email alisa@gotopsail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Nurses 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)

4 1/19/2017

Meeting Date

Topic _____

Bill Number 639
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

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 1160

INTRODUCER: Senator Bradley

SUBJECT: Elections

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	Favorable
2.	Davis	Cibula	JU	Favorable
3.			RC	

I. Summary:

SB 1160 addresses several elections issues that include:

- Authorizing the *general* use of touch screen voting systems with a voter-verifiable paper trail for canvassing and recount purposes, currently used only for disabled voters;
- Requiring candidates to use a cashier's check or money order to pay the qualifying fees to run for office;
- Allowing a court to extend poll hours only upon a specific showing or finding of extraordinary circumstances;
- Prohibiting an elected official from being a poll watcher;
- Allowing county supervisors of elections to *either* publish sample ballots in newspapers or mail them to registered electors, reversing a duplicative requirement passed in 2013; and
- Creating a statutory affidavit "cure" process to remedy and count a vote-by-mail ballot where the signature submitted by the voter doesn't match the signature on file in the registration book or precinct register, which is identical to SB 954 (2017) by Sen. Passidomo.

II. Present Situation:

Touch Screen Voting Systems (with voter-verifiable paper trail)

A "voting system" is a method of casting and processing votes that consists of electromechanical components and, in many cases, utilizes mark-sense ballots. The voting system may also include things like procedures, operating manuals, supplies, printouts, and other software necessary for the system's operation.¹

To be used in a Florida election, the voting system must be approved by the State Division of Elections. The Division tests the reliability of both the hardware and software components to

¹ Section 97.021(45), F.S.

make sure that they meet the standards set out in law and rules. Florida's certification process is among the most comprehensive in the nation.

Section 101.56062, F.S., enumerates the statutory standards for accessible voting systems, including items like requirements for tactile or audio input devices and font size for the visually impaired. *Only persons with disabilities may vote on an accessible voting system.*²

The disability voting systems generally include a “voter interface device,” which many Floridians may remember as “touch screens.”³ The difference between the original “touch screen” systems in use in about 15 counties in the mid-2000s and the current crop of certified disability voting systems, such as the ES&S AutoMARK⁴ and ExpressVote,⁵ is that the new systems “mark” a scannable paper ballot — a voter-verifiable paper trail that can be used for recount purposes. These systems prevent an elector from “overvoting,” selecting more than one candidate per race, and warn or prompt the voter if he or she “undervotes,” or skips a race. There is a summary review screen at the end of the selection process to allow a voter to go back and make or change a selection.⁶ After the ballot is printed, voters are able to review the ballot for accuracy before depositing it in an optical scanner for counting.

Candidate Qualifying Fees

In 2011, the Legislature modified a long-standing procedure that allowed a partisan candidate to “cure” a bad campaign check submitted to cover filing fees at the time of qualifying for office.⁷ The original provision had given a candidate 48 hours from receiving notice that his or her financial institution had returned the check to sort out the situation, *notwithstanding the end of qualifying*. The 2011 modification required the candidate to correct the situation *no later than* the end of the 4-day, 96 hour, qualifying period.

In 2016, the Florida Supreme Court struck down the change and re-wrote s. 99.061(7)(a)1., F.S., reinstating the pre-2011 statutory language.

² Section 101.56075 (1) and (2), F.S. In some instances, it is possible that only a *single* voter in a polling place will use the disability voting equipment, which can raise concerns with respect to the secrecy of the ballot.

³ In the early-to-mid 2000s, some Florida counties experimented with touch screen voting systems *without a paper trail* for the general voting populace; those systems were ultimately replaced by optical scan (i.e., blacken-the-oval) voting systems for all but disabled voters, beginning with the 2008 primary election. Ch. 2007-30, § 6, Laws of Fla. (codified at § 101.56075, F.S.).

⁴ This system marks the same type of optical scan ballot design familiar to voters, effectively serving as an electronic “pen.” Verified Voting, ES&S AutoMARK Description and Instructional Video, <https://www.verifiedvoting.org/resources/voting-equipment/ess/automark/> (last accessed April 12, 2017)[hereinafter, *AutoMARK Web Page*].

⁵ The ExpressVote produces a ballot card with multiple bar codes at the top corresponding to the voter's choices. Underneath the bar codes, the card contains the offices or amendments on the ballot, along with the voter's choice in each contest. See Verified Voting, ES&S ExpressVote Description and Instructional Video, <https://www.verifiedvoting.org/resources/voting-equipment/ess/expressvote/> (last accessed April 12, 2017)[hereinafter, *ExpressVote Web Page*].

⁶ Voters can return to a contest selection *for any reason*, not just because they left a race blank, or undervoted, and change a selection.

⁷ Ch. 2011-40, § 14, Laws of Fla. (codified at § 99.061(7)(a)1., F.S.). The Legislature left the original procedure untouched for *non-partisan* candidates, such as judges and school board members. Section 105.031(5)(a)1., F.S.

In *Wright v. City of Miami Gardens*,⁸ a candidate for mayor of the City of Miami Gardens was disqualified from the race because the candidate's bank inadvertently failed to honor his campaign check when there were sufficient funds in the campaign account. The bank did not return the check until two weeks after the end of the qualifying period; the City didn't notify candidate until 4 days later — far too late for the candidate to cure under the statute. The Court found that the statutory time frame for curing deficiencies was “essentially impossible” in most circumstances.⁹ Further, the Court held that the:

...[S]tatute at issue here is arbitrary and without a rational basis. ... [It] effectively forecloses the candidacy of all otherwise qualified candidates who have done all they were required to do but have had their checks returned, not due to insufficient funds or some other matter within their control, but due to sheer bad luck resulting from a bank error totally beyond their control. This bright line, by turning on luck rather than conduct, is irrational and violates Wright's constitutional right to run for public office.¹⁰

Extending Polling Hours

The polls in Florida are open from 7 a.m. to 7 p.m. on election day, in accordance with the local time zone in the county seat.¹¹ Voters in line at closing time are allowed to cast ballots.

Lawsuits seeking to extend the polling hours on election day due to some problem or perceived irregularity have become an increasingly common tactic nationwide as well as in Florida.¹² For example, in the 2014 Florida gubernatorial race, the Charlie Crist campaign filed an emergency motion to extend the polling hours in Broward County for 2 hours due to what it called “voter confusion and malfunctions.”¹³ Although the motion was denied, judges have been known to grant these type of requests.¹⁴

Poll Watchers

Political parties, candidates, and political committees organized to support or oppose a ballot issue may designate qualified and registered county electors to serve as poll watchers.¹⁵ They are entitled to have one poll watcher in each polling room or early voting site at any given time during the election. Candidates, sheriffs, deputy sheriffs, police, and other law enforcement officers may not be poll watchers.

⁸ 200 So.3d 765 (Fla. 2016).

⁹ *Id.* at 776.

¹⁰ *Id.*

¹¹ Section 100.011, F.S.

¹² Olivia Snider and Matthew Dearmond, *Closing Time? The Extension of Polling Station Hours*, University of Kentucky Election Law Society (Nov. 4, 2014), <http://www.uky.edu/electionlaw/analysis/closing-time-extension-polling-station-hours> (last visited April 12, 2017).

¹³ U.S. News & World Report, *Crist Motion to Keep Polls Open in Broward County Gets Denied* (Nov. 4, 2014) <https://www.usnews.com/news/articles/2014/11/04/crist-files-motion-to-keep-polls-open-in-broward-county> (last accessed April 12, 2017).

¹⁴ See *supra* note 12. Judges in Georgia and Connecticut extended the hours at several polling places in 2014.

¹⁵ Section 101.131, F.S.

Poll watchers are there to observe the conduct of elections and elections officials. They are not allowed to go any closer to an official's table or a voting booth than is reasonably necessary to do their job. They are not allowed to obstruct the orderly conduct of the election. Poll watchers may only pose questions regarding polling procedures directly to the clerk in charge of the precinct or polling place and are prohibited from interacting with voters.

Sample Ballot Publication

Before the passage of the 2013 Paper Reduction Act,¹⁶ county supervisors of elections had the option to either publish a sample ballot in a newspaper of general circulation in the county or mail a sample ballot to registered voters. The Act authorized sending sample ballots by e-mail if a voter provided an e-mail address and opted to receive a sample ballot by e-mail, but the Act also set-up the *double requirement* of publishing *and* sending a sample ballot.

Canvassing of Vote-by-Mail Ballots

In 2013, at the urging of the state supervisors of elections, the Legislature changed the law to allow a voter who returned a vote-by-mail ballot *without a signature* on the Voter's Certificate (on the back of the mailing envelope) to correct or "cure" the defect by submitting a sworn affidavit along with corroborating identification.¹⁷

For the 2014 election cycle, county canvassing boards cured *missing* vote-by-mail ballot signatures by confirming the validity of the voter identification submitted and comparing the voter's signature on the cure affidavit with the registration signature on file in the registration books or precinct register. If the voter ID was valid and the signatures matched, the canvassing board counted the ballot; otherwise, the board rejected the ballot and notified the voter of the reason, *post-election*.¹⁸ The notification included a card for the voter to update his or her signature for the next election. It is important to note that a matching voter signature was an essential component of the cure process for determining the validity of the ballot.¹⁹

In 2016, shortly before the general election, U.S. District Judge Mark Walker ruled that the state's failure to provide a process for curing vote-by-mail ballots with *mismatched* signatures was unconstitutional in light of the State's statutory procedure for correcting *missing* signatures.²⁰ The federal court issued a temporary injunction directing the state to offer the same

¹⁶ Ch. 2013-192, Laws of Fla.

¹⁷ Ch. 2013-57, § 15, Laws of Fla. (codified at § 101.68, F.S.) Previously, the practice had been that a ballot was deemed "cast" when a voter took the final step that enabled the ballot to be counted.

¹⁸ There was and is no statutory requirement that the supervisors notify voters who submit missing ballot signatures. The idea was that third parties (political parties and other groups) who follow vote-by-mail ballot returns on a daily basis would handle that responsibility.

¹⁹ "The canvassing board shall, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate **or on the absentee ballot affidavit as provided in subsection (4)** [the cure affidavit] with the signature of the elector in the registration books or the precinct register to see that the elector is duly registered in the county and to determine the legality of that absentee ballot." (emphasis added) Section 101.68(1)(c)1., F.S. (2014).

²⁰ *Fla. Dem. Party v. Detzner*, 2016 U.S. Dist. LEXIS 143620, Case No. 4:16cv607-MW/CAS (N.D. Fla., Oct. 16, 2016). The court opined, "It is illogical, irrational, and patently bizarre for the State of Florida to withhold the opportunity to cure from mismatched-signature voters while providing that same opportunity to no-signature voters. And in doing so, the State of Florida has categorically disenfranchised thousands of voters arguably for no reason other than they have poor handwriting or their handwriting has changed over time." *Id.* at 22.

process for curing both types of signature deficiencies, notwithstanding that Florida law *requires a matching signature on the cure affidavit* in order for a ballot to count.²¹

As a result, the only mismatched-signature ballots that canvassing boards should have remedied under the judge's order were those where the voter returned an affidavit with a *matching* signature, perhaps because the voter:

- Hurriedly wrote his or her signature on the original Voter's Certificate or signed on an uneven surface, but was more precise in signing the cure affidavit; or
- Recalled using a different signature in the past and signed the cure affidavit with that prior signature.²²

The judge's order did not provide relief to voters who submitted the *same* mismatched signature on both the Voter's Certificate *and* cure affidavit, perhaps resulting from:

- The voter forgetting that he or she had registered using a different signature; or
- The voter's signature deteriorating or changing *over time* as the result of the natural aging process or a specific health-related event (i.e., stroke, blindness, paralysis, and dementia).

The federal court stayed the case with a permanent injunction until Friday, May 5, 2017, the last day of the regular session, and scheduled a status conference for the week of May 15, 2017.²³

III. Effect of Proposed Changes:

The bill makes a number of substantive changes to the Florida Election Code.

Touch Screen Voting Systems (with voter-verifiable paper trail)

The bill modifies a few voting system terms and provisions in the election code to authorize the use of an electronic "voter interface device" to mark paper ballots for optical scanning. The bill further provides that the ballot layout need only apply to the voter interface device and not to the printed ballot. These changes will effectively allow *any* elector to use the touch screen voting equipment with a scannable paper trail that is currently authorized solely for disabled voters, such as the ES&S, AutoMARK, and ExpressVote systems.

Candidate Qualifying Fees

The bill requires most partisan and non-partisan candidates²⁴ to pay qualifying fees to run for office with a cashier's check or money order, removing the need for any cure procedure for personal campaign checks returned for insufficient funds.²⁵ This will provide certainty as to who

²¹ The State chose not to defend the statute on substantive grounds, leaving the judge only the one-sided Petitioner's brief/argument and Florida statutory law as sources of information from which to construct the opinion.

²² A person may use different signatures at various stages of life, especially at a younger age when the person is seeking to establish his or her own identity.

²³ *Detzner*, No. 4:16cv607-MW/CAS (N.D. Fla, Dec. 12, 2016) (order staying case).

²⁴ Excluding special district candidates.

²⁵ Cashier's checks and money orders are effectively *purchased* with funds drawn from the campaign account. As such, the cashier's check or money order operate like a cash substitute, though there is a paper trail for campaign finance reporting purposes.

is running at the close of the qualifying period and allow supervisors of elections, in most cases, to immediately begin preparing and distributing vote-by-mail ballots.

Extending Polling Hours

The bill allows a court to extend polling hours beyond 7 p.m. *only* upon a specific showing or finding of fact that extraordinary circumstances justify the extension. The degree to which a court would consider itself constitutionally bound or practically limited by this requirement is unclear.

Poll Watchers

The bill prohibits an *elected official* from being designated as a poll watcher, joining the ranks of candidates, sheriffs, deputy sheriffs, police, and other law enforcement officers who are currently prohibited.

Sample Ballot Publication

The bill allows a county Supervisor of Elections to *either* publish a sample ballot in a local newspaper or mail it to registered voters; the Supervisors of Elections had this option prior to 2013.

Canvassing of Vote-by-Mail Ballots

The bill creates a process for a voter to cure a vote-by-mail ballot with a *non-matching* signature. The voter must submit a signed “cure” affidavit along with a copy of a valid picture ID. This is similar to the process the Legislature authorized in 2013 for fixing vote-by-mail ballots that contained *no signature*, a process that is maintained and expanded upon in the current bill.

The cure process for both types of defective ballots begins when a Supervisor of Elections receives a vote-by-mail ballot that contains *no signature* or that contains a signature that *does not match* the voter’s signature in the registration book or precinct register. The supervisor must immediately notify the voter²⁶ and provide an opportunity to cure the defect by submission of a signed cure affidavit and a copy of a proper ID no later than 5 p.m. on the day before the election — the current deadline for correcting a ballot with no signature.²⁷

The decision tree in Section VII, Related Issues graphically details the process for canvassing vote-by-mail ballots with missing or mismatched signatures. Key points from the diagram are discussed below.

²⁶ Current law does not specifically task the supervisor with this responsibility, as the 2013 authorizing legislation envisioned notification by campaigns, parties, and interested third-party groups that track vote-by-mail ballots on a daily basis. This position is no longer viable given the judge’s temporary injunction in the *Detzner* case directing the supervisors to provide such notice, notwithstanding that the directive may have sprung from a misunderstanding of current Florida law. See *Fla. Dem. Party v. Detzner*, No. 4:16cv607-MW/CAS at p. 28-29 (N.D. Fla., Oct. 16, 2016) (citing a notice provision historically applied only *post-election*).

²⁷ The affidavit and instructions are available on the Division of Elections and all supervisors’ websites, along with all relevant contact information and mailing addresses. Section 101.68(4)(e), F.S. (re-designated as subparagraph (d) in the bill).

Mismatched-Signature Ballots

A voter may cure a mismatched signature on a vote-by-mail ballot by submitting:

- A *signed affidavit* attesting to his or her eligibility to vote and attesting to the fact that he or she requested and returned a vote-by-mail ballot; and
- The same type of current and valid picture identification required at the polls, which is now categorized as Tier 1 identification, such as a Florida driver's license or passport,²⁸ if the signature on the cure affidavit does not match the voter's signature on file; or
- Either Tier 1 identification, such as picture identification that is accepted at the polls or one of the lesser forms of identification currently authorized in law for curing *missing* signatures with the voter's name and current residence address, which is categorized in the bill as Tier 2²⁹ identification, such as a current utility bill, if the signature on the cure affidavit does not match the voter's signature on file.

Missing-Signature Ballots³⁰

A voter may cure a missing signature on a vote-by-mail ballot by submitting:

- A *signed affidavit* attesting to his or her eligibility to vote and attesting to the fact that he or she requested and returned a vote-by-mail ballot; and
- The same type of current and valid picture identification required at the polls, now categorized as Tier 1 identification,³¹ if the signature on the cure affidavit does not match the voter's signature on file; or
- Either Tier 1 identification, like a photo identification acceptable at the polls, or one of the lesser forms of identification currently authorized in law with the voter's name and current residence address, which is categorized in the bill as Tier 2,³² such as a current utility bill, if the signature on the cure affidavit does match the voter's signature on file.

Additional minor changes made by the bill include:

- Modifying the cure affidavit instructions to request a preference for Tier 1 identification, if available. (If the signature on the cure affidavit does not match the signature on file, the voter must have submitted a current and valid Tier 1 photo ID for the ballot to count.)
- Amending the *post-election* notification process to require that a supervisor of elections send a voter registration card to any voter whose ballot *counted* notwithstanding a non-matching signature — for purposes of updating the signature for the next election.

²⁸ Tier 1 identification includes the following current and valid photo IDs: Florida driver license; Florida identification card issued by the Department of Highway Safety and Motor Vehicles; United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; a Florida license to carry a concealed weapon or firearm; or, an employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality. The bill also *specifically* designates a Florida driver's license and state-issued ID as permissible forms of photo identification, a clarification of the original 2013 legislation that incorporates the current practice and informal legal interpretation.

²⁹ Tier 2 identification includes a current utility bill, bank statement, government check, paycheck, or government document, but excludes a voter identification card.

³⁰ With the exception of providing an *additional* opportunity for a voter to cure a defective ballot upon submission of a cure affidavit with a *mismatched* voter signature, which would not count under current law, the process for cure remains the same.

³¹ See *supra* note 28.

³² See *supra* note 29.

- Making technical, conforming, and structural changes to the statute.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Sample Ballot Publication

Revenue; recurring

Local newspapers may lose revenue in the form of publication fees for sample ballots, as supervisors of elections are increasingly preferring to mail sample ballots to voters' residences. The overall amount of revenue lost is cannot be determined because revenue losses will depend on how many supervisors of elections choose to mail sample ballots *in lieu of* publication.

C. Government Sector Impact:

Sample Ballot Publication

Expenditures; recurring

County supervisors of elections will save an unknown amount of money each election cycle by either foregoing newspaper publication *or* the mailing of sample ballots to voters. The bulk of the savings will be realized by the county supervisors of elections who pay for the elections, except for *special election* savings which will be realized by the State, which must reimburse the counties to run these elections.

Canvassing of Vote-by-Mail Ballots

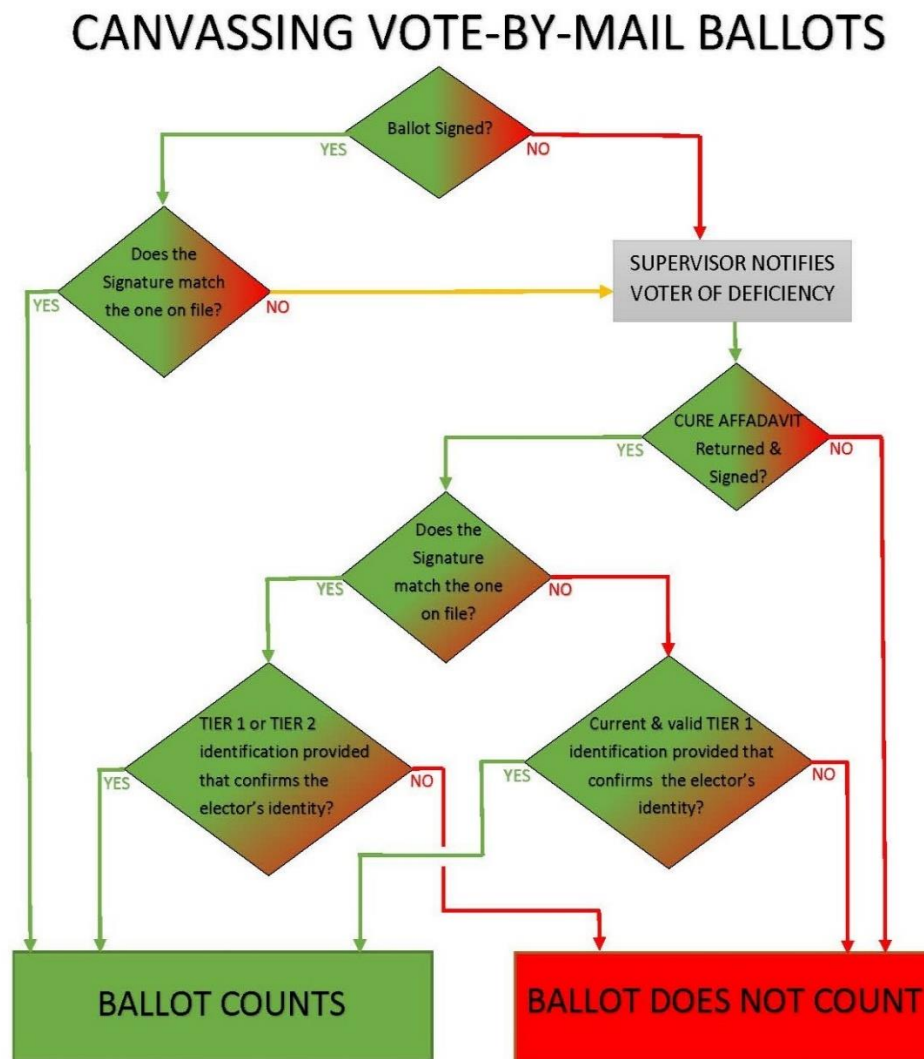
Supervisors of elections may incur some additional costs to notify voters who submit vote-by-mail ballots with missing or mismatched signatures and do not have an e-mail address on file. Those costs are expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Canvassing of Vote-by-Mail Ballots**

The following decision tree outlines the canvassing board process for determining the validity of vote-by-mail ballots with missing and/or mismatched signatures:

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 97.021, 99.061, 100.011, 101.131, 101.151, 101.20, 101.5603, 101.56075, 101.68, 105.031.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

By Senator Bradley

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1 A bill to be entitled
 2 An act relating to elections; amending s. 97.021,
 3 F.S.; revising the definition of the term "marksense
 4 ballot"; amending s. 99.061, F.S.; requiring a
 5 candidate to provide a money order or cashier's check
 6 drawn upon his or her campaign account to the filing
 7 officer if not qualifying by petition; deleting
 8 provisions regarding returned checks, to conform;
 9 amending s. 100.011, F.S.; specifying conditions under
 10 which a court may extend the time of the official
 11 closing of the polls; amending s. 101.131, F.S.;
 12 prohibiting an elected official from being designated
 13 as a poll watcher; amending s. 101.151, F.S.;
 14 specifying applicability of ballot layout requirements
 15 with respect to voting systems using a voter interface
 16 device to designate an elector's ballot selections;
 17 amending s. 101.20, F.S.; providing an exception to
 18 the requirement that the supervisor of elections
 19 publish a sample ballot in a newspaper of general
 20 circulation if a sample ballot is mailed to a
 21 registered voter's household by a specified time;
 22 amending s. 101.5603, F.S.; revising the definition of
 23 the term "marking device"; amending s. 101.56075,
 24 F.S.; revising a reference regarding the use of a
 25 marking device; amending s. 101.68, F.S.; deleting an
 26 obsolete date; modifying and clarifying provisions
 27 governing the canvassing of vote-by-mail ballots;
 28 authorizing use of the vote-by-mail ballot cure
 29 affidavit if an elector's signature does not match the

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30 signature in the registration books or precinct
 31 register; requiring the supervisor of elections to
 32 immediately notify an elector upon receipt of a vote-
 33 by-mail ballot with a missing or mismatched signature;
 34 revising terminology; revising the cure affidavit
 35 instructions with respect to acceptable forms of
 36 identification; specifying that a Florida driver
 37 license or Florida identification card are acceptable
 38 forms of identification for purposes of curing a vote-
 39 by-mail ballot; expanding the scope of post-election
 40 signature update requests to include electors who
 41 cured a vote-by-mail ballot with a mismatched
 42 signature; amending s. 105.031, F.S.; requiring
 43 certain nonpartisan candidates to provide a money
 44 order or cashier's check drawn upon his or her
 45 campaign account to the filing officer if not
 46 qualifying by petition; deleting provisions regarding
 47 returned checks, to conform; providing an effective
 48 date.

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

51
 52 Section 1. Subsection (5) of section 97.021, Florida
 53 Statutes, is amended to read:

54 97.021 Definitions.—For the purposes of this code, except
 55 where the context clearly indicates otherwise, the term:

56 (5) "Ballot" or "official ballot" when used in reference

57 to:

58 (a) "Marksense ballot ~~ballots~~" means a ~~that~~ printed sheet

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of paper, used in conjunction with an electronic or electromechanical vote tabulation voting system, containing the names of candidates, ~~or~~ a statement of proposed constitutional amendments or other questions or propositions submitted to the electorate at any election, or the selections made by the elector of candidates or other questions or propositions at an election, on which ~~sheet of paper~~ an elector casts his or her vote either directly on the sheet of paper or indirectly through the use of a voter interface device used to designate the elector's ballot selections on the sheet of paper.

(b) "Electronic or electromechanical devices" means a ballot that is voted by the process of electronically designating, including by touchscreen, or marking with a marking device for tabulation by automatic tabulating equipment or data processing equipment.

Section 2. Paragraph (a) of subsection (7) of section 99.061, Florida Statutes, is amended to read:

99.061 Method of qualifying for nomination or election to federal, state, county, or district office.—

(7) (a) In order for a candidate to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. A ~~money order or cashier's check properly executed check~~ drawn upon funds in the candidate's campaign account payable to the person or entity as prescribed by the filing officer in an amount not less than the fee required by s. 99.092, unless the candidate obtained the required number of signatures on petitions pursuant to s. 99.095. The filing fee for a special district candidate is not required to be drawn upon funds in the

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candidate's campaign account. ~~If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall have until the end of qualifying to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.~~

2. The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, which must be verified under oath or affirmation pursuant to s. 92.525(1) (a).

3. If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1) (b).

4. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. 106.021.

5. The full and public disclosure or statement of financial interests required by subsection (5). A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics or the supervisor of elections prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

Section 3. Present subsections (3) and (4) of section 100.011, Florida Statutes, are renumbered as subsections (4) and (5), respectively, and a new subsection (3) is added to that section, to read:

100.011 Opening and closing of polls, all elections; expenses.—

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(3) A court may not extend the time of the official closing of the polls unless there is a specific showing or finding of fact that extraordinary circumstances exist to justify the extension.

Section 4. Subsection (3) of section 101.131, Florida Statutes, is amended to read:

101.131 Watchers at polls.—

(3) An elected official, ~~No~~ candidate, ~~or~~ sheriff, deputy sheriff, police officer, or other law enforcement officer may not be designated as a poll watcher.

Section 5. Subsection (10) is added to section 101.151, Florida Statutes, to read:

101.151 Specifications for ballots.—

(10) With respect to any voting system that uses a voter interface device to designate the elector's ballot selections on a sheet of paper, the requirements of this section, s. 101.161, and ss. 101.2512-101.254 which prescribe specifications for ballot layout apply only to how the candidates and issues are displayed on the voter interface device.

Section 6. Subsection (2) of section 101.20, Florida Statutes, is amended to read:

101.20 Publication of ballot form; sample ballots.—

(2) Upon completion of the list of qualified candidates, a sample ballot shall be published by the supervisor of elections in a newspaper of general circulation in the county, ~~before the day of election.~~ However, the supervisor is not required to publish the sample ballot in a newspaper of general circulation in the county if the supervisor mails a sample ballot to each household where there is a registered elector at least 7 days

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before the election. The A supervisor may send a sample ballot to each registered elector by e-mail at least 7 days before an election if an e-mail address has been provided and the elector has opted to receive a sample ballot by electronic delivery. If an e-mail address has not been provided, or if the elector has not opted for electronic delivery, a sample ballot may be mailed to each registered elector or to each household in which there is a registered elector at least 7 days before an election.

Section 7. Subsection (5) of section 101.5603, Florida Statutes, is amended to read:

101.5603 Definitions relating to Electronic Voting Systems Act.—As used in this act, the term:

(5) "Marking device" means any approved device for marking a ballot with ink or other substance, including the use of a voter interface device, which will enable the ballot to be tabulated by means of automatic tabulating equipment.

Section 8. Subsection (1) of section 101.56075, Florida Statutes, is amended to read:

101.56075 Voting methods.—

(1) Except as provided in subsection (2), all voting shall be by marksense ballot using ~~utilizing~~ a marking device for the purpose of designating ballot selections.

Section 9. Section 101.68, Florida Statutes, is amended to read:

101.68 Canvassing of vote-by-mail ballot.—

(1) The supervisor of the county where the absent elector resides shall receive the voted ballot, at which time the supervisor shall compare the signature of the elector on the voter's certificate with the signature of the elector in the

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175 registration books or the precinct register to determine whether
 176 the elector is duly registered in the county and may record on
 177 the elector's registration certificate that the elector has
 178 voted. ~~However, effective July 1, 2005,~~ An elector who dies
 179 after casting a vote-by-mail ballot but on or before election
 180 day shall remain listed in the registration books until the
 181 results have been certified for the election in which the ballot
 182 was cast. The supervisor shall safely keep the ballot unopened
 183 in his or her office until the county canvassing board canvasses
 184 the vote. Except as provided in subsection (4), after a vote-by-
 185 mail ballot is received by the supervisor, the ballot is deemed
 186 to have been cast, and changes or additions may not be made to
 187 the voter's certificate.

188 (2)(a) The county canvassing board may begin the canvassing
 189 of vote-by-mail ballots at 7 a.m. on the 15th day before the
 190 election, but not later than noon on the day following the
 191 election. In addition, for any county using electronic
 192 tabulating equipment, the processing of vote-by-mail ballots
 193 through such tabulating equipment may begin at 7 a.m. on the
 194 15th day before the election. However, notwithstanding any such
 195 authorization to begin canvassing or otherwise processing vote-
 196 by-mail ballots early, no result shall be released until after
 197 the closing of the polls in that county on election day. Any
 198 supervisor of elections, deputy supervisor of elections,
 199 canvassing board member, election board member, or election
 200 employee who releases the results of a canvassing or processing
 201 of vote-by-mail ballots prior to the closing of the polls in
 202 that county on election day commits a felony of the third
 203 degree, punishable as provided in s. 775.082, s. 775.083, or s.

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775.084.

204
 205 (b) To ensure that all vote-by-mail ballots to be counted
 206 by the canvassing board are accounted for, the canvassing board
 207 shall compare the number of ballots in its possession with the
 208 number of requests for ballots received to be counted according
 209 to the supervisor's file or list.

210 (c)1. The canvassing board must ~~shall~~, if the supervisor
 211 has not already done so, compare the signature of the elector on
 212 the voter's certificate or on the vote-by-mail ballot cure
 213 affidavit as provided in subsection (4) with the signature of
 214 the elector in the registration books or the precinct register
 215 to see that the elector is duly registered in the county and to
 216 determine the legality of that vote-by-mail ballot. A vote-by-
 217 mail ballot may only be counted if:

218 a. The signature on the voter's certificate or the cure
 219 affidavit matches the elector's signature in the registration
 220 books or precinct register; however, in the case of a cure
 221 affidavit, the supporting identification listed in subsection
 222 (4) must also confirm the identity of the elector; or

223 b. The cure affidavit contains a signature that does not
 224 match the elector's signature in the registration books or
 225 precinct register, but the elector has submitted a current and
 226 valid Tier 1 identification pursuant to subsection (4) which
 227 confirms the identity of the elector.

228 2. The ballot of an elector who casts a vote-by-mail ballot
 229 shall be counted even if the elector dies on or before election
 230 day, as long as, before ~~prior to~~ the death of the voter, the
 231 ballot was postmarked by the United States Postal Service, date-
 232 stamped with a verifiable tracking number by a common carrier,

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or already in the possession of the supervisor of elections. A ~~vote-by-mail ballot is considered illegal if the voter's certificate or vote-by-mail ballot affidavit does not include the signature of the elector, as shown by the registration records or the precinct register. However,~~

3. A vote-by-mail ballot is not considered illegal if the signature of the elector does not cross the seal of the mailing envelope. If the canvassing board determines that any ballot is illegal, a member of the board shall, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The vote-by-mail ballot affidavit, if applicable, the envelope, and the ballot contained therein shall be preserved in the manner that official ballots voted are preserved.

4.2. If any elector or candidate present believes that a vote-by-mail ballot is illegal due to a defect apparent on the voter's certificate or the cure vote-by-mail ballot affidavit, he or she may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of that ballot, specifying the precinct, the ballot, and the reason he or she believes the ballot to be illegal. A challenge based upon a defect in the voter's certificate or cure vote-by-mail ballot affidavit may not be accepted after the ballot has been removed from the mailing envelope.

5. If the canvassing board determines that a ballot is illegal, a member of the board must, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The cure affidavit, if applicable, the envelope, and the ballot therein shall be preserved in the manner that official ballots are preserved.

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(d) The canvassing board shall record the ballot upon the proper record, unless the ballot has been previously recorded by the supervisor. The mailing envelopes shall be opened and the secrecy envelopes shall be mixed so as to make it impossible to determine which secrecy envelope came out of which signed mailing envelope; however, in any county in which an electronic or electromechanical voting system is used, the ballots may be sorted by ballot styles and the mailing envelopes may be opened and the secrecy envelopes mixed separately for each ballot style. The votes on vote-by-mail ballots shall be included in the total vote of the county.

(3) The supervisor or the chair of the county canvassing board shall, after the board convenes, have custody of the vote-by-mail ballots until a final proclamation is made as to the total vote received by each candidate.

(4) (a) ~~The supervisor of elections shall, on behalf of the county canvassing board, notify each elector whose ballot was rejected as illegal and provide the specific reason the ballot was rejected. The supervisor shall mail a voter registration application to the elector to be completed indicating the elector's current signature if the elector's ballot was rejected due to a difference between the elector's signature on the voter's certificate or vote-by-mail ballot affidavit and the elector's signature in the registration books or precinct register. This section does not prohibit the supervisor from providing additional methods for updating an elector's signature.~~

~~(b) Until 5 p.m. on the day before an election, The supervisor shall, on behalf of the county canvassing board,~~

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291 immediately notify ~~allow~~ an elector who has returned a vote-by-
 292 mail ballot that does not include the elector's signature or
 293 contains a signature that does not match the elector's signature
 294 in the registration books or precinct register. The supervisor
 295 shall allow such an elector to complete and submit an affidavit
 296 in order to cure the ~~unsigned~~ vote-by-mail ballot until 5 p.m.
 297 on the day before the election.

298 ~~(b)(c)~~ The elector ~~shall provide identification to the~~
 299 ~~supervisor and~~ must complete a cure ~~vote-by-mail ballot~~
 300 affidavit in substantially the following form:
 301

302 VOTE-BY-MAIL BALLOT CURE AFFIDAVIT

303 I, ..., am a qualified voter in this election and
 304 registered voter of County, Florida. I do solemnly swear or
 305 affirm that I requested and returned the vote-by-mail ballot and
 306 that I have not and will not vote more than one ballot in this
 307 election. I understand that if I commit or attempt any fraud in
 308 connection with voting, vote a fraudulent ballot, or vote more
 309 than once in an election, I may be convicted of a felony of the
 310 third degree and fined up to \$5,000 and imprisoned for up to 5
 311 years. I understand that my failure to sign this affidavit means
 312 that my vote-by-mail ballot will be invalidated.

313 ... (Voter's Signature) ...

314 ... (Address) ...

315
 316
 317 ~~(c)(d)~~ Instructions must accompany the cure ~~vote-by-mail~~
 318 ~~ballot~~ affidavit in substantially the following form:
 319

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320 READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE
 321 AFFIDAVIT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR
 322 BALLOT NOT TO COUNT.
 323

324 1. In order to ensure that your vote-by-mail ballot will be
 325 counted, your affidavit should be completed and returned as soon
 326 as possible so that it can reach the supervisor of elections of
 327 the county in which your precinct is located no later than 5
 328 p.m. on the ~~2nd~~ day before the election.

329 2. You must sign your name on the line above (Voter's
 330 Signature).

331 3. You must make a copy of one of the following forms of
 332 identification:

333 a. Tier 1 identification.—Current and valid identification
 334 that includes your name and photograph: Florida driver license;
 335 Florida identification card issued by the Department of Highway
 336 Safety and Motor Vehicles; United States passport; debit or
 337 credit card; military identification; student identification;
 338 retirement center identification; neighborhood association
 339 identification; public assistance identification; veteran health
 340 identification card issued by the United States Department of
 341 Veterans Affairs; a Florida license to carry a concealed weapon
 342 or firearm; or an employee identification card issued by any
 343 branch, department, agency, or entity of the Federal Government,
 344 the state, a county, or a municipality; or

345 b. Tier 2 identification.—ONLY IF YOU DO NOT HAVE A TIER 1
 346 FORM OF IDENTIFICATION, identification that shows your name and
 347 current residence address: current utility bill, bank statement,
 348 government check, paycheck, or government document (excluding

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voter identification card).

4. Place the envelope bearing the affidavit into a mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. Mail, deliver, or have delivered the completed affidavit along with the copy of your identification to your county supervisor of elections. Be sure there is sufficient postage if mailed and that the supervisor's address is correct.

5. Alternatively, you may fax or e-mail your completed affidavit and a copy of your identification to the supervisor of elections. If e-mailing, please provide these documents as attachments.

(d) ~~(e)~~ The department and each supervisor shall include the affidavit and instructions on their respective websites. The supervisor must include his or her office's mailing address, e-mail address, and fax number on the page containing the affidavit instructions; the department's instruction page must include the office mailing addresses, e-mail addresses, and fax numbers of all supervisors of elections or provide a conspicuous link to such addresses.

(e) ~~(f)~~ The supervisor shall attach each affidavit received to the appropriate vote-by-mail ballot mailing envelope.

(f) After all election results on the ballot have been certified, the supervisor shall, on behalf of the county canvassing board, notify each elector whose ballot has been rejected as illegal and provide the specific reason the ballot was rejected. In addition, the supervisor shall mail a voter registration application to the elector to be completed indicating the elector's current signature if the signature on

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the voter's certificate or cure affidavit did not match the elector's signature in the registration books or precinct register. This section does not prohibit the supervisor from providing additional methods for updating an elector's signature.

Section 10. Paragraph (a) of subsection (5) of section 105.031, Florida Statutes, is amended to read:

105.031 Qualification; filing fee; candidate's oath; items required to be filed.—

(5) ITEMS REQUIRED TO BE FILED.—

(a) In order for a candidate for judicial office or the office of school board member to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. Except for candidates for retention to judicial office, a money order or cashier's check ~~properly executed check~~ drawn upon funds in the candidate's campaign account in an amount not less than the fee required by subsection (3) or, in lieu thereof, the copy of the notice of obtaining ballot position pursuant to s. 105.035. ~~If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall, the end of qualifying notwithstanding, have 48 hours from the time such notification is received, excluding Saturdays, Sundays, and legal holidays, to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.~~

2. The candidate's oath required by subsection (4), which must contain the name of the candidate as it is to appear on the

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407 ballot; the office sought, including the district or group
 408 number if applicable; and the signature of the candidate, duly
 409 acknowledged.

410 3. The loyalty oath required by s. 876.05, signed by the
 411 candidate and duly acknowledged.

412 4. The completed form for the appointment of campaign
 413 treasurer and designation of campaign depository, as required by
 414 s. 106.021. In addition, each candidate for judicial office,
 415 including an incumbent judge, shall file a statement with the
 416 qualifying officer, within 10 days after filing the appointment
 417 of campaign treasurer and designation of campaign depository,
 418 stating that the candidate has read and understands the
 419 requirements of the Florida Code of Judicial Conduct. Such
 420 statement shall be in substantially the following form:

421

422 Statement of Candidate for Judicial Office

423

424 I, ...(name of candidate)..., a judicial candidate, have
 425 received, read, and understand the requirements of the Florida
 426 Code of Judicial Conduct.

427 ...(Signature of candidate)...

428 ...(Date)...

429

430 5. The full and public disclosure of financial interests
 431 required by s. 8, Art. II of the State Constitution or the
 432 statement of financial interests required by s. 112.3145,
 433 whichever is applicable. A public officer who has filed the full
 434 and public disclosure or statement of financial interests with
 435 the Commission on Ethics or the supervisor of elections prior to

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436 qualifying for office may file a copy of that disclosure at the
 437 time of qualifying.

438 Section 11. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: April 5, 2017

I respectfully request that **Senate Bill # 1160**, relating to Elections, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley", is written over a horizontal line.

Senator Rob Bradley
Florida Senate, District 5

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/17
Meeting Date

SB 1160
Bill Number (if applicable)

Topic Elections

~~Amendment Barcode (if applicable)~~

Name Jane Jordan

Job Title _____

Address 2932 Parrish Dr
Valhalla FL 32309
City State Zip

Phone 880 591-2709
Email Samsamg84@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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/CS/SB 1352

INTRODUCER: Judiciary Committee; Governmental Oversight and Accountability Committee; and
Senator Young

SUBJECT: Division of Administrative Hearings

DATE: April 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ferrin</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1352 changes the employment classification of Administrative Law Judges (ALJ) at the Division of Administrative Hearings, creates a statewide nominating commission for the appointment of ALJs, and specifies procedures for the appointment, reappointment, and removal of ALJs.

Employment Classification of ALJs

Current law provides that ALJs are classified as Career Service employees in the state personnel system. This bill changes the employment classification of ALJs from Career Service to Senior Management Service.

Statewide Nominating Commission

The bill creates a statewide nominating commission for the nomination of ALJs. Under the bill, the chief ALJ, who serves as the DOAH director, must appoint ALJs from the list of individuals nominated by the statewide nominating commission. Current law provides that the chief ALJ is himself or herself appointed by the Governor and Cabinet.

The statewide nominating commission must be composed of the following members:

- Three members appointed by the Governor, at least one of whom must be a minority person;

- Two members appointed by the Attorney General;
- Two members appointed by the Chief Financial Officer; and
- Two members appointed by the Commissioner of Agriculture.

Appointment, Reappointment, and Length of Service of ALJs

The bill also establishes a process by which the chief ALJ must appoint, reappoint, or remove ALJs and specifies the length of ALJs' terms, which are not to exceed 4 years. The bill requires DOAH to maintain the 33 ALJ positions as they exist on June 30, 2017, and allows each currently serving ALJ to continue to serve until June 30, 2018. Each ALJ currently serving may be appointed under the reappointment process.

The bill takes effect July 1, 2017.

II. Present Situation:

Administrative Law Judges

Administrative Law Judges (ALJs) preside over disputes arising under the Administrative Procedure Act (APA)¹ and other state laws in which the substantial interests of a person are determined by an agency² and which involve a disputed issue of material fact.³ When a state agency proposes to take some action that is adverse to a person, the affected person is usually entitled to request an administrative hearing to determine the matter.⁴

Each ALJ is employed by the Division of Administrative Hearings (DOAH) and must have been a member of The Florida Bar in good standing for the preceding 5 years.⁵ DOAH is administratively housed under the Department of Management Services (DMS); however,

¹ Chapter 120, F.S.

² Section 120.52(1), F.S., defines the term "agency" to include the following officers or governmental entities if acting pursuant to powers other than those derived from the Constitution:

(a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04, F.S.; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chs. 163, 373, 380, and 582, F.S., and s. 186.504, F.S.

(b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.

(c) Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this chapter by general or special law or existing judicial decisions.

This definition does not include a municipality or legal entity created solely by a municipality; a legal entity or agency created in whole or in part pursuant to part II of ch. 361, F.S.; a metropolitan planning organization created pursuant to s. 339.175, F.S.; a separate legal or administrative entity created pursuant to s. 339.175, F.S., of which a metropolitan planning organization is a member; an expressway authority pursuant to ch. 348, F.S. or any transportation authority or commission under ch. 343, F.S., or ch. 349, F.S.; or a legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), F.S., unless any party to such agreement is otherwise an agency pursuant to this definition. Section 120.52(1), F.S.

³ Section 120.57(1), F.S.

⁴ DOAH, *Representing Yourself Before the Division of Administrative Hearings*, pg. 1, <https://www.doah.state.fl.us/ALJ/RepYourself.pdf> (last visited Apr. 12, 2017).

⁵ Section 120.65(4), F.S.

DOAH is not subject to the control, supervision, or direction of DMS.⁶ The head of DOAH is a director who also serves as chief ALJ. The director must be appointed by the Administration Commission⁷ and confirmed by the Senate. The director and any deputy chief ALJ must possess the same minimum qualifications as the ALJs employed by DOAH.⁸

Career Service System

Chapter 110, F.S., establishes the state's personnel management system. The system must adopt means to recruit, select, train, develop, and maintain an effective and responsible workforce. In so doing, the system must provide policies and procedures for:

- Employee hiring and advancement;
- Training and career development;
- Position classification, salary administration, benefits, affirmative action; and
- Employee performance evaluations, discipline, and discharge.⁹

The Department of Management Services is charged with establishing and maintaining a classification and compensation program addressing Career Service, Selected Exempt Service, and Senior Management Service positions.¹⁰ The classification of a position determines the types of benefits assigned to the position and the compensation and collective bargaining status of the position. A position must be classified as Career Service unless it is specifically exempted by statute.¹¹

A Career Service employee who has satisfactorily completed at least a 1-year probationary period may be suspended or dismissed only for cause. Cause includes poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.¹² Career Service employees who have completed the probationary period are also entitled to a grievance process¹³ and have the right to appeal to the Public Employees Relations Commission a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.¹⁴

Selected Exempt Service is a separate system of personnel administration for positions that are exempt from the Career Service System.¹⁵ Employees in the Selected Exempt Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.¹⁶ The Selected Exempt Service provides greater pay and benefits overall than those provided for Career Service

⁶ *Id.*

⁷ Section 14.202, F.S., establishes the Administration Commission as part of the Executive Office of the Governor. The Administration Commission is comprised of the Governor and Cabinet. Section 14.202, F.S.

⁸ Section 120.65(1), F.S.

⁹ Section 110.105(1), F.S.

¹⁰ Section 110.2035(1), F.S.

¹¹ Section 110.205(1), F.S.

¹² Section 110.227(1), F.S.

¹³ Section 110.227(4)(a), F.S.

¹⁴ Section 110.227(5)(a) and (6), F.S.

¹⁵ Section 110.602, F.S.

¹⁶ Section 110.604, F.S.

employees, but less pay and benefits overall than those provided for the Senior Management Service.¹⁷

Current law exempts from the Career Service System all positions that require as a prerequisite to employment a Bachelor of Laws or Juris Doctor degree from a law school accredited by the American Bar Association and membership in The Florida Bar. However, attorneys who serve as ALJs within DOAH are specifically excluded from this exemption; therefore, they are classified as Career Service employees.¹⁸

III. Effect of Proposed Changes:

Section 1 repeals the provision that excludes attorneys who serve as ALJs from the Career Service exemption, and classifies ALJs as Senior Management Service employees.

Section 2 requires full-time ALJs to be appointed by the chief ALJ, and prohibits an ALJ from engaging in the private practice of law during his or her term of office. The ALJ must be appointed from a list of three individuals nominated by a statewide nominating commission created by the bill.

The statewide nominating commission must be composed of the following members:

- Three members appointed by the Governor, at least one of whom must be a minority person as defined in s. 288.703, F.S.;¹⁹
- Two members appointed by the Attorney General;
- Two members appointed by the Chief Financial Officer; and
- Two members appointed by the Commissioner of Agriculture.

Beginning July 1, 2017, the Governor and each member of the Cabinet must appoint one member to serve a 2-year term and appoint the remaining members to serve 4-year terms. Thereafter, each member must be appointed for a 4-year term. If a vacancy occurs on the nominating commission, it must be filled by the original appointing authority for the unexpired balance of the term. The bill administratively houses the nominating commission within DOAH and requires the meetings and determinations of the nominating commission to be open to the public.

The bill requires each ALJ to be appointed for a 4-year term, but authorizes the chief ALJ to remove an ALJ at any time for cause. Before the expiration of an ALJ's term, the nominating

¹⁷ See s. 110.603(2), F.S.

¹⁸ Section 110.205(2)(r), F.S.

¹⁹ Section 288.703(4), F.S., classifies as a minority person a lawful, permanent resident of Florida who is:

(a) An African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin.

(b) A Hispanic American, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race.

(c) An Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778.

(d) A Native American, a person who has origins in any of the Indian Tribes of North America before 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services.

(e) An American woman.

commission must review the ALJ's conduct and determine whether the ALJ's performance is satisfactory. In determining whether an ALJ's performance is satisfactory, the commission must consider the extent to which the ALJ has met the requirements of the Administrative Procedures Act. The nominating commission must report its findings to the chief ALJ at least 6 months before the ALJ's term expires. The chief ALJ must review the commission's report and may reappoint the ALJ for an additional 4-year term. If the chief ALJ does not reappoint the ALJ, he or she must inform the nominating commission. The ALJ must continue serving until a successor is appointed. If a vacancy occurs during an ALJ's unexpired term, if the nominating commission does not find the ALJ's performance satisfactory, or if the chief ALJ does not reappoint the ALJ, the chief ALJ must appoint a successor judge for a 4-year term in accordance with the process described below.

Appointments must be made to each of the 33 authorized ALJ positions by June 30, 2018, for terms beginning on July 1, 2018. For the term beginning on July 1, 2018, ALJs must be appointed in the following manner:

- Eight ALJs appointed to a 1-year term;
- Eight ALJs appointed to a 2-year term;
- Eight ALJs appointed to a 3-year term; and
- Nine ALJs appointed to a 4-year term.

Thereafter, each term of office must be 4 years, and there is no limit on the number of terms an ALJ may serve.

The bill requires DOAH to maintain the 33 ALJ positions in existence as of June 30, 2017, and allows each ALJ who is currently serving to continue to serve until June 30, 2018. The bill specifies that an ALJ serving before July 1, 2018, is eligible for reappointment as an ALJ by the chief ALJ.

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.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The change in the classification of the 33 ALJ positions from Career Service employees to Senior Management Service employees will likely have a negative fiscal impact to the state because the Senior Management classification provides greater pay and benefits than Career Service or Select Exempt Service.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 110.205 and 120.65 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on April 19, 2017:**

The committee substitute provides for administrative law judges to be appointed to staggered 4-year terms instead of staggered 8-year terms.

CS by Governmental Oversight and Accountability on April 3, 2017:

- Places ALJs in the Senior Management Service;
- Retains existing law for the appointment of the chief ALJ and DOAH director by the Governor and Cabinet;
- Authorizes the chief ALJ to appoint, reappoint, and remove ALJs; and
- Increases the regular term for ALJs from 4 years to 8 years.

²⁰ See s. 110.603(2), F.S.

B. Amendments:

None.

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



655586

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Young) recommended the following:

Senate Amendment

Delete lines 146 - 179
and insert:

(b) Each administrative law judge shall be appointed for a 4-year term, but during his or her term of office may be removed by the chief administrative law judge for cause. Before the expiration of a judge's term of office, the statewide nominating commission shall review the judge's conduct and determine whether the judge's performance is satisfactory. In determining whether a judge's performance is satisfactory, the commission



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shall consider the extent to which the judge has met the requirements of this chapter. The commission shall report its finding to the chief administrative law judge no later than 6 months before the expiration of the judge's term of office. The chief administrative law judge shall review the commission's report and may reappoint the administrative law judge for an additional 4-year term. If the chief administrative law judge does not reappoint the judge, the chief administrative law judge shall inform the commission. The judge shall remain in office until the chief administrative law judge has appointed a successor judge in accordance with this subsection. If a vacancy occurs during a judge's unexpired term, the commission does not find the judge's performance satisfactory, or the chief administrative law judge does not reappoint the judge, the chief administrative law judge must appoint a successor judge for a 4-year term in accordance with paragraph (a).

(c) The chief administrative law judge shall appoint each administrative law judge by June 30, 2018, for a term beginning on July 1, 2018. For the term beginning on July 1, 2018, administrative law judges shall be appointed in the following manner: eight judges appointed to a 1-year term, eight judges appointed to a 2-year term, eight judges appointed to a 3-year term, and nine judges appointed to a 4-year term. Thereafter, each term of office shall be 4 years. Nothing herein limits a chief administrative law judge's ability to reappoint an administrative law judge to additional terms in accordance with this subsection.

By the Committee on Governmental Oversight and Accountability;
and Senator Young

585-03375-17

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1 A bill to be entitled
2 An act relating to the Division of Administrative
3 Hearings; amending s. 110.205, F.S.; revising
4 positions at the division that are exempt from the
5 Career Service System; amending s. 120.65, F.S.;
6 requiring the chief administrative law judge to
7 appoint administrative law judges; prohibiting an
8 administrative law judge from engaging in the private
9 practice of law during his or her term of office;
10 requiring the chief administrative law judge to
11 appoint administrative law judges from nominees
12 recommended by a statewide nominating commission;
13 specifying the composition and term lengths of members
14 of the commission; providing that meetings and
15 determinations of the commission be open to the
16 public; providing that the commission be
17 administratively housed within the division;
18 specifying term lengths of administrative law judges;
19 prescribing procedures for the commission to review a
20 judge's performance before the expiration of a term;
21 requiring the chief administrative law judge to take
22 certain action regarding a judge after the
23 commission's review; providing for initial
24 appointments of administrative law judges and
25 staggered terms; providing transitional provisions;
26 providing an effective date.
27
28 Be It Enacted by the Legislature of the State of Florida:
29

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

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30 Section 1. Paragraphs (j), (r), and (w) of subsection (2)
31 of section 110.205, Florida Statutes, are amended to read:
32 110.205 Career service; exemptions.—
33 (2) EXEMPT POSITIONS.—The exempt positions that are not
34 covered by this part include the following:
35 (j) The appointed secretaries and the State Surgeon
36 General, assistant secretaries, deputy secretaries, and deputy
37 assistant secretaries of all departments; attorneys who serve as
38 administrative law judges pursuant to s. 120.65; the executive
39 directors, assistant executive directors, deputy executive
40 directors, and deputy assistant executive directors of all
41 departments; the directors of all divisions and those positions
42 determined by the department to have managerial responsibilities
43 comparable to such positions, which positions include, but are
44 not limited to, program directors, assistant program directors,
45 district administrators, deputy district administrators, the
46 Director of Central Operations Services of the Department of
47 Children and Families, the State Transportation Development
48 Administrator, the State Public Transportation and Modal
49 Administrator, district secretaries, district directors of
50 transportation development, transportation operations,
51 transportation support, and the managers of the offices of the
52 Department of Transportation specified in s. 20.23(3)(b). Unless
53 otherwise fixed by law, the department shall set the salary and
54 benefits of these positions and the positions of county health
55 department directors and county health department administrators
56 of the Department of Health in accordance with the rules of the
57 Senior Management Service.
58 (r) All positions not otherwise exempt under this

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

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subsection which require as a prerequisite to employment:
 licensure as a physician pursuant to chapter 458, licensure as
 an osteopathic physician pursuant to chapter 459, licensure as a
 chiropractic physician pursuant to chapter 460, including those
 positions which are occupied by employees who are exempted from
 licensure pursuant to s. 409.352; licensure as an engineer
 pursuant to chapter 471, which are supervisory positions; or for
 12 calendar months, which require as a prerequisite to
 employment that the employee have received the degree of
 Bachelor of Laws or Juris Doctor from a law school accredited by
 the American Bar Association and thereafter membership in The
 Florida Bar, ~~except for any attorney who serves as an~~
~~administrative law judge pursuant to s. 120.65 or for hearings~~
~~conducted pursuant to s. 120.57(1)(a).~~ Unless otherwise fixed by
 law, the department shall set the salary and benefits for these
 positions in accordance with the rules established for the
 Selected Exempt Service.

(w) Managerial employees, as defined in s. 447.203(4),
 confidential employees, as defined in s. 447.203(5), and
 supervisory employees who spend the majority of their time
 communicating with, motivating, training, and evaluating
 employees, and planning and directing employees' work, and who
 have the authority to hire, transfer, suspend, lay off, recall,
 promote, discharge, assign, reward, or discipline subordinate
 employees or effectively recommend such action, including all
 employees serving as supervisors, administrators, and directors.
 Excluded are employees also designated as special risk or
 special risk administrative support ~~and attorneys who serve as~~
~~administrative law judges pursuant to s. 120.65 or for hearings~~

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~~conducted pursuant to s. 120.57(1)(a).~~ Additionally, registered
 nurses licensed under chapter 464, dentists licensed under
 chapter 466, psychologists licensed under chapter 490 or chapter
 491, nutritionists or dietitians licensed under part X of
 chapter 468, pharmacists licensed under chapter 465,
 psychological specialists licensed under chapter 491, physical
 therapists licensed under chapter 486, and speech therapists
 licensed under part I of chapter 468 are excluded, unless
 otherwise collectively bargained.

Section 2. Subsections (1) through (4) of section 120.65,
 Florida Statutes, are amended to read:

120.65 Administrative law judges.—

(1) The Division of Administrative Hearings within the
 Department of Management Services shall be headed by a director
 who shall be appointed by the Administration Commission and
 confirmed by the Senate. The director, who shall also serve as
 the chief administrative law judge, and any deputy chief
 administrative law judge must possess the same minimum
 qualifications as the administrative law judges employed by the
 division. The Deputy Chief Judge of Compensation Claims must
 possess the minimum qualifications established in s. 440.45(2)
 and shall report to the director. The division is ~~shall be~~ a
 separate budget entity, and the director shall be its agency
 head for all purposes. The Department of Management Services
 shall provide administrative support and service to the division
 to the extent requested by the director. The division shall not
 be subject to control, supervision, or direction by the
 Department of Management Services in any manner, including, but
 not limited to, personnel, purchasing, transactions involving

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real or personal property, and budgetary matters.

(2) The chief administrative law judge shall appoint full-time administrative law judges to conduct hearings in accordance with this chapter. A person may not serve as an administrative law judge unless he or she has been a member of The Florida Bar in good standing for the previous 5 years. An administrative law judge may not engage in the private practice of law during his or her term of office.

(a)1. Except as provided in paragraph (b), the chief administrative law judge shall appoint an administrative law judge from a list of three persons nominated by a statewide nominating commission. The statewide nominating commission shall be composed of three members, at least one of whom must be a minority person as defined in s. 288.703, appointed by the Governor; two members appointed by the Attorney General; two members appointed by the Chief Financial Officer; and two members appointed by the Commissioner of Agriculture.

2. Beginning July 1, 2017, the Governor and each member of the Cabinet shall appoint one member of the statewide nominating commission to serve a 2-year term and appoint the remaining members to serve 4-year terms. Thereafter, each member shall be appointed for a 4-year term. A vacancy occurring on the commission shall be filled by the original appointing authority for the unexpired balance of the term.

3. The meetings and determinations of the statewide nominating commission as to the administrative law judges shall be open to the public.

4. The statewide nominating commission shall be administratively housed within the division.

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(b) Each administrative law judge shall be appointed for an 8-year term, but during his or her term of office may be removed by the chief administrative law judge for cause. Before the expiration of a judge's term of office, the statewide nominating commission shall review the judge's conduct and determine whether the judge's performance is satisfactory. In determining whether a judge's performance is satisfactory, the commission shall consider the extent to which the judge has met the requirements of this chapter. The commission shall report its finding to the chief administrative law judge no later than 6 months before the expiration of the judge's term of office. The chief administrative law judge shall review the commission's report and may reappoint the administrative law judge for an additional 8-year term. If the chief administrative law judge does not reappoint the judge, the chief administrative law judge shall inform the commission. The judge shall remain in office until the chief administrative law judge has appointed a successor judge in accordance with this subsection. If a vacancy occurs during a judge's unexpired term, the commission does not find the judge's performance satisfactory, or the chief administrative law judge does not reappoint the judge, the chief administrative law judge must appoint a successor judge for an 8-year term in accordance with paragraph (a).

(c) The chief administrative law judge shall appoint each administrative law judge by June 30, 2018, for a term beginning on July 1, 2018. For the term beginning on July 1, 2018, administrative law judges shall be appointed in the following manner: eight judges appointed to a 2-year term, eight judges appointed to a 4-year term, eight judges appointed to a 6-year

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term, and nine judges appointed to an 8-year term. Thereafter, each term of office shall be 8 years. Nothing herein limits a chief administrative law judge's ability to reappoint an administrative law judge to additional terms in accordance with this subsection.

(d) The Division of Administrative Hearings shall maintain 33 administrative law judges as they existed on June 30, 2017. Each administrative law judge may continue to serve until June 30, 2018, and may be appointed for additional terms under the process for reappointments in paragraphs (b) and (c).

(3)(2) The director has the right to appeal actions by the Executive Office of the Governor that affect amendments to the division's approved operating budget or any personnel actions pursuant to chapter 216 to the Administration Commission, which shall decide such issue by majority vote. The appropriations committees may advise the Administration Commission on the issue. If the President of the Senate and the Speaker of the House of Representatives object in writing to the effects of the appeal, the appeal may be affirmed by the affirmative vote of two-thirds of the commission members present.

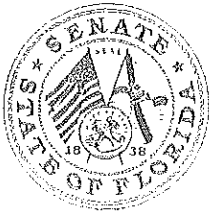
(4)(3) Each state agency as defined in chapter 216 and each political subdivision shall make its facilities available, at a time convenient to the provider, for use by the division in conducting proceedings pursuant to this chapter.

~~(4) The division shall employ administrative law judges to conduct hearings required by this chapter or other law. Any person employed by the division as an administrative law judge must have been a member of The Florida Bar in good standing for the preceding 5 years.~~

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204 Section 3. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG
18th District

April 4, 2017

Senator Greg Steube, Chair
Senate Judiciary Committee
515 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Steube,

My Senate Bill 1352, Division of Administrative Hearings has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Thank you for your consideration of this request. If I need to provide you with more information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Dana Young".

Dana Young
State Senator – 18th District

cc: Tom Cibula, Staff Director – Senate Judiciary Committee

REPLY TO:

- ☐ 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

4/19/2017

Meeting Date

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

1352

Bill Number (if applicable)

Topic Division of Administrative Hearings

Amendment Barcode (if applicable)

Name Robert Cohen

Job Title Director and Chief Judge

Address 1230 Apalachee Parkway

Phone 850-488-9675

Street

Tallahassee

FL

32301

City

State

Zip

Email bob.cohen@doah.state.fl.us

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Division of Administrative Hearings

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

04/19/2017

Meeting Date

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

1352

Bill Number (if applicable)

655586

Amendment Barcode (if applicable)

Topic Division of Administrative Hearings

Name Robert Cohen

Job Title Director and Chief Judge

Address 1230 Apalachee Parkway

Phone 850-488-9675

Street

Tallahassee

FL

32301

Email bob.cohen@doah.state.fl.us

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Division of Administrative Hearings

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)

April 19, 2017

Meeting Date

1352

Bill Number (if applicable)

Topic APA

655586 - Speaking on
Amendment Barcode (if applicable)

the Amendment

Name FRED DUDLEY

Job Title ATTORNEY

Address 3522 THOMASVILLE RD. SUITE 301
Street

Phone (850) 294-3471

TALLAHASSEE, FL. 32309
City State Zip

Email DUDLEY@MYLICENSELAW.COM

Speaking: ☐ For ☐ Against ☒ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

(BUT NOT ON THIS ISSUE)

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)

4 119 /2017

Meeting Date

Topic _____

Bill Number 1352
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1520

INTRODUCER: Regulated Industries Committee and Senator Latvala

SUBJECT: Termination of a Condominium Association

DATE: April 20, 2017

REVISED: 04/20/17

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	Fav/CS
2.	Stallard	Cibula	JU	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1520 revises the requirements for the optional termination of a condominium. Most of the bill's changes pertain to the optional termination of a condominium in which a bulk owner owns at least 80 percent of the total voting interests. Regarding these terminations, the bill increases consumer protections by:

- Entitling all persons whose condominium unit is their homestead to be paid at least as much as they paid for their units;
- Increasing mandatory disclosure of the identities of significant stakeholders in a condominium before a termination plan may proceed; and
- Requiring approval of a termination plan by the Department of Business and Professional Regulation.

Regarding optional terminations in general, the bill requires 80 percent of a condominium's voting interests to vote for an optional termination, regardless of what a condominium's governing documents may provide. The bill also reduces from 10 percent to 5 percent the percentage of voting interests necessary to veto a termination plan. In relation to an optional termination of a condominium created by conversion (such as from an apartment complex), the bill prohibits termination until 10 years after conversion, which is 5 years more than current law requires.

Additionally, the bill expressly states that the amendments made by the bill to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, and are intended to address the rights

and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.

II. Present Situation:

Condominiums

A condominium is a “form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, [as part of the ownership of] to each unit, an undivided share in common [portion of the condominium property].”¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.² The declaration must include the condominium’s bylaws, and the declaration functions as the condominium’s “constitution,” subject to applicable laws.³ A condominium is administered by a board of directors referred to as a “board of administration.”⁴

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units and may be amended as provided in the declaration.⁵ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than two-thirds of the unit owners.⁶

Condominium “association property” is real and personal property owned or leased, or dedicated by a recorded plat to the association for the use and benefit of its members.⁷ However, “condominium property” is lands, leaseholds, and personal property subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.⁸ The common elements are the portions of the condominium property not included in the units.⁹

Voting interests are the voting rights distributed to the association members as set forth in the declaration.¹⁰ In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.¹¹

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁴ Section 718.103(4), F.S.

⁵ Sections 718.104(5) and 718.110(1)(a), F.S.

⁶ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

⁷ Section 718.103(3), F.S.

⁸ Section 718.103(13), F.S.

⁹ Section 718.103(8), F.S.

¹⁰ Section 718.103(30), F.S. Voting rights are distributed pursuant to s. 718.104(4)(j), F.S.

¹¹ Section 718.103(30), F.S.

Termination of a Condominium

The termination of a condominium is authorized under two circumstances.¹² One circumstance is when the continued operation of the condominium would constitute economic waste or the ability to continue the condominium is impossible because of laws or regulations. The second circumstance is when a sufficient percentage of the voting interests of the condominium approve a plan of termination. A termination that occurs under the second circumstance is referred to as an optional termination.

Termination Due to Economic Waste or Impossibility

When the continued operation of a condominium would constitute economic waste or when the ability to continue operating a condominium is made impossible by law or regulation, a plan of termination based on economic waste or impossibility may be approved by the lesser of the lowest percentage of voting interests necessary to amend the declaration or as otherwise provided in the declaration for approval of termination. Conditions constituting economic waste or impossibility exist if:

1. The total estimated cost of construction or repairs necessary to construct the intended improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium after completion of the construction or repairs; or
2. It becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations.¹³

Optional Termination

Unless the declaration of condominium provides a lower percentage, a condominium may be terminated at any time if, in a vote on a plan of termination, at least 80 percent of the condominium's total voting interests vote for termination and less than 10 percent of the total voting interests reject the termination.¹⁴ If 10 percent or more of the voting interests reject the plan of termination, another termination may not be considered for 18 months after the date of rejection.¹⁵

If a bulk owner owns 80 percent of the total voting interests of a condominium, the optional termination of the condominium is subject to additional limitations and requirements. These limitations and requirements are meant to protect the non-bulk owners.¹⁶ A bulk owner is defined as a single holder of an association's voting interests or an owner together with a related entity or entities that would be considered an insider¹⁷ holding these voting interests.¹⁸

¹² Section 718.117, F.S. This section's termination provisions apply to all condominiums in this state in existence on or after July 1, 2007.

¹³ Section 718.117(2)(a), F.S. However, if the condominium contains timeshare units, a different approval percentage may apply. See ss. 718.117(2)(b) and (c), F.S.

¹⁴ Section 718.117(3), F.S.

¹⁵ Section 718.117(3)(a)2., F.S.

¹⁶ Section 718.117(3)(c), F.S.

¹⁷ See s. 726.102(8), F.S. for the definition of "insider."

¹⁸ *Id.*

The plan of termination must make the following disclosures to unit owners in a sworn statement before a plan of termination may be presented for consideration:

- The identity of any person who owns or controls 50 percent or more of the condominium units or, if owned by an artificial entity, the person who owns or controls it and the person who owns or controls 20 percent of the entity that constitutes the bulk owner;
- The units acquired by the bulk owner, the date of acquisition and the price of each unit; and
- The relationship of any board member to the bulk owner.¹⁹

The unit owners, other than the bulk owner or owners, are entitled to elect at least one-third of the board before approval of any plan of termination.²⁰

If a plan goes forward, all unit owners, other than the bulk owner, must be compensated in an amount equal to at least 100 percent of the fair market value of their units, as determined by an independent appraiser selected by the termination trustee.²¹ An original purchaser from the developer who rejects the plan of termination and whose unit was granted a homestead exemption and who is current in payment of assessments, other monetary obligations to the association, and any mortgage encumbering the unit on the date of recording of the plan of termination must receive the original purchase price paid for the unit or current fair market value, whichever is greater.²² The plan of termination must provide for the payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien.²³ The payment may not exceed the unit's share of the proceeds of termination under the plan.²⁴

Additionally former unit owners are allowed to lease their units if the former condominium units are offered for lease to the public,²⁵ and a relocation fee must be paid to former unit owners who had a homestead exemption on their units.²⁶

Number of Condominium Terminations

The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation furnished the number of condominium terminations for the previous 5 calendar years, which are shown in the chart below:²⁷

Calendar Year	Total Terminations	Optional Terminations
2012	30	28
2013	37	35
2014	38	37
2015	33	33
2016	29	26

¹⁹ Section 718.117(3)(c)5., F.S.

²⁰ Section 718.117(3)(d), F.S.

²¹Section 718.117(3)(c)3., F.S.

²² *Id.*

²³ Section 718.117(3)(c)4., F.S.

²⁴ *Id.*

²⁵ Section 718.117(3)(c)1., F.S.

²⁶ Section 718.117(3)(c)2. F.S.

²⁷ Email from Colton Madill, DBPR, March 28, 2017, on file with the Senate Committee on Regulated Industries.

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes may enforce and ensure compliance with the provisions of the condominium chapter of the Florida Statutes, as well as with the rules relating to the development, construction, sale, lease, ownership, and operation, and management of residential condominium units.²⁸ The Division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control. The Division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association. After control of the condominium or cooperative is transferred from the developer to the unit owners, the Division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.²⁹

As part of the Division's authority to investigate complaints, the Division is authorized to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.³⁰

III. Effect of Proposed Changes:

The bill amends s. 718.117(3), F.S. to revise the requirements for the optional termination of a condominium.

Optional Termination of a Condominium

Changes Applying to All Optional Terminations of Condominiums

For an optional condominium termination to proceed, the bill requires that at least 80 percent of the total voting interests of a condominium vote for termination. However, the bill prohibits a termination plan from proceeding if it is rejected by 5 percent of the condominium's voting interests, which is a smaller percentage of the condominium's voting interests than specified in current law. Under current law, a termination plan may not proceed if it is rejected by at least 10 percent of the voting interests.

Moreover, under current law, the approval percentage is a default threshold that may be supplanted by the terms of a condominium's declaration to make it easier or more difficult to terminate a condominium. The threshold in the bill, however, will supplant any approval threshold in a condominium's declaration.

The bill also increases the minimum time periods between successive votes on a termination plan. If 5 percent or more of the voting interests of a condominium reject a plan of termination, a subsequent plan may not be considered for 24 months, instead of 18 months as under current law.

²⁸ Section 718.501(1), F.S.

²⁹ Sections 718.501(1) and 719.501(1), F.S.

³⁰ *Id.*

Condominium Conversions

Some condominiums are created by the conversion of non-condominium property, such as apartment buildings. The bill extends the time between the date that a condominium is created by conversion and the date that the condominium association may vote for optional termination from 10 years to 5 years.

Changes Applying to Condominiums that are At Least 80-percent-owned by Bulk Owners

Compared to other condominium terminations, current law places more restrictions on the termination of a condominium if a bulk owner owns at least 80 percent of the condominium's total voting interests.

As under current law, each unit owner other than the bulk owner must be compensated at least 100 percent of the fair market value of his or her unit. Additionally, current law requires that a unit owner receive at least the original purchase price paid for his or her unit if he or she:

- Was an original purchaser;
- Rejected the plan of termination; and
- Received a homestead exemption on the unit.

The bill, in contrast, requires only that a person's unit have been granted homestead-exemption status for the person to be guaranteed this amount of compensation.

The bill also broadens the requirement to disclose to the unit owners anyone who owns a significant portion of the condominium before a plan of termination is presented to the unit owners. Specifically, the plan must include written, sworn disclosures of the identity of any person or entity that owns or controls at least 25 percent (instead of 50 percent, as in current law) of the condominium units. Moreover, if it is an artificial entity that owns at least 25 percent of the units, then the following must also be disclosed in the same manner:

- The natural person or persons who directly or indirectly manage or control the artificial entity or entities; and
- The natural person or persons who directly or indirectly own or control 10 percent (instead of 20 percent as under current law) or more of the artificial entity or entities that constitute the bulk owner.

Lastly, the written and sworn disclosure must also include the factual circumstances that show that the plan complies with the requirements of s. 718.117, F.S., the statute amended by the bill, and shows that the plan supports the expressed public policies of the statute.

Division Approval

The bill requires a condominium association that approves a plan for optional termination to submit the plan to the Division for review. The Division may authorize the termination to proceed after it determines that the plan complies with the procedural requirements set forth in s. 718.117, F.S., the statute amended by the bill.

Retroactive Application

The bill expressly states that the amendments made by the bill to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, and are intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.

Effective Date

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:

CS/SB 1520 provides that the amendments to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, are intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act. With respect to existing condominiums, the provisions of the bill may implicate constitutional concerns relating to impairment of contract.³¹

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,³² the Florida Supreme court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. In the Court's opinion, it invalidated a statute, as an unconstitutional impairment of contract, which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The Court further set forth several factors to be considered in balancing whether a state law has in fact operated as a substantial impairment of a contractual relationship, stating "[t]he severity of the impairment measures the height of the hurdle the state legislation must clear."³³

The court stated that if there is minimal alteration of contractual obligations, the inquiry may end at its first stage. Severe impairment pushes the inquiry into a careful

³¹ Article I, s. 10, U.S. Constitution and Art. I, s. 10, Fla. Const.

³² *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

³³ *Pomponio*, 378 So. 2d at 779.

examination of the nature and purpose of the state legislation. The factors to be considered are whether:

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary, or whether it is severe, permanent, immediate, and retroactive.³⁴

In *Tropicana Condominium Association, Inc. v. Tropical Condominium, L.L.C.* (*Tropicana Condominium*),³⁵ the Third District Court of Appeal held that the 2007 amendments to s. 718.117, F.S., dealing with termination of a condominium, could not be applied retroactively to a condominium in which the declaration of condominium did not contain language that the condominium was governed by Florida's Condominium Act "as amended from time to time." The 2007 amendment to s. 718.117, F.S., reduced from 100 percent to 80 percent the vote required to consent to termination of a condominium.³⁶

Absent language that a condominium's declaration was governed by Florida's Condominium Act "as amended from time to time," the Condominium Act could not be applied retroactively to a declaration if it impairs contractual obligations. Applying the test in *Pomponio*, the court held that applying the reduced percentage required for termination in s. 718.117, F.S., would "work a severe, permanent, and immediate change" in the unit owners' safeguards against termination built into their condominium's declaration.³⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may require investors seeking to convert a condominium unit to apartments or to some other use to provide unit owners greater compensation. The bill also ensures that all persons whose condominium is their homestead will receive at least the price they paid for the condominium units upon the condominiums' termination.

C. Government Sector Impact:

For Fiscal Year 2017-2018, the bill appropriates \$85,006 in recurring funds and \$4,046 in nonrecurring funds from the trust fund to the Department of Business and Professional Regulation. The bill also authorizes one full-time equivalent position with an associated salary rate of \$56,791/year to implement the bill.

³⁴ *Id.*

³⁵ *Tropicana Condominium Association, Inc. v. Tropical Condominium, L.L.C.*, 208 So. 3d 755 (Fla. 3rd DCA 2016).

³⁶ *Compare*, s. 718.117(1), F.S. (2006) and s. 1, ch. 2007-226, Laws of Fla., (the amendment to s. 718.117(3), F.S.). Additionally, the *Tropicana Condominium's* declaration required approval of 100 percent of the unit owners to terminate the condominium. *See, Tropicana, Id.*

³⁷ *Id.*, quoting *Pomponio*.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 718.117 of the Florida Statutes.

This bill creates an undesignated section 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 Regulated Industries on April 4, 2017:

The committee substitute:

- Revises the legislative findings in s. 718.117(1), F.S.
- Retains the requirement in current law that at least 80 percent of the total voting interests must approve the plan of termination.
- Repeals the requirement that a unit owner must have rejected the plan of termination to be compensated for the fair market value of the unit.
- Requires that the plan of termination must include factual circumstances that show that the plan complies with the requirements of s. 718.117, F.S., and that the plan supports the public policies expressed in s. 718.117, F.S.
- Requires that the plan of termination must be submitted to the division for review after the unit owners approve the plan of termination.
- Provides that plan of termination may proceed after the division determines that the plan complies with s. 718.117, F.S.
- Provides that the process in s. 718.117(2), F.S., dealing with termination of a condominium because of economic waste or impossibility, does not apply to the optional termination authorized in subsection (3) of that section.
- Transfers the language in s. 718.117(1), F.S., which provides for its application to all condominiums in Florida in existence on or after July 1, 2007, to a new subsection (21) in s. 718.117, F.S.
- Creates an undesignated section of law to provide that the amendments in the bill to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, and are intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.
- Appropriates, for Fiscal Year 2017-2018, \$85,006 in recurring funds and \$4,046 in nonrecurring funds from the trust fund to the DBPR.
- Authorizes one full-time equivalent position at the DBPR with an associated salary rate of 56,791 to implement the provisions in the bill.

B. Amendments:

None.

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

By the Committee on Regulated Industries; and Senator Latvala

580-03441-17

20171520c1

A bill to be entitled

An act relating to termination of a condominium association; amending s. 718.117, F.S.; revising legislative findings; requiring a plan of termination to be approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation and meet specified requirements for a condominium form of ownership to be terminated for all or a portion of the condominium property under certain circumstances; revising voting requirements for the rejection of a plan of termination; increasing the amount of time before a new plan of termination may be considered after a previous rejection under certain conditions; revising the requirements to qualify for payment as a homestead owner; revising and providing notice requirements; requiring the division to examine a plan of termination and provide specified notice within a certain timeframe; providing applicability; specifying that a plan of termination is presumed to be accepted if notice is not provided within the specified timeframe; providing an appropriation and authorizing a position; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 718.117, Florida Statutes, are amended, and subsection (21) is added to that section, to read:

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

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718.117 Termination of condominium.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Condominiums are created as authorized by statute and are subject to covenants that encumber the land and restrict the use of real property.

(b) In some circumstances, the continued enforcement of those covenants that may create economic waste and, areas of disrepair which threaten the safety and welfare of the public, or cause obsolescence of the a condominium property for its intended use and thereby lower property tax values, and the Legislature further finds that it is the public policy of this state to provide by statute a method to preserve the value of the property interests and the rights of alienation thereof that owners have in the condominium property before and after termination.

(c) The Legislature further finds that It is contrary to the public policy of this state to require the continued operation of a condominium when to do so constitutes economic waste or when the ability to do so is made impossible by law or regulation.

(d) It is in the best interest of the state to provide for termination of the covenants of a declaration of condominium in certain circumstances in order to:

1. Ensure the continued maintenance, management, and repair of stormwater management systems, conservation areas, and conservation easements.

2. Avoid transferring the expense of maintaining infrastructure serving the condominium property, including, but not limited to, stormwater systems and conservation areas, to

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the general tax bases of the state and local governments.

3. Prevent covenants from impairing the continued productive use of the property.

4. Protect state residents from health and safety hazards created by derelict, damaged, obsolete, or abandoned condominium properties.

5. Provide fair treatment and just compensation for individuals and preserve property values and the local property tax base.

6. Preserve the state's long history of protecting homestead property and homestead property rights by ensuring that such protection is extended to homestead property owners in the context of a termination of the covenants of a declaration of condominium. This section applies to all condominiums in this state in existence on or after July 1, 2007.

(3) OPTIONAL TERMINATION. ~~Except as provided in subsection (2) or unless the declaration provides for a lower percentage,~~ The condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination meeting the requirements of this section and approved by the division. Before a residential association submits a plan to the division, the plan must be approved by at least 80 percent of the total voting interests of the condominium. However, if 5 10 percent or more of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections, the plan of termination may not proceed.

(a) The termination of the condominium form of ownership is subject to the following conditions:

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1. The total voting interests of the condominium must include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.

2. If 5 10 percent or more of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 24 18 months after the date of the rejection.

(b) This subsection does not apply to any condominium created pursuant to part VI of this chapter until 10 5 years after the recording of the declaration of condominium, unless there is no objection to the plan of termination.

(c) For purposes of this subsection, the term "bulk owner" means the single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within

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the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner's former unit, the unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and shall be required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

2. Any former unit owner whose unit was granted homestead exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner's former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment shall be in addition to the termination proceeds for such owner's former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

3. For their respective units, all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. The fair market value shall be determined as of a date that is no earlier than 90 days before the date that the plan of termination is recorded and shall be determined by an independent appraiser selected by the

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termination trustee. For a person ~~an original purchaser from the developer who rejects the plan of termination and~~ whose unit was granted homestead exemption status by the applicable county property appraiser, or was an owner-occupied operating business, as of the date that the plan of termination is recorded and who is current in payment of both assessments and other monetary obligations to the association ~~and any mortgage encumbering the unit~~ as of the date the plan of termination is recorded, the fair market value ~~for the unit owner rejecting the plan~~ shall be at least the original purchase price paid for the unit. For purposes of this subparagraph, the term "fair market value" means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure shall not be considered for purposes of determining fair market value.

4. The plan of termination must provide for payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit's share of the proceeds of termination under the plan. If the unit owner is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit as of the date the plan of termination is recorded, the receipt by the holder of the unit's share of the proceeds of termination under the plan or the outstanding balance of the mortgage, whichever is less, shall be deemed to have satisfied the first mortgage in full.

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175 5. Before a plan of termination is presented to the unit
 176 owners for consideration pursuant to this paragraph, the plan
 177 must include the following written disclosures in a sworn
 178 statement:

179 a. The identity of any person or entity that owns or
 180 controls 25 ~~50~~ percent or more of the units in the condominium
 181 and, if the units are owned by an artificial entity or entities,
 182 a disclosure of the natural person or persons who, directly or
 183 indirectly, manage or control the entity or entities and the
 184 natural person or persons who, directly or indirectly, own or
 185 control 10 ~~20~~ percent or more of the artificial entity or
 186 entities that constitute the bulk owner.

187 b. The units acquired by any bulk owner, the date each unit
 188 was acquired, and the total amount of compensation paid to each
 189 prior unit owner by the bulk owner, regardless of whether
 190 attributed to the purchase price of the unit.

191 c. The relationship of any board member to the bulk owner
 192 or any person or entity affiliated with the bulk owner subject
 193 to disclosure pursuant to this subparagraph.

194 d. The factual circumstances that show that the plan
 195 complies with the requirements of this section and that the plan
 196 supports the expressed public policies of this section.

197 (d) If the members of the board of administration are
 198 elected by the bulk owner, unit owners other than the bulk owner
 199 may elect at least one-third of the members of the board of
 200 administration before the approval of any plan of termination.

201 (e) The division shall examine the plan of termination to
 202 determine its procedural sufficiency and, within 45 days after
 203 receipt of the initial filing, the division shall notify the

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204 association by mail of any procedural deficiencies or that the
 205 filing is accepted. If the notice is not given within 45 days
 206 after the receipt of the filing, the plan of termination is
 207 presumed to be accepted. If the division determines that the
 208 conditions required by this section have been met and that the
 209 plan complies with the procedural requirements of this section,
 210 the division shall authorize the termination, and the
 211 termination may proceed pursuant to this section.

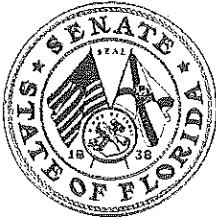
212 (f) Subsection (2) does not apply to optional termination
 213 pursuant to this subsection.

214 (21) APPLICABILITY.—This section applies to all
 215 condominiums in this state in existence on or after July 1,
 216 2007.

217 Section 2. The amendments made by this act to s. 718.117,
 218 Florida Statutes, are intended to clarify existing law, are
 219 remedial in nature and intended to address the rights and
 220 liabilities of the affected parties, and apply to all
 221 condominiums created under the Condominium Act.

222 Section 3. For the 2017-2018 fiscal year, the sums of
 223 \$85,006 in recurring funds and \$4,046 in nonrecurring funds from
 224 the Division of Florida Condominiums, Timeshares, and Mobile
 225 Homes Trust Fund are appropriated to the Department of Business
 226 and Professional Regulation, and one full-time equivalent
 227 position with associated salary rate of 56,791 is authorized,
 228 for the purpose of implementing this act.

229 Section 4. 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

April 5, 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 1520, relating to Condominium Terminations, 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,

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

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
APPEARANCE RECORD

4-19-17

Meeting Date

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

1520

Bill Number (if applicable)

Topic TERMINATION OF CONDOMINIUM

Amendment Barcode (if applicable)

Name ROBERT RHINEHART

Job Title COMMUNITY ASSOC. MANAGER

Address 644 CAPITAL CIR. N.E

Phone 850-878-3134

Street

JAL FL 32301

City

State

Zip

Email EMS@EMS-FL.BIZ

Speaking: ☒ For ☐ Against ☐ Information

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

Representing EXECUTIVE MANAGEMENT SERVICES, INC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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)

4/19/17

Meeting Date

1520

Bill Number (if applicable)

Topic Condo Termination

Amendment Barcode (if applicable)

Name Travis Moore

Job Title _____

Address P.O. Box 2020

Phone 727.421.6902

Street

St. Petersburg

FL

33731

Email travis@moore-relations.

City

State

Zip

com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing Community Associations 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
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 1044

INTRODUCER: Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Garcia and others

SUBJECT: Child Welfare

DATE: April 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Fav/CS
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1044 makes a number of revisions to current law relating to the care of children in the child welfare system. Many of these changes are recommended by the Department of Children and Families (department) and seek to better ensure child safety.

The specific changes in the bill:

- Require the department to identify the father earlier in the legal process to allow for more placement options and family involvement for a child removed by the department.
- Allow the department to return an abused or neglected child to his or her home with an in-home safety plan when the conditions that caused the child to be removed are resolved, rather than when the parents have substantially completed their case plan.
- Require the appropriate community-based care lead agency or subcontracted agency to establish a multi-disciplinary team to determine appropriate placement of a child after gathering customized data and information on the child.
- Require the department to collect and post on its website data on out-of-home placements and update the website twice a year.
- Require the department to consider the safety of any new children added to the home of a family after a child abuse investigation has begun.
- Require a parent to be assessed for substance abuse and complete treatment when there is evidence of harm to a child as a result of substance abuse.

- Allow the department to terminate parental rights when a child has been placed in out-of-home care in any jurisdiction three or more times.
- Prohibit payments under the Relative Caregiver Program when the parent is living with the relative along with the child.
- Allow the release of medical records by hospitals and physicians in child abuse cases.
- Authorize the department to release confidential child abuse records to screen employees at residential homes.
- Allow certain children services councils, as independent special districts having taxing authority, to remain in existence without additional voter approval in 2020 if they were reapproved for a second time since 2005.
- Prohibit the use of state-appropriated funds to pay the salary of a community-based care lead agency administrative employee in an amount that exceeds the salary paid to the secretary of the department.

The bill addresses placement, treatment, and services for substance-exposed newborns and their families to:

- Require the department and community-based lead care agencies to establish a safe-care plan and develop and implement a coordinated approach to offering treatment and services to substance-abused newborns and their families.
- Require child protective investigators and case managers to receive specialized training prior to accepting cases of substance-abused newborns.
- Establish in the Fourth Judicial Circuit the shared family care residential services pilot program to facilitate the temporary placement of substance-exposed newborns and their families in the home of trained volunteer families for the purpose of mentoring and receiving treatment and services.

The bill also addresses self-care and life needs of unaccompanied homeless youth. These changes:

- Allow certified unaccompanied homeless youth to apply for identification cards with the Department of Highway Safety and Motor Vehicles which provide that they have been certified by an authorized entity;
- Clarify eligibility for tuition exemptions for unaccompanied and homeless youth; and
- Clarify current law allowing unaccompanied homeless youth to obtain medical care without parental permission.

Components of this bill will have a fiscal impact on the department, but data specifying the extent of the impact is not available.

The bill takes effect July 1, 2017, except for the provisions in Section 13 of the bill, relating to the removal of a child from a home and placement in out-of-home care, which take effect January 1, 2018.

II. Present Situation:

Paternity in Dependency Cases

Although the term “legal father” is not defined in the Florida Statutes, current law provides that a man is the parent of a child if:

- The child was conceived or born while the man was married to the mother;
- The man has legally adopted the child;
- A court has determined the man to be the child’s father;
- The man has signed an affidavit of paternity or he is listed on the child’s birth certificate; or
- The man is the unmarried biological father who has acknowledged in writing that he is the father of the child and has complied with other requirements set forth in s. 63.062(2), F.S.¹

The legal father is included as a party to the case in a dependency proceeding.² As such:

- Both parents must be advised of their right to counsel at each stage of the dependency proceeding;³
- The department must obtain the names of all parents and prospective parents when they take custody of a child;⁴
- All parents are provided written notice of their right to counsel and right to be heard and present evidence at the shelter hearing;⁵
- All parents are notified of every proceeding or hearing involving the child;⁶
- The court makes its own inquiry to discover the parent’s identity when a dependency petition is filed and the identity of a parent is unknown;⁷ and
- The department conducts a diligent search to determine the parent’s location when the identity of a parent is known, but his or her whereabouts are unknown.⁸

Therefore, determining the identity of a child’s father as early in the process as possible is essential in a dependency proceeding.

Conditions for Return and Predisposition Studies

The Legislature has declared that that time is of the essence for establishing permanency for a child in the dependency system⁹ and that reunification of a child with his or her parent or legal guardian is the first preference of the available permanency goals.¹⁰ When safe to do so, reunification should occur as timely as possible to help promote, foster, and maintain child-parent attachments. Currently, the determinant for the court to address reunification with a parent and a child’s return home is a parent’s substantial compliance with his or her case plan.

¹ See also ss. 39.01(49), 63.032(12), and 985.03(38) F.S.

² Section 39.01(51), F.S.

³ Section 39.013(9), F.S.

⁴ Section 39.401(4), F.S.

⁵ Section 39.402(5), F.S.

⁶ Section 39.502(1), F.S.

⁷ Section 39.503(1), F.S.

⁸ Section 39.503(5), F.S.

⁹ Section 39.0136(1), F.S.

¹⁰ Section 39.621(1) and (2), F.S.

Additionally, current law requires the court to consider prevention or reunification efforts of the department and whether the reasons for removal have been remedied.¹¹

The department has determined that a more reliable and time sensitive standard for determining when a child can safely return home encompasses DCF demonstrating to the court that the conditions that existed in the home which necessitated the child's placement out of home have changed and that an in-home safety plan will enable a better response to any danger or risks in the home.¹²

Conditions for return are the specific circumstances that must change prior to the child's return home when there is an out-of-home safety plan in response to impending danger. The conditions for return describe what must exist or be different with respect to specific family circumstances, home environment, caregiver perception, behavior, capacity, and/or safety service resources that will allow for reunification to occur with the use of an in-home safety plan.¹³

Current practice also replaces substantial compliance with the case plan as the determining factors in a child's return home at disposition and other subsequent court hearings, with conditions for return and an in-depth review of the in-home safety plan. Current practice also replaces the predisposition study used to provide the court with a family functioning assessment, which focuses more narrowly and specifically on danger threats and information related to the determination of child safety.¹⁴

Children in Households having an Active Investigation or Ongoing Services

The department's current policy related to a child who is born into or a child who has moved into a household having an active investigation or ongoing services requires the child protective investigator or case manager to add the child to the child welfare case as a participant in Florida Safe Families Network (FSFN)¹⁵ and assess the new child as part of the family functioning assessment.

Substance Exposed Newborn Protection

The number of babies born in Florida addicted to drugs has substantially increased in recent years. In just 1 year, from 2014 to 2015, the number of substance-exposed newborns increased from 1,903 to 2,487. Most of these newborns were opiate-addicted, such as from methadone, heroin, or oxycodone. Babies born addicted to opioids commonly remain hospitalized for weeks after they are delivered so doctors can gradually wean them off the drugs in their systems,

¹¹ Section 39.521(1), F.S.

¹² Department of Children and Families, *2017 Agency Legislative Bill Analysis*, pg. 4 (March 2, 2017) (on file with the Senate Judiciary Committee).

¹³ Department of Children and Families Operating Procedures. CFOP 170-7, Chapter 9 Establish Conditions for Return (March 24, 2017)(on file with the Senate Judiciary Committee).

¹⁴ Department of Children and Families Operating Procedures. CFOP 170-5, Chapter 4 Investigation Types and Use of the Family Functioning Assessment(Jan. 30, 2017)(on file with the Senate Judiciary Committee).

¹⁵ FSFN is Florida's Statewide Automated Child Welfare Information System (SACWIS) and serves as the official child welfare case record.

usually by giving them diminishing amounts of morphine, phenobarbital (a relaxant) and other drugs to combat withdrawal symptoms.¹⁶

Abuse of drugs or alcohol by parents and other caregivers can have negative effects on the health, safety, and well-being of children either through the harm caused prenatally or to children of any age by exposure to drug activity in their home or environment. The Child Abuse Prevention and Treatment Act (CAPTA) requires states to have policies and procedures in place to notify child protective services agencies of substance-exposed newborns and to establish a plan of safe care for newborns identified as being affected by substance abuse or having withdrawal symptoms resulting from prenatal drug exposure.¹⁷

The Comprehensive Addiction and Recovery Act (CARA)¹⁸ further amended CAPTA in 2016 to add requirements for states to ensure the safety and well-being of infants following release from the care of healthcare providers by:

- Addressing the health and substance use disorder treatment needs of the infant and affected family members or caregivers;
- Monitoring plans of safe care to determine whether and how local entities are making referrals and delivering appropriate services to the infant and affected family or caregiver in accordance with state requirements; and
- Developing plans of safe care for infants affected by all substance abuse, not just illegal substance abuse, as was the requirement prior to 2016 changes.

In defining the term “harm,” s. 39.01, F.S., includes exposing a child to controlled substances or alcohol as a form of harm. Exposure to a controlled substance or alcohol is established by:

- A test, administered at birth, which indicates that the child’s blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or
- Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.¹⁹

Current law provides no requirement that the parents of substance-exposed newborns undergo an assessment or evaluation or complete treatment for substance abuse. The courts presently have sole discretion to determine whether a parent is required to undergo treatment.

¹⁶ Gluck, Frank, *Born High: Florida battles rising cases of addicted newborns*, available at: <http://www.news-press.com/story/news/investigations/2016/07/16/born-high-florida-battles-rising-cases-addicted-newborns/87025868/> (last visited April 21, 2017).

¹⁷ 42 U.S.C. s.5106a(b), as amended by the CAPTA Reauthorization Act of 2010 (P.L. 111-320).

¹⁸ P.L. 114-198.

¹⁹ Section 39.01(30)(g), F.S. As used in this paragraph, the term “controlled substance” means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03, F.S.

Termination of Parental Rights

Out-of-Home Care

One of the grounds for a termination of parental rights is that on three or more occasions the child or another child of the parent or parents has been placed in out-of-home care under ch. 39, F.S., and the conditions that resulted in the out-of-home placement were caused by the parent or parents.²⁰ However, a prior placement of a child in out-of-home care in a state other than Florida cannot serve as a basis for the termination of parental rights.

Single Parent Termination

A termination of parental rights of one parent without a termination of parental rights of the other parent is permitted only if:

- The child has only one surviving parent;
- The identity of a prospective parent has been established as unknown after sworn testimony;
- The parent whose rights are being terminated is a parent through a single-parent adoption;
- The protection of the child demands termination of the rights of a single parent; or
- The parent whose rights are being terminated meets any of the criteria specified in s. 39.806(1)(d) and (f)-(m).²¹

Grounds for termination of parental rights in s. 39.806, F.S., that are not included in the list of grounds allowable for single parent terminations are:

- Conduct toward the child or other children by a parent which demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services. A provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency;²² and
- A conviction of a parent for an offense that requires the parent to register as a sexual predator under s. 775.21.²³

Supplemental Adjudication of Dependency

In 2008, the legislature amended s. 39.507, F.S., relating to adjudicatory hearings to provide:

(7)(a) For as long as a court maintains jurisdiction over a dependency case, only one order adjudicating each child in the case dependent shall be entered. This order establishes the legal status of the child for purposes of proceedings under this chapter and may be based on the conduct of one parent, both parents, or a legal custodian.

(b) However, the court must determine whether each parent or legal custodian identified in the case abused, abandoned, or neglected the child in a subsequent evidentiary hearing. If the evidentiary hearing is conducted subsequent to the adjudication of the child, the court shall supplement the adjudicatory order, disposition

²⁰ Section 39.806(l), F.S.

²¹ Section 39.811(6), F.S.

²² Section 39.806(1)(c), F.S.

²³ Section 39.806(1)(n), F.S.

order, and the case plan, as necessary. With the exception of proceedings pursuant to s. 39.811, the child's dependency status may not be retried or readjudicated.²⁴

Section 39.507, F.S., is not being applied uniformly across the state due to a conflict between holdings from the Third and Fifth District Courts of Appeals.²⁵ The Third District Court of Appeal in *D.A. v. Dep't of Children & Family Servs.*, affirmed the trial court's holding that a child may be adjudicated dependent twice, the second time based on a prospective risk of harm from a parent to a child.²⁶ In this case, the trial court adjudicated a child dependent based on the behavior of the mother and her consent to the adjudication of dependency of her child. Subsequently, the trial court adjudicated the child dependent based on the behavior of the father, which caused a substantial risk of imminent, but not actual harm to the child.²⁷ In contrast, the court in *P.S. v. Department of Children and Families*, 4 So. 3d 719 (Fla. 5th DCA 2009), held that a child may only be adjudicated dependent at a second evidentiary hearing if the second parent actually harms a child.²⁸

Domestic Violence Injunction in Dependency

A Child Protective Investigator (CPI) must implement separate safety plans for the perpetrator of domestic violence and a parent who is a victim of domestic violence as defined in s.741.28, F.S. If the perpetrator of domestic violence is not the parent, guardian, or legal custodian of the child, the CPI shall seek issuance of an injunction authorized by s. 39.504, F.S., to implement a safety plan for the perpetrator and to impose any other conditions to protect the child.²⁹ The law does not address any action to be taken by the CPI if the perpetrator is not able to be located.

Parental Relocation with a Child

A parent who wishes to permanently relocate with a child more than 50 miles from the current residence must petition the court for permission to modify a court order establishing a time-sharing schedule, unless the other parent agrees to the relocation.³⁰ On first read, this provision appears only to apply to situations in which parents have a time-sharing arrangement for minor children.

However, the term "child" as used in s. 61.13001, F.S., is defined as any person under the jurisdiction of a state court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) or the subject of an order granting a parent or other person a right to time-sharing, residential care, kinship, or custody.³¹ Therefore, the provisions on parental relocation may apply to situations in which a child is dependent.

²⁴ Chapter 208-245, Laws of Florida.

²⁵ See *D.A. v. Department of Children & Family Services*, 84 So. 3d 1136, 1140 (Fla. 3d DCA 2012), and *P.S. v. Department of Children and Families*, 4 So. 3d 719, 720-721 (Fla. 5th DCA 2009).

²⁶ *D.A.*, *supra* note 23, at 1139.

²⁷ *Id.* at 1139-1140.

²⁸ *P.S.*, *supra* note 23, at 720.

²⁹ Section 39.301(9)(a)6.a., F.S.

³⁰ Section 61.13001(1)(e), F.S.

³¹ Section 61.13001(1)(a), F.S.

A child custody proceeding is a proceeding in which legal custody, physical custody, residential care, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under ss. 61.524-61.540, F.S.³²

In 2015, the Fourth District Court of Appeal held that the provisions of s. 61.13001, F.S., apply to permanent guardianship placements for a dependent child.³³ Therefore, according to this case, if a permanent guardian wishes to move with a dependent child more than 50 miles away, the guardian must file a motion for permission to relocate the child's residence. At the hearing, the court must issue an order based on the best interests of the child, just as is the case for any relocation determination.³⁴ Still, the ability of a guardian to file a motion under s. 61.13001, F.S., is unclear.³⁵

The issue of relocation with a child by a permanent guardian is addressed elsewhere, however. Section 39.6221(1)(e), F.S., requires a permanent guardian to provide notice to the court of any change in his or her residential address. Moreover, if the permanent guardian moves to another address in-state, the permanent guardian must still comply with visitation requirements as established by the court in its written order of guardianship.³⁶ Additionally, to ensure compliance with the UCCJEA, the department requires as standard procedure that every order of permanent guardianship include a provision that the child not be moved outside of the state without court permission.³⁷

Confidential Information Sharing

Federal law requires children ages 14 years and older to participate in developing the case plan and requires the case plan to state the rights of the child to education, health, visitation, and court participation, and the right to stay safe and avoid exploitation.³⁸ The new federal language does not provide protections for confidential information that might be shared at a case planning conference and there are currently no statutory safeguards in Florida law related to the confidentiality of information shared at a case planning conference.

Confidentiality of Reports and Records in Cases of Child Abuse or Neglect

Section 39.202, F.S., provides a public records exemption for all records held by the department on reports of child abandonment, abuse, or neglect, including reports made to the central abuse

³² Section 61.502(4), F.S.

³³ Section 39.6221, F.S.

³⁴ *T.B. v. Department of Children & Families*, 189 So. 3d 150, 152 (Fla. 4th DCA 2015).

³⁵ *Id.* at 152-153. Section 61.13.001(1)(d), F.S., defines a parent, for purposes of parental relocation, as any person named by court order or express written agreement who is subject to court enforcement or a person reflected as a parent on a birth certificate and who is entitled to access to or time-sharing with the child.

³⁶ Section 39.6221(2)(c), (d), and (e), F.S.

³⁷ Email from Rachel Moscoso, Dep't of Children & Families, to staff with the Senate Judiciary Committee (April 18, 2017)(on file with the Senate Judiciary Committee).

³⁸ P.L. 113-183.

hotline operated by the department. Limited disclosure is authorized for the following entities and purposes, including:

- Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, the Office of Early Learning, or county agencies responsible for carrying out:
 - Child or adult protective investigations and services; and
 - Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapter 393, F.S., family day care homes, and other homes used to provide for the care and welfare of children;
- Criminal justice agencies having appropriate jurisdiction;
- The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child, and their attorneys, including any attorney representing a child in civil or criminal proceedings;
- An appropriate state attorney, grand jury, or court including the Division of Administrative Hearings or the Public Employees Relations Commission;
- Any appropriate official of the department or the Agency for Persons with Disabilities who is responsible for:
 - Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult;
 - Taking administrative action concerning an employee of the department or the agency who is alleged to have perpetrated child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult; or
 - Employing and continuing employment of personnel of the department or the agency;
- Employees or agents of the Department of Revenue responsible for child support enforcement activities;
- Certain employees of a local school district or the Department of Education; or
- Persons with whom the department is seeking to place the child or to whom placement has been granted, including foster parents for whom an approved home study has been conducted, the designee of a licensed residential group home, an approved relative or nonrelated preadoptive parents for whom a favorable preliminary adoptive home study has been conducted, adoptive parents, or an adoption entity acting on behalf of preadoptive or adoptive parents.³⁹

Relative Caregiver Ineligibility

A substantial amount of research acknowledges that children in the care of relatives, or what is often referred to as “kinship care,” are less likely to change placements and benefit from increased placement stability, as compared to children placed in general foster care. Most child welfare systems strive to place children in stable conditions without multiple living arrangement changes. As opposed to children living in foster care, children living in kinship care are more

³⁹ Section 39.202(2), F.S.

likely to remain in their own neighborhoods, be placed with siblings, and have more consistent interactions with their birth parents than do children placed in foster care.⁴⁰

Recognizing the importance of relative placements, the Legislature created the Relative Caregiver Program in 1998 to provide financial assistance to eligible relatives caring for children who would otherwise be in foster care.⁴¹ In 2014, the Legislature expanded the program to include specified nonrelative caregivers.⁴²

According to the department, as of December 31, 2016, Florida had 13,056 children in kinship foster care placements and 12,478 children in licensed foster care placements.⁴³

Children receiving cash benefits under the Relative Caregiver Program are not eligible to simultaneously receive WAGES cash benefits under chapter 414, F.S.⁴⁴ A department rule provides that the parent's presence in the home with the child and relative caregiver for 30 days or more results in the child becoming ineligible for Relative Caregiver Program funds.⁴⁵ Currently, s. 39.5085, F.S., is silent on the issue of parents and stepparents living in the home with the child and relative caregiver, and this has resulted in cases where the courts have ordered the department to pay Relative Caregiver Program funds contrary to federal law.

Medical Records

Currently, both chapter 395, relating to hospital licensing and regulation, and chapter 456, relating to health professions and occupations, address the release of patient records. Section 395.3025(4)(g), F.S., F.S., provides that patient records are confidential and must not be disclosed without the consent of the patient or a legal representative. However, disclosure may be made without consent to entities including the department or its agent for investigations of abuse, neglect, or exploitation of children or vulnerable adults. This provision enables the department and its agents to access medical records for children in care without the patient's written authorization.

However, physician office practices not licensed under Chapter 395, F.S., have no authority to release patient records to the department without the patient's written authorization.⁴⁶ These records, however, may be important to the investigation of child abuse and neglect.

⁴⁰ David Rubin and Kevin Downes, et al., *The Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care* (June 2, 2008), available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2654276/>, (last visited April 12, 2017).

⁴¹ Section 39.5085(1), F.S.

⁴² Chapter 2014-224, Laws of Florida.

⁴³ Florida Department of Children and Families, DCF Quick Facts, available at: <http://www.dcf.state.fl.us/general-information/quick-facts/cw/> (last visited April 12, 2017).

⁴⁴ Sections 414.045(1)(b)3. and 414.095(2)(a)5., F.S.

⁴⁵ Chapter 65C-28.008(2)(d), F.A.C.

⁴⁶ Section 456.057(7), F.S.

Background Screening for Group Home Personnel

Current law requires all caregivers in residential group homes to meet the same education, training, and background and other screening requirements as foster parents.⁴⁷ A department rule requires foster parents to be screened through the central abuse hotline.⁴⁸ However, current law also provides that information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h) or s. 402.302(15), F.S.⁴⁹ Residential child caring agencies are not included in the exceptions. Therefore, reports to the central abuse hotline may not be used for conducting background checks of residential group care personnel.

Children's Services Councils

In 1986, the Legislature authorized Florida counties to create by ordinance children's services councils as special countywide special districts to fund children's services. Counties may create:⁵⁰

- Independent special districts, for which the county governing body must seek voter approval to levy annual ad valorem property taxes;⁵¹ or
- Dependent special districts, which are supported by appropriation and are authorized to accept grants and donations from public and private sources.⁵²

Children's services councils are authorized to exercise the following powers and functions:

- Provide preventive, developmental, treatment, rehabilitative, and other services for children;
- Provide funds to other agencies that operate for the benefit of children, with the exception of the public school system;
- Collect data and conduct research to determine the needs of the children in the county;
- Coordinate with providers of children's services to prevent duplication of services; and
- Lease or buy necessary real estate, equipment and personal property.⁵³

The governing body of the county shall submit to the electorate the question of retention or dissolution of a children's services council established as an independent special district having voter-approved taxing authority in a general election according to the following schedule:

- For a district in existence on July 1, 2010, and serving a county having a population of 400,000 or fewer persons as of that date.....2014.
- For a district in existence on July 1, 2010, and serving a county with a population of 2 million or more persons as of that date.....2020.⁵⁴

⁴⁷ Section 409.145(2)(e), F.S.

⁴⁸ Chapter 65C-13.023(2) and (8), F.A.C.

⁴⁹ Section 39.201(6), F.S.

⁵⁰ Chapter 86-197, L.O.F.

⁵¹ Section 125.901(1), F.S.

⁵² Section 125.901(7), F.S.

⁵³ Section 125.901(2), F.S.

⁵⁴ Section 125.901(4), F.S.

The Children's Trust of Miami is the only council in a county having a population of 2 million or more. The trust was created in 2002 and was renewed by referendum in 2008.⁵⁵

Placement Assessment

Research shows an association between frequent placement disruptions and adverse outcomes on a child, including poor academic performance and social or emotional adjustment difficulties such as aggression, withdrawal, and poor social interaction with peers and teachers. Despite this evidence, child welfare systems have shown a limited focus on reducing placement instability for children in their care.⁵⁶ Mismatching placements to children's needs has been identified as a factor that negatively impacts placement stability. Identifying the right placement requires effective assessment.⁵⁷

When a child is unable to safely remain at home with a parent, the most appropriate available out-of-home placement may be chosen after analyzing the child's age, gender, sibling status, special physical, educational, emotional and developmental needs, alleged type of abuse, neglect or abandonment, community ties and school placement, and potential responsible caregivers that can meet the child's needs.⁵⁸

Lead agencies must consider placement in residential group care if the child is 11 or older, has been in licensed family foster care for 6 months or longer and removed from family foster care more than once, and has serious behavioral problems or has been determined to be without the options of either family reunification or adoption. In addition, the assessment must consider information from several sources, including psychological evaluations, professionals with knowledge of the child, and the desires of the child concerning placement. If the lead agency case managers determine that residential group care would be an appropriate placement, the child must be placed in residential group care if a bed is available.⁵⁹ Children who do not meet the specified criteria may be placed in residential group care if it is determined that such placement is the most appropriate for the child.⁶⁰

These placement requirements were enacted in 2001 and 2002 to allow increased use of residential group home placements until additional foster homes could be recruited.⁶¹ However, while the 2001 and 2002 legislation was being considered by the Legislature, the department expressed concerns that the impact of proposed legislation ran contrary to published literature,

⁵⁵ The Children's Trust of Miami-Dade County, available at: <https://www.thechildrenstrust.org/about> (last visited April 13, 2017).

⁵⁶ Noonan, K. and Rubin, D., et al. *Securing Child Safety, Well-being, and Permanency Through Placement Stability in Foster Care*, The Children's Hospital of Philadelphia Research Institute, Fall 2009.

⁵⁷ Teija Sudol, *Placement Stability Information Packet*, National Resource Center for Permanency and Family Connections, December 2009.

⁵⁸ Rule 65C-28.004, F.A.C

⁵⁹ Sections 39.523(1) and 409.1676, F.S.

⁶⁰ Section 39.523(4), F.S.

⁶¹ Sections. 39.523(1), 409.1676(2)(b), 409.1677 and 409.1679(1), F.S.

guidance from the federal government, and the actions of other states in moving away from group home care.⁶²

Lead Agency Executive Compensation

The Internal Revenue Code section that sets the rules governing compensation at public nonprofits, including those known as 501(c)3 organizations, specifies that no part of the net earnings of a section 501(c)3 organization may inure to the benefit of any private shareholder or individual.⁶³ However, the IRS also gives each nonprofit's board of directors latitude in determining how much to pay top employees. The IRS does require that the nonprofit's board have an objective process for setting executive salaries, including use of comparisons with salaries paid by similar organizations for similar services. However, a nonprofit that normally pays no taxes may be taxed for paying excess benefits to an insider.⁶⁴

Disagreement exists within the nonprofit community about whether administrators of nonprofits need to be highly paid to remain and provide leadership in the nonprofit sector. Regarding the use of federal funds to pay executive salaries, the federal government generally caps at \$196,000 how much of a nonprofit executive's salary can be paid with federal funds. A nonprofit can easily get around the standard by reporting that private funds are used to pay the portion of salary which exceeds the limit.⁶⁵ Some states have taken steps to impose similar caps.

A provision in New Jersey's budget limits what nonprofit groups can pay their chief executives if they are providing social services under state contracts.⁶⁶ Beginning July 1, 2010, the state capped the salaries of executives with any nonprofit social service agency having a budget greater than \$20 million at \$141,000. Executive directors of nonprofit groups who oversee budgets between \$10 million and \$20 million are capped at no more than \$126,900 in state compensation. Persons overseeing a budget between \$5 million and \$10 million are limited to \$119,850 a year from the state, and those with a budget less than \$5 million are capped at \$105,750 in salary from the state.

In Florida, each community-based care lead agency is required to post on its website the current budget for the lead agency, including salaries, bonuses, and other compensation paid, by position, for the agency's chief executive officer, chief financial officer, and chief operating officer, or their equivalents.⁶⁷

⁶² Testimony from committee meetings: Senate Children and Families Committee, SB 623, January 30, 2002; Senate Children and Families Committee, SB 1214, March 14, 2001; House Child and Family Security Committee, HB 1145, March 15, 2001; House Child and Family Security Committee, HB 755, February 7, 2002.

⁶³ 26 U.S.C. s. 501. Exemption from tax on corporations, certain trusts, etc.

⁶⁴ *Id.*

⁶⁵ Accountable California: The Center for Public Accountability. Executives at Publicly-Funded Nonprofits Make Big Bucks Serving the Needy. March 16, 2011, available from: <http://www.seiu721.org/2009/10/executives-at-publicly-funded-nonprofits.php> (last visited April 14, 2017).

⁶⁶ Livio, S.K. April 25, 2010. *N.J. Governor Chris Christie aims to cap salaries of nonprofit group executives to \$141K.* available from: http://www.nj.com/news/index.ssf/2010/04/nj_gov_chris_christie_aims_to.html (last visited April 14, 2017). Also see Strom, S. July 26, 2010. *Lawmakers Seeking Cuts Look at Nonprofit Salaries,* available from: <http://www.nytimes.com/2010/07/27/us/27nonprofit.html?pagewanted=all> (last visited April 14, 2017).

⁶⁷ Section 409.988(1)(d), F.S.

The following chart details executive compensation for each community-based care lead agency and allows for a comparison of chief executive officer salaries, the number of children receiving both in-home and out-of-home services, and the agency annual contract amount. There does not appear to be a correlation between executive compensation and other factors.⁶⁸

CBC Lead Agency	Chief Executive Officer Annual Compensation From CBC Contract	# of Children Receiving Services	Annual Contract Amount (Millions)	% of Budget from Public Funds
Lakeview Center – Families First Network	\$199,784	2,087	\$46.5	NA
Big Bend Community-Based Care ⁶⁹	\$367,380	1,180	\$35.3	99.08
Partnership for Strong Families	\$145,000	1,321	\$33.8	99.67
Family Support Services of North Florida	\$200,155	1,578	\$56	99.64
Community Partnership for Children	\$150,822	1,670	\$34.5	100.00
St. Johns County Commission	\$82,000	279	\$5.7	NA
Kids First of Florida	\$108,000	386	\$8.7	99.99
Sarasota Family YMCA	\$148,484	1,490	\$29.3	NA
Eckerd Community Alternative Pinellas/Pasco	\$164,243	2,650	\$67.4	NA
Eckerd Community Alternatives Hillsborough	\$176,436	3,762	\$73.6	NA
Children’s Network of SW Florida	\$177,654	2,391	\$40	99.99
Brevard Family Partnership	\$195,297	1,135	\$23.4	98.84
CBC of Central Florida	\$243,386	2,742	\$70	99.96

⁶⁸ The department provided annual contract amounts, # of FTE’s and # of children receiving services. *See also* Center for Child Welfare, available at <http://centerforchildwelfare.fmhi.usf.edu/Datareports/TrendReports.shtml> Individual agency websites report compensation amounts. The table was compiled by the Senate Committee on Children, Families, and Elder Affairs.

⁶⁹ Big Bend Community Based Care serves as both the CBC lead agency and as the Managing Entity (ME) The CEO receives income from both state contracts for a total of \$474,123.

Kids Central	\$206,794	2,311	\$48.5	99.99
Heartland for Children	\$155,000	1,910	\$43.6	100.00
Devereux Community Based Care	\$131,211	1,011	\$28.6	NA
ChildNet Palm Beach and Broward	\$227,894	5,904	\$44.4 (PB) \$72.3 (B)	100.00
Our Kids of Miami Dade	\$207,489	3,056	\$104.2	100.00

In 2015, during an operational audit of community-based care lead agencies, the Auditor General found instances where salary payments, including bonuses, selected perquisites, and severance pay, or leave balances did not appear to be properly supported or calculated in accordance with established Community-based Care policy or state law.⁷⁰

State law specifies that no extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made. The audit discovered salary payments made with department-provided funds included a \$15,000 bonus awarded to the CEO of Big Bend Community Based Care in December 2012 which was not supported by a provision in the CEO's employment contract. In response to the audit inquiry, lead agency management indicated that bonuses awarded at the discretion of the Board were based on market standards and performance.

However, as the CEO's employment contract did not provide for the payment of bonuses, the \$15,000 bonus payment was extra compensation prohibited by state law. The audit procedures also found that the lead agency had not established policies and procedures regarding the award and calculation of bonuses for staff.⁷¹

Unaccompanied Homeless Youth

Unaccompanied homeless youth are children, most often teenagers, experiencing homelessness while not in the physical custody of a parent or guardian. It is estimated that 1.6 to 1.7 million youth experience homelessness on their own each year. These youth live in a variety of unsafe, temporary situations, including cars, parks, the homes of other people, shelters, and motels. Most of these young people have left home due to severe dysfunction in their families, including abuse and neglect. Studies have found that 20-40 percent of unaccompanied homeless youth were abused sexually in their homes, while 40-60 percent were abused physically. Over two-thirds of unaccompanied homeless youth report that at least one of their parents abuses drugs or alcohol.

⁷⁰ Office of the Auditor General, *Department of Children and Families and Selected Community-Based Care Lead Agencies Oversight of Foster Care and Related Service*. Report No. 2015-156, pg. 1 (March 2015).

⁷¹ *Id.*

Other youth are thrown out of their homes because they are pregnant, gay or lesbian, or because their parents believe they are old enough to take care of themselves.⁷²

In 2012, the Legislature enacted legislation to give homeless youth ages 16 and older the ability to request and receive their birth certificate from the state.⁷³ Without a birth certificate, minors who are not in the physical custody of a parent or guardian cannot obtain other forms of identification, such as a Social Security card, driver's license or state identification card. Without such documentation, they face barriers that hinder their ability to recover from homelessness.

In 2014, the Legislature expanded the 2012 law to enable unaccompanied homeless youth the ability to seek medical care for themselves or their children without parental consent.⁷⁴

III. Effect of Proposed Changes:

Section 1 amends s. 39.01, F.S., to create a definition for the term “legal father” and amend the definition of the term “parent.” These revised definitions work in concert with other procedures in an attempt to provide notice to biological fathers of a child in shelter proceedings.

Section 2 amends s. 39.201, F.S., relating to mandatory reporting and the child abuse hotline, to allow the use of information in the central abuse hotline for the employment screening of caregivers employed by residential group homes.

Section 3 amends s. 39.202, F.S., relating to the confidentiality of reports and records in child abuse and neglect cases. This provision adds to the list of limited circumstances in which these records and reports may be released to include employment screening for caregivers in residential group homes. Current law authorizes a release of child abuse and neglect records for the purpose of licensing or approving adoptive homes, foster homes, child care facilities, facilities licensed to serve persons with developmental disabilities, family day care homes, and other homes used to provide for the care and welfare of children. This bill also expands from up to 30 to up to 60 days, the number of days the department has to provide access to the parent or legal custodian of the child in the record or to any person identified in a report as having harmed the child.

Section 4 amends s. 39.301, F.S., relating to protective investigations, to require a child protective investigator to implement a safety plan for a perpetrator of domestic violence only if the investigator is able to locate the perpetrator. It also clarifies when a CPI must seek an injunction to prevent child abuse pursuant to s. 39.504, F.S., pending the disposition of the petition for dependency. The bill also requires that when a child is born into or moves into a home that is under a protective investigation, the child must be added to the investigation and assessed for child safety.

Section 5 amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment or neglect, to provide that if an individual employed as a caregiver in a residential

⁷² National Association for the Education of Homeless Children and Youth, Unaccompanied Homeless Youth, *available at*: <http://www.naehcy.org/educational-resources/youth>, (last visited April 14, 2017).

⁷³ Section 743.067(3)(a), F.S.

⁷⁴ *Id.*

group home is named in any capacity in three or more reports to the child abuse hotline within a 5-year period, those reports may be reviewed for employment screening.

Section 6 amends s. 309.402, F.S., relating to placement in a shelter, to require additional inquiry by the court at a shelter hearing to identify and locate the legal father of the child and provide requirements for the inquiry.

Section 7 amends s. 39.503, F.S., relating to cases where the identity or location of a parent is unknown when a dependency petition is filed, to require additional inquiry under oath by the court to identify and locate the legal father of the child. The bill also provides that the required diligent search include a search of the Florida Putative Father Registry.

Section 8 amends s. 39.504, F.S., relating to injunctions, to require the same judge to hear both the dependency proceeding and the injunction proceeding when applicable. The bill also provides that if an alleged offender cannot be located after a diligent search, the court may enter an injunction based on the sworn petition and any affidavits.

Section 9 amends s. 39.507, F.S., to resolve conflicting decisions of the Third and Fifth District Courts of Appeal as to whether a petitioner must demonstrate that the second parent has actually harmed a child already adjudicated dependent based on the behavior of the first parent. The language in the bill adopts the interpretation of law provided by the Third District Court of Appeal in *D.A. v. Dep't of Children & Family Servs.*⁷⁵ Therefore, the bill specifies that a court may make supplemental findings to the original order regarding the conduct of the second parent short of a showing of actual harm or abuse. Instead of finding harm caused by the second parent, the court may add a finding to the record that the second parent placed the child at substantial risk of imminent abuse, abandonment, or neglect. The court is also not required to conduct an evidentiary hearing for the second parent in order to supplement an order or case plan if the parent consents to or admits the relevant allegations or fails to appear at an arraignment hearing.

Section 10 amends s. 39.5085, F.S., related to the Relative Caregiver Program, to prohibit a relative or non-relative caregiver from receiving a payment under the program if the parent or stepparent of the child resides in the home. The caregiver may receive a payment under the program; however, if a minor child as well as the minor parent's child are living in the home and both have been adjudicated dependent. The proposed changes will align s. 39.5085, F.S., with s. 414.095 F.S., and federal law.

Section 11 amends s. 39.521, F.S., to replace the requirement for a predisposition study with a requirement for a family functioning assessment and revise the timelines for providing a copy of the case plan to the parties. The bill also replaces general references to the department's prevention and reunification efforts with a requirement for a specific in-home safety plan prepared or approved by the department.

Under this new requirement the court must review and make findings on whether a child can safely remain in or return to the home based upon the in-home safety plan and available safety management services. The bill also provides that when a child is adjudicated dependent based

⁷⁵ *D.A.*, *supra* note 23, at 1140.

upon evidence of harm related to exposure of a child to a controlled substance or alcohol, the parent is required to undergo a substance abuse disorder assessment or evaluation and comply with treatment and services that are determined to be necessary.

The bill also specifies the information that must be provided to the court in the family functioning assessment and changes the standard for returning a child home from “parent having substantially complied with the case plan” to “circumstances that caused the out-of-home placement and issues subsequently identified have been remedied.”

Section 12 amends s. 39.522, F.S., relating to postdisposition change of custody, to change the standard for returning a child home from “parent having substantially complied with the case plan” to “circumstances that caused the out-of-home placement and issues subsequently identified have been remedied.”

Section 13 amends s. 39.523, F.S., relating to placement in out-of-home care, to require the department to establish a comprehensive placement assessment process to determine the most appropriate match for the level of care needed by the child. The bill requires the community-based lead care agency or a subcontracting agency to establish and coordinate a multi-disciplinary team in determining placement for the child. After the team is established, the team must document data and information on a variety of factors relating to the child and determine placement based upon these factors and any additional evaluations.

The bill requires the department to document placement assessments in the Florida Safe Families Network (FSFN).⁷⁶ On a semi-annual basis, the department must collect and post information on its website related to the placement of children in out-of-home care, and update the information on January 1 and July 1 of each year.

Section 14 creates s. 39.6001, F.S., relating to safe-care plans for substance-exposed newborns. The bill requires the department, in coordination with the Department of Health, the Agency for Health Care Administration, and others, to develop a strategy for coordinated services to ensure the safety and well-being of newborns with prenatal substance exposure through the implementation of a safe-care plan. The safe-care plan will prescribe treatment needs and services of the newborn.

Section 15 amends s. 39.6011, F.S., relating to case plan development, to provide that the department may discuss confidential information during a case planning conference and requires all conference participants to maintain the confidentiality of shared information.

Section 16 amends s. 39.6012, F.S., relating to case plan tasks and services, to require that whenever there is evidence of harm related to exposure of a child to a controlled substance or alcohol, the case plan must include a required task that the parent undergo a substance abuse

⁷⁶ The FFSN is Florida’s Statewide Automated Child Welfare Information System, considered to be the official child welfare case record. The FFNS is accessed by the Florida Abuse Hotline, child protective investigators, adult protective investigators, and others. Department of Children and Families, *Florida Safe Families Network Overview*, available at <http://www.dcf.state.fl.us/initiatives/GMWorkgroup/docs/meeting060809/June%208%20presentation%20-%20Pasek.pdf> (last visited April 17, 2017).

disorder assessment or evaluation and comply with treatment and services that are determined to be necessary.

Section 17 amends s. 39.6221, F.S., to provide that the requirements of s. 61.13001, F.S., relating to parental relocation, do not apply to permanent guardianships established under chapter 39, F.S. As such, permanent guardians of a dependent child will not need the approval of a court to relocate their residences. However, these guardians will be required to report their new addresses and continue with any visitation requirements, but these guardians, pursuant to department rules, are required to have court approval to move out of the state with a dependent child.

Section 18 amends s. 39.701, F.S., relating to judicial review, to require the department to assess a child for child safety and provide notice to the court when the child is born into or moves into a home that is under court jurisdiction. The bill also provides a timeline for both the safety assessment and a progress update that are to be filed with the court and provides the department with rulemaking authority.

Section 19 amends s. 39.801, F.S., relating to court procedures, jurisdiction, notice, and service of process, to address notice requirements for a petition of termination of parental rights to a prospective father if there is no legal father.

Section 20 amends s. 39.803, F.S., relating to unknown identity or location of a parent after a termination for parental rights petition has been filed, to require additional information to the inquiry conducted by the court to identify or locate a parent and authorizes the court to order scientific testing to determine maternity or paternity of the child.

Section 21 amends s. 39.806, F.S., relating to termination of parental rights, to allow child removals in other states, territories or jurisdictions to be considered when establishing a ground for termination of parental rights.

Section 22 amends s. 39.811, F.S., relating to powers and orders of disposition, to add to the list of circumstances in which one parent is subject to a termination of parental rights based on possible harm to the life, safety, well-being, or physical, mental, or emotional health of the child, regardless of whether that parent is convicted of an offense requiring registration as a sexual predator under s. 775.21, F.S.

Section 23 amends s. 125.901, F.S., relating to children's services councils, to provide an exception to a requirement that a county submit the question of retention or dissolution of a district having voter-approved taxing authority to the general electorate in a general election.

Section 24 amends s. 322.051, F.S., relating to identification cards, to provide a requirement for a statement on the back of cards for unaccompanied homeless youth to acknowledge that they have been certified as such and include a citation to s. 743.067, F.S.

Section 25 amends s. 395.3025, F.S., relating to patient and personnel records, to allow these confidential records to be disclosed to contracted entities of the department without consent of the patient or his or her legal representative. Private physician offices have requested statutory

authority to provide these records to child protective investigators and dependency case managers.

Section 26 amends s. 402.40, relating to child welfare training and certification, to define a “child welfare trainer” and provide the department rulemaking authority to determine standards for these trainers to ensure that they are qualified to train child welfare professionals. There are currently no standards in place.

Section 27 creates s. 409.16741, F.S., relating to prenatal substance abuse to require the department to establish or adopt 1 or more initial screening and assessment instruments to address and treat the needs of substance-exposed newborns in the context of the family environment. To further this goal, the department or the community-based lead care agency must regularly conduct multidisciplinary staffings on services, jointly assess local service capacity for substance-exposed newborns, and adopt a plan to ensure that substance-exposed newborns are assigned to child-protective investigators and case managers having specialized training in this area.

Section 28 creates s. 409.16742, F.S., which requires the department to establish a pilot program that will provide shared family care residential services for substance-exposed newborns. In establishing the pilot program, the bill requires the department to enter into a contract with the designated lead agency or with a private entity capable of providing appropriate residential care. Shared family care will involve temporarily placing both the substance-exposed newborn and his or her entire family in the home of a family trained to mentor and provide support to the biological parents. The family temporarily placed will receive services specified by the department. The pilot program is limited to newborns and families in the Fourth Judicial Circuit.

Section 29 amends s. 409.992, F.S., relating to community-based care lead agency expenditures, to prohibit the use of state-appropriated funds to pay the salaries of administrative employees of lead agencies in amounts in excess of the salary of the secretary of the department. The current annual salary of the secretary is \$140,539, and 15 of 18 lead agencies pay their CEOs in excess of this amount.

Section 30 amends s. 456.057, F.S., relating to ownership and control of patient records to allow the disclosure of confidential records to the department, its agent or its contracted entity, for the purpose of conducting child protective investigations of or providing services in cases of abuse, neglect or exploitation of children or vulnerable adults.

Section 31 repeals s. 409.141, F.S., relating to equitable reimbursement methodology of group homes, to remove obsolete requirements.

Section 32 repeals s. 409.1677, F.S., relating to model comprehensive residential services programs, to remove obsolete programs.

Section 33 amends s. 743.067, F.S., relating to certified unaccompanied homeless youth to define “certified unaccompanied homeless youth,” to allow a continuum of care lead agency or its designee to certify a youth as an unaccompanied homeless youth, require the department’s Office on Homelessness to develop a form to be used when certifying a youth, and authorize

certified youth to apply for an identification card with the Department of Highway Safety and Motor Vehicles.

Section 34 amends s. 1009.25, F.S., relating to tuition and fee exemptions for postsecondary education, to remove a reference to temporary shelter for individuals intended to be institutionalized and to clarify that college or university dormitory housing is not permanent housing.

Section 35 amends s. 39.524, F.S., relating to safe-harbor placement, to conform a cross-reference.

Section 36 amends 394.495, F.S., relating to child and adolescent mental health system of care, to conform a cross-reference.

Section 37 amends s. 409.1678, F.S., relating to specialized residential options for children who are victims of sexual exploitation, to conform a cross-reference.

Section 38 amends s. 960.065, F.S., relating to eligibility for awards, to conform a cross-reference.

Section 39 amends s. 409.1679, F.S., relating to reimbursement, to conform cross-references.

Section 40 amends s. 1002.3305, F.S., relating to College-Preparatory Boarding Academy Pilot Program for at risk students, to conform a cross-reference.

Section 41 reenacts s. 483.181(2), F.S., relating to acceptance, collection, identification, and examination of specimens.

The bill takes effect July 1, 2017, except for the provisions in Section 13 of the bill relating to the removal of a child from a home and placement in out-of-home care, which take effect January 1, 2018.

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:

By limiting the amount of state funds that may be used to pay the salaries of administrative employees of community based care lead agencies, more funding may be available to provide services to children and families. Conversely, some of the highly paid administrative employees will have lower salaries, assuming that the salary reductions resulting from the bill are not offset with other funds.

Additionally, a parent involved in a paternity issue for a dependent child may have to pay the cost of a paternity test.

C. Government Sector Impact:

Although the bill requires the department to develop a process to perform abuse registry checks for residential group care employees in accordance with s. 39.201(6), F.S., the department estimates that increased workload can be absorbed by existing staff.

However, the department may incur a fiscal impact in other respects. The bill's changes to s. 39.523, F.S., will now require a full placement assessment on every child who enters out-of-home care. Although a workload impact in developing the assessment tool is expected on the community-based care lead agencies, impact is unknown.⁷⁷ The bill also requires the department to collect data from each community-based care lead agency and post it on the department's website, and update the information twice a year.

In the provisions of the bill which relate to substance-exposed newborns, the bill requires the department to develop screening and assessment tools for treatment and services. Child protective investigators and case managers must receive specialized training in working with substance-exposed newborns. Regarding the requirements specific to the shared family care residential services program, the department will either have to contract with the designated lead agency or a private entity to provide residential care.

The bill will reduce costs paid by the community-based care lead agencies for paternity tests, to the extent that the bill requires the court to assess the cost of the testing against the parent (Lines 513 through 518 of the bill). The cost of a paternity test ranges from \$50 to \$500, depending on the type of test. During the 2015-2016 Fiscal Year, Children's Legal Services served more than 52,414 children. If in only 5 percent of the cases paternity testing is required, the department and its community-based care lead agencies would annually save \$131,000 to \$1,310,000.

⁷⁷ Department of Children and Families, *2017 Agency Legislative Bill Analysis* (March 2, 2017)(on file with the Senate Judiciary Committee).

D. Constitutional Issues:

Lines 236 through 238 of the bill allow the department to release central abuse hotline information to be used for employment screening of caregivers employed at residential group homes. In the past, constitutional due process concerns have been raised about using unsubstantiated information in a report to the central abuse hotline for employment screening.⁷⁸ Notably, the bill does not require that a person be notified of an adverse employment decision based on a report to the hotline or give the person an opportunity to challenge the allegations submitted to the hotline. Additionally, the bill increases from up to 30 to up to 60 the number of days the department has prior to having to make confidential records of child abuse, abandonment, or neglect available to a person identified in the report as having harmed the child.

VI. Technical Deficiencies:

Line 1073 of the bill refers to the term “sub-contacted.” The proper term should be “subcontracted”.

VII. Related Issues:**The definition of the terms “legal father” and “parent” as used in ch. 39, F.S.**

Section 1 of the bill create a definition of the term “legal father.” This definition is also included within the definition of “parent”. The purpose or intent of having duplicate definitions of the same term is not clear.

Shared Family Care Residential Services Pilot Program

Section 28 of the bill establishes the Shared Family Care Residential Services Pilot Program. Shared family care will involve temporarily placing both the substance-exposed newborn and his or her entire family in the home of a family trained to mentor and provide support to the biological parents. The bill does not identify who develops the training protocol or who provides the training. Additionally, the bill does not specify the type and length of training provided to the family prior to placement, or include any safeguards typically required of other temporary placements, such as for foster families. Safeguards typically required in other out-of-home placements of children include a home study by a licensed social worker, a full Level 2 background screening for persons in the home who are older than the age of 18, and compliance with uniform fire safety standards. Additionally, members from the placed family are not required to undergo background screening, even if other children reside in the placed home.

⁷⁸ Committee on Children, Families, and Elder Affairs, The Florida Senate, Issue Brief 2011-205: Review of State Child Abuse Registries (Oct. 2010), <https://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-205cf.pdf>; Julianna Debler, University of Central Florida, *Has the pendulum swung too far? A legal evaluation of Florida's child abuse and neglect registry* (2012), Available at <http://stars.library.ucf.edu/cgi/viewcontent.cgi?article=2327&context=honorstheses1990-2015>.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.201, 39.202, 39.301, 39.302, 39.402, 39.503, 39.504, 39.507, 39.5085, 39.521, 39.522, 39.523, 39.524, 39.6011, 39.6012, 39.6221, 39.701, 39.801, 39.803, 39.806, 39.811, 125.901, 322.051, 394.495, 395.3025, 402.40, 409.1678, 409.1679, 409.992, 456.057, 743.067, 960.065, 1002.3305, and 1009.25.

The bill creates the following sections of the Florida Statutes: 39.6001, 409.16741, and 409.16742.

This bill reenacts the following section of the Florida Statutes: 483.181(2).

This bill repeals the following sections of the Florida Statutes: 409.141, and 409.1677.

IX. Additional Information:

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

CS by Judiciary on April 19, 2017:

The committee substitute:

- Requires the court at a child placement hearing to review the in-home safety plan and available safety management services available to protect a child in making its findings to remove the child or allow the child to remain in the home.
- Requires the appropriate community-based care lead agency or subcontracted agency to establish a multi-disciplinary team to determine appropriate placement after gathering customized data and information on each child.
- Requires the department to collect and post on its website data on out-of-home placements, rather than requiring the department to draft and provide a report to the Governor and the Legislature.
- Requires the department and community-based lead care agencies to establish a safe-care plan and develop and implement a coordinated approach to offering treatment and services to substance-abused newborns and their families.
- Creates a shared family care residential services pilot program in the Fourth Judicial Circuit to facilitate the temporary placement of substance-exposed newborns and their family in the home of a volunteer trained family for the purpose of being mentored and receiving treatment and services.
- Allows for the disclosure of child abuse records held by the department for the purpose of screening employees as caregivers in residential homes, including but not limited to abuse hotline records.
- Increases from up to 30 days to up to 60 days, the number of days the department has prior to having to make confidential records of child abuse, abandonment, or neglect available to parents or legal custodians of the child, or a person identified in the report as having harmed the child.
- Provides that a continuum of care lead agency or its designee may certify a youth as an unaccompanied homeless youth.

CS by Children, Families, and Elder Affairs on March 13, 2017:

The committee substitute:

- Allows certified unaccompanied homeless youth to apply for identification cards with DHSMV that contain a statement that they have been certified by an authorized entity and a statutory citation on the back.
- Clarifies eligibility for tuition exemptions for unaccompanied and homeless youth.
- Clarifies current law related to unaccompanied homeless youth allowing them to obtain medical care without parental permission.
- Changes the effective date to January 1, 2018.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
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The Committee on Judiciary (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (35) through (80) of section 39.01, Florida Statutes, are redesignated as subsections (36) through (81), respectively, a new subsection (35) is added to that section, and subsections (10) and (32) and present subsection (49) of that section are amended, to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:



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(10) "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (48) ~~(47)~~.

(32) "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's care as defined in subsection (48) ~~(47)~~.

(35) "Legal father" means a man married to the mother at the time of conception or birth of their child, unless paternity has been otherwise determined by a court of competent jurisdiction. If no man was married to the mother at the time of birth or conception of the child, the term "legal father" means a man named on the birth certificate of the child pursuant to s. 382.013(2), a man determined by a court order to be the father of the child, or a man determined by an administrative proceeding to be the father of the child.

~~(50)(49)~~ "Parent" means a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. 63.062(1). "Parent" also means a man married to the mother at the time of conception or birth of their child, unless paternity has been otherwise determined by a court of competent jurisdiction. If no man was married to the mother at the time of birth or conception of the child, the term "legal father" means a man named on the birth certificate of the child pursuant to s. 382.013(2), a man determined by court order to be



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41 the father of the child, or a man determined by an
42 administrative proceeding to be the father of the child. If a
43 child has been legally adopted, the term "parent" means the
44 adoptive mother or father of the child. For purposes of this
45 chapter only, when the phrase "parent or legal custodian" is
46 used, it refers to rights or responsibilities of the parent and,
47 only if there is no living parent with intact parental rights,
48 to the rights or responsibilities of the legal custodian who has
49 assumed the role of the parent. The term does not include an
50 individual whose parental relationship to the child has been
51 legally terminated, or an alleged or prospective parent, unless:

52 (a) The parental status falls within the terms of s.
53 39.503(1) or s. 63.062(1); or

54 (b) Parental status is applied for the purpose of
55 determining whether the child has been abandoned.

56 Section 2. Subsection (6) of section 39.201, Florida
57 Statutes, is amended to read:

58 39.201 Mandatory reports of child abuse, abandonment, or
59 neglect; mandatory reports of death; central abuse hotline.—

60 (6) Information in the central abuse hotline may not be
61 used for employment screening, except as provided in s.
62 39.202(2)(a) and (h) or s. 402.302(15). Information in the
63 central abuse hotline and the department's automated abuse
64 information system may be used by the department, its authorized
65 agents or contract providers, the Department of Health, or
66 county agencies as part of the licensure or registration process
67 pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

68 Pursuant to s. 39.202(2)(q), the information in the central
69 abuse hotline may also be used by the Department of Education



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for purposes of educator certification discipline and review.
Additionally, in accordance with s. 409.145(2)(e), the
information in the central abuse hotline may be used for
employment screening for caregivers at residential group homes.

Section 2. Paragraphs (a), (d), and (e) of subsection (2)
of section 39.202, Florida Statutes, are amended to read:

39.202 Confidentiality of reports and records in cases of
child abuse or neglect.—

(2) Except as provided in subsection (4), access to such
records, excluding the name of the reporter which shall be
released only as provided in subsection (5), shall be granted
only to the following persons, officials, and agencies:

(a) Employees, authorized agents, or contract providers of
the department, the Department of Health, the Agency for Persons
with Disabilities, the Office of Early Learning, or county
agencies responsible for carrying out:

1. Child or adult protective investigations;
2. Ongoing child or adult protective services;
3. Early intervention and prevention services;
4. Healthy Start services;
5. Licensure or approval of adoptive homes, foster homes,
child care facilities, facilities licensed under chapter 393,
family day care homes, providers who receive school readiness
funding under part VI of chapter 1002, or other homes used to
provide for the care and welfare of children; ~~or~~
6. Employment screening for caregivers in residential group
homes; or

~~7.6.~~ Services for victims of domestic violence when
provided by certified domestic violence centers working at the



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department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

(d) The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child, and their attorneys, including any attorney representing a child in civil or criminal proceedings. This access shall be made available no later than 60~~30~~ days after the department receives the initial report of abuse, neglect, or abandonment. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

(e) Any person alleged in the report as having caused the abuse, abandonment, or neglect of a child. This access shall be made available no later than 60~~30~~ days after the department receives the initial report of abuse, abandonment, or neglect and, when the alleged perpetrator is not a parent, shall be limited to information involving the protective investigation only and shall not include any information relating to subsequent dependency proceedings. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

Section 3. Paragraph (a) of subsection (9) of section 39.301, Florida Statutes, is amended, and subsection (23) is added to that section, to read:

39.301 Initiation of protective investigations.—

(9)(a) For each report received from the central abuse hotline and accepted for investigation, the department or the



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sheriff providing child protective investigative services under s. 39.3065, shall perform the following child protective investigation activities to determine child safety:

1. Conduct a review of all relevant, available information specific to the child and family and alleged maltreatment; family child welfare history; local, state, and federal criminal records checks; and requests for law enforcement assistance provided by the abuse hotline. Based on a review of available information, including the allegations in the current report, a determination shall be made as to whether immediate consultation should occur with law enforcement, the child protection team, a domestic violence shelter or advocate, or a substance abuse or mental health professional. Such consultations should include discussion as to whether a joint response is necessary and feasible. A determination shall be made as to whether the person making the report should be contacted before the face-to-face interviews with the child and family members.

2. Conduct face-to-face interviews with the child; other siblings, if any; and the parents, legal custodians, or caregivers.

3. Assess the child's residence, including a determination of the composition of the family and household, including the name, address, date of birth, social security number, sex, and race of each child named in the report; any siblings or other children in the same household or in the care of the same adults; the parents, legal custodians, or caregivers; and any other adults in the same household.

4. Determine whether there is any indication that any child in the family or household has been abused, abandoned, or



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neglected; the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof; and a determination as to the person or persons apparently responsible for the abuse, abandonment, or neglect, including the name, address, date of birth, social security number, sex, and race of each such person.

5. Complete assessment of immediate child safety for each child based on available records, interviews, and observations with all persons named in subparagraph 2. and appropriate collateral contacts, which may include other professionals. The department's child protection investigators are hereby designated a criminal justice agency for the purpose of accessing criminal justice information to be used for enforcing this state's laws concerning the crimes of child abuse, abandonment, and neglect. This information shall be used solely for purposes supporting the detection, apprehension, prosecution, pretrial release, posttrial release, or rehabilitation of criminal offenders or persons accused of the crimes of child abuse, abandonment, or neglect and may not be further disseminated or used for any other purpose.

6. Document the present and impending dangers to each child based on the identification of inadequate protective capacity through utilization of a standardized safety assessment instrument. If present or impending danger is identified, the child protective investigator must implement a safety plan or take the child into custody. If present danger is identified and the child is not removed, the child protective investigator shall create and implement a safety plan before leaving the home or the location where there is present danger. If impending



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danger is identified, the child protective investigator shall create and implement a safety plan as soon as necessary to protect the safety of the child. The child protective investigator may modify the safety plan if he or she identifies additional impending danger.

a. If the child protective investigator implements a safety plan, the plan must be specific, sufficient, feasible, and sustainable in response to the realities of the present or impending danger. A safety plan may be an in-home plan or an out-of-home plan, or a combination of both. A safety plan may include tasks or responsibilities for a parent, caregiver, or legal custodian. However, a safety plan may not rely on promissory commitments by the parent, caregiver, or legal custodian who is currently not able to protect the child or on services that are not available or will not result in the safety of the child. A safety plan may not be implemented if for any reason the parents, guardian, or legal custodian lacks the capacity or ability to comply with the plan. If the department is not able to develop a plan that is specific, sufficient, feasible, and sustainable, the department shall file a shelter petition. A child protective investigator shall implement separate safety plans for the perpetrator of domestic violence, if the investigator, using reasonable efforts, is able to locate the perpetrator to implement a safety plan, and for the parent who is a victim of domestic violence as defined in s. 741.28. Reasonable efforts to locate a perpetrator include, but are not limited to, a diligent search pursuant to the same requirements as in s. 39.503. If the perpetrator of domestic violence is not the parent, guardian, or legal custodian of any child in the



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home and if the department does not intend to file a shelter petition or dependency petition that will assert allegations against the perpetrator as a parent of a child in the home ~~the~~ child, the child protective investigator shall seek issuance of an injunction authorized by s. 39.504 to implement a safety plan for the perpetrator and impose any other conditions to protect the child. The safety plan for the parent who is a victim of domestic violence may not be shared with the perpetrator. If any party to a safety plan fails to comply with the safety plan resulting in the child being unsafe, the department shall file a shelter petition.

b. The child protective investigator shall collaborate with the community-based care lead agency in the development of the safety plan as necessary to ensure that the safety plan is specific, sufficient, feasible, and sustainable. The child protective investigator shall identify services necessary for the successful implementation of the safety plan. The child protective investigator and the community-based care lead agency shall mobilize service resources to assist all parties in complying with the safety plan. The community-based care lead agency shall prioritize safety plan services to families who have multiple risk factors, including, but not limited to, two or more of the following:

- (I) The parent or legal custodian is of young age;
- (II) The parent or legal custodian, or an adult currently living in or frequently visiting the home, has a history of substance abuse, mental illness, or domestic violence;
- (III) The parent or legal custodian, or an adult currently living in or frequently visiting the home, has been previously



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found to have physically or sexually abused a child;

(IV) The parent or legal custodian or an adult currently living in or frequently visiting the home has been the subject of multiple allegations by reputable reports of abuse or neglect;

(V) The child is physically or developmentally disabled; or

(VI) The child is 3 years of age or younger.

c. The child protective investigator shall monitor the implementation of the plan to ensure the child's safety until the case is transferred to the lead agency at which time the lead agency shall monitor the implementation.

(23) If, at any time during a child protective investigation, a child is born into a family under investigation or a child moves into the home under investigation, the child protective investigator shall add the child to the investigation and assess the child's safety pursuant to subsection (7) and paragraph (9)(a).

Section 4. Subsections (1) and (7) of section 39.302, Florida Statutes, are amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(32) or (48) ~~s. 39.01(32) or (47)~~, acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established



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under s. 39.201(5) and notify the appropriate state attorney, law enforcement agency, and licensing agency, which shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations or having face-to-face interviews with the child, investigation visits shall be unannounced unless it is determined by the department or its agent that unannounced visits threaten the safety of the child. If a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an interview with the child's parent or legal guardian. The department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

(7) When an investigation of institutional abuse, neglect, or abandonment is closed and a person is not identified as a caregiver responsible for the abuse, neglect, or abandonment alleged in the report, the fact that the person is named in some



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capacity in the report may not be used in any way to adversely affect the interests of that person. This prohibition applies to any use of the information in employment screening, licensing, child placement, adoption, or any other decisions by a private adoption agency or a state agency or its contracted providers.

(a) However, if such a person is a licensee of the department and is named in any capacity in three or more reports within a 5-year period, the department may review those reports and determine whether the information contained in the reports is relevant for purposes of determining whether the person's license should be renewed or revoked. If the information is relevant to the decision to renew or revoke the license, the department may rely on the information contained in the report in making that decision.

(b) Likewise, if a person is employed as a caregiver in a residential group home licensed pursuant to s. 409.175 and is named in any capacity in three or more reports within a 5-year period, all reports may be reviewed for the purposes of the employment screening required pursuant to s. 409.145(2) (e).

Section 5. Paragraph (c) of subsection (8) of section 39.402, Florida Statutes, is amended to read:

39.402 Placement in a shelter.—

(8)

(c) At the shelter hearing, the court shall:

1. Appoint a guardian ad litem to represent the best interest of the child, unless the court finds that such representation is unnecessary;

2. Inform the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each



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subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013; ~~and~~

3. Give the parents or legal custodians an opportunity to be heard and to present evidence; and

4. Inquire of those present at the shelter hearing as to the identity and location of the legal father. In determining who the legal father of the child may be, the court shall inquire under oath of those present at the shelter hearing whether they have any of the following information:

a. Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

b. Whether the mother was cohabiting with a male at the probable time of conception of the child.

c. Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

d. Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

e. Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child or in which the child has resided or resides.

f. Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

g. Whether a man has been determined by a court order to be the father of the child.



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h. Whether a man has been determined by an administrative proceeding to be the father of the child.

Section 6. Subsections (1), (6), and (8) of section 39.503, Florida Statutes, are amended, subsection (9) is added to that section, and subsection (7) of that section is republished, to read:

39.503 Identity or location of parent unknown; special procedures.—

(1) If the identity or location of a parent is unknown and a petition for dependency or shelter is filed, the court shall conduct under oath the following inquiry of the parent or legal custodian who is available, or, if no parent or legal custodian is available, of any relative or custodian of the child who is present at the hearing and likely to have any of the following information:

(a) Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

(b) Whether the mother was cohabiting with a male at the probable time of conception of the child.

(c) Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

(d) Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

(e) Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the



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child has resided or resides.

(f) Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

(g) Whether a man has been determined by a court order to be the father of the child.

(h) Whether a man has been determined by an administrative proceeding to be the father of the child.

(6) The diligent search required by subsection (5) must include, at a minimum, inquiries of all relatives of the parent or prospective parent made known to the petitioner, inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent, inquiries of other state and federal agencies likely to have information about the parent or prospective parent, inquiries of appropriate utility and postal providers, a thorough search of at least one electronic database specifically designed for locating persons, a search of the Florida Putative Father Registry, and inquiries of appropriate law enforcement agencies. Pursuant to s. 453 of the Social Security Act, 42 U.S.C. s. 653(c)(4), the department, as the state agency administering Titles IV-B and IV-E of the act, shall be provided access to the federal and state parent locator service for diligent search activities.

(7) Any agency contacted by a petitioner with a request for information pursuant to subsection (6) shall release the requested information to the petitioner without the necessity of a subpoena or court order.

(8) If the inquiry and diligent search identifies a prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn



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affidavit of parenthood and filing it with the court or the department. A prospective parent who files a sworn affidavit of parenthood while the child is a dependent child but no later than at the time of or before ~~prior to~~ the adjudicatory hearing in any termination of parental rights proceeding for the child shall be considered a parent for all purposes under this section unless the other parent contests the determination of parenthood. If the prospective parent does not file a sworn affidavit of parenthood or if the other parent contests the determination of parenthood, the court may, after considering the best interest of the child, order scientific testing to determine the maternity or paternity of the child. The court shall assess the cost of the maternity or paternity determination as a cost of litigation. If the court finds the prospective parent to be a parent as a result of the scientific testing, the court shall enter a judgment of maternity or paternity, shall assess the cost of the scientific testing to the parent, and shall enter an amount of child support to be paid by the parent as determined under s. 61.30. If the known parent contests the recognition of the prospective parent as a parent, the prospective parent shall not be recognized as a parent until proceedings to determine maternity or paternity under chapter 742 have been concluded. However, the prospective parent shall continue to receive notice of hearings as a participant until pending results of the chapter 742 proceedings to determine maternity or paternity have been concluded.

(9) If the diligent search under subsection (5) fails to identify and locate a prospective parent, the court shall so find and may proceed without further notice.



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Section 7. Section 39.504, Florida Statutes, is amended to read:

39.504 Injunction ~~pending disposition of petition;~~
penalty.—

(1) At any time after a protective investigation has been initiated pursuant to part III of this chapter, the court, upon the request of the department, a law enforcement officer, the state attorney, or other responsible person, or upon its own motion, may, if there is reasonable cause, issue an injunction to prevent any act of child abuse. Reasonable cause for the issuance of an injunction exists if there is evidence of child abuse or if there is a reasonable likelihood of such abuse occurring based upon a recent overt act or failure to act. If there is a pending dependency proceeding regarding the child whom the injunction is sought to protect, the judge hearing the dependency proceeding must also hear the injunction proceeding regarding the child.

(2) The petitioner seeking the injunction shall file a verified petition, or a petition along with an affidavit, setting forth the specific actions by the alleged offender from which the child must be protected and all remedies sought. Upon filing the petition, the court shall set a hearing to be held at the earliest possible time. Pending the hearing, the court may issue a temporary ex parte injunction, with verified pleadings or affidavits as evidence. The temporary ex parte injunction pending a hearing is effective for up to 15 days and the hearing must be held within that period unless continued for good cause shown, which may include obtaining service of process, in which case the temporary ex parte injunction shall be extended for the



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continuanace period. The hearing may be held sooner if the alleged offender has received reasonable notice.

(3) Before the hearing, the alleged offender must be personally served with a copy of the petition, all other pleadings related to the petition, a notice of hearing, and, if one has been entered, the temporary injunction. If the petitioner is unable to locate the alleged offender for service after a diligent search pursuant to the same requirements as in s. 39.503 and the filing of an affidavit of diligent search, the court may enter the injunction based on the sworn petition and any affidavits. At the hearing, the court may base its determination on a sworn petition, testimony, or an affidavit and may hear all relevant and material evidence, including oral and written reports, to the extent of its probative value even though it would not be competent evidence at an adjudicatory hearing. Following the hearing, the court may enter a final injunction. The court may grant a continuance of the hearing at any time for good cause shown by any party. If a temporary injunction has been entered, it shall be continued during the continuance.

(4) If an injunction is issued under this section, the primary purpose of the injunction must be to protect and promote the best interests of the child, taking the preservation of the child's immediate family into consideration.

(a) The injunction applies to the alleged or actual offender in a case of child abuse or acts of domestic violence. The conditions of the injunction shall be determined by the court, which may include ordering the alleged or actual offender to:



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1. Refrain from further abuse or acts of domestic violence.
2. Participate in a specialized treatment program.
3. Limit contact or communication with the child victim,
other children in the home, or any other child.
4. Refrain from contacting the child at home, school, work,
or wherever the child may be found.
5. Have limited or supervised visitation with the child.
6. Vacate the home in which the child resides.
7. Comply with the terms of a safety plan implemented in
the injunction pursuant to s. 39.301.

(b) Upon proper pleading, the court may award the following relief in a temporary ex parte or final injunction:

1. Exclusive use and possession of the dwelling to the caregiver or exclusion of the alleged or actual offender from the residence of the caregiver.
2. Temporary support for the child or other family members.
3. The costs of medical, psychiatric, and psychological treatment for the child incurred due to the abuse, and similar costs for other family members.

This paragraph does not preclude an adult victim of domestic violence from seeking protection for himself or herself under s. 741.30.

(c) The terms of the final injunction shall remain in effect until modified or dissolved by the court. The petitioner, respondent, or caregiver may move at any time to modify or dissolve the injunction. Notice of hearing on the motion to modify or dissolve the injunction must be provided to all parties, including the department. The injunction is valid and



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enforceable in all counties in the state.

(5) Service of process on the respondent shall be carried out pursuant to s. 741.30. The department shall deliver a copy of any injunction issued pursuant to this section to the protected party or to a parent, caregiver, or individual acting in the place of a parent who is not the respondent. Law enforcement officers may exercise their arrest powers as provided in s. 901.15(6) to enforce the terms of the injunction.

(6) Any person who fails to comply with an injunction issued pursuant to this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) The person against whom an injunction is entered under this section does not automatically become a party to a subsequent dependency action concerning the same child.

Section 8. Paragraph (b) of subsection (7) of section 39.507, Florida Statutes, is amended to read:

39.507 Adjudicatory hearings; orders of adjudication.—

(7)

(b) However, the court must determine whether each parent or legal custodian identified in the case abused, abandoned, or neglected the child or engaged in conduct that placed the child at substantial risk of imminent abuse, abandonment, or neglect ~~in a subsequent evidentiary hearing~~. If a second parent is served and brought into the proceeding after the adjudication, and an the evidentiary hearing for the second parent is ~~conducted subsequent to the adjudication of the child~~, the court shall supplement the adjudicatory order, disposition order, and the case plan, as necessary. The petitioner is not required to



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prove actual harm or actual abuse by the second parent in order
for the court to make supplemental findings regarding the
conduct of the second parent. The court is not required to
conduct an evidentiary hearing for the second parent in order to
supplement the adjudicatory order, the disposition order, and
the case plan if the requirements of s. 39.506(3) or (5) are
satisfied. With the exception of proceedings pursuant to s.
39.811, the child's dependency status may not be retried or
readjudicated.

Section 9. Paragraph (a) of subsection (2) of section
39.5085, Florida Statutes, is amended to read:

39.5085 Relative Caregiver Program.—

(2) (a) The Department of Children and Families shall
establish, ~~and operate, and implement~~ the Relative Caregiver
Program ~~pursuant to eligibility guidelines established in this~~
~~section as further implemented~~ by rule of the department. The
Relative Caregiver Program shall, within the limits of available
funding, provide financial assistance to:

1. Relatives who are within the fifth degree by blood or
marriage to the parent or stepparent of a child and who are
caring full-time for that dependent child in the role of
substitute parent as a result of a court's determination of
child abuse, neglect, or abandonment and subsequent placement
with the relative under this chapter.

2. Relatives who are within the fifth degree by blood or
marriage to the parent or stepparent of a child and who are
caring full-time for that dependent child, and a dependent half-
brother or half-sister of that dependent child, in the role of
substitute parent as a result of a court's determination of



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child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.

3. Nonrelatives who are willing to assume custody and care of a dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the nonrelative caregiver under this chapter. The court must find that a proposed placement under this subparagraph is in the best interest of the child.

4. The relative or nonrelative caregiver may not receive a Relative Caregiver Program payment if the parent or stepparent of the child resides in the home. However, a relative or nonrelative may receive the Relative Caregiver Program payment for a minor parent who is in his or her care, as well as for the minor parent's child, if both children have been adjudicated dependent and meet all other eligibility requirements. If the caregiver is currently receiving the payment, the Relative Caregiver Program payment must be terminated no later than the first of the following month after the parent or stepparent moves into the home, allowing for 10-day notice of adverse action.

The placement may be court-ordered temporary legal custody to the relative or nonrelative under protective supervision of the department pursuant to s. 39.521(1)(c)3. ~~s. 39.521(1)(b)3.~~, or court-ordered placement in the home of a relative or nonrelative as a permanency option under s. 39.6221 or s. 39.6231 or under former s. 39.622 if the placement was made before July 1, 2006. The Relative Caregiver Program shall offer financial assistance



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to caregivers who would be unable to serve in that capacity without the caregiver payment because of financial burden, thus exposing the child to the trauma of placement in a shelter or in foster care.

Section 10. Subsections (1), (2), (6), and (7) of section 39.521, Florida Statutes, are amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(a) A written case plan and a family functioning assessment ~~predisposition study~~ prepared by an authorized agent of the department must be approved by ~~filed with~~ the court. The department must file the case plan and the family functioning assessment with the court, serve a copy of the case plan on ~~served upon~~ the parents of the child, and provide a copy of the case plan ~~provided~~ to the representative of the guardian ad litem program, if the program has been appointed, and provide a copy ~~provided~~ to all other parties:

1. Not less than 72 hours before the disposition hearing, if the disposition hearing occurs on or after the 60th day after the child was placed in out-of-home care. All such case plans must be approved by the court.

2. Not less than 72 hours before the case plan acceptance



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hearing, if the disposition hearing occurs before the 60th day after the date the child was placed in out-of-home care and a case plan has not been submitted pursuant to this paragraph, or if the court does not approve the case plan at the disposition hearing. ~~The case plan acceptance hearing must occur the court must set a hearing~~ within 30 days after the disposition hearing to review and approve the case plan.

(b) The court may grant an exception to the requirement for a family functioning assessment ~~predisposition study~~ by separate order or within the judge's order of disposition upon finding that all the family and child information required by subsection (2) is available in other documents filed with the court.

(c) ~~(b)~~ When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal custodian and the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation. The order may be made only upon good cause shown and pursuant to notice and procedural requirements provided under the Florida Rules of Juvenile Procedure. The mental health assessment or evaluation must be administered by a qualified professional as defined in s. 39.01, and the substance abuse assessment or evaluation must be administered by a qualified professional as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when



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appropriate and available, participation in and compliance with a mental health court program established under chapter 394 or a treatment-based drug court program established under s. 397.334. Adjudication of a child as dependent based upon evidence of harm as defined in s. 39.01(30)(g) demonstrates good cause, and the court shall require the parent whose actions caused the harm to submit to a substance abuse disorder assessment or evaluation and to participate and comply with treatment and services identified in the assessment or evaluation as being necessary.

In addition to supervision by the department, the court, including the mental health court program or the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires mental health or substance abuse disorder treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the



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court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department must set forth the powers of the custodian of the child and include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, further judicial reviews are not required if permanency has been established for the child.

(d)~~(e)~~ At the conclusion of the disposition hearing, the court shall schedule the initial judicial review hearing which must be held no later than 90 days after the date of the disposition hearing or after the date of the hearing at which the court approves the case plan, whichever occurs earlier, but in no event shall the review hearing be held later than 6 months after the date of the child's removal from the home.

(e)~~(d)~~ The court shall, in its written order of disposition, include all of the following:

1. The placement or custody of the child.
2. Special conditions of placement and visitation.
3. Evaluation, counseling, treatment activities, and other actions to be taken by the parties, if ordered.



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4. The persons or entities responsible for supervising or monitoring services to the child and parent.

5. Continuation or discharge of the guardian ad litem, as appropriate.

6. The date, time, and location of the next scheduled review hearing, which must occur within the earlier of:

- a. Ninety days after the disposition hearing;
- b. Ninety days after the court accepts the case plan;
- c. Six months after the date of the last review hearing; or
- d. Six months after the date of the child's removal from his or her home, if no review hearing has been held since the child's removal from the home.

7. If the child is in an out-of-home placement, child support to be paid by the parents, or the guardian of the child's estate if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child. The court may exercise jurisdiction over all child support matters, shall adjudicate the financial obligation, including health insurance, of the child's parents or guardian, and shall enforce the financial obligation as provided in chapter 61. The state's child support enforcement agency shall enforce child support orders under this section in the same manner as child support orders under chapter 61. Placement of the child shall not be contingent upon issuance of a support order.

8.a. If the court does not commit the child to the temporary legal custody of an adult relative, legal custodian, or other adult approved by the court, the disposition order shall include the reasons for such a decision and shall include a determination as to whether diligent efforts were made by the



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department to locate an adult relative, legal custodian, or other adult willing to care for the child in order to present that placement option to the court instead of placement with the department.

b. If no suitable relative is found and the child is placed with the department or a legal custodian or other adult approved by the court, both the department and the court shall consider transferring temporary legal custody to an adult relative approved by the court at a later date, but neither the department nor the court is obligated to so place the child if it is in the child's best interest to remain in the current placement.

For the purposes of this section, "diligent efforts to locate an adult relative" means a search similar to the diligent search for a parent, but without the continuing obligation to search after an initial adequate search is completed.

9. Other requirements necessary to protect the health, safety, and well-being of the child, to preserve the stability of the child's educational placement, and to promote family preservation or reunification whenever possible.

(f)(e) If the court finds that an in-home safety plan prepared or approved by the department ~~the prevention or reunification efforts of the department~~ will allow the child to remain safely at home or that conditions for return have been met and an in-home safety plan prepared or approved by the department will allow the child to be safely returned to the home, the court shall allow the child to remain in or return to the home after making a specific finding of fact that ~~the~~



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~~reasons for removal have been remedied to the extent that the~~
child's safety, well-being, and physical, mental, and emotional
health will not be endangered.

~~(g)(f)~~ If the court places the child in an out-of-home
placement, the disposition order must include a written
determination that the child cannot safely remain at home with
an in-home safety plan ~~reunification or family preservation~~
~~services~~ and that removal of the child is necessary to protect
the child. If the child is removed before the disposition
hearing, the order must also include a written determination as
to whether, after removal, the department made a reasonable
effort to reunify the parent and child. Reasonable efforts to
reunify are not required if the court finds that any of the acts
listed in s. 39.806(1)(f)-(l) have occurred. The department has
the burden of demonstrating that it made reasonable efforts.

1. For the purposes of this paragraph, the term "reasonable
effort" means the exercise of reasonable diligence and care by
the department to provide the services ordered by the court or
delineated in the case plan.

2. In support of its determination as to whether reasonable
efforts have been made, the court shall:

a. Enter written findings as to whether an in-home safety
plan could have prevented removal ~~prevention or reunification~~
~~efforts were indicated.~~

b. If an in-home safety plan was ~~prevention or~~
~~reunification efforts were~~ indicated, include a brief written
description of what appropriate and available safety management
services ~~prevention and reunification efforts~~ were initiated
~~made.~~



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c. Indicate in writing why further efforts could or could not have prevented or shortened the separation of the parent and child.

3. A court may find that the department made a reasonable effort to prevent or eliminate the need for removal if:

a. The first contact of the department with the family occurs during an emergency;

b. The department's assessment ~~appraisal by the department~~ of the home situation indicates a substantial and immediate danger to the child's safety or physical, mental, or emotional health which cannot be mitigated by the provision of safety management ~~preventive~~ services;

c. The child cannot safely remain at home, because there are no safety management ~~preventive~~ services that can ensure the health and safety of the child or, even with appropriate and available services being provided, the health and safety of the child cannot be ensured; or

d. The parent is alleged to have committed any of the acts listed as grounds for expedited termination of parental rights under s. 39.806(1)(f)-(l).

4. A reasonable effort by the department for reunification has been made if the appraisal of the home situation by the department indicates that the severity of the conditions of dependency is such that reunification efforts are inappropriate. The department has the burden of demonstrating to the court that reunification efforts were inappropriate.

5. If the court finds that the provision of safety management services by ~~prevention or reunification effort of the~~ department would not have permitted the child to remain safely



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at home, the court may commit the child to the temporary legal custody of the department or take any other action authorized by this chapter.

(2) The family functioning assessment ~~predisposition study~~ must provide the court with the following documented information:

(a) Evidence of maltreatment and the circumstances accompanying the maltreatment.

(b) Identification of all danger threats active in the home.

(c) An assessment of the adult functioning of the parents.

(d) An assessment of general parenting practices and the parent's disciplinary approach and behavior management methods.

(e) An assessment of the parent's behavioral, emotional, and cognitive protective capacities.

(f) An assessment of child functioning.

(g) A safety analysis describing the capacity for an in-home safety plan to control the conditions that result in the child being unsafe and the specific actions necessary to keep the child safe.

(h) Identification of the conditions for return which would allow the child to be placed safely back into the home with an in-home safety plan and any safety management services necessary to ensure the child's safety.

~~(a) The capacity and disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.~~

~~(b) The length of time the child has lived in a stable,~~



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~~satisfactory environment and the desirability of maintaining continuity.~~

~~(c) The mental and physical health of the parents.~~

~~(d) The home, school, and community record of the child.~~

~~(i)(e)~~ The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

~~(f) Evidence of domestic violence or child abuse.~~

~~(g) An assessment defining the dangers and risks of returning the child home, including a description of the changes in and resolutions to the initial risks.~~

~~(h) A description of what risks are still present and what resources are available and will be provided for the protection and safety of the child.~~

~~(i) A description of the benefits of returning the child home.~~

~~(j) A description of all unresolved issues.~~

~~(j)(k)~~ Child welfare ~~A Florida Abuse Hotline Information System (FAHIS)~~ history from the Statewide Automated Child Welfare Information System (SACWIS) and criminal records check for all caregivers, family members, and individuals residing within the household from which the child was removed.

~~(k)(l)~~ The complete report and recommendation of the child protection team of the Department of Health or, if no report exists, a statement reflecting that no report has been made.

~~(l)(m)~~ All opinions or recommendations from other professionals or agencies that provide evaluative, social, reunification, or other services to the parent and child.

~~(m)(n)~~ A listing of appropriate and available safety



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management ~~prevention and reunification~~ services for the parent and child to prevent the removal of the child from the home or to reunify the child with the parent after removal and an ~~to~~ reunify the child with the parent after removal, including the availability of family preservation services and an explanation of the following:

1. If the services were or were not provided.

2. If the services were provided, the outcome of the services.

3. If the services were not provided, why they were not provided.

4. If the services are currently being provided and if they need to be continued.

~~(e) A listing of other prevention and reunification services that were available but determined to be inappropriate and why.~~

~~(p) Whether dependency mediation was provided.~~

(n) ~~(q)~~ If the child has been removed from the home and there is a parent who may be considered for custody pursuant to this section, a recommendation as to whether placement of the child with that parent would be detrimental to the child.

(o) ~~(r)~~ If the child has been removed from the home and will be remaining with a relative, parent, or other adult approved by the court, a home study report concerning the proposed placement shall be provided to the court ~~included in the predisposition report~~. Before recommending to the court any out-of-home placement for a child other than placement in a licensed shelter or foster home, the department shall conduct a study of the home of the proposed legal custodians, which must include, at a



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minimum:

1. An interview with the proposed legal custodians to assess their ongoing commitment and ability to care for the child.

2. Records checks through the State Automated Child Welfare Information System (SACWIS), and local and statewide criminal and juvenile records checks through the Department of Law Enforcement, on all household members 12 years of age or older. In addition, the fingerprints of any household members who are 18 years of age or older may be submitted to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information. The department has the discretion to request State Automated Child Welfare Information System (SACWIS) and local, statewide, and national criminal history checks and fingerprinting of any other visitor to the home who is made known to the department. Out-of-state criminal records checks must be initiated for any individual who has resided in a state other than Florida if that state's laws allow the release of these records. The out-of-state criminal records must be filed with the court within 5 days after receipt by the department or its agent.

3. An assessment of the physical environment of the home.

4. A determination of the financial security of the proposed legal custodians.

5. A determination of suitable child care arrangements if the proposed legal custodians are employed outside of the home.

6. Documentation of counseling and information provided to the proposed legal custodians regarding the dependency process



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and possible outcomes.

7. Documentation that information regarding support services available in the community has been provided to the proposed legal custodians.

8. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

The department may not place the child or continue the placement of the child in a home under shelter or postdisposition placement if the results of the home study are unfavorable, unless the court finds that this placement is in the child's best interest.

(p)~~(s)~~ If the child has been removed from the home, a determination of the amount of child support each parent will be required to pay pursuant to s. 61.30.

~~(t) If placement of the child with anyone other than the child's parent is being considered, the predisposition study shall include the designation of a specific length of time as to when custody by the parent will be reconsidered.~~

Any other relevant and material evidence, including other written or oral reports, may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing. Except as otherwise specifically provided, nothing in this section prohibits the publication of proceedings in a hearing.

(6) With respect to a child who is the subject in



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proceedings under this chapter, the court may issue to the department an order to show cause why it should not return the child to the custody of the parents upon the presentation of evidence that the conditions for return of the child have been met ~~expiration of the case plan, or sooner if the parents have substantially complied with the case plan.~~

(7) The court may enter an order ending its jurisdiction over a child when a child has been returned to the parents, provided the court shall not terminate its jurisdiction or the department's supervision over the child until 6 months after the child's return. The department shall supervise the placement of the child after reunification for at least 6 months with each parent or legal custodian from whom the child was removed. The court shall determine whether its jurisdiction should be continued or terminated in such a case based on a report of the department or agency or the child's guardian ad litem, and any other relevant factors; if its jurisdiction is to be terminated, the court shall enter an order to that effect.

Section 11. Subsections (2) and (3) of section 39.522, Florida Statutes, are amended to read:

39.522 Postdisposition change of custody.—The court may change the temporary legal custody or the conditions of protective supervision at a postdisposition hearing, without the necessity of another adjudicatory hearing.

(2) In cases where the issue before the court is whether a child should be reunited with a parent, the court shall review the conditions for return and determine whether the circumstances that caused the out-of-home placement and issues subsequently identified have been remedied ~~parent has~~



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~~substantially complied with the terms of the case plan to the extent that the return of the child to the home with an in-home safety plan prepared or approved by the department will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home.~~

(3) In cases where the issue before the court is whether a child who is placed in the custody of a parent should be reunited with the other parent upon a finding that the circumstances that caused the out-of-home placement and issues subsequently identified have been remedied to the extent that the return of the child to the home of the other parent with an in-home safety plan prepared or approved by the department will not be detrimental to the child ~~of substantial compliance with the terms of the case plan~~, the standard shall be that the safety, well-being, and physical, mental, and emotional health of the child would not be endangered by reunification and that reunification would be in the best interest of the child.

Section 12. Effective January 1, 2018, section 39.523, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 39.523, F.S., for present text.)
39.523 Placement in out-of-home care.-

(1) LEGISLATIVE FINDINGS AND INTENT.-

(a) The Legislature finds that it is a basic tenet of child welfare practice and the law that children be placed in the least restrictive, most family-like setting available in close proximity to the home of their parents, consistent with the best interests and needs of the child, and that children be placed in



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permanent homes in a timely manner.

(b) The Legislature also finds that there is an association between frequent placement changes and adverse outcomes for the child, that mismatching placements to children's needs has been identified as a factor that negatively impacts placement stability and that identifying the right placement for each child requires effective assessment.

(c) It is the intent of the Legislature that whenever a child is unable to safely remain at home with a parent, the most appropriate available out-of-home placement shall be chosen after an assessment of the child's needs and the availability of caregivers qualified to meet the child's needs.

(2) ASSESSMENT AND PLACEMENT.— When any child is removed from a home and placed into out-of-home care, a comprehensive placement assessment process shall be completed to determine the level of care needed by the child and match the child with the most appropriate placement.

(a) The community-based care lead agency or sub-contacted agency with the responsibility for assessment and placement must coordinate a multi-disciplinary team staffing with any available individual currently involved with the child including, but not limited to, a representative from the department and the case manager for the child; a therapist, attorney ad-litem, guardian ad litem, teachers, coaches, Children's Medical Services and other community providers of services to the child or stakeholders as applicable. The team should also include clergy, relatives and fictive kin. Team participants must gather data and information on the child that is known at the time including, but not limited to:



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1. Mental, medical, behavioral health and medication history;

2. Community ties and school placement;

3. Current placement decisions relating to any siblings;

4. Alleged type of abuse or neglect including sexual abuse and trafficking history; and

5. The child's age, maturity, strengths, hobbies or activities, and the child's preference for placement.

(b) The comprehensive placement assessment process may also include the use of an assessment instrument or tool that is best suited for the individual child.

(c) The most appropriate available out-of-home placement shall be chosen after consideration by all members of the multi-disciplinary team of all of the information and data gathered, including the results and recommendations of any evaluations conducted

(d) Placement decisions for each child in out-of-home placement shall be reviewed as often as necessary to ensure permanency issues related to this population of children are addressed.

(e) The department shall document all placement assessments and placement decisions in the Florida Safe Families Network.

(f) If it is determined during the comprehensive placement assessment process that residential treatment as defined in s. 39.407 would be suitable for the child, the procedures in that section must be followed.

(3) JUDICIAL REVIEW.— At each judicial review, the court shall consider the results of the assessment, the placement decision made for the child and services provided to the child



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as required under s. 39.701.

(4) DATA COLLECTION.— The department shall collect the following information by community-based care lead agency and post it on the Department of Children and Families' website. The information is to be updated on January 1 and July 1 of each year.

(a) The number of children placed with relatives and nonrelatives, in family foster homes, and in residential group care.

(b) An inventory of available services that are necessary to maintain children in the least restrictive settings and a plan for filling any identified gap in those services.

(c) The number of children who were placed based upon the assessment.

(d) An inventory of existing placements for children by type and by community-based care lead agency.

(e) The strategies being used by community-based care lead agencies to recruit, train, and support an adequate number of families to provide home-based family care.

(5) RULEMAKING.— The department may adopt rules necessary to carry out the provisions of this section.

Section 13. Section 39.6001, Florida Statutes, is created to read:

39.6001 .— Safe care plans for substance exposed newborns.— The department, in partnership with the Department of Health, the Agency for Health Care Administration, other state agencies, and community partners, shall develop a strategy for coordinated services to ensure the safety and well-being of newborns with prenatal substance exposure by creating, implementing, and



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monitoring safe care plans. A safe care plan is a written plan for a newborn with prenatal substance abuse exposure following the newborn's release from the care of a health care provider. The plan must address the health and substance abuse disorder treatment needs of the newborn through infancy and the affected family or caregiver. The department shall monitor such plans to ensure appropriate referrals are made and services are delivered to the newborn and the affected family or caregiver.

Section 14. Subsection (1) of section 39.6011, Florida Statutes, is amended to read:

39.6011 Case plan development.—

(1) The department shall prepare a draft of the case plan for each child receiving services under this chapter. A parent of a child may not be threatened or coerced with the loss of custody or parental rights for failing to admit in the case plan of abusing, neglecting, or abandoning a child. Participating in the development of a case plan is not an admission to any allegation of abuse, abandonment, or neglect, and it is not a consent to a finding of dependency or termination of parental rights. The case plan shall be developed subject to the following requirements:

(a) The case plan must be developed in a face-to-face conference with the parent of the child, any court-appointed guardian ad litem, and, if appropriate, the child and the temporary custodian of the child.

(b) Notwithstanding s. 39.202, the department may discuss confidential information during the case planning conference in the presence of individuals who participate in the conference. All individuals who participate in the conference shall maintain



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the confidentiality of all information shared during the case planning conference.

~~(c)-(b)~~ The parent may receive assistance from any person or social service agency in preparing the case plan. The social service agency, the department, and the court, when applicable, shall inform the parent of the right to receive such assistance, including the right to assistance of counsel.

~~(d)-(e)~~ If a parent is unwilling or unable to participate in developing a case plan, the department shall document that unwillingness or inability to participate. The documentation must be provided in writing to the parent when available for the court record, and the department shall prepare a case plan conforming as nearly as possible with the requirements set forth in this section. The unwillingness or inability of the parent to participate in developing a case plan does not preclude the filing of a petition for dependency or for termination of parental rights. The parent, if available, must be provided a copy of the case plan and be advised that he or she may, at any time before the filing of a petition for termination of parental rights, enter into a case plan and that he or she may request judicial review of any provision of the case plan with which he or she disagrees at any court hearing set for the child.

Section 14. Subsection (1) of section 39.6012, Florida Statutes, is amended to read:

39.6012 Case plan tasks; services.—

(1) The services to be provided to the parent and the tasks that must be completed are subject to the following:

(a) The services described in the case plan must be designed to improve the conditions in the home and aid in



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maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement. The services offered must be the least intrusive possible into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement given the circumstances of the case and the child's need for safe and proper care.

(b) The case plan must describe each of the tasks with which the parent must comply and the services to be provided to the parent, specifically addressing the identified problem, including:

1. The type of services or treatment.
2. The date the department will provide each service or referral for the service if the service is being provided by the department or its agent.
3. The date by which the parent must complete each task.
4. The frequency of services or treatment provided. The frequency of the delivery of services or treatment provided shall be determined by the professionals providing the services or treatment on a case-by-case basis and adjusted according to their best professional judgment.
5. The location of the delivery of the services.
6. The staff of the department or service provider accountable for the services or treatment.
7. A description of the measurable objectives, including the timeframes specified for achieving the objectives of the case plan and addressing the identified problem.

(c) If there is evidence of harm as defined in s.



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39.01(30)(g), the case plan must include as a required task for the parent whose actions caused the harm that the parent submit to a substance abuse disorder assessment or evaluation and participate and comply with treatment and services identified in the assessment or evaluation as being necessary.

Section 15. Subsection (7) is added to section 39.6221, Florida Statutes, to read:

39.6221 Permanent guardianship of a dependent child.—

(7) The requirements of s. 61.13001 do not apply to permanent guardianships established under this section.

Section 16. Paragraph (h) is added to subsection (1) of section 39.701, Florida Statutes, to read:

39.701 Judicial review.—

(1) GENERAL PROVISIONS.—

(h) If a child is born into a family that is under the court's jurisdiction or a child moves into a home that is under the court's jurisdiction, the department shall assess the child's safety and provide notice to the court.

1. The department shall complete an assessment to determine how the addition of a child will impact family functioning. The assessment must be completed at least 30 days before a child is expected to be born or to move into a home, or within 72 hours after the department learns of the pregnancy or addition if the child is expected to be born or to move into the home in less than 30 days. The assessment shall be filed with the court.

2. Once a child is born into a family or a child moves into the home, the department shall complete a progress update and file it with the court.

3. The court has the discretion to hold a hearing on the



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progress update filed by the department.

4. The department shall adopt rules to implement this subsection.

Section 17. Subsection (3) of section 39.801, Florida Statutes, is amended to read:

39.801 Procedures and jurisdiction; notice; service of process.—

(3) Before the court may terminate parental rights, in addition to the other requirements set forth in this part, the following requirements must be met:

(a) Notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights and a copy of the petition must be personally served upon the following persons, specifically notifying them that a petition has been filed:

1. The parents of the child.

2. The legal custodians of the child.

3. If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.

4. Any person who has physical custody of the child.

5. Any grandparent entitled to priority for adoption under s. 63.0425.

6. Any prospective parent who has been identified under s. 39.503 or s. 39.803, unless a court order has been entered pursuant to s. 39.503(4) or (9) or s. 39.803(4) or (9) which indicates no further notice is required. Except as otherwise provided in this section, if there is not a legal father, notice of the petition for termination of parental rights must be



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provided to any known prospective father who is identified under
oath before the court or who is identified by a diligent search
of the Florida Putative Father Registry. Service of the notice
of the petition for termination of parental rights may not be
required if the prospective father executes an affidavit of
nonpaternity or a consent to termination of his parental rights
which is accepted by the court after notice and opportunity to
be heard by all parties to address the best interests of the
child in accepting such affidavit.

7. The guardian ad litem for the child or the
representative of the guardian ad litem program, if the program
has been appointed.

The document containing the notice to respond or appear must
contain, in type at least as large as the type in the balance of
the document, the following or substantially similar language:
"FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
NOTICE."

(b) If a party required to be served with notice as
prescribed in paragraph (a) cannot be served, notice of hearings
must be given as prescribed by the rules of civil procedure, and
service of process must be made as specified by law or civil
actions.

(c) Notice as prescribed by this section may be waived, in
the discretion of the judge, with regard to any person to whom



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notice must be given under this subsection if the person executes, before two witnesses and a notary public or other officer authorized to take acknowledgments, a written surrender of the child to a licensed child-placing agency or the department.

(d) If the person served with notice under this section fails to personally appear at the advisory hearing, the failure to personally appear shall constitute consent for termination of parental rights by the person given notice. If a parent appears for the advisory hearing and the court orders that parent to personally appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of said hearing, then failure of that parent to personally appear at the adjudicatory hearing shall constitute consent for termination of parental rights.

Section 18. Section 39.803, Florida Statutes, is amended, to read:

39.803 Identity or location of parent unknown after filing of termination of parental rights petition; special procedures.—

(1) If the identity or location of a parent is unknown and a petition for termination of parental rights is filed, the court shall conduct under oath the following inquiry of the parent who is available, or, if no parent is available, of any relative, caregiver, or legal custodian of the child who is present at the hearing and likely to have the information:

(a) Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

(b) Whether the mother was cohabiting with a male at the



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probable time of conception of the child.

(c) Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

(d) Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

(e) Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.

(f) Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

(g) Whether a man has been determined by a court order to be the father of the child.

(h) Whether a man has been determined by an administrative proceeding to be the father of the child.

(2) The information required in subsection (1) may be supplied to the court or the department in the form of a sworn affidavit by a person having personal knowledge of the facts.

(3) If the inquiry under subsection (1) identifies any person as a parent or prospective parent, the court shall require notice of the hearing to be provided to that person.

(4) If the inquiry under subsection (1) fails to identify any person as a parent or prospective parent, the court shall so find and may proceed without further notice.

(5) If the inquiry under subsection (1) identifies a parent or prospective parent, and that person's location is unknown, the court shall direct the petitioner to conduct a diligent



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search for that person before scheduling an adjudicatory hearing regarding the petition for termination of parental rights to the child unless the court finds that the best interest of the child requires proceeding without actual notice to the person whose location is unknown.

(6) The diligent search required by subsection (5) must include, at a minimum, inquiries of all known relatives of the parent or prospective parent, inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent, inquiries of other state and federal agencies likely to have information about the parent or prospective parent, inquiries of appropriate utility and postal providers, a thorough search of at least one electronic database specifically designed for locating persons, a search of the Florida Putative Father Registry, and inquiries of appropriate law enforcement agencies. Pursuant to s. 453 of the Social Security Act, 42 U.S.C. s. 653(c)(4), the department, as the state agency administering Titles IV-B and IV-E of the act, shall be provided access to the federal and state parent locator service for diligent search activities.

(7) Any agency contacted by petitioner with a request for information pursuant to subsection (6) shall release the requested information to the petitioner without the necessity of a subpoena or court order.

(8) If the inquiry and diligent search identifies a prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department. A prospective parent who files a sworn affidavit of



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parenthood while the child is a dependent child but no later than at the time of or before ~~prior to~~ the adjudicatory hearing in the termination of parental rights proceeding for the child shall be considered a parent for all purposes under this section. If the prospective parent does not file a sworn affidavit of parenthood or if the other parent contests the determination of parenthood, the court may, after considering the best interests of the child, order scientific testing to determine the maternity or paternity of the child. The court shall assess the cost of the paternity determination as a cost of litigation. If the court finds the prospective parent to be a parent as a result of the scientific testing, the court shall enter a judgment of maternity or paternity, shall assess the cost of the scientific testing to the parent, and shall enter an amount of child support to be paid by the parent as determined under s. 61.30. If the known parent contests the recognition of the prospective parent as a parent, the prospective parent shall not be recognized as a parent until proceedings to establish maternity or paternity have been concluded. However, the prospective parent shall continue to receive notice of hearings as a participant until proceedings to establish maternity or paternity have been concluded.

(9) If the diligent search under subsection (5) fails to identify and locate a prospective parent, the court shall so find and may proceed without further notice.

Section 19. Paragraph (1) of subsection (1) of section 39.806, Florida Statutes, is amended, and subsections (2) and (3) are republished, to read:

39.806 Grounds for termination of parental rights.—



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(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(1) On three or more occasions the child or another child of the parent or parents has been placed in out-of-home care pursuant to this chapter or the law of any state, territory, or jurisdiction of the United States which is substantially similar to this chapter, and the conditions that led to the child's out-of-home placement were caused by the parent or parents.

(2) Reasonable efforts to preserve and reunify families are not required if a court of competent jurisdiction has determined that any of the events described in paragraphs (1)(b)-(d) or paragraphs (1)(f)-(m) have occurred.

(3) If a petition for termination of parental rights is filed under subsection (1), a separate petition for dependency need not be filed and the department need not offer the parents a case plan having a goal of reunification, but may instead file with the court a case plan having a goal of termination of parental rights to allow continuation of services until the termination is granted or until further orders of the court are issued.

Section 20. Subsection (6) of section 39.811, Florida Statutes, is amended to read:

39.811 Powers of disposition; order of disposition.—

(6) The parental rights of one parent may be severed without severing the parental rights of the other parent only under the following circumstances:

(a) If the child has only one surviving parent;

(b) If the identity of a prospective parent has been established as unknown after sworn testimony;



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(c) If the parent whose rights are being terminated became a parent through a single-parent adoption;

(d) If the protection of the child demands termination of the rights of a single parent; or

(e) If the parent whose rights are being terminated meets any of the criteria specified in s. 39.806(1) (c), (d), (f), (g), (h), (i), (j), (k), (l), (m), or (n) ~~and (f) (m)~~.

Section 21. Paragraph (b) of subsection (4) of section 125.901, Florida Statutes, is amended to read:

125.901 Children's services; independent special district; council; powers, duties, and functions; public records exemption.—

(4)

(b)1.a. Notwithstanding paragraph (a), the governing body of the county shall submit the question of retention or dissolution of a district with voter-approved taxing authority to the electorate in the general election according to the following schedule:

(I) For a district in existence on July 1, 2010, and serving a county with a population of 400,000 or fewer persons as of that date.....2014.

(II) For a district in existence on July 1, 2010, and serving a county with a population of 2 million or more persons as of that date, unless the governing body of the county has previously submitted such question voluntarily to the electorate for a second time since 2005,.....2020.

b. A referendum by the electorate on or after July 1, 2010, creating a new district with taxing authority may specify that the district is not subject to reauthorization or may specify



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the number of years for which the initial authorization shall remain effective. If the referendum does not prescribe terms of reauthorization, the governing body of the county shall submit the question of retention or dissolution of the district to the electorate in the general election 12 years after the initial authorization.

2. The governing body of the district may specify, and submit to the governing body of the county no later than 9 months before the scheduled election, that the district is not subsequently subject to reauthorization or may specify the number of years for which a reauthorization under this paragraph shall remain effective. If the governing body of the district makes such specification and submission, the governing body of the county shall include that information in the question submitted to the electorate. If the governing body of the district does not specify and submit such information, the governing body of the county shall resubmit the question of reauthorization to the electorate every 12 years after the year prescribed in subparagraph 1. The governing body of the district may recommend to the governing body of the county language for the question submitted to the electorate.

3. Nothing in this paragraph limits the authority to dissolve a district as provided under paragraph (a).

4. Nothing in this paragraph precludes the governing body of a district from requesting that the governing body of the county submit the question of retention or dissolution of a district with voter-approved taxing authority to the electorate at a date earlier than the year prescribed in subparagraph 1. If the governing body of the county accepts the request and submits



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the question to the electorate, the governing body satisfies the requirement of that subparagraph.

If any district is dissolved pursuant to this subsection, each county must first obligate itself to assume the debts, liabilities, contracts, and outstanding obligations of the district within the total millage available to the county governing body for all county and municipal purposes as provided for under s. 9, Art. VII of the State Constitution. Any district may also be dissolved pursuant to part VII of chapter 189.

Section 22. Subsection (9) of section 322.051, Florida Statutes, is amended to read:

322.051 Identification cards.—

(9)(a) Notwithstanding any other provision of this section or s. 322.21 to the contrary, the department shall issue or renew a card at no charge to a person who presents evidence satisfactory to the department that he or she is homeless as defined in s. 414.0252(7), to a juvenile offender who is in the custody or under the supervision of the Department of Juvenile Justice and receiving services pursuant to s. 985.461, to an inmate receiving a card issued pursuant to s. 944.605(7), or, if necessary, to an inmate receiving a replacement card if the department determines that he or she has a valid state identification card. If the replacement state identification card is scheduled to expire within 6 months, the department may also issue a temporary permit valid for at least 6 months after the release date. The department's mobile issuing units shall process the identification cards for juvenile offenders and inmates at no charge, as provided by s. 944.605 (7)(a) and (b).



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(b) If the person who presents evidence that he or she is a certified unaccompanied homeless youth as defined in s. 734.067, the back of the card shall exhibit the following: As a certified unaccompanied homeless youth, this individual may consent to diagnosis and treatment and any forensic medical examination authorized pursuant to s. 743.067, F.S.

Section 23. Paragraph (g) of subsection (4) of section 395.3025, Florida Statutes, is amended, and subsection (8) of that section is republished, to read:

395.3025 Patient and personnel records; copies; examination.—

(4) Patient records are confidential and must not be disclosed without the consent of the patient or his or her legal representative, but appropriate disclosure may be made without such consent to:

(g) The Department of Children and Families, ~~or~~ or its agent, or its contracted entity, for the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults.

(8) Patient records at hospitals and ambulatory surgical centers are exempt from disclosure under s. 119.07(1), except as provided by subsections (1)-(5).

Section 24. Subsections (2) and (6) of section 402.40, Florida Statutes, are amended to read:

402.40 Child welfare training and certification.—

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

(a) "Child welfare certification" means a professional credential awarded by a department-approved third-party credentialing entity to individuals demonstrating core



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competency in any child welfare practice area.

(b) "Child welfare services" means any intake, protective investigations, preprotective services, protective services, foster care, shelter and group care, and adoption and related services program, including supportive services and supervision provided to children who are alleged to have been abused, abandoned, or neglected or who are at risk of becoming, are alleged to be, or have been found dependent pursuant to chapter 39.

(c) "Child welfare trainer" means any person providing training for the purposes of child welfare professionals earning certification.

(d)~~(e)~~ "Core competency" means the minimum knowledge, skills, and abilities necessary to carry out work responsibilities.

(e)~~(d)~~ "Person providing child welfare services" means a person who has a responsibility for supervisory, direct care, or support-related work in the provision of child welfare services pursuant to chapter 39.

(f)~~(e)~~ "Preservice curriculum" means the minimum statewide training content based upon the core competencies which is made available to all persons providing child welfare services.

(g)~~(f)~~ "Third-party credentialing entity" means a department-approved nonprofit organization that has met nationally recognized standards for developing and administering professional certification programs.

(6) ADOPTION OF RULES.—The Department of Children and Families shall adopt rules necessary to carry out ~~the provisions of~~ this section, including the requirements for child welfare



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trainers.

Section 25. Section 409.16741, Florida Statutes, is created to read:

409.16741 .- Substance exposed newborns; legislative findings and intent; screening and assessment; case management; training.-

(1) LEGISLATIVE FINDINGS AND INTENT.-

(a) The Legislature finds that children, their families, and child welfare agencies have been affected by multiple substance abuse epidemics over the past several decades, and parental substance abuse is again becoming a growing reason for removing children from their homes and placing them in foster care.

(b) The Legislature also finds that infants are the largest age group of children entering foster care and that parental substance abuse disorders are having a major impact not only on increasing child removals, but also on preventing or delaying reunification of families and increasing termination of parental rights.

(c) The Legislature further finds that two aspects of parental substance abuse affect the child welfare system: prenatal exposure when it is determined that there are immediate safety factors that necessitate the newborn being placed in protective custody; and postnatal use that affects the ability of the parent to safely care for the child.

(d) Therefore, it is the intent of the Legislature that the department will establish and monitor a coordinated approach to working with children and their families affected by substance abuse and dependence.



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(2) SCREENING AND ASSESSMENT.—The department shall develop or adopt one or more initial screening and assessment instruments to identify, determine the needs of, and plan services for substance exposed newborns and their families. In addition to conditions of the infant, conditions or behaviors of the mother or father which may indicate a risk of harm to the child shall be considered during any assessment.

(3) CASE MANAGEMENT.—

(a) The department shall conduct regular multidisciplinary staffings relating to services provided for substance exposed newborns and their families to ensure that all parties possess relevant information and that services are coordinated across systems identified in this chapter. The department or community-based care lead agency, as appropriate, shall coordinate these staffings and include individuals involved in the child's care.

(b) Each region of the department and each community-based care lead agency shall jointly assess local service capacity to meet the specialized service needs of substance exposed newborns and their families and establish a plan to develop the necessary capacity. Each plan shall be developed in consultation with entities and agencies involved in the individuals' care.

(4) TRAINING.—The department and community-based care lead agencies shall ensure that cases in which there is a substance exposed newborn are assigned to child protective investigators and case managers who have specialized training in working with substance exposed newborns and their families. The department and lead agencies shall ensure that child protective investigators and case managers receive this training before accepting a case.



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Section 26. Section 409.16742, Florida Statutes, is created to read:

409.16742 .- Shared family care residential services program for substance exposed newborns.-

(1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds that there is evidence that, with appropriate support and training, some families can remain safely together without court involvement or traumatic separations. Therefore, it is the intent of the Legislature that alternative types of placement options be available which provide both safety for substance exposed newborns and an opportunity for parents recovering from substance abuse disorders to achieve independence while living together in a protective, nurturing family environment.

(2) ESTABLISHMENT OF PILOT PROGRAM.-The department shall establish a shared family care residential services program to serve substance exposed newborns and their families in the Fourth Judicial Circuit through a contract with the designated lead agency established in accordance with s. 409.987 or with a private entity capable of providing residential care that satisfies the requirements of this section. The private entity or lead agency is responsible for all programmatic functions necessary to carry out the intent of this section. As used in this section, the term "shared family care" means out-of-home care in which an entire family in need is temporarily placed in the home of a family who is trained to mentor and support the biological parents as they develop caring skills and supports necessary for independent living.

(3) SERVICES.-The department shall specify services that should be made available to newborns and their families through



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the pilot program.

Section 27. Section 409.992, Florida Statutes, is amended to read:

409.992 Lead agency expenditures.—

(1) The procurement of commodities or contractual services by lead agencies shall be governed by the financial guidelines developed by the department and must comply with applicable state and federal law and follow good business practices. Pursuant to s. 11.45, the Auditor General may provide technical advice in the development of the financial guidelines.

(2) Notwithstanding any other provision of law, a community-based care lead agency may make expenditures for staff cellular telephone allowances, contracts requiring deferred payments and maintenance agreements, security deposits for office leases, related agency professional membership dues other than personal professional membership dues, promotional materials, and grant writing services. Expenditures for food and refreshments, other than those provided to clients in the care of the agency or to foster parents, adoptive parents, and caseworkers during training sessions, are not allowable.

(3) Notwithstanding any other provision of law, a community-based care lead agency administrative employee may not receive a salary, whether base pay or base pay combined with any bonus or incentive payments, in excess of the salary paid to the secretary of the Department of Children and Families from state-appropriated funds, including state-appropriated federal funds. This subsection does not prohibit any party from providing cash that is not from appropriated state funds to a community-based care lead agency administrative employee.



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(4)~~(3)~~ A lead community-based care agency and its subcontractors are exempt from state travel policies as provided in s. 112.061(3)(a) for their travel expenses incurred in order to comply with the requirements of this section.

Section 28. Paragraph (a) of subsection (7) of section 456.057, Florida Statutes, is amended to read:

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

(7)(a) Except as otherwise provided in this section and in s. 440.13(4)(c), such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient. However, such records may be furnished without written authorization under the following circumstances:

1. To any person, firm, or corporation that has procured or furnished such care or treatment with the patient's consent.

2. When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.

3. In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records.

4. For statistical and scientific research, provided the



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information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.

5. To a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. 395.1027 and the professional organization that certifies poison control centers in accordance with federal law.

6. To the Department of Children and Families, its agent, or its contracted entity, for the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults.

Section 29. Section 409.141, Florida Statutes, is repealed.

Section 30. Section 409.1677, Florida Statutes, is repealed.

Section 31. Section 743.067, Florida Statutes, is amended to read:

743.067 Certified unaccompanied homeless youths.—

(1) For purposes of this section, the term an "certified unaccompanied homeless youth" means a minor who is a homeless child or youth, including an unaccompanied youth, as those terms are defined in 42 U.S.C. s. 11434a., who has been certified as a unaccompanied homeless youth by ~~is an individual who is 16 years of age or older and is:~~

(a) A school district homeless liaison;

~~(a) Found by a school district's liaison for homeless children and youths to be an unaccompanied homeless youth eligible for services pursuant to the McKinney-Vento Homeless~~



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~~Assistance Act, 42 U.S.C. ss. 11431-11435; or~~

~~(b) Believed to qualify as an unaccompanied homeless youth, as that term is defined in the McKinney-Vento Homeless Assistance Act, by:~~

~~(b)1. The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director's designee;~~

~~(c)2. The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director's designee; or~~

~~(d) A Continuum of Care Lead Agency, or its designee.~~

~~3. A clinical social worker licensed under chapter 491; or~~

~~4. A circuit court.~~

~~(2)(a) The Office on Homelessness within the Department of Children and Families shall develop a standardized form that must be used by the entities specified in subsection (1) to certify qualifying unaccompanied homeless youth. The form must include the circumstances that qualify the youth; the date the youth was certified; the name, title, and signature of the certifying individual; and a citation to this section. A minor who qualifies as an unaccompanied homeless youth shall be issued a written certificate documenting his or her status by the appropriate individual as provided in subsection (1). The certificate shall be issued on the official letterhead stationery of the person making the determination and shall include the date of the finding, a citation to this section, and the signature of the individual making the finding.~~

~~(b) A certified unaccompanied homeless youth may use the~~



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completed form to apply at no charge for an identification card issued by the Department of Highway Safety and Motor Vehicles pursuant to s. 322.051(9).

(c) A health care provider may accept the written certificate or identification card as proof of the minor's status as a certified ~~an~~ unaccompanied homeless youth and may keep a copy of the certificate or identification card in the youth's medical file.

(3) A certified ~~an~~ unaccompanied homeless youth may:

(a) Petition the circuit court to have the disabilities of nonage removed under s. 743.015. The youth shall qualify as a person not required to prepay costs and fees as provided in s. 57.081. The court shall advance the cause on the calendar.

(b) Notwithstanding s. 394.4625(1), consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397 and any forensic medical examination for the purpose of investigating any felony offense under chapter 784, chapter 787, chapter 794, chapter 800, or chapter 827, for:

1. Himself or herself; or

2. His or her child, if the certified unaccompanied homeless youth is unmarried, is the parent of the child, and has actual custody of the child.

(4) This section does not affect the requirements of s. 390.01114.

Section 32. Paragraph (f) of subsection (1) of section 1009.25, Florida Statutes, is amended to read

1009.25 Fee exemptions.—



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(1) The following students are exempt from the payment of tuition and fees, including lab fees, at a school district that provides workforce education programs, Florida College System institution, or state university:

(f) A student who lacks a fixed, regular, and adequate nighttime residence or whose primary nighttime residence is a public or private shelter designed to provide temporary residence, a public or private transitional living program for individuals intended to be institutionalized, or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This includes a student who, if it were not for the availability of college or university dormitory housing, would be homeless.

Section 33. Subsection (1) of section 39.524, Florida Statutes, is amended to read:

39.524 Safe-harbor placement.—

(1) Except as provided in s. 39.407 or s. 985.801, a dependent child 6 years of age or older who has been found to be a victim of sexual exploitation as defined in s. 39.01 ~~s. 39.01(70)(g)~~ must be assessed for placement in a safe house or safe foster home as provided in s. 409.1678 using the initial screening and assessment instruments provided in s. 409.1754(1). If such placement is determined to be appropriate for the child as a result of this assessment, the child may be placed in a safe house or safe foster home, if one is available. However, the child may be placed in another setting, if the other setting is more appropriate to the child's needs or if a safe house or safe foster home is unavailable, as long as the child's behaviors are managed so as not to endanger other children



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served in that setting.

Section 34. Paragraph (p) of subsection (4) of section 394.495, Florida Statutes, is amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(4) The array of services may include, but is not limited to:

(p) Trauma-informed services for children who have suffered sexual exploitation as defined in s. 39.01 ~~s. 39.01(70)(g)~~.

Section 35. Paragraph (c) of subsection (1) and paragraphs (a) and (b) of subsection (6) of section 409.1678, Florida Statutes, are amended to read:

409.1678 Specialized residential options for children who are victims of sexual exploitation.—

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

(c) "Sexually exploited child" means a child who has suffered sexual exploitation as defined in s. 39.01 ~~s. 39.01(70)(g)~~ and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

(6) LOCATION INFORMATION.—

(a) Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in s. 39.01 ~~s. 39.01(70)(g)~~, which is held by an agency, as defined in s. 119.011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such confidential and exempt information held by an agency before, on, or after the effective date of the exemption.



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(b) Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in s. 39.01 ~~s. 39.01(70)(g)~~, may be provided to an agency, as defined in s. 119.011, as necessary to maintain health and safety standards and to address emergency situations in the safe house, safe foster home, or other residential facility.

Section 36. Subsection (5) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01 ~~s. 39.01(70)(g)~~.

Section 37. Section 409.1679, Florida Statutes, is amended to read:

409.1679 Additional requirements; reimbursement methodology.—

(1) Each program established under s. 409.1676 ~~ss. 409.1676 and 409.1677~~ must meet the following expectations, which must be included in its contracts with the department or lead agency:

(a) No more than 10 percent of the children served may move from one living environment to another, unless the child is returned to family members or is moved, in accordance with the treatment plan, to a less-restrictive setting. Each child must have a comprehensive transitional plan that identifies the child's living arrangement upon leaving the program and specific steps and services that are being provided to prepare for that arrangement. Specific expectations as to the time period



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necessary for the achievement of these permanency goals must be included in the contract.

(b) Each child must receive a full academic year of appropriate educational instruction. No more than 10 percent of the children may be in more than one academic setting in an academic year, unless the child is being moved, in accordance with an educational plan, to a less-restrictive setting. Each child must demonstrate academic progress and must be performing at grade level or at a level commensurate with a valid academic assessment.

(c) Siblings must be kept together in the same living environment 100 percent of the time, unless that is determined by the provider not to be in the children's best interest. When siblings are separated in placement, the decision must be reviewed and approved by the court within 30 days.

(d) The program must experience a caregiver turnover rate and an incidence of child runaway episodes which are at least 50 percent below the rates experienced in the rest of the state.

(e) In addition to providing a comprehensive assessment, the program must provide, 100 percent of the time, any or all of the following services that are indicated through the assessment: residential care; transportation; behavioral health services; recreational activities; clothing, supplies, and miscellaneous expenses associated with caring for these children; necessary arrangements for or provision of educational services; and necessary and appropriate health and dental care.

(f) The children who are served in this program must be satisfied with the services and living environment.

(g) The caregivers must be satisfied with the program.



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(2) ~~Notwithstanding the provisions of s. 409.141,~~ The Department of Children and Families shall fairly and reasonably reimburse the programs established under s. 409.1676 ~~ss.~~ ~~409.1676 and 409.1677~~ based on a prospective per diem rate, which must be specified annually in the General Appropriations Act. Funding for these programs shall be made available from resources appropriated and identified in the General Appropriations Act.

Section 38. Subsection (11) of section 1002.3305, Florida Statutes, is amended to read:

1002.3305 College-Preparatory Boarding Academy Pilot Program for at-risk students.—

(11) STUDENT HOUSING.—~~Notwithstanding s. 409.176 ss.~~ ~~409.1677(3)(d) and 409.176~~ or any other provision of law, an operator may house and educate dependent, at-risk youth in its residential school for the purpose of facilitating the mission of the program and encouraging innovative practices.

Section 39. For the purpose of incorporating the amendment made by this act to section 456.057, Florida Statutes, in a reference thereto, subsection (2) of section 483.181, Florida Statutes, is reenacted to read:

483.181 Acceptance, collection, identification, and examination of specimens.—

(2) The results of a test must be reported directly to the licensed practitioner or other authorized person who requested it, and appropriate disclosure may be made by the clinical laboratory without a patient's consent to other health care practitioners and providers involved in the care or treatment of the patient as specified in s. 456.057(7)(a). The report must



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include the name and address of the clinical laboratory in which the test was actually performed, unless the test was performed in a hospital laboratory and the report becomes an integral part of the hospital record.

Section 40. Except as otherwise expressly provided in this act, 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 to child welfare; amending s. 39.01, F.S.; defining the term "legal father" and redefining the term "parent"; amending s. 39.201, F.S.; providing that central abuse hotline information may be used for employment screening of residential group home caregivers; amending s. 39.202, F.S.; providing that confidential records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, may be accessed for employment screening of residential group home caregivers; changing the time period for the release of records to certain individuals; amending s. 39.301, F.S.; requiring a safety plan to be issued for a perpetrator of domestic violence only if the perpetrator can be located; specifying what constitutes reasonable



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2013 efforts; requiring that a child new to a family under
2014 investigation be added to the investigation and
2015 assessed for safety; amending s. 39.302, F.S.;
2016 conforming a cross-reference; providing that central
2017 abuse hotline information may be used for certain
2018 employment screenings; amending s. 39.402, F.S.;
2019 requiring a court to inquire as to the identity and
2020 location of a child's legal father at the shelter
2021 hearing; specifying what types of information fall
2022 within the scope of such inquiry; amending s. 39.503,
2023 F.S.; requiring a court to conduct under oath the
2024 inquiry to determine the identity or location of an
2025 unknown parent; requiring a court to seek additional
2026 information relating to a legal father's identity in
2027 such inquiry; requiring the diligent search to
2028 determine a parent's or prospective parent's location
2029 to include a search of the Florida Putative Father
2030 Registry; authorizing the court to order scientific
2031 testing to determine parentage if certain conditions
2032 exist; amending s. 39.504, F.S.; requiring the same
2033 judge to hear a pending dependency proceeding and an
2034 injunction proceeding; providing that the court may
2035 enter an injunction based on specified evidence;
2036 amending s. 39.507, F.S.; requiring a court to
2037 consider maltreatment allegations against a parent in
2038 an evidentiary hearing relating to a dependency
2039 petition; amending s. 39.5085, F.S.; revising
2040 eligibility guidelines for the Relative Caregiver
2041 Program with respect to relative and nonrelative



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2042 caregivers; amending s. 39.521, F.S.; providing new
2043 time guidelines for filing with the court and
2044 providing copies of case plans and family functioning
2045 assessments; providing for assessment and program
2046 compliance for a parent who caused harm to a child by
2047 exposing the child to a controlled substance;
2048 providing in-home safety plan requirements; providing
2049 requirements for family functioning assessments;
2050 providing supervision requirements after
2051 reunification; amending s. 39.522, F.S.; providing
2052 conditions for returning a child home with an in-home
2053 safety plan; amending s. 39.523, F.S.; providing
2054 legislative findings and intent; requiring children
2055 placed in out-of-home care to be assessed to determine
2056 the most appropriate placement; requiring the
2057 placement assessments to be documented in the Florida
2058 Safe Families Network; requiring a court to review and
2059 approve placements; requiring the Department of
2060 Children and Families to post specified information
2061 relating to assessment and placement on its website
2062 and update that information annually on January 1 and
2063 July 1; authorizing the department to adopt rules;
2064 creating s. 39.6001, F.S.; requiring the Department of
2065 Children and Families, in partnership with the
2066 Department of Health, the Agency for Health Care
2067 Administration, other state agencies, and community
2068 partners, to develop a strategy for certain
2069 coordinated services; providing for creation of a safe
2070 care plan that addresses the health and substance



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2071 abuse disorder treatment needs of a newborn and
2072 affected family or caregiver and provides for the
2073 monitoring of services provided; amending s. 39.6011,
2074 F.S.; providing requirements for confidential
2075 information in a case planning conference; providing
2076 restrictions; amending s. 39.6012, F.S.; providing for
2077 assessment and program compliance for a parent who
2078 caused harm to a child by exposing the child to a
2079 controlled substance; amending s. 39.6221, F.S.;
2080 providing that relocation requirements for parents in
2081 dissolution proceedings do not apply to permanent
2082 guardianships; amending s. 39.701, F.S.; providing
2083 safety assessment requirements for children coming
2084 into a home under court jurisdiction; granting
2085 rulemaking authority; amending s. 39.801, F.S.;
2086 providing an exception to the notice requirement
2087 regarding the advisory hearing for a petition to
2088 terminate parental rights; amending s. 39.803, F.S.;
2089 requiring a court to conduct under oath the inquiry to
2090 determine the identity or location of an unknown
2091 parent after the filing of a termination of parental
2092 rights petition; requiring a court to seek additional
2093 information relating to a legal father's identity in
2094 such inquiry; revising minimum requirements for the
2095 diligent search to determine the location of a parent
2096 or prospective parent; authorizing the court to order
2097 scientific testing to determine parentage if certain
2098 conditions exist; amending s. 39.806, F.S.; revising
2099 circumstances under which grounds for the termination



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2100 of parental rights may be established; amending s.
2101 39.811, F.S.; revising circumstances under which the
2102 rights of one parent may be terminated without
2103 terminating the rights of the other parent; amending
2104 s. 125.901, F.S.; creating an exception to the
2105 requirement that, for an independent special district
2106 in existence on a certain date and serving a
2107 population of a specified size, the governing body of
2108 the county submit the question of the district's
2109 retention or dissolution to the electorate in a
2110 specified general election; amending s. 322.051, F.S.,
2111 providing a requirement for an identification card for
2112 certified unaccompanied homeless youth; amending s.
2113 395.3025, F.S.; revising requirements for access to
2114 patient records; amending s. 402.40, F.S.; defining
2115 the term "child welfare trainer"; providing rulemaking
2116 authority; creating s. 409.16741, F.S.; providing
2117 legislative findings and intent; requiring the
2118 Department of Children and Families to develop or
2119 adopt one or more initial screening assessment
2120 instruments to identify and determine the needs of,
2121 and plan services for, substance exposed newborns and
2122 their families; requiring the department to conduct
2123 certain staffings relating to services for substance
2124 exposed newborns and their families; specifying that
2125 certain local service capacity be assessed; providing
2126 that child protective investigators receive
2127 specialized training in working with substance exposed
2128 newborns and their families before they accept such



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2129 cases; creating s. 409.16742, F.S.; providing
2130 legislative findings and intent; establishing a shared
2131 family care residential services pilot program for
2132 substance exposed newborns; amending s. 409.992, F.S.;
2133 limiting compensation from state-appropriated funds
2134 for administrative employees of community-based care
2135 agencies; amending s. 456.057, F.S.; revising
2136 requirements for access to patient records; repealing
2137 s. 409.141, F.S., relating to equitable reimbursement
2138 methodology; repealing s. 409.1677, F.S., relating to
2139 model comprehensive residential services programs;
2140 amending s. 743.067, F.S.; defining the term
2141 "certified unaccompanied homeless youth"; requiring
2142 the Office on Homelessness within the Department of
2143 Children and Families to develop a standardized form
2144 to be used in the certification process; providing
2145 information that must be included in the form;
2146 authorizing a certified unaccompanied homeless youth
2147 to apply at no charge to the Department of Highway
2148 Safety and Motor Vehicles for an identification card;
2149 conforming terminology; amending s. 1009.25, F.S.;
2150 revising fee exemption requirements related to
2151 homeless students; amending ss. 39.524, 394.495,
2152 409.1678, and 960.065, F.S.; conforming cross-
2153 references; amending ss. 409.1679 and 1002.3305, F.S.;
2154 conforming provisions to changes made by the act;
2155 reenacting s. 483.181(2), F.S., relating to
2156 acceptance, collection, identification, and
2157 examination of specimens, to incorporate the amendment



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2158 made to s. 456.057, F.S., in a reference thereto;
2159 providing an effective date.

By the Committee on Children, Families, and Elder Affairs; and
Senators Garcia and Campbell

586-02390-17

20171044c1

1 A bill to be entitled
2 An act relating to child welfare; amending s. 39.01,
3 F.S.; defining the term "legal father" and redefining
4 the term "parent"; amending s. 39.201, F.S.; providing
5 that central abuse hotline information may be used for
6 employment screening of residential group home
7 caregivers; amending s. 39.301, F.S.; requiring a
8 safety plan to be issued for a perpetrator of domestic
9 violence only if the perpetrator can be located;
10 specifying what constitutes reasonable efforts;
11 requiring that a child new to a family under
12 investigation be added to the investigation and
13 assessed for safety; amending s. 39.302, F.S.;
14 conforming a cross-reference; providing that central
15 abuse hotline information may be used for certain
16 employment screenings; amending s. 39.402, F.S.;
17 requiring a court to inquire as to the identity and
18 location of a child's legal father at the shelter
19 hearing; specifying what types of information fall
20 within the scope of such inquiry; amending s. 39.503,
21 F.S.; requiring a court to conduct under oath the
22 inquiry to determine the identity or location of an
23 unknown parent; requiring a court to seek additional
24 information relating to a legal father's identity in
25 such inquiry; requiring the diligent search to
26 determine a parent's or prospective parent's location
27 to include a search of the Florida Putative Father
28 Registry; authorizing the court to order scientific
29 testing to determine parentage if certain conditions

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

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30 exist; amending s. 39.504, F.S.; requiring the same
31 judge to hear a pending dependency proceeding and an
32 injunction proceeding; providing that the court may
33 enter an injunction based on specified evidence;
34 amending s. 39.507, F.S.; requiring a court to
35 consider maltreatment allegations against a parent in
36 an evidentiary hearing relating to a dependency
37 petition; amending s. 39.5085, F.S.; revising
38 eligibility guidelines for the Relative Caregiver
39 Program with respect to relative and nonrelative
40 caregivers; amending s. 39.521, F.S.; providing new
41 time guidelines for filing with the court and
42 providing copies of case plans and family functioning
43 assessments; providing for assessment and program
44 compliance for a parent who caused harm to a child by
45 exposing the child to a controlled substance;
46 providing in-home safety plan requirements; providing
47 requirements for family functioning assessments;
48 providing supervision requirements after
49 reunification; amending s. 39.522, F.S.; providing
50 conditions for returning a child home with an in-home
51 safety plan; amending s. 39.523, F.S.; providing
52 legislative intent; requiring children placed in out-
53 of-home care to be assessed to determine the most
54 appropriate placement; requiring the placement
55 assessments to be documented in the Florida Safe
56 Families Network; requiring a court to review and
57 approve placements; requiring the Department of
58 Children and Families to report annually to the

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

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59 Governor and the Legislature on the number of children
 60 placed with relatives and the number placed in out-of-
 61 home care; authorizing the department to adopt rules;
 62 amending s. 39.6011, F.S.; providing requirements for
 63 confidential information in a case planning
 64 conference; providing restrictions; amending s.
 65 39.6012, F.S.; providing for assessment and program
 66 compliance for a parent who caused harm to a child by
 67 exposing the child to a controlled substance; amending
 68 s. 39.6221, F.S.; providing that relocation
 69 requirements for parents in dissolution proceedings do
 70 not apply to permanent guardianships; amending s.
 71 39.701, F.S.; providing safety assessment requirements
 72 for children coming into a home under court
 73 jurisdiction; granting rulemaking authority; amending
 74 s. 39.801, F.S.; providing an exception to the notice
 75 requirement regarding the advisory hearing for a
 76 petition to terminate parental rights; amending s.
 77 39.803, F.S.; requiring a court to conduct under oath
 78 the inquiry to determine the identity or location of
 79 an unknown parent after the filing of a termination of
 80 parental rights petition; requiring a court to seek
 81 additional information relating to a legal father's
 82 identity in such inquiry; revising minimum
 83 requirements for the diligent search to determine the
 84 location of a parent or prospective parent;
 85 authorizing the court to order scientific testing to
 86 determine parentage if certain conditions exist;
 87 amending s. 39.806, F.S.; revising circumstances under

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88 which grounds for the termination of parental rights
 89 may be established; amending s. 39.811, F.S.; revising
 90 circumstances under which the rights of one parent may
 91 be terminated without terminating the rights of the
 92 other parent; amending s. 125.901, F.S.; creating an
 93 exception to the requirement that, for an independent
 94 special district in existence on a certain date and
 95 serving a population of a specified size, the
 96 governing body of the county submit the question of
 97 the district's retention or dissolution to the
 98 electorate in a specified general election; amending
 99 s. 322.051, F.S., providing a requirement for an
 100 identification card for certified unaccompanied or
 101 homeless youth; amending s. 395.3025, F.S.; revising
 102 requirements for access to patient records; amending
 103 s. 402.40, F.S.; defining the term "child welfare
 104 trainer"; providing rulemaking authority; amending s.
 105 409.992, F.S.; limiting compensation from state-
 106 appropriated funds for administrative employees of
 107 community-based care agencies; amending s. 456.057,
 108 F.S.; revising requirements for access to patient
 109 records; repealing s. 409.141, F.S., relating to
 110 equitable reimbursement methodology; repealing s.
 111 409.1677, F.S., relating to model comprehensive
 112 residential services programs; amending s. 743.067,
 113 F.S.; defining the term "certified unaccompanied
 114 homeless youth"; requiring the Office on Homelessness
 115 within the Department of Children and Families to
 116 develop a standardized form to be used in the

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117 certification process; providing information that must
 118 be included in the form; authorizing a certified
 119 unaccompanied homeless youth to apply at no charge to
 120 the Department of Highway Safety and Motor Vehicles
 121 for an identification card; conforming terminology;
 122 amending s. 1009.25, F.S.; revising fee exemption
 123 requirements related to homeless students; amending
 124 ss. 39.524, 394.495, 409.1678, and 960.065, F.S.;
 125 conforming cross-references; amending ss. 409.1679 and
 126 1002.3305, F.S.; conforming provisions to changes made
 127 by the act; reenacting s. 483.181(2), F.S., relating
 128 to acceptance, collection, identification, and
 129 examination of specimens, to incorporate the amendment
 130 made to s. 456.057, F.S., in a reference thereto;
 131 providing an effective date.

132
 133 Be It Enacted by the Legislature of the State of Florida:

134
 135 Section 1. Present subsections (35) through (80) of section
 136 39.01, Florida Statutes, are redesignated as subsections (36)
 137 through (81), respectively, a new subsection (35) is added to
 138 that section, and subsections (10) and (32) and present
 139 subsection (49) of that section are amended, to read:

140 39.01 Definitions.—When used in this chapter, unless the
 141 context otherwise requires:

142 (10) "Caregiver" means the parent, legal custodian,
 143 permanent guardian, adult household member, or other person
 144 responsible for a child's welfare as defined in subsection (48)
 145 ~~(47)~~.

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146 (32) "Institutional child abuse or neglect" means
 147 situations of known or suspected child abuse or neglect in which
 148 the person allegedly perpetrating the child abuse or neglect is
 149 an employee of a private school, public or private day care
 150 center, residential home, institution, facility, or agency or
 151 any other person at such institution responsible for the child's
 152 care as defined in subsection (48) ~~(47)~~.

153 (35) "Legal father" means a man married to the mother at
 154 the time of conception or birth of their child, unless paternity
 155 has been otherwise determined by a court of competent
 156 jurisdiction. If no man was married to the mother at the time of
 157 birth or conception of the child, the term "legal father" means
 158 a man named on the birth certificate of the child pursuant to s.
 159 382.013(2), a man determined by a court order to be the father
 160 of the child, or a man determined by an administrative
 161 proceeding to be the father of the child.

162 (50) ~~(49)~~ "Parent" means a woman who gives birth to a child
 163 and a man whose consent to the adoption of the child would be
 164 required under s. 63.062(1). "Parent" also means a man married
 165 to the mother at the time of conception or birth of their child,
 166 unless paternity has been otherwise determined by a court of
 167 competent jurisdiction. If no man was married to the mother at
 168 the time of birth or conception of the child, the term "legal
 169 father" means a man named on the birth certificate of the child
 170 pursuant to s. 382.013(2), a man determined by court order to be
 171 the father of the child, or a man determined by an
 172 administrative proceeding to be the father of the child. If a
 173 child has been legally adopted, the term "parent" means the
 174 adoptive mother or father of the child. For purposes of this

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chapter only, when the phrase "parent or legal custodian" is used, it refers to rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless:

(a) The parental status falls within the terms of s.

39.503(1) or s. 63.062(1); or

(b) Parental status is applied for the purpose of determining whether the child has been abandoned.

Section 2. Subsection (6) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h) or s. 402.302(15). Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

Pursuant to s. 39.202(2)(q), the information in the central abuse hotline may also be used by the Department of Education for purposes of educator certification discipline and review.

Additionally, in accordance with s. 409.145(2)(e), the information in the central abuse hotline may be used for employment screening for caregivers at residential group homes.

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Section 3. Paragraph (a) of subsection (9) of section 39.301, Florida Statutes, is amended, and subsection (23) is added to that section, to read:

39.301 Initiation of protective investigations.—

(9) (a) For each report received from the central abuse hotline and accepted for investigation, the department or the sheriff providing child protective investigative services under s. 39.3065, shall perform the following child protective investigation activities to determine child safety:

1. Conduct a review of all relevant, available information specific to the child and family and alleged maltreatment; family child welfare history; local, state, and federal criminal records checks; and requests for law enforcement assistance provided by the abuse hotline. Based on a review of available information, including the allegations in the current report, a determination shall be made as to whether immediate consultation should occur with law enforcement, the child protection team, a domestic violence shelter or advocate, or a substance abuse or mental health professional. Such consultations should include discussion as to whether a joint response is necessary and feasible. A determination shall be made as to whether the person making the report should be contacted before the face-to-face interviews with the child and family members.

2. Conduct face-to-face interviews with the child; other siblings, if any; and the parents, legal custodians, or caregivers.

3. Assess the child's residence, including a determination of the composition of the family and household, including the name, address, date of birth, social security number, sex, and

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233 race of each child named in the report; any siblings or other
 234 children in the same household or in the care of the same
 235 adults; the parents, legal custodians, or caregivers; and any
 236 other adults in the same household.

237 4. Determine whether there is any indication that any child
 238 in the family or household has been abused, abandoned, or
 239 neglected; the nature and extent of present or prior injuries,
 240 abuse, or neglect, and any evidence thereof; and a determination
 241 as to the person or persons apparently responsible for the
 242 abuse, abandonment, or neglect, including the name, address,
 243 date of birth, social security number, sex, and race of each
 244 such person.

245 5. Complete assessment of immediate child safety for each
 246 child based on available records, interviews, and observations
 247 with all persons named in subparagraph 2. and appropriate
 248 collateral contacts, which may include other professionals. The
 249 department's child protection investigators are hereby
 250 designated a criminal justice agency for the purpose of
 251 accessing criminal justice information to be used for enforcing
 252 this state's laws concerning the crimes of child abuse,
 253 abandonment, and neglect. This information shall be used solely
 254 for purposes supporting the detection, apprehension,
 255 prosecution, pretrial release, posttrial release, or
 256 rehabilitation of criminal offenders or persons accused of the
 257 crimes of child abuse, abandonment, or neglect and may not be
 258 further disseminated or used for any other purpose.

259 6. Document the present and impending dangers to each child
 260 based on the identification of inadequate protective capacity
 261 through utilization of a standardized safety assessment

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262 instrument. If present or impending danger is identified, the
 263 child protective investigator must implement a safety plan or
 264 take the child into custody. If present danger is identified and
 265 the child is not removed, the child protective investigator
 266 shall create and implement a safety plan before leaving the home
 267 or the location where there is present danger. If impending
 268 danger is identified, the child protective investigator shall
 269 create and implement a safety plan as soon as necessary to
 270 protect the safety of the child. The child protective
 271 investigator may modify the safety plan if he or she identifies
 272 additional impending danger.

273 a. If the child protective investigator implements a safety
 274 plan, the plan must be specific, sufficient, feasible, and
 275 sustainable in response to the realities of the present or
 276 impending danger. A safety plan may be an in-home plan or an
 277 out-of-home plan, or a combination of both. A safety plan may
 278 include tasks or responsibilities for a parent, caregiver, or
 279 legal custodian. However, a safety plan may not rely on
 280 promissory commitments by the parent, caregiver, or legal
 281 custodian who is currently not able to protect the child or on
 282 services that are not available or will not result in the safety
 283 of the child. A safety plan may not be implemented if for any
 284 reason the parents, guardian, or legal custodian lacks the
 285 capacity or ability to comply with the plan. If the department
 286 is not able to develop a plan that is specific, sufficient,
 287 feasible, and sustainable, the department shall file a shelter
 288 petition. A child protective investigator shall implement
 289 separate safety plans for the perpetrator of domestic violence,
 290 if the investigator, using reasonable efforts, is able to locate

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291 the perpetrator to implement a safety plan, and for the parent
 292 who is a victim of domestic violence as defined in s. 741.28.
 293 Reasonable efforts to locate a perpetrator include, but are not
 294 limited to, a diligent search pursuant to the same requirements
 295 as in s. 39.503. If the perpetrator of domestic violence is not
 296 the parent, guardian, or legal custodian of any child in the
 297 home and if the department does not intend to file a shelter
 298 petition or dependency petition that will assert allegations
 299 against the perpetrator as a parent of a child in the home the
 300 child, the child protective investigator shall seek issuance of
 301 an injunction authorized by s. 39.504 to implement a safety plan
 302 for the perpetrator and impose any other conditions to protect
 303 the child. The safety plan for the parent who is a victim of
 304 domestic violence may not be shared with the perpetrator. If any
 305 party to a safety plan fails to comply with the safety plan
 306 resulting in the child being unsafe, the department shall file a
 307 shelter petition.

308 b. The child protective investigator shall collaborate with
 309 the community-based care lead agency in the development of the
 310 safety plan as necessary to ensure that the safety plan is
 311 specific, sufficient, feasible, and sustainable. The child
 312 protective investigator shall identify services necessary for
 313 the successful implementation of the safety plan. The child
 314 protective investigator and the community-based care lead agency
 315 shall mobilize service resources to assist all parties in
 316 complying with the safety plan. The community-based care lead
 317 agency shall prioritize safety plan services to families who
 318 have multiple risk factors, including, but not limited to, two
 319 or more of the following:

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320 (I) The parent or legal custodian is of young age;
 321 (II) The parent or legal custodian, or an adult currently
 322 living in or frequently visiting the home, has a history of
 323 substance abuse, mental illness, or domestic violence;
 324 (III) The parent or legal custodian, or an adult currently
 325 living in or frequently visiting the home, has been previously
 326 found to have physically or sexually abused a child;
 327 (IV) The parent or legal custodian or an adult currently
 328 living in or frequently visiting the home has been the subject
 329 of multiple allegations by reputable reports of abuse or
 330 neglect;
 331 (V) The child is physically or developmentally disabled; or
 332 (VI) The child is 3 years of age or younger.
 333 c. The child protective investigator shall monitor the
 334 implementation of the plan to ensure the child's safety until
 335 the case is transferred to the lead agency at which time the
 336 lead agency shall monitor the implementation.
 337 (23) If, at any time during a child protective
 338 investigation, a child is born into a family under investigation
 339 or a child moves into the home under investigation, the child
 340 protective investigator shall add the child to the investigation
 341 and assess the child's safety pursuant to subsection (7) and
 342 paragraph (9)(a).

343 Section 4. Subsections (1) and (7) of section 39.302,
 344 Florida Statutes, are amended to read:

345 39.302 Protective investigations of institutional child
 346 abuse, abandonment, or neglect.—

347 (1) The department shall conduct a child protective
 348 investigation of each report of institutional child abuse,

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349 abandonment, or neglect. Upon receipt of a report that alleges
 350 that an employee or agent of the department, or any other entity
 351 or person covered by s. 39.01(32) or (48) ~~s. 39.01(32) or (47)~~,
 352 acting in an official capacity, has committed an act of child
 353 abuse, abandonment, or neglect, the department shall initiate a
 354 child protective investigation within the timeframe established
 355 under s. 39.201(5) and notify the appropriate state attorney,
 356 law enforcement agency, and licensing agency, which shall
 357 immediately conduct a joint investigation, unless independent
 358 investigations are more feasible. When conducting investigations
 359 or having face-to-face interviews with the child, investigation
 360 visits shall be unannounced unless it is determined by the
 361 department or its agent that unannounced visits threaten the
 362 safety of the child. If a facility is exempt from licensing, the
 363 department shall inform the owner or operator of the facility of
 364 the report. Each agency conducting a joint investigation is
 365 entitled to full access to the information gathered by the
 366 department in the course of the investigation. A protective
 367 investigation must include an interview with the child's parent
 368 or legal guardian. The department shall make a full written
 369 report to the state attorney within 3 working days after making
 370 the oral report. A criminal investigation shall be coordinated,
 371 whenever possible, with the child protective investigation of
 372 the department. Any interested person who has information
 373 regarding the offenses described in this subsection may forward
 374 a statement to the state attorney as to whether prosecution is
 375 warranted and appropriate. Within 15 days after the completion
 376 of the investigation, the state attorney shall report the
 377 findings to the department and shall include in the report a

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378 determination of whether or not prosecution is justified and
 379 appropriate in view of the circumstances of the specific case.
 380 (7) When an investigation of institutional abuse, neglect,
 381 or abandonment is closed and a person is not identified as a
 382 caregiver responsible for the abuse, neglect, or abandonment
 383 alleged in the report, the fact that the person is named in some
 384 capacity in the report may not be used in any way to adversely
 385 affect the interests of that person. This prohibition applies to
 386 any use of the information in employment screening, licensing,
 387 child placement, adoption, or any other decisions by a private
 388 adoption agency or a state agency or its contracted providers.
 389 (a) However, if such a person is a licensee of the
 390 department and is named in any capacity in three or more reports
 391 within a 5-year period, the department may review those reports
 392 and determine whether the information contained in the reports
 393 is relevant for purposes of determining whether the person's
 394 license should be renewed or revoked. If the information is
 395 relevant to the decision to renew or revoke the license, the
 396 department may rely on the information contained in the report
 397 in making that decision.
 398 (b) Likewise, if a person is employed as a caregiver in a
 399 residential group home licensed pursuant to s. 409.175 and is
 400 named in any capacity in three or more reports within a 5-year
 401 period, all reports may be reviewed for the purposes of the
 402 employment screening required pursuant to s. 409.145(2)(e).
 403 Section 5. Paragraph (c) of subsection (8) of section
 404 39.402, Florida Statutes, is amended to read:
 405 39.402 Placement in a shelter.-
 406 (8)

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(c) At the shelter hearing, the court shall:

1. Appoint a guardian ad litem to represent the best interest of the child, unless the court finds that such representation is unnecessary;

2. Inform the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013; ~~and~~

3. Give the parents or legal custodians an opportunity to be heard and to present evidence; and

4. Inquire of those present at the shelter hearing as to the identity and location of the legal father. In determining who the legal father of the child may be, the court shall inquire under oath of those present at the shelter hearing whether they have any of the following information:

a. Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

b. Whether the mother was cohabiting with a male at the probable time of conception of the child.

c. Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

d. Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

e. Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the

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time of or since conception of the child or in which the child has resided or resides.

f. Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

g. Whether a man has been determined by a court order to be the father of the child.

h. Whether a man has been determined by an administrative proceeding to be the father of the child.

Section 6. Subsections (1), (6), and (8) of section 39.503, Florida Statutes, are amended, subsection (9) is added to that section, and subsection (7) of that section is republished, to read:

39.503 Identity or location of parent unknown; special procedures.—

(1) If the identity or location of a parent is unknown and a petition for dependency or shelter is filed, the court shall conduct under oath the following inquiry of the parent or legal custodian who is available, or, if no parent or legal custodian is available, of any relative or custodian of the child who is present at the hearing and likely to have any of the following information:

(a) Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

(b) Whether the mother was cohabiting with a male at the probable time of conception of the child.

(c) Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

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(d) Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

(e) Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.

(f) Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

(g) Whether a man has been determined by a court order to be the father of the child.

(h) Whether a man has been determined by an administrative proceeding to be the father of the child.

(6) The diligent search required by subsection (5) must include, at a minimum, inquiries of all relatives of the parent or prospective parent made known to the petitioner, inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent, inquiries of other state and federal agencies likely to have information about the parent or prospective parent, inquiries of appropriate utility and postal providers, a thorough search of at least one electronic database specifically designed for locating persons, a search of the Florida Putative Father Registry, and inquiries of appropriate law enforcement agencies. Pursuant to s. 453 of the Social Security Act, 42 U.S.C. s. 653(c)(4), the department, as the state agency administering Titles IV-B and IV-E of the act, shall be provided access to the federal and state parent locator service for diligent search activities.

(7) Any agency contacted by a petitioner with a request for

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information pursuant to subsection (6) shall release the requested information to the petitioner without the necessity of a subpoena or court order.

(8) If the inquiry and diligent search identifies a prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department. A prospective parent who files a sworn affidavit of parenthood while the child is a dependent child but no later than at the time of or ~~before~~ prior to the adjudicatory hearing in any termination of parental rights proceeding for the child shall be considered a parent for all purposes under this section unless the other parent contests the determination of parenthood. If the prospective parent does not file a sworn affidavit of parenthood or if the other parent contests the determination of parenthood, the court may, after considering the best interest of the child, order scientific testing to determine the maternity or paternity of the child. The court shall assess the cost of the maternity or paternity determination as a cost of litigation. If the court finds the prospective parent to be a parent as a result of the scientific testing, the court shall enter a judgment of maternity or paternity, shall assess the cost of the scientific testing to the parent, and shall enter an amount of child support to be paid by the parent as determined under s. 61.30. If the known parent contests the recognition of the prospective parent as a parent, the prospective parent shall not be recognized as a parent until proceedings to determine maternity or paternity under chapter 742 have been concluded. However, the prospective

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parent shall continue to receive notice of hearings as a participant ~~until pending results of the chapter 742 proceedings to determine maternity or paternity have been concluded.~~

(9) If the diligent search under subsection (5) fails to identify and locate a prospective parent, the court shall so find and may proceed without further notice.

Section 7. Section 39.504, Florida Statutes, is amended to read:

39.504 Injunction ~~pending disposition of petition;~~ penalty.—

(1) At any time after a protective investigation has been initiated pursuant to part III of this chapter, the court, upon the request of the department, a law enforcement officer, the state attorney, or other responsible person, or upon its own motion, may, if there is reasonable cause, issue an injunction to prevent any act of child abuse. Reasonable cause for the issuance of an injunction exists if there is evidence of child abuse or if there is a reasonable likelihood of such abuse occurring based upon a recent overt act or failure to act. If there is a pending dependency proceeding regarding the child whom the injunction is sought to protect, the judge hearing the dependency proceeding must also hear the injunction proceeding regarding the child.

(2) The petitioner seeking the injunction shall file a verified petition, or a petition along with an affidavit, setting forth the specific actions by the alleged offender from which the child must be protected and all remedies sought. Upon filing the petition, the court shall set a hearing to be held at the earliest possible time. Pending the hearing, the court may

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issue a temporary ex parte injunction, with verified pleadings or affidavits as evidence. The temporary ex parte injunction pending a hearing is effective for up to 15 days and the hearing must be held within that period unless continued for good cause shown, which may include obtaining service of process, in which case the temporary ex parte injunction shall be extended for the continuance period. The hearing may be held sooner if the alleged offender has received reasonable notice.

(3) Before the hearing, the alleged offender must be personally served with a copy of the petition, all other pleadings related to the petition, a notice of hearing, and, if one has been entered, the temporary injunction. If the petitioner is unable to locate the alleged offender for service after a diligent search pursuant to the same requirements as in s. 39.503 and the filing of an affidavit of diligent search, the court may enter the injunction based on the sworn petition and any affidavits. At the hearing, the court may base its determination on a sworn petition, testimony, or an affidavit and may hear all relevant and material evidence, including oral and written reports, to the extent of its probative value even though it would not be competent evidence at an adjudicatory hearing. Following the hearing, the court may enter a final injunction. The court may grant a continuance of the hearing at any time for good cause shown by any party. If a temporary injunction has been entered, it shall be continued during the continuance.

(4) If an injunction is issued under this section, the primary purpose of the injunction must be to protect and promote the best interests of the child, taking the preservation of the

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child's immediate family into consideration.

(a) The injunction applies to the alleged or actual offender in a case of child abuse or acts of domestic violence. The conditions of the injunction shall be determined by the court, which may include ordering the alleged or actual offender to:

1. Refrain from further abuse or acts of domestic violence.
2. Participate in a specialized treatment program.
3. Limit contact or communication with the child victim, other children in the home, or any other child.
4. Refrain from contacting the child at home, school, work, or wherever the child may be found.
5. Have limited or supervised visitation with the child.
6. Vacate the home in which the child resides.
7. Comply with the terms of a safety plan implemented in the injunction pursuant to s. 39.301.

(b) Upon proper pleading, the court may award the following relief in a temporary ex parte or final injunction:

1. Exclusive use and possession of the dwelling to the caregiver or exclusion of the alleged or actual offender from the residence of the caregiver.
2. Temporary support for the child or other family members.
3. The costs of medical, psychiatric, and psychological treatment for the child incurred due to the abuse, and similar costs for other family members.

This paragraph does not preclude an adult victim of domestic violence from seeking protection for himself or herself under s. 741.30.

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(c) The terms of the final injunction shall remain in effect until modified or dissolved by the court. The petitioner, respondent, or caregiver may move at any time to modify or dissolve the injunction. Notice of hearing on the motion to modify or dissolve the injunction must be provided to all parties, including the department. The injunction is valid and enforceable in all counties in the state.

(5) Service of process on the respondent shall be carried out pursuant to s. 741.30. The department shall deliver a copy of any injunction issued pursuant to this section to the protected party or to a parent, caregiver, or individual acting in the place of a parent who is not the respondent. Law enforcement officers may exercise their arrest powers as provided in s. 901.15(6) to enforce the terms of the injunction.

(6) Any person who fails to comply with an injunction issued pursuant to this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) The person against whom an injunction is entered under this section does not automatically become a party to a subsequent dependency action concerning the same child.

Section 8. Paragraph (b) of subsection (7) of section 39.507, Florida Statutes, is amended to read:

39.507 Adjudicatory hearings; orders of adjudication.—

(7)

(b) However, the court must determine whether each parent or legal custodian identified in the case abused, abandoned, or neglected the child or engaged in conduct that placed the child at substantial risk of imminent abuse, abandonment, or neglect

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in a ~~subsequent evidentiary hearing~~. If a second parent is served and brought into the proceeding after the adjudication, and an ~~the~~ evidentiary hearing for the second parent is conducted ~~subsequent to the adjudication of the child~~, the court shall supplement the adjudicatory order, disposition order, and the case plan, as necessary. The petitioner is not required to prove actual harm or actual abuse by the second parent in order for the court to make supplemental findings regarding the conduct of the second parent. The court is not required to conduct an evidentiary hearing for the second parent in order to supplement the adjudicatory order, the disposition order, and the case plan if the requirements of s. 39.506(3) or (5) are satisfied. With the exception of proceedings pursuant to s. 39.811, the child's dependency status may not be retried or readjudicated.

Section 9. Paragraph (a) of subsection (2) of section 39.5085, Florida Statutes, is amended to read:

39.5085 Relative Caregiver Program.—

(2)(a) The Department of Children and Families shall establish, ~~and operate, and implement~~ the Relative Caregiver Program ~~pursuant to eligibility guidelines established in this section as further implemented by rule of the department~~. The Relative Caregiver Program shall, within the limits of available funding, provide financial assistance to:

1. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement

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with the relative under this chapter.

2. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child, and a dependent half-brother or half-sister of that dependent child, in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.

3. Nonrelatives who are willing to assume custody and care of a dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the nonrelative caregiver under this chapter. The court must find that a proposed placement under this subparagraph is in the best interest of the child.

4. The relative or nonrelative caregiver may not receive a Relative Caregiver Program payment if the parent or stepparent of the child resides in the home. However, a relative or nonrelative may receive the Relative Caregiver Program payment for a minor parent who is in his or her care, as well as for the minor parent's child, if both children have been adjudicated dependent and meet all other eligibility requirements. If the caregiver is currently receiving the payment, the Relative Caregiver Program payment must be terminated no later than the first of the following month after the parent or stepparent moves into the home, allowing for 10-day notice of adverse action.

The placement may be court-ordered temporary legal custody to

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the relative or nonrelative under protective supervision of the department pursuant to s. 39.521(1)(c)3. ~~s. 39.521(1)(b)3.~~, or court-ordered placement in the home of a relative or nonrelative as a permanency option under s. 39.6221 or s. 39.6231 or under former s. 39.622 if the placement was made before July 1, 2006. The Relative Caregiver Program shall offer financial assistance to caregivers who would be unable to serve in that capacity without the caregiver payment because of financial burden, thus exposing the child to the trauma of placement in a shelter or in foster care.

Section 10. Subsections (1), (2), (6), and (7) of section 39.521, Florida Statutes, are amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(a) A written case plan and a family functioning assessment ~~pre-disposition study~~ prepared by an authorized agent of the department must be approved by filed with the court. ~~The department must file the case plan and the family functioning assessment with the court, serve a copy of the case plan on-~~ served upon the parents of the child, and provide a copy of the case plan ~~provided~~ to the representative of the guardian ad litem program, if the program has been appointed, and provide a

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~~copy provided~~ to all other parties:

1. Not less than 72 hours before the disposition hearing, if the disposition hearing occurs on or after the 60th day after the child was placed in out-of-home care. All such case plans must be approved by the court.

2. Not less than 72 hours before the case plan acceptance hearing, if the disposition hearing occurs before the 60th day after the date the child was placed in out-of-home care and a case plan has not been submitted pursuant to this paragraph, or if the court does not approve the case plan at the disposition hearing, The case plan acceptance hearing must occur ~~the court must set a hearing~~ within 30 days after the disposition hearing to review and approve the case plan.

(b) The court may grant an exception to the requirement for a family functioning assessment ~~pre-disposition study~~ by separate order or within the judge's order of disposition upon finding that all the family and child information required by subsection (2) is available in other documents filed with the court.

~~(c)(b)~~ When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal custodian and the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation. The order may be made only upon good cause shown and pursuant to notice and procedural requirements provided under the Florida Rules of Juvenile Procedure. The mental health

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assessment or evaluation must be administered by a qualified professional as defined in s. 39.01, and the substance abuse assessment or evaluation must be administered by a qualified professional as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health court program established under chapter 394 or a treatment-based drug court program established under s. 397.334. Adjudication of a child as dependent based upon evidence of harm as defined in s. 39.01(30)(g) demonstrates good cause, and the court shall require the parent whose actions caused the harm to submit to a substance abuse disorder assessment or evaluation and to participate and comply with treatment and services identified in the assessment or evaluation as being necessary. In addition to supervision by the department, the court, including the mental health court program or the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires mental health or substance abuse disorder treatment.

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2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department must set forth the powers of the custodian of the child and include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, further judicial reviews are not required if permanency has been established for the child.

(d) ~~(e)~~ At the conclusion of the disposition hearing, the court shall schedule the initial judicial review hearing which must be held no later than 90 days after the date of the disposition hearing or after the date of the hearing at which the court approves the case plan, whichever occurs earlier, but in no event shall the review hearing be held later than 6 months after the date of the child's removal from the home.

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813 ~~(e)(4)~~ The court shall, in its written order of
 814 disposition, include all of the following:
 815 1. The placement or custody of the child.
 816 2. Special conditions of placement and visitation.
 817 3. Evaluation, counseling, treatment activities, and other
 818 actions to be taken by the parties, if ordered.
 819 4. The persons or entities responsible for supervising or
 820 monitoring services to the child and parent.
 821 5. Continuation or discharge of the guardian ad litem, as
 822 appropriate.
 823 6. The date, time, and location of the next scheduled
 824 review hearing, which must occur within the earlier of:
 825 a. Ninety days after the disposition hearing;
 826 b. Ninety days after the court accepts the case plan;
 827 c. Six months after the date of the last review hearing; or
 828 d. Six months after the date of the child's removal from
 829 his or her home, if no review hearing has been held since the
 830 child's removal from the home.
 831 7. If the child is in an out-of-home placement, child
 832 support to be paid by the parents, or the guardian of the
 833 child's estate if possessed of assets which under law may be
 834 disbursed for the care, support, and maintenance of the child.
 835 The court may exercise jurisdiction over all child support
 836 matters, shall adjudicate the financial obligation, including
 837 health insurance, of the child's parents or guardian, and shall
 838 enforce the financial obligation as provided in chapter 61. The
 839 state's child support enforcement agency shall enforce child
 840 support orders under this section in the same manner as child
 841 support orders under chapter 61. Placement of the child shall

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842 not be contingent upon issuance of a support order.
 843 8.a. If the court does not commit the child to the
 844 temporary legal custody of an adult relative, legal custodian,
 845 or other adult approved by the court, the disposition order
 846 shall include the reasons for such a decision and shall include
 847 a determination as to whether diligent efforts were made by the
 848 department to locate an adult relative, legal custodian, or
 849 other adult willing to care for the child in order to present
 850 that placement option to the court instead of placement with the
 851 department.
 852 b. If no suitable relative is found and the child is placed
 853 with the department or a legal custodian or other adult approved
 854 by the court, both the department and the court shall consider
 855 transferring temporary legal custody to an adult relative
 856 approved by the court at a later date, but neither the
 857 department nor the court is obligated to so place the child if
 858 it is in the child's best interest to remain in the current
 859 placement.
 860
 861 For the purposes of this section, "diligent efforts to locate an
 862 adult relative" means a search similar to the diligent search
 863 for a parent, but without the continuing obligation to search
 864 after an initial adequate search is completed.
 865 9. Other requirements necessary to protect the health,
 866 safety, and well-being of the child, to preserve the stability
 867 of the child's educational placement, and to promote family
 868 preservation or reunification whenever possible.
 869 ~~(f)(e)~~ If the court finds that an in-home safety plan
 870 prepared or approved by the department ~~the prevention or~~

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~~reunification efforts of the department~~ will allow the child to remain safely at home or that conditions for return have been met and an in-home safety plan prepared or approved by the department will allow the child to be safely returned to the home, the court shall allow the child to remain in or return to the home after making a specific finding of fact that ~~the reasons for removal have been remedied to the extent that~~ the child's safety, well-being, and physical, mental, and emotional health will not be endangered.

(g) (f) If the court places the child in an out-of-home placement, the disposition order must include a written determination that the child cannot safely remain at home with reunification or family preservation services and that removal of the child is necessary to protect the child. If the child is removed before the disposition hearing, the order must also include a written determination as to whether, after removal, the department made a reasonable effort to reunify the parent and child. Reasonable efforts to reunify are not required if the court finds that any of the acts listed in s. 39.806(1)(f)-(l) have occurred. The department has the burden of demonstrating that it made reasonable efforts.

1. For the purposes of this paragraph, the term "reasonable effort" means the exercise of reasonable diligence and care by the department to provide the services ordered by the court or delineated in the case plan.

2. In support of its determination as to whether reasonable efforts have been made, the court shall:

a. Enter written findings as to whether prevention or reunification efforts were indicated.

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b. If prevention or reunification efforts were indicated, include a brief written description of what appropriate and available prevention and reunification efforts were made.

c. Indicate in writing why further efforts could or could not have prevented or shortened the separation of the parent and child.

3. A court may find that the department made a reasonable effort to prevent or eliminate the need for removal if:

a. The first contact of the department with the family occurs during an emergency;

b. The appraisal by the department of the home situation indicates a substantial and immediate danger to the child's safety or physical, mental, or emotional health which cannot be mitigated by the provision of preventive services;

c. The child cannot safely remain at home, because there are no preventive services that can ensure the health and safety of the child or, even with appropriate and available services being provided, the health and safety of the child cannot be ensured; or

d. The parent is alleged to have committed any of the acts listed as grounds for expedited termination of parental rights under s. 39.806(1)(f)-(l).

4. A reasonable effort by the department for reunification has been made if the appraisal of the home situation by the department indicates that the severity of the conditions of dependency is such that reunification efforts are inappropriate. The department has the burden of demonstrating to the court that reunification efforts were inappropriate.

5. If the court finds that the prevention or reunification

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effort of the department would not have permitted the child to remain safely at home, the court may commit the child to the temporary legal custody of the department or take any other action authorized by this chapter.

(2) The family functioning assessment ~~predisposition study~~ must provide the court with the following documented information:

(a) Evidence of maltreatment and the circumstances accompanying the maltreatment.

(b) Identification of all danger threats active in the home.

(c) An assessment of the adult functioning of the parents.

(d) An assessment of general parenting practices and the parent's disciplinary approach and behavior management methods.

(e) An assessment of the parent's behavioral, emotional, and cognitive protective capacities.

(f) An assessment of child functioning.

(g) A safety analysis describing the capacity for an in-home safety plan to control the conditions that result in the child being unsafe and the specific actions necessary to keep the child safe.

(h) Identification of the conditions for return which would allow the child to be placed safely back into the home with an in-home safety plan and any safety management services necessary to ensure the child's safety.

~~(a) The capacity and disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.~~

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~~(b) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.~~

~~(c) The mental and physical health of the parents.~~

~~(d) The home, school, and community record of the child.~~

(i) ~~(e)~~ The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

~~(f) Evidence of domestic violence or child abuse.~~

~~(g) An assessment defining the dangers and risks of returning the child home, including a description of the changes in and resolutions to the initial risks.~~

~~(h) A description of what risks are still present and what resources are available and will be provided for the protection and safety of the child.~~

~~(i) A description of the benefits of returning the child home.~~

~~(j) A description of all unresolved issues.~~

(j)(k) Child welfare A Florida Abuse Hotline Information System (FAHIS) history from the Statewide Automated Child Welfare Information System (SACWIS) and criminal records check for all caregivers, family members, and individuals residing within the household from which the child was removed.

(k) ~~(l)~~ The complete report and recommendation of the child protection team of the Department of Health or, if no report exists, a statement reflecting that no report has been made.

(l) ~~(m)~~ All opinions or recommendations from other professionals or agencies that provide evaluative, social, reunification, or other services to the parent and child.

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987 (m)~~(n)~~ A listing of appropriate and available safety
 988 management prevention and reunification services for the parent
 989 and child to prevent the removal of the child from the home or
 990 to reunify the child with the parent after removal and an ~~to~~
 991 ~~reunify the child with the parent after removal, including the~~
 992 ~~availability of family preservation services and an explanation~~
 993 of the following:
 994 1. If the services were or were not provided.
 995 2. If the services were provided, the outcome of the
 996 services.
 997 3. If the services were not provided, why they were not
 998 provided.
 999 4. If the services are currently being provided and if they
 1000 need to be continued.
 1001 ~~(e) A listing of other prevention and reunification~~
 1002 ~~services that were available but determined to be inappropriate~~
 1003 ~~and why.~~
 1004 ~~(p) Whether dependency mediation was provided.~~
 1005 (n)~~(q)~~ If the child has been removed from the home and
 1006 there is a parent who may be considered for custody pursuant to
 1007 this section, a recommendation as to whether placement of the
 1008 child with that parent would be detrimental to the child.
 1009 (o)~~(r)~~ If the child has been removed from the home and will
 1010 be remaining with a relative, parent, or other adult approved by
 1011 the court, a home study report concerning the proposed placement
 1012 shall be provided to the court ~~included in the predisposition~~
 1013 ~~report.~~ Before recommending to the court any out-of-home
 1014 placement for a child other than placement in a licensed shelter
 1015 or foster home, the department shall conduct a study of the home

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1016 of the proposed legal custodians, which must include, at a
 1017 minimum:
 1018 1. An interview with the proposed legal custodians to
 1019 assess their ongoing commitment and ability to care for the
 1020 child.
 1021 2. Records checks through the State Automated Child Welfare
 1022 Information System (SACWIS), and local and statewide criminal
 1023 and juvenile records checks through the Department of Law
 1024 Enforcement, on all household members 12 years of age or older.
 1025 In addition, the fingerprints of any household members who are
 1026 18 years of age or older may be submitted to the Department of
 1027 Law Enforcement for processing and forwarding to the Federal
 1028 Bureau of Investigation for state and national criminal history
 1029 information. The department has the discretion to request State
 1030 Automated Child Welfare Information System (SACWIS) and local,
 1031 statewide, and national criminal history checks and
 1032 fingerprinting of any other visitor to the home who is made
 1033 known to the department. Out-of-state criminal records checks
 1034 must be initiated for any individual who has resided in a state
 1035 other than Florida if that state's laws allow the release of
 1036 these records. The out-of-state criminal records must be filed
 1037 with the court within 5 days after receipt by the department or
 1038 its agent.
 1039 3. An assessment of the physical environment of the home.
 1040 4. A determination of the financial security of the
 1041 proposed legal custodians.
 1042 5. A determination of suitable child care arrangements if
 1043 the proposed legal custodians are employed outside of the home.
 1044 6. Documentation of counseling and information provided to

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the proposed legal custodians regarding the dependency process and possible outcomes.

7. Documentation that information regarding support services available in the community has been provided to the proposed legal custodians.

8. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

The department may not place the child or continue the placement of the child in a home under shelter or postdisposition placement if the results of the home study are unfavorable, unless the court finds that this placement is in the child's best interest.

(p) ~~(e)~~ If the child has been removed from the home, a determination of the amount of child support each parent will be required to pay pursuant to s. 61.30.

~~(t) If placement of the child with anyone other than the child's parent is being considered, the predisposition study shall include the designation of a specific length of time as to when custody by the parent will be reconsidered.~~

Any other relevant and material evidence, including other written or oral reports, may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing. Except as otherwise specifically provided, nothing in this section prohibits the publication of proceedings in a hearing.

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(6) With respect to a child who is the subject in proceedings under this chapter, the court may issue to the department an order to show cause why it should not return the child to the custody of the parents upon the presentation of evidence that the conditions for return of the child have been met ~~expiration of the case plan, or sooner if the parents have substantially complied with the case plan.~~

(7) The court may enter an order ending its jurisdiction over a child when a child has been returned to the parents, provided the court shall not terminate its jurisdiction or the department's supervision over the child until 6 months after the child's return. The department shall supervise the placement of the child after reunification for at least 6 months with each parent or legal custodian from whom the child was removed. The court shall determine whether its jurisdiction should be continued or terminated in such a case based on a report of the department or agency or the child's guardian ad litem, and any other relevant factors; if its jurisdiction is to be terminated, the court shall enter an order to that effect.

Section 11. Subsections (2) and (3) of section 39.522, Florida Statutes, are amended to read:

39.522 Postdisposition change of custody.—The court may change the temporary legal custody or the conditions of protective supervision at a postdisposition hearing, without the necessity of another adjudicatory hearing.

(2) In cases where the issue before the court is whether a child should be reunited with a parent, the court shall review the conditions for return and determine whether the circumstances that caused the out-of-home placement and issues

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1103 ~~subsequently identified have been remedied parent has~~
 1104 ~~substantially complied with the terms of the case plan to the~~
 1105 ~~extent that the return of the child to the home with an in-home~~
 1106 ~~safety plan prepared or approved by the department will not be~~
 1107 ~~detrimental to the child's safety, well-being, and physical,~~
 1108 ~~mental, and emotional health of the child is not endangered by~~
 1109 ~~the return of the child to the home.~~

1110 (3) In cases where the issue before the court is whether a
 1111 child who is placed in the custody of a parent should be
 1112 reunited with the other parent upon a finding that the
 1113 circumstances that caused the out-of-home placement and issues
 1114 subsequently identified have been remedied to the extent that
 1115 the return of the child to the home of the other parent with an
 1116 in-home safety plan prepared or approved by the department will
 1117 not be detrimental to the child of substantial compliance with
 1118 the terms of the case plan, the standard shall be that the
 1119 safety, well-being, and physical, mental, and emotional health
 1120 of the child would not be endangered by reunification and that
 1121 reunification would be in the best interest of the child.

1122 Section 12. Section 39.523, Florida Statutes, is amended to
 1123 read:

1124 (Substantial rewording of section. See
 1125 s. 39.523, F.S., for present text.)

1126 39.523 Placement in out-of-home care.—The Legislature finds
 1127 that it is a basic tenet of child welfare practice and the law
 1128 that children be placed in the least restrictive, most family-
 1129 like setting available in close proximity to the home of their
 1130 parents, consistent with the best interests and needs of the
 1131 child, and that children be placed in permanent homes in a

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1132 timely manner.

1133 (1) When any child is removed from a home and placed into
 1134 out-of-home care, a comprehensive placement assessment shall be
 1135 completed to determine whether the child's needs can be met with
 1136 family members or in a family foster home and, if not, which
 1137 type of foster care placement setting would provide a more
 1138 effective and appropriate level of care.

1139 (2) The assessment and any placement decision must be done
 1140 in conjunction with a permanency team that must be established
 1141 by the department or the community-based care lead agency that
 1142 places children pursuant to this section and is dedicated to
 1143 overcoming the permanency challenges occurring for children in
 1144 out-of-home care. The team must attempt to include a
 1145 representative from the community-based care lead agency, the
 1146 caseworker for the child, the out-of-home care provider, the
 1147 guardian ad litem if one has been appointed, any provider of
 1148 services to the child, teachers, clergy, relatives, fictive kin,
 1149 and all appropriate biological family members.

1150 (3) The permanency team shall convene a multidisciplinary
 1151 staffing every 180 calendar days, to coincide with the judicial
 1152 review, to reassess the appropriateness of the child's current
 1153 placement. The multidisciplinary staffing shall consider, at a
 1154 minimum, the current level of the child's functioning, whether
 1155 recommended services are being provided effectively, any
 1156 services that would enable transition to a less restrictive
 1157 family-like setting, and diligent efforts to find other
 1158 permanent living arrangements for the child.

1159 (4) The department shall document initial placement
 1160 assessments in the Florida Safe Families Network.

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- 1161 (5) If it is determined during the comprehensive placement
 1162 assessment that residential treatment as defined in s. 39.407
 1163 would be suitable for the child, the procedures in that section
 1164 must be followed.
- 1165 (6) At each judicial review, the court shall review the
 1166 assessment placement decision for the child and the department
 1167 shall demonstrate why the placement is in the least restrictive
 1168 setting. If the child has been placed in group care with a
 1169 residential child-caring agency, the department must demonstrate
 1170 why the child cannot be placed with a relative or nonrelative or
 1171 in a family foster home and why the placement in group care with
 1172 a residential child-caring agency continues to be necessary and
 1173 consistent with the child's short-term and long-term goals, and
 1174 must document efforts to help the child transition to a more
 1175 family-like setting.
- 1176 (7) By October 1 of each year, the department shall report
 1177 to the Governor, the President of the Senate, and the Speaker of
 1178 the House of Representatives on the placement of children in
 1179 out-of-home care, including placements with relatives and
 1180 nonrelatives, family foster homes, and residential group care
 1181 during the year. At a minimum, the report must include, by each
 1182 community-based care lead agency:
- 1183 (a) The number of children placed with relatives and
 1184 nonrelatives, in family foster homes, and in residential group
 1185 care.
- 1186 (b) An inventory of available services that are necessary
 1187 to maintain children in the least restrictive settings and a
 1188 plan for filling any identified gap in those services.
- 1189 (c) The number of children who were placed based upon the

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- 1190 assessment.
- 1191 (d) An inventory of existing placements for children by
 1192 type and by community-based care lead agency.
- 1193 (e) The strategies being used by community-based care lead
 1194 agencies to recruit, train, and support an adequate number of
 1195 families to provide home-based family care.
- 1196 (f) For every placement of a child made that is contrary to
 1197 an appropriate placement as determined by the assessment process
 1198 in this section, an explanation from the community-based care
 1199 lead agency as to why the placement was made.
- 1200 (8) The department may adopt rules necessary to carry out
 1201 the provisions of this section.
- 1202 Section 13. Subsection (1) of section 39.6011, Florida
 1203 Statutes, is amended to read:
- 1204 39.6011 Case plan development.—
- 1205 (1) The department shall prepare a draft of the case plan
 1206 for each child receiving services under this chapter. A parent
 1207 of a child may not be threatened or coerced with the loss of
 1208 custody or parental rights for failing to admit in the case plan
 1209 of abusing, neglecting, or abandoning a child. Participating in
 1210 the development of a case plan is not an admission to any
 1211 allegation of abuse, abandonment, or neglect, and it is not a
 1212 consent to a finding of dependency or termination of parental
 1213 rights. The case plan shall be developed subject to the
 1214 following requirements:
- 1215 (a) The case plan must be developed in a face-to-face
 1216 conference with the parent of the child, any court-appointed
 1217 guardian ad litem, and, if appropriate, the child and the
 1218 temporary custodian of the child.

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1219 (b) Notwithstanding s. 39.202, the department may discuss
 1220 confidential information during the case planning conference in
 1221 the presence of individuals who participate in the conference.
 1222 All individuals who participate in the conference shall maintain
 1223 the confidentiality of all information shared during the case
 1224 planning conference.

1225 (c) ~~(b)~~ The parent may receive assistance from any person or
 1226 social service agency in preparing the case plan. The social
 1227 service agency, the department, and the court, when applicable,
 1228 shall inform the parent of the right to receive such assistance,
 1229 including the right to assistance of counsel.

1230 (d) ~~(e)~~ If a parent is unwilling or unable to participate in
 1231 developing a case plan, the department shall document that
 1232 unwillingness or inability to participate. The documentation
 1233 must be provided in writing to the parent when available for the
 1234 court record, and the department shall prepare a case plan
 1235 conforming as nearly as possible with the requirements set forth
 1236 in this section. The unwillingness or inability of the parent to
 1237 participate in developing a case plan does not preclude the
 1238 filing of a petition for dependency or for termination of
 1239 parental rights. The parent, if available, must be provided a
 1240 copy of the case plan and be advised that he or she may, at any
 1241 time before the filing of a petition for termination of parental
 1242 rights, enter into a case plan and that he or she may request
 1243 judicial review of any provision of the case plan with which he
 1244 or she disagrees at any court hearing set for the child.

1245 Section 14. Subsection (1) of section 39.6012, Florida
 1246 Statutes, is amended to read:

1247 39.6012 Case plan tasks; services.—

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1248 (1) The services to be provided to the parent and the tasks
 1249 that must be completed are subject to the following:

1250 (a) The services described in the case plan must be
 1251 designed to improve the conditions in the home and aid in
 1252 maintaining the child in the home, facilitate the child's safe
 1253 return to the home, ensure proper care of the child, or
 1254 facilitate the child's permanent placement. The services offered
 1255 must be the least intrusive possible into the life of the parent
 1256 and child, must focus on clearly defined objectives, and must
 1257 provide the most efficient path to quick reunification or
 1258 permanent placement given the circumstances of the case and the
 1259 child's need for safe and proper care.

1260 (b) The case plan must describe each of the tasks with
 1261 which the parent must comply and the services to be provided to
 1262 the parent, specifically addressing the identified problem,
 1263 including:

- 1264 1. The type of services or treatment.
- 1265 2. The date the department will provide each service or
 1266 referral for the service if the service is being provided by the
 1267 department or its agent.
- 1268 3. The date by which the parent must complete each task.
- 1269 4. The frequency of services or treatment provided. The
 1270 frequency of the delivery of services or treatment provided
 1271 shall be determined by the professionals providing the services
 1272 or treatment on a case-by-case basis and adjusted according to
 1273 their best professional judgment.
- 1274 5. The location of the delivery of the services.
- 1275 6. The staff of the department or service provider
 1276 accountable for the services or treatment.

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1277 7. A description of the measurable objectives, including
 1278 the timeframes specified for achieving the objectives of the
 1279 case plan and addressing the identified problem.
 1280 (c) If there is evidence of harm as defined in s.
 1281 39.01(30)(g), the case plan must include as a required task for
 1282 the parent whose actions caused the harm that the parent submit
 1283 to a substance abuse disorder assessment or evaluation and
 1284 participate and comply with treatment and services identified in
 1285 the assessment or evaluation as being necessary.
 1286 Section 15. Subsection (7) is added to section 39.6221,
 1287 Florida Statutes, to read:
 1288 39.6221 Permanent guardianship of a dependent child.—
 1289 (7) The requirements of s. 61.13001 do not apply to
 1290 permanent guardianships established under this section.
 1291 Section 16. Paragraph (h) is added to subsection (1) of
 1292 section 39.701, Florida Statutes, to read:
 1293 39.701 Judicial review.—
 1294 (1) GENERAL PROVISIONS.—
 1295 (h) If a child is born into a family that is under the
 1296 court's jurisdiction or a child moves into a home that is under
 1297 the court's jurisdiction, the department shall assess the
 1298 child's safety and provide notice to the court.
 1299 1. The department shall complete an assessment to determine
 1300 how the addition of a child will impact family functioning. The
 1301 assessment must be completed at least 30 days before a child is
 1302 expected to be born or to move into a home, or within 72 hours
 1303 after the department learns of the pregnancy or addition if the
 1304 child is expected to be born or to move into the home in less
 1305 than 30 days. The assessment shall be filed with the court.

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

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1306 2. Once a child is born into a family or a child moves into
 1307 the home, the department shall complete a progress update and
 1308 file it with the court.
 1309 3. The court has the discretion to hold a hearing on the
 1310 progress update filed by the department.
 1311 4. The department shall adopt rules to implement this
 1312 subsection.
 1313 Section 17. Subsection (3) of section 39.801, Florida
 1314 Statutes, is amended to read:
 1315 39.801 Procedures and jurisdiction; notice; service of
 1316 process.—
 1317 (3) Before the court may terminate parental rights, in
 1318 addition to the other requirements set forth in this part, the
 1319 following requirements must be met:
 1320 (a) Notice of the date, time, and place of the advisory
 1321 hearing for the petition to terminate parental rights and a copy
 1322 of the petition must be personally served upon the following
 1323 persons, specifically notifying them that a petition has been
 1324 filed:
 1325 1. The parents of the child.
 1326 2. The legal custodians of the child.
 1327 3. If the parents who would be entitled to notice are dead
 1328 or unknown, a living relative of the child, unless upon diligent
 1329 search and inquiry no such relative can be found.
 1330 4. Any person who has physical custody of the child.
 1331 5. Any grandparent entitled to priority for adoption under
 1332 s. 63.0425.
 1333 6. Any prospective parent who has been identified under s.
 1334 39.503 or s. 39.803, unless a court order has been entered

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1335 pursuant to s. 39.503(4) or (9) or s. 39.803(4) or (9) which
 1336 indicates no further notice is required. Except as otherwise
 1337 provided in this section, if there is not a legal father, notice
 1338 of the petition for termination of parental rights must be
 1339 provided to any known prospective father who is identified under
 1340 oath before the court or who is identified by a diligent search
 1341 of the Florida Putative Father Registry. Service of the notice
 1342 of the petition for termination of parental rights may not be
 1343 required if the prospective father executes an affidavit of
 1344 nonpaternity or a consent to termination of his parental rights
 1345 which is accepted by the court after notice and opportunity to
 1346 be heard by all parties to address the best interests of the
 1347 child in accepting such affidavit.

1348 7. The guardian ad litem for the child or the
 1349 representative of the guardian ad litem program, if the program
 1350 has been appointed.

1351 The document containing the notice to respond or appear must
 1352 contain, in type at least as large as the type in the balance of
 1353 the document, the following or substantially similar language:
 1354 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
 1355 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
 1356 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
 1357 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
 1358 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
 1359 NOTICE."

1361 (b) If a party required to be served with notice as
 1362 prescribed in paragraph (a) cannot be served, notice of hearings
 1363 must be given as prescribed by the rules of civil procedure, and

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1364 service of process must be made as specified by law or civil
 1365 actions.

1366 (c) Notice as prescribed by this section may be waived, in
 1367 the discretion of the judge, with regard to any person to whom
 1368 notice must be given under this subsection if the person
 1369 executes, before two witnesses and a notary public or other
 1370 officer authorized to take acknowledgments, a written surrender
 1371 of the child to a licensed child-placing agency or the
 1372 department.

1373 (d) If the person served with notice under this section
 1374 fails to personally appear at the advisory hearing, the failure
 1375 to personally appear shall constitute consent for termination of
 1376 parental rights by the person given notice. If a parent appears
 1377 for the advisory hearing and the court orders that parent to
 1378 personally appear at the adjudicatory hearing for the petition
 1379 for termination of parental rights, stating the date, time, and
 1380 location of said hearing, then failure of that parent to
 1381 personally appear at the adjudicatory hearing shall constitute
 1382 consent for termination of parental rights.

1383 Section 18. Section 39.803, Florida Statutes, is amended,
 1384 to read:

1385 39.803 Identity or location of parent unknown after filing
 1386 of termination of parental rights petition; special procedures.-

1387 (1) If the identity or location of a parent is unknown and
 1388 a petition for termination of parental rights is filed, the
 1389 court shall conduct under oath the following inquiry of the
 1390 parent who is available, or, if no parent is available, of any
 1391 relative, caregiver, or legal custodian of the child who is
 1392 present at the hearing and likely to have the information:

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1393 (a) Whether the mother of the child was married at the
 1394 probable time of conception of the child or at the time of birth
 1395 of the child.

1396 (b) Whether the mother was cohabiting with a male at the
 1397 probable time of conception of the child.

1398 (c) Whether the mother has received payments or promises of
 1399 support with respect to the child or because of her pregnancy
 1400 from a man who claims to be the father.

1401 (d) Whether the mother has named any man as the father on
 1402 the birth certificate of the child or in connection with
 1403 applying for or receiving public assistance.

1404 (e) Whether any man has acknowledged or claimed paternity
 1405 of the child in a jurisdiction in which the mother resided at
 1406 the time of or since conception of the child, or in which the
 1407 child has resided or resides.

1408 (f) Whether a man is named on the birth certificate of the
 1409 child pursuant to s. 382.013(2).

1410 (g) Whether a man has been determined by a court order to
 1411 be the father of the child.

1412 (h) Whether a man has been determined by an administrative
 1413 proceeding to be the father of the child.

1414 (2) The information required in subsection (1) may be
 1415 supplied to the court or the department in the form of a sworn
 1416 affidavit by a person having personal knowledge of the facts.

1417 (3) If the inquiry under subsection (1) identifies any
 1418 person as a parent or prospective parent, the court shall
 1419 require notice of the hearing to be provided to that person.

1420 (4) If the inquiry under subsection (1) fails to identify
 1421 any person as a parent or prospective parent, the court shall so

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1422 find and may proceed without further notice.

1423 (5) If the inquiry under subsection (1) identifies a parent
 1424 or prospective parent, and that person's location is unknown,
 1425 the court shall direct the petitioner to conduct a diligent
 1426 search for that person before scheduling an adjudicatory hearing
 1427 regarding the petition for termination of parental rights to the
 1428 child unless the court finds that the best interest of the child
 1429 requires proceeding without actual notice to the person whose
 1430 location is unknown.

1431 (6) The diligent search required by subsection (5) must
 1432 include, at a minimum, inquiries of all known relatives of the
 1433 parent or prospective parent, inquiries of all offices of
 1434 program areas of the department likely to have information about
 1435 the parent or prospective parent, inquiries of other state and
 1436 federal agencies likely to have information about the parent or
 1437 prospective parent, inquiries of appropriate utility and postal
 1438 providers, a thorough search of at least one electronic database
 1439 specifically designed for locating persons, a search of the
 1440 Florida Putative Father Registry, and inquiries of appropriate
 1441 law enforcement agencies. Pursuant to s. 453 of the Social
 1442 Security Act, 42 U.S.C. s. 653(c)(4), the department, as the
 1443 state agency administering Titles IV-B and IV-E of the act,
 1444 shall be provided access to the federal and state parent locator
 1445 service for diligent search activities.

1446 (7) Any agency contacted by petitioner with a request for
 1447 information pursuant to subsection (6) shall release the
 1448 requested information to the petitioner without the necessity of
 1449 a subpoena or court order.

1450 (8) If the inquiry and diligent search identifies a

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1451 prospective parent, that person must be given the opportunity to
 1452 become a party to the proceedings by completing a sworn
 1453 affidavit of parenthood and filing it with the court or the
 1454 department. A prospective parent who files a sworn affidavit of
 1455 parenthood while the child is a dependent child but no later
 1456 than at the time of or ~~before~~ ~~prior to~~ the adjudicatory hearing
 1457 in the termination of parental rights proceeding for the child
 1458 shall be considered a parent for all purposes under this
 1459 section. If the prospective parent does not file a sworn
 1460 affidavit of parenthood or if the other parent contests the
 1461 determination of parenthood, the court may, after considering
 1462 the best interests of the child, order scientific testing to
 1463 determine the maternity or paternity of the child. The court
 1464 shall assess the cost of the paternity determination as a cost
 1465 of litigation. If the court finds the prospective parent to be a
 1466 parent as a result of the scientific testing, the court shall
 1467 enter a judgment of maternity or paternity, shall assess the
 1468 cost of the scientific testing to the parent, and shall enter an
 1469 amount of child support to be paid by the parent as determined
 1470 under s. 61.30. If the known parent contests the recognition of
 1471 the prospective parent as a parent, the prospective parent shall
 1472 not be recognized as a parent until proceedings to establish
 1473 maternity or paternity have been concluded. However, the
 1474 prospective parent shall continue to receive notice of hearings
 1475 as a participant until proceedings to establish maternity or
 1476 paternity have been concluded.
 1477 (9) If the diligent search under subsection (5) fails to
 1478 identify and locate a prospective parent, the court shall so
 1479 find and may proceed without further notice.

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1480 Section 19. Paragraph (1) of subsection (1) of section
 1481 39.806, Florida Statutes, is amended, and subsections (2) and
 1482 (3) are republished, to read:
 1483 39.806 Grounds for termination of parental rights.—
 1484 (1) Grounds for the termination of parental rights may be
 1485 established under any of the following circumstances:
 1486 (1) On three or more occasions the child or another child
 1487 of the parent or parents has been placed in out-of-home care
 1488 pursuant to this chapter or the law of any state, territory, or
 1489 jurisdiction of the United States which is substantially similar
 1490 to this chapter, and the conditions that led to the child's out-
 1491 of-home placement were caused by the parent or parents.
 1492 (2) Reasonable efforts to preserve and reunify families are
 1493 not required if a court of competent jurisdiction has determined
 1494 that any of the events described in paragraphs (1)(b)-(d) or
 1495 paragraphs (1)(f)-(m) have occurred.
 1496 (3) If a petition for termination of parental rights is
 1497 filed under subsection (1), a separate petition for dependency
 1498 need not be filed and the department need not offer the parents
 1499 a case plan having a goal of reunification, but may instead file
 1500 with the court a case plan having a goal of termination of
 1501 parental rights to allow continuation of services until the
 1502 termination is granted or until further orders of the court are
 1503 issued.
 1504 Section 20. Subsection (6) of section 39.811, Florida
 1505 Statutes, is amended to read:
 1506 39.811 Powers of disposition; order of disposition.—
 1507 (6) The parental rights of one parent may be severed
 1508 without severing the parental rights of the other parent only

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under the following circumstances:

(a) If the child has only one surviving parent;

(b) If the identity of a prospective parent has been established as unknown after sworn testimony;

(c) If the parent whose rights are being terminated became a parent through a single-parent adoption;

(d) If the protection of the child demands termination of the rights of a single parent; or

(e) If the parent whose rights are being terminated meets any of the criteria specified in s. 39.806(1)(c), (d), (f), (g), (h), (i), (j), (k), (l), (m), or (n) ~~and (f)-(m)~~.

Section 21. Paragraph (b) of subsection (4) of section 125.901, Florida Statutes, is amended to read:

125.901 Children's services; independent special district; council; powers, duties, and functions; public records exemption.—

(4)

(b)1.a. Notwithstanding paragraph (a), the governing body of the county shall submit the question of retention or dissolution of a district with voter-approved taxing authority to the electorate in the general election according to the following schedule:

(I) For a district in existence on July 1, 2010, and serving a county with a population of 400,000 or fewer persons as of that date.....2014.

(II) For a district in existence on July 1, 2010, and serving a county with a population of 2 million or more persons as of that date, unless the governing body of the county has previously submitted such question voluntarily to the electorate

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for a second time since 2005.....2020.

b. A referendum by the electorate on or after July 1, 2010, creating a new district with taxing authority may specify that the district is not subject to reauthorization or may specify the number of years for which the initial authorization shall remain effective. If the referendum does not prescribe terms of reauthorization, the governing body of the county shall submit the question of retention or dissolution of the district to the electorate in the general election 12 years after the initial authorization.

2. The governing body of the district may specify, and submit to the governing body of the county no later than 9 months before the scheduled election, that the district is not subsequently subject to reauthorization or may specify the number of years for which a reauthorization under this paragraph shall remain effective. If the governing body of the district makes such specification and submission, the governing body of the county shall include that information in the question submitted to the electorate. If the governing body of the district does not specify and submit such information, the governing body of the county shall resubmit the question of reauthorization to the electorate every 12 years after the year prescribed in subparagraph 1. The governing body of the district may recommend to the governing body of the county language for the question submitted to the electorate.

3. Nothing in this paragraph limits the authority to dissolve a district as provided under paragraph (a).

4. Nothing in this paragraph precludes the governing body of a district from requesting that the governing body of the

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county submit the question of retention or dissolution of a district with voter-approved taxing authority to the electorate at a date earlier than the year prescribed in subparagraph 1. If the governing body of the county accepts the request and submits the question to the electorate, the governing body satisfies the requirement of that subparagraph.

If any district is dissolved pursuant to this subsection, each county must first obligate itself to assume the debts, liabilities, contracts, and outstanding obligations of the district within the total millage available to the county governing body for all county and municipal purposes as provided for under s. 9, Art. VII of the State Constitution. Any district may also be dissolved pursuant to part VII of chapter 189.

Section 22. Subsection (9) of section 322.051, Florida Statutes, is amended to read:
322.051 Identification cards.—

(9) (a) Notwithstanding any other provision of this section or s. 322.21 to the contrary, the department shall issue or renew a card at no charge to a person who presents evidence satisfactory to the department that he or she is homeless as defined in s. 414.0252(7), to a juvenile offender who is in the custody or under the supervision of the Department of Juvenile Justice and receiving services pursuant to s. 985.461, to an inmate receiving a card issued pursuant to s. 944.605(7), or, if necessary, to an inmate receiving a replacement card if the department determines that he or she has a valid state identification card. If the replacement state identification card is scheduled to expire within 6 months, the department may

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also issue a temporary permit valid for at least 6 months after the release date. The department's mobile issuing units shall process the identification cards for juvenile offenders and inmates at no charge, as provided by s. 944.605 (7) (a) and (b).

(b) If the person who presents evidence that he or she is homeless is a certified unaccompanied or homeless youth as defined in s. 734.067, the back of the card shall exhibit the following:

As a certified unaccompanied or homeless youth, this individual may consent to diagnosis and treatment and any forensic medical examination authorized pursuant to s. 743.067, F.S.

Section 23. Paragraph (g) of subsection (4) of section 395.3025, Florida Statutes, is amended, and subsection (8) of that section is republished, to read:

395.3025 Patient and personnel records; copies; examination.—

(4) Patient records are confidential and must not be disclosed without the consent of the patient or his or her legal representative, but appropriate disclosure may be made without such consent to:

(g) The Department of Children and Families, ~~or~~ its agent, or its contracted entity, for the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults.

(8) Patient records at hospitals and ambulatory surgical centers are exempt from disclosure under s. 119.07(1), except as provided by subsections (1)-(5).

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1625 Section 24. Subsections (2) and (6) of section 402.40,
 1626 Florida Statutes, are amended to read:
 1627 402.40 Child welfare training and certification.—
 1628 (2) DEFINITIONS.—As used in this section, the term:
 1629 (a) "Child welfare certification" means a professional
 1630 credential awarded by a department-approved third-party
 1631 credentialing entity to individuals demonstrating core
 1632 competency in any child welfare practice area.
 1633 (b) "Child welfare services" means any intake, protective
 1634 investigations, preprotective services, protective services,
 1635 foster care, shelter and group care, and adoption and related
 1636 services program, including supportive services and supervision
 1637 provided to children who are alleged to have been abused,
 1638 abandoned, or neglected or who are at risk of becoming, are
 1639 alleged to be, or have been found dependent pursuant to chapter
 1640 39.
 1641 (c) "Child welfare trainer" means any person providing
 1642 training for the purposes of child welfare professionals earning
 1643 certification.
 1644 (d) (e) "Core competency" means the minimum knowledge,
 1645 skills, and abilities necessary to carry out work
 1646 responsibilities.
 1647 (e) (d) "Person providing child welfare services" means a
 1648 person who has a responsibility for supervisory, direct care, or
 1649 support-related work in the provision of child welfare services
 1650 pursuant to chapter 39.
 1651 (f) (e) "Preservice curriculum" means the minimum statewide
 1652 training content based upon the core competencies which is made
 1653 available to all persons providing child welfare services.

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1654 (g) (f) "Third-party credentialing entity" means a
 1655 department-approved nonprofit organization that has met
 1656 nationally recognized standards for developing and administering
 1657 professional certification programs.
 1658 (6) ADOPTION OF RULES.—The Department of Children and
 1659 Families shall adopt rules necessary to carry out ~~the provisions~~
 1660 of this section, including the requirements for child welfare
 1661 trainers.
 1662 Section 25. Section 409.992, Florida Statutes, is amended
 1663 to read:
 1664 409.992 Lead agency expenditures.—
 1665 (1) The procurement of commodities or contractual services
 1666 by lead agencies shall be governed by the financial guidelines
 1667 developed by the department and must comply with applicable
 1668 state and federal law and follow good business practices.
 1669 Pursuant to s. 11.45, the Auditor General may provide technical
 1670 advice in the development of the financial guidelines.
 1671 (2) Notwithstanding any other provision of law, a
 1672 community-based care lead agency may make expenditures for staff
 1673 cellular telephone allowances, contracts requiring deferred
 1674 payments and maintenance agreements, security deposits for
 1675 office leases, related agency professional membership dues other
 1676 than personal professional membership dues, promotional
 1677 materials, and grant writing services. Expenditures for food and
 1678 refreshments, other than those provided to clients in the care
 1679 of the agency or to foster parents, adoptive parents, and
 1680 caseworkers during training sessions, are not allowable.
 1681 (3) Notwithstanding any other provision of law, a
 1682 community-based care lead agency administrative employee may not

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receive a salary, whether base pay or base pay combined with any bonus or incentive payments, in excess of the salary paid to the secretary of the Department of Children and Families from state-appropriated funds, including state-appropriated federal funds. This subsection does not prohibit any party from providing cash that is not from appropriated state funds to a community-based care lead agency administrative employee.

~~(4)(3)~~ A lead community-based care agency and its subcontractors are exempt from state travel policies as provided in s. 112.061(3)(a) for their travel expenses incurred in order to comply with the requirements of this section.

Section 26. Paragraph (a) of subsection (7) of section 456.057, Florida Statutes, is amended to read:

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

(7)(a) Except as otherwise provided in this section and in s. 440.13(4)(c), such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient. However, such records may be furnished without written authorization under the following circumstances:

1. To any person, firm, or corporation that has procured or furnished such care or treatment with the patient's consent.

2. When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the

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defendant and the plaintiff.

3. In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records.

4. For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.

5. To a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. 395.1027 and the professional organization that certifies poison control centers in accordance with federal law.

6. To the Department of Children and Families, its agent, or its contracted entity, for the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults.

Section 27. Section 409.141, Florida Statutes, is repealed.

Section 28. Section 409.1677, Florida Statutes, is repealed.

Section 29. Section 743.067, Florida Statutes, is amended to read:

743.067 Certified unaccompanied homeless youths.—

(1) For purposes of this section, the term ~~an~~ "certified unaccompanied homeless youth" means a minor who is a homeless child or youth or an unaccompanied youth, as those terms are

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defined in 42 U.S.C. s. 11434a., who has been certified as homeless or unaccompanied by is an individual who is 16 years of age or older and is:

(a) A school district homeless liaison;

~~(a) Found by a school district's liaison for homeless children and youths to be an unaccompanied homeless youth eligible for services pursuant to the McKinney-Vento Homeless Assistance Act, 42 U.S.C. ss. 11431-11435; or~~

~~(b) Believed to qualify as an unaccompanied homeless youth, as that term is defined in the McKinney-Vento Homeless Assistance Act, by:~~

~~(b)1. The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director's designee; or~~

~~(c)2. The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director's designee.~~

~~3. A clinical social worker licensed under chapter 491; or~~

~~4. A circuit court.~~

(2)(a) The Office on Homelessness within the Department of Children and Families shall develop a standardized form that must be used by the entities specified in subsection (1) to certify qualifying unaccompanied homeless youth. The form must include the circumstances that qualify the youth; the date the youth was certified; the name, title, and signature of the certifying individual; and a citation to this section. A minor who qualifies as an unaccompanied homeless youth shall be issued a written certificate documenting his or her status by the

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~~appropriate individual as provided in subsection (1). The certificate shall be issued on the official letterhead stationery of the person making the determination and shall include the date of the finding, a citation to this section, and the signature of the individual making the finding.~~

(b) A certified unaccompanied homeless youth may use the completed form to apply at no charge for an identification card issued by the Department of Highway Safety and Motor Vehicles pursuant to s. 322.051(9).

(c) A health care provider may accept the written certificate or identification card as proof of the minor's status as a certified ~~an~~ unaccompanied homeless youth and may keep a copy of the certificate or identification card in the youth's medical file.

(3) A certified ~~an~~ unaccompanied homeless youth may:

(a) Petition the circuit court to have the disabilities of nonage removed under s. 743.015. The youth shall qualify as a person not required to prepay costs and fees as provided in s. 57.081. The court shall advance the cause on the calendar.

(b) Notwithstanding s. 394.4625(1), consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397 and any forensic medical examination for the purpose of investigating any felony offense under chapter 784, chapter 787, chapter 794, chapter 800, or chapter 827, for:

1. Himself or herself; or

2. His or her child, if the certified unaccompanied homeless youth is unmarried, is the parent of the child, and has

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1799 actual custody of the child.

1800 (4) This section does not affect the requirements of s.
1801 390.01114.

1802 Section 30. Paragraph (f) of subsection (1) of section
1803 1009.25, Florida Statutes, is amended to read

1804 1009.25 Fee exemptions.—

1805 (1) The following students are exempt from the payment of
1806 tuition and fees, including lab fees, at a school district that
1807 provides workforce education programs, Florida College System
1808 institution, or state university:

1809 (f) A student who lacks a fixed, regular, and adequate
1810 nighttime residence or whose primary nighttime residence is a
1811 public or private shelter designed to provide temporary
1812 residence, a public or private transitional living program for
1813 individuals intended to be institutionalized, or a public or
1814 private place not designed for, or ordinarily used as, a regular
1815 sleeping accommodation for human beings. This includes a student
1816 who, if it were not for the availability of college or
1817 university dormitory housing, would be homeless.

1818 Section 31. Subsection (1) of section 39.524, Florida
1819 Statutes, is amended to read:

1820 39.524 Safe-harbor placement.—

1821 (1) Except as provided in s. 39.407 or s. 985.801, a
1822 dependent child 6 years of age or older who has been found to be
1823 a victim of sexual exploitation as defined in s. 39.01 ~~s.~~
1824 ~~39.01(70)(g)~~ must be assessed for placement in a safe house or
1825 safe foster home as provided in s. 409.1678 using the initial
1826 screening and assessment instruments provided in s. 409.1754(1).
1827 If such placement is determined to be appropriate for the child

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1828 as a result of this assessment, the child may be placed in a
1829 safe house or safe foster home, if one is available. However,
1830 the child may be placed in another setting, if the other setting
1831 is more appropriate to the child's needs or if a safe house or
1832 safe foster home is unavailable, as long as the child's
1833 behaviors are managed so as not to endanger other children
1834 served in that setting.

1835 Section 32. Paragraph (p) of subsection (4) of section
1836 394.495, Florida Statutes, is amended to read:

1837 394.495 Child and adolescent mental health system of care;
1838 programs and services.—

1839 (4) The array of services may include, but is not limited
1840 to:

1841 (p) Trauma-informed services for children who have suffered
1842 sexual exploitation as defined in s. 39.01 ~~s. 39.01(70)(g)~~.

1843 Section 33. Paragraph (c) of subsection (1) and paragraphs
1844 (a) and (b) of subsection (6) of section 409.1678, Florida
1845 Statutes, are amended to read:

1846 409.1678 Specialized residential options for children who
1847 are victims of sexual exploitation.—

1848 (1) DEFINITIONS.—As used in this section, the term:

1849 (c) "Sexually exploited child" means a child who has
1850 suffered sexual exploitation as defined in s. 39.01 ~~s.~~
1851 ~~39.01(70)(g)~~ and is ineligible for relief and benefits under the
1852 federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101
1853 et seq.

1854 (6) LOCATION INFORMATION.—

1855 (a) Information about the location of a safe house, safe
1856 foster home, or other residential facility serving victims of

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sexual exploitation, as defined in s. 39.01 ~~s. 39.01(70)(g)~~, which is held by an agency, as defined in s. 119.011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such confidential and exempt information held by an agency before, on, or after the effective date of the exemption.

(b) Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in s. 39.01 ~~s. 39.01(70)(g)~~, may be provided to an agency, as defined in s. 119.011, as necessary to maintain health and safety standards and to address emergency situations in the safe house, safe foster home, or other residential facility.

Section 34. Subsection (5) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01 ~~s. 39.01(70)(g)~~.

Section 35. Section 409.1679, Florida Statutes, is amended to read:

409.1679 Additional requirements; reimbursement methodology.—

(1) Each program established under s. 409.1676 ~~ss. 409.1676 and 409.1677~~ must meet the following expectations, which must be included in its contracts with the department or lead agency:

(a) No more than 10 percent of the children served may move from one living environment to another, unless the child is

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returned to family members or is moved, in accordance with the treatment plan, to a less-restrictive setting. Each child must have a comprehensive transitional plan that identifies the child's living arrangement upon leaving the program and specific steps and services that are being provided to prepare for that arrangement. Specific expectations as to the time period necessary for the achievement of these permanency goals must be included in the contract.

(b) Each child must receive a full academic year of appropriate educational instruction. No more than 10 percent of the children may be in more than one academic setting in an academic year, unless the child is being moved, in accordance with an educational plan, to a less-restrictive setting. Each child must demonstrate academic progress and must be performing at grade level or at a level commensurate with a valid academic assessment.

(c) Siblings must be kept together in the same living environment 100 percent of the time, unless that is determined by the provider not to be in the children's best interest. When siblings are separated in placement, the decision must be reviewed and approved by the court within 30 days.

(d) The program must experience a caregiver turnover rate and an incidence of child runaway episodes which are at least 50 percent below the rates experienced in the rest of the state.

(e) In addition to providing a comprehensive assessment, the program must provide, 100 percent of the time, any or all of the following services that are indicated through the assessment: residential care; transportation; behavioral health services; recreational activities; clothing, supplies, and

586-02390-17 20171044c1

miscellaneous expenses associated with caring for these children; necessary arrangements for or provision of educational services; and necessary and appropriate health and dental care.

(f) The children who are served in this program must be satisfied with the services and living environment.

(g) The caregivers must be satisfied with the program.

(2) ~~Notwithstanding the provisions of s. 409.141,~~ The Department of Children and Families shall fairly and reasonably reimburse the programs established under s. 409.1676 ~~ss-~~ ~~409.1676~~ and ~~409.1677~~ based on a prospective per diem rate, which must be specified annually in the General Appropriations Act. Funding for these programs shall be made available from resources appropriated and identified in the General Appropriations Act.

Section 36. Subsection (11) of section 1002.3305, Florida Statutes, is amended to read:

1002.3305 College-Preparatory Boarding Academy Pilot Program for at-risk students.—

(11) STUDENT HOUSING.—~~Notwithstanding s. 409.176 ss-~~ ~~409.1677(3) (d) and 409.176~~ or any other provision of law, an operator may house and educate dependent, at-risk youth in its residential school for the purpose of facilitating the mission of the program and encouraging innovative practices.

Section 37. For the purpose of incorporating the amendment made by this act to section 456.057, Florida Statutes, in a reference thereto, subsection (2) of section 483.181, Florida Statutes, is reenacted to read:

483.181 Acceptance, collection, identification, and examination of specimens.—

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(2) The results of a test must be reported directly to the licensed practitioner or other authorized person who requested it, and appropriate disclosure may be made by the clinical laboratory without a patient's consent to other health care practitioners and providers involved in the care or treatment of the patient as specified in s. 456.057(7)(a). The report must include the name and address of the clinical laboratory in which the test was actually performed, unless the test was performed in a hospital laboratory and the report becomes an integral part of the hospital record.

Section 38. This act shall take effect January 1, 2018.

The Florida Senate
State Senator René García
36th District

Please reply to:

District Office:

1490 West 68 Street
Suite # 201
Hialeah, FL 33014
Phone# (305) 364-3100

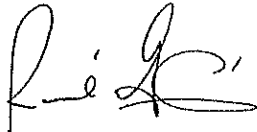
March 14th, 2017

The Honorable Greg Steube
Chairman, Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Steube,

Please have this letter serve as my formal request to have **SB 1044: Child Welfare** be heard during the next scheduled Judiciary Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García
District 36

CC: Tom Cibula
Joyce Butler

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/17
Meeting Date

1044C1
Bill Number (if applicable)

819136
Amendment Barcode (if applicable)

Topic Child Welfare

Name Victoria Zepp

Job Title Exec. Dir. Gov & Affairs

Address 121 N. Monroe St. 9007

Street

TLH
City

FL
State

32301
Zip

Phone 888.241.6309

Email VICTORIA@CLARITY-1.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing FL Coalition for Children

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)

4/19/17
Meeting Date

1044
Bill Number (if applicable)

Topic SB 1044

Amendment Barcode (if applicable)

Name BRYAN CHERRY

Job Title Lobbyist

Address 205 S. Adams

Phone (850) 205-0885

Street

Tallahassee FL 32301

City

State

Zip

Email bryan@adamstadvocates.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Coalition For The Homeless

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)

19 Apr 17

Meeting Date

1044

Bill Number (if applicable)

Topic Child Welfare

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Street

Phone 850.510.9922

Tall

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.

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)

4/19/17
Meeting Date

1044
Bill Number (if applicable)

Topic CHILD WELFARE

Amendment Barcode (if applicable)

Name DIANA RAGBEER

Job Title DIRECTOR, PUBLIC POLICY

Address BISCUIT SW 2RD AVE
Street

Phone 305 571-5700

MIAMI FL
City State Zip

Email RE

Speaking: ☐ For ☐ Against ☐ Information

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

Representing THE CHILDREN'S TRUST

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1370

INTRODUCER: Judiciary Committee and Senator Perry

SUBJECT: Lottery Games

DATE: April 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	Favorable
2.	Parks	Cibula	JU	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1370 states that every contract between the Department of the Lottery (department) and a lottery ticket vendor must include a provision requiring the vendor to prominently place or print the words “WARNING: GAMBLING CAN BE ADDICTIVE” on all tickets. The bill also states that every contract between the department and a ticket retailer must include a provision requiring the retailer to prominently display a sign (provided by the department) with the same warning at the tickets’ point of sale.

The bill will have a fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill provides for an effective date of July 1, 2017.

II. Present Situation:

Section 15 of Article X of the State Constitution (1968) allows lotteries to be operated by the state. The relevant provisions of statute which specify how the Florida Lottery must be operated are set forth in s. 24.102(2), F.S., which provides:

- The net proceeds of lottery games shall be used to support improvements in public education;
- Lottery operations shall be undertaken as an entrepreneurial business enterprise; and
- The department shall be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the Florida Lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens”¹ for the benefit of public education.² The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.³ Retailers receive commissions of 5 percent of the ticket price, 1 percent of the prize value for redeeming winning tickets, and bonus and performance incentive payments.⁴ Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.⁵

The department selects retailers based on financial responsibility, integrity, reputation, accessibility, convenience, security of the location, and estimated sales volume, with special consideration for small businesses.⁶ Retailers must be at least 18 years old, and the sale of lottery tickets must occur as part of an ongoing retail business. Contracting with a retailer with a felony criminal history is prohibited,⁷ and the authority to act as a retailer may not be transferred.⁸

Retailers may not extend credit or lend money to a person to purchase a lottery ticket. The use of a credit or charge card or other instrument issued by a bank, savings association, credit union, charge card company, or by a retailer (for installment sales of goods) is allowed, if the lottery ticket purchase is part of a purchase transaction for other goods and services that cost \$20 or more.⁹

The department may establish by rule a system to verify and pay winning lottery tickets:¹⁰

- Any lottery retailer, as well as any department office, may redeem a winning ticket valued at less than \$600.¹¹ Payments less than \$50 are generally paid by a retailer in cash, depending on store policy or local ordinance. Higher amounts may be paid by cash, check, or money order at no cost to the winner.
- Only a department office may redeem a winning ticket valued at \$600 or more.¹² Winning tickets are paid at the claimant’s option in a combination of cash, check, or lottery tickets (with a limitation of \$200 payable in cash).

¹ See s. 24.104, F.S.

² See s. 24.121(2), F.S.

³ See s. 24.105(17), F.S.

⁴ Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, Report No. 14-06, *See Lottery Transfers Have Recovered; Options Remain to Enhance Transfers 2* (January 2014), (hereinafter *OPPAGA Report 14-06*), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf>, (last visited Apr. 13, 2017).

⁵ See Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, Report No. 15-03, *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Increase Efficiency 1 n.3* (Jan. 2015), (hereinafter *OPPAGA Report 15-03*), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last visited Apr. 13, 2017).

⁶ See s. 24.112(2), F.S., which also includes a statement of legislative intent that retailer selections be based on business considerations and public convenience, without regard to political affiliation.

⁷ See s. 24.112(3)(c), F.S.

⁸ See s. 24.112(4), F.S.

⁹ See s. 24.118(1), F.S.

¹⁰ See s. 24.115, F.S., and Fla. Admin. Code R. 53ER15-31 (2015).

¹¹ The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the nine lottery district offices, or to lottery headquarters in Tallahassee.

¹² Mega Millions® and Powerball® prizes up to \$1 million may be claimed at any lottery district office. All other prizes greater than \$250,000 must be claimed at lottery headquarters.

Prizes must be claimed within certain time limits, depending on the type of game played. Instant lottery tickets (e.g., scratch-off tickets), must be redeemed within 60 days after the end of that lottery game.¹³ Other lottery tickets (e.g., tickets for drawings) must be redeemed within 180 days after the drawing or the end of the lottery game in which the prize was won.

The department may adopt rules governing the types of lottery games to be conducted,¹⁴ including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”¹⁵

The department introduced full service vending machines in retail stores across the state in November 2013.¹⁶ In its most recent Financial Audit, the department stated that 500 vending machines used in the 2015-2016 fiscal year reflected an increase in sales of more than \$36 million, more than 14 percent over the prior fiscal year.¹⁷

Scratch-off Games

The department’s legislatively-approved performance standards are reported in its long-range program plan for the 2017-2018 fiscal year.¹⁸ In that plan, the department noted that it set a new all-time sales record in the 2015-2016 fiscal year with sales reaching \$6.06 billion, exceeding those in the prior year by more than \$479 million and resulting in a transfer of more than \$1.69 billion to the Educational Enhancement Trust Fund.¹⁹ Further, the department indicated that the success of the Florida Lottery was a result of the agency’s continued efforts to expand and revise its roster of games. During the 2015-2016 fiscal year, scratch-off ticket sales exceeded \$3 billion for the fourth consecutive year, and broke all-time scratch-off sales records for the fifth consecutive year.²⁰

Scratch-off games have a finite lifecycle based on the number that are printed and how they sell; at the end of the lifecycle of a game, the department replaces it with more profitable games. Typically, 12 to 15 scratch-off games are closed each calendar quarter. The following criteria are used to determine when to end games:

¹³ See s. 24.115(1)(f), F.S.

¹⁴ See s. 24.105(9)(a), F.S.

¹⁵ Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, Laws of Fla., authorized such machines, subject to restrictions that they be: (1) designed solely for dispensing of instant lottery tickets; (2) activated by coin or currency; (3) in the direct line of sight of on-duty retail employees; (4) capable of being electronically deactivated for 5 minutes or more; and (5) incapable of redeeming winning tickets, though they may dispense change. Chapter 2012-130, Laws of Fla., moved the restrictions on player-activated machines from s. 24.105(9)(a)4., F.S., to s. 24.112(15), F.S. As amended, the law (1) authorizes lottery vending machines to dispense “online lottery tickets, instant lottery tickets, or both,” and (2) prohibits use of mechanical reels or video depictions of slot machine or casino game themes or titles (but does not prohibit use of casino game themes or titles on lottery tickets, signage, or advertising displays on the vending machines).

¹⁶ OPPAGA Report 14-06, *supra* note 5, at 2.

¹⁷ See State of Florida Auditor General, Report No. 2017-103, *Financial Audit of the Department of the Lottery, for the Fiscal Year Ended June 30, 2016, and 2015 30* (Jan. 2015), http://www.myflorida.com/audgen/pages/pdf_files/2015-092.pdf (2017 Financial Audit section) (last visited Apr. 13, 2017).

¹⁸ See Florida Lottery, Long Range Program Plan (Sept. 13, 2016), <http://floridafiscalportal.state.fl.us/Document.aspx?ID=14600&DocType=PDF> (last visited Apr. 13, 2017).

¹⁹ *Id.* at pages 3-4.

²⁰ *Id.* at page 4.

- There are no remaining top prizes;
- There is no available inventory to order; and
- Current sales levels, inventory levels, contract requirements, seasonality, unforeseen circumstances, changing market conditions or print defects.²¹

The department currently promotes responsible lottery play and directs persons struggling with a gambling problem to contact the 1-888-ADMIT-IT telephone line for assistance.²²

III. Effect of Proposed Changes:

The bill amends s. 24.111, F.S., concerning vendors of lottery tickets, to require that every contract between the Department of the Lottery and a ticket vendor include a provision that the vendor must place or print a warning on all lottery tickets which prominently reads: “WARNING: GAMBLING CAN BE ADDICTIVE.”

The bill also amends s. 24.112, F.S., concerning retailers of lottery tickets, to require that every contract between the department and a ticket retailer include a provision that the retailer must prominently display a sign, provided by the department, with the text “WARNING: GAMBLING CAN BE ADDICTIVE” at the tickets’ point of sale.

The bill will likely only be held to affect contracts entered into after the effective date. The Florida Supreme Court has ruled that a substantive statute cannot operate retrospectively unless the Legislature provides clear intent that it should do so; even then, the statute may not be applied retroactively if it “impairs vested rights, creates new obligations, or imposes new penalties.”²³ Here, the bill creates a new obligation for lottery ticket vendors to provide for the marking of all tickets, and it arguably impairs vendors and retailers’ right to contract under art. I, s. 10, Fla. Const. Thus, the bill will likely be deemed prospective.

The bill provides for 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.

²¹ OPPAGA Report 15-03, *supra* note 5, at 10.

²² See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Florida Lottery) for SB 1370, dated Mar. 7, 2017 on file with Senate Committee on Regulated Industries) at page 2.

²³ See *State Farm v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995) (citations omitted).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of the Lottery indicated that the original version of the bill would have no fiscal impact on state government.²⁴ However, that version of the bill did not include the provision requiring the department to provide warning signs for retailers. The department will likely incur expenses producing and distributing these signs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 24.111 and 24.112.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 19, 2017:

The committee substitute removes the language for retailers which would have required them to print warning labels on lottery tickets and replaces it with the language requiring retailers to display warning signs.

B. Amendments:

None.

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

²⁴ *Id.* at page 3.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 15 - 28
and insert:

(8) Every contract subject to this section shall contain a provision that requires the vendor to place or print a warning on all lottery tickets that prominently reads: "WARNING: GAMBLING CAN BE ADDICTIVE."

Section 2. Subsections (10) through (15) of section 24.112, Florida Statutes, are renumbered as subsections (11) through (16), respectively, and a new subsection (10) is added to that



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section to read:

24.112 Retailers of lottery tickets; authorization of vending machines to dispense lottery tickets.—

(10) Every contract subject to this section shall contain a provision that requires the retailer to prominently display a sign, provided by the department, at the lottery ticket point of sale that states: "WARNING: GAMBLING CAN BE ADDICTIVE."

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

And the title is amended as follows:

Delete lines 2 - 7

and insert:

An act relating to warnings for lottery games;
amending s. 24.111, F.S.; requiring contracts entered into between the Department of the Lottery and a vendor of lottery tickets to include a provision that requires the vendor to place or print a specified warning on all lottery tickets; amending s. 24.112, F.S.; requiring contracts entered into between the department and a retailer of lottery tickets to include a provision that requires the retailer to prominently display a sign with a specified warning at the point of sale; providing an

By Senator Perry

8-01213-17

20171370__

A bill to be entitled

An act relating to lottery games; amending ss. 24.111 and 24.112, F.S.; requiring contracts entered into between the Department of the Lottery and a vendor or retailer of lottery tickets to include a provision that requires the vendor or retailer place or print a specified warning on all lottery tickets; providing an effective date.

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

Section 1. Subsection (8) is added to section 24.111, Florida Statutes, to read:

24.111 Vendors; disclosure and contract requirements.—

(8) Every contract entered into by the department pursuant to this section shall contain a provision that requires the vendor to place or print a warning on all lottery tickets that prominently reads: "WARNING: GAMBLING CAN BE ADDICTIVE."

Section 2. Subsections (10) through (15) of section 24.112, Florida Statutes, are renumbered as subsections (11) through (16), respectively, and a new subsection (10) is added to that section to read:

24.112 Retailers of lottery tickets; authorization of vending machines to dispense lottery tickets.—

(10) Every contract entered into by the department pursuant to this section shall contain a provision that requires the retailer to place or print a warning on all lottery tickets that prominently reads: "WARNING: GAMBLING CAN BE ADDICTIVE."

Section 3. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: April 4, 2017

I respectfully request that **Senate Bill #1370**, relating to Lottery Games , be placed on the:

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

A handwritten signature in cursive script that reads "W. Keith Perry".

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/2017

Meeting Date

1370

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S.
Street

Phone 727/897-9291

City

State

Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 294

INTRODUCER: Judiciary Committee and Senator Bracy

SUBJECT: Condominium, Cooperative, and Homeowners' Associations

DATE: April 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	Favorable
2.	<u>Parks</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 294 provides substantively identical changes to the annual financial reporting requirements for condominium, cooperative, and homeowners' associations.

Under existing law, these associations must prepare annual financial statements. The complexity of these statements is based on the annual revenues of an association. Associations having larger revenues must prepare more complex financial statements. The members of these associations, however, may vote to allow the association to prepare less complex financial statements than otherwise required by law but not for more than 3 consecutive years. The bill repeals the 3-consecutive-year limit on allowing an association to prepare less complex financial statements.

The bill also repeals the provisions of law that require condominium, cooperative, and homeowners' associations having fewer than 50 units or parcels to prepare a report of cash receipts and expenditures. This change will make these smaller associations subject to other provisions of existing law which define the financial reporting requirements of an association based on its annual revenues.

II. Present Situation:

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chapters 718 and 719, F.S., for condominium and cooperative associations, respectively. The

division may investigate complaints and enforce compliance with chapters 718 and 719, F.S., with respect to associations that are still under developer control.¹ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.² After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.³ For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.⁴

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.⁵

If the division has reasonable cause to believe that a violation of any provision of chapter 718, F.S., chapter 719, F.S., or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. In addition, the division is authorized to petition a court to appoint a receiver or conservator to implement a court order or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.⁶

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such contract rights,

¹ Sections 718.501(1) and 719.501(1), F.S.

² *Id.*

³ Section 718.501(1), F.S.

⁴ *Id.*

⁵ Sections 718.501(1) and 719.501(1), F.S.

⁶ *Id.*

including, but not limited to, the rights of the developer to complete the community as initially contemplated.

In regards to homeowners' associations, the division's authority is limited to arbitration of recall election disputes.⁷

Condominium

A condominium is a “form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”⁸ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.⁹ A declaration is similar to a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.¹⁰

A condominium is administered by a board of directors referred to as a “board of administration.”¹¹

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” to mean:

that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit's occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.¹²

Homeowners' Associations

Florida laws provide statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations. These laws protect the rights

⁷ See s. 720.306(9)(c), F.S.

⁸ Section 718.103(11), F.S.

⁹ Section 718.104(2), F.S.

¹⁰ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

¹¹ Section 718.103(4), F.S.

¹² See ss. 719.106(1)(g) and 719.107, F.S.

of association members without unduly impairing the ability of such associations to perform their functions.¹³

A “homeowners’ association” is defined as “a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”¹⁴ Unless specifically stated to the contrary, homeowners’ associations are also governed by chapter 607, F.S., relating to for-profit corporations or by chapter 617, F.S., relating to not-for-profit corporations.¹⁵

Homeowners’ associations are administered by a board of directors whose members are elected.¹⁶ The powers and duties of homeowners’ associations include the powers and duties provided in chapter 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.¹⁷ The officers and members of a homeowners’ association have a fiduciary relationship to the members who are served by the association.¹⁸

Chapters 718, 719, and 720, F.S.

Chapter 718, F.S., relating to condominiums, chapter 719, F.S., relating to cooperatives, and chapter 720, F.S., relating to homeowners’ associations, provide for the governance of these associations. The chapters delineate requirements for notices of meetings,¹⁹ recordkeeping requirements, including which records are accessible to the members of the association,²⁰ and financial reporting.²¹ Timeshare condominiums are generally governed by chapter 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

Official Records

Condominium, cooperative associations, and homeowners’ associations are required to maintain the official records of an association. The provisions regarding access to records are similar for each type of association.

¹³ See s. 720.302(1), F.S.

¹⁴ Section 720.301(9), F.S.

¹⁵ Section 720.302(5), F.S.

¹⁶ See ss. 720.303 and 720.307, F.S.

¹⁷ See ss. 720.301 and 720.303, F.S.

¹⁸ Section 720.303(1), F.S.

¹⁹ See s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners’ associations.

²⁰ See s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners’ associations.

²¹ See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners’ associations.

Current law delineates the types of records that the association must maintain and identifies records that are and are not accessible to association members. The associations are required to maintain official records for at least 7 years.²²

The official records of the association must be open to inspection by any association member or the authorized representative of such member at all reasonable times. Members of the association have the right to inspect the records, and to make copies or obtain copies, at the reasonable expense, if any, of the member.

If the association fails to provide the requested records within 10 working days after receipt of a written request from a member, there is a rebuttable presumption that the association willfully failed to comply with the access to records requirement. A member of the association is entitled to actual damages or minimum damages for the association's willful failure to comply with a records request. Minimum damages are \$50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request.

If a condominium or cooperative association fails to permit inspection, the person prevailing in an action to enforce the access to records requirement is entitled to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Current law does not provide a right to attorney fees expressly related to failure to provide requested records, but a member of a homeowners' association, if he or she is the prevailing party in litigation against the association, is entitled to recover reasonable attorney fees and costs, and may also recover additional amounts determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund the expenses of the litigation.

Financial Reporting

Sections 718.11(13), 719.104(4), and 720.303(7), F.S., provide the financial reporting requirements for condominium, cooperative, and homeowners' associations, respectively. These provisions for each association type are comparable.

Within 90 days following the end of the fiscal or calendar year, or annually on such date as provided in the association's bylaws, the board must complete, or contract with a third party to complete, the financial statements. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

Condominium and cooperative associations may not waive the financial reporting requirements for more than 3 consecutive years.²³ A cooperative association may waive financial reporting for the fiscal year by a vote of a majority of the voting interests of the association present at a duly

²² See s. 718.111(13)(b), F.S., for condominiums, s. 719.104(2)(b), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners' associations.

²³ Sections 718.111(13) and 718.104(4)(b)4., F.S. Chapter 720, F.S., does not authorize homeowners' associations to waive financial reporting requirements.

called meeting of the association.²⁴ Chapter 718, F.S., does not provide the process for waiving financial reporting requirements in condominium associations.

The type of financial reporting that an association must perform is based on the association's total annual revenue. An association with total annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.
- At least \$150,000 but less than \$300,000 must prepare compiled financial statements.²⁵
- At least \$300,000 but less than \$500,000 must prepare reviewed financial statements.²⁶
- \$500,000 or more must prepare audited financial statements.²⁷

An association of fewer than 50 units or parcels, regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures. Provisions specify the information that must be disclosed in the report of cash receipts and expenditures. Cooperative and homeowners' associations may provide otherwise in their governing documents.

If approved by a majority of voting interests present at a duly called meeting, an association may prepare or cause to be prepared:

- A report of cash receipts and expenditures in lieu of a compiled, reviewed or audited financial statement;
- A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

III. Effect of Proposed Changes:

Existing sections 718.11(13), 719.104(4), and 720.303(7), F.S., specify the financial reporting requirements for condominium, cooperative, and homeowners' associations, respectively. The bill provides substantively identical revisions to the financial reporting requirements for each type of association.

The bill repeals s. 718.111(13)(b)2., 719.104(4)(c)2., and 720.303(7)(b)2., F.S., the provisions that require condominium, cooperative, and homeowners' associations, respectively, having fewer than 50 units or parcels, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures. Under the bill, an association having fewer than 50 units or

²⁴ Section 718.104(4)(b)4., F.S.

²⁵ A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without the assurance of a Certified Public Accountant (CPA) that the statement conforms with Generally Accepted Accounting Principles (GAAP). Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).

²⁶ A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

²⁷ An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

parcels is required to prepare a compiled, reviewed, or audited financial statement if the association's total annual revenue is more than \$150,000. However, the bill does not increase the financial reporting requirements for a smaller association whose revenues do not exceed \$150,000.

The bill also amends ss. 718.111(13)(d), 719.104(c)2. and 720.303(7)(b)2., F.S., to repeal the 3-consecutive-year limit on the ability of an association to prepare less complex financial statements than otherwise required by law. Under this change, the members of an association can waive the statutory requirement for default financial statements whenever they want, regardless of how many consecutive times the waiver has already been made.

The effective date of the bill is July 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:

The bill may cause a negative impact on condominium, cooperative and homeowners' associations operating fewer than 50 units, if an association is required to hire an accountant to complete a compiled, reviewed, or audited financial statement instead of the report of cash receipts and expenditures required under current law. However, the bill also allows the members of an association, regardless of the number of units or parcels, to vote to allow a report of cash receipts and expenditures in lieu of the default requirements for more complex financial statements.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.111, 719.104, and 720.303.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 19, 2017:

The committee substitute removes the penalty for condominium, cooperative, and homeowners' associations that do not provide financial reports to unit owners. The penalty would have prohibited these associations from waiving the default statutory requirements for financial statements for 3 consecutive years. The committee substitute also deletes provisions of law that prohibit associations from waiving the default statute requirements for financial statements for more than 3 consecutive years.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
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The Committee on Judiciary (Bracy) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (13) of section 718.111, Florida
Statutes, is amended to read:

718.111 The association.—

(13) FINANCIAL REPORTING.—Within 90 days after the end of
the fiscal year, or annually on a date provided in the bylaws,
the association shall prepare and complete, or contract for the
preparation and completion of, a financial report for the



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preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of \$150,000 or



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more, but less than \$300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).~~

~~2.3.~~ A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if



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the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s.



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718.104(4) (e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association. ~~An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.~~

Section 2. Paragraphs (b) and (c) of subsection (4) of section 719.104, Florida Statutes, are amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(4) FINANCIAL REPORT.—

(b) Except as provided in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:

1. An association with total annual revenues between \$150,000 and \$299,999 shall prepare a compiled financial statement.

2. An association with total annual revenues between \$300,000 and \$499,999 shall prepare a reviewed financial statement.

3. An association with total annual revenues of \$500,000 or



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more shall prepare an audited financial statement.

4. The requirement to have the financial statement compiled, reviewed, or audited does not apply to an association if a majority of the voting interests of the association present at a duly called meeting of the association have voted to waive this requirement for the fiscal year. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. ~~An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.~~

(c)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the financial statements required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.~~

~~2.3.~~ A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and



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expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association.

Section 3. Paragraph (b) of subsection (7) of section 720.303, Florida Statutes, is amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(7) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall, within the time limits set forth in subsection (5), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows:

(b)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial~~



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~~statements required by paragraph (a) unless the governing documents provide otherwise.~~

2.3. A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

===== 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 condominium, cooperative, and homeowners' associations; amending ss. 718.111, 719.104, and 720.303, F.S.; deleting exemptions for certain associations from specified reporting requirements; deleting provisions prohibiting certain associations from waiving certain financial reporting requirements for more than 3 years; providing an effective date.

By Senator Bracy

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A bill to be entitled

An act relating to condominium, cooperative, and homeowners' associations; amending ss. 718.111, 719.104, and 720.303, F.S.; requiring associations to meet specified financial reporting requirements if they fail to provide unit owners or members with requested financial information; providing that associations that fail to provide such information may not exercise a specified reporting option for a specified period; deleting exemptions for certain associations from specified reporting requirements; providing an effective date.

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

Section 1. Subsection (13) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner. If, upon receipt of a

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written request, an association does not provide a copy of the prior year's financial report to the unit owner, the association shall provide to the division the financial reporting required under this section for the next 3 consecutive years and may not exercise the reporting option authorized in paragraph (d) for those years. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.

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3. An association with total annual revenues of \$500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).~~

~~2.3-~~ A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

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3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until

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control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.

Section 2. Paragraphs (a) and (c) of subsection (4) of section 719.104, Florida Statutes, are amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(4) FINANCIAL REPORT.—

(a) Within 90 days following the end of the fiscal or calendar year or annually on such date as provided in the bylaws of the association, the board of administration shall prepare and complete, or contract with a third party to prepare and complete, a financial report covering the preceding fiscal or calendar year. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, calendar year, or other date provided in the bylaws, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. If, upon receipt of a written request, an association does not provide a copy of the prior year's financial report to the member, the association shall provide to the division the financial reporting required under this section for the next 3 consecutive years and may not exercise the reporting option authorized in paragraph (e) for those years. The division shall

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adopt rules setting forth uniform accounting principles, standards, and reporting requirements.

(c)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the financial statements required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.~~

~~2.3.~~ A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association.

Section 3. Subsection (7) of section 720.303, Florida Statutes, is amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(7) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract with a

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third party for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall, within the time limits set forth in subsection (5), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. If, upon receipt of a written request, an association does not provide a copy of the prior year's financial report to the member, the association shall provide to the division the financial reporting required under this section for the next 3 consecutive years and may not exercise the reporting option authorized in paragraph (d) for those years. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy. The financial statements shall be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$500,000 or

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more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.~~

2.3. A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall

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provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

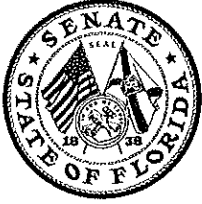
(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Section 4. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Banking and Insurance
Judiciary
Regulated Industries

SENATOR RANDOLPH BRACY

11th District

April 6, 2017

The Honorable Senator Steube
326 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chairman Steube,

I respectfully request SB 294, pertaining to Condominium, Cooperative and Homeowners Associations annual financial reporting be placed on the agenda for the next scheduled Judiciary Committee meeting.

I thank you in advance for your consideration and should you have any further questions please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randolph Bracy".

Senator Randolph Bracy
Senate District 11

Cc: Senator Lizbeth Benaquisto , Vice Chair
Tom Cibula, Staff Director
Joyce Butler , Committee Administrative Assistant

REPLY TO:

- ☐ 150 N. Lakeshore Drive, Ocoee, Florida 34761 (407) 656-6716
- ☐ 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

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)

4/19/17

Meeting Date

294

Bill Number (if applicable)

Topic Condominium, Cooperatives, and HOAs

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Job Title _____

Address P.O. Box 2020

Street

Phone 727.421.6902

St. Petersburg

City

FL

State

33731

Zip

Email travis@moore-relations.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Community Associations 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)

4/19/2017
Meeting Date

~~321~~ 294
Bill Number (if applicable)

Topic Condominiums, Cooperatives, Homeowners Assoc

740772 -
Amendment Barcode (if applicable)

Name Melanie Bostick

Speak on
Amendment

Job Title Vice President

Address 113 E. College Ave.
Street
Tallahassee FL 32301
City State Zip

Phone (850) 841-1726

Email melanie@libertypartnersh.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

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)

294

Meeting Date _____

Bill Number (if applicable) _____

Topic Condo HOA Association

Amendment Barcode (if applicable) _____

Name Justin Thomas

Job Title Director of Governmental Affairs

Address 325 W College
Street

Phone 528-2209

32303

Email _____

City

State

Zip

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

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 970

INTRODUCER: Criminal Justice and Senator Bracy

SUBJECT: Florida Compensation Trust Fund for Survivors of Human Trafficking/Department of Law Enforcement

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Fav/CS
2.	Jones	Cibula	JU	Favorable
3.			AP	

I. Summary:

CS/SB 970 creates the Trust Fund for Victims of Human Trafficking and Prevention within the Department of Legal Affairs.

The purposes of the trust fund include, but are not limited to:

- Educating the public about the recruitment, trafficking, and exploitation of persons in connection with human trafficking;
- Assisting in the prevention of the recruitment of minors in Florida schools for exploitation;
- Establishing a survivors' resource center to make available to survivors of human trafficking legal services, social services, safe harbors, safe houses, and language services;
- Advertising the National Human Trafficking Resource Center hotline number and the BeFree Textline in diverse venues;
- Assisting in the coordination between law enforcement and service providers; and
- Assisting in vacating any convictions of minors who were victims of human trafficking.

The Florida Constitution requires a bill creating a new trust fund to pass by a three-fifths vote of the membership of each chamber of the Legislature. State trust funds must terminate not more than four years after the initial creation of the fund unless the Legislature sets a shorter time.

In accordance with the Florida Constitution, the trust fund is terminated on July 1, 2021.

The bill takes effect on the same date as CS/CS/SB 972 or similar legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There is an estimated 20.9 million adults and children in the world who are in some sort of forced labor or sexual exploitation. Of that number, an estimated 26 percent of them are children, and in 2010, it was estimated that as many as 300,000 children in the United States were at risk for exploitation each year.¹

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking by using labor or services or through commercial sexual activity.²

Statewide Council on Human Trafficking

The Attorney General is the head of the Department of Legal Affairs.³ The Department of Legal Affairs (DLA) is responsible for providing all legal services required by any executive department unless otherwise provided by law. Additionally, the DLA administers certain trust funds and related programs that support crime victim services, criminal investigations,⁴ and crime prevention.⁵

The Statewide Council on Human Trafficking (council) resides within the DLA "for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to fight commercial sexual exploitation as a form of human trafficking and to support victims."⁶

Civil Cause of Action for Human Trafficking

CS/CS/SB 972 Human Trafficking

CS/CS/SB 972, which is linked to CS/SB 970, creates a civil cause of action for victims of human trafficking to bring against the trafficker⁷ or facilitator⁸ of human trafficking. The bill

¹ U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (December 2011) available at http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited March 26, 2017). Polaris, *Human Trafficking: The Facts*, 2016, available at <https://polarisproject.org/facts> (last visited March 26, 2017).

² See ss. 787.06(3) and (4), F.S.

³ Section 16.015, F.S.

⁴ Sections 16.555 and 16.556, F.S.

⁵ Section 16.54, F.S.

⁶ Section 16.617, F.S.

⁷ CS/SB 972 defines a "trafficker" as any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.

⁸ CS/CS/SB 972 defines a "facilitator" as a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker, which assist or enable the trafficker to carry out human trafficking.

allows a victim to bring a civil action against the trafficker or facilitator of human trafficking who victimized the victim. The council, with the consent of the victim, can bring a civil cause of action on behalf of the victim against the trafficker or facilitator of human trafficking who victimizes a person in Florida.

The victim, or the council on behalf of the victim, who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs.

If the council prevails on behalf of the victim, the trust fund must hold the moneys awarded for distribution to the victim, or his or her parent, legal guardian, or estate. If the victim's parent or legal guardian knowingly or through willful blindness, participated in the human trafficking, he or she is not entitled to any distribution or benefit from the trust fund. The trust fund must keep the funds if there is no person or estate to receive the funds. The bill allows these funds to be used for the purposes of the trust fund.

If a victim, or the council on behalf of the victim, prevails in an action, the court must award a civil penalty against the defendant of \$100,000. This penalty is in addition to, and not in lieu of, any other damage award. The civil penalty cannot be disclosed to the jury. The proceeds from the civil penalty must be deposited into the trust fund.

There is no statute of limitations for this civil action.

III. Effect of Proposed Changes:

The bill creates the Trust Fund for Victims of Human Trafficking and Prevention within the Department of Legal Affairs. The bill specifies that trust fund's funds must consist of funds obtained under s. 787.063, F.S., from civil actions brought on behalf of victims, from penalties imposed by the courts, and funds received from any other source, including legislative appropriations.

The purposes of the trust fund include, but are not limited to:

- Educating the public about the recruitment, trafficking, and exploitation of persons in connection with human trafficking;
- Assisting in the prevention of the recruitment of minors in Florida schools for exploitation;
- Establishing a survivors' resource center to make available to survivors of human trafficking legal services, social services, safe harbors, safe houses, and language services;
- Advertising the National Human Trafficking Resource Center hotline number and the BeFree Textline in diverse venues;
- Assisting in the coordination between law enforcement and service providers; and
- Assisting in vacating any convictions of minors who were victims of human trafficking.

In accordance with section 19(f)(2), Art. III, of the Florida Constitution, the trust fund must, unless terminated sooner, be terminated on July 1, 2021. Before its scheduled termination, the trust fund must be reviewed as provided in s. 215.3206(1) and (2), F.S.

The bill takes effect on the same date as CS/CS/SB 972 or similar legislation is adopted in the same legislative session, or an extension thereof, and becomes law. CS/CS/SB 972 is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Section 19(f), Art. III, of the Florida Constitution requires that a bill that creates a new trust fund must:

- Terminate not more than four years after the effective date of the bill creating the trust fund. The Legislature may set a shorter time period.
- Pass both chambers of the Legislature by a three-fifths vote of the membership of each chamber.

The bill contains a termination date of July 1, 2021, for the created trust fund.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The costs to the Department of Legal Affairs to administer the trust fund is unknown at this time. CS/CS/SB 972 requires the court to issue a civil penalty of \$100,000, if the victim or the council prevails. The civil penalty must be deposited into the trust fund. CS/CS/SB 972 also provides the following appropriation:

- For the 2017-2018 Fiscal Year \$153,000 in recurring funds and \$29,000 in nonrecurring funds from the Crimes Compensation Trust Fund to the Department of Legal Affairs, and three full-time equivalent positions are authorized, for the purpose of implementing CS/CS/SB 972.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is linked to the passage of CS/CS/SB 972.

VIII. Statutes Affected:

This bill creates section 787.0611 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on April 17, 2017:

The committee substitute:

- Creates the trust fund in the Department of Legal Affairs, instead of the Department of Law Enforcement;
- Renames the trust fund;
- Specifies where the trust funds' funds come from;
- Clarifies the purposes of the trust fund; and
- Specifies that the bill is effective on the same date as CS/CS/SB 972.

- B. **Amendments:**

None.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Banking and Insurance
Judiciary
Regulated Industries

SENATOR RANDOLPH BRACY

11th District

April 17, 2017

The Honorable Senator Steube
326 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chairman Steube,

I respectfully request SB 970 and SB 972, pertaining to Human Trafficking and Trust Funds for Survivors of Human Trafficking be placed on the agenda for the next scheduled Judiciary Committee meeting.

I thank you in advance for your consideration and should you have any further questions please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Randolph Bracy".

Senator Randolph Bracy
Senate District 11

Cc: Senator Lizbeth Benaquisto , Vice Chair
Tom Cibula, Staff Director
Joyce Butler , Committee Administrative Assistant

REPLY TO:

- ☐ 150 N. Lakeshore Drive, Ocoee, Florida 34761 (407) 656-6716
- ☐ 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

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)

19 Apr 17

Meeting Date

970

Bill Number (if applicable)

Topic Trust Fund - Human Trafficking

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Street

Phone 850.510.9922

Tall

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

APPEARANCE RECORD

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

4/19/17

Meeting Date

970

Bill Number (if applicable)

Topic T.F. ~~VICTIM~~ HUMAN TRAFFICKING

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO BOX 341644

Phone 813.264.2977

Street

TAMPA

FL

33699

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

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)

4-19-17

Meeting Date

970

Bill Number (if applicable)

Topic T.F. VIC HUMAN TRAFFICKING

Amendment Barcode (if applicable)

Name AMBER KELLY

Job Title DIRECTOR of POLICY & COMMUNICATIONS

Address 4853 S. ORANGE AVE

Phone 407-418-0260

Street

ORLANDO FL 32806

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA FAMILY ACTION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 972

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Bracy

SUBJECT: Human Trafficking

DATE: April 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Fav/CS
2.	Jones	Cibula	JU	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 972 creates a civil cause of action for victims of human trafficking.

The specific provisions of the bill:

- Allow the Statewide Council on Human Trafficking (council) within the Department of Legal Affairs, with the consent of the victim, to bring a civil cause of action against the trafficker or facilitator of human trafficking;
- Specify the standard of proof for this civil action is by the preponderance of the evidence;
- Specify that the victim, or the council on behalf of the victim, who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs;
- Require the court impose civil penalties;
- Specifies that there is no statute of limitations for the civil action;
- Require the council to issue an annual report about the trust fund and to administer the Trust Fund for Victims of Human Trafficking and Prevention, created in CS/SB 970;
- Require the Attorney General to recommend one or more educational programs to train employees of public lodging establishments in the identification and reporting of suspected human trafficking;
- Provide the owner or operator of a public lodging establishment may not be held vicariously liable for facilitating human trafficking if certain employees complete educational programs within a specified time;

- Authorize the issuance of subpoenas in certain investigations involving children;
- Provide a nondisclosure requirement for these subpoenas in certain situations;
- Provide penalties for violation of the subpoenas or nondisclosure requirements;
- Provide immunity from civil liability for persons disclosing information requested in the subpoena; and
- Provide for judicial review and extension of the nondisclosure requirement.

The bill provides an appropriation for the 2017-2018 Fiscal Year of \$153,000 in recurring funds and \$29,000 in nonrecurring funds from the Crimes Compensation Trust Fund to the Department of Legal Affairs, and three full-time equivalent positions are authorized, for the purpose of implementing the bill.

The bill is effective October 1, 2017.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There is an estimated 20.9 million adults and children in the world who are in some sort of forced labor or sexual exploitation. Of that number, an estimated 26 percent of them are children, and in 2010, it was estimated that as many as 300,000 children in the United States were at risk for exploitation each year.¹

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking by using labor or services or through commercial sexual activity.²

Civil Cause of Action

Victims of human trafficking have a civil cause of action against a person who:

- With criminal intent, has:
 - Received any proceeds derived, directly or indirectly, from a pattern of criminal activity; or
 - Through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

¹ U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (December 2011) available at http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited March 26, 2017). Polaris, *Human Trafficking: The Facts*, 2016, available at <https://polarisproject.org/facts> (last visited March 26, 2017).

² See ss. 787.06(3) and (4), F.S.

- Through a pattern of criminal activity or through the collection of an unlawful debt, has acquired or maintained, directly or indirectly, any interest in or control of any enterprise or real property.
- Was employed by or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.
- Has conspired or endeavored to violate any of the actions listed above.³

The civil cause of action allows for threefold the actual damages sustained. The victim is entitled to minimum damages of \$200 and reasonable attorney's fees and court costs. Section 772.104(3), F.S., prohibits punitive damages from being awarded. The standard of proof for the civil cause of action is clear and convincing evidence.⁴

The statute of limitations for the civil cause of action is 5 years after the conduct constituting a violation of one of the above stated provisions. The statute of limitations is suspended during prosecution for the criminal activity or criminal conduct, which is the basis for the civil action and for two years after its conclusion.⁵

Statewide Council on Human Trafficking

The Attorney General is the head of the Department of Legal Affairs.⁶ The Department of Legal Affairs (DLA) is responsible for providing all legal services required by any executive department unless otherwise provided by law. Additionally, the DLA administers certain trust funds and related programs that support crime victim services, criminal investigations,⁷ and crime prevention.⁸

The Statewide Council on Human Trafficking resides within the DLA "for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to fight commercial sexual exploitation as a form of human trafficking and to support victims."⁹

Subpoenas

The Sixth Amendment to the United States Constitution guarantees the defendant in a criminal case the right to have compulsory process for obtaining witnesses in his or her favor. That process is the issuing of subpoenas. Specifically, a subpoena is an order directed to a person which requires his or her attendance at a particular time and place to testify as a witness. A subpoena may also require the witness to bring documents or other tangible evidence which may be introduced as evidence in a case.¹⁰

³ Section 772.103, F.S.

⁴ Section 772.104, F.S.

⁵ Section 772.17, F.S.

⁶ Section 16.015, F.S.

⁷ Sections 16.555 and 16.556, F.S.

⁸ Section 16.54, F.S.

⁹ Section 16.617, F.S.

¹⁰ THE LAW DICTIONARY,;What is Subpoena? <http://thelawdictionary.org/subpoena/> (last visited April 21, 2017).

Subpoenas can also be issued in a criminal investigation¹¹ or in a criminal prosecution during discovery¹² or for trial¹³ by the state attorney, the defendant, his or her counsel. Generally, a subpoena must state the name of the court and the title of action and the time and the place at which the witness is commanded to give testimony or produce evidence.¹⁴ Once a witness is subpoenaed by either party, he or she must remain available for attendance until the case is resolved or until he or she is excused by the court hearing the case.¹⁵ A witness's failure to do so could result in being held in contempt of court.¹⁶

Nondisclosure

A subpoena may prohibit the recipient of the subpoena from disclosing the existence or contents of the subpoena. For example, Florida statute authorizes an agency that is investigating¹⁷ a violation of Florida's Racketeer Influenced and Corrupt Organizations (RICO) Act¹⁸ to issue a civil investigative subpoena for testimony or documents.¹⁹ This subpoena is confidential for 120 days, meaning the recipient of the subpoena may not disclose its contents or existence to any person or entity other than his or her attorney during that period.²⁰ The 120-day period may be extended by a circuit court upon showing of good cause by the investigative agency.²¹ For good cause to exist, there must be a showing:

- Of sufficient factual grounds to reasonably indicate a violation of ss. 895.01 – 895.06, F.S.;
- That the documents or testimony requested appear reasonably calculated to lead to the discovery of admissible evidence; and
- Of facts that reasonably indicate that, disclosure of the subpoena would hamper or impede the investigation, or would result in a flight from prosecution.²²

¹¹ Florida law authorizes certain entities to use subpoenas for the purpose of conducting criminal investigations, including, but not limited to, s. 409.920, F.S., (authorizing the Attorney General to subpoena witnesses or materials, including medical records, during an investigation for Medicaid fraud); s. 415.107, F.S., (authorizing a criminal justice agency investigating a report related to abuse, neglect, or exploitation of a vulnerable adult to subpoena related records); and s. 414.411, F.S., (authorizing Department of Financial Services to subpoena witnesses and records related to a public assistance fraud investigation).

¹² Fla. R. Crim. P. 3.220 (h), allows any party to conduct a deposition by oral examination of any person authorized by the rule, generally including listed witnesses, co-defendants, or unlisted witnesses who have information relevant to the offense charged. The rule provides that the issuance of the subpoena for deposition is the same as provided for in the Florida Rules of Civil Procedure.

¹³ Fla. R. Crim. P. 3.361(a), provides that subpoenas for testimony before the court and subpoenas for production of tangible evidence before the court may be issued by the clerk of the court or by any attorney of record in the case.

¹⁴ *Id.*

¹⁵ Section 914.03, F.S.

¹⁶ *Id.*

¹⁷ In order to issue a subpoena, the level of proof required is that there must be "something more than a fishing expedition, and something less than probable cause." *Check 'n Go of Florida, Inc. v. State* 790 So.2d 454,458 (Fla. 5th DCA 2001).

¹⁸ The Racketeer Influenced and Corrupt Organizations Act was passed by Congress in 1970 as part of the Organized Crime Control Act of 1970. Florida passed its own RICO Act in 1977.

¹⁹ Section 895.06, F.S.

²⁰ Section 895.06(2), F.S.

²¹ *Id.*

²² *Id.*

Upon failure of the person or enterprise to comply with the subpoena, the investigative agency may apply to the circuit court to enforce the subpoena.²³

Similarly, federal law authorizes the Federal Bureau of Investigation (FBI) to issue a National Security Letter (NSL), which is an administrative subpoena that allows the FBI to require records from wire or electronic communication service providers if the records are relevant to investigations related to terrorism or clandestine intelligence activities.²⁴ For such subpoenas, the FBI may require nondisclosure if the FBI certifies that disclosure may result in (i) a danger to the national security of the United States; (ii) interference with a criminal counterterrorism, or counterintelligence investigation; (iii) interference with diplomatic relations; or (iv) danger to the life or physical safety of any person.²⁵

To avoid potential First Amendment concerns with such a restraint on speech, Congress passed the USA FREEDOM Act of 2015, which authorizes a recipient of a NSL/subpoena to notify the Government or file a petition for judicial review if the recipient wishes to have a court review a nondisclosure requirement in such subpoena.²⁶ Courts have upheld the FBI's authority to issue the subpoenas and the accompanying nondisclosure requirements because of the government's compelling interest in protecting national security.²⁷

III. Effect of Proposed Changes:

Human Trafficking Civil Action

The bill creates an additional civil cause of action for victims of human trafficking to bring against the trafficker or facilitator of human trafficking who victimized them and allows the victims to recover damages. (Section 3, creating s. 787.063, F.S.). The Legislature finds that, to achieve the state's goals relating to human trafficking set forth in s. 787.06(1)(d), F.S., it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages.

The bill defines the following terms (Section 2, creating s. 787.062, F.S.):

- “Council” means the Statewide Council on Human Trafficking within the Department of Legal Affairs, as created in s. 16.617, F.S.
- “Facilitator” means a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker, which assist or enable the trafficker to carry out human trafficking.
- “Human trafficking” has the same meaning as provided in s. 787.06(2), F.S.
- “Trafficker” means any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.
- “Trust fund” refers to the Trust Fund for Victims of Human Trafficking and Prevention created in s. 787.0611, F.S.

²³ Section 895.06(4), F.S.

²⁴ 18 U.S.C. s. 2709(b)(1).

²⁵ *Id.* at s. 2709(c)(1)(B).

²⁶ 18 U.S.C. s. 3511(b)(1)(A).

²⁷ *Lynch v. Under Seal*, 165 F.Supp.3d 352 (D. Md. 2015).

- “Venture” means any group of two or more individuals associated in fact, whether or not a legal entity.
- “Victim of human trafficking” means a person subjected to coercion, as defined in s. 787.06, F.S., for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.
- “Willful blindness” occurs when a person’s suspicions are aroused about a particular fact and, while he or she realizes its probability, he or she deliberately refrains from obtaining confirmation of or acting on the fact because he or she wants to remain in ignorance, such that knowledge of the fact avoided can reasonably and fairly be imputed to the person who avoided confirming it.

The bill allows a victim to bring a civil action against the trafficker or facilitator of human trafficking who victimized the victim. The bill also allows the council, with the consent of the victim to bring a civil cause of action against the trafficker or facilitator of human trafficking who victimizes a person in Florida. An action may be brought in any court of competent jurisdiction and the standard of proof is preponderance of the evidence. The court has specific authority to consolidate civil actions for the same trafficker or facilitator for the purpose of case resolution and aggregate jurisdiction.

The victim, or the council on behalf of the victim, who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs. The bill requires the noneconomic damages be calculated as in a tort action.

The bill specifies that the measure of economic damages for services or labor coerced from the victim of human trafficking must be the greater of the fair market value of the labor²⁸ or services²⁹ provided or the amount realized by the trafficker. The economic damages must be calculated as a daily amount of the compensation payable to a person under s. 961.06(1)(a), F.S., for every day that the human trafficking was ongoing.³⁰ The bill specifies that the economic damages also include:

- Past and future medical and mental health expenses;
- Repatriation expenses, when a victim elects repatriation; and
- All other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the human trafficking.

The bill specifies that if the council prevails on behalf of the victim, the trust fund must hold the moneys awarded for distribution to the victim, or his or her parent, legal guardian, or estate. If the victim’s parent or legal guardian knowingly or through willful blindness, participated in the human trafficking, he or she is not entitled to any distribution or benefit from the trust fund. The

²⁸ Section 787.06(2)(e), F.S., defines “labor” to mean work of economic or financial value.

²⁹ Section 787.06(2)(h), F.S., defines “services” to mean any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.

³⁰ Section 961.06(1)(a), F.S., provides that monetary compensation (for wrongful incarceration) is calculated at a rate of \$50,000 for each year and can be prorated as necessary to account for a portion of a year.

trust fund must keep the funds if there is no person or estate to receive the funds. The bill allows these funds to be used for the purposes of the trust fund.

These remedies are in addition to and cumulative with other legal and administrative remedies available to victims of human trafficking. The bill specifies that a victim may not recover under both the civil action created by the bill and the civil action provided in s. 772.104(2), F.S.

If a victim or the council, on behalf of the victim, prevails in an action, the court must award a civil penalty against the defendant of \$100,000. This penalty is in addition to, and not in lieu of, any other damage award. The civil penalty cannot be disclosed to the jury. The proceeds from the civil penalty must be deposited into the trust fund.

The court must also impose a civil penalty against the defendant in favor of the law enforcement agencies for \$50,000, if one or more law enforcement agencies rescued the victim or located the property upon which the abuse or exploitation occurred. The bill specifies that the award of the penalty to the law enforcement agencies is to fund future efforts to combat human trafficking. The court must equitably distribute the civil penalty among the law enforcement agencies.

The bill specifies that there is no statute of limitations for these civil actions.

The bill requires the Attorney General to consult with state and national hotel and lodging associations and recommend one or more educational programs designed to train employees of public lodging establishments in the identification and reporting of suspected human trafficking. The Attorney General must make this recommendation no later than January 31, 2018, and periodically update this recommendation.

If a public lodging establishment requires employees that the establishment expects to routinely interact with guests to complete one of the recommended educational programs within 30 days of hiring or by July 1, 2018, whichever occurs later, the owner or operator may not be held vicariously liable.

The bill requires the council to issue an annual report no later than October 1 of each year to the President of the Senate and the Speaker of the House of Representatives detailing for the prior fiscal year all of the following (Section 4, creating s. 787.064, F.S.):

- The status of the trust fund;
- Any actions and outcomes under s. 787.063, F.S.; and
- Any information that demonstrates the council's fulfillment of the purposes of the trust fund during the prior fiscal year.

The bill also amends s. 16.617, F.S., (Section 5), to require the council to perform the functions and duties as the bill requires and administer the Trust Fund for Victims of Human Trafficking and Prevention.³¹

The bill provides an appropriation for the 2017-2018 Fiscal Year of \$153,000 in recurring funds and \$29,000 in nonrecurring funds from the Crimes Compensation Trust Fund to the Department

³¹ See CS/SB 970 (2017).

of Legal Affairs, and three full-time equivalent positions are authorized, for the purpose of implementing the bill.

Investigative Subpoenas

The bill creates s. 794.11, F.S., which allows criminal justice agencies to issue subpoenas for specified investigations involving children. (Section 5, creating s. 794.11, F.S.).

The bill defines the following terms for this section of bill:

- “Child” means a person younger than 18 years of age.
- “Child sexual offender” means a person required to register as a sexual predator under s. 775.21, F.S., or as a sexual offender under s. 943.0435, F.S., if at least one of the offenses that qualified the person for such registration requirement involved a victim who was a child at the time of the offense.
- “Criminal justice agency” means a law enforcement agency, court, or prosecutor in Florida.
- “Sexual exploitation or abuse of a child” means a criminal offense based on any conduct described in s. 39.01(70), F.S.

The bill specifies that a criminal justice agency may issue a subpoena in any investigation for:

- An offense involving the sexual exploitation or abuse of a child;
- A sexual offense allegedly committed by a child sexual offender who has not registered as required under ss. 775.21 or 943.0435, F.S.; or
- An offense under ch. 847, F.S., involving a child victim which is not otherwise included in the above two bullets.

A subpoena may require the production of any record, object, or other information relevant to the investigation. The subpoena can also seek the testimony by the custodian of the record, object, or other information concerning the production and authenticity of the information. The subpoena must describe any record, object, or other information required to be produced and specify a reasonable return date by which the information sought must be made available.

The subpoena must also include notice of the nondisclosure requirement, the availability of judicial review.

The bill provides that the service of these subpoenas may be served as provided in ch. 48, F.S.³²

Nondisclosure Requirement

The bill allows a criminal justice agency to prohibit a recipient of the subpoena from disclosing the existence or contents of the subpoena for 180 days. A subpoena that may not be disclosed must include written certification that disclosure of the subpoena may result in one of the following:

- Endangering a person’s life or physical safety;
- Encouraging a person’s flight from prosecution;
- Destruction of or tampering with evidence;

³² Chapter 48, F.S., specifies how summons, subpoenas, and other process in civil actions are served.

- Intimidation of potential witnesses; or
- Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

The bill provides the recipient of the subpoena subject to the nondisclosure requirement is able to disclose information about the subpoena to the following individuals:

- A person who is necessary to comply with the subpoena;
- An attorney in order to obtain legal advice or assistance regarding the subpoena; and
- Any other person authorized by the issuing criminal justice agency.

An individual to whom a disclosure is made to must be provided with a copy of the subpoena and are subject to the nondisclosure requirement. The criminal justice agency that issued the subpoena may request the identity of the individual whom the disclosure was made.

If a person refuses to comply with the subpoena, the criminal justice agency may request that the circuit court issue an order requiring compliance. If issued, a violation of such order is punishable by contempt of court. Further, a subpoena recipient, or a person to whom information is lawfully disclosed, who knowingly violates:

- A subpoena's nondisclosure requirement commits a noncriminal violation punishable by the imposition of a fine up to \$500. The bill specifies that each person to whom a prohibited disclosure is made constitutes a separate violation subject to a separate fine.
- A nondisclosure requirement ordered by the court may be punished by the court as contempt of court.

A subpoena containing a nondisclosure requirement must provide notice of the above-described penalties.

The bill allows the subpoena recipient to challenge the requirements of the subpoena at any time before the return date by petitioning the circuit court of the county in which he or she lives. The bill also allows the subpoena recipient, or a person to whom information about the subpoena is disclosed, to challenge a nondisclosure requirement by filing a petition for judicial review in the circuit court or notifying the criminal justice agency that issued the subpoena.

Within 30 days after the criminal justice agency receives a notification challenging the nondisclosure requirement the criminal justice agency must apply for an order prohibiting the disclosure of the existence or contents of the subpoena. An application for a nondisclosure order or extension thereof or a response to a filed petition filed must include a certification from the criminal justice agency that issued the subpoena indicating that the disclosure of such information may result in one of the circumstances stated above.

A circuit court shall issue a nondisclosure order or extension thereof if it determines that there is reason to believe that disclosure of such information may result in one or more of the circumstances. Upon this showing, a circuit court may issue an ex parte order extending a nondisclosure order imposed for an additional 180 days. There is no limit on the number of nondisclosure extensions that may be granted.

A circuit court must close any hearing to the extent necessary to prevent the unauthorized disclosure of a request for records, objects, or other information. Petitions, filings, records, orders, certifications, and subpoenas must also be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of any information under this section. However, an open hearing can occur in a contempt proceeding.

The bill specifies that the nondisclosure requirement must remain in effect during the pendency of these proceedings. The bill also requires the circuit court to rule on such petition or application as expeditiously as possible.

Other

Witnesses subpoenaed to testify are reimbursed for fees and mileage at the same rate at which witnesses in Florida courts are reimbursed.³³ A subpoena issued under the bill must not require the production of anything that is protected from production under the standards applicable to a subpoena duces tecum issued by a Florida court.³⁴

The bill allows criminal justice agencies to require the production of documents as soon as possible, but the recipient of the subpoena must be given at least 24 hours after he or she is served to comply. The criminal justice agency must return any original documents or objects upon request, within a reasonable time, if prosecution does not occur.

The bill provides immunity from civil liability for persons disclosing information requested in the subpoena. This allows persons with information needed by the criminal justice agency to disclose it without fear that the person being investigated may sue them for disclosing the information.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³³ Section 92.142, F.S. establishes the amount that witnesses in a court in Florida will be reimbursed for their time. Consideration is given to the length of testimony, the distance traveled, and the reason for testifying.

³⁴ A subpoena may request evidence that is relevant and admissible or is reasonably calculated to lead to admissible evidence. *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995). Certain documents, such as materials prepared for trial or work products, are not discoverable under the Florida Rules of Civil Procedure. Fla. R. Civ. P. 1.280.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The impact on the courts is unknown at this time.

The bill provides an appropriation for the 2017-2018 Fiscal Year of \$153,000 in recurring funds and \$29,000 in nonrecurring funds from the Crimes Compensation Trust Fund to the Department of Legal Affairs, and three full-time equivalent positions are authorized, for the purpose of implementing the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The statute of limitations provided for the civil cause of action in s. 772.104, F.S., is five years with some provided exceptions.³⁵ The bill provides that there is no statute of limitations for this new civil cause of action. The Legislature may wish to consider whether policy reasons would support the application of statutes of limitations to the civil liability provisions of the bill. The Florida Supreme Court in *Kipnis v. Bayerische Hypo-Und Vereinsbank*, 202 So. 3d 859, 866 (Fla. 2016), recently explained the policy reasons for statutes of limitations as follows:

Clearly, the purpose of the statute of limitations includes ‘protect[ing] defendants from unfair surprise and stale claims.’ *Raymond James Fin. Servs., Inc. v. Phillips*, 126 So. 3d 186, 192 (Fla. 2013) (quoting *Fla. Dep’t of Health & Rehab. Servs. v. S.A.P.*, 835 So. 2d 1091, 1096 (Fla. 2002)). We have explained that statutes of limitations

afford parties needed protection against the necessity of defending claims which, because of their antiquity, would place the defendant at a grave disadvantage. In such cases how resolutely unfair it would be to award one who has willfully or carelessly slept on his legal rights an opportunity to enforce an unfresh claim against a party who is left to shield himself from liability with nothing more than tattered or faded memories, misplaced or discarded records, and missing or deceased witnesses. Indeed, in such circumstances, the quest for truth might elude even the wisest court.

³⁵ Section 772.17, F.S.

Major League Baseball v. Morsani, 790 So. 2d 1071, 1075 (Fla. 2001) (quoting *Nardone v. Reynolds*, 333 So. 2d 25, 36 (Fla. 1976)).

The bill also provides for judicial review of the nondisclosure requirement. To the extent that the nondisclosure requirement raises potential First Amendment concerns, a criminal justice agency may have to provide a compelling state interest for a nondisclosure requirement.

If a person violates a subpoena's nondisclosure requirement he or she may be punished by a fine. If a person fails to comply with the nondisclosure ordered by the court, he or she may be punished by the court as contempt of court. These penalties would only be enforceable to the extent of the court's jurisdiction.

CS/SB 970 creates the Trust Fund for Victims of Human Trafficking and Prevention that is referred to in this bill.

CS/SB 1788 creates a public records exemption and is linked to the passage of this bill.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 787.061, 787.062, 787.063, 787.064, and 794.11.

This bill amends section 16.617 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Judiciary on April 19, 2017:

The committee substitute:

- Requires the Attorney General to recommend one or more educational programs to train employees of public lodging establishments in the identification and reporting of suspected human trafficking;
- Provides the owner or operator of a public lodging establishment may not be held vicariously liable if certain employees complete such educational programs within a specified time;
- Authorizes the issuance of subpoenas in certain investigations involving children;
- Provides a nondisclosure requirement for these subpoenas in certain situations;
- Provides penalties for violation of the subpoenas or a nondisclosure requirement;
- Provides immunity from civil liability for persons disclosing information requested in the subpoena; and
- Provides for judicial review and the extension of the nondisclosure requirement in an investigative subpoena.

CS by Criminal Justice on April 17, 2017:

The committee substitute:

- Defines new terms;
- Specifies the types of damages a victim is entitled to and how the damages must be figured;
- Removes the proposed civil forfeiture cause of action;
- Requires the council to issue an annual report about the trust fund;
- Amends s. 16.617, F.S., to include the administration of the Trust Fund for Victims of Human Trafficking and Prevention;
- Adds an appropriation to implement the bill;
- Changes the effective date from July 1, 2017, to October 1, 2017; and
- Makes technical and stylistic changes.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Bracy) recommended the following:

Senate Amendment (with title amendment)

Between lines 141 and 142
insert:

(4) EDUCATIONAL PROGRAMS.—No later than January 31, 2018,
and periodically thereafter, the Attorney General shall consult
with state and national hotel and lodging associations and
recommend one or more educational programs designed to train
employees of public lodging establishments in the identification
and reporting of suspected human trafficking. The owner or
operator of a public lodging establishment may not be held



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vicariously liable under this section if the establishment
requires only those employees the establishment expects to
routinely interact with guests to complete one of the
recommended educational programs within 30 days of hiring or by
July 1, 2018, whichever occurs later.

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

And the title is amended as follows:

Delete line 16

and insert:

subject to a statute of limitations; requiring the
Attorney General to recommend one or more educational
programs designed to train employees of public lodging
establishments in the identification and reporting of
suspected human trafficking; providing that the owner
or operator of a public lodging establishment may not
be held vicariously liable if certain employees
complete such educational programs within a specified
time; creating s.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment (with title amendment)

Between lines 154 and 155
insert:

Section 5. Section 794.11, Florida Statutes, is created to
read:

794.11 Investigative subpoenas in certain cases involving
child victims.—

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

(a) "Child" means a person younger than 18 years of age.

(b) "Child sexual offender" means a person required to



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register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435 if at least one of the offenses that qualified the person for such registration requirement involved a victim who was a child at the time of the offense.

(c) "Criminal justice agency" means a law enforcement agency, court, or prosecutor in this state.

(d) "Sexual exploitation or abuse of a child" means a criminal offense based on any conduct described in s. 39.01(70).

(2) AUTHORIZATION.—

(a) A criminal justice agency may issue in writing and cause to be served a subpoena requiring the production of any record, object, or other information or testimony described in paragraph (b) in any investigation of:

1. An offense involving the sexual exploitation or abuse of a child;

2. A sexual offense allegedly committed by a child sexual offender who has not registered as required under s. 775.21 or s. 943.0435; or

3. An offense under chapter 847 involving a child victim which is not otherwise included in subparagraph 1. or subparagraph 2.

(b) A subpoena issued under this section may require:

1. The production of any record, object, or other information relevant to the investigation.

2. Testimony by the custodian of the record, object, or other information concerning its production and authenticity.

(3) CONTENTS OF SUBPOENAS.—A subpoena issued under this section must describe any record, object, or other information required to be produced and prescribe a reasonable return date



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by which the record, object, or other information can be assembled and made available.

(4) WITNESS EXPENSES.—Witnesses subpoenaed under this section shall be reimbursed for fees and mileage at the same rate at which witnesses in the courts of this state are reimbursed.

(5) PETITIONS BEFORE RETURN DATE.—At any time before the return date specified in the subpoena, the recipient of the subpoena may, in the circuit court of the county in which the recipient conducts business or resides, petition for an order modifying or setting aside the subpoena or the requirement for nondisclosure of certain information under subsection (6).

(6) NONDISCLOSURE.—

(a)1. If a subpoena issued under this section is accompanied by a written certification under subparagraph 2. and notice under paragraph (c), the recipient of the subpoena, and a person to whom information is disclosed under subparagraph (b)1., may not disclose to any person for a period of 180 days the existence or contents of the subpoena.

2. The nondisclosure requirement in subparagraph 1. applies if the criminal justice agency that issued the subpoena certifies in writing that the disclosure may result in one or more of the following circumstances:

a. Endangering a person's life or physical safety;
b. Encouraging a person's flight from prosecution;
c. Destruction of or tampering with evidence;
d. Intimidation of potential witnesses; or
e. Otherwise seriously jeopardizing an investigation or unduly delaying a trial.



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(b)1. A recipient of a subpoena may disclose information subject to the nondisclosure requirement in subparagraph (a)1. to:

a. A person to whom disclosure is necessary in order to comply with the subpoena;

b. An attorney in order to obtain legal advice or assistance regarding the subpoena; or

c. Any other person as authorized by the criminal justice agency that issued the subpoena.

2. A recipient of a subpoena who discloses to a person described in subparagraph 1. information subject to the nondisclosure requirement shall notify such person of the nondisclosure requirement by providing the person with a copy of the subpoena. A person to whom information is disclosed under subparagraph 1. is subject to the nondisclosure requirement in subparagraph (a)1.

3. At the request of the criminal justice agency that issued the subpoena, a recipient of a subpoena who discloses or intends to disclose to a person described in sub-subparagraph 1.a. or sub-subparagraph 1.b. information subject to the nondisclosure requirement shall provide to the criminal justice agency the identity of the person to whom such disclosure was or will be made.

(c)1. The nondisclosure requirement imposed under paragraph (a) is subject to judicial review under subsection (13).

2. A subpoena issued under this section, in connection with which a nondisclosure requirement under paragraph (a) is imposed, must include:

a. Notice of the nondisclosure requirement and the



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99 availability of judicial review.

100 b. Notice that a violation of the nondisclosure requirement
101 is subject to the penalties provided in paragraph (11)(b).

102 (d) The nondisclosure requirement in paragraph (a) may be
103 extended under subsection (13).

104 (7) EXCEPTIONS TO PRODUCTION.—A subpoena issued under this
105 section may not require the production of anything that is
106 protected from production under the standards applicable to a
107 subpoena duces tecum issued by a court of this state.

108 (8) RETURN OF RECORDS AND OBJECTS.—If a case or proceeding
109 resulting from the production of any record, object, or other
110 information under this section does not arise within a
111 reasonable time after such production, the criminal justice
112 agency to which it was delivered shall, upon written demand made
113 by the person producing it, return the record, object, or other
114 information to such person, unless the record was a copy and not
115 an original.

116 (9) TIME OF PRODUCTION.—A subpoena issued under this
117 section may require production of any record, object, or other
118 information as soon as possible, but the recipient of the
119 subpoena must have at least 24 hours after he or she is served
120 to produce the record, object, or other information.

121 (10) SERVICE.—A subpoena issued under this section may be
122 served as provided in chapter 48.

123 (11) ENFORCEMENT.—

124 (a) If a recipient of a subpoena under this section refuses
125 to comply with the subpoena, the criminal justice agency may
126 invoke the aid of any circuit court described in subsection (5)
127 or of the circuit court of the county in which the authorized



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investigation is being conducted. Such court may issue an order requiring the recipient of a subpoena to appear before the criminal justice agency that issued the subpoena to produce any record, object, or other information or to testify concerning the production and authenticity of the record, object, or other information. Any failure to comply with an order under this paragraph may be punished by the court as a contempt of court. All process in any such case may be served in any county in which such person may be found.

(b) A recipient of a subpoena, or a person to whom information is disclosed under subparagraph(6)(b)1., who knowingly violates:

1. A nondisclosure requirement imposed under paragraph (6)(a) commits a noncriminal violation punishable as provided in s. 775.083. Each person to whom a disclosure is made in violation of this subparagraph constitutes a separate violation subject to a separate fine.

2. A nondisclosure requirement ordered by the court under this section may be held in contempt of court.

(12) IMMUNITY.—Notwithstanding any other law, any person, including any officer, agent, or employee, receiving a subpoena under this section who complies in good faith with the subpoena and produces or discloses any record, object, or other information sought is not liable in any court in this state to any customer or other person for such production or disclosure.

(13) JUDICIAL REVIEW OF NONDISCLOSURE REQUIREMENT.—

(a)1.a. If a recipient of a subpoena under this section, or a person to whom information is disclosed under subparagraph (6)(b)1., wishes to have a court review a nondisclosure



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requirement under subsection (6), such recipient or person may
notify the criminal justice agency issuing the subpoena or file
a petition for judicial review in the circuit court described in
subsection (5).

b. Within 30 days after the date on which the criminal
justice agency receives the notification under sub-subparagraph
a., the criminal justice agency shall apply for an order
prohibiting the disclosure of the existence or contents of the
subpoena. An application under this sub-subparagraph may be
filed in the circuit court described in subsection (5) or in the
circuit court of the county in which the authorized
investigation is being conducted.

c. The nondisclosure requirement shall remain in effect
during the pendency of proceedings relating to the requirement.

d. A circuit court that receives a petition under sub-
subparagraph a. or an application under sub-subparagraph b.
shall rule on such petition or application as expeditiously as
possible.

2. An application for a nondisclosure order or extension
thereof or a response to a petition filed under this paragraph
must include a certification from the criminal justice agency
that issued the subpoena indicating that the disclosure of such
information may result in one or more of the circumstances
described in subparagraph (6) (a)2.

3. A circuit court shall issue a nondisclosure order or
extension thereof under this paragraph if it determines that
there is reason to believe that disclosure of such information
may result in one or more of the circumstances described in
subparagraph (6) (a)2.



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4. Upon a showing that any of the circumstances described in subparagraph (6)(a)2. continues to exist, a circuit court may issue an ex parte order extending a nondisclosure order imposed under this section for an additional 180 days. There is no limit on the number of nondisclosure extensions that may be granted under this subparagraph.

(b) In all proceedings under this subsection, subject to any right to an open hearing in a contempt proceeding, a circuit court must close any hearing to the extent necessary to prevent the unauthorized disclosure of a request for records, objects, or other information made to any person under this section. Petitions, filings, records, orders, certifications, and subpoenas must also be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of any information under this section.

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

And the title is amended as follows:

Delete line 19

and insert:

specified information, by a specified date; creating s. 794.11, F.S.; defining terms; authorizing subpoenas in certain investigations of sexual offenses involving child victims; specifying the purpose of such subpoenas; requiring a subpoena to contain certain information; requiring the reimbursement of subpoenaed witnesses; authorizing the recipient of the subpoena to petition a court; prohibiting the disclosure of the existence or contents of a subpoena under certain



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215 circumstances; providing exceptions; requiring certain
216 notice to be provided in a subpoena that contains a
217 nondisclosure requirement; exempting from production
218 certain records, objects, and other information;
219 providing for the return of records, objects, and
220 other information produced; specifying timeframes
221 within which records, objects, and other information
222 must be returned; providing for service and
223 enforcement of the subpoenas; providing penalties for
224 a violation of the subpoena or nondisclosure
225 requirement; providing immunity for certain persons
226 complying with the subpoenas in certain circumstances;
227 providing for judicial review, and extensions, of such
228 nondisclosure requirement; amending

By the Committee on Criminal Justice; and Senator Bracy

591-03907-17

2017972c1

A bill to be entitled

An act relating to victims of human trafficking; creating s. 787.061, F.S.; providing a short title; creating s. 787.062, F.S.; defining terms; creating s. 787.063, F.S.; providing legislative findings; creating a civil cause of action for victims of human trafficking, or for the Statewide Council on Human Trafficking on their behalves, against a trafficker or facilitator; providing procedures and requirements for bringing a claim; requiring a court to impose a civil penalty against a defendant if a victim, or the council on the victim's behalf, prevails; requiring a court to impose a civil penalty and award it equitably to one or more law enforcement agencies under certain circumstances; providing that such actions are not subject to a statute of limitations; creating s. 787.064, F.S.; requiring the council to issue an annual report to the Legislature which includes specified information, by a specified date; amending s. 16.617, F.S.; adding functions and duties for the council; providing for administration of the trust fund by the council; providing appropriations; providing an effective date.

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

Section 1. Section 787.061, Florida Statutes, is created to read:

787.061 Short title.—Sections 787.061-787.065 may be cited

Page 1 of 6

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

591-03907-17

2017972c1

as the "Civil Action for Victims of Human Trafficking and Prevention of Human Trafficking Act."

Section 2. Section 787.062, Florida Statutes, is created to read:

787.062 Definitions for the Civil Action for Victims of Human Trafficking and Prevention of Human Trafficking Act.—As used in ss. 787.061-787.065 the term:

(1) "Council" means the Statewide Council on Human Trafficking within the Department of Legal Affairs, as created in s. 16.617.

(2) "Facilitator" means a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker which assist or enable the trafficker to carry out human trafficking.

(3) "Human trafficking" has the same meaning as provided in s. 787.06.

(4) "Trafficker" means any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.

(5) "Trust fund" means the Trust Fund for Victims of Human Trafficking and Prevention created in s. 787.0611.

(6) "Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

(7) "Victim of human trafficking" means a person subjected to coercion, as defined in s. 787.06, for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to

Page 2 of 6

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

591-03907-17

2017972c1

human trafficking as defined by federal law.

(8) "Willful blindness" occurs when a person's suspicions are aroused about a particular fact and, while he or she realizes its probability, he or she deliberately refrains from obtaining confirmation of or acting on the fact because he or she wants to remain in ignorance, such that knowledge of the fact avoided can reasonably and fairly be imputed to the person who avoided confirming it.

Section 3. Section 787.063, Florida Statutes, is created to read:

787.063 Civil action for victims of human trafficking.-

(1) FINDINGS.-The Legislature finds that, to achieve the state's goals relating to human trafficking set forth in s. 787.06(1)(d), it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages.

(2) CIVIL CAUSE OF ACTION.-

(a) A victim of human trafficking has a civil cause of action against the trafficker or facilitator of human trafficking who victimized her or him, and may recover damages for such victimization as provided in this section.

(b) The council, with the consent of the victim, may bring a civil cause of action against a trafficker or facilitator of human trafficking who victimizes a person in this state.

(c) If the council prevails in any action, the trust fund shall hold moneys awarded to the victim for distribution to the victim or her or his parent, legal guardian, or estate. However, if the victim's parent or legal guardian knowingly, or through willful blindness, participated in the human trafficking, such person is not entitled to any distribution or benefit from the

591-03907-17

2017972c1

trust fund. If there is no person or estate to appropriately receive the funds, they must remain in the trust fund and be used for purposes of the trust fund, as described in s. 787.0611.

(d) The action may be brought in any court of competent jurisdiction and the standard of proof is a preponderance of the evidence.

(e) A victim, or the council on behalf of the victim, who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs.

1. The measure of economic damages for services or labor coerced from the victim of human trafficking shall be the greater of the fair market value of the labor or services provided or the amount realized by the trafficker. For purposes of this subparagraph, the terms "labor" and "services" have the same meanings as provided in s. 787.06.

2. The measure of economic damages for every day that the human trafficking was ongoing shall be calculated as a daily amount of the compensation payable to a person under s. 961.06(1)(a).

3. Economic damages also include past and future medical and mental health expenses; repatriation expenses, when a victim elects repatriation; and all other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the human trafficking.

4. Noneconomic damages shall be calculated as in a tort action.

591-03907-17

2017972c1

(f) The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to victims of human trafficking, except that a victim may not recover under both this section and s. 772.104(2).

(g) If a victim or the council, on behalf of the victim, prevails in an action under this section, in addition to any other award imposed, the court must award a civil penalty against the defendant in the amount of \$100,000. This penalty is in addition to, and not in lieu of, any other damage award. The civil penalty must be assessed by the court and may not be disclosed to the jury. Proceeds from the civil penalty must be deposited into the trust fund.

(h) If one or more law enforcement agencies rescued the victim or located the property upon which the abuse or exploitation of a victim or victims had occurred, the court must impose a civil penalty against the defendant in the amount of \$50,000 and award the penalty to the law enforcement agencies to fund future efforts to combat human trafficking. The court must equitably distribute the civil penalty among the law enforcement agencies.

(i) The court shall have specific authority to consolidate civil actions for the same trafficker or facilitator for the purpose of case resolution and aggregate jurisdiction.

(3) STATUTE OF LIMITATIONS.—There is no statute of limitations for actions brought pursuant to this section.

Section 4. Section 787.064, Florida Statutes, is created to read:

787.064 Annual Report of the Civil Action for Victims of Human Trafficking and Prevention of Human Trafficking Act.—The

591-03907-17

2017972c1

council shall issue an annual report no later than October 1 of each year to the President of the Senate and the Speaker of the House of Representatives detailing for the prior fiscal year all of the following:

(1) The status of the trust fund.

(2) Any actions and outcomes under s. 787.063.

(3) Any information that demonstrates the council's fulfillment of the purposes of the trust fund during the prior fiscal year.

Section 5. Paragraph (f) is added to subsection (4) of section 16.617, Florida Statutes, to read:

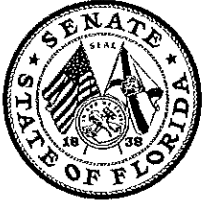
16.617 Statewide Council on Human Trafficking; creation; membership; duties.—

(4) DUTIES.—The council shall:

(f) Perform the functions and duties as provided in ss. 787.061-787.065 and administer the Trust Fund for Victims of Human Trafficking and Prevention as created in s. 787.0611.

Section 6. For the 2017-2018 fiscal year, the sums of \$153,000 in recurring funds and \$29,000 in nonrecurring funds from the Crimes Compensation Trust Fund are appropriated to the Department of Legal Affairs, and three full-time equivalent positions are authorized, for the purpose of implementing this act.

Section 7. This act shall take effect October 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Banking and Insurance
Judiciary
Regulated Industries

SENATOR RANDOLPH BRACY

11th District

April 17, 2017

The Honorable Senator Steube
326 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chairman Steube,

I respectfully request SB 970 and SB 972, pertaining to Human Trafficking and Trust Funds for Survivors of Human Trafficking be placed on the agenda for the next scheduled Judiciary Committee meeting.

I thank you in advance for your consideration and should you have any further questions please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randolph Bracy".

Senator Randolph Bracy
Senate District 11

Cc: Senator Lizbeth Benaquisto , Vice Chair
Tom Cibula, Staff Director
Joyce Butler , Committee Administrative Assistant

REPLY TO:

- ☐ 150 N. Lakeshore Drive, Ocoee, Florida 34761 (407) 656-6716
- ☐ 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

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)

4/19/07

Meeting Date

972

Bill Number (if applicable)

273830

Amendment Barcode (if applicable)

Topic Human Trafficking

Name CJ Johnson

Job Title General Counsel

Address 2725 Center Place
Street

Phone 321-501-9903

Melbourne FL 32940
City State Zip

Email cjohnson@cchampions.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Community Champions

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)

4/19/17

Meeting Date

972

Bill Number (if applicable)

273830

Amendment Barcode (if applicable)

Topic Anti-Human Trafficking

Name Nicole Whitaker

Job Title Advocate against human trafficking

Address 909 East Park Ave

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-556-9413

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/19/17

Meeting Date

972

Bill Number (if applicable)

273830

Amendment Barcode (if applicable)

Topic Anti-Human Trafficking

Name Dean R. LeBoeuf

Job Title President Brooks & LeBoeuf

Address 909 E. Park Ave
Street

Phone 850-222-2000

Lallahassee 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 Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 119 12017

Meeting Date

Topic _____

Bill Number 972

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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4/19/2017

Meeting Date

972

Bill Number (if applicable)

Topic Anti Human Trafficking

Amendment Barcode (if applicable)

Name Jean R. LeBoeuf

Job Title President Brooks & LeBoeuf

Address 909 E. Park Ave
Street

Phone 850-222-2000

Tallahassee 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 self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/17
Meeting Date

972
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Nicole Whitaker

Job Title Anti-human trafficking advocate

Address 909 East Park Ave
Street

Phone 850-556-9413

Tallahassee 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 Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/2017

Meeting Date

972

Bill Number (if applicable)

271152

Amendment Barcode (if applicable)

Topic Anti Human Trafficking Education Amendment

Name Dean R. Le Boeuf

Job Title President Brooks & Le Boeuf

Address 909 E Park Avenue

Street

Jacksonville, FL

City

State

32301

Zip

Phone 850-222-2000

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/17

Meeting Date

972

Bill Number (if applicable)

Topic VICTIMS of HUMAN TRAFFICKING

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO BOX 241644

Phone 813.264.2977

Street

TAMPA

City

FL

State

33694

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ETHICS & RELIGIOUS LIBERTY COMMISSION

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)

4/19/17

Meeting Date

972

Bill Number (if applicable)

Topic VICTIMS of HUMAN TRAFFICKING

Amendment Barcode (if applicable)

Name AMBER KELLY

Job Title DIRECTOR of POLICY AND COMMUNICATIONS

Address 4853 S ORANGE AVE Phone 407-418-0260
Street

ORLANDO FL 32806 Email _____
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA FAMILY ACTION

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)

4/19/17

Meeting Date

972

Bill Number (if applicable)

Topic Victims of Human Trafficking

Amendment Barcode (if applicable)

Name Victoria Zepp

Job Title Exec. Dir, Gov't Affairs

Address 121 N. Monroe St. 9007

Phone 850.241.6309

TLH FL 32301
City State Zip

Email Victoria@CLARITY-1.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Coalition for Children

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)

04/19/17

Meeting Date

972

Bill Number (if applicable)

~~273830~~ 273830

Amendment Barcode (if applicable)

Topic Human Trafficking

Name Agent Mike Spadafora & Lt. Rob Vitaliano

Job Title Agent / Lt.

Address 340 Gushipp Blvd.

Street

Rockledge

City

FL

State

32955

Zip

Phone _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Brevard County Sheriff's Office

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

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 150

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Steube and others

SUBJECT: Controlled Substances

DATE: April 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Hrdlicka</u>	<u>CJ</u>	Fav/CS
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 150 addresses scheduling for controlled substances and punishment for controlled substance offenses. The bill also provides for prison diversion of certain nonviolent offenders who are convicted of a drug possession offense or whose criminal behavior is related to substance abuse.

Specifically, the bill:

- Provides that a person 18 years of age or older commits felony murder if he or she unlawfully distributes any specified controlled substance, including a specified fentanyl-related substance, and the distribution is proven to be the proximate cause of death of the user;
- Includes in Schedule I a class of fentanyl derivatives and five substances that were originally developed for legitimate research but that have now emerged in the illicit drug market;
- Punishes unlawful possession of 10 grams or more of certain Schedule II substances, including certain fentanyl-related substances;
- Adds codeine, an isomer of hydrocodone, to a current provision punishing trafficking in hydrocodone, and adds additional phenethylamines and phencyclidines to current provisions punishing trafficking in phencyclidine and phenethylamine;
- Punishes trafficking in fentanyl, synthetic cannabinoids, and n-benzyl phenethylamines, through imposing mandatory minimum terms of imprisonment and mandatory fines;
- Authorizes a court to depart from a mandatory minimum sentence for drug trafficking after evaluating the defendant's crime, history, character, and chances for successful rehabilitation,

if the court finds compelling reasons on the record that the mandatory minimum sentence is unnecessary to protect the public;

- Authorizes certain crime laboratory personnel to possess, store, and administer emergency opioid antagonists used to treat opioid overdoses;
- Provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), or any portion thereof, include all subsequent amendments to the act;
- Requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless the sentence could cause harm to the public;
- Restores a circumstance for mitigating (reducing) a sentence based on substance abuse or addiction and amenability to treatment; and
- Requires diversion through drug court, residential drug treatment, or drug offender probation for certain nonviolent felony offenders who are amenable to substance abuse treatment.

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the provisions of the bill involving felony murder by drug distribution, controlled substances scheduling, and controlled substance offenses. However, those provisions are identical to provisions in CS/HB 477, which the CJIC estimates will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The CJIC has not reviewed the provision of the bill authorizing a court to depart from a mandatory minimum sentence for a drug trafficking offense. However, the CJIC reviewed SB 1436, which, in part, authorizes departures for trafficking in hydrocodone and oxycodone, and estimates that bill would have a “negative indeterminate” prison bed impact. See Section V. Fiscal Impact Statement.

The CJIC has not reviewed prison diversion provisions of the bill. However, these provisions are identical to provisions in CS/SB 290. The CJIC estimates that prison diversion for certain drug possession offenders will result in a cumulative decrease of 1,001 prison beds over 5 years (FY 2017-2018 to FY 2021-2022) with a cumulative cost avoidance of \$131,965,742. Other prison diversion provisions are estimated to have a “negative indeterminate” prison bed impact (an unquantifiable decrease in prison beds). The actual impact associated with passage of the bill will differ depending on a number of factors including the existing inventory of prison beds. See Section V. Fiscal Impact Statement.

The Office of the State Courts Administrator estimates the prison diversion provisions of CS/SB 290 will have an indeterminate fiscal impact due to an anticipated increase in judicial time and workload as a result of increased sentencing hearing time. See Section V. Fiscal Impact Statement.

The Department of Corrections has also provided preliminary impact estimates for prison diversion provisions of CS/SB 290. See Section V. Fiscal Impact Statement.

II. Present Situation:

Florida's Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the statute. The most important factors in determining which schedule may apply to a substance are the “potential for abuse”¹ of the substance and whether there is a currently accepted medical use for the substance.² The controlled substance schedules are as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and have no currently accepted medical use in the United States. This schedule includes cannabis and heroin.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and have a currently accepted but severely restricted medical use in the United States. This schedule includes cocaine, codeine, and fentanyl.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the substances contained in Schedules I and II and have a currently accepted medical use in the United States. This schedule includes stimulants and anabolic steroids.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to the substances in Schedule III and have a currently accepted medical use in the United States. This schedule includes benzodiazepines and barbiturates.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in the United States. This schedule includes mixtures that contain small quantities of opiates and codeine.

Punishment of Prohibited Drug Acts

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance. The penalty for violating s. 893.13, F.S., depends on the act committed, the substance and quantity of the substance involved, and the location in which the violation occurred. For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., which includes many synthetic controlled substances, is a third degree felony.³ However, if that substance is sold within 1,000 feet of a child care facility or secondary school, the violation is a second-degree felony.⁴

Drug trafficking, punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state, or knowingly being in actual or

¹ Pursuant to s. 893.035(3)(a), F.S., “potential for abuse” means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user’s health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user’s own initiative rather than on the basis of professional medical advice.

² See s. 893.03, F.S.

³ Section 893.13(1)(a)2., F.S. A third-degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

⁴ Section 893.13(1)(c)2., F.S. A second-degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. *Id.*

constructive possession of, certain controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of controlled substances. The quantity of the substance must meet a specified weight threshold. Most drug trafficking offenses are first degree felonies⁵ and are subject to a mandatory minimum term and a mandatory fine, which is determined by the weight range applicable to the quantity of the substance involved in the trafficking.

Fentanyl and Related Drugs

Fentanyl is a Schedule II controlled substance.⁶ Some fentanyl analogs⁷ or derivatives⁸, such as alfentanil,⁹ carfentanil,¹⁰ and sufentanil¹¹ are also Schedule II controlled substances.¹² It is a second degree felony to possess alfentanil, carfentanil, or fentanyl with the intent to sell, manufacture, or deliver them, or to unlawfully sell, manufacture, or deliver any of these substances.¹³

The National Institute on Drug Abuse provides that “Fentanyl is a powerful synthetic opioid analgesic that is similar to morphine but is 50 to 100 times more potent.”¹⁴ When prescribed by a physician, fentanyl is typically used to treat patients with severe pain or to manage pain after

⁵ A first-degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. However, when specifically provided by statute, a first-degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. *Id.*

⁶ Section 893.03(2)(b)9., F.S.

⁷ “An analog is a drug whose structure is related to that of another drug but whose chemical and biological properties may be quite different.” Chemistry-Dictionary.com, <http://www.chemistry-dictionary.com/definition/analog.php> (last visited on March 28, 2017).

⁸ A “derivative” is “a chemical compound that may be produced from another compound of similar structure in one or more steps, as in replacement of H by an alkyl, acyl, or amino group.” Drugs.com, <https://www.drugs.com/dict/derivative.html> (last visited Apr. 14, 2017).

⁹ Alfentanil is “a short-acting opioid anesthetic and analgesic derivative of [fentanyl]. It produces an early peak analgesic effect and fast recovery of consciousness. Alfentanil is effective as an anesthetic during surgery, for supplementation of analgesia during surgical procedures, and as an analgesic for critically ill patients.” “Alfentanil,” MeSH, National Center for Biotechnology Information, U.S. National Library of Medicine, <https://www.ncbi.nlm.nih.gov/mesh/?term=alfentanil> (last visited Apr. 14, 2017).

¹⁰ Carfentanil is a fentanyl derivative. “Fentanyl drug profile,” European Monitoring Centre for Drug and Drug Addiction, <http://www.emcdda.europa.eu/publications/drug-profiles/fentanyl> (last visited Apr. 14, 2017). The drug “is one of the most potent opioids known (also the most potent opioid used commercially).” “Carfentanil,” National Center for Biotechnology Information, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/carfentanil#section=Top> (last visited Apr. 14, 2017). The drug “has a quantitative potency approximately 10,000 times that of morphine and 100 times that of fentanyl, with activity in humans starting at about 1 microgram. It is marketed ... as a general anesthetic agent for large animals. Carfentanil is intended for large-animal use only as its extreme potency makes it inappropriate for use in humans. Currently sufentanil, approximately 10-20 times less potent (500 to 1000 times the efficacy of morphine per weight) than carfentanil, is the maximum strength fentanyl analog for use in humans.” *Id.*

¹¹ Sufentanil is a fentanyl derivative. “Fentanyl drug profile,” European Monitoring Centre for Drug and Drug Addiction, <http://www.emcdda.europa.eu/publications/drug-profiles/fentanyl> (last visited Apr. 14, 2017). The drug “is an opioid analgesic that is used as an adjunct in anesthesia, in balanced anesthesia, and as a primary anesthetic agent.” “Sufentanil,” National Center for Biotechnology Information, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/41693> (last visited Apr. 14, 2017).

¹² Section 893.03(2)(b)1., 6., and 29., F.S.

¹³ Section 893.13(1)(a)1., F.S.

¹⁴ “DrugFacts” (revised June 2016), National Institute on Drug Abuse, <https://www.drugabuse.gov/publications/drugfacts/fentanyl> (last visited Apr. 14, 2017). “The estimated lethal dose of fentanyl in humans is 2 mg.” “Fentanyl drug profile,” European Monitoring Centre for Drug and Drug Addiction, <http://www.emcdda.europa.eu/publications/drug-profiles/fentanyl> (last visited Apr. 14, 2017).

surgery and is administered via injection, transdermal patch, or in lozenges.¹⁵ Although prescription fentanyl can be misused, most overdoses and related deaths have been linked to illicitly-manufactured fentanyl, including fentanyl analogs.¹⁶ Illicitly-manufactured fentanyl is produced in clandestine laboratories and may be sold as a powder, spiked on blotter paper, mixed with heroin, or sold as tablets made to look like other, less potent opioids.¹⁷ Fentanyl and its analogs may be mixed into other drugs and sold without the customer's knowledge of the presence of fentanyl.¹⁸

According to a recent report by the Centers for Disease Control and Prevention, during 2013–2014, fentanyl submissions¹⁹ increased 494 percent in Florida (from 33 to 196), concurrent with a 115 percent increase in fentanyl deaths in Florida (from 185 to 397).²⁰ Fentanyl analogs were specifically implicated in 49 drug overdose deaths in Florida between January and June 2015.²¹ According to the 2015 Annual Report (dated September 2016) of the Florida Medical Examiners, there were 911 deaths in which fentanyl was present (206) or deemed the cause of death (705).²² Further, 99 of the deaths associated with fentanyl were ones in which the deceased had only that drug in their system, while the rest were in combination with another drug.²³

Illicit Use of Compounds Developed for Forensic and Research Applications

Compounds are often developed for legitimate forensic and research applications. However, some of these compounds later emerge in the illicit drug market. The following substances are examples of those substances:

- W-15, 4-chloro-N- [1- (2-phenylethyl) -2-piperidinylidene] -benzenesulfonamide.
- W-18, 4-chloro-N- [1-[2-(4-nitrophenyl) ethyl] -2-piperidinylidene] -benzenesulfonamide.
- AH-7921, 3, 4-dichloro-N- [[(1-dimethylamino) cyclohexyl]methyl] -benzamide.
- U47700, trans-3, 4-dichloro-N- [2-(dimethylamino) cyclohexyl] -N-methyl-benzamide.
- MT-45,1-cyclohexyl-4- (1,2-diphenylethyl) -piperazine, dihydrochloride.

¹⁵ *Id.*

¹⁶ “Increases in Fentanyl-Related Overdose Deaths-Florida and Ohio, 2013-2015,” *Morbidity and Mortality Weekly Report* (August 26, 2016), Centers for Disease Control and Prevention, <https://www.cdc.gov/mmwr/volumes/65/wr/mm6533a3.htm> (last visited Apr. 14, 2017).

¹⁷ “DrugFacts” (revised June 2016), National Institute on Drug Abuse, <https://www.drugabuse.gov/publications/drugfacts/fentanyl> (last visited Apr. 14, 2017).

¹⁸ For example, the National Institute on Drug Abuse has noted that “it is likely that carfentanil is being added to mixtures of heroin and other street drugs.” “Alert Issued in Ohio for Human Use of Animal Sedative Carfentanil, with Cases Also Seen in Florida” (August 23, 2016), National Institute on Drug Abuse, <https://www.drugabuse.gov/drugs-abuse/emerging-trends-alerts> (last visited Apr. 14, 2017).

¹⁹ In this context, “submissions” means “drug products obtained by law enforcement that tested positive for fentanyl.” *Id.*

²⁰ “Increases in Fentanyl-Related Overdose Deaths-Florida and Ohio, 2013-2015,” *Morbidity and Mortality Weekly Report* (August 26, 2016), Centers for Disease Control and Prevention, <https://www.cdc.gov/mmwr/volumes/65/wr/mm6533a3.htm> (last visited Apr. 14, 2017).

²¹ *Id.*

²² *Drugs Identified in Deceased Persons* (2015 Annual Report) (September 2016), p. 3, Florida Medical Examiners Commission, <http://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms.aspx> (last visited Apr. 14, 2017).

²³ *Id.* at p. 30.

W-15 and W-18 are “two of a series of drugs with analgesic properties of unknown origin synthesized in Canada in 1981.”²⁴ AH-7921 is an experimental opioid agonist²⁵ developed and patented by the former pharmaceutical company Allen & Hanburys.²⁶ U-47700 “is an opioid analgesic drug developed by the pharmaceutical company Upjohn in the 1970s and is structurally related to AH-7921[.]”²⁷ “MT-45 is a piperazine derivate originally synthesized by a pharmaceutical company in the 1970s.”²⁸

U-47700 is currently a Schedule I controlled substance pursuant to emergency rule²⁹ of the Florida Attorney General’s Office.³⁰

Emergency Treatment for Suspected Opioid Overdose

In addition to being deadly to drug users, fentanyl-related drugs pose a dangerous threat to first responders and law enforcement officers, because a lethal dose can be accidentally inhaled or absorbed through the skin.³¹ The U.S. Drug Enforcement Administration has warned laboratory personnel to take measures to protect themselves from accidental exposure and to immediately administer Naloxone, a drug used to treat opioid overdoses, in the event of exposure.³²

Section 381.887, F.S., authorizes certain emergency responders³³ to possess, store, and administer emergency opioid antagonists as clinically indicated. Crime laboratory personnel are not referenced in the statute.

²⁴ Mohr, A., Friscia, M., Papsun, D., Kacinko, S., Buzby, D., and Logan, B., “Analysis of Novel Synthetic Opioids U-47700, U-50488 and Furanyl Fentanyl by LC–MS/MS in Postmortem Casework” (2016) 40(9): 709, 716 (footnote and citation omitted), *Journal of Analytical Toxicology*, <https://academic.oup.com/jat/article/40/9/709/2527448/Analysis-of-Novel-Synthetic-Opioids-U-47700-U> (last visited Apr. 14, 2017). “Emerging evidence suggests that W-18 is not an opioid.” “Novel Synthetic Opioids in Counterfeit Pharmaceuticals and other Illicit Street Drugs” (June 2016), *CCENDU Bulletin*, Canadian Centre on Substance Abuse, <http://www.ohrdp.ca/ccendu-bulletin-novel-synthetic-opioids-in-counterfeit-pharmaceuticals-and-other-illicit-street-drugs/> (last visited Apr. 14, 2017).

²⁵ Medicine Net defines the term “agonist” as a substance that acts like another substance and therefore stimulates an action, <http://www.medicinenet.com/script/main/art.asp?articlekey=7835> (last visited Apr. 14, 2017).

²⁶ Kjellgren, A., Jacobsson K., and Soussan C., “The Quest for Well-Being and Pleasure: Experiences of the Novel Synthetic Opioids AH-7921 and MT-45, as Reported by Anonymous Users Online” (2016) 7(4): 1 (footnote and citation omitted), *Journal of Addiction Research & Therapy*, <https://www.omicsonline.org/open-access/the-quest-for-wellbeing-and-pleasure-experiences-of-the-novel-syntheticopioids-ah7921-and-mt45-as-reported-by-anonymous-users-onli-2155-6105-1000287.php?aid=77568> (last visited Apr. 14, 2017).

²⁷ See footnote 24.

²⁸ *Id.* (footnote and citation omitted).

²⁹ Section 893.035(7), F.S.

³⁰ Notice of Emergency Rule, 2ER16-1 (“Addition of U-47700 (3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide) [t]o Schedule I, Subsection 893.03(1)(a), F.S.”) and Certification of Department of Legal Affairs Emergency Rule Filed with the Department of State (filed September 27, 2016), Department of Legal Affairs (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary).

³¹ “DEA Issues Carfentanil Warning to Police and Public” (September 22, 2016), U.S. Drug Enforcement Administration, <https://www.dea.gov/divisions/hq/2016/hq092216.shtml> (last visited Apr. 14, 2017).

³² *Id.*

³³ Emergency responders include, but are not limited to, law enforcement officers, paramedics, and emergency medical technicians. Section 381.887(4), F.S.

Synthetic Cannabinoids, Cathinones, and Phenethylamines

Section 893.03(1)(c), F.S., lists numerous substances described as “hallucinogenic substances.” Many of them appear to be synthetic cannabinoids, cathinone derivatives, and phenethylamines. “Synthetic [c]annabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but ... they are cannabinoid-like in their activity.”³⁴

Cathinone is a Schedule I controlled substance.³⁵ The “molecular architecture” of cathinone “can be altered to produce a series of different compounds which are closely structurally related to cathinone. Together these are known as the ‘cathinones’ or ‘cathinone derivatives.’”³⁶

“Phenethylamines” is a broad category of “psychoactive substances.”³⁷ Probably the most well-known phenethylamine is 3,4-Methylenedioxymethamphetamine (MDMA), which is often referred to by the street name “Ecstasy.” Phenethylamines include “the ‘2C’ series of hallucinogenic phenethylamines” (referring to “the chemical structure consisting of two carbon atoms between the phenyl and amine moieties”).³⁸ A new group of 2C compounds, referred to as the “N-methoxybenzyl-substituted phenethylamines (NBOMe)” have emerged on the illicit drug market.³⁹ These compounds were “[i]nitially synthesized for research purposes,” and “are thought to be more potent than some of the conventional hallucinogens.”⁴⁰

Felony Murder by Drug Distribution

Section 782.04(1)(a)3., F.S., provides that if a person 18 years of age or older unlawfully distributes certain controlled substances that are later proven to be the proximate cause of the death of a drug user, the distributor commits murder in the first degree, a capital felony.⁴¹ The controlled substances currently included in this subparagraph are:

- A substance controlled under s. 893.03(1), F.S.;
- Cocaine;
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium; and
- Methadone.

³⁴ “Synthetic Cannabinoids Drug Information,” Redwood Toxicology Laboratory, https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids (last visited Apr. 14, 2017).

³⁵ Section 893.03(1)(c)8, F.S.

³⁶ *Consideration of the cathinones* (March 2010), p. 6, Advisory Council on the Misuse of Drugs, United Kingdom, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/119173/acmd-cathinones-report-2010.pdf (last visited Apr. 14, 2017).

³⁷ Sanders B., Lankenau S., Bloom J., and Hathazi D., “‘Research chemicals’: Tryptamine and Phenethylamine Use Among High Risk Youth” (2008) 43(3-4): 389, *Substance Use & Misuse*, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/> (last visited Apr. 14, 2017).

³⁸ “NBOMe Drugs,” *CALL US* ... (official newsletter) (Spring 2015) 13(2), California Poison Control System, <http://www.calpoison.org/hcp/2015/callusvol13no2.htm> (last visited Apr. 14, 2017).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ A capital felony is generally punishable by life imprisonment or a death sentence as provided in s. 921.141, F.S. “First-degree murder by drug distribution has been a recognized offense since 1972. See ch. 76-141, § 1, Laws of Fla.; ch. 72-724, § 3, Laws of Fla.” *Pena v. State*, 829 So. 2d 289, 291 (Fla. 2d 2002), approved *Pena v. State*, 901 So. 2d 781 (Fla. 2005), rehearing denied *Pena v. State*, 2005 Fla. LEXIS 994 (Fla. Apr. 25, 2005).

Under s. 782.04(1)(a)3., F.S., a defendant does not need to intend an act of homicide, have knowledge of a drug overdose, or be present when it occurs. In order to be guilty of this offense, the defendant need only intend to unlawfully distribute one of the prohibited drugs that results in a death caused by the drug.⁴²

Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code⁴³ (Code) as Florida's "primary sentencing policy."⁴⁴ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).⁴⁵ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.⁴⁶ Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. Absent mitigation,⁴⁷ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.⁴⁸

Mandatory Minimum Sentences and Departures

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence."⁴⁹ Generally, the sentencing range under the Code is the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

Limited circumstances allow for departure from a mandatory minimum term: the defendant is a youthful offender;⁵⁰ the state attorney waives a "10/20/Life" mandatory minimum term;⁵¹ the

⁴² *Pena v. State*, 829 So. 2d at 294.

⁴³ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

⁴⁴ *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013)* (Executive Summary), Florida Department of Corrections, http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited Apr. 14, 2017).

⁴⁵ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

⁴⁶ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

⁴⁷ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

⁴⁸ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment.

⁴⁹ Fla. R. Crim. P. 3.704(d)(26). See *State v. Vanderhoff*, 14 So.3d 1185, 1189 (Fla. 5th DCA 2009) ("the parties incorrectly assumed that a mitigating factor that would justify a downward departure under the Criminal Punishment Code, could also allow the trial court to waive a mandatory sentence").

⁵⁰ Section 958.04, F.S.

⁵¹ Section 27.366, F.S.

state attorney moves to reduce or suspend a sentence based on substantial assistance rendered;⁵² and a defendant commits a violation s. 316.027(2)(c), F.S. (driver involved in a fatal crash fails to stop and remain at the scene of a crash).⁵³

Section 893.135, F.S., contains the most mandatory minimum terms (47) for felonies.

Departure from a Code Sentence When Total Sentence Points are 22 Points or Fewer

An exception to typical Code sentencing is found in s. 775.082(10), F.S. Under this subsection, if a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony,⁵⁴ and if the total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could cause public harm, the court may sentence the offender to a state correctional facility.

Sentence Mitigating Circumstances

As previously noted, the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to and including the maximum penalty provided under s. 775.082, F.S. However, the court may “depart downward” from the scored lowest permissible sentence if the court finds there is a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.⁵⁵

Relevant to the bill, pre-Code sentencing guidelines provided for the following mitigating circumstance: “The defendant requires specialized treatment for addiction, mental disorder, or physical disability, and the defendant is amenable to treatment.”⁵⁶

With the enactment of the Code, this mitigating circumstance was modified.⁵⁷ As modified, the mitigating circumstance read: “The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.”⁵⁸ The Code also specified that the defendant’s “substance abuse or addiction, including intoxication,⁵⁹ at the time of the offense” was not a mitigating

⁵² Sections 790.163(2), 790.164(2), and 893.135(4), F.S.

⁵³ Section 316.027(2)(g), F.S.

⁵⁴ Section 776.08, F.S., defines a “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

⁵⁵ Section 921.0026(4)(d), F.S., specifies that mitigating circumstances include, but are not limited to, the mitigating circumstances specified in that section.

⁵⁶ Section 921.0016, F.S. (1996). In 1993, the Legislature codified this mitigating factor which was created by the Florida Supreme Court in 1987. Chapter 93-406, s. 13, L.O.F.; *Barbera v. State*, 505 So.2d 413 (Fla. 1987). In *Barbera*, the court was persuaded that intoxication and drug dependency could mitigate a sentence because the defense of intoxication could be used by a jury to justify convicting a defendant of a lesser offense. In 1999, the Legislature eliminated the voluntary intoxication defense. Chapter 99-174, L.O.F.; s. 775.051, F.S.

⁵⁷ Chapter 97-194, s. 8, L.O.F.

⁵⁸ Section 921.0026(2)(d), F.S. (1997).

⁵⁹ While s. 775.051, F.S., provides that voluntary intoxication resulting from the consumption, injection, or other use of alcohol or other controlled substances (except those legally prescribed) is not a defense to any offense, this does not

factor and did “not, under any circumstance, justify a downward departure from the permissible sentencing range.”⁶⁰

In 2009, the Legislature created a mitigating circumstance in which substance abuse or addiction could be considered: “The defendant’s offense is a nonviolent felony, the defendant’s Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 52 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence.”⁶¹ The only subsequent change to this mitigating circumstance occurred in 2011 when the Legislature increased total sentence points from 52 points to 60 points.⁶² Further, since the 2009 change, the law specifies that, except for this mitigating circumstance, the defendant’s substance abuse or addiction, including intoxication, is not a mitigating factor.⁶³

Drug Court Diversion for Certain Nonviolent Felony Offenders

Section 948.01, F.S., in part, authorizes a court to place a defendant into a postadjudicatory treatment-based drug court program if the defendant’s offense is a nonviolent felony⁶⁴ committed on or after July 1, 2009, the defendant’s Code scoresheet total sentence points under s. 921.0024, F.S., are 60 points or fewer, the defendant is amenable to substance abuse treatment, and the defendant otherwise qualifies under s. 397.334(3), F.S.⁶⁵

The satisfactory completion of the program is a required condition of the defendant’s probation or community control. The defendant must be fully advised of the purpose of the program and must agree to enter the program. The original sentencing court must relinquish jurisdiction of the defendant’s case to the postadjudicatory drug court program until the defendant is no longer active in the program, the case is returned to the sentencing court due to the defendant’s termination from the program for failure to comply with the terms thereof, or the defendant’s sentence is completed.

necessarily preclude the Legislature from addressing substance abuse or addiction, including intoxication, as a mitigating circumstance. For example, while a defendant may not raise as a defense that the victim was a willing participant in the crime, the Legislature has authorized mitigation of a Code sentence based on this circumstance. Section 921.0026(2)(f), F.S.; *State v. Rife*, 789 So.2d 288 (Fla. 2001).

⁶⁰ Section 921.0026(3), F.S. (1997).

⁶¹ Section 921.0026(2)(m) and (3), F.S.; ch. 2009-64, s. 2, L.O.F. The term “nonviolent felony” has the same meaning as provided in s. 948.08(6), F.S., which defines “nonviolent felony” as a third-degree felony violation of ch. 810, F.S., or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

⁶² Chapter 2011-33, s. 2, L.O.F.

⁶³ Section 921.0026(3), F.S. Further, while current law provides for a mitigating circumstance based on the defendant requiring specialized treatment for a mental disorder if the defendant is amenable to treatment, that mental disorder cannot be related to substance abuse or addiction or for a physical disability. Section 921.0026(2)(d), F.S.

⁶⁴ “Nonviolent felony” has the same meaning as provided in s. 948.08(6), F.S.

⁶⁵ Section 948.01(7), F.S. Section 397.334(3)(a), F.S., provides that entry into any postadjudicatory treatment-based drug court program as a condition of probation or community control pursuant to s. 948.01, F.S., s. 948.06, F.S., or s. 948.20, F.S., must be based upon the sentencing court’s assessment of the defendant’s criminal history, substance abuse screening outcome, amenability to the services of the program, total sentence points, the recommendation of the state attorney and the victim, if any, and the defendant’s agreement to enter the program.

III. Effect of Proposed Changes:

The bill, which takes effect October 1, 2017, addresses scheduling for controlled substances and punishment for controlled substance offenses. The bill also provides for prison diversion of certain nonviolent offenders who are amenable to treatment and are convicted of a drug possession offense or whose criminal behavior is related to substance abuse. A full description of the provisions of the bill is provided below.

Emergency Treatment for Suspected Opioid Overdose (Section 1)

Section 1 of the bill amends s. 381.887, F.S., to add certain crime laboratory personnel to the group of persons authorized to possess, store, and administer emergency opioid antagonists as clinically indicated. These crime laboratory personnel include, but are not limited to:

- Analysts;
- Evidence intake personnel; and
- Their supervisors.

Crime laboratory personnel will be authorized to administer the medication without a prescription, allowing them to respond in the event of accidental exposure in the course of their job performance.

Felony Murder by Drug Distribution (Section 2)

Section 2 of the bill amends s. 782.04(1)(a)3., F.S., to add four substances to the offense of felony murder by drug distribution. As a result of this change, a person 18 years of age or older commits felony murder if he or she unlawfully distributes any of the following substances and the distribution of the substance is proven to be the proximate cause of the death of the user of the substance:

- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil; or
- A controlled substance analog, as described in s. 893.0356, F.S.,⁶⁶ of any described substance (or a substance currently listed this subparagraph),⁶⁷ and mixtures containing any of those substances.

Cross-References to the Florida Comprehensive Drug Abuse Prevention and Control Act (Section 3)

Section 3 of the bill creates s. 893.015, F.S., to specify that the purpose of ch. 893, F.S., is to comprehensively address drug abuse prevention and control in this state, and, as such, unless

⁶⁶ A “controlled substance analog” is a substance which, due to its chemical structure and potential for abuse, if the substance: (1) is substantially similar to that of a Schedule I or Schedule II controlled substance; and (2) has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II. Section 893.0356(2)(a), F.S.

⁶⁷ Those substances are: a substance controlled under s. 893.03(1)(c), F.S.; cocaine; opium or any synthetic or natural salt, compound, or derivative, or preparation of opium; and methadone.

expressly provided otherwise, a specific reference to ch. 893, F.S., or any section thereof incorporates all subsequent amendments to ch. 893, F.S., or any section thereof.⁶⁸

Scheduling of Controlled Substances (Section 4)

Section 4 of the bill amends s. 893.03(1)(a), F.S., to add fentanyl derivatives to Schedule I, including:

- A general class by chemical structure (a 4-anilidopiperidine structure or “core”) and a description of chemical substitutions that can be made to the structure to remain an illicit member of the structure family;⁶⁹
- Twenty-three substances specifically identified as fentanyl derivatives; and
- An exclusion for alfentanil, carfentanil, fentanyl, and sufentanil so as to not alter their current placement in Schedule II.

The bill amends s. 893.03(1)(c), F.S., to add five new substances to Schedule I. These substances, which have emerged in the illicit drug market, were originally developed for forensic and research applications:

- W-15, 4-chloro-N- [1- (2-phenylethyl) -2-piperidinylidene] -benzenesulfonamide;
- W-18, 4-chloro-N- [1- [2-(4-nitrophenyl) ethyl] -2-piperidinylidene] -benzenesulfonamide;
- AH-7921, 3, 4-dichloro-N- [1-(dimethylamino) cyclohexyl] methyl] -benzamide;
- U47700, trans-3, 4-dichloro-N- [2-(dimethylamino) cyclohexyl] -N-methyl-benzamide; and
- MT-45, 1-cyclohexyl-4- (1, 2-diphenylethyl) -piperazine, dihydrochloride.

Unlawful Drug Acts Involving Certain Schedule II Controlled Substances (Section 5)

Section 5 of the bill amends s. 893.13(6)(c), F.S., which currently provides that it is a first degree felony to possess more than 10 grams of certain Schedule I controlled substances, to include certain Schedule II substances (substances listed in s. 893.03(2)(b), F.S., which include fentanyl and fentanyl derivatives).

Trafficking in Codeine (Section 6)

Section 6 of the bill amends s. 893.135(1)(c)2., F.S., which currently punishes “trafficking in hydrocodone,” to add a specific scheduling reference for hydrocodone and to:

⁶⁸ “Legislative enactments frequently incorporate portions of the Florida Statutes by reference. A cross-reference to a general body of law (without reference to a specific statute) incorporates the referenced law and any subsequent amendments to or repeal of the referenced law.” Preface to the official 2016 Florida Statutes, p. viii (case citations omitted). “In contrast, as a general rule, a cross-reference to a specific statute incorporates only the language of the referenced statute as it existed at that time, unaffected by any subsequent amendments to or repeal of the incorporated statute.” *Id.* To avoid the necessity of reenacting specific references to sections within certain chapters of law, the Legislature has codified provisions that allow for all specific references to sections of law within certain chapters to automatically incorporate all subsequent amendments. Such chapters of law include ch. 435, F.S. (“Employment Screening”) and ch. 938, F.S. (“Court Costs.”). See ss. 435.01 and 938.31, F.S.

⁶⁹ For example “[w]ith or without substitution of the piperidine ring for a pyrrolidine ring, perhydroazepine ring, or azepine ring.”

- Add codeine,⁷⁰ a Schedule II substance⁷¹ and an isomer⁷² of hydrocodone,⁷³ to the controlled substances punishable under this subparagraph; and
- Remove “derivative, isomer, or salt of an isomer” related to hydrocodone from those punishable under this subparagraph.⁷⁴

By adding codeine to the trafficking in hydrocodone provision, codeine becomes subject to current penalties for trafficking in hydrocodone. Currently, trafficking in 14 grams or more of hydrocodone is generally a first degree felony and is subject to the following mandatory minimum terms of imprisonment and mandatory fines:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000, if the quantity involved is 14 grams or more, but less than 28 grams;
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000, if the quantity involved is 28 grams or more, but less than 50 grams;
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of \$500,000, if the quantity involved is 50 grams or more, but less than 200 grams; and
- A 25-year mandatory minimum term of imprisonment and a mandatory fine of \$750,000, if the quantity involved is 200 grams or more, but less than 30 kilograms.⁷⁵

Further, trafficking in 30 kilograms or more of hydrocodone is “trafficking in illegal drugs,” a first degree felony punishable by life imprisonment.⁷⁶ However, a person commits the capital felony⁷⁷ of “trafficking in illegal drugs,” which is also punishable by a mandatory fine of \$500,000, if:

- The court determines that, in addition to committing the act:
 - The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or
 - The person’s conduct in committing that act led to a natural, though not inevitable, lethal result.⁷⁸
- A person knowingly brings into Florida 60 kilograms or more of hydrocodone (or any another specified substance), knowing that the probable result of such importation would be the death of any person.⁷⁹

⁷⁰ Codeine is an opioid, typically prescribed as a pain reliever and cough suppressant, which has a high potential for addiction. “The Effects of Codeine Use,” DrugAbuse.com, <http://drugabuse.com/library/the-effects-of-codeine-use/> (last visited Apr. 14, 2017).

⁷¹ Section 893.03(2)(a)1.g., F.S.

⁷² An isomer is “one of two or more compounds, radicals, or ions that contain the same number of atoms of the same elements but differ in structural arrangement and properties.” Merriam-Webster (online dictionary), <https://www.merriam-webster.com/dictionary/isomer> (last visited Apr. 14, 2017).

⁷³ Email from Michelle DePaola, Chemistry Technical Leader, Florida Department of Law Enforcement, to staff of the House Criminal Justice Subcommittee (February 23, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary).

⁷⁴ *Id.* This language is removed because codeine is the only known isomer of hydrocodone and is specifically scheduled in s. 893.03(2)(a)1.g., F.S.

⁷⁵ Section 893.135(1)(c)2.a.-d., F.S.

⁷⁶ Section 893.135(1)(c)4., F.S.

⁷⁷ A capital drug trafficking felony is punishable by life imprisonment or a death sentence as provided in s. 921.142, F.S.

⁷⁸ Section 893.135(1)(c)4., F.S. (“trafficking in illegal drugs”).

⁷⁹ Section 893.135(1)(c)5., F.S. (“capital importation of illegal drugs”).

Trafficking in Oxycodone (Section 6)

Section 6 of the bill amends s. 893.135(1)(c)3., F.S., which currently punishes “trafficking in oxycodone,” to add a specific scheduling reference for oxycodone and to remove the words “derivative, isomer, or salt of an isomer,” which currently appear in this subparagraph, because there have not been any drugs identified as a derivative, isomer, or salt of an isomer of oxycodone.⁸⁰

Trafficking in Fentanyl (Section 6)

Section 6 of the bill creates s. 893.135(1)(c)4., F.S., which punishes “trafficking in fentanyl.” Trafficking in fentanyl, a first degree felony, is knowingly selling, purchasing, manufacturing, delivering, or bringing into the state, or knowingly being in actual or constructive possession of, 4 grams or more of:

- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil;
- A fentanyl derivative as described in s. 893.03(1)(a)62., F.S. (added by Section 1 of the bill);
- A controlled substance analog, as described in s. 893.0356, F.S., of any described substance; or
- A mixture containing any described substance.

This offense includes mandatory minimum terms of imprisonment and mandatory fines, which are based on the quantity involved in the trafficking:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000, if the quantity involved is 4 grams or more, but less than 14 grams;
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000, if the quantity involved is 14 grams or more, but less than 28 grams; and
- A 25-year mandatory minimum term of imprisonment and a mandatory fine of \$500,000, if the quantity involved is 28 grams or more.

Trafficking in Phencyclidine (Section 6)

Section 6 of the bill amends s. 893.135(1)(d), F.S., which currently punishes “trafficking in phencyclidine,” to add a specific scheduling reference for phencyclidine and to add the following substances to those currently punishable under this paragraph:

- A substance identified as a “substituted phenylcyclohexylamine” in s. 893.03(1)(c)195., F.S.;⁸¹

⁸⁰ Email from Michelle DePaola, Chemistry Technical Leader, Florida Department of Law Enforcement to staff of the House Criminal Justice Subcommittee (February 23, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary).

⁸¹ Phenylcyclohexylamine is a relative of phencyclidine. The term “substituted” is a general term that means a portion of the chemical structure is removed and replaced with a different chemical structure. There are many permutations. The term “substituted phenylcyclohexylamine” can have many different substitutions but the base structure is that of phenylcyclohexylamine. E-mail from staff of the Florida Department of Law Enforcement to staff of the Senate Committee

- Five analogs of phencyclidine described in s. 893(1)(c)13., 32., 38., 103., and 146., F.S.; and
- A mixture containing any described substance.

By adding these substances to the trafficking in phencyclidine provision, these substances become subject to current penalties for trafficking in phencyclidine. Currently, trafficking in 28 grams or more of phencyclidine is generally a first degree felony and is subject to the following mandatory minimum terms of imprisonment and mandatory fines:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000, if the quantity involved is 28 grams or more, but less than 200 grams;
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000, if the quantity involved is 200 grams or more, but less than 400 grams; and
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of \$250,000, if the quantity involved is 400 grams or more.⁸²

Further, a person commits a capital felony, which is also punishable by a mandatory fine of \$250,000, if the person knowingly brings into Florida 800 grams or more of phencyclidine, knowing that the probable result of such importation would be the death of any person.⁸³

Trafficking in Phenethylamines (Section 6)

Section 6 of the bill amends s. 893.135(1)(k), F.S., which currently punishes “trafficking in phenethylamines.” This paragraph currently lists a number of phenethylamines described in s. 893.03(1)(c), F.S. The bill removes these listed substances and refers to them by their specific scheduling reference in s. 893.03(1)(c), F.S. The bill also adds the following substances:

- A substance described in s. 893.03(1)(c)21., 43.-45., 58., 72.-80., 81.-86., 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163., or 187.-189., F.S., which include phenethylamines and cathinones;
- A substituted cathinone described in s. 893.03(1)(c)191., F.S.;
- A substituted phenethylamine described in s. 893.03(1)(c)192., F.S.; and
- A mixture containing any described substance or containing the salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers of any described substance.

By adding these substances to the trafficking in phenethylamines provision, these substances become subject to current penalties for trafficking in phenethylamines. Trafficking in 10 grams or more of any listed substance is generally a first degree felony and is subject to the following mandatory minimum terms of imprisonment and mandatory fines:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000, if the quantity involved is 10 grams or more, but less than 200 grams.
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000, if the quantity involved is 200 grams or more, but less than 400 grams.

on Criminal Justice (March 28, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary).

⁸² Section 893.13(1)(d)1.a.-c., F.S.

⁸³ Section 893.13(1)(d)2., F.S.

- A 15-year mandatory minimum term of imprisonment and a mandatory fine of \$250,000, if the quantity involved is 400 grams or more.⁸⁴

Further, a person commits a capital felony, which is also punishable by a mandatory fine of \$250,000, if the person knowingly manufactures or brings into Florida 30 kilograms or more of any previously-described substance, knowing that the probable result of such manufacture or importation would be the death of any person.⁸⁵

Trafficking in Synthetic Cannabinoids (Section 6)

Section 6 of the bill creates s. 893.135(1)(m), F.S., which punishes “trafficking in synthetic cannabinoids.” Trafficking in synthetic cannabinoids, which is a first degree felony, is knowingly selling, purchasing, manufacturing, delivering, or bringing into Florida, or knowingly being in actual or constructive possession of, 280 grams or more of:

- A substance described in s. 893.03(1)(c)30., 46.-50., 114.-142., 151.-156., 166.-173., or 176.-186., F.S. (synthetic cannabinoids);
- A synthetic cannabinoid described in s. 893.03(1)(c)190., F.S.; or
- A mixture containing any described substance.

This offense includes mandatory minimum terms of imprisonment and mandatory fines, which are based on the quantity involved in the trafficking:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000, if the quantity involved is 280 grams or more, but less than 500 grams;
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000, if the quantity involved is 500 grams or more, but less than 1,000 grams;
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of \$200,000, if the quantity involved is 1,000 grams or more, but less than 30 kilograms; and
- A 25-year mandatory minimum term of imprisonment and a mandatory fine of \$750,000, if the quantity involved is 30 kilograms or more.

Trafficking in N-benzyl Phenethylamines (Section 6)

Section 6 of the bill creates s. 893.135(1)(n), F.S., which punishes “trafficking in n-benzyl phenethylamines.” Trafficking in n-benzyl phenethylamines, which is a first degree felony, is knowingly selling, purchasing, manufacturing, delivering, or bringing into Florida, or knowingly being in actual or constructive possession of, 14 grams or more of:

- A substance described in s. 893.03(1)(c)164., 174., or 175., F.S. (n-benzyl phenethylamines);
- A n-benzyl phenethylamine compound, as described in s. 893.03(1)(c)193., F.S.; or
- A mixture containing any described substance.

⁸⁴ Section 893.135(1)(k)2., F.S.

⁸⁵ Section 893.135(1)(k)3., F.S.

This offense includes mandatory minimum terms of imprisonment and mandatory fines, which are based on the quantity involved in the trafficking:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000, if the quantity involved is 14 grams or more, but less than 100 grams;
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000, if the quantity involved is 100 grams or more, but less than 200 grams; and
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of \$500,000, if the quantity involved is 200 grams or more.

Further, a person commits a capital felony, which is also punishable by a mandatory fine of \$500,000, if the person knowingly manufactures or brings into Florida 400 grams or more of a n-benzyl phenethylamine compound, knowing that the probable result of such importation would be the death of any person.

Departure from a Drug Trafficking Mandatory Minimum Sentence (Section 6)

Section 6 of the bill creates s. 893.135(8), F.S., which authorizes a departure from a mandatory minimum sentence for drug trafficking. For an offense listed under s. 893.135, F.S., which is committed on or after October 1, 2017, and which carries a mandatory minimum sentence, a court may depart from the applicable mandatory minimum sentence if, in giving due regard to the nature of the defendant's crime, history, and character and chances for successful rehabilitation, the court finds compelling reasons on the record that imposition of the mandatory minimum is unnecessary for public safety. Each month, a court must submit to the Legislature's Office of Economic and Demographic Research the written reasons in each case in which the court departed from the mandatory minimum sentence.

Ranking Trafficking Offenses (Section 7)

Section 7 of the bill amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank trafficking offenses that are created by the bill (described below).

The following trafficking offenses are ranked in Level 7:

- Trafficking in fentanyl (4 grams or more, but less than 14 grams);
- Trafficking in synthetic cannabinoids (280 grams or more, but less than 500 grams);
- Trafficking in synthetic cannabinoids (500 grams or more, but less than 1,000 grams); and
- Trafficking in n-benzyl phenethylamines, (14 grams or more, but less than 100 grams).

The following trafficking offenses are ranked in Level 8:

- Trafficking in fentanyl (14 grams or more, but less than 28 grams);
- Trafficking in synthetic cannabinoids (1,000 grams or more, but less than 30 kilograms); and
- Trafficking in n-benzyl phenethylamines (100 grams or more, but less than 200 grams).

The following trafficking offenses are ranked in Level 9:

- Trafficking in fentanyl (28 grams or more);
- Trafficking in synthetic cannabinoids (30 kilograms or more); and
- Trafficking in n-benzyl phenethylamines (200 grams or more).

The bill also makes technical corrections to language describing some current trafficking offenses ranked in the chart.

Prison Diversion for Certain Drug Possession Offenders (Section 8)

Section 8 of the bill requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless the sentence could cause harm to the public. Section 775.082(10), F.S., currently provides that a court must sentence a defendant to a nonstate prison sanction if the defendant is sentenced for a third degree felony that is not a forcible felony and total sentence points under the Code are 22 points or fewer, unless the court determines such sentence could cause harm to the public.

The bill amends s. 775.082, F.S., to provide that if a defendant is sentenced for a primary offense of possession of a controlled substance committed on or after October 1, 2017, and if the total sentence points under the Code are 60 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could cause harm to the public, the court may sentence the offender to a state correctional facility.

The bill defines “possession of a controlled substance” as possession of a controlled substance in violation of s. 893.13, F.S., but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135, F.S., which punishes drug trafficking.

Staff notes that this diversion provision could apply to a defendant who has a prior record, which might include a prior violent offense. For example, a defendant with a current offense of possession of a controlled substance and a prior offense of aggravated assault would score fewer than 60 total points. However, under the bill, the court could opt against diversion if the court finds that diversion could cause harm to the public.

Sentence Mitigating Circumstances (Section 9)

Section 9 of the bill restores a circumstance for mitigating (reducing) a Code sentence. This mitigating circumstance, which was authorized under the pre-Code sentencing guidelines until it was removed in 1997, was based on the defendant’s substance abuse or addiction and amenability to treatment.

The bill amends s. 921.0026, F.S., to add the following circumstance for mitigation of a scored lowest permissible sentence under the Code: For an offense committed on or after October 1, 2017, the defendant requires specialized treatment for addiction, a mental disorder, or a physical disability, and the defendant is amenable to treatment.

Drug Court, Treatment, or Probation for Certain Nonviolent Felony Offenders (Section 10)

Section 10 of the bill *requires* diversion through drug court, residential drug treatment, or drug offender probation for certain nonviolent felony offenders who are amenable to substance abuse treatment. Section 948.01, F.S., in part, currently *authorizes* a court to place a defendant into a

postadjudicatory treatment-based drug court program if the defendant's offense is a nonviolent felony committed on or after July 1, 2009, total sentence points under the Code are 60 points or fewer, the defendant is amenable to substance abuse treatment, and the defendant otherwise qualifies under s. 397.334(3), F.S. (criteria for entry into a post adjudicatory treatment-based drug court program).

The bill amends s. 948.01(7), F.S., to *require* a court to place a defendant into a postadjudicatory treatment-based drug court program, residential drug treatment, or drug offender probation if the defendant committed a nonviolent felony offense on or after October 1, 2017, the defendant's Code scoresheet total sentence points are 60 points or fewer, the defendant is amenable to substance abuse treatment, the defendant's criminal behavior is related to substance abuse or addiction, and the defendant otherwise qualifies under s. 397.334(3), F.S. The satisfactory completion of the program is a required condition of the defendant's probation or community control.

Reenactments (Sections 11 to 29)

Sections 11 to 29 reenact, respectively, ss. 775.08435, 921.002, 921.00265, 394.47892, 397.334, 910.035, 921.187, 943.04352, 39.806, 63.089, 95.11, 775.082, 775.0823, 921.16, 948.06, 948.062, 985.265, 1012.315, and 1012.467, F.S., for the purpose of incorporating amendments made by the bill to various statutes.

Effective Date

The bill takes effect 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:

None.

C. Government Sector Impact:

Felony Murder by Drug Distribution, Controlled Substance Scheduling, and Controlled Substance Offenses (Sections 2, 4, and 5 to 7)

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation has not reviewed the provisions of the bill involving felony murder by drug distribution (Section 2), controlled substances scheduling (Section 4), and controlled substance offenses (Sections 5 to 7). However, those provisions are identical to provisions in CS/HB 477, which the CJIC estimates will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds).⁸⁶

Per the Department of Corrections (DOC), one person was charged and sentenced to prison for drug-related first degree murder (sentence length of 24 months). Per the Florida Department of Law Enforcement (FDLE), in FY 2015-2016, one person was arrested for selling fentanyl, and two people received a conviction/adjudication withheld. DOC does not track the number of admissions to prison for fentanyl, so that population is not known. Per the FDLE, citing the Florida Medical Examiners’ 2015 Annual Report,⁸⁷ there were 911 deaths in which fentanyl was present or deemed the cause of death. Further, 99 of the deaths associated with fentanyl only had that in their system, while the rest were in combination with another drug.

Per the DOC, in FY 2015-2016, there were 44 (adj.)⁸⁸ offenders sentenced for trafficking in hydrocodone and oxycodone, and 34 (adj.) were sentenced to prison (mean sentence length of 70.5 months and an incarceration rate of 77.3 percent adj. and 75.7 percent unadj.). However, the changes in the bill should not affect these offenses.

Per the DOC, in FY 2015-2016, there were 487 (adj.) offenders sentenced for trafficking offenses similar to fentanyl (heroin included) between 4 and 14 grams. There were 363 (adj.) sentenced to prison (mean sentence length of 62.1 months and an incarceration rate of 74.6 percent adj. and 74.5 percent unadj.). There were 126 (adj.) offenders sentenced for trafficking between 14 and 28 grams, and 102 (adj.) of these offenders were sentenced to prison (mean sentence length of 94.6 months and an incarceration rate of 81.0 percent adj and 81percent unadj.). There were 81 (adj.) offenders sentenced for trafficking between 28 grams and 30 kilograms, and 64 (adj.) of these offenders were sentenced to prison (mean sentence length of 144.5 months and an incarceration rate of 79.0 percent

⁸⁶ E-mail, dated March 28, 2017, to staff of the Senate Committee on Criminal Justice from staff of the Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary). All information in this section of the analysis regarding CJIC estimates of provisions of the bill addressing felony murder by drug distribution, controlled substance scheduling, controlled substance offenses, and departures from mandatory minimum sentences for drug trafficking offenses is from this source.

⁸⁷ *Drugs Identified in Deceased Persons* (2015 Annual Report) (September 2016), p. 3, Florida Medical Examiners Commission, <http://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms.aspx> (last visited on Apr. 14, 2017).

⁸⁸ The abbreviation “adj.” means “adjusted.” The abbreviation “unadj.” means “unadjusted.” Sentencing data from the DOC is incomplete, which means that the numbers the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

adj. and 79.1 percent unadj.). No offenders were sentenced for trafficking more than 30 kilograms.

Per the DOC, in FY 2015-2016, there were two (adj.) offenders sentenced for trafficking in phencyclidine between 28 and 200 grams, and both offenders received a prison sentence (mean sentence length of 96.0 months and an incarceration rate of 100 percent). There was one offender sentenced for trafficking between 400 and 800 grams, but that person did not receive a prison sentence.

The only other current trafficking offenses that exist out of s. 893.03(1)(c), F.S., are MDMA and phenethylamines, both of them combined in the DOC's data. Per the DOC, in FY 2015-2016, there were 41 (adj.) offenders sentenced for trafficking between 10 and 200 grams of these drugs. There were 26 (adj.) sentenced to prison (mean sentence length of 45.6 months and an incarceration rate of 63.4 percent adj. and 64.7 percent unadj.). There were two offenders sentenced for trafficking between 200 and 400 grams of these drugs, and none of those offenders were sentenced to prison. There was also one (adj.) offender sentenced for trafficking in over 400 grams of these drugs in FY 2015-2016, and that offender was sentenced to prison (sentence length of 84.0 months and incarceration rate of 100 percent). No offenders were sentenced above 30 kilograms.

Departure from a Drug Trafficking Mandatory Minimum Sentence (Section 6)

The CJIC has not reviewed the part of Section 6 of the bill which authorizes a court to depart from a mandatory minimum sentence for a drug trafficking offense. However, the CJIC reviewed SB 1436, which, in part, authorizes departures for trafficking in hydrocodone and oxycodone, and estimates the bill will have a “negative indeterminate” prison bed impact.

Prison Diversion (Sections 8 to 10)

The CJIC has not reviewed Sections 8 to 10 of the bill, which address prison diversion. However, Sections 8 to 10 are identical to prison diversion provisions in CS/SB 290, which the CJIC did review (see below).⁸⁹

The DOC provided preliminary estimates (see below) of the prison diversion provisions of SB 290, which are identical to Sections 8 to 10 of this bill.⁹⁰ The DOC noted that if a significant number of defendants that otherwise would have been sentenced to prison are diverted to supervision under these provisions, there would be a critical need for additional probation staff to manage the additional workload. There would also be a need

⁸⁹ “Narrative Analyses of Adopted Impacts” (updated through March 2, 2017), Criminal Justice Impact Conference, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm> (last visited Apr. 14, 2017). Unless otherwise noted, all information in this section of the analysis regarding prison diversion provisions of the bill is from this source. If the bill were to become law, the actual impact associated with the bill would differ depending on a number of factors including the existing inventory of prison beds.

⁹⁰ 2017 Legislative Bill Analysis (SB 290) (February 16, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary). Unless otherwise noted, all information in this section of the analysis regarding DOC estimates of the prison diversion provisions is from this source.

for additional co-occurring beds and funding for offenders who are in need of outpatient substance abuse treatment services, including assessment, individual counseling, group counseling, treatment plan review, and aftercare services.

The Office of the State Courts Administrator (OSCA) states that the prison diversion provisions of SB 290 would likely lead to an increase in judicial workload because there will be much lengthier sentencing hearings as defendants will attempt to prove to the judge that they have a drug problem and that they are amenable to treatment. However, the fiscal impact is indeterminate because the OSCA does not currently have data needed to quantifiably establish the increase in judicial time and workload as a result of increased sentencing hearing time. Trial court judicial workload is measured using a case weighting system that calculates the amount of time that it takes for a judge to dispose of a case. Passage of these provisions may impact the case weighting system. The number of case filings using the case weighting system is used to determine the needs for additional judicial resources each year. Any judicial workload increases in the future as a result of these provisions would be reflected in the Supreme Court's annual opinion *In re: Certification of Need for Additional Judges*.⁹¹

Prison Diversion for Certain Drug Possession Offenders

Section 8 of the bill requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless such sentence could present a danger to the public. The CJIC estimates that an identical prison diversion provision in CS/SB 290 will result in a cumulative decrease of 1,001 prison beds over 5 years (FY 2017-2018 to FY 2021-2022) with a cumulative cost avoidance of \$131,965,742 (\$64,993,112 in operating costs⁹² and \$66,972,630 in fixed capital outlay costs⁹³).⁹⁴ The complete breakdown of projected annual prison bed reductions and cost savings is provided in the table below:

⁹¹ Information provided by the Office of the State Courts Administrator (January 23, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary). All information in this section of the analysis regarding OSCA estimates is from this source.

⁹² FY 2015-2016 operating costs per inmate were obtained from the DOC. The \$53.49 per diem (\$19,524 annual cost) is for all department facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$3.34 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference. "PRCs" means probation and restitution centers.

⁹³ FY 2006-2007 capital costs per bed were based on the DOC's cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the CJIC on February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insight, Inc.

⁹⁴ "Narrative Analyses of Adopted Impacts" (updated through Apr. 14, 2017), Criminal Justice Impact Conference, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm> (last visited Apr. 14, 2017). All information in this section of the analysis regarding prison diversion provisions of the bill is from this source.

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2017-2018	-155	-155	(\$1,580,380)	(\$36,210,390)	(\$37,790,770)	(\$37,790,770)
2018-2019	-570	-415	(\$7,569,725)	(\$16,015,650)	(\$23,585,375)	(\$61,376,145)
2019-2020	-815	-245	(\$14,807,728)	(\$8,475,390)	(\$23,283,118)	(\$84,659,263)
2020-2021	-941	-126	(\$19,243,126)	(\$4,144,860)	(\$23,387,986)	(\$108,047,249)
2021-2022	-1,001	-60	(\$21,792,153)	(\$2,126,340)	(\$23,918,493)	(\$131,965,742)
Total	-1,001	-1,001	(\$64,993,112)	(\$66,972,630)	(\$131,965,742)	(\$131,965,742)

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 10, 2017.

The DOC's preliminary estimate is that this diversion provision will impact the end of year prison population along with a corresponding increase to the supervised population. The chart provided below estimates impact based on certain percentages of the affected population being diverted from prison to supervision and drug treatment pursuant to this diversion provision. For example, for FY 2017-2018 to FY 2021-2022, the entire population that could be affected (100 percent) is estimated to be 5,287 persons. If five percent of this population (264 persons) were incarcerated, it would cost \$2,610,122. If, instead, these persons were diverted under this provision, the cost of supervision would be \$536,729. The "total cost to implement" (\$2,610,122 minus \$536,729) is a cost savings of \$2,073,383.

FY 2017-2018 to FY 2021-2022				
% of Inmates Affected	Affected Population	Inmate Costs	Supervision Costs	Total Cost to Implement
5%	264	(\$2,610,112)	\$536,729	(\$2,073,383)
10%	528	(\$5,220,223)	\$1,073,360	(\$4,146,863)
15%	792	(\$7,830,335)	\$1,610,088	(\$6,220,247)
20%	1,059	(\$10,469,510)	\$2,152,872	(\$8,316,638)
25%	1,321	(\$13,062,186)	\$2,685,569	(\$10,376,617)
50%	2,646	(\$26,159,244)	\$5,379,103	(\$20,780,141)
75%	3,966	(\$39,209,801)	\$8,062,551	(\$31,147,250)
100%	5,287	(\$52,271,986)	\$10,748,119	(\$41,523,867)

Data from the Florida Department of Corrections, February 10, 2017.⁹⁵

Restoring a Sentence Mitigating Circumstance

Section 9 of the bill restores a previous mitigating circumstance based on the defendant's substance abuse or addiction and amenability to treatment. The CJIC estimates that an identical mitigating circumstance provision in CS/SB 290 will have a "negative indeterminate" prison bed impact. The available data does not have the information necessary to determine which offenders entering prison might require specialized treatment for addiction. Per the DOC, in FY 2015-2016, there were 54,444 (adj.) offenders sentenced for a nonviolent felony with total sentencing points between 22 and 60 points, and 12,929 (adj.) of these offenders were sentenced to prison (mean sentence length of 26.1 months and an incarceration rate of 23.8 percent adj and 23.8 percent

⁹⁵ This data is on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary.

unadj.). However, it cannot be determined what sentencing patterns judges might adopt with this new factor at their disposal.

The DOC's preliminary estimate is that restoring the mitigating circumstance will have an indeterminate impact.⁹⁶

Requiring Drug Court, Treatment, or Probation for Certain Nonviolent Felony Offenders

Section 10 of the bill requires the court to place certain nonviolent felony offenders into a drug court program, residential drug treatment, or drug offender probation if certain criteria are met. The CJIC estimates that an identical provision in CS/SB 290 will have a “negative indeterminate” prison bed impact: The available data does not have the information necessary to determine which offenders entering prison might be amenable to substance abuse treatment, nor can it be determined if an offender's criminal behavior was related to substance abuse or addiction.

Because the DOC does not have the ability to predict how many defendants are “amenable to treatment” and whose “criminal behavior is related to substance abuse or addiction,” the DOC's preliminary estimate is that the diversion provision will have an indeterminate impact.

The chart provided below estimates impact based on certain percentages of the affected population being diverted from prison to supervision and drug treatment pursuant to this diversion provision. For example, for FY 2017-2018 to FY 2021-2022, the entire population that could be affected (100 percent) is estimated to be 24,607 persons. If five percent of this population (1,230 persons) were incarcerated, it would cost \$24,014,335. If, instead, these persons were diverted under this diversion provision, the total cost of supervision and drug treatment would be \$15,618,678 (\$2,499,538 for supervision plus \$13,119,141 for treatment). The “total cost to implement” (\$24,014,335 minus \$15,618,678) would be a cost savings of \$8,395,656.

FY 2017-2018 to FY 2021-2022					
% of Inmates Affected	Affected Population	Inmate Costs	Supervision Costs	Drug Treatment Costs	Total Cost to Implement
5%	1,230	(\$24,014,335)	\$2,499,538	\$13,119,141	(\$8,395,656)
10%	2,462	(\$48,067,719)	\$5,003,212	\$26,238,281	(\$16,826,226)
15%	3,692	(\$72,082,055)	\$7,502,751	\$39,357,422	(\$25,221,882)
20%	4,921	(\$96,076,866)	\$10,000,223	\$52,476,564	(\$33,600,079)
25%	6,152	(\$120,110,725)	\$12,501,777	\$65,595,704	(\$42,013,244)
50%	12,305	(\$240,240,975)	\$25,005,817	\$131,191,408	(\$84,043,750)
75%	18,456	(\$360,332,176)	\$37,505,579	\$196,787,112	(\$126,039,485)
100%	24,607	(\$480,423,376)	\$50,005,434	\$262,382,817	(\$168,035,125)
Data from the Florida Department of Corrections, February 10, 2017. ⁹⁷					

⁹⁶ “Although the bill changes the factors that a court may consider in imposing a downward departure sentence, such sentences remain discretionary. As a result the projected impact of these changes is indeterminate.”

⁹⁷ This data is on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 6, in part, authorizes a court to depart from a mandatory minimum sentence for drug trafficking after evaluating the defendant's crime, history, character, and chances for successful rehabilitation, if the court finds compelling reasons on the record that the mandatory minimum sentence is not necessary to protect the public. Each month, a court must submit to the Legislature's Office of Economic and Demographic Research (EDR) the written reasons in each case in which the court departed from the mandatory minimum sentence. The bill does not specify what the EDR is supposed to do with this information.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.887, 775.082, 782.04, 893.03, 893.13, 893.135, 921.0022, 921.0026, and 948.01.

This bill creates section 893.015 of the Florida Statutes.

The bill reenacts ss. 39.806, 63.089, 95.11, 394.47892, 397.334, 775.082, 775.0823, 775.08435, 910.035, 921.002, 921.00265, 921.16, 921.187, 943.04352, 948.06, 948.062, 985.265, 1012.315, and 1012.467, F.S., for the purpose of incorporating amendments made by the bill to various 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 April 19, 2017:

The committee substitute corrects a technical deficiency by removing the date for which a provision on mitigating circumstances for nonviolent felony offenders would apply to conform to another change to the bill by a prior committee.

CS by Criminal Justice on April 3, 2017:

The committee substitute:

- Provides that a person 18 years of age or older commits felony murder if he or she unlawfully distributes any specified controlled substance, including a specified fentanyl-related substance, and the distribution is proven to be the proximate cause of the death of the user of the substance;
- Includes in Schedule I a class of fentanyl derivatives and five substances that were originally developed for legitimate research but that have now emerged in the illicit drug market;
- Punishes unlawful possession of 10 grams or more of certain Schedule II substances, including certain fentanyl-related substances;

- Adds codeine, an isomer of hydrocodone, to a current provision punishing trafficking in hydrocodone, and adds additional phenethylamines and phencyclidines to current provisions punishing trafficking in phencyclidine and phenethylamine;
- Revises the new offense of trafficking in fentanyl;
- Punishes trafficking in synthetic cannabinoids, and n-benzyl phenethylamines, including mandatory minimum terms of imprisonment and mandatory fines;
- Authorizes a court to depart from a mandatory minimum sentence for drug trafficking after evaluating the defendant's crime, history, character, and chances for successful rehabilitation, if the court finds compelling reasons on the record that the mandatory minimum sentence is not necessary to protect the public;
- Ranks new offenses for trafficking in fentanyl, synthetic cannabinoids, and n-benzyl phenethylamines in the Code offense severity ranking chart;
- Removes a new offense of committing a drug act in a dwelling;
- Removes the ranking of a LSD trafficking offense in the Code offense severity ranking chart;
- Authorizes certain crime laboratory personnel to possess, store, and administer emergency opioid antagonists used to treat opioid overdoses;
- Provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), or any portion thereof, include all subsequent amendments to the act;
- Requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless such sentence could present a danger to the public;
- Restores a circumstance for mitigating (reducing) a sentence based on substance abuse or addiction and amenability to treatment; and
- Requires diversion through drug court, residential drug treatment, or drug offender probation for certain nonviolent felony offenders who are amenable to substance abuse treatment.

B. Amendments:

None.



152060

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Bracy) recommended the following:

Senate Amendment

Delete lines 2233 - 2234
and insert:
(n)~~(m)~~ The defendant's offense is a

By the Committee on Criminal Justice; and Senators Steube,
Baxley, Passidomo, Artiles, and Mayfield

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1 A bill to be entitled
2 An act relating to controlled substances; amending s.
3 381.887, F.S.; providing that certain emergency
4 responders and crime laboratory personnel may possess,
5 store, and administer emergency opioid antagonists;
6 amending s. 782.04, F.S.; providing that unlawful
7 distribution of specified controlled substances and
8 analogs or mixtures thereof by an adult which
9 proximately cause a death is murder; providing
10 criminal penalties; creating s. 893.015, F.S.;
11 specifying purpose relating to drug abuse prevention
12 and control; providing that a reference to ch. 893,
13 F.S., or to any section or portion thereof, includes
14 all subsequent amendments; amending s. 893.03, F.S.;
15 adding certain synthetic opioid substitute compounds
16 to the list of Schedule I controlled substances;
17 amending s. 893.13, F.S.; prohibiting possession of
18 more than 10 grams of specified substances; providing
19 criminal penalties; amending s. 893.135, F.S.;
20 revising the substances that constitute the offenses
21 of trafficking and capital trafficking in, and capital
22 importation of, hydrocodone and oxycodone; creating
23 the offense of trafficking in fentanyl; providing
24 penalties and specifying minimum terms of imprisonment
25 and fines based on the quantity involved in the
26 offense; revising the substances that constitute the
27 offenses of trafficking in phencyclidine and capital
28 importation of phencyclidine; revising the substances
29 that constitute trafficking in phenethylamines and

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30 capital manufacture or importation of phenethylamines;
31 creating the offense of trafficking in synthetic
32 cannabinoids; providing penalties and specifying
33 minimum terms of imprisonment and fines based on the
34 quantity involved in the offense; creating the
35 offenses of trafficking in n-benzyl phenethylamines
36 and capital manufacture or importation of a n-benzyl
37 phenethylamine compound; providing penalties and
38 specifying minimum terms of imprisonment and fines
39 based on the quantity involved in the offense;
40 authorizing a court to depart from a mandatory minimum
41 sentence for drug trafficking if the court finds
42 compelling reasons that the mandatory minimum sentence
43 is not necessary for the protection of the public;
44 requiring a court to submit written reasons for such
45 departure to the Office of Economic and Demographic
46 Research; reenacting and amending s. 921.0022, F.S.;
47 ranking offenses on the offense severity ranking chart
48 of the Criminal Punishment Code; incorporating the
49 amendments made by the act in cross-references to
50 amended provisions; amending s. 775.082, F.S.;
51 requiring that a court sentence a defendant who is
52 convicted of a primary offense of possession of a
53 controlled substance committed on or after a specified
54 date to a nonstate prison sanction under certain
55 circumstances; defining the term "possession of a
56 controlled substance"; amending s. 921.0026, F.S.;
57 revising the mitigating circumstances under which a
58 departure from the lowest permissible sentence is

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59 reasonably justified; making technical changes;
 60 amending s. 948.01, F.S.; requiring a sentencing court
 61 to place certain defendants who commit an offense on
 62 or after a specified date into a postadjudicatory
 63 treatment-based drug court program, into residential
 64 drug treatment, or on drug offender probation; making
 65 technical changes; reenacting ss. 775.08435(1)(b) and
 66 (c), 921.002(3), and 921.00265(1), F.S., relating to
 67 the prohibition on withholding adjudication in felony
 68 cases, the Criminal Punishment Code, and recommended
 69 and departure sentences, respectively, to incorporate
 70 the amendment made to s. 921.0026, F.S., in references
 71 thereto; reenacting ss. 394.47892(2) and (4)(a),
 72 397.334(3)(a) and (5), 910.035(5)(a), 921.187(1)(c),
 73 and 943.04352, F.S., relating to mental health court
 74 programs, treatment-based drug court programs,
 75 transfer for participation in a problem-solving court,
 76 offender probation with or without adjudication of
 77 guilt, and court placement of a defendant on
 78 misdemeanor probation, respectively, to incorporate
 79 the amendment made to s. 948.01, F.S., in references
 80 thereto; reenacting ss. 39.806(1)(d), 63.089(4)(b),
 81 95.11(10), 775.082(1)(b) and (3)(a), (b), and (c),
 82 775.0823(1) and (2), 921.16(1), 948.06(8)(c),
 83 948.062(1)(a), 985.265(3)(b), 1012.315(1)(d), and
 84 1012.467(2)(g), relating to grounds for termination of
 85 parental rights, proceeding to terminate parental
 86 rights pending adoption, limitations other than for
 87 the recovery of real property, penalties, when

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88 sentences to be concurrent and when consecutive,
 89 violent offenses committed against specified
 90 officials, violation of probation or community
 91 control, reviewing and reporting serious offenses
 92 committed by offenders placed on probation or
 93 community control, detention transfer and release,
 94 disqualification from employment, and noninstructional
 95 contractors who are permitted access to school grounds
 96 when students are present, respectively, to
 97 incorporate the amendments made by the act in cross-
 98 references to amended provisions; providing an
 99 effective date.

100
 101 Be It Enacted by the Legislature of the State of Florida:

102
 103 Section 1. Subsection (4) of section 381.887, Florida
 104 Statutes, is amended to read:

105 381.887 Emergency treatment for suspected opioid overdose.—

106 (4) The following persons ~~Emergency responders, including,~~
 107 ~~but not limited to, law enforcement officers, paramedics, and~~
 108 ~~emergency medical technicians,~~ are authorized to possess, store,
 109 and administer emergency opioid antagonists as clinically
 110 indicated:

111 (a) Emergency responders, including, but not limited to,
 112 law enforcement officers, paramedics, and emergency medical
 113 technicians.

114 (b) Crime laboratory personnel for the statewide criminal
 115 analysis laboratory system as described in s. 943.32, including,
 116 but not limited to, analysts, evidence intake personnel, and

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117 their supervisors.

118 Section 2. Paragraph (a) of subsection (1) of section
119 782.04, Florida Statutes, is amended to read:

120 782.04 Murder.—

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

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

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

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

127 b. Arson,

128 c. Sexual battery,

129 d. Robbery,

130 e. Burglary,

131 f. Kidnapping,

132 g. Escape,

133 h. Aggravated child abuse,

134 i. Aggravated abuse of an elderly person or disabled adult,

135 j. Aircraft piracy,

136 k. Unlawful throwing, placing, or discharging of a
137 destructive device or bomb,

138 l. Carjacking,

139 m. Home-invasion robbery,

140 n. Aggravated stalking,

141 o. Murder of another human being,

142 p. Resisting an officer with violence to his or her person,

143 q. Aggravated fleeing or eluding with serious bodily injury
144 or death,

145 r. Felony that is an act of terrorism or is in furtherance

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146 of an act of terrorism,

147 s. Human trafficking; or

148 3. Which resulted from the unlawful distribution by a
149 person 18 years of age or older of any of the following
150 substances, or mixture containing any of the following
151 substances substance controlled under s. 893.03(1), cocaine as
152 described in s. 893.03(2)(a)4., opium or any synthetic or
153 natural salt, compound, derivative, or preparation of opium, or
154 methadone by a person 18 years of age or older, when such
155 substance or mixture ~~drug~~ is proven to be the proximate cause of
156 the death of the user;

157 a. A substance controlled under s. 893.03(1);

158 b. Cocaine as described in s. 893.03(2)(a)4.;

159 c. Opium or any synthetic or natural salt, compound,
160 derivative, or preparation of opium;

161 d. Methadone;

162 e. Alfentanil, as described in s. 893.03(2)(b)1.;

163 f. Carfentanil, as described in s. 893.03(2)(b)6.;

164 g. Fentanyl, as described in s. 893.03(2)(b)9.;

165 h. Sufentanil, as described in s. 893.03(2)(b)29.; or

166 i. A controlled substance analog, as described in s.
167 893.0356, of any substance specified in sub-subparagraphs a.-h.,

168 is murder in the first degree and constitutes a capital felony,
170 punishable as provided in s. 775.082.

171 Section 3. Section 893.015, Florida Statutes, is created to
172 read:

173 893.015 Statutory references.—The purpose of this chapter
174 is to comprehensively address drug abuse prevention and control

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175 in this state. To this end, unless expressly provided otherwise,
 176 a reference in any section of the Florida Statutes to chapter
 177 893 or to any section or portion of a section of chapter 893
 178 includes all subsequent amendments to chapter 893 or to the
 179 referenced section or portion of a section.

180 Section 4. Paragraphs (a) and (c) of subsection (1) of
 181 section 893.03, Florida Statutes, are amended to read:

182 893.03 Standards and schedules.—The substances enumerated
 183 in this section are controlled by this chapter. The controlled
 184 substances listed or to be listed in Schedules I, II, III, IV,
 185 and V are included by whatever official, common, usual,
 186 chemical, trade name, or class designated. The provisions of
 187 this section shall not be construed to include within any of the
 188 schedules contained in this section any excluded drugs listed
 189 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
 190 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
 191 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
 192 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
 193 Anabolic Steroid Products."

194 (1) SCHEDULE I.—A substance in Schedule I has a high
 195 potential for abuse and has no currently accepted medical use in
 196 treatment in the United States and in its use under medical
 197 supervision does not meet accepted safety standards. The
 198 following substances are controlled in Schedule I:

199 (a) Unless specifically excepted or unless listed in
 200 another schedule, any of the following substances, including
 201 their isomers, esters, ethers, salts, and salts of isomers,
 202 esters, and ethers, whenever the existence of such isomers,
 203 esters, ethers, and salts is possible within the specific

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204 chemical designation:

- 205 1. Acetyl-alpha-methylfentanyl.
- 206 2. Acetylmethadol.
- 207 3. Allylprodine.
- 208 4. Alphacetylmethadol (except levo-alphacetylmethadol, also
 209 known as levo-alpha-acetylmethadol, levomethadyl acetate, or
 210 LAAM).
- 211 5. Alphamethadol.
- 212 6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl)
 213 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
 214 (N-propanilido) piperidine).
- 215 7. Alpha-methylthiofentanyl.
- 216 8. Alphameprodine.
- 217 9. Benzethidine.
- 218 10. Benzylfentanyl.
- 219 11. Betacetylmethadol.
- 220 12. Beta-hydroxyfentanyl.
- 221 13. Beta-hydroxy-3-methylfentanyl.
- 222 14. Betameprodine.
- 223 15. Betamethadol.
- 224 16. Betaprodine.
- 225 17. Clonitazene.
- 226 18. Dextromoramide.
- 227 19. Diampromide.
- 228 20. Diethylthiambutene.
- 229 21. Difenoxin.
- 230 22. Dimenoxadol.
- 231 23. Dimepheptanol.
- 232 24. Dimethylthiambutene.

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233 25. Dioxaphetyl butyrate.
 234 26. Dipipanone.
 235 27. Ethylmethylthiambutene.
 236 28. Etonitazene.
 237 29. Etoperidine.
 238 30. Flunitrazepam.
 239 31. Furethidine.
 240 32. Hydroxypethidine.
 241 33. Ketobemidone.
 242 34. Levomoramide.
 243 35. Levophenacymorphan.
 244 36. Desmethylprodine (1-Methyl-4-Phenyl-4-
 245 Propionoxypiperidine).
 246 37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
 247 piperidyl]-N-phenylpropanamide).
 248 38. 3-Methylthiofentanyl.
 249 39. Morpheridine.
 250 40. Noracymethadol.
 251 41. Norlevorphanol.
 252 42. Normethadone.
 253 43. Norpipanone.
 254 44. Para-Fluorofentanyl.
 255 45. Phenadoxone.
 256 46. Phenampromide.
 257 47. Phenomorphan.
 258 48. Phenoperidine.
 259 49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-
 260 Acetyloxypiperidine).
 261 50. Piritramide.

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262 51. Proheptazine.
 263 52. Properidine.
 264 53. Propiram.
 265 54. Racemoramide.
 266 55. Thenylfentanyl.
 267 56. Thiofentanyl.
 268 57. Tilidine.
 269 58. Trimeperidine.
 270 59. Acetylfentanyl.
 271 60. Butyrylfentanyl.
 272 61. Beta-Hydroxythiofentanyl.
 273 62. Fentanyl derivatives. Unless specifically excepted,
 274 listed in another schedule, or contained within a pharmaceutical
 275 product approved by the United States Food and Drug
 276 Administration, any material, compound, mixture, or preparation,
 277 including its salts, isomers, esters, or ethers, and salts of
 278 isomers, esters, or ethers, whenever the existence of such salts
 279 is possible within any of the following specific chemical
 280 designations containing a 4-anilidopiperidine structure:
 281 a. With or without substitution at the carbonyl of the
 282 aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl,
 283 methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl,
 284 dihydrofuranyl, benzyl moiety, or rings containing heteroatoms
 285 sulfur, oxygen, or nitrogen;
 286 b. With or without substitution at the piperidine amino
 287 moiety with a phenethyl, benzyl, alkylaryl (including
 288 heteroaromatics), alkyltetrazolyl ring, or an alkyl or
 289 carbomethoxy group, whether or not further substituted in the
 290 ring or group;

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291 c. With or without substitution or addition to the
 292 piperidine ring to any extent with one or more methyl,
 293 carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester
 294 groups;
 295 d. With or without substitution of one or more hydrogen
 296 atoms for halogens, or methyl, alkyl, or methoxy groups, in the
 297 aromatic ring of the anilide moiety;
 298 e. With or without substitution at the alpha or beta
 299 position of the piperidine ring with alkyl, hydroxyl, or methoxy
 300 groups;
 301 f. With or without substitution of the benzene ring of the
 302 anilide moiety for an aromatic heterocycle; and
 303 g. With or without substitution of the piperidine ring for
 304 a pyrrolidine ring, perhydroazepine ring, or azepine ring;
 305 excluding, Alfentanil, Carfentanil, Fentanyl, and Sufentanil;
 306 including, but not limited to:
 307 (I) Acetyl-alpha-methylfentanyl.
 308 (II) Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl)
 309 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
 310 (N-propanilido) piperidine).
 311 (III) Alpha-methylthiofentanyl.
 312 (IV) Benzylfentanyl.
 313 (V) Beta-hydroxyfentanyl.
 314 (VI) Beta-hydroxy-3-methylfentanyl.
 315 (VII) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
 316 piperidyl]-N-phenylpropanamide).
 317 (VIII) 3-Methylthiofentanyl.
 318 (IX) Para-Fluorofentanyl.
 319

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320 (X) Thenylfentanyl or Thienyl fentanyl.
 321 (XI) Thiofentanyl.
 322 (XII) Acetyl fentanyl.
 323 (XIII) Butyrylfentanyl.
 324 (XIV) Beta-Hydroxythiofentanyl.
 325 (XV) Lofentanil.
 326 (XVI) Ocfentanil.
 327 (XVII) Ohmfentanyl.
 328 (XVIII) Benzodioxolefentanyl.
 329 (XIX) Furanyl fentanyl.
 330 (XX) Pentanoyl fentanyl.
 331 (XXI) Cyclopentyl fentanyl.
 332 (XXII) Isobutyryl fentanyl.
 333 (XXIII) Remifentanil.
 334 (c) Unless specifically excepted or unless listed in
 335 another schedule, any material, compound, mixture, or
 336 preparation that contains any quantity of the following
 337 hallucinogenic substances or that contains any of their salts,
 338 isomers, including optical, positional, or geometric isomers,
 339 homologues, nitrogen-heterocyclic analogs, esters, ethers, and
 340 salts of isomers, homologues, nitrogen-heterocyclic analogs,
 341 esters, or ethers, if the existence of such salts, isomers, and
 342 salts of isomers is possible within the specific chemical
 343 designation or class description:
 344 1. Alpha-Ethyltryptamine.
 345 2. 4-Methylaminorex (2-Amino-4-methyl-5-phenyl-2-
 346 oxazoline).
 347 3. Aminorex (2-Amino-5-phenyl-2-oxazoline).
 348 4. DOB (4-Bromo-2,5-dimethoxyamphetamine).

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349 5. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
 350 6. Bufotenine.
 351 7. Cannabis.
 352 8. Cathinone.
 353 9. DET (Diethyltryptamine).
 354 10. 2,5-Dimethoxyamphetamine.
 355 11. DOET (4-Ethyl-2,5-Dimethoxyamphetamine).
 356 12. DMT (Dimethyltryptamine).
 357 13. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine analog
 358 of phencyclidine).
 359 14. JB-318 (N-Ethyl-3-piperidyl benzilate).
 360 15. N-Ethylamphetamine.
 361 16. Fenethylamine.
 362 17. 3,4-Methylenedioxy-N-hydroxyamphetamine.
 363 18. Ibogaine.
 364 19. LSD (Lysergic acid diethylamide).
 365 20. Mescaline.
 366 21. Methcathinone.
 367 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
 368 23. PMA (4-Methoxyamphetamine).
 369 24. PMMA (4-Methoxymethamphetamine).
 370 25. DOM (4-Methyl-2,5-dimethoxyamphetamine).
 371 26. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
 372 27. MDA (3,4-Methylenedioxyamphetamine).
 373 28. JB-336 (N-Methyl-3-piperidyl benzilate).
 374 29. N,N-Dimethylamphetamine.
 375 30. Parahexyl.
 376 31. Peyote.
 377 32. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine

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378 analog of phencyclidine).
 379 33. Psilocybin.
 380 34. Psilocyn.
 381 35. *Salvia divinorum*, except for any drug product approved
 382 by the United States Food and Drug Administration which contains
 383 *Salvia divinorum* or its isomers, esters, ethers, salts, and
 384 salts of isomers, esters, and ethers, if the existence of such
 385 isomers, esters, ethers, and salts is possible within the
 386 specific chemical designation.
 387 36. Salvinorin A, except for any drug product approved by
 388 the United States Food and Drug Administration which contains
 389 Salvinorin A or its isomers, esters, ethers, salts, and salts of
 390 isomers, esters, and ethers, if the existence of such isomers,
 391 esters, ethers, and salts is possible within the specific
 392 chemical designation.
 393 37. Xylazine.
 394 38. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine)
 395 (Thiophene analog of phencyclidine).
 396 39. 3,4,5-Trimethoxyamphetamine.
 397 40. Methylone (3,4-Methylenedioxymethcathinone).
 398 41. MDPV (3,4-Methylenedioxypyrovalerone).
 399 42. Methymethcathinone.
 400 43. Methoxymethcathinone.
 401 44. Fluoromethcathinone.
 402 45. Methylethcathinone.
 403 46. CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-
 404 yl)phenol) and its dimethyloctyl (C8) homologue.
 405 47. HU-210 [(6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-
 406 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol].

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407 48. JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).
 408 49. JWH-073 (1-Butyl-3-(1-naphthoyl)indole).
 409 50. JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-
 410 naphthoyl)indole).
 411 51. BZP (Benzylpiperazine).
 412 52. Fluorophenylpiperazine.
 413 53. Methylphenylpiperazine.
 414 54. Chlorophenylpiperazine.
 415 55. Methoxyphenylpiperazine.
 416 56. DBZP (1,4-Dibenzylpiperazine).
 417 57. TFMPP (Trifluoromethylphenylpiperazine).
 418 58. MBDB (Methylbenzodioxolylbutanamine) or (3,4-
 419 Methylenedioxy-N-methylbutanamine).
 420 59. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
 421 60. 5-Hydroxy-N-methyltryptamine.
 422 61. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
 423 62. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
 424 63. Methyltryptamine.
 425 64. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
 426 65. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
 427 66. Tyramine (4-Hydroxyphenethylamine).
 428 67. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
 429 68. DiPT (N,N-Diisopropyltryptamine).
 430 69. DPT (N,N-Dipropyltryptamine).
 431 70. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
 432 71. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
 433 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
 434 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
 435 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).

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436 75. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
 437 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
 438 77. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
 439 78. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
 440 79. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
 441 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
 442 81. Butylone (3,4-Methylenedioxy-alpha-
 443 methylaminobutyrophenone).
 444 82. Ethcathinone.
 445 83. Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
 446 84. Naphyrone (Naphthylpyrovalerone).
 447 85. Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).
 448 86. 3,4-Methylenedioxy-N,N-diethylcathinone.
 449 87. 3,4-Methylenedioxy-propiofenone.
 450 88. 3,4-Methylenedioxy-alpha-bromopropiophenone.
 451 89. 3,4-Methylenedioxy-propiofenone-2-oxime.
 452 90. 3,4-Methylenedioxy-N-acetylcathinone.
 453 91. 3,4-Methylenedioxy-N-acetylmethcathinone.
 454 92. 3,4-Methylenedioxy-N-acetylethcathinone.
 455 93. Bromomethcathinone.
 456 94. Buphedrone (alpha-Methylamino-butyrophenone).
 457 95. Eutylone (3,4-Methylenedioxy-alpha-
 458 ethylaminobutyrophenone).
 459 96. Dimethylcathinone.
 460 97. Dimethylmethcathinone.
 461 98. Pentylone (3,4-Methylenedioxy-alpha-
 462 methylaminovalerophenone).
 463 99. MDPPP (3,4-Methylenedioxy-alpha-
 464 pyrrolidinopropiophenone).

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465 100. MDPBP (3,4-Methylenedioxy-alpha-
 466 pyrrolidinobutyrophenone).
 467 101. MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).
 468 102. MPHP (Methyl-alpha-pyrrolidinohexanophenone).
 469 103. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP
 470 (Benocyclidine).
 471 104. F-MABP (Fluoromethylaminobutyrophenone).
 472 105. MeO-PBP (Methoxypyrrolidinobutyrophenone).
 473 106. Et-PBP (Ethylpyrrolidinobutyrophenone).
 474 107. 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
 475 108. Me-EABP (Methylethylaminobutyrophenone).
 476 109. Etizolam.
 477 110. PPP (Pyrrolidinopropiophenone).
 478 111. PBP (Pyrrolidinobutyrophenone).
 479 112. PVP (Pyrrolidinovaletherophenone) or
 480 (Pyrrolidinopentiophenone).
 481 113. MPPP (Methyl-alpha-pyrrolidinopropiophenone).
 482 114. JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).
 483 115. JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).
 484 116. JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).
 485 117. JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).
 486 118. JWH-072 (1-Propyl-3-(1-naphthoyl)indole).
 487 119. JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).
 488 120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
 489 121. JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-
 490 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
 491 122. JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).
 492 123. JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).
 493 124. JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).

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494 125. JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
 495 126. JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
 496 127. JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
 497 128. JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
 498 129. JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).
 499 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
 500 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
 501 ol).
 502 131. HU-308 ([(1R,2R,5R)-2-[2,6-Dimethoxy-4-(2-methyloctan-
 503 2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]
 504 methanol).
 505 132. HU-331 (3-Hydroxy-2-[(1R,6R)-3-methyl-6-(1-
 506 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
 507 1,4-dione).
 508 133. CB-13 (4-Pentyloxy-1-(1-naphthoyl)naphthalene).
 509 134. CB-25 (N-Cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
 510 undecanamide).
 511 135. CB-52 (N-Cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
 512 undecanamide).
 513 136. CP 55,940 (2-[3-Hydroxy-6-propanol-cyclohexyl]-5-(2-
 514 methyloctan-2-yl)phenol).
 515 137. AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).
 516 138. AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).
 517 139. RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).
 518 140. RCS-8 (1-(2-Cyclohexylethyl)-3-(2-
 519 methoxyphenylacetyl)indole).
 520 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-
 521 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
 522 naphthalenylmethanone).

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523 142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-
 524 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
 525 naphthalenylmethanone).
 526 143. Pentedrone (alpha-Methylaminovalerophenone).
 527 144. Fluoroamphetamine.
 528 145. Fluoromethamphetamine.
 529 146. Methoxetamine.
 530 147. Methiopropamine.
 531 148. Methylbuphedrone (Methyl-alpha-
 532 methylaminobutyrophenone).
 533 149. APB ((2-Aminopropyl)benzofuran).
 534 150. APDB ((2-Aminopropyl)-2,3-dihydrobenzofuran).
 535 151. UR-144 (1-Pentyl-3-(2,2,3,3-
 536 tetramethylcyclopropanoyl)indole).
 537 152. XLRI1 (1-(5-Fluoropentyl)-3-(2,2,3,3-
 538 tetramethylcyclopropanoyl)indole).
 539 153. Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-
 540 tetramethylcyclopropanoyl)indole).
 541 154. AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).
 542 155. AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-
 543 iodobenzoyl)indole).
 544 156. STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-
 545 carboxamide).
 546 157. URB-597 ((3'-(Aminocarbonyl)[1,1'-biphenyl]-3-yl)-
 547 cyclohexylcarbamate).
 548 158. URB-602 ([1,1'-Biphenyl]-3-yl-carbamic acid,
 549 cyclohexyl ester).
 550 159. URB-754 (6-Methyl-2-[(4-methylphenyl)amino]-1-
 551 benzoxazin-4-one).

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552 160. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).
 553 161. 2C-H (2,5-Dimethoxyphenethylamine).
 554 162. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).
 555 163. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).
 556 164. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-
 557 methoxybenzyl)]phenethylamine).
 558 165. MDMA (3,4-Methylenedioxymethamphetamine).
 559 166. PB-22 (8-Quinoliny 1-pentylindole-3-carboxylate).
 560 167. Fluoro PB-22 (8-Quinoliny 1-(fluoropentyl)indole-3-
 561 carboxylate).
 562 168. BB-22 (8-Quinoliny 1-(cyclohexylmethyl)indole-3-
 563 carboxylate).
 564 169. Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-
 565 3-carboxamide).
 566 170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
 567 pentylindazole-3-carboxamide).
 568 171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
 569 (4-fluorobenzyl)indazole-3-carboxamide).
 570 172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-
 571 1-pentylindazole-3-carboxamide).
 572 173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
 573 yl)-1-(fluoropentyl)indole-3-carboxamide).
 574 174. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-
 575 methoxybenzyl)]phenethylamine).
 576 175. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-
 577 methoxybenzyl)]phenethylamine).
 578 176. AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
 579 (cyclohexylmethyl)indazole-3-carboxamide).
 580 177. FUB-PB-22 (8-Quinoliny 1-(4-fluorobenzyl)indole-3-

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 581 carboxylate).
 582 178. Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-
 583 3-carboxamide).
 584 179. Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
 585 (fluoropentyl)indazole-3-carboxamide).
 586 180. THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).
 587 181. AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-
 588 1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol).
 589 182. AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-
 590 (hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-
 591 hexahydrobenzo[c]chromen-1-ol).
 592 183. AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-
 593 (hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-
 594 hexahydrobenzo[c]chromen-1-ol).
 595 184. AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-
 596 6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9
 597 diol).
 598 185. HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-
 599 dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-
 600 tetrahydro-6aH-benzo[c]chromen-1-ol).
 601 186. HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-
 602 6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione).
 603 187. MAPB ((2-Methylaminopropyl)benzofuran).
 604 188. 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine).
 605 189. 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine).
 606 190. Synthetic Cannabinoids.—Unless specifically excepted
 607 or unless listed in another schedule or contained within a
 608 pharmaceutical product approved by the United States Food and
 609 Drug Administration, any material, compound, mixture, or

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 610 preparation that contains any quantity of a synthetic
 611 cannabinoid found to be in any of the following chemical class
 612 descriptions, or homologues, nitrogen-heterocyclic analogs,
 613 isomers (including optical, positional, or geometric), esters,
 614 ethers, salts, and salts of homologues, nitrogen-heterocyclic
 615 analogs, isomers, esters, or ethers, whenever the existence of
 616 such homologues, nitrogen-heterocyclic analogs, isomers, esters,
 617 ethers, salts, and salts of isomers, esters, or ethers is
 618 possible within the specific chemical class or designation.
 619 Since nomenclature of these synthetically produced cannabinoids
 620 is not internationally standardized and may continually evolve,
 621 these structures or the compounds of these structures shall be
 622 included under this subparagraph, regardless of their specific
 623 numerical designation of atomic positions covered, if it can be
 624 determined through a recognized method of scientific testing or
 625 analysis that the substance contains properties that fit within
 626 one or more of the following categories:
 627 a. Tetrahydrocannabinols.—Any tetrahydrocannabinols
 628 naturally contained in a plant of the genus *Cannabis*, the
 629 synthetic equivalents of the substances contained in the plant
 630 or in the resinous extracts of the genus *Cannabis*, or synthetic
 631 substances, derivatives, and their isomers with similar chemical
 632 structure and pharmacological activity, including, but not
 633 limited to, Delta 9 tetrahydrocannabinols and their optical
 634 isomers, Delta 8 tetrahydrocannabinols and their optical
 635 isomers, Delta 6a,10a tetrahydrocannabinols and their optical
 636 isomers, or any compound containing a tetrahydrobenzo[c]chromene
 637 structure with substitution at either or both the 3-position or
 638 9-position, with or without substitution at the 1-position with

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hydroxyl or alkoxy groups, including, but not limited to:

(I) Tetrahydrocannabinol.

(II) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(III) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IV) JWH-051 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(V) JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VI) JWH-057 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VII) JWH-359 ((6aR,10aR)-1-Methoxy-6,6,9-trimethyl-3-(2,3-dimethylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VIII) AM-087 ((6aR,10aR)-3-(2-Methyl-6-bromohex-2-yl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IX) AM-411 ((6aR,10aR)-3-(1-Adamantyl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(X) Parahexyl.

b. Naphthoylindoles, Naphthoylindazoles, Naphthoylcarbazoles, Naphthylmethylindoles, Naphthylmethylindazoles, and Naphthylmethylcarbazoles.—Any compound containing a naphthoylindole, naphthoylindazole, naphthoylcarbazole, naphthylmethylindole, naphthylmethylindazole, or naphthylmethylcarbazole structure, with or without substitution on the indole, indazole, or carbazole ring to any extent, whether or not substituted on the

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naphthyl ring to any extent, including, but not limited to:

(I) JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

(II) JWH-011 (1-(1-Methylhexyl)-2-methyl-3-(1-naphthoyl)indole).

(III) JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).

(IV) JWH-016 (1-Butyl-2-methyl-3-(1-naphthoyl)indole).

(V) JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).

(VI) JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).

(VII) JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).

(VIII) JWH-022 (1-(4-Pentenyl)-3-(1-naphthoyl)indole).

(IX) JWH-071 (1-Ethyl-3-(1-naphthoyl)indole).

(X) JWH-072 (1-Propyl-3-(1-naphthoyl)indole).

(XI) JWH-073 (1-Butyl-3-(1-naphthoyl)indole).

(XII) JWH-080 (1-Butyl-3-(4-methoxy-1-naphthoyl)indole).

(XIII) JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).

(XIV) JWH-098 (1-Pentyl-2-methyl-3-(4-methoxy-1-naphthoyl)indole).

(XV) JWH-116 (1-Pentyl-2-ethyl-3-(1-naphthoyl)indole).

(XVI) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

(XVII) JWH-149 (1-Pentyl-2-methyl-3-(4-methyl-1-naphthoyl)indole).

(XVIII) JWH-164 (1-Pentyl-3-(7-methoxy-1-naphthoyl)indole).

(XIX) JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).

(XX) JWH-180 (1-Propyl-3-(4-propyl-1-naphthoyl)indole).

(XXI) JWH-182 (1-Pentyl-3-(4-propyl-1-naphthoyl)indole).

(XXII) JWH-184 (1-Pentyl-3-[(4-methyl)-1-naphthylmethyl]indole).

(XXIII) JWH-193 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methyl-1-naphthoyl)indole).

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697 (XXIV) JWH-198 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methoxy-1-
 698 naphthoyl)indole).
 699 (XXV) JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-
 700 naphthoyl)indole).
 701 (XXVI) JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
 702 (XXVII) JWH-387 (1-Pentyl-3-(4-bromo-1-naphthoyl)indole).
 703 (XXVIII) JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).
 704 (XXIX) JWH-412 (1-Pentyl-3-(4-fluoro-1-naphthoyl)indole).
 705 (XXX) JWH-424 (1-Pentyl-3-(8-bromo-1-naphthoyl)indole).
 706 (XXXI) AM-1220 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(1-
 707 naphthoyl)indole).
 708 (XXXII) AM-1235 (1-(5-Fluoropentyl)-6-nitro-3-(1-
 709 naphthoyl)indole).
 710 (XXXIII) AM-2201 (1-(5-Fluoropentyl)-3-(1-
 711 naphthoyl)indole).
 712 (XXXIV) Chloro JWH-018 (1-(Chloropentyl)-3-(1-
 713 naphthoyl)indole).
 714 (XXXV) Bromo JWH-018 (1-(Bromopentyl)-3-(1-
 715 naphthoyl)indole).
 716 (XXXVI) AM-2232 (1-(4-Cyanobutyl)-3-(1-naphthoyl)indole).
 717 (XXXVII) THJ-2201 (1-(5-Fluoropentyl)-3-(1-
 718 naphthoyl)indazole).
 719 (XXXVIII) MAM-2201 (1-(5-Fluoropentyl)-3-(4-methyl-1-
 720 naphthoyl)indole).
 721 (XXXIX) EAM-2201 (1-(5-Fluoropentyl)-3-(4-ethyl-1-
 722 naphthoyl)indole).
 723 (XL) EG-018 (9-Pentyl-3-(1-naphthoyl)carbazole).
 724 (XLI) EG-2201 (9-(5-Fluoropentyl)-3-(1-
 725 naphthoyl)carbazole).

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726 c. Naphthoylpyrroles.—Any compound containing a
 727 naphthoylpyrrole structure, with or without substitution on the
 728 pyrrole ring to any extent, whether or not substituted on the
 729 naphthyl ring to any extent, including, but not limited to:
 730 (I) JWH-030 (1-Pentyl-3-(1-naphthoyl)pyrrole).
 731 (II) JWH-031 (1-Hexyl-3-(1-naphthoyl)pyrrole).
 732 (III) JWH-145 (1-Pentyl-5-phenyl-3-(1-naphthoyl)pyrrole).
 733 (IV) JWH-146 (1-Heptyl-5-phenyl-3-(1-naphthoyl)pyrrole).
 734 (V) JWH-147 (1-Hexyl-5-phenyl-3-(1-naphthoyl)pyrrole).
 735 (VI) JWH-307 (1-Pentyl-5-(2-fluorophenyl)-3-(1-
 736 naphthoyl)pyrrole).
 737 (VII) JWH-309 (1-Pentyl-5-(1-naphthalenyl)-3-(1-
 738 naphthoyl)pyrrole).
 739 (VIII) JWH-368 (1-Pentyl-5-(3-fluorophenyl)-3-(1-
 740 naphthoyl)pyrrole).
 741 (IX) JWH-369 (1-Pentyl-5-(2-chlorophenyl)-3-(1-
 742 naphthoyl)pyrrole).
 743 (X) JWH-370 (1-Pentyl-5-(2-methylphenyl)-3-(1-
 744 naphthoyl)pyrrole).
 745 d. Naphthylmethylenindenes.—Any compound containing a
 746 naphthylmethylenindene structure, with or without substitution
 747 at the 3-position of the indene ring to any extent, whether or
 748 not substituted on the naphthyl ring to any extent, including,
 749 but not limited to, JWH-176 (3-Pentyl-1-
 750 (naphthylmethylene)indene).
 751 e. Phenylacetylindoles and Phenylacetylindazoles.—Any
 752 compound containing a phenylacetylindole or phenylacetylindazole
 753 structure, with or without substitution on the indole or
 754 indazole ring to any extent, whether or not substituted on the

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phenyl ring to any extent, including, but not limited to:

- (I) JWH-167 (1-Pentyl-3-(phenylacetyl)indole).
- (II) JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).
- (III) JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).
- (IV) JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
- (V) JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
- (VI) JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
- (VII) Cannabipiperidiethanone.
- (VIII) RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole).
- f. Cyclohexylphenols.—Any compound containing a cyclohexylphenol structure, with or without substitution at the 5-position of the phenolic ring to any extent, whether or not substituted on the cyclohexyl ring to any extent, including, but not limited to:
 - (I) CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol).
 - (II) Cannabicyclohexanol (CP 47,497 dimethyloctyl (C8) homologue).
 - (III) CP-55,940 (2-(3-Hydroxy-6-propanol-cyclohexyl)-5-(2-methyloctan-2-yl)phenol).
- g. Benzoylindoles and Benzoylindazoles.—Any compound containing a benzoylindole or benzoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:
 - (I) AM-679 (1-Pentyl-3-(2-iodobenzoyl)indole).
 - (II) AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).
 - (III) AM-1241 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-

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iodo-5-nitrobenzoyl)indole).

- (IV) Pravadoline (1-[2-(4-Morpholinyl)ethyl]-2-methyl-3-(4-methoxybenzoyl)indole).
- (V) AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole).
- (VI) RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).
- (VII) RCS-4 C4 homologue (1-Butyl-3-(4-methoxybenzoyl)indole).
- (VIII) AM-630 (1-[2-(4-Morpholinyl)ethyl]-2-methyl-6-iodo-3-(4-methoxybenzoyl)indole).
- h. Tetramethylcyclopropanoylindoles and Tetramethylcyclopropanoylindazoles.—Any compound containing a tetramethylcyclopropanoylindole or tetramethylcyclopropanoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the tetramethylcyclopropyl group to any extent, including, but not limited to:
 - (I) UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).
 - (II) XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).
 - (III) Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).
 - (IV) A-796,260 (1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).
 - (V) A-834,735 (1-[4-(Tetrahydropyranyl)methyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).
 - (VI) M-144 (1-(5-Fluoropentyl)-2-methyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

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813 (VII) FUB-144 (1-(4-Fluorobenzyl)-3-(2,2,3,3-
 814 tetramethylcyclopropanoyl)indole).
 815 (VIII) FAB-144 (1-(5-Fluoropentyl)-3-(2,2,3,3-
 816 tetramethylcyclopropanoyl)indazole).
 817 (IX) XLR12 (1-(4,4,4-Trifluorobutyl)-3-(2,2,3,3-
 818 tetramethylcyclopropanoyl)indole).
 819 (X) AB-005 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(2,2,3,3-
 820 tetramethylcyclopropanoyl)indole).
 821 i. Adamantoylindoles, Adamantoylindazoles, Adamantylindole
 822 carboxamides, and Adamantylindazole carboxamides.—Any compound
 823 containing an adamantoyl indole, adamantoyl indazole, adamantyl
 824 indole carboxamide, or adamantyl indazole carboxamide structure,
 825 with or without substitution on the indole or indazole ring to
 826 any extent, whether or not substituted on the adamantyl ring to
 827 any extent, including, but not limited to:
 828 (I) AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).
 829 (II) Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-
 830 3-carboxamide).
 831 (III) STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-
 832 carboxamide).
 833 (IV) AM-1248 (1-(1-Methylpiperidine)methyl-3-(1-
 834 adamantoyl)indole).
 835 (V) AB-001 (1-Pentyl-3-(1-adamantoyl)indole).
 836 (VI) APICA (N-Adamant-1-yl 1-pentylindole-3-carboxamide).
 837 (VII) Fluoro AB-001 (1-(Fluoropentyl)-3-(1-
 838 adamantoyl)indole).
 839 j. Quinolinyndolecarboxylates,
 840 Quinolinyndazolecarboxylates, Quinolinyndolecarboxamides,
 841 and Quinolinyndazolecarboxamides.—Any compound containing a

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842 quinolinyndole carboxylate, quinolinyndazole carboxylate,
 843 isoquinolinyndole carboxylate, isoquinolinyndazole
 844 carboxylate, quinolinyndole carboxamide, quinolinyndazole
 845 carboxamide, isoquinolinyndole carboxamide, or
 846 isoquinolinyndazole carboxamide structure, with or without
 847 substitution on the indole or indazole ring to any extent,
 848 whether or not substituted on the quinoline or isoquinoline ring
 849 to any extent, including, but not limited to:
 850 (I) PB-22 (8-Quinolinyndyl 1-pentylindole-3-carboxylate).
 851 (II) Fluoro PB-22 (8-Quinolinyndyl 1-(fluoropentyl)indole-3-
 852 carboxylate).
 853 (III) BB-22 (8-Quinolinyndyl 1-(cyclohexylmethyl)indole-3-
 854 carboxylate).
 855 (IV) FUB-PB-22 (8-Quinolinyndyl 1-(4-fluorobenzyl)indole-3-
 856 carboxylate).
 857 (V) NPB-22 (8-Quinolinyndyl 1-pentylindazole-3-carboxylate).
 858 (VI) Fluoro NPB-22 (8-Quinolinyndyl 1-(fluoropentyl)indazole-
 859 3-carboxylate).
 860 (VII) FUB-NPB-22 (8-Quinolinyndyl 1-(4-fluorobenzyl)indazole-
 861 3-carboxylate).
 862 (VIII) THJ (8-Quinolinyndyl 1-pentylindazole-3-carboxamide).
 863 (IX) Fluoro THJ (8-Quinolinyndyl 1-(fluoropentyl)indazole-3-
 864 carboxamide).
 865 k. Naphthylindolecarboxylates and
 866 Naphthylindazolecarboxylates.—Any compound containing a
 867 naphthylindole carboxylate or naphthylindazole carboxylate
 868 structure, with or without substitution on the indole or
 869 indazole ring to any extent, whether or not substituted on the
 870 naphthyl ring to any extent, including, but not limited to:

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871 (I) NM-2201 (1-Naphthalenyl 1-(5-fluoropentyl)indole-3-
 872 carboxylate).
 873 (II) SDB-005 (1-Naphthalenyl 1-pentylindazole-3-
 874 carboxylate).
 875 (III) Fluoro SDB-005 (1-Naphthalenyl 1-
 876 (fluoropentyl)indazole-3-carboxylate).
 877 (IV) FDU-PB-22 (1-Naphthalenyl 1-(4-fluorobenzyl)indole-3-
 878 carboxylate).
 879 (V) 3-CAF (2-Naphthalenyl 1-(2-fluorophenyl)indazole-3-
 880 carboxylate).
 881 1. Naphthylindole carboxamides and Naphthylindazole
 882 carboxamides.-Any compound containing a naphthylindole
 883 carboxamide or naphthylindazole carboxamide structure, with or
 884 without substitution on the indole or indazole ring to any
 885 extent, whether or not substituted on the naphthyl ring to any
 886 extent, including, but not limited to:
 887 (I) NNEI (N-Naphthalen-1-yl 1-pentylindole-3-carboxamide).
 888 (II) Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-
 889 3-carboxamide).
 890 (III) Chloro-NNEI (N-Naphthalen-1-yl 1-
 891 (chloropentyl)indole-3-carboxamide).
 892 (IV) MN-18 (N-Naphthalen-1-yl 1-pentylindazole-3-
 893 carboxamide).
 894 (V) Fluoro MN-18 (N-Naphthalen-1-yl 1-
 895 (fluoropentyl)indazole-3-carboxamide).
 896 m. Alkylcarbonyl indole carboxamides, Alkylcarbonyl
 897 indazole carboxamides, Alkylcarbonyl indole carboxylates, and
 898 Alkylcarbonyl indazole carboxylates.-Any compound containing an
 899 alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl,

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900 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-
 901 phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an
 902 indole carboxamide, indazole carboxamide, indole carboxylate, or
 903 indazole carboxylate, with or without substitution on the indole
 904 or indazole ring to any extent, whether or not substituted on
 905 the alkylcarbonyl group to any extent, including, but not
 906 limited to:
 907 (I) ADBICA, (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-
 908 pentylindole-3-carboxamide).
 909 (II) Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
 910 yl)-1-(fluoropentyl)indole-3-carboxamide).
 911 (III) Fluoro ABICA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
 912 (fluoropentyl)indole-3-carboxamide).
 913 (IV) AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
 914 pentylindazole-3-carboxamide).
 915 (V) Fluoro AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-
 916 1-(fluoropentyl)indazole-3-carboxamide).
 917 (VI) ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-
 918 1-pentylindazole-3-carboxamide).
 919 (VII) Fluoro ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-
 920 oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).
 921 (VIII) AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
 922 (4-fluorobenzyl)indazole-3-carboxamide).
 923 (IX) ADB-FUBINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
 924 yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).
 925 (X) AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
 926 (cyclohexylmethyl)indazole-3-carboxamide).
 927 (XI) MA-CHMINACA (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
 928 (cyclohexylmethyl)indazole-3-carboxamide).

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929 (XII) MAB-CHMINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
 930 yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).
 931 (XIII) AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
 932 penty lindazole-3-carboxamide).
 933 (XIV) Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
 934 (fluoropentyl)indazole-3-carboxamide).
 935 (XV) FUB-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(4-
 936 fluorobenzyl)indazole-3-carboxamide).
 937 (XVI) MDMB-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
 938 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).
 939 (XVII) MDMB-FUBINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
 940 2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).
 941 (XVIII) MDMB-CHMICA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
 942 2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide).
 943 (XIX) PX-1 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-
 944 fluoropentyl)indole-3-carboxamide).
 945 (XX) PX-2 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-
 946 fluoropentyl)indazole-3-carboxamide).
 947 (XXI) PX-3 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-
 948 (cyclohexylmethyl)indazole-3-carboxamide).
 949 (XXII) PX-4 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(4-
 950 fluorobenzyl)indazole-3-carboxamide).
 951 (XXIII) MO-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
 952 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxylate).
 953 n. Cumylindolecarboxamides and Cumylindazolecarboxamides.—
 954 Any compound containing a N-(2-phenylpropan-2-yl) indole
 955 carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide
 956 structure, with or without substitution on the indole or
 957 indazole ring to any extent, whether or not substituted on the

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958 phenyl ring of the cumyl group to any extent, including, but not
 959 limited to:
 960 (I) CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-pentylindole-3-
 961 carboxamide).
 962 (II) Fluoro CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-
 963 (fluoropentyl)indole-3-carboxamide).
 964 o. Other Synthetic Cannabinoids.—Any material, compound,
 965 mixture, or preparation that contains any quantity of a
 966 Synthetic Cannabinoid, as described in sub-subparagraphs a.-n.:
 967 (I) With or without modification or replacement of a
 968 carbonyl, carboxamide, alkylene, alkyl, or carboxylate linkage
 969 between either two core rings, or linkage between a core ring
 970 and group structure, with or without the addition of a carbon or
 971 replacement of a carbon;
 972 (II) With or without replacement of a core ring or group
 973 structure, whether or not substituted on the ring or group
 974 structures to any extent; and
 975 (III) Is a cannabinoid receptor agonist, unless
 976 specifically excepted or unless listed in another schedule or
 977 contained within a pharmaceutical product approved by the United
 978 States Food and Drug Administration.
 979 191. Substituted Cathinones.—Unless specifically excepted,
 980 listed in another schedule, or contained within a pharmaceutical
 981 product approved by the United States Food and Drug
 982 Administration, any material, compound, mixture, or preparation,
 983 including its salts, isomers, esters, or ethers, and salts of
 984 isomers, esters, or ethers, whenever the existence of such salts
 985 is possible within any of the following specific chemical
 986 designations:

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- 987 a. Any compound containing a 2-amino-1-phenyl-1-propanone
 988 structure;
 989 b. Any compound containing a 2-amino-1-naphthyl-1-propanone
 990 structure; or
 991 c. Any compound containing a 2-amino-1-thiophenyl-1-
 992 propanone structure,
 993 whether or not the compound is further modified:
 994 (I) With or without substitution on the ring system to any
 995 extent with alkyl, alkylthio, thio, fused alkylenedioxy, alkoxy,
 996 haloalkyl, hydroxyl, nitro, fused furan, fused benzofuran, fused
 997 dihydrofuran, fused tetrahydropyran, fused alkyl ring, or halide
 998 substituents;
 999 (II) With or without substitution at the 3-propanone
 1000 position with an alkyl substituent or removal of the methyl
 1001 group at the 3-propanone position;
 1002 (III) With or without substitution at the 2-amino nitrogen
 1003 atom with alkyl, dialkyl, acetyl, or benzyl groups, whether or
 1004 not further substituted in the ring system; or
 1005 (IV) With or without inclusion of the 2-amino nitrogen atom
 1006 in a cyclic structure, including, but not limited to:
 1007 (A) Methcathinone.
 1008 (B) Ethcathinone.
 1009 (C) Methylone (3,4-Methylenedioxymethcathinone).
 1010 (D) 2,3-Methylenedioxymethcathinone.
 1011 (E) MDPV (3,4-Methylenedioxypyrovalerone).
 1012 (F) Methylmethcathinone.
 1013 (G) Methoxymethcathinone.
 1014 (H) Fluoromethcathinone.
 1015 (I) Methylethcathinone.

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- 1016 (J) Butylone (3,4-Methylenedioxy-alpha-
 1017 methylaminobutyrophenone).
 1018 (K) Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
 1019 (L) BMDP (3,4-Methylenedioxy-N-benzylcathinone).
 1020 (M) Naphyrone (Naphthylpyrovalerone).
 1021 (N) Bromomethcathinone.
 1022 (O) Buphedrone (alpha-Methylaminobutyrophenone).
 1023 (P) Eutylone (3,4-Methylenedioxy-alpha-
 1024 ethylaminobutyrophenone).
 1025 (Q) Dimethylcathinone.
 1026 (R) Dimethylmethcathinone.
 1027 (S) Pentylone (3,4-Methylenedioxy-alpha-
 1028 methylaminovalerophenone).
 1029 (T) Pentedrone (alpha-Methylaminovalerophenone).
 1030 (U) MDPBP (3,4-Methylenedioxy-alpha-
 1031 pyrrolidinopropiophenone).
 1032 (V) MDPBP (3,4-Methylenedioxy-alpha-
 1033 pyrrolidinobutyrophenone).
 1034 (W) MPPP (Methyl-alpha-pyrrolidinopropiophenone).
 1035 (X) PPP (Pyrrolidinopropiophenone).
 1036 (Y) PVP (Pyrrolidinovalerophenone) or
 1037 (Pyrrolidinopentiophenone).
 1038 (Z) MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).
 1039 (AA) MPHP (Methyl-alpha-pyrrolidinohexanophenone).
 1040 (BB) F-MABP (Fluoromethylaminobutyrophenone).
 1041 (CC) Me-EABP (Methylethylaminobutyrophenone).
 1042 (DD) PBP (Pyrrolidinobutyrophenone).
 1043 (EE) MeO-PBP (Methoxypyrrolidinobutyrophenone).
 1044 (FF) Et-PBP (Ethylpyrrolidinobutyrophenone).

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1045 (GG) 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
 1046 (HH) Dimethylone (3,4-Methylenedioxy-N,N-
 1047 dimethylcathinone).
 1048 (II) 3,4-Methylenedioxy-N,N-diethylcathinone.
 1049 (JJ) 3,4-Methylenedioxy-N-acetylcathinone.
 1050 (KK) 3,4-Methylenedioxy-N-acetylmethcathinone.
 1051 (LL) 3,4-Methylenedioxy-N-acetylcathinone.
 1052 (MM) Methylbuphedrone (Methyl-alpha-
 1053 methylaminobutyrophenone).
 1054 (NN) Methyl-alpha-methylaminohexanophenone.
 1055 (OO) N-Ethyl-N-methylcathinone.
 1056 (PP) PHP (Pyrrolidinoheptanophenone).
 1057 (QQ) PV8 (Pyrrolidinoheptanophenone).
 1058 (RR) Chloromethcathinone.
 1059 (SS) 4-Bromo-2,5-dimethoxy-alpha-aminoacetophenone.
 1060 192. Substituted Phenethylamines.—Unless specifically
 1061 excepted or unless listed in another schedule, or contained
 1062 within a pharmaceutical product approved by the United States
 1063 Food and Drug Administration, any material, compound, mixture,
 1064 or preparation, including its salts, isomers, esters, or ethers,
 1065 and salts of isomers, esters, or ethers, whenever the existence
 1066 of such salts is possible within any of the following specific
 1067 chemical designations, any compound containing a phenethylamine
 1068 structure, without a beta-keto group, and without a benzyl group
 1069 attached to the amine group, whether or not the compound is
 1070 further modified with or without substitution on the phenyl ring
 1071 to any extent with alkyl, alkylthio, nitro, alkoxy, thio,
 1072 halide, fused alkylendioxy, fused furan, fused benzofuran,
 1073 fused dihydrofuran, or fused tetrahydropyran substituents,

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1074 whether or not further substituted on a ring to any extent, with
 1075 or without substitution at the alpha or beta position by any
 1076 alkyl substituent, with or without substitution at the nitrogen
 1077 atom, and with or without inclusion of the 2-amino nitrogen atom
 1078 in a cyclic structure, including, but not limited to:
 1079 a. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
 1080 b. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
 1081 c. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
 1082 d. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
 1083 e. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
 1084 f. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
 1085 g. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
 1086 h. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
 1087 i. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).
 1088 j. 2C-H (2,5-Dimethoxyphenethylamine).
 1089 k. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).
 1090 l. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).
 1091 m. MDMA (3,4-Methylenedioxymethamphetamine).
 1092 n. MBDB (Methylbenzodioxolylbutanamine) or (3,4-
 1093 Methylenedioxy-N-methylbutanamine).
 1094 o. MDA (3,4-Methylenedioxyamphetamine).
 1095 p. 2,5-Dimethoxyamphetamine.
 1096 q. Fluoroamphetamine.
 1097 r. Fluoromethamphetamine.
 1098 s. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
 1099 t. DOB (4-Bromo-2,5-dimethoxyamphetamine).
 1100 u. DOC (4-Chloro-2,5-dimethoxyamphetamine).
 1101 v. DOET (4-Ethyl-2,5-dimethoxyamphetamine).
 1102 w. DOI (4-Iodo-2,5-dimethoxyamphetamine).

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1103 x. DOM (4-Methyl-2,5-dimethoxyamphetamine).
 1104 y. PMA (4-Methoxyamphetamine).
 1105 z. N-Ethylamphetamine.
 1106 aa. 3,4-Methylenedioxy-N-hydroxyamphetamine.
 1107 bb. 5-Methoxy-3,4-methylenedioxyamphetamine.
 1108 cc. PMMA (4-Methoxymethamphetamine).
 1109 dd. N,N-Dimethylamphetamine.
 1110 ee. 3,4,5-Trimethoxyamphetamine.
 1111 ff. 4-APB (4-(2-Aminopropyl)benzofuran).
 1112 gg. 5-APB (5-(2-Aminopropyl)benzofuran).
 1113 hh. 6-APB (6-(2-Aminopropyl)benzofuran).
 1114 ii. 7-APB (7-(2-Aminopropyl)benzofuran).
 1115 jj. 4-APDB (4-(2-Aminopropyl)-2,3-dihydrobenzofuran).
 1116 kk. 5-APDB (5-(2-Aminopropyl)-2,3-dihydrobenzofuran).
 1117 ll. 6-APDB (6-(2-Aminopropyl)-2,3-dihydrobenzofuran).
 1118 mm. 7-APDB (7-(2-Aminopropyl)-2,3-dihydrobenzofuran).
 1119 nn. 4-MAPB (4-(2-Methylaminopropyl)benzofuran).
 1120 oo. 5-MAPB (5-(2-Methylaminopropyl)benzofuran).
 1121 pp. 6-MAPB (6-(2-Methylaminopropyl)benzofuran).
 1122 qq. 7-MAPB (7-(2-Methylaminopropyl)benzofuran).
 1123 rr. 5-EAPB (5-(2-Ethylaminopropyl)benzofuran).
 1124 ss. 5-MAPDB (5-(2-Methylaminopropyl)-2,3-
 1125 dihydrobenzofuran),
 1126
 1127 which does not include phenethylamine, mescaline as described in
 1128 subparagraph 20., substituted cathinones as described in
 1129 subparagraph 191., N-Benzyl phenethylamine compounds as
 1130 described in subparagraph 193., or methamphetamine as described
 1131 in subparagraph (2)(c)4.

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1132 193. N-Benzyl Phenethylamine Compounds.—Unless specifically
 1133 excepted or unless listed in another schedule, or contained
 1134 within a pharmaceutical product approved by the United States
 1135 Food and Drug Administration, any material, compound, mixture,
 1136 or preparation, including its salts, isomers, esters, or ethers,
 1137 and salts of isomers, esters, or ethers, whenever the existence
 1138 of such salts is possible within any of the following specific
 1139 chemical designations, any compound containing a phenethylamine
 1140 structure without a beta-keto group, with substitution on the
 1141 nitrogen atom of the amino group with a benzyl substituent, with
 1142 or without substitution on the phenyl or benzyl ring to any
 1143 extent with alkyl, alkoxy, thio, alkylthio, halide, fused
 1144 alkylenedioxy, fused furan, fused benzofuran, or fused
 1145 tetrahydropyran substituents, whether or not further substituted
 1146 on a ring to any extent, with or without substitution at the
 1147 alpha position by any alkyl substituent, including, but not
 1148 limited to:
 1149 a. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-
 1150 methoxybenzyl)]phenethylamine).
 1151 b. 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-
 1152 hydroxybenzyl)]phenethylamine).
 1153 c. 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-
 1154 fluorobenzyl)]phenethylamine).
 1155 d. 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-
 1156 methylenedioxybenzyl)]phenethylamine).
 1157 e. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-
 1158 methoxybenzyl)]phenethylamine).
 1159 f. 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-
 1160 hydroxybenzyl)]phenethylamine).

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1161 g. 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-
 1162 fluorobenzyl)]phenethylamine).
 1163 h. 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-
 1164 methylenedioxybenzyl)]phenethylamine).
 1165 i. 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-
 1166 methoxybenzyl)]phenethylamine).
 1167 j. 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-
 1168 methoxybenzyl)]phenethylamine).
 1169 k. 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-
 1170 methoxybenzyl)]phenethylamine).
 1171 l. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-
 1172 methoxybenzyl)]phenethylamine).
 1173 m. 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-
 1174 hydroxybenzyl)]phenethylamine).
 1175 n. 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-
 1176 fluorobenzyl)]phenethylamine).
 1177 o. 25C-NBMD (4-Chloro-2,5-dimethoxy-[N-(2,3-
 1178 methylenedioxybenzyl)]phenethylamine).
 1179 p. 25H-NBOMe (2,5-Dimethoxy-[N-(2-
 1180 methoxybenzyl)]phenethylamine).
 1181 q. 25H-NBOH (2,5-Dimethoxy-[N-(2-
 1182 hydroxybenzyl)]phenethylamine).
 1183 r. 25H-NBF (2,5-Dimethoxy-[N-(2-
 1184 fluorobenzyl)]phenethylamine).
 1185 s. 25D-NBOMe (4-Methyl-2,5-dimethoxy-[N-(2-
 1186 methoxybenzyl)]phenethylamine),
 1187 which does not include substituted cathinones as described in
 1188 subparagraph 191.
 1189

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1190 194. Substituted Tryptamines.—Unless specifically excepted
 1191 or unless listed in another schedule, or contained within a
 1192 pharmaceutical product approved by the United States Food and
 1193 Drug Administration, any material, compound, mixture, or
 1194 preparation containing a 2-(1H-indol-3-yl)ethanamine, for
 1195 example tryptamine, structure with or without mono- or di-
 1196 substitution of the amine nitrogen with alkyl or alkenyl groups,
 1197 or by inclusion of the amino nitrogen atom in a cyclic
 1198 structure, whether or not substituted at the alpha position with
 1199 an alkyl group, whether or not substituted on the indole ring to
 1200 any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy
 1201 groups, including, but not limited to:
 1202 a. Alpha-Ethyltryptamine.
 1203 b. Bufotenine.
 1204 c. DET (Diethyltryptamine).
 1205 d. DMT (Dimethyltryptamine).
 1206 e. MET (N-Methyl-N-ethyltryptamine).
 1207 f. DALT (N,N-Diallyltryptamine).
 1208 g. EiPT (N-Ethyl-N-isopropyltryptamine).
 1209 h. MiPT (N-Methyl-N-isopropyltryptamine).
 1210 i. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
 1211 j. 5-Hydroxy-N-methyltryptamine.
 1212 k. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
 1213 l. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
 1214 m. Methyltryptamine.
 1215 n. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
 1216 o. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
 1217 p. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
 1218 q. DiPT (N,N-Diisopropyltryptamine).

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1219 r. DPT (N,N-Dipropyltryptamine).
 1220 s. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
 1221 t. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
 1222 u. 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine).
 1223 v. 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine).
 1224 w. 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine).
 1225 x. 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine).
 1226 y. 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-
 1227 isopropyltryptamine).
 1228 z. Methyl-alpha-ethyltryptamine.
 1229 aa. Bromo-DALT (Bromo-N,N-diallyltryptamine),
 1230
 1231 which does not include tryptamine, psilocyn as described in
 1232 subparagraph 34., or psilocybin as described in subparagraph 33.
 1233 195. Substituted Phenylcyclohexylamines.—Unless
 1234 specifically excepted or unless listed in another schedule, or
 1235 contained within a pharmaceutical product approved by the United
 1236 States Food and Drug Administration, any material, compound,
 1237 mixture, or preparation containing a phenylcyclohexylamine
 1238 structure, with or without any substitution on the phenyl ring,
 1239 any substitution on the cyclohexyl ring, any replacement of the
 1240 phenyl ring with a thiophenyl or benzothiophenyl ring, with or
 1241 without substitution on the amine with alkyl, dialkyl, or alkoxy
 1242 substituents, inclusion of the nitrogen in a cyclic structure,
 1243 or any combination of the above, including, but not limited to:
 1244 a. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP
 1245 (Benocyclidine).
 1246 b. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine analog
 1247 of phencyclidine).

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1248 c. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine
 1249 analog of phencyclidine).
 1250 d. PCPr (Phenylcyclohexylpropylamine).
 1251 e. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) (Thiophene
 1252 analog of phencyclidine).
 1253 f. PCEEA (Phenylcyclohexyl(ethoxyethylamine)).
 1254 g. PCMPA (Phenylcyclohexyl(methoxypropylamine)).
 1255 h. Methoxetamine.
 1256 i. 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine).
 1257 j. Bromo-PCP ((Bromophenyl)cyclohexylpiperidine).
 1258 k. Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine).
 1259 l. Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine).
 1260 m. Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine).
 1261 n. Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine).
 1262 o. Methyl-PCP ((Methylphenyl)cyclohexylpiperidine).
 1263 p. Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine).
 1264 q. Oxo-PCP ((Oxophenyl)cyclohexylpiperidine).
 1265 r. Amino-PCP ((Aminophenyl)cyclohexylpiperidine).
 1266 196. W-15, 4-chloro-N-[1-(2-phenylethyl)-2-
 1267 piperidinylidene]-benzenesulfonamide.
 1268 197. W-18, 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-
 1269 piperidinylidene]-benzenesulfonamide.
 1270 198. AH-7921, 3,4-dichloro-N-[[1-
 1271 (dimethylamino)cyclohexyl]methyl]-benzamide.
 1272 199. U47700, trans-3,4-dichloro-N-[2-
 1273 (dimethylamino)cyclohexyl]-N-methyl-benzamide.
 1274 200. MT-45, 1-cyclohexyl-4-(1,2-diphenylethyl)-piperazine,
 1275 dihydrochloride.
 1276 Section 5. Paragraph (c) of subsection (6) of section

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893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(6)

(c) Except as provided in this chapter, a person may not possess more than 10 grams of any substance named or described in s. 893.03(1)(a), ~~or~~ (1)(b), or (2)(b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Paragraphs (c), (d), and (k) of subsection (1) of section 893.135, Florida Statutes, are amended, and paragraphs (m) and (n) are added to that subsection, and a new subsection (8) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the

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quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.j., codeine, as described in s. 893.03(2)(a)1.g., or any salt, ~~derivative, isomer, or salt of an isomer~~ thereof, or 14 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of

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imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 200 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.o., or any salt, ~~derivative, isomer, or salt of an isomer~~ thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

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4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

(I) Alfentanil, as described in s. 893.03(2)(b)1.;

(II) Carfentanil, as described in s. 893.03(2)(b)6.;

(III) Fentanyl, as described in s. 893.03(2)(b)9.;

(IV) Sufentanil, as described in s. 893.03(2)(b)29.;

(V) A fentanyl derivative, as described in s.

893.03(1)(a)62.;

(VI) A controlled substance analog, as described in s.

893.0356, of any substance described in sub-sub-subparagraphs

(I)-(V); or

(VII) A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI),

commits a felony of the first degree, which felony shall be known as "trafficking in fentanyl," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and shall be ordered to pay a fine of \$50,000.

(II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and shall be ordered to pay a fine of \$100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of \$500,000.

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1393 ~~5.4-~~ A person who knowingly sells, purchases, manufactures,
 1394 delivers, or brings into this state, or who is knowingly in
 1395 actual or constructive possession of, 30 kilograms or more of
 1396 any morphine, opium, oxycodone, hydrocodone, codeine,
 1397 hydromorphone, or any salt, derivative, isomer, or salt of an
 1398 isomer thereof, including heroin, as described in s.
 1399 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
 1400 more of any mixture containing any such substance, commits the
 1401 first degree felony of trafficking in illegal drugs. A person
 1402 who has been convicted of the first degree felony of trafficking
 1403 in illegal drugs under this subparagraph shall be punished by
 1404 life imprisonment and is ineligible for any form of
 1405 discretionary early release except pardon or executive clemency
 1406 or conditional medical release under s. 947.149. However, if the
 1407 court determines that, in addition to committing any act
 1408 specified in this paragraph:

1409 a. The person intentionally killed an individual or
 1410 counseled, commanded, induced, procured, or caused the
 1411 intentional killing of an individual and such killing was the
 1412 result; or

1413 b. The person's conduct in committing that act led to a
 1414 natural, though not inevitable, lethal result,
 1415
 1416 such person commits the capital felony of trafficking in illegal
 1417 drugs, punishable as provided in ss. 775.082 and 921.142. A
 1418 person sentenced for a capital felony under this paragraph shall
 1419 also be sentenced to pay the maximum fine provided under
 1420 subparagraph 1.

1421 ~~6.5-~~ A person who knowingly brings into this state 60

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1422 kilograms or more of any morphine, opium, oxycodone,
 1423 hydrocodone, codeine, hydromorphone, or any salt, derivative,
 1424 isomer, or salt of an isomer thereof, including heroin, as
 1425 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or
 1426 60 kilograms or more of any mixture containing any such
 1427 substance, and who knows that the probable result of such
 1428 importation would be the death of a person, commits capital
 1429 importation of illegal drugs, a capital felony punishable as
 1430 provided in ss. 775.082 and 921.142. A person sentenced for a
 1431 capital felony under this paragraph shall also be sentenced to
 1432 pay the maximum fine provided under subparagraph 1.

1433 (d)1. Any person who knowingly sells, purchases,
 1434 manufactures, delivers, or brings into this state, or who is
 1435 knowingly in actual or constructive possession of, 28 grams or
 1436 more of phencyclidine, as described in s. 893.03(2)(b)23., a
 1437 substituted phenylcyclohexylamine, as described in s.
 1438 893.03(1)(c)195., or a substance described in s.
 1439 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture
 1440 containing phencyclidine, as described in s. 893.03(2)(b)23.
 1441 ~~893.03(2)(b).~~ a substituted phenylcyclohexylamine, as described
 1442 in s. 893.03(1)(c)195., or a substance described in s.
 1443 893.03(1)(c)13., 32., 38., 103., or 146.,
 1444 commits a felony of the first degree, which felony shall be
 1445 known as "trafficking in phencyclidine," punishable as provided
 1446 in s. 775.082, s. 775.083, or s. 775.084. If the quantity
 1447 involved:

1448 a. Is 28 grams or more, but less than 200 grams, such
 1449 person shall be sentenced to a mandatory minimum term of
 1450 imprisonment of 3 years, and the defendant shall be ordered to

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pay a fine of \$50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.

2. Any person who knowingly brings into this state 800 grams or more of phencyclidine, as described in s. 893.03(2)(b)23., a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s. 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture containing phencyclidine, as described in s. 893.03(2)(b)23. ~~893.03(2)(b),~~ a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s. 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the probable result of such importation would be the death of any person commits capital importation of phencyclidine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(k)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of ~~a any of the following substances described in s. 893.03(1)(e):~~

a. Substance described in s. 893.03(1)(c)4., 5., 10., 11.,

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15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86., 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163., 165., or 187.-189., a substituted cathinone, as described in s. 893.03(1)(c)191., or substituted phenethylamine, as described in s. 893.03(1)(c)192.;

b. Mixture containing any substance described in subparagraph a.; or

c. Salt, isomer, ester, or ether or salt of an isomer, ester, or ether of a substance described in subparagraph a.,

~~a. (MDMA) 3,4-Methylenedioxymethamphetamine;~~

~~b. DOB (4-Bromo-2,5-dimethoxyamphetamine);~~

~~c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~

~~d. 2,5-Dimethoxyamphetamine;~~

~~e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~

~~f. N-ethylamphetamine;~~

~~g. 3,4-Methylenedioxy-N-hydroxyamphetamine;~~

~~h. 5-Methoxy-3,4-methylenedioxyamphetamine;~~

~~i. PMA (4-methoxyamphetamine);~~

~~j. PMMA (4-methoxymethamphetamine);~~

~~k. DOM (4-Methyl-2,5-dimethoxyamphetamine);~~

~~l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~

~~m. MDA (3,4-Methylenedioxyamphetamine);~~

~~n. N,N-dimethylamphetamine;~~

~~o. 3,4,5-Trimethoxyamphetamine;~~

~~p. Methylenone (3,4-Methylenedioxy-methcathinone);~~

~~q. MDPV (3,4-Methylenedioxy-pyrenevalerone); or~~

~~r. Methylenmethcathinone;~~

~~individually or analogs thereto or isomers thereto or in any~~

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combination of or any mixture containing any substance listed in sub-subparagraphs a.-f., commits a felony of the first degree, which felony shall be known as "trafficking in phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved under subparagraph 1.:

a. Is 10 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$250,000.

3. A person who knowingly manufactures or brings into this state 30 kilograms or more of a substance described in sub-subparagraph 1.a., a mixture described in sub-subparagraph 1.b., or a salt, isomer, ester, or ether or a salt of an isomer, ester, or ether described in sub-subparagraph 1.c., any of the following substances described in s. 893.03(1)(c):

- a. MDMA (3,4-Methylenedioxymethamphetamine);
- b. DOB (4-Bromo-2,5-dimethoxyamphetamine);
- c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);
- d. 2,5-Dimethoxyamphetamine;
- e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);
- f. N-ethylamphetamine;
- g. N-Hydroxy-3,4-methylenedioxymphetamine;

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~~h. 5-Methoxy-3,4-methylenedioxymphetamine;~~

~~i. PMA (4-methoxyamphetamine);~~

~~j. PMMA (4-methoxymethamphetamine);~~

~~k. DOM (4-Methyl-2,5-dimethoxyamphetamine);~~

~~l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~

~~m. MDA (3,4-Methylenedioxymphetamine);~~

~~n. N,N-dimethylamphetamine;~~

~~o. 3,4,5-Trimethoxyamphetamine;~~

~~p. Methylon (3,4-Methylenedioxymethcathinone);~~

~~q. MDPV (3,4-Methylenedioxypyrovalerone); or~~

~~r. Methylmethcathinone,~~

~~individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-f., and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of phenethylamines, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 2. 1.~~

(m)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 280 grams or more of a:

a. Substance described in s. 893.03(1)(c)30., 46.-50., 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic cannabinoid, as described in s. 893.03(1)(c)190.; or

b. Mixture containing any substance described in sub-

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subparagraph a.,

commits a felony of the first degree, which felony shall be known as "trafficking in synthetic cannabinoids," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved under subparagraph 1.:

a. Is 280 grams or more, but less than 500 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 500 grams or more, but less than 1,000 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 1,000 grams or more, but less than 30 kilograms such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and the defendant shall be ordered to pay a fine of \$200,000.

d. Is 30 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and the defendant shall be ordered to pay a fine of \$750,000.

(n)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of:

a. A substance described in s. 893.03(1)(c)164., 174., or 175., a n-benzyl phenethylamine compound, as described in s. 893.03(1)(c)193.; or

b. A mixture containing any substance described in sub-

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subparagraph a.,

commits a felony of the first degree, which felony shall be known as "trafficking in n-benzyl phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved under subparagraph 1.:

a. Is 14 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 100 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and the defendant shall be ordered to pay a fine of \$500,000.

3. A person who knowingly manufactures or brings into this state 400 grams or more of a substance described in subparagraph 1.a. or a mixture described in sub-subparagraph 1.b., and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of a n-benzyl phenethylamine compound, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine under subparagraph 2.

(8) For an offense listed under this section committed on or after October 1, 2017, which carries a mandatory minimum

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1625 sentence, a court may depart from the applicable mandatory
 1626 minimum sentence if, in giving due regard to the nature of the
 1627 crime, history, and character of the defendant, and the
 1628 defendant's chances of successful rehabilitation, the court
 1629 finds compelling reasons on the record that imposition of the
 1630 mandatory minimum is not necessary for the protection of the
 1631 public. Each month, a court shall submit to the Office of
 1632 Economic and Demographic Research of the Legislature the written
 1633 reasons in each case in which the court departed from the
 1634 mandatory minimum sentence.

1635 Section 7. For the purpose of incorporating the amendments
 1636 made by this act to sections 893.03, 893.13, and 893.135,
 1637 Florida Statutes, in references thereto, paragraphs (a), (b),
 1638 (c), (d), and (e) subsection (3) of section 921.0022, Florida
 1639 Statutes, are reenacted; and paragraphs (g), (h), and (i) of
 1640 subsection (3) of section 921.0022, Florida Statutes, are
 1641 amended to read:

1642 921.0022 Criminal Punishment Code; offense severity ranking
 1643 chart.—

1644 (3) OFFENSE SEVERITY RANKING CHART

1645 (a) LEVEL 1

Florida Statute	Felony Degree	Description
24.118(3) (a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2) (b)	3rd	Discretionary sales surtax;

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limitations, administration,
and collection.

1649 212.15(2) (b) 3rd Failure to remit sales taxes,
amount greater than \$300 but
less than \$20,000.

1650 316.1935(1) 3rd Fleeing or attempting to elude
law enforcement officer.

1651 319.30(5) 3rd Sell, exchange, give away
certificate of title or
identification number plate.

1652 319.35(1) (a) 3rd Tamper, adjust, change, etc.,
an odometer.

1653 320.26(1) (a) 3rd Counterfeit, manufacture, or
sell registration license
plates or validation stickers.

1654 322.212 3rd Possession of forged, stolen,
(1) (a)-(c) counterfeit, or unlawfully
issued driver license;
possession of simulated
identification.

1655 322.212(4) 3rd Supply or aid in supplying
unauthorized driver license or

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			identification card.
1656	322.212(5)(a)	3rd	False application for driver license or identification card.
1657	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
1658	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
1659	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
1660	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
1661	562.27(1)	3rd	Possess still or still apparatus.
1662	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.

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1663	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
1664	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
1665	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
1666	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
1667	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
1668	826.01	3rd	Bigamy.
1669	828.122(3)	3rd	Fighting or baiting animals.
1670	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed

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			in s. 92.28.
1671	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
1672	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
1673	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
1674	838.15(2)	3rd	Commercial bribe receiving.
1675	838.16	3rd	Commercial bribery.
1676	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
1677	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
1678	849.01	3rd	Keeping gambling house.
1679			

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	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
1680	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
1681	849.25(2)	3rd	Engaging in bookmaking.
1682	860.08	3rd	Interfere with a railroad signal.
1683	860.13(1)(a)	3rd	Operate aircraft while under the influence.
1684	893.13(2)(a)2.	3rd	Purchase of cannabis.
1685	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
1686	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
1687			
1688	(b) LEVEL 2		
1689			

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	591-03340A-17		2017150c1
	Florida Statute	Felony Degree	Description
1690	379.2431 (1) (e) 3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
1691	379.2431 (1) (e) 4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
1692	403.413(6) (c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
1693	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
1694	590.28(1)	3rd	Intentional burning of lands.
1695	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
1696			

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	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
1697	806.13(1) (b) 3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
1698	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
1699	810.09(2) (e)	3rd	Trespassing on posted commercial horticulture property.
1700	812.014(2) (c) 1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
1701	812.014(2) (d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
1702	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device

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countermeasure.

1703

817.234 (1) (a) 2. 3rd False statement in support of insurance claim.

1704

817.481 (3) (a) 3rd Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.

1705

817.52 (3) 3rd Failure to redeliver hired vehicle.

1706

817.54 3rd With intent to defraud, obtain mortgage note, etc., by false representation.

1707

817.60 (5) 3rd Dealing in credit cards of another.

1708

817.60 (6) (a) 3rd Forgery; purchase goods, services with false card.

1709

817.61 3rd Fraudulent use of credit cards over \$100 or more within 6 months.

1710

826.04 3rd Knowingly marries or has sexual intercourse with person to whom

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related.

1711

831.01 3rd Forgery.

1712

831.02 3rd Uttering forged instrument; utters or publishes alteration with intent to defraud.

1713

831.07 3rd Forging bank bills, checks, drafts, or promissory notes.

1714

831.08 3rd Possessing 10 or more forged notes, bills, checks, or drafts.

1715

831.09 3rd Uttering forged notes, bills, checks, drafts, or promissory notes.

1716

831.11 3rd Bringing into the state forged bank bills, checks, drafts, or notes.

1717

832.05 (3) (a) 3rd Cashing or depositing item with intent to defraud.

1718

843.08 3rd False personation.

1719

893.13 (2) (a) 2. 3rd Purchase of any s.

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893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3., (2)(c)5.,
 (2)(c)6., (2)(c)7., (2)(c)8.,
 (2)(c)9., (3), or (4) drugs
 other than cannabis.

893.147(2) 3rd Manufacture or delivery of drug
 paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description

119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.

316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.

316.193(2)(b)	3rd	Felony DUI, 3rd conviction.

316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.

319.30(4)	3rd	Possession by junkyard of motor

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vehicle with identification
 number plate removed.

319.33(1)(a) 3rd Alter or forge any certificate
 of title to a motor vehicle or
 mobile home.

319.33(1)(c) 3rd Procure or pass title on stolen
 vehicle.

319.33(4) 3rd With intent to defraud,
 possess, sell, etc., a blank,
 forged, or unlawfully obtained
 title or registration.

327.35(2)(b) 3rd Felony BUI.

328.05(2) 3rd Possess, sell, or counterfeit
 fictitious, stolen, or
 fraudulent titles or bills of
 sale of vessels.

328.07(4) 3rd Manufacture, exchange, or
 possess vessel with counterfeit
 or wrong ID number.

376.302(5) 3rd Fraud related to reimbursement
 for cleanup expenses under the
 Inland Protection Trust Fund.

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1736	379.2431 (1) (e) 5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
1737	379.2431 (1) (e) 6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
1738	400.9935(4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
1739	400.9935(4) (e)	3rd	Filing a false license application or other required information or failing to report information.
1740	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.

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1741	501.001(2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
1742	624.401(4) (a)	3rd	Transacting insurance without a certificate of authority.
1743	624.401(4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
1744	626.902(1) (a) & (b)	3rd	Representing an unauthorized insurer.
1745	697.08	3rd	Equity skimming.
1746	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
1747	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
1748	806.10(2)	3rd	Interferes with or assaults firefighter in performance of

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duty.

1749

810.09(2)(c) 3rd Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.

1750

812.014(2)(c)2. 3rd Grand theft; \$5,000 or more but less than \$10,000.

1751

812.0145(2)(c) 3rd Theft from person 65 years of age or older; \$300 or more but less than \$10,000.

1752

815.04(5)(b) 2nd Computer offense devised to defraud or obtain property.

1753

817.034(4)(a)3. 3rd Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.

1754

817.233 3rd Burning to defraud insurer.

1755

817.234 3rd Unlawful solicitation of persons involved in motor vehicle accidents.

1756

817.234(11)(a) 3rd Insurance fraud; property value

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less than \$20,000.

1757

817.236 3rd Filing a false motor vehicle insurance application.

1758

817.2361 3rd Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.

1759

817.413(2) 3rd Sale of used goods as new.

1760

817.505(4) 3rd Patient brokering.

1761

828.12(2) 3rd Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

1762

831.28(2)(a) 3rd Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.

1763

831.29 2nd Possession of instruments for counterfeiting driver licenses or identification cards.

1764

838.021(3)(b) 3rd Threatens unlawful harm to

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public servant.

1765

843.19 3rd Injure, disable, or kill police
dog or horse.

1766

860.15(3) 3rd Overcharging for repairs and
parts.

1767

870.01(2) 3rd Riot; inciting or encouraging.

1768

893.13(1)(a)2. 3rd Sell, manufacture, or deliver
cannabis (or other s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) drugs).

1769

893.13(1)(d)2. 2nd Sell, manufacture, or deliver
s. 893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) drugs
within 1,000 feet of
university.

1770

893.13(1)(f)2. 2nd Sell, manufacture, or deliver
s. 893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,

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(2)(c)9., (3), or (4) drugs
within 1,000 feet of public
housing facility.

1771

893.13(4)(c) 3rd Use or hire of minor; deliver
to minor other controlled
substances.

1772

893.13(6)(a) 3rd Possession of any controlled
substance other than felony
possession of cannabis.

1773

893.13(7)(a)8. 3rd Withhold information from
practitioner regarding previous
receipt of or prescription for
a controlled substance.

1774

893.13(7)(a)9. 3rd Obtain or attempt to obtain
controlled substance by fraud,
forgery, misrepresentation,
etc.

1775

893.13(7)(a)10. 3rd Affix false or forged label to
package of controlled
substance.

1776

893.13(7)(a)11. 3rd Furnish false or fraudulent
material information on any
document or record required by

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chapter 893.

1777

893.13(8)(a)1. 3rd Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.

1778

893.13(8)(a)2. 3rd Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.

1779

893.13(8)(a)3. 3rd Knowingly write a prescription for a controlled substance for a fictitious person.

1780

893.13(8)(a)4. 3rd Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.

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1781

918.13(1)(a) 3rd Alter, destroy, or conceal investigation evidence.

1782

944.47 3rd Introduce contraband to
(1)(a)1. & 2. correctional facility.

1783

944.47(1)(c) 2nd Possess contraband while upon the grounds of a correctional institution.

1784

985.721 3rd Escapes from a juvenile facility (secure detention or residential commitment facility).

1785

1786

1787

(d) LEVEL 4

Florida Statute	Felony Degree	Description

1788

316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

1789

499.0051(1)	3rd	Failure to maintain or deliver

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	591-03340A-17		2017150c1	transaction history, transaction information, or transaction statements.
1790				
	499.0051(5)	2nd		Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
1791				
	517.07(1)	3rd		Failure to register securities.
1792				
	517.12(1)	3rd		Failure of dealer, associated person, or issuer of securities to register.
1793				
	784.07(2)(b)	3rd		Battery of law enforcement officer, firefighter, etc.
1794				
	784.074(1)(c)	3rd		Battery of sexually violent predators facility staff.
1795				
	784.075	3rd		Battery on detention or commitment facility staff.
1796				
	784.078	3rd		Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
1797				
	784.08(2)(c)	3rd		Battery on a person 65 years of age or older.

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1798				
	784.081(3)	3rd		Battery on specified official or employee.
1799				
	784.082(3)	3rd		Battery by detained person on visitor or other detainee.
1800				
	784.083(3)	3rd		Battery on code inspector.
1801				
	784.085	3rd		Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
1802				
	787.03(1)	3rd		Interference with custody; wrongly takes minor from appointed guardian.
1803				
	787.04(2)	3rd		Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
1804				
	787.04(3)	3rd		Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
1805				

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1806	787.07	3rd	Human smuggling.
	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
1807	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
1808	790.115(2)(c)	3rd	Possessing firearm on school property.
1809	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
1810	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
1811	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
1812	810.06	3rd	Burglary; possession of tools.
1813	810.08(2)(c)	3rd	Trespass on property, armed

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			with firearm or dangerous weapon.
1814	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
1815	812.014(2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
1816	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
1817	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
1818	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
1819	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
1820	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.

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1821	837.02(1)	3rd	Perjury in official proceedings.
1822	837.021(1)	3rd	Make contradictory statements in official proceedings.
1823	838.022	3rd	Official misconduct.
1824	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
1825	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
1826	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
1827	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
1828	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).

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1829	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
1830	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
1831	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
1832	914.14(2)	3rd	Witnesses accepting bribes.
1833	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
1834	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
1835	918.12	3rd	Tampering with jurors.
1836	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
1837			

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1838 (e) LEVEL 5

1839

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or

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		supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
1846	379.367(4)	3rd Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
1847	379.407(5)(b)3.	3rd Possession of 100 or more undersized spiny lobsters.
1848	381.0041(11)(b)	3rd Donate blood, plasma, or organs knowing HIV positive.
1849	440.10(1)(g)	2nd Failure to obtain workers' compensation coverage.
1850	440.105(5)	2nd Unlawful solicitation for the purpose of making workers' compensation claims.

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1851	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
1852	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
1853	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
1854	790.01(2)	3rd	Carrying a concealed firearm.
1855	790.162	2nd	Threat to throw or discharge destructive device.
1856	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
1857	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
1858	790.23	2nd	Felons in possession of

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			firearms, ammunition, or electronic weapons or devices.
1859	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
1860	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
1861	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
1862	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
1863	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
1864	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
1865	812.019(1)	2nd	Stolen property; dealing in or trafficking in.

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1866

812.131(2)(b) 3rd Robbery by sudden snatching.

1867

812.16(2) 3rd Owning, operating, or
conducting a chop shop.

1868

817.034(4)(a)2. 2nd Communications fraud, value
\$20,000 to \$50,000.

1869

817.234(11)(b) 2nd Insurance fraud; property value
\$20,000 or more but less than
\$100,000.

1870

817.2341(1), 3rd Filing false financial
(2)(a) & (3)(a) statements, making false
entries of material fact or
false statements regarding
property values relating to the
solvency of an insuring entity.

1871

817.568(2)(b) 2nd Fraudulent use of personal
identification information;
value of benefit, services
received, payment avoided, or
amount of injury or fraud,
\$5,000 or more or use of
personal identification
information of 10 or more
persons.

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1872

817.611(2)(a) 2nd Traffic in or possess 5 to 14
counterfeit credit cards or
related documents.

1873

817.625(2)(b) 2nd Second or subsequent fraudulent
use of scanning device or
reencoder.

1874

825.1025(4) 3rd Lewd or lascivious exhibition
in the presence of an elderly
person or disabled adult.

1875

827.071(4) 2nd Possess with intent to promote
any photographic material,
motion picture, etc., which
includes sexual conduct by a
child.

1876

827.071(5) 3rd Possess, control, or
intentionally view any
photographic material, motion
picture, etc., which includes
sexual conduct by a child.

1877

839.13(2)(b) 2nd Falsifying records of an
individual in the care and
custody of a state agency
involving great bodily harm or

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death.

1878

843.01 3rd Resist officer with violence to person; resist arrest with violence.

1879

847.0135(5)(b) 2nd Lewd or lascivious exhibition using computer; offender 18 years or older.

1880

847.0137 3rd Transmission of pornography by (2) & (3) electronic device or equipment.

1881

847.0138 3rd Transmission of material (2) & (3) harmful to minors to a minor by electronic device or equipment.

1882

874.05(1)(b) 2nd Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

1883

874.05(2)(a) 2nd Encouraging or recruiting person under 13 years of age to join a criminal gang.

1884

893.13(1)(a)1. 2nd Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d),

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(2)(a), (2)(b), or (2)(c)4. drugs).

1885

893.13(1)(c)2. 2nd Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

1886

893.13(1)(d)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.

1887

893.13(1)(e)2. 2nd Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8.,

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(2) (c) 9., (3), or (4) within
1,000 feet of property used for
religious services or a
specified business site.

1888

893.13(1) (f) 1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1) (a), (1) (b), (1) (d),
or (2) (a), (2) (b), or (2) (c) 4.
drugs) within 1,000 feet of
public housing facility.

1889

893.13(4) (b) 2nd Use or hire of minor; deliver
to minor other controlled
substance.

1890

893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing
of controlled substance.

1891

1892

1893

(g) LEVEL 7

Florida Statute	Felony Degree	Description

1894

316.027(2) (c)	1st	Accident involving death, failure to stop; leaving scene.

1895

316.193(3) (c) 2.	3rd	DUI resulting in serious bodily

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injury.

1896

316.1935(3) (b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

1897

327.35(3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.

1898

402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfigurement, permanent disability, or death.

1899

409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.

1900

409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.

1901

456.065(2)	3rd	Practicing a health care profession without a license.

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1902	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
1903	458.327(1)	3rd	Practicing medicine without a license.
1904	459.013(1)	3rd	Practicing osteopathic medicine without a license.
1905	460.411(1)	3rd	Practicing chiropractic medicine without a license.
1906	461.012(1)	3rd	Practicing podiatric medicine without a license.
1907	462.17	3rd	Practicing naturopathy without a license.
1908	463.015(1)	3rd	Practicing optometry without a license.
1909	464.016(1)	3rd	Practicing nursing without a license.
1910	465.015(2)	3rd	Practicing pharmacy without a license.

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1911	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
1912	467.201	3rd	Practicing midwifery without a license.
1913	468.366	3rd	Delivering respiratory care services without a license.
1914	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
1915	483.901(7)	3rd	Practicing medical physics without a license.
1916	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
1917	484.053	3rd	Dispensing hearing aids without a license.
1918	494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.

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1919			
	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
1920			
	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
1921			
	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
1922			
	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
1923			
	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
1924			
	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or

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			conceal a sexual predator.
1925			
	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
1926			
	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
1927			
	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
1928			
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
1929			
	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
1930			
	784.045(1)(a)2.	2nd	Aggravated battery; using

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			deadly weapon.	
1931	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.	
1932	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.	
1933	784.048(7)	3rd	Aggravated stalking; violation of court order.	
1934	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.	
1935	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.	
1936	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.	
1937	784.081(1)	1st	Aggravated battery on specified official or employee.	
1938	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.	
1939	784.083(1)	1st	Aggravated battery on code	

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			inspector.	
1940	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.	
1941	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.	
1942	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).	
1943	790.16(1)	1st	Discharge of a machine gun under specified circumstances.	
1944	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.	
1945	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.	
1946	790.166(3)	2nd	Possessing, selling, using, or	

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	591-03340A-17		2017150c1	attempting to use a hoax weapon of mass destruction.
1947				
	790.166(4)	2nd		Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
1948				
	790.23	1st,PBL		Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
1949				
	794.08(4)	3rd		Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
1950				
	796.05(1)	1st		Live on earnings of a prostitute; 2nd offense.
1951				
	796.05(1)	1st		Live on earnings of a prostitute; 3rd and subsequent offense.
1952				
	800.04(5)(c)1.	2nd		Lewd or lascivious molestation; victim younger than 12 years of

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	591-03340A-17		2017150c1	age; offender younger than 18 years of age.
1953				
	800.04(5)(c)2.	2nd		Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
1954				
	800.04(5)(e)	1st		Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
1955				
	806.01(2)	2nd		Maliciously damage structure by fire or explosive.
1956				
	810.02(3)(a)	2nd		Burglary of occupied dwelling; unarmed; no assault or battery.
1957				
	810.02(3)(b)	2nd		Burglary of unoccupied dwelling; unarmed; no assault or battery.
1958				
	810.02(3)(d)	2nd		Burglary of occupied conveyance; unarmed; no assault or battery.

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1959	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
1960	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
1961	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
1962	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
1963	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
1964	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
1965	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the

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			theft of property and traffics in stolen property.
1966	812.131(2)(a)	2nd	Robbery by sudden snatching.
1967	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
1968	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
1969	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
1970	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
1971	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
1972	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.

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1973			
	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
1974			
	817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
1975			
	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
1976			
	825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
1977			
	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
1978			
	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
1979			
	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.

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1980			
	838.015	2nd	Bribery.
1981			
	838.016	2nd	Unlawful compensation or reward for official behavior.
1982			
	838.021(3)(a)	2nd	Unlawful harm to a public servant.
1983			
	838.22	2nd	Bid tampering.
1984			
	843.0855(2)	3rd	Impersonation of a public officer or employee.
1985			
	843.0855(3)	3rd	Unlawful simulation of legal process.
1986			
	843.0855(4)	3rd	Intimidation of a public officer or employee.
1987			
	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
1988			
	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
1989			
	872.06	2nd	Abuse of a dead human body.
1990			

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	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
1991			
	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
1992			
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
1993			
	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or

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			a specified business site.
1994			
	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
1995			
	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
1996			
	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
1997			
	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
1998			
	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
1999			
	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
2000			
	893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.

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2001	893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
2002	<u>893.135</u> <u>(1)(c)4.b.(I)</u>	<u>1st</u>	<u>Trafficking in fentanyl, 4</u> <u>grams or more, less than 14</u> <u>grams.</u>
2003	<u>893.135(1)(d)1.a.</u> ~~893.135(1)(d)1.~~	1st	Trafficking in phencyclidine, ~~more than~~ 28 grams <u>or more</u> , less than 200 grams.
2004	893.135(1)(e)1.	1st	Trafficking in methaqualone, ~~more than~~ 200 grams <u>or more</u> , less than 5 kilograms.
2005	893.135(1)(f)1.	1st	Trafficking in amphetamine, ~~more than~~ 14 grams <u>or more</u> , less than 28 grams.
2006	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
2007	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.

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2008	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
2009	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
2010	<u>893.135(1)(m)2.a.</u>	<u>1st</u>	<u>Trafficking in synthetic</u> <u>cannabinoids, 280 grams or</u> <u>more, less than 500 grams.</u>
2011	<u>893.135(1)(m)2.b.</u>	<u>1st</u>	<u>Trafficking in synthetic</u> <u>cannabinoids, 500 grams or</u> <u>more, less than 1,000 grams.</u>
2012	<u>893.135(1)(n)2.a.</u>	<u>1st</u>	<u>Trafficking in n-benzyl</u> <u>phenethylamines, 14 grams or</u> <u>more, less than 100 grams.</u>
2013	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
2014	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
2015			

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	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
2016			
	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
2017			
	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
2018			
	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
2019			
	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2020			
	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false

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	591-03340A-17		2017150c1
			registration information.
2021			
	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
2022			
	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
2023			
	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2024			
	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
2025			
	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
2026			
	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

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2027	591-03340A-17		2017150c1
	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
2028			
2029	(h) LEVEL 8		
2030			
	Florida Statute	Felony Degree	Description
2031	316.193	2nd	DUI manslaughter.
	(3) (c) 3.a.		
2032	316.1935(4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
2033	327.35(3) (c) 3.	2nd	Vessel BUI manslaughter.
2034	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
2035	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
2036	560.123(8) (b) 2.	2nd	Failure to report currency or

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	591-03340A-17		2017150c1
			payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
2037	560.125(5) (b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
2038	655.50(10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
2039	777.03(2) (a)	1st	Accessory after the fact, capital felony.
2040	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.

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2041			
	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
2042			
	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
2043			
	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
2044			
	787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
2045			
	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
2046			
	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
2047			
	787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the

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			state.
2048			
	787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.
2049			
	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
2050			
	794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
2051			
	794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
2052			
	794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender

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			does not use physical force likely to cause injury.	
2053				
	794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.	
2054				
	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.	
2055				
2056	800.04(4)(b)	2nd	Lewd or lascivious battery.	
	800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.	
2057				
	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.	
2058				
	810.02(2)(a)	1st, PBL	Burglary with assault or battery.	
2059				

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	591-03340A-17		2017150c1	
	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.	
2060				
	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.	
2061				
	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.	
2062				
2063	812.13(2)(b)	1st	Robbery with a weapon.	
	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.	
2064				
	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.	
2065				
	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.	
2066				
	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document;	

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	591-03340A-17		2017150c1
			defendant is incarcerated or under supervision.
2067	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
2068	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
2069	817.611(2)(c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
2070	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
2071	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
2072	825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.
2073			

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	591-03340A-17		2017150c1
	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
2074	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
2075	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
2076	860.16	1st	Aircraft piracy.
2077	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
2078	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
2079	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
2080			

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	591-03340A-17		2017150c1
	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
2081	893.135	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
	(1)(b)1.b.		
2082	893.135	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
	(1)(c)1.b.		
2083	893.135	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
	(1)(c)2.c.		
2084	893.135	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
	(1)(c)3.c.		
2085	<u>893.135</u>	<u>1st</u>	<u>Trafficking in fentanyl, 14</u>
	<u>(1)(c)4.b.(II)</u>		<u>grams or more, less than 28</u>
2086	893.135	1st	Trafficking in phencyclidine, ~~more than~~ 200 grams <u>or more</u> , less than 400 grams.
	(1)(d)1.b.		
2087	893.135	1st	Trafficking in methaqualone,

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	(1)(e)1.b.		~~more than~~ 5 kilograms <u>or more</u> , less than 25 kilograms.
2088	893.135	1st	Trafficking in amphetamine, ~~more than~~ 28 grams <u>or more</u> , less than 200 grams.
	(1)(f)1.b.		
2089	893.135	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
	(1)(g)1.b.		
2090	893.135	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
	(1)(h)1.b.		
2091	893.135	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
	(1)(j)1.b.		
2092	893.135	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
	(1)(k)2.b.		
2093	<u>893.135(1)(m)2.c.</u>	<u>1st</u>	<u>Trafficking in synthetic</u>
			<u>cannabinoids, 1,000 grams or</u>
			<u>more, less than 30 kilograms.</u>
2094	<u>893.135(1)(n)2.b.</u>	<u>1st</u>	<u>Trafficking in n-benzyl</u>

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		<u>phenethylamines, 100 grams or more, less than 200 grams.</u>	
2095	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
2096	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
2097	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
2098	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
2099	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
2100	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial

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	591-03340A-17			2017150c1
			transactions totaling or exceeding \$20,000 but less than \$100,000.	
2101				
2102	(i) LEVEL 9			
2103				
	Florida Statute	Felony Degree	Description	
2104				
	316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.	
2105				
	327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.	
2106				
	409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.	
2107				
	499.0051(8)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.	
2108				
	560.123(8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.	
2109				
	560.125(5) (c)	1st	Money transmitter business by unauthorized person, currency,	

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or payment instruments totaling
or exceeding \$100,000.

2110

655.50(10)(b)3. 1st Failure to report financial
transactions totaling or
exceeding \$100,000 by financial
institution.

2111

775.0844 1st Aggravated white collar crime.

2112

782.04(1) 1st Attempt, conspire, or solicit
to commit premeditated murder.

2113

782.04(3) 1st,PBL Accomplice to murder in
connection with arson, sexual
battery, robbery, burglary,
aggravated fleeing or eluding
with serious bodily injury or
death, and other specified
felonies.

2114

782.051(1) 1st Attempted felony murder while
perpetrating or attempting to
perpetrate a felony enumerated
in s. 782.04(3).

2115

782.07(2) 1st Aggravated manslaughter of an
elderly person or disabled
adult.

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2116

787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or
reward or as a shield or
hostage.

2117

787.01(1)(a)2. 1st,PBL Kidnapping with intent to
commit or facilitate commission
of any felony.

2118

787.01(1)(a)4. 1st,PBL Kidnapping with intent to
interfere with performance of
any governmental or political
function.

2119

787.02(3)(a) 1st,PBL False imprisonment; child under
age 13; perpetrator also
commits aggravated child abuse,
sexual battery, or lewd or
lascivious battery,
molestation, conduct, or
exhibition.

2120

787.06(3)(c)1. 1st Human trafficking for labor and
services of an unauthorized
alien child.

2121

787.06(3)(d) 1st Human trafficking using
coercion for commercial sexual
activity of an unauthorized

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	591-03340A-17		2017150c1
			adult alien.
2122	787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
2123	790.161	1st	Attempted capital destructive device offense.
2124	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
2125	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
2126	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
2127	794.011(4)(a)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.

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2128	794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
2129	794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
2130	794.011(4)(d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
2131	794.011(8)(b)	1st,PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
2132	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
2133	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.

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	591-03340A-17		2017150c1
2134	812.13(2)(a)	1st, PBL	Robbery with firearm or other deadly weapon.
2135	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly weapon.
2136	812.135(2)(b)	1st	Home-invasion robbery with weapon.
2137	817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
2138	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
2139	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
2140	817.568(7)	2nd,	Fraudulent use of personal

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		PBL	identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
2141	827.03(2)(a)	1st	Aggravated child abuse.
2142	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
2143	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
2144	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
2145	893.135	1st	Attempted capital trafficking offense.
2146	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.

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	591-03340A-17		2017150c1
2147	893.135	1st	Trafficking in cocaine, more
	(1)(b)1.c.		than 400 grams, less than 150
			kilograms.
2148	893.135	1st	Trafficking in illegal drugs,
	(1)(c)1.c.		more than 28 grams, less than
			30 kilograms.
2149	893.135	1st	Trafficking in hydrocodone, 200
	(1)(c)2.d.		grams or more, less than 30
			kilograms.
2150	893.135	1st	Trafficking in oxycodone, 100
	(1)(c)3.d.		grams or more, less than 30
			kilograms.
2151	<u>893.135</u>	<u>1st</u>	<u>Trafficking in fentanyl, 28</u>
	<u>(1)(c)4.b.(III)</u>		<u>grams or more.</u>
2152	893.135	1st	Trafficking in phencyclidine,
	(1)(d)1.c.		~~more than~~ 400 grams <u>or more.</u>
2153	893.135	1st	Trafficking in methaqualone,
	(1)(e)1.c.		~~more than~~ 25 kilograms <u>or more.</u>
2154	893.135	1st	Trafficking in amphetamine,
	(1)(f)1.c.		~~more than~~ 200 grams <u>or more.</u>
2155			

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	893.135	1st	Trafficking in gamma-
	(1)(h)1.c.		hydroxybutyric acid (GHB), 10
			kilograms or more.
2156	893.135	1st	Trafficking in 1,4-Butanediol,
	(1)(j)1.c.		10 kilograms or more.
2157	893.135	1st	Trafficking in Phenethylamines,
	(1)(k)2.c.		400 grams or more.
2158	<u>893.135</u>	<u>1st</u>	<u>Trafficking in synthetic</u>
	<u>(1)(m)2.d.</u>		<u>cannabinoids, 30 kilograms or</u>
			<u>more.</u>
2159	<u>893.135(1)(n)2.c.</u>	<u>1st</u>	<u>Trafficking in n-benzyl</u>
			<u>phenethylamines, 200 grams or</u>
			<u>more.</u>
2160	896.101(5)(c)	1st	Money laundering, financial
			instruments totaling or
			exceeding \$100,000.
2161	896.104(4)(a)3.	1st	Structuring transactions to
			evade reporting or registration
			requirements, financial
			transactions totaling or
			exceeding \$100,000.
2162			
2163	Section 8. Present subsection (11) of section 775.082,		

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Florida Statutes, is redesignated as subsection (12), and a new subsection (11) is added to that section, to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(11) If a defendant is sentenced for a primary offense of possession of a controlled substance committed on or after October 1, 2017, and if the total sentence points pursuant to s. 921.0024 are 60 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section. As used in this subsection, the term "possession of a controlled substance" means possession of a controlled substance in violation of s. 893.13, but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135.

Section 9. Section 921.0026, Florida Statutes, is amended to read:

921.0026 Mitigating circumstances.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(1) A downward departure from the lowest permissible sentence, as calculated according to the total sentence points pursuant to s. 921.0024, is prohibited unless there are circumstances or factors that reasonably justify the downward departure. Mitigating factors to be considered include, but are

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not limited to, those listed in subsection (2). The imposition of a sentence below the lowest permissible sentence is subject to appellate review under chapter 924, but the extent of downward departure is not subject to appellate review.

(2) Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.

(c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.

(d) For an offense committed on or after October 1, 1998, but before October 1, 2017, the defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.

(e) For an offense committed on or after October 1, 2017, the defendant requires specialized treatment for an addiction, a mental disorder, or a physical disability, and the defendant is amenable to treatment.

(f) ~~(e)~~ The need for payment of restitution to the victim outweighs the need for a prison sentence.

(g) ~~(f)~~ The victim was an initiator, willing participant, aggressor, or provoker of the incident.

(h) ~~(g)~~ The defendant acted under extreme duress or under the domination of another person.

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2222 ~~(i)(h)~~ Before the identity of the defendant was determined,
 2223 the victim was substantially compensated.
 2224 ~~(j)(i)~~ The defendant cooperated with the state to resolve
 2225 the current offense or any other offense.
 2226 ~~(k)(j)~~ The offense was committed in an unsophisticated
 2227 manner and was an isolated incident for which the defendant has
 2228 shown remorse.
 2229 ~~(l)(k)~~ At the time of the offense the defendant was too
 2230 young to appreciate the consequences of the offense.
 2231 ~~(m)(i)~~ The defendant is to be sentenced as a youthful
 2232 offender.
 2233 ~~(n)(m)~~ For an offense committed on or after October 1,
 2234 1998, but before October 1, 2017, the defendant's offense is a
 2235 nonviolent felony, the defendant's Criminal Punishment Code
 2236 scoresheet total sentence points under s. 921.0024 are 60 points
 2237 or fewer, and the court determines that the defendant is
 2238 amenable to the services of a postadjudicatory treatment-based
 2239 drug court program and is otherwise qualified to participate in
 2240 the program as part of the sentence. Except as provided in this
 2241 paragraph, the defendant's substance abuse or addiction,
 2242 including intoxication at the time of the offense, is not a
 2243 mitigating factor for an offense committed on or after October
 2244 1, 1998, but before October 1, 2017, and does not, under any
 2245 circumstance, justify a downward departure from the permissible
 2246 sentencing range For purposes of this paragraph, the term
 2247 "nonviolent felony" has the same meaning as provided in s.
 2248 948.08(6).
 2249 ~~(o)(n)~~ The defendant was making a good faith effort to
 2250 obtain or provide medical assistance for an individual

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2251 experiencing a drug-related overdose.
 2252 (3) As used in subsection (2), the term "nonviolent felony"
 2253 has the same meaning as provided in s. 948.08 ~~Except as provided~~
 2254 ~~in paragraph (2)(m), the defendant's substance abuse or~~
 2255 ~~addiction, including intoxication at the time of the offense, is~~
 2256 ~~not a mitigating factor under subsection (2) and does not, under~~
 2257 ~~any circumstances, justify a downward departure from the~~
 2258 ~~permissible sentencing range.~~
 2259 Section 10. Subsection (7) of section 948.01, Florida
 2260 Statutes, is amended to read:
 2261 948.01 When court may place defendant on probation or into
 2262 community control.-
 2263 (7) (a) Notwithstanding s. 921.0024 and effective for
 2264 offenses committed on or after July 1, 2009, the sentencing
 2265 court may place the defendant into a postadjudicatory treatment-
 2266 based drug court program if the defendant's Criminal Punishment
 2267 Code scoresheet total sentence points under s. 921.0024 are 60
 2268 points or fewer, the offense is a nonviolent felony, the
 2269 defendant is amenable to substance abuse treatment, and the
 2270 defendant otherwise qualifies under s. 397.334(3). The
 2271 satisfactory completion of the program shall be a condition of
 2272 the defendant's probation or community control. ~~As used in this~~
 2273 ~~subsection, the term "nonviolent felony" means a third degree~~
 2274 ~~felony violation under chapter 810 or any other felony offense~~
 2275 ~~that is not a forcible felony as defined in s. 776.08.~~
 2276 (b) Notwithstanding s. 921.0024 and effective for offenses
 2277 committed on or after October 1, 2017, the sentencing court must
 2278 place the defendant into a postadjudicatory treatment-based drug
 2279 court program, into residential drug treatment, or on drug

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2280 offender probation if the defendant's Criminal Punishment Code
 2281 scoresheet total sentence points under s. 921.0024 are 60 points
 2282 or fewer, the offense is a nonviolent felony, the defendant is
 2283 amenable to substance abuse treatment, the defendant's criminal
 2284 behavior is related to substance abuse or addiction, and the
 2285 defendant otherwise qualifies under s. 397.334(3). The
 2286 satisfactory completion of the program must be a condition of
 2287 the defendant's probation or community control.

2288 (c) ~~(b)~~ In order to be placed in a postadjudicatory
 2289 treatment-based drug court program under paragraph (a) or
 2290 paragraph (b), the defendant must be fully advised of the
 2291 purpose of the program, and the defendant must agree to enter
 2292 the program. The original sentencing court shall relinquish
 2293 jurisdiction of the defendant's case to the postadjudicatory
 2294 drug court program until the defendant is no longer active in
 2295 the program, the case is returned to the sentencing court due to
 2296 the defendant's termination from the program for failure to
 2297 comply with the terms thereof, or the defendant's sentence is
 2298 completed.

2299 (d) As used in this subsection, the term "nonviolent
 2300 felony" means a third degree felony violation under chapter 810
 2301 or any other felony offense that is not a forcible felony as
 2302 defined in s. 776.08.

2303 Section 11. For the purpose of incorporating the amendment
 2304 made by this act to section 921.0026, Florida Statutes, in
 2305 references thereto, paragraphs (b) and (c) of subsection (1) of
 2306 section 775.08435, Florida Statutes, are reenacted to read:

2307 775.08435 Prohibition on withholding adjudication in felony
 2308 cases.—

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2309 (1) Notwithstanding the provisions of s. 948.01, the court
 2310 may not withhold adjudication of guilt upon the defendant for:

2311 (b) A second degree felony offense unless:

2312 1. The state attorney requests in writing that adjudication
 2313 be withheld; or

2314 2. The court makes written findings that the withholding of
 2315 adjudication is reasonably justified based on circumstances or
 2316 factors in accordance with those set forth in s. 921.0026.

2317
 2318 Notwithstanding any provision of this section, no adjudication
 2319 of guilt shall be withheld for a second degree felony offense if
 2320 the defendant has a prior withholding of adjudication for a
 2321 felony that did not arise from the same transaction as the
 2322 current felony offense.

2323 (c) A third degree felony offense if the defendant has a
 2324 prior withholding of adjudication for a felony offense that did
 2325 not arise from the same transaction as the current felony
 2326 offense unless:

2327 1. The state attorney requests in writing that adjudication
 2328 be withheld; or

2329 2. The court makes written findings that the withholding of
 2330 adjudication is reasonably justified based on circumstances or
 2331 factors in accordance with those set forth in s. 921.0026.

2332
 2333 Notwithstanding any provision of this section, no adjudication
 2334 of guilt shall be withheld for a third degree felony offense if
 2335 the defendant has two or more prior withholdings of adjudication
 2336 for a felony that did not arise from the same transaction as the
 2337 current felony offense.

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Section 12. For the purpose of incorporating the amendment made by this act to section 921.0026, Florida Statutes, in a reference thereto, subsection (3) of section 921.002, Florida Statutes, is reenacted to read:

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

(3) A court may impose a departure below the lowest permissible sentence based upon circumstances or factors that reasonably justify the mitigation of the sentence in accordance with s. 921.0026. The level of proof necessary to establish facts supporting the mitigation of a sentence is a preponderance of the evidence. When multiple reasons exist to support the mitigation, the mitigation shall be upheld when at least one circumstance or factor justifies the mitigation regardless of the presence of other circumstances or factors found not to justify mitigation. Any sentence imposed below the lowest permissible sentence must be explained in writing by the trial court judge.

Section 13. For the purpose of incorporating the amendment made by this act to section 921.0026, Florida Statutes, in a reference thereto, subsection (1) of section 921.00265, Florida Statutes, is reenacted to read:

921.00265 Recommended sentences; departure sentences; mandatory minimum sentences.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(1) The lowest permissible sentence provided by calculations from the total sentence points pursuant to s.

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921.0024(2) is assumed to be the lowest appropriate sentence for the offender being sentenced. A departure sentence is prohibited unless there are mitigating circumstances or factors present as provided in s. 921.0026 which reasonably justify a departure.

Section 14. For the purpose of incorporating the amendment made by this act to section 948.01, Florida Statutes, in references thereto, subsection (2) and paragraph (a) of subsection (4) of section 394.47892, Florida Statutes, are reenacted to read:

394.47892 Mental health court programs.—

(2) Mental health court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, postadjudicatory mental health court programs as provided in ss. 948.01 and 948.06, and review of the status of compliance or noncompliance of sentenced defendants through a mental health court program.

(4)(a) Entry into a postadjudicatory mental health court program as a condition of probation or community control pursuant to s. 948.01 or s. 948.06 must be based upon the sentencing court's assessment of the defendant's criminal history, mental health screening outcome, amenability to the services of the program, and total sentence points; the recommendation of the state attorney and the victim, if any; and the defendant's agreement to enter the program.

Section 15. For the purpose of incorporating the amendment made by this act to section 948.01, Florida Statutes, in references thereto, paragraph (a) of subsection (3) and subsection (5) of section 397.334, Florida Statutes, are reenacted to read:

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2396 397.334 Treatment-based drug court programs.—

2397 (3) (a) Entry into any postadjudicatory treatment-based drug
2398 court program as a condition of probation or community control
2399 pursuant to s. 948.01, s. 948.06, or s. 948.20 must be based
2400 upon the sentencing court's assessment of the defendant's
2401 criminal history, substance abuse screening outcome, amenability
2402 to the services of the program, total sentence points, the
2403 recommendation of the state attorney and the victim, if any, and
2404 the defendant's agreement to enter the program.

2405 (5) Treatment-based drug court programs may include
2406 pretrial intervention programs as provided in ss. 948.08,
2407 948.16, and 985.345, treatment-based drug court programs
2408 authorized in chapter 39, postadjudicatory programs as provided
2409 in ss. 948.01, 948.06, and 948.20, and review of the status of
2410 compliance or noncompliance of sentenced offenders through a
2411 treatment-based drug court program. While enrolled in a
2412 treatment-based drug court program, the participant is subject
2413 to a coordinated strategy developed by a drug court team under
2414 subsection (4). The coordinated strategy may include a protocol
2415 of sanctions that may be imposed upon the participant for
2416 noncompliance with program rules. The protocol of sanctions may
2417 include, but is not limited to, placement in a substance abuse
2418 treatment program offered by a licensed service provider as
2419 defined in s. 397.311 or in a jail-based treatment program or
2420 serving a period of secure detention under chapter 985 if a
2421 child or a period of incarceration within the time limits
2422 established for contempt of court if an adult. The coordinated
2423 strategy must be provided in writing to the participant before
2424 the participant agrees to enter into a treatment-based drug

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2425 court program.

2426 Section 16. For the purpose of incorporating the amendment
2427 made by this act to section 948.01, Florida Statutes, in a
2428 reference thereto, paragraph (a) of subsection (5) of section
2429 910.035, Florida Statutes, is reenacted to read:

2430 910.035 Transfer from county for plea, sentence, or
2431 participation in a problem-solving court.—

2432 (5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—

2433 (a) For purposes of this subsection, the term "problem-
2434 solving court" means a drug court pursuant to s. 948.01, s.
2435 948.06, s. 948.08, s. 948.16, or s. 948.20; a military veterans'
2436 and servicemembers' court pursuant to s. 394.47891, s. 948.08,
2437 s. 948.16, or s. 948.21; a mental health court program pursuant
2438 to s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16;
2439 or a delinquency pretrial intervention court program pursuant to
2440 s. 985.345.

2441 Section 17. For the purpose of incorporating the amendment
2442 made by this act to section 948.01, Florida Statutes, in a
2443 reference thereto, paragraph (c) of subsection (1) of section
2444 921.187, Florida Statutes, is reenacted to read:

2445 921.187 Disposition and sentencing; alternatives;
2446 restitution.—

2447 (1) The alternatives provided in this section for the
2448 disposition of criminal cases shall be used in a manner that
2449 will best serve the needs of society, punish criminal offenders,
2450 and provide the opportunity for rehabilitation. If the offender
2451 does not receive a state prison sentence, the court may:

2452 (c) Place the offender on probation with or without an
2453 adjudication of guilt pursuant to s. 948.01.

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Section 18. For the purpose of incorporating the amendment made by this act to section 948.01, Florida Statutes, in a reference thereto, section 943.04352, Florida Statutes, is reenacted to read:

943.04352 Search of registration information regarding sexual predators and sexual offenders required when placement on misdemeanor probation.—When the court places a defendant on misdemeanor probation pursuant to ss. 948.01 and 948.15, the public or private entity providing probation services must conduct a search of the probationer's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement under s. 943.043. The probation services provider may conduct the search using the Internet site maintained by the Department of Law Enforcement. Also, a national search must be conducted through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.

Section 19. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 39.806, Florida Statutes, is reenacted to read:

39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(d) When the parent of a child is incarcerated and either:

1. The period of time for which the parent is expected to be incarcerated will constitute a significant portion of the child's minority. When determining whether the period of time is

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significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child. When determining harm, the court shall consider the following factors:

a. The age of the child.

b. The relationship between the child and the parent.

c. The nature of the parent's current and past provision for the child's developmental, cognitive, psychological, and

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physical needs.

d. The parent's history of criminal behavior, which may include the frequency of incarceration and the unavailability of the parent to the child due to incarceration.

e. Any other factor the court deems relevant.

Section 20. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 63.089, Florida Statutes, is reenacted to read:

63.089 Proceeding to terminate parental rights pending adoption; hearing; grounds; dismissal of petition; judgment.—

(4) FINDING OF ABANDONMENT.—A finding of abandonment resulting in a termination of parental rights must be based upon clear and convincing evidence that a parent or person having legal custody has abandoned the child in accordance with the definition contained in s. 63.032. A finding of abandonment may also be based upon emotional abuse or a refusal to provide reasonable financial support, when able, to a birth mother during her pregnancy or on whether the person alleged to have abandoned the child, while being able, failed to establish contact with the child or accept responsibility for the child's welfare.

(b) The child has been abandoned when the parent of a child is incarcerated on or after October 1, 2001, in a federal, state, or county correctional institution and:

1. The period of time for which the parent has been or is expected to be incarcerated will constitute a significant portion of the child's minority. In determining whether the period of time is significant, the court shall consider the

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child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

2. The incarcerated parent has been determined by a court of competent jurisdiction to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, convicted of child abuse as defined in s. 827.03, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of a substantially similar offense in another jurisdiction. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, termination of the parental rights of the incarcerated parent is in the best interests of the child.

Section 21. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, subsection (10) of section 95.11, Florida Statutes, is reenacted to read:

95.11 Limitations other than for the recovery of real

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property.—Actions other than for recovery of real property shall be commenced as follows:

(10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph (4) (d), an action for wrongful death seeking damages authorized under s. 768.21 brought against a natural person for an intentional tort resulting in death from acts described in s. 782.04 or s. 782.07 may be commenced at any time. This subsection shall not be construed to require an arrest, the filing of formal criminal charges, or a conviction for a violation of s. 782.04 or s. 782.07 as a condition for filing a civil action.

Section 22. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, paragraph (b) of subsection (1) and paragraphs (a), (b), and (c) of subsection (3) of section 775.082, Florida Statutes, are reenacted to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1)

(b)1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court

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finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2) (a).

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2) (c).

3. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2) (a) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)1. For a life felony committed before October 1, 1983, by a term of imprisonment for life or for a term of at least 30 years.

2. For a life felony committed on or after October 1, 1983,

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by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

4.a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:

(I) A term of imprisonment for life; or

(II) A split sentence that is a term of at least 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), by a term of imprisonment for life.

5. Notwithstanding subparagraphs 1.-4., a person who is convicted under s. 782.04 of an offense that was reclassified as a life felony which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

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b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

6. For a life felony committed on or after October 1, 2014, which is a violation of s. 787.06(3)(g), by a term of imprisonment for life.

(b)1. For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

2. Notwithstanding subparagraph 1., a person convicted under s. 782.04 of a first degree felony punishable by a term of years not exceeding life imprisonment, or an offense that was reclassified as a first degree felony punishable by a term of years not exceeding life, which was committed before the person attained 18 years of age may be punished by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of

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imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(c) Notwithstanding paragraphs (a) and (b), a person convicted of an offense that is not included in s. 782.04 but that is an offense that is a life felony or is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, or an offense that was reclassified as a life felony or an offense punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 20 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(d).

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Section 23. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, subsections (1) and (2) of section 775.0823, Florida Statutes, are reenacted to read:

775.0823 Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.—The Legislature does hereby provide for an increase and certainty of penalty for any person convicted of a violent offense against any law enforcement or correctional officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against any state attorney elected pursuant to s. 27.01 or assistant state attorney appointed under s. 27.181; or against any justice or judge of a court described in Art. V of the State Constitution, which offense arises out of or in the scope of the officer's duty as a law enforcement or correctional officer, the state attorney's or assistant state attorney's duty as a prosecutor or investigator, or the justice's or judge's duty as a judicial officer, as follows:

(1) For murder in the first degree as described in s. 782.04(1), if the death sentence is not imposed, a sentence of imprisonment for life without eligibility for release.

(2) For attempted murder in the first degree as described in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended,

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deferred, or withheld.

Section 24. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, subsection (1) of section 921.16, Florida Statutes, is reenacted to read:

921.16 When sentences to be concurrent and when consecutive.—

(1) A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently. Any sentence for sexual battery as defined in chapter 794 or murder as defined in s. 782.04 must be imposed consecutively to any other sentence for sexual battery or murder which arose out of a separate criminal episode or transaction.

Section 25. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (c) of subsection (8) of section 948.06, Florida Statutes, is reenacted to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(8)

(c) For purposes of this section, the term "qualifying

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offense" means any of the following:

1. Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), or luring or enticing a child under s. 787.025(2)(b) or (c).

2. Murder or attempted murder under s. 782.04, attempted felony murder under s. 782.051, or manslaughter under s. 782.07.

3. Aggravated battery or attempted aggravated battery under s. 784.045.

4. Sexual battery or attempted sexual battery under s. 794.011(2), (3), (4), or (8)(b) or (c).

5. Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4), lewd or lascivious molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious conduct under s. 800.04(6)(b), lewd or lascivious exhibition under s. 800.04(7)(b), or lewd or lascivious exhibition on computer under s. 847.0135(5)(b).

6. Robbery or attempted robbery under s. 812.13, carjacking or attempted carjacking under s. 812.133, or home invasion robbery or attempted home invasion robbery under s. 812.135.

7. Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025.

8. Sexual performance by a child or attempted sexual performance by a child under s. 827.071.

9. Computer pornography under s. 847.0135(2) or (3), transmission of child pornography under s. 847.0137, or selling or buying of minors under s. 847.0145.

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2802 10. Poisoning food or water under s. 859.01.
 2803 11. Abuse of a dead human body under s. 872.06.
 2804 12. Any burglary offense or attempted burglary offense that
 2805 is either a first degree felony or second degree felony under s.
 2806 810.02(2) or (3).
 2807 13. Arson or attempted arson under s. 806.01(1).
 2808 14. Aggravated assault under s. 784.021.
 2809 15. Aggravated stalking under s. 784.048(3), (4), (5), or
 2810 (7).
 2811 16. Aircraft piracy under s. 860.16.
 2812 17. Unlawful throwing, placing, or discharging of a
 2813 destructive device or bomb under s. 790.161(2), (3), or (4).
 2814 18. Treason under s. 876.32.
 2815 19. Any offense committed in another jurisdiction which
 2816 would be an offense listed in this paragraph if that offense had
 2817 been committed in this state.
 2818 Section 26. For the purpose of incorporating the amendment
 2819 made by this act to section 782.04, Florida Statutes, in a
 2820 reference thereto, paragraph (a) of subsection (1) of section
 2821 948.062, Florida Statutes, is reenacted to read:
 2822 948.062 Reviewing and reporting serious offenses committed
 2823 by offenders placed on probation or community control.—
 2824 (1) The department shall review the circumstances related
 2825 to an offender placed on probation or community control who has
 2826 been arrested while on supervision for the following offenses:
 2827 (a) Any murder as provided in s. 782.04;
 2828 Section 27. For the purpose of incorporating the amendment
 2829 made by this act to section 782.04, Florida Statutes, in a
 2830 reference thereto, paragraph (b) of subsection (3) of section

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2831 985.265, Florida Statutes, is reenacted to read:
 2832 985.265 Detention transfer and release; education; adult
 2833 jails.—
 2834 (3)
 2835 (b) When a juvenile is released from secure detention or
 2836 transferred to nonsecure detention, detention staff shall
 2837 immediately notify the appropriate law enforcement agency,
 2838 school personnel, and victim if the juvenile is charged with
 2839 committing any of the following offenses or attempting to commit
 2840 any of the following offenses:
 2841 1. Murder, under s. 782.04;
 2842 2. Sexual battery, under chapter 794;
 2843 3. Stalking, under s. 784.048; or
 2844 4. Domestic violence, as defined in s. 741.28.
 2845 Section 28. For the purpose of incorporating the amendment
 2846 made by this act to section 782.04, Florida Statutes, in a
 2847 reference thereto, paragraph (d) of subsection (1) of section
 2848 1012.315, Florida Statutes, is reenacted to read:
 2849 1012.315 Disqualification from employment.—A person is
 2850 ineligible for educator certification, and instructional
 2851 personnel and school administrators, as defined in s. 1012.01,
 2852 are ineligible for employment in any position that requires
 2853 direct contact with students in a district school system,
 2854 charter school, or private school that accepts scholarship
 2855 students under s. 1002.39 or s. 1002.395, if the person,
 2856 instructional personnel, or school administrator has been
 2857 convicted of:
 2858 (1) Any felony offense prohibited under any of the
 2859 following statutes:

591-03340A-17

2017150c1

2860 (d) Section 782.04, relating to murder.
 2861 Section 29. For the purpose of incorporating the amendment
 2862 made by this act to section 782.04, Florida Statutes, in a
 2863 reference thereto, paragraph (g) of subsection (2) of section
 2864 1012.467, Florida Statutes, is reenacted to read:
 2865 1012.467 Noninstructional contractors who are permitted
 2866 access to school grounds when students are present; background
 2867 screening requirements.—
 2868 (2)
 2869 (g) A noninstructional contractor for whom a criminal
 2870 history check is required under this section may not have been
 2871 convicted of any of the following offenses designated in the
 2872 Florida Statutes, any similar offense in another jurisdiction,
 2873 or any similar offense committed in this state which has been
 2874 redesignated from a former provision of the Florida Statutes to
 2875 one of the following offenses:
 2876 1. Any offense listed in s. 943.0435(1)(h)1., relating to
 2877 the registration of an individual as a sexual offender.
 2878 2. Section 393.135, relating to sexual misconduct with
 2879 certain developmentally disabled clients and the reporting of
 2880 such sexual misconduct.
 2881 3. Section 394.4593, relating to sexual misconduct with
 2882 certain mental health patients and the reporting of such sexual
 2883 misconduct.
 2884 4. Section 775.30, relating to terrorism.
 2885 5. Section 782.04, relating to murder.
 2886 6. Section 787.01, relating to kidnapping.
 2887 7. Any offense under chapter 800, relating to lewdness and
 2888 indecent exposure.

Page 155 of 156

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

591-03340A-17

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2889 8. Section 826.04, relating to incest.
 2890 9. Section 827.03, relating to child abuse, aggravated
 2891 child abuse, or neglect of a child.
 2892 Section 30. This act shall take effect October 1, 2017.

Page 156 of 156

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-19-17

Meeting Date

150

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name

Bob Gualtieri

Job Title

Sheriff of Pinellas County

Address

10750 Ulmerton Rd.

Street

Phone

727-582-6200

City

Largo

State

FL

Zip

33778

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)

4/19/17
Meeting Date

SB 150
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Buddy Jacobs

Job Title General Counsel Fla. Prosecuting Attorneys Assoc.

Address 961 687 Gateway Blvd.
Street
Fernandina Bch FL 32034
City State Zip

Phone _____

Email _____

Speaking: ☒ For ☒ Against ☐ Information

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

Representing State Attorneys of Fla.

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)

APPEARANCE RECORD

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

April 19, 2017

Meeting Date

150

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Chief Frank FabrizioJob Title Chief of PoliceAddress 2636 Mitcham DrivePhone 850-219-3631

Street

Tallahassee

City

State FL

Zip

Email bhoward@fpca.comSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing The Florida Police Chiefs AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

4-19-17

Meeting Date

150

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933

Street

Phone 352.682.2542

Gainesville, FL

City

32614

State

Zip

Email gnewburn@fam.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Families Against Mandatory Minimums

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)

19 Apr 17

Meeting Date

150

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall
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

APPEARANCE RECORD

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

4/19
Meeting Date

150
Bill Number (if applicable)

Topic REXITING / QDA

Amendment Barcode (if applicable)

Name SAZ NUZZO

Job Title VP POLICY

Address 100 N DUVAL ST.
Street

Phone 850-322-9941

TAH FL 32301
City State Zip

Email SNUZZO@JAMESMADISON.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing THE JAMES MADISON INST.

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)

4/19/17.
Meeting Date

150
Bill Number (if applicable)

Topic Criminal Offenses.

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 824 N. Duval St.

Phone

City FL 32303

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Right on Crime.

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

4-19-17
Meeting Date

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

150
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JESS McCARTY

Job Title ASST COUNTY ATTORNEY

Address 111 NW 1st St 2810
Street
City MIAMI State Zip 33128

Phone 305-979-7110
Email JESS.McCARTY@MIAMI.DADE.GOV

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MIAMI - DADE 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
APPEARANCE RECORD

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

4/19/2017

Meeting Date

150

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

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)

19 April 2017
Meeting Date

150
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Policy Director

Address 2868 Mahan Dr

Phone 850 878 2194

Tallahassee FL 32308
City State Zip

Email jill@myfbha.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Behavioral Health Association

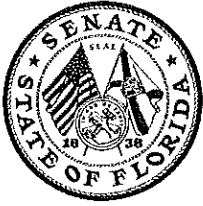
Appearing at request of Chair: ☐ Yes ☒ No

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

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Chair*
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Health Policy
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR LIZBETH BENACQUISTO

27th District

April 19, 2017

The Honorable Greg Stuebe, Chair
Senate Judiciary Committee
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Stuebe,

Please excuse me from attending the Senate Committee on Judiciary today, April 19th. I will be unable to attend. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 27

REPLY TO:

- ☐ 2310 First Street, Unit 305, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 400 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee Judge:

Started: 4/19/2017 1:35:07 PM

Ends: 4/19/2017 3:29:14 PM Length: 01:54:08

1:35:05 PM Meeting called to order by Chair Steube
1:35:09 PM Roll call by Administrative Assistant Joyce Butler
1:35:13 PM Quorum present
1:35:55 PM CS/SB 1044 presented by Senator Garcia
1:36:15 PM Amendment Barcode No. 819136 presented
1:37:55 PM Amendment Barcode No. 819136 adopted
1:38:12 PM Speaker Victoria Zepp, Florida Coalition for Children
1:40:19 PM Bryan Cherry, Florida Coalition for the Homeless waives in support
1:40:25 PM Barney Bishop, Florida Smart Justice Alliance waives in support
1:40:30 PM Diana Ragbeer, The Children's Trust waives in support
1:40:42 PM Senator Garcia closes on CS/SB 1044
1:41:14 PM Roll call by Administrative Assistant Joyce Butler
1:41:23 PM CS/CS/SB 1044 reported favorably
1:41:46 PM SB 634 presented by Senator Campbell
1:42:24 PM Corinne Mixon, Florida Academy of Physicians Assistants waives in support
1:42:30 PM Barney Bishop, Florida Smart Justice Alliance waives in support
1:42:38 PM Alisa LaPolt, Florida Nurses Association waives in support
1:42:43 PM Speaker Brian Pitts, Justice-2-Jesus
1:44:25 PM Senator Campbell waives close on SB 634
1:44:31 PM Roll call by Administrative Assistant Joyce Butler
1:44:33 PM SB 634 reported favorably
1:44:55 PM SB 1370 presented by Senator Perry
1:45:15 PM Amendment Barcode No. 665466 presented
1:45:32 PM Amendment adopted
1:45:37 PM Question by Senator Powell
1:45:42 PM Response by Senator Perry
1:46:03 PM Follow-up by Senator Powell
1:46:10 PM Response by Senator Perry
1:46:33 PM Follow-up by Senator Powell
1:46:43 PM Response by Senator Perry
1:47:18 PM Question by Senator Gibson
1:47:26 PM Response by Senator Perry
1:47:52 PM Follow-up by Senator Gibson
1:48:11 PM Response by Senator Perry
1:48:22 PM Brian Pitts waives in support
1:48:38 PM Debate by Senator Flores
1:49:03 PM Debate by Senator Mayfield
1:49:29 PM Senator Perry waives close on CS/SB 1370
1:49:35 PM Roll call by Administrative Assistant Joyce Butler
1:49:41 PM CS/SB 1370 reported favorably
1:50:02 PM CS/SB 1352 presented by Senator Young
1:51:14 PM Amendment Barcode No. 655586 presented

1:52:51 PM Amendment adopted
1:52:56 PM Question from Senator Gibson
1:53:06 PM Response by Senator Young
1:53:14 PM Follow-up question from Senator Gibson
1:53:31 PM Response by Senator Young
1:54:18 PM Follow-up question from Senator Gibson
1:54:23 PM Response by Senator Young
1:55:05 PM Follow-up question from Senator Gibson
1:55:10 PM Response by Senator Young
1:57:13 PM Question from Senator Thurston
1:57:27 PM Response by Senator Young
1:57:33 PM Follow-up question from Senator Thurston
1:58:01 PM Response by Senator Young
1:58:32 PM Follow-up question from Senator Thurston
1:58:38 PM Response by Senator Young
1:59:50 PM Question from Senator Powell
1:59:57 PM Response by Senator Young
2:00:04 PM Question from Senator Thurston
2:00:29 PM Response by Senator Young
2:01:05 PM Question from Senator Gibson
2:01:20 PM Response by Senator Young
2:01:38 PM Follow-up question from Senator Gibson
2:02:22 PM Response by Senator Young
2:02:58 PM Speaker Hon. Robert Cohen, Division of Administrative Hearings
2:06:59 PM Question from Senator Thurston
2:07:04 PM Response by Hon. Cohen
2:07:55 PM Follow-up question from Senator Thurston
2:08:00 PM Response by Hon. Cohen
2:08:18 PM Follow-up question from Senator Thurston
2:08:21 PM Response by Hon. Cohen
2:09:00 PM Question from Senator Gibson
2:09:14 PM Response by Hon. Cohen
2:09:48 PM Follow-up question from Senator Gibson
2:10:34 PM Response by Hon. Cohen
2:11:14 PM Follow-up question from Senator Gibson
2:11:18 PM Response by Hon. Cohen
2:11:28 PM Speaker Fred Dudley
2:13:26 PM Brian Pitts waives in support
2:13:42 PM Senator Young waives close on CS/SB 1352
2:13:47 PM Roll call by Administrative Assistant Joyce Butler
2:13:50 PM CS/CS/SB 1352 reported favorably
2:14:23 PM SB 1160 presented by Senator Bradley
2:16:17 PM Question from Senator Gibson
2:16:21 PM Response by Senator Bradley
2:18:10 PM Follow-up question from Senator Gibson
2:18:14 PM Response by Senator Bradley
2:19:31 PM Follow-up question from Senator Gibson
2:19:37 PM Response by Senator Bradley
2:20:19 PM Question from Senator Powell
2:20:26 PM Response by Senator Bradley
2:21:09 PM Follow-up question from Senator Powell
2:21:23 PM Response by Senator Bradley

2:22:01 PM Follow-up question from Senator Powell
2:22:06 PM Response by Senator Bradley
2:22:55 PM Follow-up question from Senator Powell
2:23:01 PM Response by Senator Bradley
2:23:59 PM Jane Jordan, League of Women Voters waives in support
2:24:14 PM Senator Bradley waives close on SB 1160
2:24:19 PM Roll call by Administrative Assistant Joyce Butler
2:24:40 PM SB 1160 reported favorably
2:24:58 PM Senator Powell motions to show he votes negative on SB 1352
2:25:09 PM Senator Passidomo presents CS/SB 200
2:25:48 PM Amendment Barcode No. 596794 presented
2:26:48 PM Question from Senator Flores
2:27:36 PM Response by Senator Passidomo
2:28:03 PM Follow-up question from Senator Flores
2:29:22 PM Response by Senator Passidomo
2:30:42 PM Follow-up question from Senator Flores
2:31:44 PM Speaker Andrea Reid, Florida Bar Family Law Section
2:35:55 PM Question from Senator Garcia
2:36:19 PM Response by Ms. Reid
2:37:01 PM Follow-up question from Senator Garcia
2:37:08 PM Response by Ms. Reid
2:37:27 PM Follow-up question from Senator Garcia
2:37:36 PM Response by Ms. Reid
2:38:17 PM Follow-up question from Senator Garcia
2:38:41 PM Question from Senator Thurston
2:39:22 PM Response by Ms. Reid
2:39:34 PM Follow-up question from Senator Thurston
2:39:44 PM Response by Ms. Reid
2:40:00 PM Follow-up question from Senator Thurston
2:40:03 PM Response by Ms. Reid
2:40:35 PM Amendment Barcode No. 596794 adopted
2:40:48 PM Speaker Mike Cusick, Safe Family Program of Southwest Florida
2:44:03 PM Question from Senator Thurston
2:44:09 PM Response by Mr. Cusick
2:44:21 PM Speaker Victoria Zepp, Florida Coalition for Children
2:46:11 PM Question from Senator Flores
2:46:17 PM Response by Ms. Zepp
2:46:24 PM Question from Senator Flores
2:46:30 PM Response by Ms. Zepp
2:47:06 PM Question from Senator Bracy
2:47:19 PM Response by Ms. Zepp
2:47:59 PM Follow-up question from Senator Bracy
2:48:03 PM Response by Ms. Zepp
2:48:39 PM Follow-up question from Senator Bracy
2:48:48 PM Response by Ms. Zepp
2:49:03 PM Question from Senator Gibson
2:49:07 PM Response by Ms. Zepp
2:50:07 PM Amber Kelly, Florida Family Action waives in support
2:51:06 PM Bill Bunkley, Florida Ethics Religious Liberty Commission waives in support
2:51:11 PM Alan Abromowitz, GAL Program waives in support
2:51:15 PM Speaker Brian Pitts, Justice-2-Jesus
2:55:22 PM Debate by Senator Garcia

2:55:27 PM Debate by Senator Flores
2:57:54 PM Debate by Senator Thurston
2:59:31 PM Debate by Senator Bracy
2:59:52 PM Senator Passidomo waives close on CS/SB 200
2:59:54 PM Roll call by Administrative Assistant Joyce Butler
2:59:58 PM CS/CS/SB 200 reported favorably
3:00:20 PM CS/SB 1520 presented by Senator Latvala
3:01:36 PM Robert Rhinehart, Executive Management Services, Inc. waives in support
3:01:44 PM Travis Moore, Community Associations Institute waives in support
3:01:48 PM Senator Latvala waives close on CS/SB 1520
3:01:53 PM Roll call by Administrative Assistant Joyce Butler
3:02:11 PM CS/SB 1520 reported favorably
3:02:27 PM CS/SB 744 presented by Senator Passidomo
3:02:49 PM Amendment Barcode No. 845968 presented
3:03:25 PM Amendment adopted
3:03:53 PM Amendment Barcode No. 432334 presented
3:03:58 PM Amendment adopted
3:04:02 PM Amendment Barcode No. 484612 presented
3:04:24 PM Amendment adopted
3:04:34 PM Travis Moore, Community Associations Institute waives in support
3:04:39 PM Speaker Buddy Dewar, FL Fire Sprinkler Association
3:07:24 PM Fred Dudley waives in support of Amendment Barcode 845968
3:07:36 PM Speaker Jon Pasqualone, FL Fire Marshalls
3:08:42 PM Yeline Goin waives in support
3:08:47 PM William Stander, American Fire Sprinkle Association waives in opposition
3:08:57 PM Malanie Bostick, Florida Institute of CPAs waives in support
3:09:04 PM Senator Passidomo waives close on CS/SB 744
3:09:07 PM Roll call by Administrative Assistant Joyce Butler
3:09:25 PM CS/CS/SB 744 reported favorably
3:09:29 PM CS/SB 1046 presented by Senator Passidomo
3:10:08 PM Senator Passidomo waives close on CS/SB 1046
3:10:08 PM Roll call by Administrative Assistant Joyce Butler
3:10:12 PM CS/SB 1046 reported favorably
3:10:37 PM CS/SB 150 presented by Senator Steube
3:11:10 PM Amendment Barcode No. 152060 presented
3:11:30 PM Amendment adopted
3:11:59 PM Speaker Bob Gualtieri, Florida Sheriffs Association
3:13:42 PM Speaker Buddy Jacobs, State Attorneys of Florida
3:14:35 PM Speaker Chief Frank Fabrizio, Florida Police Chiefs Association
3:15:24 PM Greg Newburn, Families Against Mandatory Minimums waives in support
3:15:37 PM Speaker Barney Bishop, Florida Smart Justice Association
3:17:20 PM Sal Nuzzo, The Jones Madison Institute waives in support
3:17:26 PM Chelsea Murphy, Right on Crime waives in support
3:17:29 PM Jess McCarty, Assistant County Attorney, Miami-Dade County waives in support
3:17:32 PM Brian Pitts, Justice-2-Jesus waives in support
3:17:37 PM Jill Gran, Florida Behavioral Health Association waives in support
3:17:49 PM Senator Steube waives close on CS/SB 150
3:17:51 PM Roll call by Administrative Assistant Joyce Butler
3:17:55 PM CS/CS/SB 150 reported favorably
3:18:15 PM SB 12 presented by Senator Steube
3:18:31 PM Lance Block waives in support
3:18:37 PM Matt Forrest waives in support

3:18:40 PM Speaker Brian Pitts, Justice-2-Jesus
3:20:04 PM Senator Steube waives close
3:20:07 PM Roll call by Administrative Assistant Joyce Butler
3:20:09 PM SB 12 reported favorably
3:20:29 PM SB 294 presented by Senator Bracy
3:20:39 PM Amendment Barcode No. 740772 presented
3:21:04 PM Amendment adopted
3:21:09 PM Travis Moore, Community Associations Institute waives in support
3:21:18 PM Melanie Bostick, Florida Institute of CPAs waives in support
3:21:23 PM Justin Thomas, Florida Institute of CPAs waives in support
3:21:30 PM Senator Bracy waives close
3:21:31 PM Roll call by Administrative Assistant Joyce Butler
3:21:36 PM CS/SB 294 reported favorably
3:21:47 PM CS/SB 970 presented by Senator Bracy
3:22:08 PM Barney Bishop, Florida Smart Justice Alliance waives in support
3:22:12 PM Bill Bunkley, Florida Ethics and Religious Liberty Commission waives in support
3:22:18 PM Amber Kelly, Florida Family Association waives in support
3:22:23 PM Senator Bracy waives close
3:22:25 PM Roll call by Administrative Assistant Joyce Butler
3:22:38 PM CS/SB 970 reported favorably
3:22:47 PM CS/SB 972 presented by Senator Bracy
3:22:57 PM Amendment Barcode No. 271152 presented
3:23:21 PM Amendment Barcode No. 273830 presented by Senator Steube
3:23:46 PM Speaker Lt. Rob Vitaliano, Brevard County Sheriff's Office
3:24:57 PM Speaker Agent Mike Spadafora, Brevard County Sheriff's Office
3:26:19 PM CJ Johnson, Community Champions waives in support
3:26:24 PM Nicole Whittaker waives in support
3:26:29 PM Dean LeBoeuf, Brooks & LeBoeuf waives in support
3:26:37 PM Senator Steube waives close on Amendment
3:26:49 PM Brian Pitts, Justice-2-Jesus waives in support
3:26:57 PM Dean LeBoeuf, Brooks & LeBoeuf waives in support
3:27:07 PM Nicole Whittaker waives in support
3:27:10 PM Bill Bunkley, Florida Ethics & Religious Liberty Commission waives in support
3:27:13 PM Amber Kelly, Florida Family Action waives in support
3:27:15 PM Victoria Zepp, Florida Coalition for Children waives in support
3:27:21 PM Senator Bracy closes
3:27:35 PM Roll call by Administrative Assistant Joyce Butler
3:27:38 PM CS/CS/SB 972 reported favorably
3:28:03 PM Senator Thurston to be shown favorably on CS/CS/SB 1044, SB 634, CS/SB 1520 and CS/SB 1046
3:28:14 PM Senator Bracy as unfavorable on 1370
3:28:22 PM Senator Powell to be shown favorable on SB 12
3:28:34 PM Senator Mayfield moves that CS/CS/SJR 134 and SB 1164 be TP'd
3:29:06 PM Senator Flores moves to adjourn