

Tab 1	SB 14 by Altman; Relief of the Estate of Dr. Sherrill Lynn Aversa by the Department of Transportation					
280610	A	S	RCS	JU, Ring	Delete L.57 - 63:	02/10 10:03 AM
Tab 2	SB 30 by Garcia; (Identical to H 3503) Relief of C.M.H. by the Department of Children and Families					
391648	A	S	RCS	JU, Bean	Delete L.10 - 92:	02/10 10:03 AM
Tab 3	SB 48 by Flores; (Identical to H 3529) Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families					
196086	A	S	RCS	JU, Brandes	Delete L.155 - 156:	02/10 10:03 AM
Tab 4	SB 62 by Montford; Relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office					
Tab 5	SB 16 by Joyner (CO-INTRODUCERS) Smith; (Similar to H 3513) Relief of Dennis Darling, Sr., and Wendy Smith by the State of Florida					
Tab 6	SB 38 by Soto; (Identical to H 3521) Relief of J.D.S. by the Agency for Persons with Disabilities					
Tab 7	SB 20 by Diaz de la Portilla; (Similar to CS/H 3517) Relief of Zaldivar and Campos by Orange County					
Tab 8	CS/SB 342 by BI, Gibson; (Compare to CS/H 0237) Renters Insurance					
Tab 9	CS/SB 730 by CF, Margolis; Professional Guardians					
965422	A	S	RCS	JU, Ring	Delete L.17:	02/10 10:03 AM
Tab 10	CS/SB 948 by CM, Richter; (Similar to CS/H 0739) Secondhand Dealers					
847994	A	S	WD	JU, Bean	Delete L.103 - 127:	02/09 07:44 PM
Tab 11	CS/SB 1220 by GO, Garcia; (Similar to H 1021) Public Records					
859582	D	S	RCS	JU, Bean	Delete everything after	02/10 10:03 AM
Tab 12	SB 1436 by Braynon; (Compare to CS/H 0679) Public Records					
283512	A	S	RCS	JU, Soto	Delete L.30 - 90:	02/10 10:03 AM
Tab 13	SB 1692 by Altman; (Similar to CS/H 0821) Protection of Veterans					
464856	D	S	RCS	JU, Bean	Delete everything after	02/10 10:03 AM
Tab 14	SB 668 by Stargel; (Compare to CS/H 0455) Family Law					
306652	D	S		JU, Soto	Delete everything after	02/08 06:06 PM
399458	A	S		JU, Diaz de la Portilla	Delete L.242 - 257:	02/07 05:22 PM
Tab 15	SB 794 by Ring; (Similar to CS/H 0615) Dissolution of Marriage Parenting Plans					
943498	A	S	RCS	JU, Ring	Delete L.29:	02/10 10:03 AM
Tab 16	SB 1034 by Simmons; (Similar to CS/H 1431) Health Care Providers					
582748	A	S		JU, Bean	Delete L.85:	02/08 07:01 PM

Tab 17 CS/SB 1118 by BI, Simmons; (Compare to CS/CS/1ST ENG/H 0509) Transportation Network Company Insurance						
791940	A	S	UNFAV	JU, Brandes	Delete L.168 - 188:	02/11 10:46 AM
221222	AA	S	FAV	JU, Brandes	Delete L.7 - 8:	02/11 10:46 AM
540696	A	S	RCS	JU, Brandes	Delete L.306:	02/11 10:46 AM
Tab 18 SB 1298 by Brandes; (Similar to CS/H 1181) Bad Faith Assertions of Patent Infringement						
618428	D	S		JU, Brandes	Delete everything after	02/08 06:06 PM
632174	AA	S		JU, Brandes	Delete L.173.	02/09 01:02 PM
Tab 19 SB 120 by Abruzzo (CO-INTRODUCERS) Sobel, Soto, Latvala, Margolis, Hutson, Bullard, Ring, Thompson, Clemens, Gibson; (Similar to H 0045) Prohibited Discrimination						
828464	D	S		JU, Bean	Delete everything after	02/05 01:48 PM
744324	AA	S		JU, Stargel	btw L.253 - 254:	02/08 11:53 AM
873568	D	S		JU, Soto	Delete everything after	02/05 01:48 PM
906078	AA	S	UNFAV	JU, Stargel	btw L.255 - 256:	02/09 09:03 AM
131762	D	S	UNFAV	JU, Simmons	Delete everything after	02/10 10:03 AM
978134	AA	S	UNFAV	JU, Stargel	btw L.255 - 256:	02/10 10:03 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Diaz de la Portilla, Chair
Senator Ring, Vice Chair

MEETING DATE: Tuesday, February 9, 2016

TIME: 4:00—6:00 p.m.

PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Diaz de la Portilla, Chair; Senator Ring, Vice Chair; Senators Bean, Benacquisto, Brandes, Joyner, Simmons, Simpson, Soto, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 14 Altman	Relief of the Estate of Dr. Sherrill Lynn Aversa by the Department of Transportation; Providing for the relief of the Estate of Dr. Sherrill Lynn Aversa; providing an appropriation to compensate the Estate of Dr. Sherrill Lynn Aversa for Dr. Aversa's death as a result of the negligence of the Department of Transportation; requiring the Executive Office of the Governor to establish spending authority from unappropriated trust fund balances of the department for compensation to the Estate of Dr. Sherrill Lynn Aversa; providing attorney fees and costs and a limitation on such fees and costs, etc. SM JU 02/09/2016 Fav/CS ATD AP	Fav/CS Yeas 9 Nays 1
2	SB 30 Garcia (Identical H 3503)	Relief of C.M.H. by the Department of Children and Families; Providing for the relief of C.M.H.; providing an appropriation to compensate C.M.H. for injuries and damages sustained as a result of the negligence of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing a limitation on the payment of fees and costs, etc. SM JU 02/09/2016 Fav/CS AHS AP	Fav/CS Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 9, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 48 Flores (Identical H 3529)	Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families; Providing for the relief of "Survivor" and the Estate of "Victim"; providing an appropriation to compensate Survivor and the Estate of Victim for injuries and damages sustained as result of the negligence of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing a limitation on the payment of compensation, fees, and costs, etc. SM JU 02/09/2016 Fav/CS AHS AP	Fav/CS Yeas 10 Nays 0
4	SB 62 Montford	Relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office; Providing for the relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of an employee of the Pasco County Sheriff's Office; providing a limitation on the payment of fees and costs, etc. SM JU 02/09/2016 Favorable CA FP	Favorable Yeas 9 Nays 1
5	SB 16 Joyner (Similar H 3513)	Relief of Dennis Darling, Sr., and Wendy Smith by the State of Florida ; Providing for the relief of Dennis Darling, Sr., and Wendy Smith, parents of Devaughn Darling, deceased; providing an appropriation from the General Revenue Fund to compensate the parents for the loss of their son, Devaughn Darling, whose death occurred while he was engaged in football preseason training on the Florida State University campus; providing a limitation on the payment of fees and costs, etc. SM JU 02/09/2016 Favorable AED AP	Favorable Yeas 9 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 9, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 38 Soto (Identical H 3521)	Relief of J.D.S. by the Agency for Persons with Disabilities; Providing for the relief of J.D.S.; providing an appropriation from the General Revenue Fund to compensate J.D.S. for injuries and damages sustained as a result of negligence by the Agency for Persons with Disabilities, as successor agency of the Department of Children and Family Services; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act; providing a limitation on the payment of fees and costs, etc. SM JU 02/09/2016 Favorable AHS AP	Favorable Yeas 9 Nays 0
7	SB 20 Diaz de la Portilla (Similar CS/H 3517)	Relief of Zaldivar and Campos by Orange County; Providing for the relief of Rafael Zaldivar and Kyoko Zaldivar, parents of Alex Zaldivar, deceased, individually and as co-personal representatives of the Estate of Alex Zaldivar, and Brienna Campos and Remington Campos by Orange County; providing for an appropriation to compensate Rafael Zaldivar and Kyoko Zaldivar for the death of Alex Zaldivar and to compensate Brienna Campos and Remington Campos for the injuries and damages they sustained as a result of the negligence of Orange County; providing a limitation on the payment of fees and costs, etc. SM JU 02/09/2016 Favorable CA FP	Favorable Yeas 10 Nays 0
8	CS/SB 342 Banking and Insurance / Gibson (Similar S 94, Compare CS/H 237)	Renters Insurance; Requiring a residential rental agreement to specify whether renters insurance is required; specifying provisions that must be included if insurance is or is not required; providing that failure to include a certain notice in a rental agreement does not create a private cause of action or nullify any part of the rental agreement, etc. BI 01/26/2016 Fav/CS JU 02/09/2016 Favorable RC	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 9, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	CS/SB 730 Children, Families, and Elder Affairs / Margolis	Professional Guardians; Limiting a professional guardian's appointments to no more than 50 wards for which the professional guardian receives compensation; prohibiting a professional guardian that has more than 50 wards for which the professional guardian receives compensation from being appointed another ward after a certain date until the professional guardian has fewer than 50 wards, etc. CF 01/20/2016 Fav/CS JU 02/09/2016 Fav/CS FP	Fav/CS Yeas 10 Nays 0
10	CS/SB 948 Commerce and Tourism / Richter (Similar CS/H 739)	Secondhand Dealers; Requiring that the record of a secondhand dealer transaction include digital photos of the items; authorizing an action in replevin against a secondhand dealer based on a right of possession to stolen goods; providing that a secondhand dealer commits a noncriminal violation when an owner or lienor prevails in a replevin action under certain circumstances, etc. CM 01/19/2016 Fav/CS JU 02/09/2016 Favorable FP	Favorable Yeas 10 Nays 0
11	CS/SB 1220 Governmental Oversight and Accountability / Garcia (Similar H 1021)	Public Records; Specifying the circumstances under which a court may assess and award the reasonable costs of enforcement against an agency in a civil action to enforce ch. 119, F.S., etc. GO 01/26/2016 Fav/CS JU 02/09/2016 Fav/CS FP	Fav/CS Yeas 7 Nays 3
12	SB 1436 Braynon (Compare CS/H 679)	Public Records; Providing an exemption from public records requirements for certain official records relating to matters or cases governed by the Florida Rules of Family Law; providing an exemption from public records requirements for a petition for an injunction that is dismissed and the petition's contents; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. JU 02/09/2016 Fav/CS GO RC	Fav/CS Yeas 9 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 9, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	SB 1692 Altman (Similar CS/H 821)	Protection of Veterans; Prohibiting an agent or attorney retained for purposes of a veteran's claims assistance from seeking reimbursement for a specified assessment from the claimant, etc. JU 02/09/2016 Fav/CS ACJ FP	Fav/CS Yeas 10 Nays 0
14	SB 668 Stargel (Compare CS/H 455, H 553, CS/S 250)	Family Law; Requiring a court to consider certain alimony factors and make specific written findings of fact under certain circumstances; requiring a court to make specified findings before ruling on a request for alimony; revising the factors that are used to determine the best interests of a child; prohibiting a court from changing the duration of alimony; requiring that a child support award be adjusted to reduce the combined alimony and child support award under certain circumstances, etc. JU 02/09/2016 Not Considered ACJ AP	Not Considered
15	SB 794 Ring (Similar CS/H 615)	Dissolution of Marriage Parenting Plans; Requiring that parenting plans provide that either parent may consent to mental health treatment for the child; providing that the consenting parent shall be financially responsible for certain costs of such treatment, etc. JU 02/09/2016 Fav/CS CF RC	Fav/CS Yeas 9 Nays 1
16	SB 1034 Simmons (Similar CS/H 1431, Compare CS/S 178)	Health Care Providers; Revising the definitions of the terms "contract" and "health care provider"; extending sovereign immunity to employees or agents of a health care provider that executes a contract with a governmental contractor; requiring the posting of notice that a specified health care provider is an agent of a governmental contractor; revising the definition of the term "officer, employee, or agent" to include employees or agents of a health care provider, etc. HP 01/19/2016 Favorable JU 02/09/2016 Not Considered RC	Not Considered

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 9, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	CS/SB 1118 Banking and Insurance / Simmons (Compare CS/CS/H 509)	Transportation Network Company Insurance; Requiring a statement in certain crash reports as to whether any driver at the time of the accident was providing a prearranged ride or logged into a digital network of a transportation network company; requiring a transportation network company driver, or the transportation network company on the driver's behalf, to maintain certain primary automobile insurance under certain circumstances; requiring a transportation network company to maintain certain insurance and obligate the insurer to defend a certain claim if specified insurance by the driver lapses or does not provide the required coverage, etc. BI 01/19/2016 Fav/CS JU 02/09/2016 Fav/CS AP	Fav/CS Yeas 7 Nays 3
18	SB 1298 Brandes (Similar CS/H 1181)	Bad Faith Assertions of Patent Infringement; Prohibiting a person from sending a demand letter to a target which makes a bad faith assertion of patent infringement; specifying that the Patent Troll Prevention Act does not create a private right of action; deleting a provision stating that a violation is an unfair or deceptive trade practice under ch. 501, F.S., etc. JU 02/09/2016 Not Considered ACJ AP	Not Considered
Pending Reconsideration:			
19	SB 120 Abruzzo (Similar H 45)	Prohibited Discrimination; Creating the "Florida Competitive Workforce Act"; revising provisions to include sexual orientation and gender identity or expression and the perception of race, color, religion, sex, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status as impermissible grounds for discrimination; providing an exception for constitutionally protected free exercise of religion, etc. JU 01/26/2016 Temporarily Postponed JU 02/09/2016 Abandoned reconsider (Unfavorable) GO AGG FP	Pending Motion to Reconsider Abandoned -- Final Vote: Unfavorable Yeas 5 Nays 5

Bills that are not considered or temporarily postponed on Monday will be considered on Tuesday.

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 9, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
-----	-------------------------	--	------------------

Other Related Meeting Documents



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
1/6/16	SM	FAV/4 amends
02/11/16	JU	Fav/CS
	ATD	
	AP	

January 6, 2016

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 14** – Judiciary Committee and Senator Thad Altman
Relief of Estate of Dr. Sherrill Lynn Aversa

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$650,000 FROM UNAPPROPRIATED TRUST FUNDS OF THE DEPARTMENT OF TRANSPORTATION FOR THE DEATH OF THE CLAIMANT IN AN AUTOMOBILE ACCIDENT CAUSED WHEN A LADDER FELL OFF A DEPARTMENT TRUCK.

CURRENT STATUS:

Before a prior legislative session, Judge Bram D. E. Canter, 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. After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported FAVORABLY.

Judge Canter's report was reissued for SB 30 (2012), the most recent version of the claim bill for which a report is available. The 2012 report is attached as an addendum to this document.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Thomas C. Cibula. My responsibilities were to review the records relating to the claim

bill, be available for questions from Senators, and determine whether any changes have occurred since the hearing before Judge Canter, which if known at the hearing might have significantly altered the findings or recommendation in the report.

As part of my review of this matter, counsel for the parties were asked to describe any developments that have occurred since the original special master hearing. After reviewing the responses, I find that there are no new facts that would justify altering the original findings. Additionally, the 2012 claim bill on which Judge Canter's report is based is effectively identical to the claim bill filed for the 2016 Legislative Session.

The 2016 bill, however, retains several errors relating to the amount of the consent judgment, prior payments by the Department of Transportation, and the amount that should be paid under the claim bill. These errors were identified in Judge Canter's special master report and recognized in correspondence from the parties. Accordingly, Senate may wish to revise the bill as follows:

Delete line 44

and insert:

amount of \$800,000 solely against the department, with no

Delete lines 46-47

and insert:

WHEREAS, the department has paid \$150,000 to the Estate of Dr. Aversa consistent with the statutory limits of liability set forth in

Delete line 57

and insert:

\$650,00 to a new category titled "Relief: Estate of Dr.

Delete lines 62-63

and insert:

a warrant, pursuant to the Stipulated Settlement Agreement executed by the Department of Transportation and the personal representative of the estate of Dr. Sherrill Lynn Aversa, in the amount of \$650,000 upon funds of the Department of

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Judiciary:

The CS corrects errors in the bill relating to the amount of the underlying judgment and the amount of the appropriation. As a result of the corrections, the amount of the appropriation in the bill is reduced to \$650,000 from \$697,000.



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
12/1/11	SM	Fav/1 amendment

December 1, 2011

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

Re: **SB 30 (2012)** – Senator Thad Altman
Relief of Sherrill Lynn Aversa

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$650,000 FROM UNAPPROPRIATED TRUST FUNDS OF THE DEPARTMENT OF TRANSPORTATION FOR THE DEATH OF THE CLAIMANT IN AN AUTOMOBILE ACCIDENT CAUSED WHEN A LADDER FELL OFF A DEPARTMENT TRUCK.

FINDINGS OF FACT:

On June 21, 1999, Dr. Sherrill Lynn Aversa, 33 years old, was traveling southbound on I-75 in Tampa in rush hour traffic. She was wearing her seatbelt. At the same time, a Department of Transportation (DOT) truck driven by DOT employee Domingo Alvarado was traveling northbound. A 12-foot extension ladder on the DOT truck was not well-secured and fell off the truck into the path of a vehicle driven by Roxann Hodge. Ms. Hodge veered sharply left to avoid the ladder and went into the median where she lost control of her vehicle. Ms. Hodge's car crossed the median into the southbound traffic and struck Dr. Aversa's car head-on. Dr. Aversa was killed instantly. Three other vehicles were also involved in the crash, but those drivers were not seriously injured.

When Mr. Alvarado realized that the ladder had fallen off his truck, he pulled off the roadway, backed up, and retrieved the ladder, which had come to a rest in the center northbound lane. Mr. Alvarado re-secured the ladder and then proceeded on his way. He said that he was unaware that his ladder caused a crash, although he acknowledged seeing smoke and commotion in the southbound lanes of I-75. Later that evening, Mr. Alvarado saw news coverage of the crash and called the Florida Highway Patrol to report his probable involvement.

Mr. Alvarado was cited for a violation of section 316.520, Florida Statutes, for failing to secure a load. DOT suspended him for four weeks without pay for violating DOT's policy regarding securing equipment on his truck.

Dr. Aversa was survived by her husband, Dr. Lee Crandall. They had no children. Dr. Aversa was an epidemiologist at the University of Miami Medical School and a leading researcher in the field of HIV/AIDS. An economist's report estimated that Dr. Aversa's economic damages (lost wages, etc.) were approximately \$2.6 million.

Dr. Crandall created a non-profit foundation to honor Dr. Aversa. The foundation awards scholarships to assist epidemiology students in completing their doctoral degrees. Dr. Crandall testified at the claim bill hearing that it is his intention to deposit most of the funds awarded from this claim bill into the foundation in order to endow the scholarships in perpetuity.

The other injured drivers settled with DOT for a total of \$50,000. That left \$150,000 under the sovereign immunity cap to pay Dr. Aversa's estate. DOT paid \$150,000 to Dr. Aversa's estate. All but \$727 was used to pay for attorney's fees and costs. Dr. Crandall received approximately \$110,000 from a life insurance policy, \$100,000 in underinsured motorist coverage, and \$10,000 in settlement proceeds from Ms. Hodge's insurer. Some of these funds were used to pay off Dr. Aversa's student loans and some will be transferred to the foundation once Dr. Aversa's estate is closed.

LITIGATION HISTORY:

Dr. Crandall, as husband and personal representative of Dr. Aversa's estate, filed an action for negligence against DOT in the circuit court for Hillsborough County in 2000. In May 2003, on the eve of trial, the parties entered into a stipulated settlement agreement wherein DOT agreed to pay Dr. Aversa's estate a total of \$800,000. DOT has already paid \$150,000, leaving \$650,000 to be paid by way of this claim bill. As a part of the settlement agreement, DOT agreed to cooperate and support the passage of a claim bill in the amount of \$650,000.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine, based on the evidence presented to the Special Master, whether DOT is liable in negligence for the death of the Claimant and, if so, whether the amount of the claim is reasonable.

Mr. Alvarado had a duty to secure the load to his truck pursuant to section 316.520, Florida Statutes, and DOT policy. His failure to do so was the direct and proximate cause of the crash that killed Dr. Aversa. Mr. Alvarado was an employee of DOT acting in the course and scope of his employment at the time of the crash. His negligence is therefore attributable to DOT.

The amount of the claim is fair and reasonable.

ATTORNEY'S FEES:

Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. There is an agreement to pay the lobbyist's fee from the claim bill proceeds, which could conflict with the requirement in SB 30 that the lobbyist's fee must be paid from the 25 percent attorney's fees.

OTHER ISSUES:

DOT states that the claim should be paid from the State Transportation Fund.

There are some errors in SB 30. The bill states that the consent judgment was for \$797,500. The correct figure is \$800,000. The bill states that DOT paid \$100,000 to Dr. Aversa's estate, but DOT paid \$150,000.

SPECIAL MASTER'S FINAL REPORT – SB 30 (2012)

December 1, 2011

Page 4

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 30 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Thad Altman
Debbie Brown, Interim Secretary of the Senate
Counsel of Record



280610

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 57 - 63
and insert:
\$650,000 to a new category titled "Relief: Estate of Dr.
Sherrill Lynn Aversa" as compensation to the Estate of Dr.
Sherrill Lynn Aversa for the death of Dr. Sherrill Lynn Aversa,
which amount includes attorney fees and costs.

Section 3. The Chief Financial Officer is directed to draw
a warrant, pursuant to the stipulated settlement agreement
executed by the Department of Transportation and the personal



280610

representative of the estate of Dr. Sherrill Lynn Aversa, in the
amount of \$650,000 upon funds of the Department of

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

And the title is amended as follows:

Delete lines 44 - 47

and insert:

amount of \$800,000 solely against the department, with no
finding of comparative negligence against any other party, and

WHEREAS, the department has paid \$150,000 to the Estate of
Dr. Aversa consistent with the statutory limits of liability set
forth in



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic
Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

February 2, 2016

The Honorable Miguel Diaz de la Portilla
Senate Committee on Judiciary, Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Diaz de la Portilla:

I respectfully request that SB 14 related to *Relief of the Estate of Dr. Eversa*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman". The signature is written in a cursive style.

Thad Altman

CC: Tom Cibula, Staff Director, 515 Knott Building
Joyce Butler, Committee Administrative Assistant

TA/dw

REPLY TO:

- ☐ 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- ☐ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



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
01/13/16	SM	Favorable
02/11/16	JU	Fav/CS
	AHS	
	AP	

January 13, 2016

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 30** – Judiciary Committee and Senator Rene Garcia
HB 3503 – Representative Jimmie Smith
Relief of C.M.H by the Department of Children and Families

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$5,000,000 PREDICATED ON THE ENTRY OF A JURY AWARD IN FAVOR OF CHRISTOPHER HANN AND THERESA HANN, INDIVIDUALLY, AND AS NAUTRAL GUARDIANS OF C.M.H., A MINOR CHILD, DUE TO THE NEGLIGENCE OF THE DEPARTMENT OF CHILDREN AND FAMILIES.

CURRENT STATUS:

On November 19, 2014, Barbara M. Crosier, serving as a Senate Special Master, held a de novo hearing on a previous version of this bill, SB 58. 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 the amount to be paid amended to \$2.5 million.

The jury awarded \$9.5 million (\$4.75 million assessed against DCF) for past and future pain and suffering. Based on a lack of objective evidence in the record, a 50 percent reduction of DCF's obligation or \$2.375 million may be a more appropriate amount to be paid for the non-economic damages. A corresponding reduction of 50 percent of DCF's share of the economic damages (\$125,000) would be appropriate.

It was further recommended that the fund be paid into a trust established for C.M.H. in equal installments over 10 years to pay for expenses related to education, psycho-therapies and living expenses. Any funds remaining in the trust after 10 years would be distributed in full to C.M.H. A copy of the report is attached as an addendum to this report.

PRIOR LEGISLATIVE HISTORY: Senate Bill 58, by Senator Simpson and HB 3537 by Rep. Smith were filed during the 2015 Legislative Session. The Senate Bill was amended by the Judiciary Committee to require funds paid to C.M.H. be placed in an irrevocable trust fund. The Senate Bill, as amended passed the Appropriations Subcommittee on Health and Human Services; however, the bill died in the Senate Appropriations Committee.

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report filed December 18, 2014.

RECOMMENDATIONS: For the reasons set forth above the undersigned recommends that Senate Bill 30 (2016) be reported favorably with the amounts to be paid amended to \$2.375 million for non-economic damages and \$125,000 for economic damages to be paid by the Department of Children and Families.

Respectfully submitted,

Barbara M. Crosier
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Judiciary:

The committee substitute revises the “whereas clauses” in the bill in a manner that deletes or downgrades the more egregious allegations of misconduct by the Department of Children and Families.



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location

302 Capitol

Mailing Address

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

DATE	COMM	ACTION
12/18/14	SM	Fav/1 amendment

December 18, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 58** – Senator Wilton Simpson
HB 3537 – Representative Smith
Relief of C.M.H. by the Department of Children and Families

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$5,000,000 PREDICATED ON THE ENTRY OF A JURY AWARD IN FAVOR OF CHRISTOPHER HANN AND THERESA HANN, INDIVIDUALLY, AND AS NATURAL GUARDIANS OF C.M.H., A MINOR CHILD, DUE TO THE NEGLIGENCE OF THE DEPARTMENT OF CHILDREN AND FAMILIES.

FINDINGS OF FACT:

The Department of Children and Families, placed J.W., a 10 year old foster child with a history of violence and sexual assaults against younger children, in the home of Christopher and Theresa Hann. The Hanns had young children of their own, and because the Hanns were not trained to handle a child with J.W.'s propensity for violence, the department should not have placed J.W. in the Hann's home. Making matters worse, the department concealed J.W.'s violent past from the Hanns when it had a duty to disclose it. Ultimately, the department's placement of J.W. in the Hann's home led to

the emotional, physical, and sexual abuse of C.M.H., the Hann's 8 year old son, by J.W.

The Department of Children and Families knew of J.W.'s propensity for violence toward other children.

J.W. was born January 23, 1992, in Florida, to a teenage mother who had a history of mental illness and homelessness. She did not receive prenatal care and attempted suicide during the third month of her pregnancy by inhaling butane. J.W.'s mother was living in a shelter for homeless and runaway youth at his birth. J.W.'s biological father had a history of drug abuse and played no major role in his life.

J.W. lived with his mother until the age of 4. During this time he was subjected to extreme neglect, cruelty, and physical and sexual abuse by his mother, her boyfriends, and her extended family members. J.W., at age 1, was subjected to sexual abuse for approximately 2-3 years by males visiting his mother. He was severely beaten at age 2 while in the care of his mother's boyfriend.

As a result of his repeated abuse and neglect, J.W. began to exhibit symptoms of post-traumatic stress disorder. Due to aggressive behaviors, he was dismissed from two daycare centers. At age 3, he attempted suicide. He was subsequently diagnosed as having attention deficit hyperactivity disorder with psychotic behavior and suicidal tendencies and treated with anti-psychotic medication.

J.W. was returned to his mother's care at age 5. He was severely psychotic and began setting fires. In June 1997, J.W. was admitted to the Columbia Hospital Inpatient Psychiatric Program for a week due to self-mutilation, violent behavior, homicidal ideation, auditory hallucinations, and multiple suicide attempts. J.W. would continue receiving intensive outpatient psychiatric treatment for 7 months following his initial hospitalization.

After receiving a report that J.W. was again sexually molested by another of his mother's male friends, the department placed J.W. back into foster care where he resided on and off for approximately 5 years. He was involuntarily hospitalized at least two more times by age 9. One hospitalization was due

to aggressive behavior, an attempt to stab his uncle and his babysitter with a knife. Later he was hospitalized for planning to bring a gun and knife to school to kill a teacher and himself. In 2002, J.W. was living with his mother who had married several years earlier and had given birth to a daughter with her new husband. The department and the family entered into a voluntary case plan to address continuing allegations of abuse, neglect, and domestic violence in the home. During this time, J.W. began to exhibit sexually aggressive behavior towards other children. Multiple reports indicated that J.W. performed anal penetration on a neighborhood girl. He also continued to display severe psychotic behavior. On one occasion he attempted to cut his stepfather's throat while he slept.

On June 14, 2002, DCF family services counselor, Suzy Parchment, referred J.W. to Camelot Community Care, a DCF provider of child welfare and behavioral health services, for intensive therapeutic in-home services. Realizing the severity of J.W.'s behavior, in a communication with Camelot on June 24, Ms. Parchment noted that J.W. needed to be in a residential treatment facility as soon as possible.

As an emergency, temporary solution and noting that J.W. was a danger in the home, Camelot accepted the referral to provide mental health services to J.W. in his natural home while the department sought residential placement. Camelot noted on its admission form that J.W. was a sexual predator and engaged in sexually inappropriate behavior. It was also noted that J.W. suffered from non-specified psychosis, major depression with psychotic features, adjustment disorder and attention deficit hyperactivity disorder. The in-home counselor assigned to J.W.'s case did not have experience with sexual trauma, and Camelot's initial treatment plan did not include any specific goals or specialized treatment for sexual abuse.

J.W.'s mother informed Camelot and the department that J.W. was giving his 3 year old sister hickies, bouncing her on his lap in a sexual manner, and having her fondle his genitals. Camelot performed a child safety determination and found that based on J.W.'s history, a sibling was likely to be in immediate danger of moderate to severe harm if J.W. was not supervised. Camelot recommended that J.W.'s parents

separate him from his younger sister at night and closely watch him when he interacts with his sister.

On or about August 2002, the department removed J.W. and his younger sister from their mother's care after she abandoned them at a friend's house. J.W. was sheltered in the home of a family friend, Luz Cruz, a non-relative placement while his younger half-sister was placed with family members.

J.W. underwent a Comprehensive Behavioral Health Assessment on August 30, 2002, at the request of DCF. The assessment concluded that J.W. "should not have unsupervised access to [his younger sister], or to any younger, or smaller children wherever he resides." The Assessment also states: ***"J.W.'s caregiver must be informed about these issues and must be able to demonstrate that they can provide adequate levels of supervision in order to prevent further victimization. These issues should be strongly considered in terms of making decisions about both temporary and long term care and supervision of J.W."***

Based upon the findings and recommendations in the Assessment, J.W. was referred to Father Flanagan's Boys' Home d/b/s Girls and Boys Town, a DCF service provider, for case management services.

The Department of Children and Families knew that J.W., should not have been placed in a home with younger children.

Ms. Parchment removed J.W. from the Cruz home on September 6, 2002, due to allegations of sexual abuse by a member of the Cruz family; however, she did not report the abuse allegation as required by Florida law. It was also on September 6, 2002, that J.W. was placed with the Hanns.

Mr. and Mrs. Hann were former neighbors of J.W. and his natural family. The Hanns lived with their two children, a daughter, age 16, and a son, C.M.H., age 8. They were not licensed or trained foster parents. In the past, J.W. had often sought shelter in the Hann home when left alone by his mother. Theresa Hann had offered to care for J.W. and his

mother lobbied Camelot and the department to have J.W. placed with the Hann family instead of Luz Cruz.

Ms. Parchment recalled her first impressions of the Hann family were of nice people who maintained a very organized and clean home. She believed Theresa Hann's main purpose was to care for J.W. and that she had no ulterior motives. However, despite the willingness of the Hanns to care for J.W., the removal of J.W. from the Cruz home and placement in the Hann home violated DCF rules.

Under the department's rules, it is required to obtain prior court approval for all non-relative placements. This requirement eliminates non-relative placements for use in lieu of emergency shelter care. Ms. Parchment did not obtain the required court approval prior to placing J.W. in the Hann home. She also failed to notify the department's legal team, who is responsible for court filings, of the allegation of sexual abuse of J.W. in the Cruz home or his subsequent placement in the Hann home for two months.

Additionally, the placement directly conflicted with previous recommendations by department providers regarding placement for J.W. due to his sexually aggressive behaviors. J.W. was placed in a home with an 8 year old child even though 2 months earlier Camelot had warned that a sibling would be in danger in a home with J.W. One week prior to the placement, St. Mary's Medical Center had recommended that J.W. not have unsupervised access to younger children. The Hanns were not provided any information about J.W.'s ongoing inappropriate behavior with younger children and the Hanns allowed J.W. to share a bedroom with their son, C.M.H. Department rules expressly prohibit placing a sexually aggressive child in a bedroom with another child. Ms. Parchment knew of the planned sleeping arrangements prior to placing J.W. in the Hann home but did not tell them that the arrangement was prohibited under the department's rules.

The Department of Children and Families failed to inform the Hanns of J.W.'s background.

Christopher Hann specifically requested information about J.W., but the department failed to provide any information regarding J.W.'s troubled history of child-on-child sexual abuse or on his background generally. Florida law requires

DCF to share psychological, psychiatric and behavioral histories, comprehensive behavioral assessments and other social assessments found in the child's resource record with caregivers. The department acknowledged during litigation that no evidence of a child resource record for J.W. was found. Additionally, for the purpose of preventing the reoccurrence of child-on-child sexual abuse, the department must provide caregivers of sexual abuse victims and aggressors with written, complete, and detailed information and strategies related to such children, including the date of the sexual abuse incident(s), type of abuse, type of treatment received, and outcome of the treatment in order to "provide a safe living environment for all the children living in the home."

Not only did the department fail to comply with its own requirements, Ms. Parchment told Mr. Hann that she was not allowed to give him such information about J.W. because the placement was temporary. Nevertheless, J.W. remained in the Hann home for approximately 3 years during which his behavioral problems continued and quickly escalated.

The Department of Children and Families knew it should have removed J.W. from the Hann home as his violent behaviors increased.

Within a few weeks after J.W.'s placement in the Hann home, Mrs. Hann reported to Camelot that J.W. was playing with matches in the presence of C.M.H.; exhibited extreme anger and hostility towards C.M.H., including yelling, screaming "shut up" at the smallest aggravation or noise, and kicking C.M.H. Among J.W.'s behavioral problems, he stabbed himself with a straightened paper clip after being grounded for leaving the neighborhood without permission; threatened to jump out of a window after it was discovered he stole a roll of felt from school; and attacked Ms. Hann, biting and scratching her when she grounded him for cursing.

Camelot recommended to Ms. Parchment that the Hanns place a one way monitor in the bedroom shared by J.W. and C.M.H. While Ms. Parchment agreed to pass the recommendation on to the Hanns, there is no evidence that the information was shared or that the Hanns ever obtained the monitor.

J.W.'s behavior further deteriorated and on October 24, 2002, after a physical altercation with C.M.H., he pulled a knife on the younger child but was stopped from further assaulting him by Mr. Hann. Camelot was immediately informed of the incident by Mr. Hann, and J.W. was again involuntarily committed into Columbia Hospital for a mental health assessment. Camelot's notes indicate Ms. Parchment was informed of J.W.'s escalating behavior in the Hann home. Ms. Parchment later acknowledged that at this point she should have considered removing J.W. from the Hann home due to the danger he posed to himself, the Hanns and their son.

A week after the mental health assessment was performed, J.W. sexually assaulted a 4 year old girl who was visiting the Hann home. The children were watching a movie when J.W. exposed his genitals and began "humping" the young girl. Ms. Hann reported the incident to DCF. During the course of the investigation, the department learned the children were not under the direct supervision of any adult at the time of the incident – a failure that DCF providers warned would lead to harm of other children when left alone with J.W. Again, DCF was required to give immediate consideration to the safety of C.M.H. Despite, the inability of the Hanns, who both worked outside the home, to adequately supervise J.W. and his continuing access to young children, DCF did not remove J.W. from the Hann home.

Camelot began pressuring Ms. Parchment to schedule a psychosexual evaluation of J.W. which she was required to do months earlier pursuant to DCF's operating procedures. The evaluation had in fact been requested by Camelot when J.W. was placed with the Hanns and again just 2 days before he sexually assaulted the 4 year old girl visiting the Hann home. Camelot's notes indicate that it told Ms. Parchment that "[J.W.] needed specific sexual counseling by a specialist in this area." Ms. Parchment took no action so Camelot advised Mr. Hann that a new safety plan would be implemented which prohibited J.W. and C.M.H. from sharing a bedroom and requiring J.W. to be under close adult supervision when other children were present. Such recommendations had already been a complete failure at preventing J.W. from perpetuating sexual abuse on other children. Further, still without knowledge of J.W.'s extensive history of sexual abuse as a

victim and aggressor, Mr. Hann informed Camelot that the family disagreed with and would not follow the safety plan.

The Department of Children and Families ignored repeated warnings from its service providers.

Beginning in November 2002, Girls and Boys Town began providing services to J.W. in conjunction with Camelot. The assessment of J.W.'s case and his current behaviors, which was performed by Girls and Boys Town, found that despite his escalating violence and suicidal and sexually aggressive actions, no additional interventions or therapies had been put in place.

Camelot again requested a psychosexual evaluation of J.W. on November 6, 2002.

Additionally, in November 2002, C.M.H. began to exhibit behavioral problems which Camelot directly attributed to J.W. being in the home. C.M.H.'s grade dropped. In one school year he went from being an "A", "B", or "C" student to failing grades and was ultimately retained in the fourth grade.

In December 2002, the Hanns, overwhelmed with the number of providers involved in J.W.'s care and the disruption to their family, canceled the services of Camelot. Camelot recommended in its discharge form, signed by Ms. Parchment, that J.W. be placed in a residential treatment facility; however, DCF did not initiate a change in placement.

In June 2003, J.W. began expressing sexually inappropriate behavior towards C.M.H., asking him if he wanted to "see what sperm looks like" before masturbating to completion in front of him and attempting to hand him the semen. Due to this new escalation of J.W.'s behavior now directed at C.M.H., the department finally secured the psychosexual evaluation of J.W. but still did not remove him from the Hann home.

The department received the results of the psychosexual evaluation of J.W. performed by The Chrysalis Center on September 18, 2003. The Center found that J.W. "fit the profile of a sexually aggressive child due to the fact that he continues to engage in extensive sexual behaviors with children younger than himself." Further, it was found that J.W. "[presented] a

risk of potentially becoming increasingly more aggressive” and “continuing sexually inappropriate behaviors.” The Center warned that J.W. “may seek out victims who are children and coerce them to engage in sexual activity.” And again the Center recommended specific counseling for J.W. and appropriate training for his caregivers, the Hanns.

Finally, in October 2003, the Hanns requested J.W. be placed in a therapeutic treatment facility as they did not feel equipped to provide him with services and interventions he needed. Therapeutic placement was authorized for J.W. and he was referred to Alternate Family Care in Jupiter, Florida. The Hanns were told that if J.W. was removed from their home they would not be permitted visitation privileges with him at the facility. The Hanns did not want to be the next in a series of parental figures that abandoned J.W. so they ultimately made the decision to maintain him in their home with a request for additional services to treat his ongoing issues. At this time the Hanns begin training to become therapeutic foster parents.

C.M.H.’s problems due to J.W.’s presence in the home continued at school. Beginning in late 2003 to early 2004, C.M.H. began to act out and have more conflicts in school. He received a student discipline referral for ongoing behavioral problems in the classroom. Additionally, in early 2004 he began gaining weight and would subsequently gain about 40 pounds over the next two years.

The Department of Children and Families failed to remove a dangerous child it had placed in the Hann home when requested by the Hanns.

Mrs. Hann was diagnosed with terminal cancer on March 3, 2004. As a result, Mr. Hann contacted DCF within 48 hours of the diagnosis and requested the process of having J.W.’s placement with them as “long-term non-relative care” be stopped and asked that J.W. be placed elsewhere. Ms. Parchment visited the Hann home within 24 hours after the request and advised the family that “we’ll get on it.”

Nothing was done and contrary to the express request and wishes of the Hanns and without their knowledge, DCF had the Hanns declared as “long term non-relative caregivers” of

J.W. The department subsequently closed the dependency case, leaving J.W. him the care of the Hanns.

The Department of Children and Family Services withdrew support for the Hann family when it was needed most.

The Hanns were not part of the foster care system so when DCF closed its dependency case, the Hann family lost approximately 50 percent of their services and counseling. Father Flanagan's suspended services to J.W. and the Hann family in April 2004. The Hanns would later directly attribute the resurgence in J.W.'s inappropriate sexual behavior to the loss of counseling services.

With almost no support from DCF, the Hanns grew more desperate as they tried to deal with Mrs. Hann's illness and J.W.'s escalating behavior.

C.M.H.'s troubles also continued. An April 2005 treatment plan from St. Mary's Child Development Center's Children's Provider Network noted that he began to have nightmares and was easily frustrated. The report also noted that his mother's diagnosis of terminal cancer and intensive chemotherapy treatments were contributing to C.M.H.'s increasing separation anxiety and grief issues. He was diagnosed with post-traumatic stress disorder.

In April 2005, Mr. Hann wrote DCF and the juvenile judge requesting help in placing J.W. in a residential placement. There was no response to his request, and J.W. remained in the Hann home.

A report from Child & Family Connections, the lead agency for community-based care in Palm Beach County, dated June 16, 2005, provided a description of J.W.'s personality and behavior, the high risk of sexual behavior problems and increasing aggression, his excessive masturbation, seeking out younger children, lies, and refusal to take responsibility for his actions. The reported stated that the Hanns "[had] been told that it is not a matter of will J.W. perpetrate on their son again, but a matter of when the perpetration would occur. [J.W. was] in need of a more restrictive setting with intensive services specializing in sexual specific treatment." The report also noted that J.W.'s previous therapist, current therapist,

and a psychosexual evaluation all recommended a full-time group home facility specializing in sexual specific treatment. The report concluded that J.W.'s condition was "so severe and the situation so urgent that treatment [could not] be safely attempted in the community."

Predictably, the numerous failures of the Department and its Family Services resulted in the sexual assault of another child.

On June 29, 2005, after a physical altercation between J.W. and Mrs. Hann, C.M.H., then 10 years old, told his parents that 2 years prior, J.W. had forced him to engage in oral sex while the boys were at a sleepover at this cousin's house. Mr. Hann called Girls & Boys Town and demanded that J.W. be removed from the home immediately. Later that same day, the department finally removed J.W. from the Hann home, and he was taken to an emergency shelter until a placement could be determined.

The court entered an order on August 11, 2005, authorizing the placement of J.W. into a residential treatment center. The court found that although a previous court order authorized placement in a specialized therapeutic group home, due to another incident that occurred while in emergency shelter, J.W. required a higher level of care.

Theresa Hann passed away the next year shortly after initiating litigation against DCF and its providers.

CLAIMANT'S POSITION:

The lawsuit was filed against the department, Camelot Community Care, Inc., Elaine Beckwith, Chrysalis Center, and Father Flanagan's Boys' Home d/b/a Girls and Boys Town of South Florida. The suit alleged the defendants were negligent and directly liable for the injuries suffered by C.M.H. as a result of the sexual abuse due to:

1. The initial placement of J.W. in the Hann home;
2. The failure of DCF to follow its own rules and operating procedures to provide the necessary treatment and services for J.W.;
3. The failure of DCF to provide the required information to the Hanns regarding J.W.'s history of sexual abuse and sexual aggressiveness, including the failure to formulate a safety plan for J.W. and all the children residing in the Hann home;

4. The failure of DCF to maintain the safety of J.W. and any children residing in the placement;
5. The failure of the DCF employee to report the allegations of sexual abuse of J.W. as mandated by s. 39.201, F.S.; and
6. DCF moving forward with having the court declare the Hanns “long-term non-relative caregivers,” closing the case file, and leaving J.W. in the custody of the Hanns without notice to them and despite their request to stop the process.

RESPONDENT'S POSITION:

The Department of Children and Families defended the lawsuit. On November 18, 2013, after a 4-week jury trial, a judgment was entered in the amount of \$10,000,000. DCF was found to be 50 percent liable (\$5,000,000) and Mr. and Mrs. Hann were found to be 50 percent liable (\$5,000,000). The jury attributed no liability to the remaining defendants.

CONCLUSIONS OF LAW:

Every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. With respect to this claim bill, which is based on a negligence claim, the claimant proved that the state had a duty to the claimant, the state breached that duty, and that the breach caused the claimant's damages.

Duty

The Department of Children and Families had a duty pursuant to exercise reasonable care when placing a child involved in child-on-child sexual abuse or sexual assault in substitute care; to provide caregivers of children with sexual aggression and sexual abuse with written, detailed and complete information of the child's history; to establish appropriate safeguards and strategies to protect all children living in the foster or temporary care; to ensure the foster family is properly trained and equipped to meet the serious needs of the foster child; and to exercise reasonable care under the circumstances.

Breach

A preponderance of the evidence establishes that DCF breached its duties by failing to follow its governing statutes, rules, and internal operating procedures by:

- Placing J.W., a known sexually aggressive, severely emotionally disturbed, and dangerous child in the Hann home without legal authority and in direct conflict with recommendations of DCF service providers that J.W. not have access to young children;
- Failing to ensure that Mr. and Mrs. Hann were duly licensed and trained as required by department rule, making them capable of safely caring for a child with J.W.'s extensive needs;
- Failing to fully and completely inform the Hanns of J.W.'s history, and the risk and danger he posed to C.M.H. as required by department rule; and
- Failing to remove J.W. from the Hann home when it became clear that the placement was inappropriate and dangerous to the Hanns and C.M.H. particularly.

Causation

The sexual, physical and emotional abuse suffered by C.M.H. was the direct and proximate result of DCF's failure to fulfill its duties regarding the foster placement of a known sexually aggressive child.

Damages

At the conclusion of a 2-week trial, the jury found DCF and Mr. and Mrs. Hann each 50 percent responsible for the negligence that resulted in the injuries suffered by C.M.H. The jury awarded C.M.H. \$6 million for past pain and suffering, \$3.5 million for future pain and suffering, \$250,000.00 for future treatment and services and \$250,000.00 for future loss of earning capacity for a total award of \$10 million. The department and Mr. and Mrs. Hann were each responsible for \$5 million. The jury did not assess any liability for negligence against the remaining 6 defendants.

C.M.H. was initially diagnosed with post-traumatic stress disorder in 2005. Thomas N. Dikel, Ph.D., reaffirmed the diagnosis in 2010, finding that C.M.H.'s severe PTSD was caused by his "experiences of child-on-child sexual abuse, exacerbated and magnified by his mother's diagnosis of stage 4, metastatic colon cancer."

He was re-evaluated by Dr. Stephen Alexander in October 2014. Dr. Alexander found C.M.H. to continue to suffer from PTSD and major depression, but had become even more

dysfunctional since his initial evaluation due to lack of services. Dr. Alexander attributed the majority of C.M.H.'s psychological trauma to this mother's illness and death; however, he did note that due to J.W.'s presence in the home during her illness, the two events have become inextricably intertwined in this psyche.

Comprehensive Rehabilitation Consultants, Inc., created a life plan for C.M.H. to determine the funds necessary to provide the support needed by C.M.H. as a direct consequence of the sexual abuse he experienced. It was determined the cost for medical, psycho-therapies, educational and support services as well as ancillary services of transportation, housing and personal items would be \$2.23 million over C.M.H.'s life.

As a result of the judgment entered by the court against DCF, the state paid \$100,000 (the maximum allowed under the state's sovereign immunity waiver) with the remaining \$4.9 million to be paid if this claim bill is passed by the Legislature and signed into law by the Governor.

COLLATERAL SOURCES OF RECOVERY:

Father Flanagan's Boys' Home d/b/a Girls and Boys Town of South Florida (Father Flanagan) was a named defendant in the lawsuit. Father Flanagan executed a settlement agreement with Claimants on July 30, 2013, in the amount of \$340,000. However, in October 2013, the jury found that Father Flanagan was not negligent for any loss, injury or damage to C.M.H.

ATTORNEY FEES:

Claimant's attorneys have acknowledged in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorneys' fees.

RECOMMENDATIONS:

The negligence of the department and the Hanns were the legal proximate cause of the damages suffered by C.M.H. However, The jury award of \$9.5 million for non-economic damages or pain and suffering is not supported by the weight of the evidence. According to Dr. Alexander's October 2014 report, C.M.H. continues to suffer from PTSD but attributes a majority of C.M.H.'s psychological trauma to the illness and death of his mother. The department should not be held financially liable for C.M.H.'s psychological trauma that occurred due to the illness and death of his mother.

Damages awarded by the jury in the amount of \$500,000 for future treatment and services and lost wages due to the sexual abuse are reasonable under the circumstances and are fully supported by the weight of the evidence. C.M.H. requires intensive and long-term psychotherapy, psychiatric evaluation and treatment and possible psychotropic mediations to assist him in dealing with his PTSD.

It should be noted that since receiving the settlement from Father Flanagan's in 2013, C.M.H. has only sought psychiatric treatment one time.

Accordingly, I recommend that SB 58 be reported FAVORABLY, with the amount to be paid amended to \$2.5 million. The jury awarded \$9.5 million (\$4.75 million assessed to DCF) for past and future pain and suffering. Based on a lack of objective evidence in the record, a 50 percent reduction of DCF's obligation or \$2.375 million may be a more appropriate amount to be paid for the non-economic damages. A corresponding reduction of 50 percent of DCF's share of the economic damages (\$125,000) would be appropriate.

I further recommend that the funds be paid into a trust established for C.M.H. in equal installments over 10 years to pay for expenses related to education, psycho-therapies and living expenses. Any funds remaining in the trust after 10 years should be distributed in full to C.M.H.

Respectfully submitted,

Barbara M. Crosier
Senate Special Master

cc: Debbie Brown, Secretary of the Senate



391648

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment

Delete lines 10 - 92
and insert:

WHEREAS, beginning at a very young age, J.W. was subjected to incidents of physical and sexual abuse, which caused him to become sexually aggressive, and

WHEREAS, on September 5, 2002, J.W., then in the custody of the Department of Children and Families (DCF), formerly known as the Department of Children and Family Services, was placed into the home of C.M.H., whose parents volunteered to have J.W. live



391648

in their home, and

WHEREAS, prior to the placement of J.W. with the family, DCF obtained a comprehensive behavioral health assessment that stated that J.W. was sexually aggressive and recommended specific precautions and training for potential foster parents, which C.M.H.'s parents did not receive, and

WHEREAS, the testimony of the DCF caseworker confirms that DCF was aware that then-10-year-old J.W. and then-8-year-old C.M.H. were sharing a bedroom, and

WHEREAS, on October 31, 2002, J.W. sexually assaulted a 4-year-old child who was visiting C.M.H.'s home, and

WHEREAS, although DCF knew that J.W. was sexually aggressive, the agency did not remove him from the home, and

WHEREAS, after November 2002, J.W.'s behavioral problems escalated, and he deliberately squeezed C.M.H.'s pet mouse to death in front of C.M.H. and made physical threats toward C.M.H., and

WHEREAS, C.M.H.'s parents began to discuss adopting J.W., whom they considered a part of their family, and

WHEREAS, in January 2004, the family began taking therapeutic parenting classes to better meet J.W.'s needs, and

WHEREAS, in March 2004, after C.M.H.'s mother was diagnosed with Stage 4, terminal, metastatic colon cancer, which had spread to her liver, C.M.H.'s father, requested that DCF stop the process of having the family designated as "long-term nonrelative caregivers," and

WHEREAS, in April 2004, DCF closed out J.W.'s dependency file, leaving J.W. in the custody of the family, and

WHEREAS, in April 2005, C.M.H.'s father wrote DCF and the



391648

juvenile judge assigned to the case to request help in placing J.W. in a residential treatment facility, and

WHEREAS, on July 28, 2005, after a physical altercation between J.W. and C.M.H., C.M.H. disclosed to his parents that J.W. had sexually assaulted him, and J.W. was immediately removed from the home, and

WHEREAS, C.M.H. sustained severe and permanent psychiatric injury, including posttraumatic stress disorder, as a result of the sexual and emotional abuse perpetrated by J.W., and

WHEREAS, the sexual assault of C.M.H. by J.W. was predictable and preventable, and

WHEREAS, on April 14, 2006, a lawsuit, Case No. 2006 CA 003727, was filed in the 15th Judicial Circuit in and for Palm Beach County on behalf of C.M.H., by and through his parents, alleging negligence on the part of DCF and its providers, which allowed the perpetration of sexual abuse against and the victimization of C.M.H. by J.W., and

WHEREAS, a mutually agreeable settlement could not be reached between all parties, and a jury trial was set in Palm Beach County, and

WHEREAS, on January 2, 2014, after a jury trial and verdict, the court entered a judgment against DCF for \$5,176,543.08, including costs, and

WHEREAS, the Division of Risk Management of the Department of Financial Services has paid the family of C.M.H. \$100,000, as allowed under s. 768.28, Florida Statutes, and

The Florida Senate
State Senator René García
38th District

Please reply to:
District Office:
1490 West 68 Street
Suite # 201
Hialeah, FL 33014
Phone# (305) 364-3100

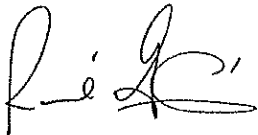
December 14th, 2015

The Honorable Miguel Diaz de la Portilla
Chairman, Judiciary Committee
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz de la Portilla:

Please have this letter serve as my formal request for ***SB 30: Relief of C.M.H. by the Department of Children and Families*** to be heard at the next possible Judiciary Committee meeting. If you have any questions or concerns regarding the bill please do not hesitate to contact my office.

Sincerely,



State Senator René García
District 38
RG:AD

CC: Tom Cibula, Joyce Butler



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
1/25/16	SM	Favorable
02/11/16	JU	Fav/CS
	AHS	
	AP	

January 25, 2016

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 48** – Judiciary Committee and Senator Anitere Flores
Relief of Survivor and Estate of Victim

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED CLAIM FOR \$3.75 MILLION AGAINST THE DEPARTMENT OF CHILDREN AND FAMILIES, WHICH AROSE FROM TWO LAWSUITS AGAINST THE DEPARTMENT, ITS EMPLOYEES, AND OTHER DEFENDANTS. THESE LAWSUITS ALLEGED THAT THE NEGLIGENCE OF AND CIVIL RIGHTS VIOLATIONS BY THE DEPARTMENT, ITS EMPLOYEES, AND OTHER DEFENDANTS RESULTED IN THE SEVERE ABUSE AND NEGLECT OF SURVIVOR AND VICTIM AND THE DEATH OF VICTIM.

INTRODUCTION:

On February 14, 2011, Survivor and Victim were found in a pest control truck owned by their adoptive father, Jorge Barahona, along the side of I-95 in Palm Beach County. Victim was dead, and Survivor was severely injured and covered in chemicals. The adoptive parents, Jorge and Carmen Barahona, tortured the children in numerous ways, likely since gaining custody of them in 2004.

For their conduct, the Barahonas are facing charges for first degree murder and aggravated child abuse. The purpose of this special master report is to determine whether the Department of Children and Families is also a legal cause of the abuse and neglect of the children.

The evidence on which the recommendation in this report is based was controlled by the claimants and consisted primarily of large volume of documents or records created by the department and its contractors and subcontractors and provided by the claimants. However, in some respects, the evidence available for the special master proceeding was limited because the underlying lawsuits settled before trial and discovery.¹ Had a trial or discovery occurred, transcripts of testimony made under oath by parties and eyewitnesses would have been available during the special master proceeding.² Additionally, because of the settlement, the department did not present any mitigating evidence during the special master proceeding or object to evidence presented by the claimants.

As a result of the limited evidence, the extent to which or the specific point in time the actions or omissions of the department and its employees became a legal cause of the abuse and neglect of Survivor and Victim cannot be determined. Similarly, the claimants made no effort and felt no obligation to present evidence showing the relative fault of the department and other defendants. Nevertheless, there is sufficient evidence to show that a jury likely would have found that failures by the department to uncover abuse were a legal cause of prolonging the suffering of Survivor and Victim and of Victim's death.

FINDINGS OF FACT:

The Findings of Fact are organized into three main components. The first component provides a chronological description of the department's interaction with Survivor and Victim. The second component describes other specific types of evidence or descriptions of specific events which was made available during the special master proceeding. The last

¹ The lack of traditional evidence complicates a special master's responsibility to independently determine liability.

Because governmental agencies occasionally settle cases against them for reasons not directly related to the merits of the claim, consent-based judgments are scrutinized carefully by the special master, by the legislative committees, and by both houses of the legislature, to ensure that independently developed facts exist to support the judgment and to justify the award.

D. Stephen Kahn, former General Counsel for the Florida Senate, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, FLA. B.J., Apr. 1988, at 27.

² Despite the settlement with the department, the claimants could have taken depositions of the relevant department employees under Senate Rule 4.81, which allows discovery consistent with the Florida Rules of Civil Procedure.

component is a summation of the evidence including reasonable inferences from the evidence.

I. Chronological Events

A. Initial Involvement with the Department, 2000

In May 2000, Survivor and Victim, a brother and sister who were twins, were born. From a few days after their birth until Victim was found dead in February 2000, the department was very involved in their lives. The department's first contact with the newborn children occurred because of their biological mother's substance abuse and Victim's medical condition.³ In March 2002, before Survivor and Victim turned 2 years old, their biological mother was arrested for domestic violence.⁴

In August 2003, when the children were 3 years old, the biological mother's rights were terminated.⁵ A few months later in March 2004, the children were removed from their father by the department after he was charged with sexual battery against a minor not related to him.⁶

B. Placement with the Barahonas, 2004

The department then placed Survivor and Victim in the foster home of Jorge and Carmen Barahona. Two other children that the Barahonas fostered and adopted also resided in the Barahona home at the time.⁷ There was no evidence presented during the special master proceeding that the Barahonas had mistreated their other children or were not qualified to foster additional children.

Within days after Survivor and Victim were placed with the Barahonas, the children's uncle in Texas sent a letter to the judge assigned to the case and department staff which expressed his and his wife's desire to obtain custody of Survivor and Victim. The letter stated in part:

We are eager to get the legal custody of those kids, and will like to know what we need to do to be able to do so. We are planning to fly to Miami next Tuesday or Wednesday to follow the necessary legal steps to gain custody of those kids.

³ Department of Children and Families, *The Barahona Case: Findings and Recommendations 2* (Mar. 14, 2011).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ These two other children have filed separate lawsuits against the department and its employees.

The letter further expressed the willingness of the aunt and uncle to take full responsibility for the financial needs of the children during the adoption process.

As a prerequisite to placing the children with their relatives in Texas, a home study for the suitability of the placement was necessary. Notes from the children's guardian ad litem show that the department expected the home study would take 3 months.⁸ However, the home study was not completed for about 15 months.⁹ No explanation for the lengthier time period for the Texas home study was provided during the special master proceeding.¹⁰ Accordingly, what the department or others did or did not do with respect to the home study is unknown.

Evidence, however, showed that the lengthy time period for the completion of the Texas home study, at least in part, caused Survivor and Victim to remain with the Barahonas. After a year and a half with the Barahonas, for example, a psychological evaluation of the children by Dr. Vanessa Archer, concluded that Survivor and Victim had bonded with the Barahonas and that sending them to Texas would be "devastatingly detrimental."^{11, 12} The evidence presented by the claimants during the special master proceeding did not disclose whether the department or someone else selected Dr. Archer for the multiple psychological evaluations assigned to her.

C. Medical Neglect, 2004

During the hearing, the claimants presented evidence that in December 2004, the department became aware of allegations

⁸ Notes of Paul Neumann, guardian ad litem (May 18, 2004) (Bates 4764).

⁹ The Department of Children and Families, *The Barahona Case: Findings and Recommendations*, 2 (Mar. 14, 2011).

¹⁰ The third amended complaint in the underlying federal lawsuit alleged that the delay in the completion of the home study was caused by inexcusable delays in processing the relevant paperwork by the department and other defendants including Our Kids and the Center for Family and Child Enrichment. See Third Amended Complaint, paragraphs 69-70, 140-142, 162-164, and 166, *Survivor and Estate of Victim v. Our Kids of Miami/Dade/Monroe, Inc. et al.*, Case No.: 1:11-cv-24611-PAS (S.D. Fla.).

¹¹ Psychological Evaluation by Dr. Archer, Archer Psychological Services, Inc., Sept. 13, 2005 (Bates 4564-4567).

¹² The third amended complaint in the underlying federal lawsuit named Dr. Archer and Archer Psychological Services, Inc., as a defendant. The general allegations forming the basis of Dr. Archer's liability were that she made her placement recommendation without full information which would have included medical records, school records, and abuse reports. See *Id.* at paragraphs 171-189. The complaint further alleged that the Center for Family and Child Enrichment and one of its employees failed in its duties to provide the relevant information to Dr. Archer. See *Id.*

that the Barahonas were neglecting Victim's medical needs. The evidence was in the form of notes recorded by the Center for Family and Child Enrichment, Inc., (CFCE) a defendant in the underlying federal lawsuit.¹³ Victim would have been 4 years old at the time.

The notes show that the nurse for Victim's endocrinologist did not believe that Victim was in a good placement for two reasons.¹⁴ First, Victim had not been to an appointment in nearly a year when Victim needed to see the doctor three times a year. Second, Victim is sent to the doctor by herself, which shows that the foster mother does not care for Victim's well-being. Apparently, the department or one of its contractors transported Victim to medical appointments.

As part of the department's 2011 review of the circumstances leading to the claim bill, the department reviewed the response to the allegations of medical neglect. The department's review found that there was "no documentation of case management follow-up with the foster mother as to the nurse's concerns raised with [Victim's] medical care."¹⁵

D. Evidence of Sexual Abuse, 2005

During the hearing, the claimants presented evidence that the department became aware that Victim had been sexually molested though a phone call to the Central Abuse Hotline about 10 p.m., January 27, 2005. Victim was 4 years old at the time. A narrative of the call written by DCF staff describes the caller's concerns as follows: "In the past, the foster father (unknown) tickled [Victim's] private area (vagina) with his fingers. This happened more than once, and the incidents occurred in the presence of other adults in the home."¹⁶

Within 2 hours after the call, a department child protective investigator consulted a psychologist who had seen Victim the

¹³ The Center for Family and Child Enrichment (CFCE) is described in the underlying federal lawsuit as a contractor for Our Kids of Miami-Dade/Monroe, Inc. CFCE's contract with Our Kids, according to the lawsuit, required it to provide case management services to children in foster care and under protective supervision in Miami-Dade County. Our Kids, which was under a contract with the department, was described in the lawsuit as the lead agency for the coordination and delivery of community-based foster care and related services. See Third Amended Complaint, paragraphs 40-42, *Survivor and Estate of Victim v. Our Kids of Miami-Dade/Monroe, Inc. et al.*, Case No.: 1:11-cv-24611-PAS (S.D. Fla.).

¹⁴ Notes recorded by the Center for Family and Child Enrichment, Dec. 15, 2004 (Bates 4856).

¹⁵ The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 6 (Mar. 14, 2011).

¹⁶ Intake Report to Central Abuse Hotline, 10:04 p.m., Jan. 27, 2005 (Bates 4500).

day before. The investigator's notes indicate that Victim had made allegations to the psychologist that were similar to those made to the Hotline. The notes further indicate that the psychologist found victim's story questionable and unfounded because of how Victim disclosed the story and because of circumstances around the narration of the story.¹⁷ Finally, the psychologist opined that it would be detrimental to wake the children up and confront them as it was then after midnight.¹⁸

The morning after the Hotline call, there was a face-to-face meeting by a department child protective investigator with all members of the Barahona household. The Barahonas denied any abuse and suggested that the perpetrator was the biological father. The investigator's notes from the meeting further state in part that Victim and Survivor:

were interviewed initially separately then together. [Victim] denied fo[ster] father touched her. Both children did make statements as to their biological father. They appeared to call both Daddy when speaking in English but called Papa and Papi when addressing them in Spanish clearly differentiating them.¹⁹

Apparently, department staff concluded that Victim was confusing her foster father with her biological father.²⁰ On February 9, 2005, department records state that the court was made aware of the abuse concerns as to the biological father and that there were no further concerns about the Barahonas.²¹

As part of the department's 2011 review of the circumstances leading to the claim bill, the department reviewed the sexual assault allegations against Mr. Barahona. The department's review found that the "Documentation suggests that the interview with [Victim] was not adequate."²² The review further found that Victim and Survivor should have been interviewed away from the Barahonas to get a more candid understanding

¹⁷ Notes by David Palachi (Jan. 28, 2005) (Bates 4509).

¹⁸ *Id.*

¹⁹ Notes by David Palachi (Jan. 28, 2005) (Bates 4505-4506).

²⁰ The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 7 (Mar. 14, 2011).

²¹ Notes by David Palachi (Feb. 9, 2005) (Bates 4503).

²² The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 7 (Mar. 14, 2011).

of how they viewed their caretakers. This interviewing technique was a “fundamental responsibility” according to the department, which might not have been well understood due to inadequate training and professional insight.²³

E. Report of Abuse from School, 2006

During the special master hearing, the claimants presented evidence of several incidents, not described in the claim bill, through which the claimants allege the department and others might have become aware of the abuse perpetrated by the Barahonas. For the sake of brevity, only some of the incidents, not identified in the claim bill, will be described in this report. One of these incidents, however, was based on a call to the Central Abuse Hotline at 2:07 p.m. on February 23, 2006, which described Victim as having a “huge bruise on her chin and neck area.”²⁴ According to the narrative of the call written by department staff, Victim made inconsistent statements about whether the bruises occurred at home or at school. The narrative also noted that Victim had missed several days of school.

The department's records show that by 3:30 p.m. a child protective investigator began investigating the call by obtaining Victim's and Survivor's attendance records and grades.²⁵ Among the first investigative notes, department staff recorded that between November and February 23, 2006, Victim had 17 absences from school.

Later that day, when the children were interviewed at school, Victim said she had slipped and fallen in class.²⁶ Both Survivor and Victim denied that anyone had hit Victim. However, the children's teacher said that Victim claimed the injury occurred at home and that Victim sometimes comes to school unclean.

The department's investigator had a face-to-face meeting with the Barahonas on the evening of the call to the Hotline. The Barahonas denied knowing about Victim's bruise. Mr. Barahona further explained that “the child usually gives him a hug before going to school and if the child had a mark, he would have seen it.”²⁷

²³ *Id.*

²⁴ Intake Report to Central Abuse Hotline, 2:07 p.m., Feb. 23, 2006 (Bates 4512-4514).

²⁵ Chronological Notes Reports, Feb. 23, 2006 (Bates 4527-4528).

²⁶ Chronological Notes Reports, Feb. 23, 2006 (Bates 4524-4526).

²⁷ Chronological Notes Reports, Feb. 23, 2006 (Bates 4521).

While department staff were speaking with Ms. Barahona, Victim “jumped in the middle and said she slipped and fell in class.”²⁸ The department’s notes further indicate that the Barahona home was clean at the time and well-stocked with food and that the other children in the house were free of bruises.

As part of the department’s continued investigation of Victim’s bruise, records indicate that a child protection team conducted a specialized interview of Victim about 2 weeks after the call to the Hotline. Child protection teams are a team of professionals who provide specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services.²⁹ The child protection team in this case concluded that the bruise was not the result of child abuse and that Victim needed testing for hyperactivity.³⁰

During the department’s 2011 review of the events leading to the claim bill, the department reviewed its response to the February 2006 call to the Hotline. The department’s report expressed concerns that what department staff did to investigate the abuse allegation was not fully documented.³¹

F. Report of Abuse from School, 2007

On March 20, 2007, the principal of Survivor and Victim’s elementary school reported potential abuse and neglect to Central Abuse Hotline.³² The narrative recorded by department staff states:

For the past five months, [Victim] has been smelling and appearing unkempt. At least 2 or 3 times a week, [Victim] smells. She smells rotten. Her uniform is not clean and her shoes are dirty. On one occasion, [Victim] got apple sauce in her hair, the next day she had apple sauce still in her hair. [Survivor] also appears unkempt. On 2/20/07, [Victim] had food in her backpack from breakfast and lunch. There is a concern that maybe she is not eating at home. [Victim]

²⁸ Chronological Notes Reports, Feb. 23, 2006 (Bates 4520-4521).

²⁹ Section 39.303(1), F.S., (2005).

³⁰ Chronological Notes Reports, Mar. 13, 2006 (Bates 4515-4516).

³¹ The Department of Children and Families, *The Barahona Case: Findings and Recommendations*, 7-8 (Mar. 14, 2011).

³² Intake Report to the Central Abuse Hotline, 3:46 p.m., Mar. 20, 2007 (Bates 4594-4596).

is always hungry and she eats a lot at school. [Victim] is afraid to talk.³³

The department's investigative summary, dated April 12, 2007, of its actions in response to the call to the Hotline concluded: "At this time the risk level is low. No evidence was found to support the allegation of environmental hazards toward the children."³⁴

In contrast to the department's conclusion, the children's guardian ad litem felt differently. In an email dated the same date as the department's investigative summary, the guardian ad litem informed his supervisor and a department attorney of the concerns of school staff.³⁵ The email explained that the reports from school, including the children's approximately 20 absences and failing grades, were causing him to rethink his prior conclusion that the children's placement with the Barahonas was best. In closing his email, the guardian ad litem wrote, "I believe some investigation needs to be done, to determine the very best place for these deserving kids to grow up and lead a healthy, happy life."³⁶ Whether the guardian ad litem reported his concerns to the dependency court is unknown.³⁷

In the department's 2011 review of the events leading to the claim bill, it reviewed its response to the March 2007 Hotline call. The department's review determined that there were "compelling facts" gathered by department staff that should have resulted in "'some indicators' or 'verified' findings for abuse."³⁸

G. Survivor and Victim Adopted, May 2009

The Barahonas finalized the adoption of Survivor and Victim in May 2009.

³³ *Id.*

³⁴ Investigative Summary (Apr. 12, 2007) (Bates 4616-4618).

³⁵ Email from Paul Neumann, guardian ad litem, to Cynthia Kline, guardian ad litem supervisor and a copy to Christine Lopez-Acevedo, a department attorney (Apr. 12, 2007) (Bates 4619-4620).

³⁶ *Id.*

³⁷ At all times relevant to the events described in the claim bill, s. 39.822(4), F.S., required the guardian ad litem for Survivor and Victim to submit written reports of recommendations to the court. These reports were not made available to the special masters.

³⁸ The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 8 (Mar. 14, 2011).

H. Final Call to Central Abuse Hotline, 2011

The final call to the Central Abuse Hotline when both Survivor and Victim may have been alive, occurred at 2:22 p.m. on February 10, 2011.³⁹ The call was made by a therapist for the Barahona's niece. According to excerpts of department records, which the claimants transcribed onto a PowerPoint slide for the special master hearing, the call and the department's response were as follows:

2/10/11 2:22 PM Survivor and Victim are tied by their hands and feet with tape and made to stay in bathtub all day and night as a form of punishment tape is taken off toRESPONSE TIME 24 HOURS BATES 4684-86--- Transcript of Hotline call:-grandmother cares for her and she has foster children who are being abused.... They are being taped up w/their arms and legs and kept in a bathtub-all day and all night and she undoes their arms to eat... and she has been threatened not to say anything.....BATES 4672-73

2/10/11 6:42 PM CPI to home NO CALL TO POLICE when kids not home. Accepts mother's story that kids are with Foster Dad as they have separated. Bates 4634

According to a recording of a hearing before the Barahona Investigative Team, department staff explained that the Hotline operator and her supervisor misclassified the call as one requiring a response within 24 hours. The call, according, to the department should have resulted in an immediate response.

Similarly, in the department's 2011 review of the events leading to the claim bill, it reviewed its response to the final Hotline call. The department's review concluded that the allegations in the call "suggested criminal child abuse incidents requiring immediate response and outreach to law enforcement."⁴⁰

³⁹ This information is based on excerpts of documents provided by the claimants on a PowerPoint presentation. Copies of complete records relating to the final call to the Hotline and the department's response to the call were not provided to the special master by the claimants.

⁴⁰ The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 10 (Mar. 14, 2011).

II. Specific Types of Evidence or Categories of Events

This component of the Findings of Fact focuses on the interaction of individuals, other than department staff, with Survivor and Victim and events occurring after Victim's death.

A. Judicial Review Proceedings

While Survivor and Victim were placed with the Barahonas, many individuals or entities were overseeing their care. One of these entities was the dependency court. Florida law required the dependency court to review the placement of Survivor and Victim on a regular basis. The information made available during the special master proceeding indicates that the dependency court knew information about the Barahonas' care of the children that, at least in hindsight, is troubling.

For example, during a hearing in December 2004, the guardian ad litem expressed concerns to the dependency court that "'play therapy' that had been originally suggested, and that the judge ordered several months ago had not begun."⁴¹ The guardian ad litem, according to his notes, believed that therapy was needed because Victim "had begun to touch her sexual areas again" since she started visitation with her biological father.⁴² In response to these concerns, "the judge told DCF to have another evaluation, and to begin therapy ASAP."⁴³

Later in the dependency process, the department reported to the court that Mr. Barahona prevented the guardian ad litem from visiting Survivor and Victim at home from May to August 2007.⁴⁴

Similarly, in October 2007, a Citizen Review Panel, appointed by the dependency court, issued a report of its findings and recommendations relating to Survivor and Victim.⁴⁵ Although the panel found that Survivor and Victim's placement with the Barahonas was "APPROPRIATE and SAFE," the report listed several recent legal events and several other concerns.⁴⁶

⁴¹ Guardian Ad Litem Case Log, Dec. 14, 2004 (BATES 4914).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Recording of hearing of the Barahona Investigative Team. On this issue, the claimants' PowerPoint presentation to the special masters cited to BATES 4635-36.

⁴⁵ Recommendations and Findings of the Citizen Review Panel, In and For the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida based on a hearing on Oct. 3, 2007 (BATES 4621—27).

⁴⁶ *Id.*

The first legal event described by the panel was that the guardian ad litem had not seen the children in 3 months. The second legal event was an abuse report that had been filed with the dependency court. The panel described the events surrounding the abuse report as follows:

[The principal] reported that [Victim's] teacher called the foster mother with concerns that there has been an increase in absences and there has not been follow through. Both children doing poorly in school and falling asleep in class. They are scared to go home and is hoarding food. They are petrified of getting in trouble. The kindergarten teacher for [Survivor] and [Victim] was also present. She reported that she was their teacher for 2 1/2 months. The children were fearful of the mom and was petrified to have the mother called. The court ordered reevaluation of both children. Court order psycho-educational and psychological on the children.⁴⁷

The concerns relevant to the claim bill, which were in the panel's October 2007 report, included a concern that the children's dental exams had not been submitted to the panel for review.⁴⁸ The panel also stated that it was concerned that the judicial review social study report was not pre-filed by the Center for Family and Child Enrichment, as required by statute. Finally, the panel expressed a concern that the guardian ad litem had not been able to visit the children at the foster home. Despite the concern, the panel noted the statement of an unidentified foster parent that the guardian ad litem did not show up for visits at the scheduled times and called them at an inconvenient time.

After the Citizen Review Panel issued its October 2007 report and after a hearing in the dependency court, the guardian ad litem supervisor sent an email to the guardian ad litem describing the hearing. The supervisor explained, "the judge was not 'buying' what the foster parents were saying" about the guardian ad litem's access to the Barahona home.⁴⁹ The

⁴⁷ *Id.*

⁴⁸ *Id.* "On three different occasions, the Citizen's Review Panel held a hearing and found that there was no documentation of the current physical, dental or vision check-ups available for the children, nor were they receiving any required therapy." The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 8 (Mar. 14, 2011).

⁴⁹ Email from Cynthia Kline, guardian ad litem supervisor, to Paul Neumann, guardian ad litem, Oct. 23, 2007 (BATES 4658).

supervisor further explained, “it appears everyone (although the Judge did not say so) is under the impression that the foster parents are trying to hide something.”⁵⁰ It was made very clear, wrote the supervisor, that the guardian ad litem was to be given access to the children in the home.

Nonetheless, the Barahona’s complaints about the guardian ad litem were considered. Eventually, the guardian ad litem was “discharged from the case to smooth over relationships with the Barahonas.”⁵¹

B. Psychological Evaluations

During the special master proceeding, the claimants provided the special master with a psychological evaluation written by Dr. Vanessa Archer in September 2005 along with portions of other evaluations written by her.⁵² The report from September 2005 concluded that “it would be extremely traumatic, if not devastatingly detrimental to the emotional and psychological well-being of these children if they were removed from their current home to be placed with relatives with whom they have no prior relationship. The effects of such a removal, regardless of what transition phase occurs, would have life-long consequences for these children.”⁵³

The children were evaluated again by Dr. Archer in 2007 when they were 7 years old. Her report stated that both Survivor and Victim had symptoms of depression and that they had thought of killing themselves.⁵⁴ The report further stated that Victim “is sure that terrible things are going to happen to her.”⁵⁵ Survivor expressed to Dr. Archer that he thought “the purpose of the evaluation was to talk about what his father did to him noting that his father ‘tickled’ him.”⁵⁶ Similarly, “[Victim] expressed the belief that the purpose of the evaluation was to talk about what her father said to her and that ‘people are lying.’”⁵⁷

⁵⁰ *Id.*

⁵¹ The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 9 (Mar. 14, 2011).

⁵² Dr. Archer was a defendant in the underlying lawsuits. She was released, according to one of the claimants’ attorneys, because she had no insurance.

⁵³ Dr. Vanessa Archer, Archer Psychological Solutions, Inc., Psychological Evaluation (Sept. 7, 2005).

⁵⁴ Dr. Vanessa Archer, Archer Psychological Services, Inc., Psychological Evaluation (June 11, 2007) (BATES 4631, 4633).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

Despite the findings in her previous evaluations, in an excerpt of an evaluation from February 2008, Dr. Archer wrote, “it is astounding how these children have thrived. They clearly have a strong bond with their current care givers.” As a result, Dr. Archer concluded that adoption was clearly in the children’s best interest and “should be allowed to proceed without further delay.”⁵⁸

With respect to the February 2008 evaluation, the Barahona independent investigative panel appointed by the department concluded that Dr. Archer:

failed to consider critical information presented by the children’s principal and school professionals about potential signs of abuse and neglect by the Barahonas. That omission made Dr. Archer’s report, at best, incomplete, and should have brought into serious question the reliability of her recommendation of adoption. Several professionals, including the Our Kid’s case manager, the GAL, and the Children’s Legal Services attorney as well as the judge, were, or should have been, aware of that significant omission, and yet apparently failed to take any steps to rectify that critical flaw in her report.⁵⁹

No evidence was produced for the special master proceeding showing whether the department or someone else selected Dr. Archer to perform the psychological evaluations.

C. Abuse Suffered by Survivor and Victim

During the special master hearing, Dr. Eli Newberger testified about the specific types of abuse and neglect suffered by Survivor and Victim. Dr. Newberger is a pediatrician and an expert in matters relating to child abuse and neglect. His testimony was based on his physical examinations of and interviews with Survivor in February 2013 and September 2015. His testimony is also based on interviews of Survivor’s aunt and uncle in Texas, who were finally able to adopt Survivor in May 2012.

Dr. Newberger testified that the Barahonas abused and neglected Survivor and Victim in numerous ways. As explained to Dr. Newberger by Survivor:

⁵⁸ Excerpt of a psychological evaluation reproduced on the claimants’ PowerPoint presentation, labeled Vanessa L. Archer Phd Report: 2/12/08 (BATES 4991-95).

⁵⁹ *The Nubia Report: The Investigative Panel’s Findings and Recommendations*, 5

- Mr. Barahona put hot sauce in Survivor's and Victim's eyes, nose, ears, and private parts, both front and back.
- Mr. Barahona shoved a noisemaker in Survivor's ear.
- Mr. Barahona made Survivor and Victim sleep in the bathtub with ice nearly every day for almost 3 years.
- The Barahonas tied Survivor's and Victim's hands and feet together with tape.
- Mr. Barahona would hit Survivor with a shoe and a mop, hard enough to cause bleeding.
- Mr. Barahona punched Survivor in the mouth which resulted in Survivor having corrective surgery.
- Mr. Barahona would place a plastic bag at random times over Survivor's and Victim's heads for as long as Mr. Barahona would like.
- Mr. Barahona would give electric shocks to Victim for a minute at a time.
- Mr. Barahona had doused Survivor with chemicals.
- Survivor had gone without eating in the Barahona home for as long as 3 days.
- Before Victim had been found, Mr. Barahona gave Survivor pills that caused Survivor to have seizures.

Dr. Newberger's physical examinations of Survivor found numerous scars across his body which were consistent with the abuse described by Survivor above. On Survivor's forearms and ankles, Survivor had linear healing lacerations from cuts through the lowest level of the skin. These scars, according to Survivor, were from having been bound in the bathtub. On his lower abdomen and back, Survivor had scars that are consistent with chemical burns. Survivor also had scarring on his penis, consistent with chemical burns.

Between Dr. Newberger's first examination of Survivor in 2013 and his examination of Survivor in 2015, some of Survivor's scars faded, but others expanded and became more prominent. How long the scars will last is unknown, but they constantly remind Survivor of the abuse he suffered.

When Dr. Newberger asked Survivor whether he was frightened all the time in the Barahona home, Survivor replied, "At night, in the bathtub, we were scared about what would happen in the morning." Additionally, Survivor told Dr. Newberger that at some point in time near Victim's death, she

told him that she wanted to die because she couldn't take the abuse anymore.

The abuse Survivor suffered in the Barahona home continues to affect him in many ways. Survivor's aunt and uncle explained to Dr. Newberger that soon after Survivor was placed with them, they would find Survivor gasping for air in the middle of the night. He was having nightmares about bags being placed over his head.

Unusual smells tend to trigger memories of abuse. Survivor might suddenly say: "I can't stay here," "It reminds me of the chemicals in the truck," or "it reminds me of what [Victim's] body smelled like after she died." Mr. Barahona operated a pest control business, and Mr. Barahona's truck was carrying pest control chemicals when Survivor and Victim were found.

In school, Dr. Newberger explained, Survivor cannot solve math problems or understand what he is reading without a full-time aide by his side. He cannot take any tests without the presence of an aide. Survivor's grades are poor or failing. According to Survivor, he cannot concentrate because he is constantly thinking about the abuse.

A recent example of how memories of abuse affect Survivor occurred after Survivor met with a prosecutor for one of the Barahonas. After he met with the prosecutor, Survivor was tremendously distressed. He insisted on being treated as an infant for a few days. He wanted to be cuddled and called by various pet names that one would call an infant. In psychological terms, this event was a serious regression and was very unusual for a 15 year old, according to Dr. Newberger.

Dr. Newberger has diagnosed Survivor as having chronic post-traumatic stress disorder, noting that Survivor's entire arc of development has been nothing but deprivation, assaults, witnessing assaults, including a murderous assault on his sister. Dr. Newberger further opined that within a reasonable degree of medical probability, Survivor has suffered a permanent injury because of the abuse in the Barahona home.

Dr. Newberger concludes that Survivor will need psychiatric and psychological care for the rest of his life as he comes into

contact with things that provoke memories and distress. Moreover, Dr. Newberger opined that if Survivor does not have the capacity to learn, his capacity to have a job and provide for himself, his ability to live independently, and his capacity to have a family and conduct himself as an adult are crippled.

D. The Barahona Case: Findings and Recommendations

On February 21, 2011, days after Victim's body was found, the Secretary of the Department of Children and Families established an independent investigative panel to examine issues relating to the Barahonas.⁶⁰ The department attached the findings and suggestions from the investigative panel in its report titled *The Barahona Case: Findings and Recommendations*. When available, the department's assessments of its actions are included in the chronological description of its interaction with the children.

During the special master hearing, a member of the investigative panel, David Lawrence,⁶¹ described the panel's activities, information it reviewed, and the findings described in its report titled *The Nubia Report: The Investigative Panel's Findings and Recommendations*.⁶² The investigative panel's findings include the following:

- Dr. Archer failed to consider critical information about potential signs of abuse, making her reports incomplete.⁶³
- The case manager from Our Kids, the guardian ad litem, and the Children's Legal Services attorney, as well as the judge, were, or should have been, aware of significant omissions in Dr. Archer's reports but failed to take any serious steps to correct the critical flaws.⁶⁴
- There was no centralized system to ensure the dissemination of critical information to all parties overseeing the care of Survivor and Victim.⁶⁵

⁶⁰ David Lawrence Jr., Roberto Martinez, and Dr. James Sewell, *Barahona Investigative Team Report 4* (Mar. 10, 2011).

⁶¹ Mr. Lawrence was the president of The Early Childhood Initiative Foundation and chair of the Children's Movement of Florida.

⁶² *The Nubia Report: The Investigative Panel's Findings and Recommendations* is available at <https://www.dcf.state.fl.us/initiatives/barahona/docs/meetings/Nubias%20Story.pdf>.

⁶³ David Lawrence, Jr., et al., *supra* note 60.

⁶⁴ *Id.* at 5.

⁶⁵ *Id.*

- The guardian ad litem, school personnel, and a nurse practitioner raised serious concerns that should have required “intense and coordinated follow-up.”⁶⁶
- There was no person serving as the “system integrator” who ensured that relevant information, including allegations of abuse, was shared and made accessible to others.⁶⁷
- There is evidence of multiple instances in which the Barahonas did not ensure the health of Survivor and Victim.⁶⁸
- During the hearings before the panel, the actions and testimony of the Chief Executive Officers of Our Kids and the Center for Family and Child Enrichment “created suspicions as to what, if anything, they were trying to hide.”⁶⁹
- Post-adoption services should have been identified by Our Kids after a post-adoption call to the Hotline in June 2010.⁷⁰
- Much of the necessary information raising red flags about the Barahonas was present within the system, but the individuals involved relied on inadequate technology instead of talking to each other.⁷¹

E. Letter of Support

The department has provided a letter of support for a claim bill in an amount not to exceed \$3.75 million, consistent with the settlement agreement in this matter.

III. Inferential Findings of Fact

The evidence presented, including the guardian ad litem’s access to the children, lack of documentation of necessary medical care, the nature of the complaints to the Hotline, and the children’s statements to Dr. Archer, show that the department and other defendants to the underlying lawsuits would have had good reason to be suspicious of how the Barahonas were treating Survivor and Victim. Moreover, the shortcomings of the department in its responses to allegations of abuse and neglect, including admissions that its staff failed

⁶⁶ *Id.* at 6.

⁶⁷ *Id.*

⁶⁸ *Id.* at 7.

⁶⁹ *Id.* at 8.

⁷⁰ *Id.*

⁷¹ *Id.* at 9.

to follow procedures, are credible along with the findings of the independent review panel.

Because the individuals overseeing the care of Survivor and Victim, which included department staff and others, had reason to be suspicious, it seems appropriate to ask, what possible explanation could there be for failing to discover the abuse and neglect? Because this matter settled before discovery and trial and because the individuals involved were not asked to testify for the special master proceeding, they were never asked this question on the record. However, the evidence available suggests that their conduct might be explained by:

- Evidence and allegations of abuse and neglect by the children's biological mother who was a drug addict and their biological father, a child molester.
- The lack of evidence that Barahonas had improperly cared for their other adoptive children.
- The convincing nature of the Barahona's lies and the Barahona's ability to coerce the children into denying the allegations of abuse.
- Wishful thinking, coupled with a belief that the signs of the type of unimaginable abuse perpetrated by the Barahonas would have been more obvious.

Although one might explain the conduct of the department and others as above, the explanations become less and less of an excuse as the signs and allegations of abuse and neglect increase.

CONCLUSIONS OF LAW:

The lawsuits leading to this claim bill were based on allegations of negligence and civil rights violations.

I. Negligence

In a negligence action, "a plaintiff must establish the four elements of duty, breach, proximate causation, and damages."⁷² Whether a duty of care exists is a question of law.⁷³ The Department of Children and Families has a duty to reasonably investigate complaints of child abuse and neglect, which is recognized by case law.⁷⁴ Once a duty is found to

⁷² *Limones v. School Dist. of Lee County*, 161 So. 3d 384, 389 (Fla. 2015).

⁷³ *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992).

⁷⁴ *Dept. of Health and Rehabilitative Svcs. v. Yamuni*, 498 So. 2d 441, 442-43 (Fla. 3d DCA 1986) (stating that the Dept. of Health and Rehabilitative Services, a precursor to the Dept. of Children and Families, has a statutory

exist, whether a defendant was negligent in fulfilling that duty is a question for the finder of fact.⁷⁵ In making that determination, a fact finder must decide whether a defendant exercised the degree of care that an ordinarily prudent person, or caseworker in this instance, would have under the same or similar circumstances.⁷⁶

I find that the claimants provided sufficient evidence in the proceeding to show that, had this case proceeded to trial, a jury would have found that the department and others breached their duties to Survivor and Victim. Juries have done so in somewhat similar lawsuits. However, due to the limited evidence, especially the lack of testimony of any of the various caseworkers, case managers, and child protective investigators, the specific point in time that the department breached its duty cannot be identified with precision.

I also find that the claimants presented sufficient evidence in this matter to show that a jury would have found that actions and inactions by the department proximately caused the suffering of Survivor and Victim to be prolonged and caused Survivor's death. "[T]he issue of proximate cause is generally a question of fact concerned with 'whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred.'" ⁷⁷ In cases against the department having some similarities to this matter, the appellate court determined that "[t]he plaintiffs presented evidence that there is a natural, direct, and continuous sequence between DCF's negligence and [a child's] injuries such that it can be reasonably said that but for DCF's negligence, the abuse to [the child] would not have occurred."⁷⁸

Finally, I find that the claimants presented sufficient evidence that a jury would have further found that Survivor and Victim suffered damages because of the department's negligence. No amount of money can compensate for the pain and

duty of care to prevent further harm to children when reports of child abuse are received); *Dept. of Children and Family Svcs. v. Amora*, 944 So. 2d 431 (Fla. 4th DCA 2006).

⁷⁵ *Yamuni*, 529 So. 2d at 262.

⁷⁶ *Russel v. Jacksonville Gas Corp.*, 117 So. 2d 29, 32 (Fla 1st DCA 1960) (defining negligence as, "the doing of something that a reasonable and prudent person would not ordinarily have done under the same or similar circumstances, or the failure to do that which a reasonable and prudent person would have done under the same or similar circumstances").

⁷⁷ *Amora*, 944 So. 2d at 431.

⁷⁸ *Id.*

suffering that Survivor and Victim endured. However, the \$5 million settlement by the department in this matter is not excessive compared to jury verdicts in similar cases.

II. Federal Civil Rights Violations

The federal lawsuit underlying this claim bill alleged that the department, its employees, Our Kids and its employees, and the Center for Family and Child Enrichment and its employees violated the federal civil rights of Survivor and Victim.

The specific legal standard governing civil rights claims is set forth in 42 U.S.C. s. 1983, which states in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

In contrast to a negligence action, in a civil rights action, the defense of sovereign immunity or the limits on the collectability of a judgment or the payment of a claim under s. 768.28, F.S., do not apply.⁷⁹ For the time periods applicable to the claim bill, s. 768.28, F.S., limited the collectability of a judgment or claim to \$100,000 per person and \$200,000 for all claims arising out of the same incident.⁸⁰

Case law clearly shows that under 42 U.S.C. s. 1983, state officials and contractors such as Our Kids can be held liable for violations of a foster child's civil rights.⁸¹ The applicable rights protected by statute include the "constitutional right to

⁷⁹ *Howlett v. Rose*, 496 U.S. 356 (1990).

⁸⁰ Chapter 2010-26, Laws of Fla., increased the limits on the payment of a claim or judgment to \$200,000 per person and \$300,000 for all claims arising out of the same incident. The increased limits apply to claims arising on or after October 1, 2011.

⁸¹ *Taylor v. Ledbetter*, 818 F.2d 791 (11th Cir. 1987); *Crispell v. Dept. of Children and Families*, 2012 WL 3599349 (M.D. Fla. 2012) (denying Children's Homes Society of Florida's motion to dismiss a civil rights action because the court found that the entity was not an arm of the state entitled to immunity under the 11th Amendment to the United States Constitution); *Woodburn v. Dept. of Children and Family Svcs.*, 854 F.Supp.2d 1184, 1201 (S.D. Fla. 2011) (finding that the plaintiff "alleged sufficient facts to support a facially plausible claim that her constitutional rights were violated by . . . Our Kids for the purpose of surviving a motion to dismiss").

be free from unnecessary pain and a fundamental right to physical safety.”⁸²

Proving a civil rights violation is different than proving negligence.⁸³ In a civil rights action, the plaintiff must show that the defendant was deliberately indifferent to the violation of a federal right. The defendant’s knowledge of a risk of harm is key. A state official acts with deliberate indifference only when disregarding a risk of harm of which he or she is actually aware.

Following the guidance above, the Federal 11th Circuit Court of appeals has stated that “in order to establish deliberate indifference, plaintiffs must be able to allege (and prove at trial) that the defendant (1) was objectively aware of a risk of serious harm; (2) recklessly disregarded the risk of harm; and (3) this conduct was more than merely negligent.”⁸⁴

The evidence presented during the special master proceeding showed that the actions of the department were negligent, not civil rights violations.⁸⁵

RELATED ISSUES:

A claim bill is an act of legislative grace, not an entitlement.⁸⁶ These bills are a “voluntary recognition of its moral obligation by the legislature . . . based on its view of justice and fair treatment of one who ha[s] suffered at the hands of the state.”⁸⁷ Consistently, the legislative proceedings relating to claim⁸⁸ bills are “separate and apart from the constraints of an earlier lawsuit.”⁸⁹

For these reasons, special masters inquire into matters that might not be admissible in court but may be relevant to

⁸² *Ray v. Foltz*, 370 F.3d 1079, 1082 (11th Cir. 2004) (citing *Taylor v. Ledbetter*, 818 F.2d 791, 794-95 (11th Cir. 1987) (en banc)).

⁸³ *Ray v. Foltz*, 370 F.3d 1079, 1083 (11th Cir. 2004).

⁸⁴ *Id.* (citing *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999)).

⁸⁵ Nonetheless, the department made a payment of \$1.25 million, which was in excess of the amounts authorized for negligence actions under s. 768.28, F.S. Perhaps there are facts that are known by the parties that were not presented. When I asked the claimants’ attorneys during the special master hearing what facts took the Barahona lawsuits from negligence to a civil rights action, they declined to directly answer the question.

⁸⁶ *Searcy Denny Scarola Barnhart & Shipley, P.A. v. State*, 2015 WL 4269031, *5 (Fla. 4th DCA), *review granted*, 2015 WL 6127021 (Fla. Oct. 14, 2015).

⁸⁷ *Noel v. Schlesinger*, 984 So. 2d 1265, 1267 Fla. 4th DCA) quoting *Gamble v. Wells*, 450 So. 2d 850, 853 (Fla. 1984).

⁸⁸ *Searcy, et al.*, *supra* note 86.

⁸⁹ *Id.*

decisions by legislators. These inquiries do not affect the recommendation of this report. However, common inquiries include: What is the claimant's criminal history? Is the claimant lawfully present in the United States? Is there any information about the claimant which would cause embarrassment to the Legislature should it enact the claim bill?

Because of the complexity of the department's system to oversee foster care and investigate allegations of abuse and neglect, different questions arise in this matter. These questions relate to the liability of other parties who were also defendants to the underlying lawsuits and were under contract to care for Survivor and Victim.

I. Fault and Damages Collected from Other Defendants

With respect to this claim bill, the most relevant inquiry asks: Who besides the Department of Children and Families was at fault for the abuse and neglect of Survivor and Victim? Of the others at fault, why were they at fault and what was their relative contribution to the damages suffered by Survivor and Victim? Finally, what amounts have been recovered from others?⁹⁰

The claimants declined my request to explain the responsibility of others for the abuse of Survivor and Victim and Victim's death.⁹¹ Nonetheless, there is information suggesting that others bear substantial responsibility, including Dr. Archer, Our Kids, and the Center for Family and Child Enrichment.

According to the settlement agreement in this matter, the department agreed to work cooperatively to reach a settlement with Dr. Archer "as part of which she will agree to take no more court or agency appointments relating to the

⁹⁰ If the lawsuit had proceeded to trial after the claimants reached a settlement with other defendants, a court may have found that the settlement agreement could not be used as a basis for offsetting damages owed by the department by damages paid by one of the defendants to the underlying lawsuits. See *Wal-Mart Stores v. Strachan*, 82 So. 3d 1052 (Fla. 4th DCA 2011). With the abolition of joint and several liability, an award against a defendant generally may not be offset by amounts recovered by a settlement with another defendant. *Id.*

⁹¹ The State Constitution permits a legislator to consider any information he or she deems to determine whether a claim bill is in the interests of his or her constituents or the state as a whole. Moreover, because claim bills are a type of appropriation bill, a legislator should have access to information necessary to determine how to rank a claim bill among the state's funding priorities.

foster care or dependency system, or children in it.”⁹² Further, according to one of the attorneys for the claimants, Dr. Archer was dismissed from the federal court case; she had no insurance, and she made no payment.⁹³

The claimants disclosed that they reached a settlement agreement with Our Kids and the Center for Family and Child Enrichment. I asked for the claimants’ attorneys for details about the settlement agreement. They refused to make the settlement agreement available or disclose the settlement amount.⁹⁴

Had the claimants fully disclosed information relative to the conduct of the other defendants to the underlying lawsuits and any settlements, the Legislature could independently evaluate whether the department’s settlement agreement is in the best interests of the state. Similarly, the lack of disclosure restricts the Legislature from independently determining whether it has a moral obligation to provide compensation in excess of the settlement agreement with the department.

The Supreme Court’s opinion in *Fabre v. Marin* shows that, had this matter been presented to a jury, the jury would have apportioned the damages among all the responsible persons.⁹⁵ Thus, the department would have been responsible only for that portion of damages equivalent to its percentage of fault.^{96, 97}

⁹² Mem. of Settlement, paragraph 5 (Mar. 6, 2013), *Survivor and Estate of Victim v. Our Kids of Miami/Dade/Monroe, Inc. et al.*, Case No.: 1:11-cv-24611-PAS.

⁹³ Statement of Neal Roth during the special master hearing (Oct. 30, 2015).

⁹⁴ The settlement agreement between the claimants and Our Kids and the Center for Family and Child Enrichment should be readily available as a public record, just as the claim bill, investigative reports by the department, and the settlement agreement between the claimants and the department is a public record. See ss. 409.1671 (2011), 287.058(1)(c), 119.011(2), and 119.07(1), F.S.; see also s. 69.081(8), F.S. The information is also available to the Legislature under s. 11.143, F.S.

⁹⁵ *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993).

⁹⁶ *Id.* at 1185.

⁹⁷ Additionally, the lack of disclosure by the claimants’ attorneys precludes an analysis of whether the department could be legally responsible for the contractors. According to *Del Pilar v. DHL Customer Solutions, Inc.*, 993 So. 2d 142, 145-46 (Fla. 1st DCA 2008):

Generally, a principal is not vicariously liable for the negligence of its independent contractor, but the principal is liable for the negligence of its agent. See generally *Fla. Power & Light Co. v. Price*, 170 So.2d 293 (Fla.1964). Whether one laboring on behalf of another is a mere agent or an independent contractor “is a question of fact ... not controlled by descriptive labels employed by the parties themselves.” *Parker v. Domino's Pizza, Inc.*, 629 So.2d 1026, 1027 (Fla. 4th DCA 1993) (internal citations omitted); see also *Font v. Stanley Steamer Int'l, Inc.*, 849 So.2d 1214, 1216 (Fla. 5th DCA 2003) (noting that question of status “is normally one for the trier of fact to decide”).

II. Distribution of Settlement Proceeds

A second related issue is whether the settlement funds paid by the department have been distributed to Survivor and the Estate of Victim. Pursuant to its settlement agreement with the claimants, the department has made the required payment of \$1.25 million. The Memorandum of Settlement, filed in the federal lawsuit, required the department to pay the settlement funds to the claimants' attorneys by the beginning of April 2013.

In October 2015, the claimants successfully terminated any rights the Barahonas may have had to inherit from Victim's estate. However, as of the date of this report, the claimants' attorneys have not provided any information showing that the settlement funds were distributed to their clients.

III. Related Lawsuits and Beneficiaries of Estate of Victim

The last related issue to this claim bill is the existence of related lawsuits against the department and several of its employees. These lawsuits were filed by the two other children who had been adopted by the Barahonas. These children are not addressed in the claim bill. However, they will recover under the claim bill as beneficiaries of the Estate of Victim. These children were adopted by the Barahonas in 2001 and 2007. The lawsuits appear to be substantially premised on an allegation that department and its employees failed to properly investigate the abuse of Survivor and Victim. The complaints further allege that this failure to investigate caused the two additional children to remain in the Barahona home and suffer abuse and neglect and witness the abuse of Survivor and Victim.⁹⁸ This report should not be read to express any opinion on the merits of those lawsuits.

ATTORNEYS FEES:

Section 768.28(8), F.S., states "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." In compliance with the statute, Neal Roth, one of the claimants' attorneys, submitted an attorney fee affidavit that states in pertinent part:

1. My name is Neal A. Roth and I am a partner of the Law Firm of Grossman Roth . . .

⁹⁸ See Complaints filed in *G.K. v. Department of Children and Families et al.*, Case No.: 14-21291 (Fla. 11th Cir. Ct.) and *J.B. v. Department of Children and Families et al.*, Case No.: 14-23724 (Fla. 11th Cir. Ct.).

2. Grossman Roth, P.A., is counsel for Claimants, Survivor and Richard Milstein, as Personal Representative of the Estate of Victim, deceased.

3. As counsel for the Claimants, we have fully complied with all provisions of Section 768.28 (8).

4. Insofar as lobbying fees are concerned, the bill as filed provides that any lobbying fees related to the claim bill will be included as part of the statutory cap on attorneys' fees in Section 768.28.

Additionally, closing statements provided by the claimants' attorneys indicate that the contract with the claimants provides for an award of attorney fees in the amount of 25 percent of the \$5 million settlement, which is \$1.25 million, plus costs.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 48 be reported FAVORABLY.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute allocates the \$3.75 million awarded by the claim bill between the two claimants. Survivor's share is \$1.125 million, and the Estate of Victim is to receive \$2.65 million.



196086

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 155 - 156
and insert:
guardians of Survivor, in the amount of \$1.125 million, and to
Richard Milstein, as personal representative of the Estate of
Victim, in the amount of \$2.625

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

And the title is amended as follows:

Delete line 140



196086

12 and insert:
13 \$3.75 million, and such funds shall be allocated
14 between Survivor and the Estate of Victim so that
15 Survivor will receive \$1.125 million and the Estate of
16 Victim will receive \$2.625 million, and



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 26, 2016

I respectfully request that **Senate Bill #48**, relating to Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families, be placed on the:

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

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37



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
12/30/15	SM	Favorable
02/08/16	JU	Favorable
	CA	
	FP	

December 30, 2015

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 62** – Senator Bill Montford
Relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$8,624,754.40 BASED ON A BENCH TRIAL AWARD FOR JENNIFER WOHLGEMUTH AGAINST THE PASCO COUNTY SHERIFF'S OFFICE TO COMPENSATE CLAIMANT FOR INJURIES SUSTAINED IN A MOTOR VEHICLE CRASH RESULTING FROM THE NEGLIGENT OPERATION OF A POLICE VEHICLE.

CURRENT STATUS:

On December 2, 2011, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, issued a report after holding a de novo hearing on a previous version of this bill, SB 22 (2012). The judge's report contained findings of fact and conclusions of law and recommended that the bill be reported favorably with one amendment. That report is attached as an addendum to this report.

PRIOR LEGISLATIVE HISTORY: Senate Bill 50 by Senator Smith and House Bill 1347 were filed during the 2011 Legislative Session. The Senate Bill was indefinitely postponed and withdrawn from consideration. The House Bill died in its only committee of reference. Senate Bill 22 by Senator Smith and House Bill 1353 were filed during the 2012 Legislative Session. The

Senate Bill passed with one amendment in all its committees of reference but died in Messages. The House Bill died in its only committee of reference.

Senate Bill 30 filed by Senator Montford and House Bill 3535 by Representative Rouson were filed during the 2015 Legislative Session. The Senate Bill passed favorably with one amendment in Judiciary but died in Community Affairs. The House Bill died in the first committee of reference.

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report.

RECOMMENDATION

For the reasons set forth above the undersigned recommends that Senate Bill 62 (2016) be reported favorably.

Respectfully submitted,

Tracy Jeanne Sumner
Senate Special Master

cc: Debbie Brown, Secretary of the Senate



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 22 (2012)** – Senator Christopher L. Smith
Relief of Jennifer Wohlgemuth

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$8,624,754.40 BASED ON A BENCH TRIAL AWARD FOR JENNIFER WOHLGEMUTH AGAINST THE PASCO COUNTY SHERIFF'S OFFICE TO COMPENSATE CLAIMANT FOR INJURIES SUSTAINED IN A MOTOR VEHICLE CRASH RESULTING FROM THE NEGLIGENT OPERATION OF A POLICE VEHICLE.

FINDINGS OF FACT:

On January 3, 2005, at approximately 1:35 a.m., the Claimant, Jennifer Wohlgemuth, was operating her Honda Accord southbound on Regency Park Boulevard in New Port Richey, Florida. The Claimant, who was not wearing her seatbelt, was in the process of dropping off several passengers with whom she had been socializing earlier that evening.

As the Claimant headed southbound on Regency Park Boulevard, she approached the intersection of Ridge Road, which is controlled by a traffic light in all four directions. Unbeknownst to the Claimant, a fleeing motorist, Scott Eddins, had proceeded through the intersection a short time

earlier headed eastbound on Ridge Road. Closely pursuing Mr. Eddins were three police vehicles with the Port Richey and New Port Richey Police Departments. A fourth law enforcement vehicle, operated by Pasco County Sheriff's Deputy Kenneth Petrillo, was well behind the pursuit and trailed the other patrol cars by 10 to 30 seconds.

Although the traffic signal at the intersection was red for vehicles traveling eastbound on Ridge Road, Deputy Petrillo entered the intersection against the light, without slowing, at a rate of travel that substantially exceeded the 45 MPH speed limit. Although Deputy Petrillo's patrol vehicle was equipped with a siren, he neglected to activate it. Almost immediately upon entering the intersection, Deputy Petrillo struck the front right portion of the Claimant's Honda Accord, which had lawfully proceeded into the intersection several seconds earlier.

As a result of the impact, which was devastating, the Claimant's vehicle traveled approximately 15 feet across a grass shoulder and sidewalk, at which point it struck a metal railing and came to rest. The front right of the Claimant's vehicle was demolished, and the entire right side was dented with inward intrusion. In addition, the front windshield, rear windshield, and right side windows were shattered and broken away.

The Claimant exited her vehicle following the collision, but collapsed in the roadway moments later due to the serious nature of her injuries. The Claimant was subsequently transported to Bayfront Medical Center for treatment.

Shortly after the accident, Florida Highway Patrol Corporal Erik W. Bromiley initiated an investigation to determine the cause of the collision. During his investigation, Corporal Bromiley learned that three Alprazolam (an anti-depressant) tablets, totaling 1.8 grams, had been discovered in the Claimant's wallet. In addition, several witnesses advised Corporal Bromiley that the Claimant had consumed alcoholic beverages at a bar earlier in the evening. Ultimately, however, Corporal Bromiley could not conclude that the Claimant was impaired by drugs or alcohol at the time of the accident.

While Corporal Bromiley remained at the scene to question witnesses and inspect the crash site, a second trooper responded to Bayfront Medical Center and obtained blood samples from the Claimant. Testing of the blood, which was drawn approximately two and one-half hours after the accident, revealed that the Claimant's blood alcohol level was .021 and .022, which is below the legal limit of .08. In addition, cocaine metabolites and Alprazolam were detected.

Jeffrey Hayes, a toxicologist employed with the Pinellas County Forensic Laboratory, estimated that at the time of the accident, the Claimant's blood alcohol level could have ranged from .047 (a level in which the driver is presumed not to be impaired pursuant to Florida law) to .097, which would exceed the legal limit. Significantly, Mr. Hayes conceded that any conclusion that the Claimant was impaired when the collision occurred would be purely speculative.

Accident reconstruction established that Deputy Petrillo was travelling between 64 MPH (with a margin of error of plus or minus 5 MPH) in a 45 MPH zone. It was further estimated that the Claimant was travelling 34 MPH, in excess of the posted 30 MPH limit for Regency Park Boulevard. However, with the margin of error of plus or minus 5 MPH, the accident reconstruction findings do not preclude a determination that the Claimant was observing the speed limit.

Although it is clear that Deputy Petrillo's siren was not activated prior to the collision, the evidence is inconclusive regarding the use of the patrol vehicle's emergency lights.

An additional investigation of the accident was conducted by Inspector Art Fremer with the Pasco County Sheriff's Office Professional Standards Unit. The purpose of Inspector Fremer's investigation was to ascertain if Deputy Petrillo had committed any statutory violations or failed to observe the policies of the Pasco County Sheriff's Office. At the conclusion of his investigation, Investigator Fremer determined that Deputy Petrillo violated General Order 41.3 of the Pasco County Sheriff's Office in the following respects: (1) failing to activate and continuously use a siren while engaged in emergency operations; (2) entering the intersection against a red light without slowing or stopping, which was necessary for safe operation; (3) entering the intersection at a speed greater than reasonable; and (4) failing

to ensure that cross-traffic flow had yielded. In addition, Investigator Fremer concluded that Deputy Petrillo had violated s. 316.072(5), Florida Statutes, which provides that the operator of an emergency vehicle may exceed the maximum speed limit "as long as the driver does not endanger life or property." As a result of his misconduct, Deputy Petrillo was suspended for 30 days without pay.

With respect to the Claimant's driving, the undersigned credits the testimony of Amanda Dunn, an eyewitness driving three to four car lengths behind the Claimant, who noticed no unusual driving and testified that the "coast was clear" when the Claimant entered the intersection. Accordingly, the undersigned finds that she operated her vehicle in accordance with the law and did not contribute to the accident.

As a result of the collision, the Claimant suffered severe closed head trauma, which included a subdural hematoma of the right frontal lobe and a subarachnoid hemorrhage. As a result of significant swelling to her brain, a portion of the Claimant's skull was removed. The Claimant remained in a coma for approximately three weeks following the accident, and did not return home until August of 2005.

At the time of the final hearing in this matter, the Claimant continues to suffer from severe impairment to her memory, a partial loss of vision, poor balance, urinary problems, anxiety, dysarthric speech, and weight fluctuations. Further, the damage to the Claimant's frontal lobe has left her with the behavior, judgment, and impulses similar to those of a seven-year-old child. As a consequence, the Claimant requires constant supervision and is unable to hold a job, drive, or live independently.

LITIGATION HISTORY:

On March 17, 2007, the Claimant filed an Amended Complaint for Negligence and Demand for Jury Trial in the Sixth Judicial Circuit, in and for Pasco County. In her Amended Complaint, the Claimant sued Robert White, as Sheriff of Pasco County, for injuries she sustained as a result of Deputy Petrillo's negligence. On March 9-11, Circuit Judge Stanley R. Mills conducted a bench trial of the Claimant's negligence claim.

On March 12, 2009, Judge Mills rendered a verdict in favor of the Claimant and awarded:

- \$299,284.32 for past medical expenses.
- \$5,786,983.00 for future medical expenses.
- \$1,055,000.00 for future lost earnings.
- \$500,000.00 for past pain and suffering.
- \$1,500,000 for future pain and suffering.

The trial judge further determined that Deputy Petrillo was 95 percent responsible for the Claimant's injuries, and that the Claimant was 5 percent responsible due to her failure to wear a seatbelt. With the allocation of 5 percent responsibility to the Claimant, the final judgment for the Claimant totaled \$8,724,754.50.

The Respondent appealed the final judgment to the Second District Court of Appeal. In its initial brief, the Respondent argued that the trial court erred by: (1) failing to allocate any responsibility to the Claimant based upon her blood alcohol level; (2) awarding lost wages that were not supported by competent substantial evidence; (3) failing to allocate any responsibility to the Claimant based upon her driving in excess of the speed limit; and (4) failing to allocate any responsibility to the Scott Eddins, the fleeing motorist. Oral argument was granted, and on March 10, 2010, the Second District Court of Appeal affirmed the trial court without a written opinion.

CLAIMANT'S ARGUMENTS:

- Deputy Petrillo's negligent operation of his patrol vehicle was the proximate cause of the Claimant's injuries.
- The trial court's findings as to damages and the apportionment of liability were appropriate.

RESPONDENT'S
ARGUMENTS:

- The Pasco County Sheriff's Office objects to any payment to the Claimant through a claim bill.
- At the time of the collision, the Claimant was not wearing her seat belt and was impaired by alcohol, drugs, or a combination of the two, and as such, more than 5 percent of the fault should be allocated to her.

- Some responsibility should be apportioned to Scott Eddins, who was being pursued by multiple law enforcement vehicles at the time Deputy Petrillo collided with the Claimant's vehicle.

CONCLUSIONS OF LAW:

Deputy Petrillo had a duty to operate his vehicle at all times with consideration for the safety of other drivers. See City of Pinellas Park v. Brown, 604 So. 2d 1222, 1226 (Fla. 1992) (holding officers conducting a high-speed chase of a man who ran a red light had a duty to reasonably safeguard surrounding motorists); Brown v. Miami-Dade Cnty., 837 So. 2d 414, 417 (Fla. 3d DCA 2001) ("Florida courts have found that police officers do owe a duty to exercise reasonable care to protect innocent bystanders . . . when their law enforcement activities create a foreseeable zone of risk"); Creamer v. Sampson, 700 So. 2d 711 (Fla. 2d DCA 1997) (holding police owed duty to innocent motorist during high speed pursuit of traffic offender). It was entirely foreseeable that injuries to motorists such as the Claimant could occur where Deputy Petrillo entered an intersection at a high rate of speed, without slowing, against a red light, and without his siren activated. Further, Deputy Petrillo failed to comply with s. 316.072(5), Florida Statutes, which provides that the operator of an emergency vehicle may exceed the maximum speed limit "as long as the driver does not endanger life or property." Deputy Petrillo breached his duty of care and the breach was the proximate cause of the Claimant's injuries.

The Pasco County Sheriff's Office, as Deputy Petrillo's employer, is liable for his negligent act. Mercury Motors Express v. Smith, 393 So. 2d 545, 549 (Fla. 1981) (holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment).

The circuit judge's allocation of 95 percent liability to the Pasco County Sheriff's Office is reasonable and should not be disturbed. The evidence failed to establish that the Claimant was impaired or that her operation of the vehicle contributed to the accident. Further, as Deputy Petrillo was well behind the pursuit, the zone of risk created by Scott Eddins (the fleeing motorist) had moved beyond the intersection of Regency Park Boulevard and Ridge Road at the time of the collision. Accordingly, the trial court correctly determined that no fault should be apportioned to Mr. Eddins.

The undersigned further concludes that the damages awarded to the Claimant were appropriate. This includes the \$1,055,000.00 for future lost earnings, which was based on the reasonable and conservative assumption that the Claimant did not possess a high school diploma, when in fact she had graduated from high school and planned to attend community college.

LEGISLATIVE HISTORY:

This is the second year that a bill has been filed on the Claimant's behalf. During the 2011 session, the bill (SB 50) was indefinitely postponed and withdrawn from consideration on May 7, 2011.

ATTORNEYS FEES:

The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), Florida Statutes.

FISCAL IMPACT:

The Respondent has already paid the statutory maximum of \$100,000.00, leaving \$8,624,754.40 unpaid. Pursuant to the Sheriff's Automobile Risk Program (a self-insurance pool), an additional \$332,000 is at the Respondent's disposal. The remaining balance would be paid by Pasco County funds. Respondent's General Counsel, Jeremiah Hawkes, advises that the Pasco County Sheriff's Office is in the midst of a significant budget crisis that would be exacerbated by the passage of the instant claim bill.

Notwithstanding the Respondent's budgetary woes, the undersigned concludes that the Claimant is presently entitled to the full amount sought. In the alternative, it would not be inappropriate to amend Senate Bill 22 to direct Respondent to pay the balance of \$8,624,754.40 over a period of years.

COLLATERAL SOURCES:

The Claimant receives \$221 per month in Social Security Disability Insurance.

SPECIAL ISSUES:

Senate Bill 22, as it is presently drafted, provides that Deputy Petrillo failed to activate his patrol vehicle's emergency lights. In light of the undersigned's finding that the evidenced is inconclusive regarding the use of emergency lights, Senate Bill 22 should be amended accordingly.

The Respondent introduced evidence that that the Claimant began using marijuana at the age of 16, as well as cocaine

several years later. Although the Claimant sought help for her addictions, she voluntarily terminated treatment roughly two weeks prior to the collision with Deputy Petrillo's vehicle. As there was no evidence that the Claimant was impaired at the time of the accident, the undersigned concludes that the Claimant's history of drug addiction should not militate against the passage of the instant claim bill.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 22 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

Edward T. Bauer
Senate Special Master

cc: Senator Christopher L. Smith
Debbie Brown, Interim Secretary of the Senate
Counsel of Record



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Reapportionment
Rules

SENATOR BILL MONTFORD

3rd District

January 20, 2016

Senator Miguel Diaz de La Portilla, Chair
Senate Committee on Judiciary
515 Knott Building
Tallahassee, Florida 32399-1100

Dear Chairman:

I respectfully request that the following claim bills be placed on the next agenda for the Senate Committee on Judiciary

SB 62 Relief for Jennifer Wohlgemuth

Your consideration in the matter would be greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
State Senator, District 3

WM/md

REPLY TO:

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

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

2/9/16

Bill Number (if applicable)

SB 62

Amendment Barcode (if applicable)

Topic

Claims Bill / Jennifer Wohlgenuth

Name

Frank Winkles

Job Title

attorney

Address

1110 Floris de Avila

Street

Phone

813 3907441

City

Tampa

State

Zip

Email

frank@winkleskw.com

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

claimant / Jennifer Wohlgenuth

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

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
01/13/16	SM	Favorable
02/08/16	JU	Favorable
	AED	
	AP	

January 13, 2016

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 16** – Senator Arthenia Joyner
HB 3513 – Representative Mia Jones
Relief of Dennis Darling and Wendy Darling by the State of Florida

SPECIAL MASTER'S FINAL REPORT

THIS IS A UNOPPOSED CLAIM BILL BY DENNIS DARLING AND WENDY DARLING, AS REPRESENTATIVES OF THE ESTATE OF THEIR SON, DEVAUGHN DARLING, FOR \$1.8 MILLION, BASED ON A FINAL JUDGMENT SUPPORTED BY A SETTLEMENT AGREEMENT BETWEEN THE DARLINGS AND THE BOARD OF TRUSTEES OF FLORIDA STATE UNIVERSITY (FSU) AS COMPENSATION FOR THE DEATH OF DEVAUGHN WHICH OCCURRED DURING PRESEASON FOOTBALL DRILLS IN 2001.

Current Status:

CURRENT STATUS: A claim bill for these Claimants was first filed in the 2007 Session, but was withdrawn at the request of Claimants before a hearing was held. A claim bill was filed again in the 2008 Session and a joint Senate/House claim bill hearing was held in 2007.

On February 16, 2009, 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 32 (2008). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported FAVORABLY.

It should be noted that the report issued by the Senate Special Master for SB 38 (2015) was amended to reflect \$1.8 million as the correct amount of funds due Dennis Darling and Wendy Darling and SB 32 is the correct claim bill number sponsored by Senator Lawson in 2008 and reported favorably by the Special Master. The claim bill filed for the 2016 session (SB16) is for the correct amount of \$1.8 million.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Barbara M. Crosier. My responsibilities were to review the records relating to the claim bill, be available for questions from Senators, and determine whether any changes have occurred since the hearing before Judge Canter, which if known at the hearing, might have significantly altered the findings or recommendation in the report.

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report.

For the reasons set forth above the undersigned recommends that Senate Bill 16 (2016) be reported favorably.

Respectfully submitted,

Barbara M. Crosier
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

JANUARY 13, 2016

Page 3



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
02/16/09	SM	Favorable

February 16, 2009

The Honorable Jeff Atwater
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 26 (2008)** Senator Al Lawson
Relief of Dennis Darling and Wendy Darling

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM BY DENNIS DARLING AND WENDY DARLING, AS REPRESENTATIVES OF THE ESTATE OF THEIR SON, DEVAUGHN DARLING, FOR \$1.2 MILLION, BASED ON A FINAL JUDGMENT SUPPORTED BY A SETTLEMENT AGREEMENT BETWEEN THE DARLINGS AND THE BOARD OF TRUSTEES OF FLORIDA STATE UNIVERSITY (FSU) AS COMPENSATION FOR THE DEATH OF DEVAUGHN WHICH OCCURRED DURING PRESEASON FOOTBALL DRILLS IN 2001.

FINDINGS OF FACT:

On February 26, 2001, while participating in "mat drills" in the Moore Athletic Center at Florida State University (FSU), DeV Vaughn Darling collapsed and died. Two autopsies were performed, but found "no definite morphologic cause of death." The autopsies, however, did find evidence of distended blood vessels "engorged" with sickled blood cells in several organs of his body.

JANUARY 13, 2016

Page 4

It was determined months before, during DeVaughn's initial physical examination upon entering FSU as a freshman, that he had sickle cell trait. Sickle cell trait is the inheritance of one gene of sickle hemoglobin and one for normal hemoglobin. In contrast, sickle cell anemia is caused by the inheritance of two sickle cell genes and is a much more serious condition with many adverse health consequences. In both the trait and the anemia, blood cells can distort (changing from a round shape to a crescent shape) and become less flexible. The cells are then less efficient at transporting oxygen to the muscles and organs of the body. The distortion and inflexibility of the blood cells impairs their ability to pass easily through the smaller blood vessels. The proportion of cells that distort and the degree of their distortion is greater in the case of sickle cell anemia.

Sickle cell trait occurs most commonly in persons of African descent and occurs in approximately 8% of African-Americans. It occurs in persons of other ancestry as well, but much less frequently.

Sickle cell trait is not treatable, but usually does not compromise the health of the individual with the trait. However, sickle cell trait has been linked to the deaths of 13 high school and college football players and a larger number of U.S. Army recruits. In all cases, the deaths occurred during extreme exertion while the individual was training. The sickling of blood cells during extreme exertion is brought on by four forces: (1) deficiency in the concentration of oxygen in arterial blood, (2) increase in body acids, (3) hyperthermia in muscles, and (4) red cell dehydration. It was established before 2001 that sickle cell trait is a factor that, when combined with other stress factors such as high temperature and dehydration, can result in "sickle cell collapse" and death during extreme exertion.

The medical issues related to athletes with sickle cell trait caused the National Collegiate Athletic Association (NCAA) to adopt guidelines regarding athletes with sickle cell trait. The 1998 guidelines contain a statement that, "There is controversy in the medical literature concerning whether sickle cell trait increases the risk of exercise-associated sudden death," but recommended that all athletes (1) avoid dehydration and acclimatize gradually to heat and humidity,

JANUARY 13, 2016

Page 5

(2) condition gradually for several weeks before engaging in exhaustive exercise regimens, and (3) refrain from extreme exertion during acute illness, especially one involving fever.

Mat drills are the name given to the pre-season conditioning drills for FSU football players conducted in February of each year. They consist of three different physical activities conducted at separate "stations" which the players rotate through. There is a station which mostly involves running sprints, an "agility station" which involves running through ropes and around cones, and a station which involves drills on a large wrestling mat. The stations are run simultaneously, beginning and ending at same time. The football players are divided into three groups according to their size. As soon as the players in a group finish the drills at one station, they move together to another station. The entire exercise takes about 90 minutes to complete.

FSU football coaches are assigned to a single station for the entire 90-minute period. Trainers are also divided between stations. The coaches and trainers watch the players closely at all times. The coaches grade the players' performances in the drills, record the grades, and discuss the grades with the players at a meeting of all of the players after all the drills have been completed.

The mat drills had a reputation for being extremely challenging because of the physical exertion required. Devard Darling, Devaughn's twin brother and also a FSU football player, said the older players teased the freshmen about what they had in store for them when February came around and the mat drills started. The players were awakened at 5:30 a.m. and started the mat drills soon after getting up. Trash cans were set out for the specific purpose of providing receptacles for the players to vomit into.

At the mat drill station, the players formed in groups of four abreast at one end of the mat. There would usually be three or four lines with four players in each line. The seniors and starters formed the first lines; freshmen formed the back lines. At the oral commands or hand signals of the coaches, the players would throw themselves onto the mat on their chests and stomachs, spin quickly to the left and right, jump onto their feet, move laterally, sprint forward to the middle of the mat,

JANUARY 13, 2016

Page 6

run in place, sprint to the end of the mat, run in place, and then sprint forward to a matted wall. The number of times the players performed any single maneuver on the mat and the sequence of maneuvers would vary. For example, the coaches might make the players dive forward onto the mat once or they might make them do it several times. After completing the drill, the four players would return to the end of the formation to await their turn to go again.

If a player did not perform a drill correctly, or “fell out” during a mat drill, all four players would be sent back to redo the drill. They redid the drill immediately while the other lines of players waited. Because of the inexperience of the freshmen, they would usually have to do more “go backs” than the other players.

The room where the mat drill took place was relatively small, about by 120 feet by 49 feet. Devard Darling said the room was always hot and muggy. In his statement to a police investigator, the head trainer said Devaughn was taken from the mat room to the training room after he collapsed because the mat room was “very hot.”

The parties disputed whether the players were given reasonable access to water. The head trainer said the players were told to drink water before the mat drills began and there were water fountains in the hallways not far from the mat area. The players, however, said it was impossible to get a drink of water during the drills and nearly impossible to get water in the short time when the players moved to a new station. No “water break” was provided during the 90-minute mat drills. Furthermore, a high-pressure, hurry-up atmosphere was created that discouraged and impeded the players from going for water. I am persuaded by the evidence presented to me that, because of the way in which the mat drills were run, it was difficult for the players to get water, many of the players did not get water, and the players that managed to get water got less than they wanted.

On February 26, 2001, the mat drill was the last station for DeVaughn. Four coaches and seven trainers (including the student trainers) were present. The written statements provided by FSU's coaches and non-student trainers were identical in stating that they saw nothing “out of the ordinary”

JANUARY 13, 2016

Page 7

in DeVaughn's level of fatigue or behavior leading up to his collapse at the conclusion of the mat drill. However, the statements of several players and a couple of the student trainers were quite different. Some players said DeVaughn told them he couldn't see, that they saw him clutching his chest, and that he was having trouble getting up off the mat and sometimes could not get up without help from other players. One student trainer said that, instead of diving forward onto the mat like the others, DeVaughn would just fall forward "like a board." Another student trainer said DeVaughn would sometimes attempt to stand, but would fall back down.

DeVaughn's line of four players was made to go back more than once and was the last to finish the drill. Some players reported that DeVaughn was not able to get into position fast enough to go back with his line and finished the drill by himself. He was the last player to finish the last station.

When DeVaughn finished the mat drill, he fell to his knees with his head resting against the wall. The head trainer and one of the players carried DeVaughn to the edge of the mat. His pulse was irregular and his breathing was shallow and erratic. DeVaughn was then carried downstairs to the training room where he was given oxygen and surrounded with ice packs to reduce his body temperature. Soon thereafter, however, DeVaughn stopped breathing. At that point, the training staff called 911. Policemen arrived first and brought a defibrillator which was used on DeVaughn in an attempt to get his pulse going again. When the ambulance arrived, DeVaughn was taken to the hospital where he was pronounced dead.

Beginning in 2002, FSU changed the way it conducted the mat drills. Now, a water break and short rest are provided to the players when they are between stations and an emergency medical crew and ambulance are standing by to render medical assistance to a player if needed.

LITIGATION HISTORY:

Claimants sued FSU in the circuit court for Leon County in 2002. The case was successfully mediated and the parties entered into a Stipulated Settlement Agreement which called for payment to Dennis and Wendy Darling, as representatives of the estate of DeVaughn Darling, the sovereign immunity limit of \$200,000 and for FSU to support the passage of a claim bill for an additional \$1.8 Million. The agreement does

JANUARY 13, 2016

Page 8

not contain a denial of liability by FSU. The circuit court entered a Final Judgment approving the settlement agreement on June 28, 2004.

CLAIMANTS' POSITION:

The Department is liable for the negligence of its coaches and trainers for 1) failing to provide DeVaughn access to water, 2) failing to provide sufficient rest periods, 3) failing to recognize DeVaughn's physical distress, 4) failing to provide adequate access to emergency medical personnel and a defibrillator, and 5) failing to maintain an adequate emergency plan.

FSU'S POSITION:

- FSU denies liability for negligence, but believes the settlement is fair and reasonable under the circumstances.
- FSU complied with all applicable standards of care.
- DeVaughn exhibited no unusual signs of exhaustion that put any coach or trainer on notice of his critical condition.
- No FSU employee was negligent in failing to provide assistance to DeVaughn.
- DeVaughn had a cold that could have contributed to his physical distress.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether FSU is liable in negligence for the death of DeVaughn Darling and, if so, whether the amount of the claim is reasonable.

FSU had a duty to conduct its football training activities in a manner that did not unreasonably endanger the health of the players beyond the dangers that are inherent in the game of football. FSU breached that duty when its employees, both coaches and trainers, created a situation with the mat drills that was unreasonably dangerous for all players, but especially for a player with sickle cell trait. The situation was unreasonably dangerous because it involved extreme physical exertion in high temperature without reasonable access to water and without adequate opportunity to rest. The situation was more dangerous for players with sickle cell trait because the trait reduces the ability of the blood to transport

JANUARY 13, 2016

Page 9

oxygen and, therefore, increases the risk of exercise-associated sudden death.

DeVaughn's death was foreseeable because FSU knew that DeVaughn had sickle cell trait, knew that sickle cell trait was linked the deaths of football players during preseason training, and was aware of the sports medicine literature and NCAA guidelines about extreme exertion, heat, dehydration, and lack of adequate pre-conditioning as factors that contribute to incidents of exercise-associated sudden death.

Furthermore, I am not persuaded by the statements of the coaches and trainers that DeVaughn's fatigue was "not out of the ordinary." No coach or trainer alleged that other players were grasping their chests, falling over "like boards," and unable to stand without help. The evidence shows that DeVaughn was showing signs of more intense physical exhaustion than other players and was probably suffering from sickle cell collapse during the course of the mat drill. However, only his final collapse at the end of the mat drill was considered by the training staff to be significant enough to warrant their intervention and assistance. It was negligent for the coaches and trainers not to intervene and render assistance to DeVaughn earlier than they did. Instead, the coaches worsened his physical distress by making him repeat the drill without a moment to rest or to get water.

The sickling of blood cells in a person with sickle cell trait begins quickly with extreme exertion, but is relieved quickly by rest. Providing water (or sports drinks) and short periods of rest during the mat drills, both of which are provided to players during a football game, is all that was needed to avoid the tragedy of DeVaughn Darling's death.

The amount of the claim is fair and reasonable.

ATTORNEY'S FEES AND
LOBBYIST'S FEES:

Claimant's attorneys agree to limit their fees to 25 percent of any amount awarded by the Legislature as required by s. 768.28(8), F.S. They also agree to pay the lobbyist's fee out of the attorney's fees. They have not acknowledged their awareness of the provision of the bill that also requires costs to be included in the 25 percent figure.

SPECIAL MASTER'S FINAL REPORT – SB 26 (2008) Senator Al Lawson

JANUARY 13, 2016

Page 10

LEGISLATIVE HISTORY:

A claim bill for these Claimants was first filed in the 2007 Session, but was withdrawn at the request of Claimants before a hearing was held. A claim bill was filed again in the 2008 Session and a joint Senate/House claim bill hearing was held in 2007.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 34 (2008) be reported FAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Al Lawson
Counsel of Record



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER

Democratic Leader
19th District

January 25, 2016

Senator Miguel Diaz de la Portilla, Chair
Senate Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz de la Portilla:

This is to request that SB 16, Relief of Dennis Darling, Sr. and Wendy Smith by the State of Florida, be placed on the agenda for the Committee on Judiciary. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, reading "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

REPLY TO:

- ☐ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- ☐ 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



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
01/13/16	SM	Favorable
02/08/16	JU	Favorable
	AHS	
	AP	

January 27, 2016

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 38** – Senator Darren Soto
HB 3521 – Representative Bruce Antone
Relief of J.D.S., by the Agency for Persons with Disabilities

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$950,000 PAYABLE TO THE AGED POOLED SPECIAL NEEDS TRUST ON BEHALF OF J.D.S., BASED ON A SETTLEMENT AGREEMENT BETWEEN PATTI R. JARRELL, AS PLENARY GUARDIAN OF J.D.S., AND THE STATE OF FLORIDA, AGENCY FOR PERSONS WITH DISABILITIES. THE CLAIM AROSE FROM THE NEGLIGENT SUPERVISION OF A GROUP HOME BY THE AGENCY.

CURRENT STATUS:

On November 12, 2014, Barbara M. Crosier, serving as a Senate Special Master, held a de novo hearing on a previous version of this bill, SB 24. After the hearing, the Senate Special Master issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably.

PRIOR LEGISLATIVE HISTORY: Senate Bill 24, by Senator Soto and HB 3503, by Rep. Plakon, were filed during the 2015 legislative session. The Senate Bill passed the Judiciary Committee and the Appropriations Subcommittee on Health and Human Services; however, the bill died in the Senate Appropriations Committee.

RECOMMENDATIONS:

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report.

For the reasons set forth above the undersigned recommends that Senate Bill 38 (2016) be reported favorably.

Respectfully submitted,

Barbara M. Crosier
Senate Special Master

cc: Debbie Brown, Secretary of the Senate



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
2/9/15	SM	Favorable

February 9, 2015

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 24 (2015)** – Senator Darren Soto
Relief of J.D.S., by the Agency for Persons with Disabilities

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$950,000 PAYABLE TO THE AGED POOLED SPECIAL NEEDS TRUST ON BEHALF OF J.D.S., BASED ON A SETTLEMENT AGREEMENT BETWEEN PATTI R. JARRELL, AS PLENARY GUARDIAN OF J.D.S. AND THE STATE OF FLORIDA, AGENCY FOR PERSONS WITH DISABILITIES. THE CLAIM AROSE FROM THE NEGLIGENT SUPERVISION OF A GROUP HOME BY THE AGENCY.

FINDINGS OF FACT:

In 1980, J.D.S. was born with severe disabilities, including cerebral palsy, autism, and mental retardation. J.D.S. has a 31 IQ and has been nonverbal her entire life. J.D.S. was placed in the custody of the State of Florida, Department of Children and Families (DCF) and considered to be a "ward" of DCF. Due to her condition, J.D.S. was dependent upon DCF for the provision of her care, treatment, and daily needs.

At the age of 4, J.D.S., as a developmentally-disabled dependent ward of the State of Florida, was placed in the

Strong Group Home. J.D.S. was totally dependent on the Strong Group Home to provide the care for her needs. She was incapable of performing even the most basic functions of life. The Strong Group Home was licensed by DCF to operate the group home, and the home was monitored through face to face visits on a monthly basis with the exception of a short interval when, due to budget cuts, visits occurred either every other month or quarterly. The Strong Group Home was also visited monthly by the Medicaid Waiver Support Coordinator who had the responsibility of ensuring J.D.S. was receiving her care plan services. Hester Strong was the administrator/owner of the Strong Group Home and was assisted by her husband, Phillip Strong. In addition to caring for 4 - 6 developmentally disabled persons, Ms. Strong cared for her elderly parents who also resided in the home.

Beginning in late 2001 and into 2002, J.D.S.'s behavior became more aggressive. She began to resist getting into a car which had not been an exhibited behavior in the past. And, although she was previously toilet trained, she began exhibiting regular incontinence. Ms. Strong did not report these changes in J.D.S.'s behaviors, and the DCF monitoring reports of the Strong Group Home did not contain any reference to them.

In December 2002, J.D.S. became pregnant while a resident in the Strong Group Home. J.D.S. was 5 months pregnant when her doctor discovered her pregnancy.

Upon the discovery of J.D.S.'s pregnancy, DCF revoked the Strong Group Home's license and J.D.S. was moved to another group home. J.D.S. gave birth to a baby girl on August 30, 2003. The newborn was immediately removed from J.D.S. and placed for adoption. Following the birth, the Florida Department of Law Enforcement took DNA samples from Phillip Strong and the newborn. The results of the DNA testing confirmed that Phillip Strong was the biological father of the infant.

DCF was responsible for the oversight of the Strong Group Home and providing care to J.D.S. when the events related to the claim bill occurred. However, in 2004, the responsibility to oversee group homes for the disabled was transferred to the Agency for Persons with Disabilities along with DCF's related liabilities.

Based on the foregoing, the State of Florida, Agency for Persons with Disabilities, stipulated to the entry of a judgment in the amount of \$1,150,000. The Agency for Persons' with Disabilities paid \$200,000 to the AGED Pooled Special Needs Trust on behalf of J.D.S., leaving \$950,000, which is the amount sought through this claim bill.

CLAIMANT'S POSITION:

The Agency for Persons with Disabilities is directly and vicariously liable for the rape and subsequent pregnancy of J.D.S. The claimant also alleges that the rape of J.D.S. was foreseeable by the agency. It should be noted that Mr. Strong was determined incompetent and never charged with the rape of J.D.S.

RESPONDENT'S POSITION:

The Agency for Persons with Disabilities settled this claim before a jury trial and is neutral in this proceeding and will take no action adverse to the passage of a claim bill.

CONCLUSIONS OF LAW:

As provided in s. 768.28, F.S. (2002), sovereign immunity shields the State of Florida and its agencies against tort liability in excess of \$200,000 per occurrence. The parties settled the case for \$1.15 million, and the Agency for Persons with Disabilities paid \$200,000 to the AGED Pooled Special Needs Trust on behalf of J.D.S. The claimant alleged APD is liable for the sexual molestation of J.D.S. under two separate legal precepts: vicarious liability and direct liability. The claimant alleged APD had a "non-delegable" duty to protect J.D.S. from harm and sexual assault. At all times material to this matter J.D.S. was a resident of the Strong Group Home.

APD is a governmental agency that licenses, monitors, and places clients in residential living facilities. APD does not undertake to provide direct services to any particular client. Instead, the Florida Legislature, in s. 393.066, F.S. (2002), has mandated that the day-to-day operational level duties of care and maintenance of a client are to be delegated by APD.

Duty

Whether there is a jury verdict or a settlement agreement, as there is in this case, every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. DCF had a duty to protect and care for J.D.S. while she was in the care of the Strong Group Home. This duty included ensuring the administrator and staff of the Strong Group

Home were properly trained to detect and prevent sexual abuse of the developmentally-disabled individuals placed in their care; adequate staffing was in place at all times and the staff met training requirements; the number of placements in the home did not exceed the limit established by DCF; and the home complied with the Bill of Rights of Persons with Developmental Disabilities as set forth under s. 393.13, F.S. (2002). Such Bill of Rights guarantees that developmentally disabled individuals have the right to be free from sexual abuse in a residential facility, the right to be free from harm, and the right to receive prompt and appropriate medical care and treatment.

The Strong Group Home administrator and staff did not meet the educational and training requirements set forth in Rule 65G-2.012, F.A.C., and s. 393.067, F.S. (2002). There was no evidence presented that the administrator met the educational requirements for licensing or that she or any staff member had received any training on how to detect, report, or prevent sexual abuse of the group home's residents and clients.

The Strong Group Home was licensed for and housed 4 - 6 developmentally disabled clients. Nevertheless, at one point while J.D.S. was in the home, DCF placed two foster children in the home. As a result of the placement of additional clients, not enough bedrooms were available and the dining room was converted into J.D.S.'s bedroom. The placement of her bed in the dining room area did not provide J.D.S. the privacy she was entitled to under the Bill of Rights of Persons with Developmental Disabilities set out in s. 393.13, F.S.

Additionally, the Strong Group Home had a duty to exercise reasonable care to protect J.D.S. from abuse and neglect, including sexual abuse; to exercise reasonable care to discover abuse and neglect, to provide J.D.S. with a reasonable, safe living environment that afforded her with privacy, and to exercise reasonable care to ensure she received prompt and appropriate medical care and treatment.

Breach

A preponderance of the evidence establishes that The Strong Group Home did not meet the educational and training requirements to be licensed as a group home initially by DCF and subsequently by APD. APD and the Strong Group Home as licensed by APD, breached their duty to properly care for

and protect J.D.S. Further, APD and the Strong Group Home breached their duty to J.D.S. with respect to compliance with the rights and privileges afforded the developmentally disabled pursuant to the Bill of Rights of the Developmentally Disabled.

Causation

The failure of the Department of Children and Families and subsequently the Agency for Persons with Disabilities to ensure the staff of the Strong Group Home was properly trained, possessed the required levels of education and credentials likely led to the rape of J.D.S.

Damages

The claim bill awards \$950,000 for the benefit of J.D.S. No evidence was presented or available indicating that the damages authorized by the settlement are excessive or inappropriate.

ATTORNEYS FEES:

Section 768.28(8), F.S., provides that “[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement.” The claimant’s attorneys have agreed to limit their fees to 25 percent of any amount awarded in compliance with the statutes. Lobbyists’ fees are included with the attorneys’ fees.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 24 be reported FAVORABLY.

Respectfully submitted,

Barbara M. Crosier
Senate Special Master



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Environmental Preservation and Conservation
Finance and Tax
Judiciary

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DARREN SOTO

Minority Caucus Rules Chair
14th District

January 20, 2016

The Honorable Miguel Diaz de la Portilla
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Diaz de la Portilla,

I respectfully request that Senate Bill 38, Relief of J.D.S, be placed on the agenda as soon as possible. Senate Bill 38 requests to provide for the relief of J.D.S. and providing an appropriation from the General Revenue Fund to compensate J.D.S. for injuries and damages sustained as a result of negligence by the Agency for Persons with Disabilities, as successor agency of the Department of Children and Family Services.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto
State Senator, District 14

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

REPLY TO:

- ☐ Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
- ☐ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



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
1/8/16	SM	Unfavorable
02/08/16	JU	Favorable
	CA	
	FP	

January 8, 2016

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 20** – Senator Miguel Diaz de la Portilla
HB 3517 – Representative Randolph Bracy
Relief of Zaldivar and Campos by Orange County

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR LOCAL FUNDS IN THE TOTAL AMOUNT OF \$400,000 (\$200,000 FOR THE ESTATE OF ALEX ZALDIVAR AND \$100,000 APEICE FOR BRIENNA AND REMINGTON CAMPOS) AGAINST ORANGE COUNTY FOR NEGLIGENCE IN FAILING TO MONITOR BESSMAN OKAFOR, A DETAINEE OF THE COUNTY ON PAROL WITH AN ANKLE MONITOR WHILE AWAITING TRIAL FOR A HOME INVASION ROBBERY, WHO, ON SEPTEMBER 10, 2013, RETURNED TO THE SCENE OF THE ROBBERY, SHOT AND INJURED BRIENNA AND REMINGTON CAMPOS, AND SHOT AND KILLED ALEX ZALDIVAR.

FINDINGS OF FACT:

On May 9, 2012, at approximately 3:00 P.M., Alex Zaldivar, Brienna Campos, Brandon Campos, and William Herrington were robbed at gun point by two men while at home in Orange County. The incident occurred at a home owned by the parents of Brienne, Brandon, and Remington Campos¹ in

¹ Remington Campos was living at the home but was not at home at the time of the initial home invasion.

which all three lived along with Alex Zaldivar.² The men forced the victims to lie on the floor with their hands tied by electronic cords while they ransacked the house stealing cash, jewelry, and electronics. After the men left, 911 was called and officers from the Ocoee Police Department and the Orange County Sheriff's Office responded. The police were quickly able to locate and arrest Bessman Okafor and Nolan Bernard due to an application on one of the stolen cell phones that allowed its location to be tracked via the internet. Okafor spent nearly 40 days in jail after his arrest and was subsequently released on bond into Orange County's Home Confinement Program. Despite assurances by police that they would be informed, the plaintiffs³ were not aware that Okafor had been released from jail.

On June 24, 2012, Okafor reported to the Home Confinement Program within the Orange County Corrections Office and received an ankle monitor. While in the Home Confinement Program, Okafor repeatedly violated curfew and his ankle monitor base unit lost power or its phone line connection on numerous occasions. However, he was never charged with violating his parole, never removed from the Home Confinement Program, and never had his bail revoked.

Between the time of Okafor's release and the events of September 10, 2013, the plaintiffs were visited on three occasions by Okafor's mother who offered them various forms of compensation in exchange for not testifying against Okafor. The plaintiffs refused and, after the third time, reported the visits to the Ocoee police.

On the morning of September 10, 2012, at around 5:00 A.M., Brienna Campos, Remington Campos, and Alex Zaldivar were at their home sleeping when Okafor and multiple accomplices broke in. They were armed with semi-automatic handguns and an AK-47 assault rifle. They proceeded to drag Brienna, Remington, and Alex from their beds and shoot each one in the head. Brienna and Remington survived the assault and were able to obtain help from a neighbor. Alex died from his wounds.

² Brienna, Remington, and Brandon Campos are siblings and all three lived at the house at the time of the initial home invasion along with Alex Zaldivar. William Herrington was a friend of the roommates who was visiting them on that day.

³ The plaintiffs in this case are the estate of Alex Zaldivar, and both Remington and Brienna Campos.

The neighbor called 911 and Brienna and Remington were admitted to Orlando Regional Medical Center at close to 6:00 A.M. Both were treated for gunshot wounds to the head and released after an overnight stay. Brienna and Remington's medical bills from the hospital stay totaled approximately \$20,000 each. Both continue to suffer from physical and mental side effects from the gunshot wound as well as the assault in general.

Testimony revealed that Alex's death has been difficult for his family and friends. Alex was described as a bright and likeable 19 year old when he was murdered; and his parents, Rafael and Kyoko Zaldivar as well as his brother Rafael Zaldivar Jr., have suffered an immeasurable loss from which they will likely never fully recover. Additionally, Alex's death has left permanent emotional scars on Brienna and Remington who witnessed his murder.

Plaintiffs testified that physically both Brienna and Remington continue to suffer from frequent migraines and Brienna has extensive short term memory loss. Psychologically, both suffer from a significant fear of strangers and trouble sleeping. The physical and psychological effects of the assault have impeded Brienna's and Remington's abilities to function normally and perform everyday activities. For example, Brienna's memory loss hinders her performance in school and Remington's fear of strangers prevents him from allowing his son to play normally with other children.

On June 23, 2012, plaintiffs sent a settlement demand to representatives of Orange County alleging that Orange County's negligence in operating its Home Confinement Program led to the injuries sustained by the plaintiffs. Ultimately, the plaintiffs settled with Orange County and agreed to release the county of all liability regarding their cases. The estate of Alex Zaldivar settled with Orange County on September 8, 2014, in the amount of \$300,000 of which \$100,000 has been paid by the county. Both Brienna and Remington Campos also settled with Orange County on September 5, 2014, in the amount of \$200,000 each, of which \$100,000 has also been paid. Orange County is self-insured for such damages up to \$1 million. In the settlement agreements, the county also agreed to an unopposed claims bills filed for the remaining amounts of the settlement on behalf of the plaintiffs.

From the settlement amounts, \$1,442.73 has been deducted from the payment to Remington Campos, \$2,027.65 has been deducted from the payment to Brienna Camps, and \$5,442.73 has been deducted from the payment to Alex Zaldivar's estate to pay for attorney's costs. Additionally, \$20,000 has been held in escrow for Brienna, \$40,000 for Remington,⁴ and \$5,000 for the estate of Alex Zaldivar to cover any remaining costs and medical liens. Attorney fees have been waived for all three litigants and lobbying fees will be assessed totaling five percent of the amount received from the claims bill (a total of \$20,000 between all three plaintiffs).

CONCLUSIONS OF LAW:

In general, the "responsibility to enforce the laws for the good of the public cannot engender a duty to act with care toward any one individual, unless an official assumes a special duty with regard to that person."⁵ It is demonstrated in the record of the case that Orange County employees acted negligently in ignoring numerous violations committed by Okafor while he was under the control of the Home Confinement Program. Additionally, there are clear economic and non-economic damages to the plaintiffs that were both actually and proximately caused from such negligence.⁶ However, it is less clear whether or not a special duty was owed to the plaintiffs in this case which would give rise to liability.

A law enforcement officer does not owe a duty of care to an individual unless there is a special duty of care created.⁷ Plaintiffs argue that in this case a special duty was created by the plaintiff's agreement to testify in the armed robbery case against Okafor and by the plaintiff's actions reporting Okafor's mother to police after she approached them with bribes in order to secure their silence. In order to support their argument, plaintiffs point to the case *Schuster v. City of New York*⁸ which was treated favorably in Florida in *Everton v. Willard*. In *Schuster*, the court states that law enforcement

⁴ The escrow account for Remington Campos is larger due to uncertainty at the time regarding the amount of hospital bills and the number of payors of such bills. Remington should be receiving the majority of the funds held in escrow. *Email from Pedro Echarte, Plaintiff's attorney, on Dec. 23, 2015.*

⁵ 28 Fla. Jur 2d Government Tort Liability § 49

⁶ Wrongful death claims are allowed against state agencies and subdivisions by s. 768.28(6)(a)2., F.S., if the original claim is presented to the state agency or subdivision within 2 years of the event from which the claim arises.

⁷ *Everton v. Willard*, 468 So. 2nd 936 (Supreme Court of Florida, 1985) at 10.

⁸ 15 N.E.2d 534

“owes a special duty to use reasonable care for the protection of persons who have collaborated with it in the arrest and prosecution of criminals, once it reasonably appears that they are in danger due to their collaboration.”⁹

In *Schuster*, the plaintiff was a young man who informed police of the whereabouts of a notorious criminal who was subsequently arrested. Schuster's involvement in the arrest was widely publicized and he received death threats of which he notified the police and from which he asked for protection which was not provided. Though the facts are somewhat similar in this case, the plaintiffs were witnesses testifying for the state, the plaintiffs reported Okafor's mother to the police, and the police failed to inform the plaintiffs that Okafor was released on bond. There is no evidence that shows that the plaintiffs were threatened by Okafor or his accomplices or that Orange County knew, or should have known, that the plaintiffs were in danger from their participation in the trial.

As such, in this special master's opinion there is no special duty of care created in this case and therefore the County is not legally liable for such damages.

ATTORNEYS FEES:

The plaintiff's attorneys have agreed to limit their lobbying and attorney fees to 25 percent. According to the closing statements provided lobbying fees will be charged in the amount of five percent of the amount awarded (\$5,000 from the awards to Brienna and Remington Campos and \$10,000 from the award to Rafael and Kyoko Zaldivar for a total of \$20,000) and attorney fees have been waived. Additionally, lines 69-72 of SB 20 allow attorney costs to be collected. These costs total \$9,103.83 not including costs associated with the Special Master Hearing held on Nov. 9, 2015.

⁹ Id. at 537

SPECIAL MASTER'S FINAL REPORT – SB 20

January 8, 2016

Page 6

RECOMMENDATIONS:

Due to the conclusions drawn above, the undersigned recommends that SB 20 be reported UNFAVORABLY.

Respectfully submitted,

Daniel Looke
Senate Special Master

cc: Secretary of the Senate

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 342

INTRODUCER: Banking and Insurance Committee and Senator Gibson

SUBJECT: Renters Insurance

DATE: February 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.	McAloon	Cibula	JU	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 342 requires a landlord of residential real property to provide notice in the rental agreement whether the tenant is required to obtain renters insurance, and if so, to specify the coverage required. If the rental agreement does not require renters insurance, the rental agreement must provide a statement regarding the benefit of purchasing renters insurance.

II. Present Situation:

Part II of ch. 83, F.S., titled "Florida Residential Landlord and Tenant Act," governs the relationship between landlords and tenants under a residential lease agreement. The Landlord and Tenant Act contains certain mandatory provisions and disclosures that a landlord must provide to a tenant or prospective tenant. Specifically, a landlord must disclose in writing or a lease agreement:

- Whether the tenant's security deposit will be held in an interest or non-interest-bearing account; the name of the account depository and disclose the rate and time of interest payments within 30 days after receiving the security deposit.
- The name and address of the landlord or person authorized to receive notices and demands on the landlord's behalf.¹

¹ Section 83.50, F.S.

- Notice of the potential liquidated damages, if there is a liquidated damages provision in the lease.²
- A specific notice if the landlord has no liability for storing or disposing the tenant's personal property after the tenant surrenders the dwelling.³
- A specific warning of the health risks of radon gas and which also refers the tenant to the county health department for additional information.⁴

Renters insurance, sometimes referred to as tenants insurance, includes three basic types of protection. The basic types of protection are for personal possessions, liability, and additional living expenses.⁵

Standard renters insurance policies protect personal belongings against damage from fire, smoke, lightning, vandalism, theft, explosion, windstorm, water, and other disasters listed in the policy.

With respect to personal liability, standard renters insurance policies provide liability protection against lawsuits for bodily injury or property damage that the insured or the insured's family members cause to other people. It also pays for damages caused by pets to others in the home.

Finally, standard renters insurance policies cover additional living expenses. If the tenant's home is destroyed by a disaster, which is covered by the policy, renters insurance covers the additional costs incurred for the insured to reside elsewhere. Policies will generally reimburse the difference between additional living expenses and normal living expenses. Additional living expenses cover hotel bills, temporary rentals, restaurant meals and other expenses incurred while the home is being rebuilt.

A 2015 Insurance Information Institute poll conducted by ORC International found that 95 percent of homeowners had homeowners insurance. Among renters, only 40 percent said they had renters insurance. However, this proportion has been increasing since the first time the question was asked in 2011, when 29 percent of renters said they had renters insurance.⁶

III. Effect of Proposed Changes:

The bill creates s. 83.491, F.S., to require that a landlord make one of two notices regarding renters insurance in the lease agreement:

- First, if renters insurance is required by the landlord, the rental agreement must specify the coverage amounts required and provide space for the tenant to initial.
- Second, if the landlord does not required the purchase of renters insurance, the rental agreement must include a statement in substantially the following:
 - "The tenant is not required to obtain renters insurance; however, the tenant is strongly advised to obtain renters insurance to cover damage to or loss of personal property."

² Section 83.595(4), F.S.

³ Section 83.67(5), F.S.

⁴ Section 404.056(4), F.S.

⁵ Insurance Information Institute, *Renters Insurance*, at <http://www.iii.org/article/renters-insurance> (last visited Feb. 4, 2016).

⁶ Insurance Information Institute, *Renters Insurance*, at <http://www.iii.org/fact-statistic/renters-insurance> (last visited Feb. 4, 2016).

The bill further provides that the failure to provide the notice does not create a private cause of action or nullify any part of the rental agreement.

The bill has an effective date of July 1, 2016, and applies to residential leases entered into on or after January 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:

Landlords will need to provide one of two additional notices regarding renters insurance. If the landlord requires renters insurance, the notice must be signed by the tenant. This may result in increased attorney fees for the landlord because of the added documentation requirements. The landlord may see a benefit through fewer tenants attempting to recover the value of damaged or lost goods from the landlord.

Tenants may start to buy more renters insurance policies because they are required to be notified of its existence. An increase in renters insurance policies will lead to reimbursement for lost or damages goods owned by the renter.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Real Property and Probate Section of The Florida Bar drafts a standardized lease that includes all provision required by state statutes. The draft lease is reviewed and approved for use by the Florida Supreme Court. The changes could require that an updated standardized lease be drafted and approved.⁷

VIII. Statutes Affected:

This bill creates section 83.491 of the Florida Statutes.

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

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

CS by Banking and Insurance on January 26, 2016:

- Changes “Renter” to “Renters” throughout the bill;
- Applies notice requirements to leases entered into on or after January 1, 2017; and
- Clarifies that failure to provide such notice does not create a private cause of action or nullify any part of the rental agreement.

B. Amendments:

None.

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

⁷ Conversation with Arlene Catherine Udick of the Landlord Tenant Committee for the Real Property and Probate Trust Law Section of The Florida Bar (January 22, 2016).

By the Committee on Banking and Insurance; and Senator Gibson

597-02607-16

2016342c1

A bill to be entitled

An act relating to renters insurance; creating s. 83.491, F.S.; requiring a residential rental agreement to specify whether renters insurance is required; specifying provisions that must be included if insurance is or is not required; providing that failure to include a certain notice in a rental agreement does not create a private cause of action or nullify any part of the rental agreement; providing an effective date.

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

Section 1. Section 83.491, Florida Statutes, is created to read:

83.491 Renters insurance.—A rental agreement entered into on or after January 1, 2017, must specify whether a tenant is required to obtain renters insurance and must provide in the agreement a line for the tenant's initials immediately following that provision.

(1) If renters insurance is required, the rental agreement must specify the coverage required.

(2) If renters insurance is not required, the rental agreement must provide a statement in substantially the following form: "The tenant is not required to obtain renters insurance; however, the tenant is strongly advised to obtain renters insurance to cover damage to or loss of personal property."

(3) Failure to provide the notice in subsection (2) does not create a private cause of action and does not nullify any part of the rental agreement under this part.

Section 2. This act shall take effect July 1, 2016.

Page 1 of 2

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

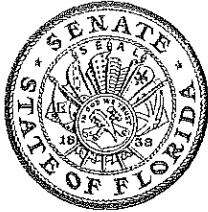
597-02607-16

2016342c1

33

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Criminal Justice, *Vice Chair*
Military and Veterans Affairs, Space, and
Domestic Security, *Vice Chair*
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development
Communications, Energy, and Public Utilities
Rules
Joint Legislative Auditing Committee

SENATOR AUDREY GIBSON
9th District

January 26, 2016

Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Diaz de la Portilla:

I respectfully request that SB 342, relating to residential tenant insurance policies, be placed on the next committee agenda.

SB 342, requires a residential agreement to advise that if renters insurance is not required, the renters' personal belongings will not be covered in the event of damage to their domicile unless they acquire renters insurance. I have also included a copy of a press release which details the coverage gap between and income owners and renters in protecting themselves against hazard as well as copies of newspaper articles on the subject. This bill unanimously in the first committee.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Audrey Gibson".

Audrey Gibson
State Senator
District 9

Attachment

REPLY TO:

☐ 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553 FAX: (904) 359-2532
☐ 205 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

342

Bill Number (if applicable)

Topic Renter's Insurance

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title _____

Address 104 W. Jefferson Street

Street

Phone 850-224-3427

Tallahassee FL

City

State

32301

Zip

Email Kelly@rtbookpa.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Apartment Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 730

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

SUBJECT: Professional Guardians

DATE: February 11, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 730 limits to 50 the number of wards a professional guardian who is a natural person may serve for compensation.

The bill has no fiscal impact to the state and has an effective date of July 1, 2016.

II. Present Situation:

Guardianship

Guardianship is a concept whereby a “guardian” acts for another, called a “ward,” whom the law regards as incapable of managing his or her own affairs due to age or incapacity. Guardianships are generally disfavored due to the loss of individual civil rights, and a guardian may be appointed only if the court finds there is no sufficient alternative to guardianship.

There are two main forms of guardianship: guardianship over the person or guardianship over the property, which may be limited or plenary.¹ For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, when an individual’s mental

¹ See generally, s. 744.102(9), F.S.

competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court-appointed examination committee.²

Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship.³ A fiduciary relationship exists between two persons when one of them is under a duty to act or to give advice for the benefit of another upon matters within the scope of that relationship.⁴ The most basic duty of a fiduciary is the duty of loyalty: a fiduciary must refrain from self-dealing, must not take unfair advantage of the ward, must act in the best interest of the ward, and must disclose material facts.⁵ In addition to the duty of loyalty, a fiduciary also owes a duty of care to carry out his or her responsibilities in an informed and considered manner.

Section 744.361, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary including protecting and preserving the property of the ward and his or her overall physical and social health. A guardian must file with the court an initial guardianship report,⁶ an annual guardianship report,⁷ and an annual accounting of the ward's property.⁸ The reports provide evidence of the guardian's faithful execution of his or her fiduciary duties.⁹

At the heart of a court's interpretation of a fiduciary relationship is a concern that persons who assume trustee-like positions with discretionary power over the interests of others might breach their duties and abuse their position. Section 744.446, F.S., states that the "fiduciary relationship which exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law." In the event of a breach by the guardian of the guardian's fiduciary duty, the court must take the necessary actions to protect the ward and the ward's assets.¹⁰

Professional Guardians

In Florida, a "professional guardian" means any guardian who has, at any time, rendered services to three or more wards as their guardian.¹¹ A professional guardian must register annually with the Statewide Public Guardianship Office.¹² Currently, there are 428 professional guardians who are registered with the Statewide Public Guardianship Office.¹³ Professional guardians must receive a minimum of 40 hours of instruction and training and a minimum of 16 hours of continuing education every 2 years after the initial educational requirement is met. The

² See generally, s. 744.102(12), F.S.

³ *In re Guardianship of Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990).

⁴ *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

⁵ *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

⁶ Section 744.362, F.S.

⁷ Section 744.367, F.S.

⁸ Section 744.3678, F.S.

⁹ Section 744.368, F.S.

¹⁰ Section 744.446(4), F.S.

¹¹ Section 744.102(17), F.S.

¹² Section 744.1083(1) and (2), F.S.

¹³ Telephone interview with Teresa Martin, Regulatory Specialist, Statewide Public Guardianship Office, Department of Elderly Affairs, Tallahassee, Fla. (Feb. 2, 2016).

instruction and education must be completed through a course approved or offered by the Statewide Public Guardianship Office.¹⁴

A professional guardian is subject to a level 2 background check,¹⁵ an investigation of the guardian's credit history,¹⁶ and is required to demonstrate competency to act as a professional guardian by taking an examination approved by the Department of Elderly Affairs.¹⁷ These requirements do not apply to a professional guardian or the employees of that professional guardian if that guardian is a:

- Trust company;
- State banking corporation;
- State savings association authorized and qualified to exercise fiduciary powers in this state; or
- National banking association or federal savings and loan association authorized and qualified to exercise fiduciary duties in this state.¹⁸

Public Guardianship Act

The Public Guardianship Act is codified in s. 744.701, F.S. The Legislature created the Statewide Public Guardianship Office in 1999 to provide oversight for all public guardians.¹⁹ The executive director of the Statewide Public Guardianship Office, after consultation with the chief judge and other judges within the judicial circuit, may establish one or more offices of public guardian within a judicial circuit.²⁰ A public guardian may serve an incapacitated person if there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian.²¹ A person serving as a public guardian is considered a professional guardian for purposes of regulation, education, and registration.²² Public guardianship offices are located in all 20 judicial circuits in the state.²³

Determining Incapacity

The process to determine incapacity and appoint a guardian begins with a petition filed in the appropriate circuit court. A petition may be executed by an adult and must be served on and read to the alleged incapacitated person. The notice and copies of the petition must be provided to the attorney for the alleged incapacitated person and served on all next of kin identified in the petition.²⁴

¹⁴ Section 744.1085(3), F.S.

¹⁵ Section 744.1085(5), F.S.

¹⁶ Section 744.1085(4), F.S.

¹⁷ Section 744.1085(6), F.S.

¹⁸ Section 744.1085(10), F.S.

¹⁹ Chapter 99-277 L.O.F.

²⁰ Section 744.703(1), F.S.

²¹ Section 744.704(1), F.S.

²² Section 744.102(17), F.S.

²³ Children, Families, and Elder Affairs Committee staff meeting with the Department of Elder Affairs on February 2, 2015.

²⁴ Section 744.331(1), F.S.

In the hearing on the petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.²⁵ The court must enter a written order determining incapacity after finding that a person is incapacitated with respect to the exercise of a particular right or all rights. A person is determined to be incapacitated only with respect to those rights specified in the court's order.²⁶ When an order determines that a person is incapable of exercising delegable rights, the court must consider whether there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. If an alternative to guardianship will not sufficiently address the problems of the incapacitated person, a guardian will be appointed.²⁷

If a petition for appointment of a guardian has been filed, an order appointing a guardian must be issued contemporaneously with the order adjudicating the person incapacitated.²⁸ If a petition for the appointment of a guardian has not been filed at the time of the hearing on the petition to determine incapacity, the court may appoint an emergency temporary guardian.²⁹

Court Proceedings

The court retains jurisdiction over all guardianships and shall review the appropriateness and extent of a guardianship annually.³⁰ At any time, any interested person, including the ward, may petition the court for review alleging that the guardian is not complying with the guardianship plan or is exceeding his or her authority under the guardianship plan and is not acting in the best interest of the ward. If the petition for review is found to be without merit, the court may assess costs and attorney fees against the petitioner.³¹

A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee.³² Fees and costs incurred are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.³³

A ward has the right to be restored to capacity at the earliest possible time.³⁴ The ward, or any interested person filing a suggestion of capacity, has the burden of proving the ward is capable of exercising some or all of the rights which were removed. Immediately upon the filing of the suggestion of capacity, the court must appoint a physician to examine the ward. The physician must examine the ward and file a report with the court within 20 days.³⁵ All objections to the suggestion of capacity must be filed within 20 days after formal notice is served on the ward, guardian, attorney for the ward, if any, and any other interested persons designated by the

²⁵ Section 744.331(5)(c), F.S.

²⁶ Section 744.331(6), F.S.

²⁷ Section 744.331(6)(b), F.S.

²⁸ Section 744.344(3), F.S.

²⁹ Section 744.344(4), F.S.

³⁰ Section 744.372, F.S.

³¹ Section 744.3715, F.S.

³² Section 744.108(1), F.S.

³³ Section 744.108(8), F.S.

³⁴ Section 744.3215(1)(c), F.S.

³⁵ Section 744.464(2)(b), F.S.

court.³⁶ If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court must set the matter for hearing.³⁷ The level of proof required to show capacity is not presently specified in the statute.

In a study and work group report by the Florida Developmental Disabilities Council, dated February 28, 2014, Palm Beach County court personnel performed a limited review of a random sample of 76 guardianship files for persons over the age of 18. Among these, more than two-thirds were of persons having age-related disabilities. After reviewing those files, the senior auditor for the circuit “reported that there were no cases where the guardianship plan recommended the restoration of any rights” of the incapacitated persons.³⁸

Media Reports

Beginning on December 6, 2014, the Sarasota Herald Tribune published a series of articles titled “The Kindness of Strangers – Inside Elder Guardianship in Florida,” which detailed abuses occurring in guardianships. The paper examined guardianship court case files and conducted interviews with wards, family, and friends in the system.³⁹ The paper concluded that “Florida has cobbled together an efficient way to identify and care for helpless elders, using the probate court system to place them under guardianship.” However, critics say this system “often ignores basic individual rights” and most often “plays out in secret, with hearings and files typically closed to the public.”⁴⁰ The paper also concluded that “monitoring elders and tapping their assets is a growth business: In 2003, there were 23 registered professional guardians in Florida, according to the Department of Elder Affairs. Today there are more than 440 – an increase greater than 1,800 percent in 11 years.”⁴¹

III. Effect of Proposed Changes:

Section 1 creates s. 744.1087, F.S., to place limits on professional guardians. The bill limits to 50 the number of wards a professional guardian who is a natural person may serve for compensation.

If the guardian has more than 50 wards for whom he or she receives compensation on July 1, 2016, the guardian may not be appointed any additional wards for compensation until he or she has fewer than 50 wards.

Section 2 provides an effective date of July 1, 2016.

³⁶ Section 744.464(2)(d), F.S.

³⁷ Section 744.464(2)(e), F.S.

³⁸ Florida Developmental Disabilities Council, *Restoration of Capacity Study and Work Group Report*, (February 28, 2014), available at http://www.guardianship.org/IRL/Resources/Handouts/Charting%20a%20New%20Course_Restoration%20Report.pdf (last visited Feb. 4, 2016).

³⁹ Barbara Peters Smith, *The Kindness of Strangers – Inside Elder Guardianship in Florida*, HERALD TRIBUNE (February 9, 2015), available at <http://guardianship.heraldtribune.com/> (last visited January 7, 2016).

⁴⁰ *Id.*

⁴¹ *Id.*

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:

Professional guardians would be limited to 50 wards per professional guardian. This would reduce the amount of fees awarded to professional guardians having more than 50 wards.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill contains no enforcement mechanisms. If the professional guardians are members of The Florida Bar, the Bar could sanction attorneys acting as professional guardians who violate the provisions of the bill.

VIII. Statutes Affected:

This bill creates section 744.1087 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 February 9, 2016:

The committee substitute clarifies that a professional guardian must be a “natural person” who is a resident of this state as specified in s. 744.309(1), F.S. A resident is described in that statute as a person residing in this state who is sui juris, or has capacity, and 18 years of age or older.

CS by Children, Families, and Elder Affairs on January 20, 2016:

The CS removes the limit for banks and trust companies from having more than 50 wards per professional guardian. The CS removes the provisions that prohibited professional guardians from conducting additional business with the ward. This is currently prohibited by s. 744.446, F.S., relating to conflicts of interest.

B. Amendments:

None.



965422

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete line 17
and insert:
guardians.—A natural person who is a resident, as specified in
s. 744.309(1), may be appointed as a professional

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

And the title is amended as follows:

Delete line 3
and insert:



965422

12 744.1087, F.S.; limiting a specified professional
13 guardian's

By the Committee on Children, Families, and Elder Affairs; and
Senator Margolis

586-02374-16

2016730c1

A bill to be entitled

An act relating to professional guardians; creating s.
744.1087, F.S.; limiting a professional guardian's
appointments to no more than 50 wards for which the
professional guardian receives compensation;
prohibiting a professional guardian that has more than
50 wards for which the professional guardian receives
compensation from being appointed another ward after a
certain date until the professional guardian has fewer
than 50 wards; providing an effective date.

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

Section 1. Section 744.1087, Florida Statutes, is created
to read:

744.1087 Maximum number of wards for professional
guardians.—A natural person may be appointed as a professional
guardian for up to 50 wards for which he or she receives
compensation. If, as of July 1, 2016, such guardian has more
than 50 wards for which he or she receives compensation, the
guardian may not be appointed additional wards for which he or
she receives compensation until he or she has fewer than 50
wards.

Section 2. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Vice Chair*
Appropriations
Appropriations Subcommittee on General Government
Banking and Insurance
Finance and Tax
Fiscal Policy

SENATOR GWEN MARGOLIS

35th District

February 4, 2016

Chair Miguel Diaz de la Portilla
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Diaz de la Portilla,

I respectfully request that SB 730, Professional Guardians be placed on the next available committee agenda. SB 730 will limit private professional guardians to no more than 50 wards. This measure will ensure that our most vulnerable are properly cared for and not taken advantage of by those they trust most.

Sincerely,

A handwritten signature in black ink, appearing to read "Gwen Margolis".

REPLY TO:

- ☐ 3050 Biscayne Boulevard, Suite 600, Miami, Florida 33137 (305) 571-5777
- ☐ 414 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5035

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

2-9-16

Meeting Date

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

730

~~703~~
Bill Number (if applicable)

Topic Guardianship

Name DOUG FRANKS

Amendment Barcode (if applicable)

Job Title _____

Address 1034 Sostre Ln

Street

Acworth GA 30102

City

State

Zip

Phone 678 570 3010

Email info@maetechworks.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Ernestine & Franks & AAAPG.net

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 948

INTRODUCER: Commerce and Tourism Committee and Senator Richter

SUBJECT: Secondhand Dealers

DATE: February 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.	McAloon	Cibula	JU	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 948 revises the laws governing transactions by secondhand dealers. Under the revised requirements, a secondhand dealer must maintain digital photos of the goods they acquire. The bill also extends the period from which a secondhand dealer must hold certain items, from 15 to 30 days from the initial acquisition. Finally, the bill subjects a secondhand dealer to a noncriminal penalty of up to \$2,500 in cases where the dealer loses in an action for replevin, and the secondhand dealer knew or should have known that the property belonged to someone else based on the rightful owner's proof of ownership. The rightful owner must have also given the secondhand dealer notice of his or her ownership, with a demand for return of the property 5-days prior to filing the action for replevin.

II. Present Situation:

Regulatory Requirements

The Florida Statutes regulate secondhand dealers and secondary metal recyclers in the trade of secondhand goods.¹ A secondhand dealer is defined as any person, corporation, or other business organization or entity that is not a secondary metals recycler and is engaged in the business of purchasing, consigning, or trading secondhand goods.² Secondhand goods are defined as personal property previously owned or used, which is purchased, consigned, or traded as used

¹ See Chapter 538, F.S.

² Section 538.03(g), F.S.

property.³ Secondhand goods do not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, cardio and strength training or conditioning equipment designed primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number.⁴

A secondhand dealer is not permitted to engage in the business of purchasing, consigning, or trading secondhand goods from any location without first registering with the Department of Revenue.⁵ Each application for registration must be accompanied by a fee equal to the amount of federal and state costs for processing the required fingerprints.⁶ The secondhand dealer's registration must be conspicuously displayed at his or her registered location.⁷ Pawnbrokers were formerly regulated as secondhand dealers, but are now separately regulated under ch. 539, F.S.

Upon each acquisition of secondhand goods, a secondhand dealer must complete a transaction record that details the goods purchased and the seller's identity.⁸ The secondhand dealer must retain this document for at least 3 years and forward a copy to a local law enforcement agency within 24 hours after the acquisition of the secondhand goods.⁹ In addition to the descriptive statements of the secondhand goods and the seller's identity, the transaction record must also include:

- A statement of the date, time, and place of the transaction;
- A summary of the goods acquired, including brand name, model number, serial number, and other unique identifiers; and
- A description of the person from whom the goods were acquired, including their right thumbprint, their name and address, and a physical description.¹⁰

Secondhand dealers are required to hold all secondhand goods for at least 15 days after they acquire the property.¹¹ If a law enforcement officer has probable cause to believe that the goods held by a secondhand dealer are stolen, the officer may place a 90-day written hold order on the goods.¹² This prevents the secondhand dealer from selling the goods and preserves them for use as evidence in a criminal trial. Additionally, this allows for the possibility of the goods to be returned to their rightful owner.

Local law enforcement agencies enforce compliance with registration, record keeping, holding periods, and inspection requirements.¹³ A person who knowingly violates the requirements governing secondhand dealers in ch. 538, F.S., commits a first degree misdemeanor, punishable by up to 1 year in jail and a \$10,000 fine.¹⁴

³ Section 538.03(1)(h), F.S.

⁴ Section 538.03(1)(h), F.S.

⁵ Section 538.09, F.S.

⁶ Section 538.09, F.S.

⁷ Section 538.09(3), F.S.

⁸ Section 538.04, F.S.

⁹ Section 538.04, F.S.

¹⁰ Sections 538.04(1)(a)-(d), F.S.

¹¹ Section 538.06(1), F.S.

¹² Section 538.06(3), F.S.

¹³ Section 538.05, F.S.

¹⁴ Section 538.07, F.S.

Methods for Return of Stolen Goods held by a Secondhand Dealer

A victim of a theft whose property is subject to a hold order may recover his or her goods, or their value, through one of three methods:

- A victim may purchase his or her items back from the secondhand dealer, and then file a civil action against the thief for reimbursement of the cost expended.
- A court may order restitution or return of the goods to the secondhand dealer or victim of the crime.¹⁵ If the court orders return of the goods or restitution to the victim, the court must also order restitution to the secondhand dealer from the person who sold the goods to the secondhand dealer.¹⁶
- A victim may file a civil action for replevin against the secondhand dealer.¹⁷

Replevin is an action for the repossession of personal property that was wrongfully taken or detained by the defendant, where the plaintiff secures a bond for, and holds the property until the court decides the rightful owner.¹⁸ Petitions for replevin must contain the following information:

- Proof of ownership or entitlement to the property in question, and a description of the property;
- A description of how, to the best of plaintiff's knowledge, the property was wrongfully taken by the defendant; and
- A statement that the property was not claimed under any legal basis such as execution, tax, or fine.¹⁹

In an action for replevin, a court is required to award the prevailing party attorney fees and costs. When the petitioner is the prevailing party, he or she is also due payment of filing and service fees.²⁰

Victims of theft and prevailing plaintiffs in an action for replevin are entitled to damages for loss of use, which are limited to no more than the value of the property before it was taken or damaged.²¹

Additionally, any person who traffics property that he or she knows to be stolen is subject to felony charges of dealing in stolen property under s. 812.019, F.S.

Summary Procedure

Summary procedure is an expedited process for consideration of civil disputes, which is provided in s. 51.011, F.S.²² It streamlines civil litigation by shortening the time period for responding to a complaint, permitting fewer pleadings, and restricting the reasons for which a party may

¹⁵ Section 538.07, F.S.

¹⁶ Section 538.06(4), F.S.

¹⁷ Section 538.08, F.S.

¹⁸ BLACK'S LAW DICTIONARY (10th ed. 2014) (defining the term "replevin"); *see also*, ch. 78, F.S., "Replevin."

¹⁹ Section 78.055, F.S.; s. 538.08, F.S.

²⁰ Section 538.08(2), F.S.

²¹ *Badillo v. Hill*, 570 So. 2d 1067, 1069 (Fla. 5th DCA 1990).

²² Daniel Morman, *Application of Summary Procedure by Agreement*, 76 FLA. BAR J. 12, 12 (Feb. 2002).

postpone the case.²³ The procedure is only available to actions specified by statute or rule and is not currently available in actions of replevin against a secondhand dealer.²⁴

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 538.04, F.S., to require that secondhand dealers include digital photos of the goods acquired, including any unique identifiers, in the report that they are required to submit to local law enforcement.

Section 2 of the bill amends s. 538.06, F.S., to increase the time a secondhand dealer must hold antique furnishings, fixtures or decorative objects, precious metals²⁵, gemstones, or jewelry, and any item of art as defined in s. 686.501, F.S., after he or she acquires it from the seller from 15 to 30 days.²⁶

Section 3 of the bill amends s. 538.08, F.S., to modify the processes by which a claimant may file an action for replevin to re-take possession of his or her goods currently in possession of a secondhand dealer. Specifically, the bill:

- Expands parties eligible to file a replevin action to include an individual who can display a right of possession to the property (lienor). Current law allows only a party who alleges ownership of the property to do so.
- Entitles a claimant who files an action for replevin to the summary procedure, provided for in s. 51.011, F.S.
- Subjects secondhand dealers named in an action for replevin to a noncriminal violation, punishable by a fine of up to \$2,500, if the dealer:
 - Received from the rightful owner or lienor, a written demand for return of property in the dealer's possession, 5 days prior to the owner's filing of an action for replevin;
 - Did not file an action for interpleader²⁷ in the replevin action to determine conflicting claims to the property;
 - Knew, or should have known, based on proof provided by the rightful owner or lienor of the property in question, that the property belonged to him or her; and
 - Failed in the replevin action, and was ordered by a court to return the goods to the rightful owner or lienor.

Section 4 provides an effective date of July 1, 2016.

²³ Section 51.011, F.S.

²⁴ Section 51.011(2), F.S.

²⁵ "Precious metals" are defined in s. 538.03(1)(e), F.S., as "any item containing any gold, silver, or platinum, or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials, or electric parts."

²⁶ Section 686.501, F.S., defines "art" as "a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macramé, quilt, print, photograph, or craft work executed in materials including, but not limited to, clay, textile, paper, fiber, wood, tile, metal, plastic, or glass. The term shall also include a rare map which is offered as a limited edition or a map 80 years old or older; or a rare document or rare print which includes, but is not limited to, a print, engraving, etching, woodcut, lithograph, or serigraph which is offered as a limited edition, or one 80 years old or older."

²⁷ Interpleader is an equitable remedy used to allow a stakeholder to avoid multiple suits or liability as a result of competing claims to a single fund or good held by the stakeholder. *Red Beryl, Inc. v. Sarasota Vault Depository, Inc.*, 176 So. 3d 375 (Fla. 2d DCA 2015); Fla. R. Civ. P. 1.240.

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:

Victims of property theft will have more efficient and less costly judicial remedies to recover their stolen goods when the goods are found at the business of a secondhand dealer.

Secondhand dealers may incur extra costs related to the 30-day hold of property, and related to the digital storage of photographs of the property. Additionally, secondhand dealers will now be subject to a noncriminal penalty of up to \$2,500 in replevin actions, if specific requirements are otherwise met by the claimant.

C. Government Sector Impact:

To the extent that the bill results in additional replevin actions, judicial workloads will increase.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 538.04, 538.06, and 538.08, F.S.

Additional Information:

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

CS by Commerce and Tourism on January 19, 2016:

- Revises the 30-day hold to apply only to antique furnishings, fixtures, and decorative objects, in addition to precious metals, gemstones, jewelry, and specific items of art; all other items acquired by a secondhand dealer will continue to be subject to a 15-day hold period.
- Subjects secondhand dealers to a noncriminal penalty of up to \$2,500 in cases where the dealer loses in an action for replevin, and where specific requirements are met by the claimant.

- B. **Amendments:**

None.

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



847994

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/09/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 103 - 127
and insert:

The plaintiff is entitled to the summary procedure provided in s. 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a writ by a secondhand dealer~~, the secondhand dealer shall hold the property at issue until the court determines the respective interests of the parties.

(4) In addition to the civil complaint ~~petition~~ for return remedy, the state may file a motion as part of a pending



847994

criminal case related to the property. The criminal court has jurisdiction to determine ownership, to order return or other disposition of the property, and to order ~~any~~ appropriate restitution to any person. Such order shall be entered upon hearing after proper notice has been given to the secondhand dealer, the victim, and the defendant in the criminal case.

(5) A secondhand dealer commits a noncriminal violation, punishable as provided in s. 775.083 by a fine of up to \$2,500, if all of the following occur:

(a) An owner or a lienor makes a written demand for return of the property and provides proof of ownership or proof of the right of possession to the secondhand dealer at least 5 calendar days before filing a replevin action.

(b) The secondhand dealer knows or should have known based on the proof provided under paragraph (a) that the property belongs to the owner or lienor.

(c) The secondhand dealer fails to return the property and does not file an action in interpleader to determine conflicting claims to the property.

(d) The owner or lienor prevails in the replevin action against the secondhand dealer.

Section 4. Paragraph (h) of subsection (1) of section 538.03, Florida Statutes, is amended to read:

538.03 Definitions; applicability.—

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

(h) "Secondhand goods" means personal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or traded as used property. The term includes gift certificates and credit



847994

memos as defined in s. 501.95. The term does ~~Such secondhand~~
~~goods do~~ not include office furniture, pianos, books, clothing,
organs, coins, motor vehicles, costume jewelry, cardio and
strength training or conditioning equipment designed primarily
for indoor use, and secondhand sports equipment that is not
permanently labeled with a serial number. As used in ~~For~~
~~purposes of~~ this paragraph, the term "secondhand sports
equipment" does not include golf clubs.

Section 5. Subsection (3) of section 538.09, Florida
Statutes, is amended to read:

538.09 Registration.—

(3) The secondhand dealer's registration shall be
conspicuously displayed at her or his registered location. A
secondhand dealer must hold secondhand goods at the registered
location ~~until~~ for the period required by s. 538.06 ~~15 days~~
~~after the secondhand transaction~~ or until any extension of the
holding period has expired, whichever is later.

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

And the title is amended as follows:

Delete lines 12 - 16

and insert:

plaintiff in a replevin action is entitled to a
certain summary procedure; providing that a secondhand
dealer commits a noncriminal violation under certain
circumstances; providing a penalty; amending s.
538.03, F.S.; revising the definition of the term
"secondhand goods"; amending s. 538.09, F.S.; revising
the period of time a secondhand dealer must hold



847994

70 secondhand goods at a registered location; providing
71 an

By the Committee on Commerce and Tourism; and Senator Richter

577-02272-16

2016948c1

A bill to be entitled

An act relating to secondhand dealers; amending s. 538.04, F.S.; requiring that the record of a secondhand dealer transaction include digital photos of the items; amending s. 538.06, F.S.; increasing the required holding period for certain goods acquired by a dealer; defining the term "antique"; amending s. 538.08, F.S.; authorizing an action in replevin against a secondhand dealer based on a right of possession to stolen goods; revising the form for a complaint for return of stolen goods; providing that a claimant in a replevin action is entitled to a certain summary procedure; providing that a secondhand dealer commits a noncriminal violation when an owner or lienor prevails in a replevin action under certain circumstances; providing a penalty; providing an effective date.

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

Section 1. Paragraphs (c) and (d) of subsection (1) of section 538.04, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (c) is added to that subsection, to read:

538.04 Recordkeeping requirements; penalties.—

(1) A secondhand dealer shall complete a secondhand dealers transaction form at the time of the actual transaction. A secondhand dealer shall maintain a copy of a completed transaction form on the registered premises for at least 1 year after the date of the transaction. However, the secondhand dealer shall maintain a copy of the transaction form for not less than 3 years. Unless other arrangements are agreed upon by

577-02272-16

2016948c1

the secondhand dealer and the appropriate law enforcement official, the secondhand dealer shall, within 24 hours after acquiring any secondhand goods, deliver to such official a record of the transaction on a form approved by the Department of Law Enforcement. Such record shall contain:

(c) Digital photos of the goods, clearly showing the items required to be included on the record as provided in paragraph (b).

Section 2. Subsection (1) of section 538.06, Florida Statutes, is amended to read:

538.06 Holding period.—

(1) (a) A secondhand dealer ~~may~~ shall not sell, barter, exchange, alter, adulterate, use, or in any way dispose of any secondhand good that is:

1. A precious metal, a gemstone, jewelry, an antique furnishing, fixture, or decorative object, or an item of art as defined in s. 686.501 within 30 calendar days after the date on which the good was acquired.

2. Not described in subparagraph 1. ~~goods~~ within 15 calendar days ~~after~~ of the date on which the good was acquired ~~of acquisition of the goods~~.

Such holding periods are not applicable when the person known by the secondhand dealer to be the person from whom the goods were acquired desires to redeem, repurchase, or recover the goods, provided the dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.

(b) As used in this subsection, the term "antique" means

577-02272-16

2016948c1

the item is at least 30 years old and has special value because of its age.

Section 3. Section 538.08, Florida Statutes, is amended to read:

538.08 Stolen goods; ~~complaint~~ petition for return.—

(1) If the secondhand dealer contests the identification, ~~or ownership, or right of possession~~ of the property, the person alleging ownership or right of possession of the property may, provided that a timely report of the theft of the goods was made to the proper authorities, bring an action for replevin in the county or circuit court. The complaint may be ~~by petition~~ in substantially the following form:

Plaintiff A. B. sues defendant C. D., and alleges:

1. This is an action to recover possession of personal property in County, Florida.

2. The description of the property is: ...(list property).... To the best of plaintiff's knowledge, information, and belief, the value of the property is \$.....

3. Plaintiff is the lawful owner of the property or is entitled to ~~the~~ possession of the property under a security agreement dated, ...(year)...., a copy of which is attached.

4. To plaintiff's best knowledge, information, and belief, the property is located at

5. The property is wrongfully detained by defendant. Defendant came into possession of the property by ...(describe method of possession).... To plaintiff's best knowledge, information, and belief, defendant detains the property because

577-02272-16

2016948c1

...(give reasons)....

6. The property has not been taken under an execution or attachment against plaintiff's property.

(2) The filing fees shall be waived by the clerk of the court, and the service fees shall be waived by the sheriff. The court shall award the prevailing party attorney ~~attorney's~~ fees and costs. In addition, when the filing party prevails in the replevin action, the court shall order payment of filing fees to the clerk and service fees to the sheriff.

(3) Upon the filing of the complaint ~~petition~~, the court shall set a hearing to be held at the earliest possible time. The claimant is entitled to the summary procedure provided in s. 51.011. Upon the receipt of the complaint ~~a petition for a writ by a secondhand dealer~~, the secondhand dealer shall hold the property at issue until the court determines the respective interests of the parties.

(4) In addition to the civil complaint ~~petition~~ for return remedy, the state may file a motion as part of a pending criminal case related to the property. The criminal court has jurisdiction to determine ownership, ~~to~~ order return or other disposition of the property, and ~~to~~ order ~~any~~ appropriate restitution to any person. Such order shall be entered upon hearing after proper notice has been given to the secondhand dealer, the victim, and the defendant in the criminal case.

(5) A secondhand dealer commits a noncriminal violation, punishable pursuant to s. 775.083 by a fine of up to \$2,500, if:

(a) The owner or lienor who prevailed in the replevin action made a written demand for return of the property and

577-02272-16

2016948c1

120 provided proof of ownership or proof of the right of possession
121 to the secondhand dealer at least 5 calendar days before filing
122 the replevin action;

123 (b) The secondhand dealer knew or should have known based
124 on the proof provided under paragraph (a) that the property
125 belonged to the owner or lienor; and

126 (c) The secondhand dealer did not file an action for
127 interpleader to determine conflicting claims to the property.

128 Section 4. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

January 21, 2016

The Honorable Miguel Diaz de la Portilla, Chair
Senate Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Diaz de la Portilla:

CS/Senate Bill 948, relating to Second Hand Dealers, has been referred to the Committee on Judiciary. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Tom Cibula, Staff Director

REPLY TO:

- ☐ 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- ☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- ☐ 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

2.9.16

Meeting Date

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

948

Bill Number (if applicable)

Topic Second Hand Dealers

Name Sarah Carroll

Job Title Partner

Address 123 S. Adams Street

Street

Tallahassee FL 32301

City

State

Zip

Phone 671.4401

Email carroll@sostrategy.com

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
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 1220

INTRODUCER: Judiciary Committee; Governmental Oversight and Accountability Committee; and
Senator Garcia

SUBJECT: Public Records

DATE: February 11, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1220 establishes circumstances under which enforcement costs and attorney fees are permitted and forbidden in an action to require an agency to disclose a public record. A court must award reasonable enforcement costs, including attorney fees, if:

- The complainant provided written notice to the records custodian that clearly and conspicuously identified the record;
- The request was provided at least 5 business days before filing the suit; and
- The agency unlawfully refused the request.

Written notice of the request, however, is not required if the agency does not post the records custodian's contact information in the agency's primary administrative building where the records are generally maintained or if the contact information is not posted on the agency's website.

A court may not award enforcement costs and fees if the court finds that:

- The action or request was frivolous, malicious, or intended to harass the agency or cause a violation of the public records chapter; or
- The delay or error in permitting access to the record was a technical violation that constitutes harmless error.

These changes are in contrast to current law which mandates that a court “shall” assess and award the reasonable cost of enforcement, including reasonable attorney fees, if the court decides that the agency unlawfully refused to permit the public record to be inspected or copied.

II. Present Situation:

Public Records Requirements

The Florida Constitution provides that every individual has a right of access to public records, unless exempted, which are made or received in connection with official public business.¹ This right applies to records of the legislative, executive, and judicial branches.²

The Public Records Act, codified in chapter 119, F.S., expressly guarantees every person’s right to inspect and copy any state or local government public record³ at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.⁴ The Public Records Act also applies to a private contractor if that private business acts on behalf of a governmental entity.⁵

An agency, as defined by chapter 119, F.S., may not impose greater conditions on responding to a public records request than that required by law. For example, an agency may not require a person seeking a public record to disclose his or her background information.⁶ Nor may an agency require an individual to put his or her request in writing as a condition of production.⁷ An agency must honor a request whether a person requests records by phone, in writing, or in person, provided that the request is sufficient to identify the records sought.⁸

Custodian of Public Records

Pursuant to s. 119.011(5), F.S., a custodian of public records is “the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.”

¹ FLA. CONST. art I, s. 24(a).

² *Id.*

³ Section 119.011(12), F.S., defines “public record” as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁴ Section 119.07(1)(a), F.S.

⁵ Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32, 36-37 (Fla. 1992).

⁶ *Bevan v. Wanichka*, 505 So. 2d 1116, 1118 (Fla. 2d DCA 1987).

⁷ *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, n.1 (Fla. 3d DCA 2001); Op. Att’y Gen. Informal Opinion (Dec. 16, 2003).

⁸ Op. Att’y Gen. Fla. 80-57, pg. 3 (1980).

A custodian of public records is required to perform statutorily required duties such as maintaining records in fireproof vaults, repairing records and comply with retention schedules set by the Department of State.⁹ In addition, s. 119.07, F.S., provides that a public records custodian has additional duties, which include:

- Acknowledging a public records request and responding to those requests in good faith;¹⁰
- Producing records after redacting exempt information or providing the statutory citation for an exemption if the entire document is exempt;¹¹
- Maintaining records that are the subject of public records litigation;¹²
- Ensuring that those records are secure if public records are provided by remote electronic means;¹³
- Providing supervision if someone wishes to photograph records;¹⁴ and
- Providing certified copies of public records upon payment of a fee.¹⁵

Public records custodians are also responsible for supervising the production of records by all agency personnel. Section 119.07(1)(a), F.S., provides that “[e]very person who has custody of a public record shall permit the record to be inspected and copied ... at any reasonable time, under reasonable conditions, and under reasonable supervision by the custodian of the public records.”

Enforcing Public Records Laws and Attorney Fees

Article I, section 24(c), Florida Constitution, requires the Legislature to enact laws governing the enforcement of public records requirements, including the “maintenance, control, destruction, disposal, and disposition of records.”

Under s. 119.11, F.S., a person may enforce the right to a public record by a lawsuit against an agency. In those lawsuits, the court must set an immediate hearing, giving the case priority over other cases.¹⁶ If a court orders an agency to open its records for inspection, the agency must comply within 48 hours.¹⁷

Section 119.12, F.S. provides that if a court finds that an agency unlawfully refused access to a public record, the court must order the public agency to pay costs and attorney fees related to the enforcement lawsuit.¹⁸ An unjustified delay in turning over public records is considered an

⁹ Section 119.021, F.S.

¹⁰ Section 119.07(1)(c), F.S.

¹¹ Section 119.07(1)(d)-(f), F.S.

¹² Section 119.07(1)(g)-(i), F.S.

¹³ Section 119.07(2), F.S.

¹⁴ Section 119.07(3), F.S.

¹⁵ Section 119.07(4), F.S.

¹⁶ Section 119.11(1), F.S.

¹⁷ Section 119.11(2), F.S.

¹⁸ Section 119.12, F.S. In 1984, the Legislature amended the public records attorney fee provision, deleting language which would permit attorney fees to be awarded only when records are “unreasonably” refused and replaced it with “unlawfully” refused. Ch. 84-298, s. 7, Laws of Fla. Based on the Legislature’s removal of the word “unreasonably,” a court concluded that good faith or honest mistakes do not excuse a defendant from being assessed attorney fees.” *News and Sun-Sentinel Co. v. Palm Beach County*, 517 So.2d 743, 744 (Fla. 4th DCA 1987), partially disapproved of in *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So.2d 27, 30 (Fla. 1993). *Lilker v. Suwannee Valley Transit Authority*, 133 So.3d 654 (Fla.

unlawful refusal, and a court will award attorney fees even if the delay was not willful or if the delay was due to incompetence.¹⁹

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is a legal consequence independent of the public records request.²⁰ Once an enforcement action is filed, the court will require a public agency to pay the requestor's attorney fees even after the agency has produced the records.²¹ The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial.²² In addition, granting attorney fees makes it more likely that public agencies will comply with public records laws.²³

The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.²⁴ Open meetings laws also include an attorney fee provision. Section 286.0114(7), F.S., provides:

(a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.

(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

Public Records Requests, Settlements and Attorney Fees

Over the past few years, governmental entities have been sued based on their failure to provide public records for what appear to be less about private citizens getting access to public records than generating settlements or attorney fees. Cities often settle the matters because settlements

1st DCA 2014). *Office of the State Attorney for the Thirteenth Judicial Circuit of Florida v. Gonzalez*, 953 So.2d 759, 765 (Fla. 2nd DCA 2007).

¹⁹ *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654, 655-656 (Fla. 1st DCA 2014); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 225 (Fla. 5th DCA 1996).

²⁰ *Mazer v. Orange County*, 811 So. 2d 857, 859 (Fla. 5th DCA 2002).

²¹ *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (Fla. 5th DCA 1996); *Althouse v. Palm Beach County Sheriff's Office*, 92 So. 3d 899, 902 (Fla. 4th DCA 2012).

²² *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

²³ *Id.*

²⁴ FLA. CONST. art I, s. 24(a).).

are less costly than litigation. For example, the City of Dunedin settled a matter for \$2,500 rather than spending \$10,000 to fight the public records request lawsuit.²⁵

Some public records lawsuits are filed by individuals and some are filed by organizations that appear to be working in concert. Two Gulf Stream residents allegedly filed 1,700 public records requests with the Town of Gulf Stream over 2 years. When the Town of Gulf Stream did not fulfil the requests, one of the residents then sued the city for failure to meet the requests.²⁶ The Town of Gulf Stream has allegedly spend more than \$1 million fielding public records requests and on legal fees, including a class action racketeering suit it filed against several residents and companies related to the residents' actions.²⁷ The Town of Gulf Stream filed the federal lawsuit against a resident, the Citizen's Awareness Foundation, Inc., Our Public Records, LLC, and other defendants based on their use of public records laws. The case was dismissed by the federal judge, who stated:

To the extent Defendants are abusing the rights affording them by the Florida public records laws, those abuses must be addressed in the individual lawsuits filed, or through a change in the laws by the Florida Legislature.²⁸

Citizen's Awareness Foundation and its sister group, Our Public Records, LLC, have filed more than 140 lawsuits across 27 counties.²⁹ The lawsuits are filed against government contractors as well as government entities.

Consumer Rights, LLC, filed a public records lawsuit against Union County, which was ultimately appealed when the trial court refused to grant attorney fees to Consumer Rights, LLC. The First District Court found:

The plaintiff made the request in suspicious email that could not be easily verified, directed it to a general email account that might not be checked by the person having anything to do with the records at issue, waited four months without saying anything and then sued the county, claiming a right to attorney fees.³⁰

²⁵ Mike Brassfield, *Lawsuits from Public Records Group are a Nuisance, Florida Cities Say*, TAMPA BAY TIMES, July 6, 2015, available at <http://www.tampabay.com/news/humaninterest/lawsuits-from-public-records-group-are-a-nuisance-florida-cities-say/2236362>.

²⁶ John Kennedy and Joan Musgrave, *Florida Bill Targets Type of Suit Used by Gulf Stream Resident O'Boyle*, PALM BEACH POST, updated Oct. 5, 2015, available at <http://www.mypalmbeachpost.com/news/news/state-regional-govt-politics/florida-bill-targets-type-of-suit-used-by-gulf-str/nns5L/>.

²⁷ *Supra* at 25.

²⁸ *Town of Gulf Stream v. O'Boyle, et al.*, Opinion and Order, Case No. 15-80182-CIV-MARRA, U.S. District Court, Southern District of Florida 2015 available at <http://law.justia.com/cases/federal/district-courts/florida/flsdce/9:2015cv80182/456973/47/>.

²⁹ Tristram Korten and Trevor Aaronson, Florida Center for Investigative Reporting, *In Lawsuits Statewide, Questions of Profits and Public Records*, (Nov. 9, 2014) available at , <http://fcir.org/2014/11/09/in-lawsuits-statewide-questions-of-profits-and-public-records/>.

³⁰ *Consumer Rights, LLC, v. Union County, Fla.*, 159 So. 3d 882, 885 (Fla. 1st DCA 2015). See also *State Dept. of Economic Opportunity v. Consumer Rights, LLC*, No. 1D15-0383, 2015 WL 9258293 (Fla. 1st DCA 2015).

In this case, the First District Court of Appeal affirmed the lower court's decision to deny attorney fees to the plaintiff. The First District Court found that the manner in which the public records request was made, as well as the fact that the County ultimately provided the requested record when it became apparent that the email was not spam, indicated that there was no refusal to provide the requested records.³¹

Public Records and Private Contractors

Public agencies, including local and statewide governmental entities and municipal officers may hire contractors to provide services or act on behalf of the public agency.³² Contractors can be individuals or business entities.³³ Private contractors who act on behalf of a public agency are required by law and the terms of their contracts to comply with public records laws in the same manner as a public agency.³⁴ These duties include keeping public records, providing the public an opportunity to inspect or copy a public record, and redacting exempt information.³⁵ A public agency is required to enforce the terms of its contract if a contractor fails to abide by public records laws.³⁶ This may include unilateral cancellation of the contract by a state agency if a contractor refuses to allow public access to materials the contractor receives in conjunction with the contract.³⁷

If a contractor fails to comply with a public records request, the requestor may sue the contractor to enforce his or her rights to have access to the records.³⁸ If a court determines that the contractor unlawfully withheld public records, the court must order the contractor to pay for the cost of the enforcement lawsuit and the requestor's attorney fees in the same manner that a public agency would be liable.³⁹ Therefore, once a lawsuit is filed, a contractor may also be held liable for attorney fees even after providing the requested records. The fees provision, however, "was not intended to force private entities to comply with the inspection requirements of [the Public Records Act] by threatening to award attorney's fees against them."⁴⁰

When is a Private Contractor an Agency for Public Records Purposes?

Pursuant to s. 119.011(2), F.S., the definition of 'agency' in the Public Records Act includes a "public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." In addition, s. 119.0701(1)(a), F.S., defines a contractor as an "individual, partnership, corporation, or business entity that enters into a contract for services with a public

³¹ *Consumer Rights, LLC*, at 886-887.

³² Section 119.0701(1)(b), F.S. *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992). Op. Att'y Gen. Fla. Informal Opinion dated December 31, 2014.

³³ Section 119.0701(1)(a), F.S.

³⁴ Section 119.0701, F.S. *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

³⁵ Section 119.0701(2), F.S.

³⁶ Section 119.0701(3), F.S.

³⁷ Section 287.058(1)(c), F.S., provides that state agency contracts which exceeding \$35,000.00 must include a provision that permits the state to unilaterally cancel the contract if the contractor refuses to permit access to public records. This does not apply to contracts related to certain state employee benefits. Section 287.058(1), F.S.

³⁸ See ss. 119.011(2), 119.0701(1), and 119.11, F.S..

³⁹ See ss. 119.011(2) and 119.12, F.S. *New York Times Co. v. PHH Mental Health Services, Inc.* 616 So. 2d 27, 29 (Fla. 1993).

⁴⁰ *New York Times Co. v. PHH Mental Health Services, Inc.* 616 So. 2d 27, 29 (Fla. 1993).

agency and is acting on behalf of the public agency.” It is not always clear, however, when a private contractor is ‘acting on behalf of’ an agency and is subject to public records laws.

To determine when a contractor is acting on behalf of a public agency, a totality of factors test may be applied.⁴¹ Some of the factors a court may consider include, but are not limited to:

- Whether the public agency created the contractor;
- How much public funding was involved;
- How much the public agency regulated the contractor;
- The comingling of decision making processes;
- Whether the contractor was performing a government function; and
- The goals of the contractor.⁴²

A contractor’s uncertainty as to whether it is an agency for public records purposes may lead a contractor to believe it is not required to provide public access to its records. If a contractor fails to comply with public records laws because of its uncertainty, a court may not always require the contractor to pay the requestor’s costs and attorney fees.⁴³

Private Contractors and Public Records Lawsuits

Private contractors have also been subject to lawsuits that appear to be more about generating settlements and attorney fees than about the individuals exercising their right to copy and inspect public records. On December 1, 2014, a circuit court judge in Duval County denied relief to a plaintiff in a lawsuit to enforce a public records request and for assessment of attorney fees.⁴⁴ According to the court order, the plaintiff made two separate requests for public records to a nonprofit organization under contract to provide social services for the Department of Children and Families. The contract manager refused to provide the documents because the contract manager believed the documents were not public records. The court found that the manner in which the plaintiff and his companions made the request ensured that “they obtained exactly what they wanted, namely an initial denial of an unreasonable and bogus request.”⁴⁵

The court found that the plaintiff’s method of requesting public records was an abuse of the public records laws noting that the actions of the requester amounted to “nothing more than a scam.”⁴⁶ The Final Order stated that the plaintiff and his attorney, who had an arrangement to split his attorney fees with the plaintiff, had “a financial interest in assuring that his requests for public records [were] refused.”⁴⁷ The court noted that in 2014, the plaintiff filed 18 public records lawsuits in Duval County, and that the attorney represented the plaintiff on approximately 13 of those cases. The court further noted that all of the cases followed a similar pattern.

⁴¹ *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

⁴² *Id.* at 1032.

⁴³ *New York Times Co. v. PHH Mental Health Services, Inc.* 616 So. 2d 27, 29 (Fla. 1993); *Stanfield v. Salvation Army*, 695 So. 2d 501, 502 (Fla. 5th DCA 1997).

⁴⁴ *Gray v. Lutheran Social Services of Northeast Florida, Inc.*, Final Order Denying Relief Under Public Records Act, No. 2014-CA-4647 (Fla. 4th Cir. Ct. Dec. 2, 2014).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

The court opined that:

If a private entity must pay an attorney's fee every time an agent denies a needless request, the cost to the state to provide important services by contracting with private entities will increase; or private entities might discontinue bidding on these contracts. The chilling effect could be disastrous to the State. Further the [Public Records] Act was not designed to create a cottage industry for so-called "civil rights activists" or others who seek to abuse the [Public Records] Act for financial gain.⁴⁸

The denial of attorney fees was affirmed by the First District Court of Appeal on December 16, 2015.⁴⁹

III. Effect of Proposed Changes:

Changes to Current Law

The bill limits access to enforcement costs and attorney fees in an action to require an agency to disclose a public record. This change is in contrast to current law which provides that a court "shall" assess and award the reasonable cost of enforcement, including reasonable attorney fees, if the court decides that the agency unlawfully refused to permit the public record to be inspected or copied. The bill establishes when those costs and fees are permitted and forbidden.

When a Court Must Award Enforcement Costs and Fees

The bill provides that a court must assess and award the reasonable costs of enforcement, including reasonable attorney fees, against a refusing agency if the court determines that:

- The complainant provided written notice that clearly and conspicuously identifies the public record request to the agency's public records custodian;
- The request was provided at least 5 business days before filing the civil action; and
- The agency unlawfully refused to permit the public record to be inspected or copied.

The complainant, however, is not required to provide written notice of the public record request to the agency's public records custodian if:

- The agency does not post the custodian's contact information in the agency's primary administrative building where the public records are generally created, sent, received, maintained and requested; or
- The contact information is not posted on the agency's website.

When a Court is Prohibited from Awarding Enforcement Costs and Fees

The bill prohibits a court from assessing and awarding the reasonable costs of enforcement, including reasonable attorney fees, against the agency if the court determines that:

⁴⁸ *Id.*

⁴⁹ *Gray v. Lutheran Social Services of Northeast Florida, Inc.*, 179 So. 3d 322 (Table) (Fla. 1st DCA 2015).

- The civil suit or request to inspect or copy the public record was frivolous, malicious, or reasonably appears to have been intended to harass the agency or cause a violation of the public records chapter; or
- An alleged delay or error in permitting the inspection or copying of the public record was a technical violation which amounted to harmless error under the circumstances.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require counties or municipalities to take an action requiring the significant expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

The bill grants greater discretion to judges as to whether they must award attorney fees in actions to enforce public records laws. This may have the effect of reducing the likelihood of an attorney accepting a public records lawsuit if he or she will not be guaranteed fees. This provision may also have the effect of essentially imposing a requirement on the public to make public records requests in writing because the enforcement costs provision requires a written request for records be sent to the records custodian.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Private Sector Impact:

Private contractors which are agencies under the public records laws may spend less in settlements and attorney fees related to public records requests.

Individuals and groups who file public records lawsuits may incur additional costs to send letters to public records custodians. There would be little or no additional costs, however, to send an email instead of letter.

C. **Government Sector Impact:**

Governmental entities may spend less in settlements and enforcement costs related to public records requests.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

Notice period

The 5-day window is not a cure period, as the bill does not foreclose a plaintiff from being awarded enforcement costs.

VIII. **Statutes Affected:**

This bill substantially amends section 119.12 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 February 9, 2016:

This CS differs from the previous version by removing some of the court's discretion to award enforcement costs and attorney fees. This bill specifies circumstances under which a court must award enforcement costs, including attorney fees, and when the court is prohibited from awarding those enforcement costs and attorney fees. The instances in which the court may not award costs and fees are expanded to include instances in which the request was malicious, reasonably intended to harass the agency, or brought to primarily cause a violation of the public records request laws or if the alleged delay or error was a technical violation that amounted to harmless error.

CS by Governmental Oversight and Accountability on January 26, 2016:

The CS provides that the court may not award enforcement costs if the court determines that the plaintiff made his or her public records request frivolously or in bad faith.

- B. **Amendments:**

None.



859582

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 119.12, Florida Statutes, is amended to
read:

119.12 Attorney ~~Attorney's~~ fees.—

(1) If a civil action is filed against an agency to enforce
the provisions of this chapter and ~~if~~ the court determines that
the complainant provided written notice clearly and
conspicuously identifying the public record request to the



859582

agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (3), and that the ~~such~~ agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, ~~against the agency responsible,~~ the reasonable costs of enforcement, including reasonable attorney attorneys' fees, against the responsible agency.

(2) The court may not assess and award any reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if the court determines that:

(a) The civil action or the request to inspect or copy a public record was frivolous, malicious, or reasonably appears to have been intended to harass the agency, or was brought or made for the primary purpose of causing a violation of this chapter; or

(b) Any alleged delay or error in permitting a public record to be inspected or copied was a technical violation of this chapter which constituted harmless error under the circumstances.

(3) The complainant is not required to provide written notice of the public record request to the agency's custodian of public records as provided in subsection (1) if the agency does not post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested or on the agency's website.

Section 2. This act shall take effect upon becoming a law.

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



859582

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to public records; amending s. 119.12,
F.S.; requiring a complainant to provide specified
written notice to an agency's custodian of public
records in order to be awarded the reasonable costs of
enforcement in a civil action for enforcement of ch.
119, F.S.; specifying circumstances under which a
court may not assess and award the reasonable costs of
enforcement against a responsible agency; providing an
exception to the requirement that a complainant
provide written notice before filing a civil action;
providing an effective date.

By the Committee on Governmental Oversight and Accountability;
and Senator Garcia

585-02626-16

20161220c1

A bill to be entitled

An act relating to public records; amending s. 119.12,
F.S.; specifying the circumstances under which a court
may assess and award the reasonable costs of
enforcement against an agency in a civil action to
enforce ch. 119, F.S.; providing an effective date.

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

Section 1. Section 119.12, Florida Statutes, is amended to
read:

119.12 Attorney ~~Attorney's~~ fees.—If a civil action is filed
against an agency to enforce the provisions of this chapter, and
if the court determines that the complainant provided written
notice of the public records request to the agency's custodian
of public records at least 5 business days before filing the
civil action and that such agency unlawfully refused to permit a
public record to be inspected or copied, the court may shall
assess and award, against the agency responsible, the reasonable
costs of enforcement, including reasonable attorney attorneys'
fees, against the responsible agency. However, if the court
determines that the request to inspect or copy a public record
was made in bad faith or was frivolous, the court may not award
any reasonable costs of enforcement, including reasonable
attorney fees, against the responsible agency.

Section 2. This act shall take effect upon becoming a law.

The Florida Senate
State Senator René García
38th District

Please reply to:
District Office:
1490 West 68 Street
Suite # 201
Hialeah, FL 33014
Phone# (305) 364-3100

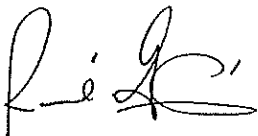
January 27th, 2016

The Honorable Senator Diaz de la Portilla
Chairman, Judiciary Committee
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Diaz de la Portilla,

Please have this letter serve as my formal request to have **SB 1220: Public Records**, be heard in the next possible Judiciary Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García
District 38
RG:AD

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)

Meeting Date _____

SB 1220
Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable) _____

Name PEGGY BELL

Job Title MAYOR, CUTLER BAY

Address 10720 CARIBBEAN BLVD
Street

Phone _____

CUTLER BAY FL 33189
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

1220
Bill Number (if applicable)

Topic Ch 119 - Attorneys Fees

Amendment Barcode (if applicable) _____

Name Mitchell Bierman

Job Title Attorney

Address 2525 Ponce de Leon Blvd.
Street

Phone 305 798 0059

City _____ State _____ Zip _____

Email mbierman@wsh-law.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Town of Cutler Bay and Village of Pinecrest

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

2/9/2016

Meeting Date

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

CS/SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name

Diane Velazquez

Job Title

Commissioner

Address

120 Main Street

Phone

407-432-6715

Street

City

Apopka, Fl. 32703

State

Zip

Email

dvelazquez@apopka.net

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

City of Apopka

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/9/2016

Meeting Date

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

CS/SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Robemary Wilson

Job Title Commissioner

Address 150 N. Lakeshore Dr

Street

Ocoee

City

FL

State

34761

Zip

Phone 407-948-2153

Email rwilson@co.oce.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Ocoee

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

2/9/2016

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

CS/SB 1220

Meeting Date

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Joseph P. McManus

Job Title Mayor Town of Oakland

Address 220 N. Tubb St

Phone 407 877 5967

Street

Oakland

FL

340780

City

State

Zip

Email jmcmanus@oaklandtowa.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Town of Oakland

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/9/2016

Meeting Date

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

CS/SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Donald "Donny" Shroyer

Job Title councilman

Address 1300 9th street

Phone (407) 301-6228

Street

St. Cloud

City

FL

State

34769

Zip

Email dshroyer@stcloud.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of St. Cloud

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/9/2016

Meeting Date

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

CS/SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name JOE DURSO

Job Title MAYOR - CITY OF LONGWOOD

Address 175 W. WARREN AVE

Street

Phone 407-722-1155

Longwood

City

FL

State

32750

Zip

Email jdurso@LongwoodFL.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CITY OF LONGWOOD

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/2016

Meeting Date

CS/SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Charles Lacey

Job Title Mayor, Winter Springs

Address 1126 E. SR 434

Street

Phone 407-327-5956

Winter Springs

City

FL

State

32708

Zip

Email CLACEY@WinterSpringsFL.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Winter Springs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/2016

Meeting Date

CS/SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name GARDNER HUSSEY

Job Title City Commissioner ALTAMONTE SPRINGS

Address 1396 Black Willow Tr.

Street

Phone 407-617-1449

ALTAMONTE SPRINGS FL 32714

City

State

Zip

Email gardnerh@cityofalt.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Altamonte Springs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/2016

CS/SB 1220

Meeting Date

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name RAY BAGSHAW

Job Title Mayor City of EDGEWOOD

Address 405 Larue Ave

Phone 407-851-2920

Street

EDGEWOOD Fl. 32809

City

State

Zip

Email rbagshaw@edgewood-fl.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CITY OF EDGEWOOD

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-14

Meeting Date

1220

Bill Number (if applicable)

859582

Amendment Barcode (if applicable)

Topic Public Records

Name Jimmie Williams

Job Title City Councilman Homestead

Address 504 NW 3rd Ave

Street

Homestead

City

FL

State

33030

Zip

Phone 305-282-4467

Email JWilliams@CityofHomestead

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Homestead

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16
Meeting Date

SB 1220
Bill Number (if applicable)

Topic Public Records

859582
Amendment Barcode (if applicable)

Name Kraig Conn

Job Title _____

Address 301 S. Bromough
Street
Tall FL 32301
City State Zip

Phone 222 9684

Email Kconn@FlaFics.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 9, 2016

Meeting Date

1220

Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name LAURA YOUNANS

Job Title LEGISLATIVE ADVOCATE

Address 100 N. MONROE ST

Street

Phone 294-1838

TAL

City

FL

State

32301

Zip

Email LYOUNANS@FL-COUNTIES.COM

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16
Meeting Date

CS/SB 1220
Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name CHARLIE LATNAM

Job Title MAYOR

Address 11 N. THIRD ST.
Street

Phone 904-910-4004

JACKSONVILLE BEACH, FL 32250
City State Zip

Email CLATNAM@JAXBEACHFL.NET

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CITY OF JACKSONVILLE BEACH

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No
NOT FOR THE CITY

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-16

Meeting Date

1220

Bill Number (if applicable)

859582

Amendment Barcode (if applicable)

Topic Public Records

Name Doslyn Buckner

Job Title Councilwoman

Address 201 Westwood Drive

Street

Miami Spg, FL

City

State

Zip

Phone 305-972-2360

Email buckner@miamispringsfl.gov

Speaking: ☒ For ☐ Against ☐ Information

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

Representing City of Miami Springs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16

Meeting Date

SB 1220

Bill Number (if applicable)

Topic Public Records

Name Nelson Rodriguez

Amendment Barcode (if applicable)

Job Title Councilman Town of Miami Lakes

Address 6601 Main Street

Street

Phone

Miami Lakes

City

FL

State

33014

Zip

Email RodriguezN@miamilakes-fl.gov

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Miami Lakes

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-16

Meeting Date

1220

Bill Number (if applicable)

859582

Amendment Barcode (if applicable)

Topic Public Records

Name RICHARD L ROCK

Job Title COUNCLMAN

Address 6131 NW 40th Street

Street

VIRGINIA GARDENS

City

State

FL 33166

Zip

Phone 305 975 1772

Email marist@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing VIRGINIA GARDENS FLORIDA LEAGUE OF CITIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

Feb. 9, 2016

Meeting Date

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

1220

Bill Number (if applicable)

Topic Public records requests

Amendment Barcode (if applicable)

Name Dean Ridings

Job Title President & CEO

Address 336 E. College Ave., Suite 201

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-212-8895

Email dridings@flpress.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing The Florida Press 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)

2/9/16

Meeting Date

1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Rick Templin

Job Title _____

Address 135 S. Monroe
Street

Phone 850-224-6926

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 Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-16

Meeting Date

SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name JAN RUBINO

Job Title _____

Address 726 INGLISIDE AVE

Street

Phone (850) 224-9262

TALLAHASSEE, FL

City

State

32303

Zip

Email rubinojan@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Bill Number (if applicable) _____

Topic SB 1220

Amendment Barcode (if applicable) _____

Name Richard Kuper

Job Title MIAMI DADE LEAGUE of CITIES

Address 19 W-FLAGLER ST
Street
M. F

Phone 3/416-4155

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

2/9/2016

Meeting Date

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

CS/SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name

Diane Velazquez

Job Title

Commissioner

Address

120 Main Street

Street

Apopka, FL 32703

City

State

Zip

Phone

407.432-2715

Email

DVelazquez@apopka.net

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

City of APOKA

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/9/2016

Meeting Date

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

CS/SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Rosemary Wilson

Job Title Committeebearer

Address 150 W. Lakeshore Dr.

Street

Ocoee FL

City

State

34761

Zip

Phone 407-948-2155

Email rwilson@ci.ocoe.fl.us

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

Representing City of Ocoee

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/9/2016

Meeting Date

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

CS/SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Joseph P. McManis

Job Title Cmsr

Address 220 N. Tubb St

Street

Phone 4078775967

Oakland FL

City

State

34780

Zip

Email jmcmanis@oakland-fla.usa.com

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

Representing Town of Oakland

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/9/2016

Meeting Date

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

CS/SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Donald "Donny" ShroyerJob Title CouncilmanAddress 1300 9th StreetPhone (407) 301-6228St. Cloud FL 34769

City

State

Zip

Email dshroyer@stcloud.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing City of St. CloudAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/9/2016

Meeting Date

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

CS/SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name JOE DURSOJob Title MAYOR - CITY OF LONGWOODAddress 175 W WARREN AVE

Street

LONGWOOD

City

FL

State

32750

Zip

Phone 407-722-1155Email jdurso@LongwoodFL.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing CITY OF LONGWOODAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/9/2016

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

CS/SB 1220

Meeting Date

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Charles LaceyJob Title Mayor, Winter SpringsAddress 1126 E. SR 434Phone 407-327-5956

Street

Winter Springs FL 32708

City

State

Zip

Email CLACEY@WINTERSPRINGSFL.ORGSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing City of Winter SpringsAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/9/2016

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

CS/SB 1220

Meeting Date

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name GARDNER HusseyJob Title City Commissioner - Altamonte SpringsAddress 1396 BLACK WILLOW TRAILPhone 407-617-1449

Street

Altamonte Springs, FL 32714Email gardnerh@cityofalt.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing City of Altamonte SpringsAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/2016

Meeting Date

CS/SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name RAY BAGSHAW

Job Title Mayor City of EDGEWOOD

Address 405 Larue Ave

Street

EDGEWOOD

City

FL

State

32809

Zip

Phone 407-851-2920

Email r.bagshaw@edgewood-fl.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of EDGEWOOD

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 1436

INTRODUCER: Judiciary Committee and Senator Braynon

SUBJECT: Public Records

DATE: February 11, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1436 creates two new public records exemptions related to court documents.

Current law prohibits a clerk of the court from placing a public record, such as a court file, record, or paper relating to a matter or case governed by the Florida Family Law Rules of Procedure on a publicly available website. These records relate to alimony, dissolution of marriage, parenting plans, paternity, and related matters. This bill provides a public records exemption for those documents.

Current law authorizes a person to petition the court for several types of injunctions for protection, including injunctions against domestic violence;¹ repeat violence;² dating violence;³ sexual violence;⁴ and stalking. In addition to providing a public records exemption for documents in family law matters, this bill provides an exemption for petitions of injunctions that are filed but later dismissed.

More specifically, the following records are confidential and exempt from disclosure:

- A public record relating to a matter or case governed by the Florida Family Law Rules of Procedure; and

¹ Section 741.30(1), F.S.

² Section 784.046(2), F.S.

³ *Id.*

⁴ *Id.*

- A petition for an injunction that is dismissed without a hearing or at an ex parte hearing due to failure to state a claim, lack of jurisdiction, or any reason having to do with the sufficiency of the petition itself without an injunction being issued, and the contents of the petition.

Because this bill creates new public records exemptions, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

Both public record exemptions are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2021, unless reviewed and saved from repeal through legislative reenactment.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁵ The records of the legislative, executive, and judicial branches are specifically included.⁶

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act⁷ guarantees every person's right to inspect and copy any state or local government public record⁸ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other

⁵ FLA. CONST. art. I, s. 24(a).

⁶ *Id.*

⁷ Chapter 119, F.S.

⁸ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." The Public Records Act does not apply to legislature or its members. (*See Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)); *but see* s. 11.0431, F.S. (providing public access to records of the Senate and the House of Representatives received in connection with the official business of the Legislature, subject to specified exemptions).

⁹ Section 119.07(1)(a), F.S.

¹⁰ FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Op. Att'y Gen. Fla. 85-62 (1985).

¹¹ FLA. CONST. art. I, s. 24(c).

substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.¹⁴ It requires the automatic repeal of the exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁵ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁶

Clerk of the Court

The clerk of the court is considered to be the county recorder.¹⁷ As county recorder, the clerk must record all instruments in one general series called “official records.”¹⁸

The clerk of the circuit court is responsible for:

- Keeping and maintaining all court documents and electronic filings in the clerk’s office;¹⁹
- Affixing a stamp, which may be electronic, to each document indicating the date and time that the submission was filed;²⁰
- Maintaining a progress docket on which the filing of each pleading or motion is noted;²¹ and
- Implementing an electronic filing process.²²

The clerk may keep minutes of court proceedings.²³

All instruments recorded in the official records must always be available to the public for inspection.²⁴ The term “public records” includes each official record.²⁵

Electronic Access to Official Records

Florida law prohibits a county recorder or a clerk of the court from placing certain images or copies of public records, including an official record, on a publicly available Internet website.²⁶

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST. art. I, s. 24(c).

¹⁴ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 28.222(1), F.S.

¹⁸ Section 28.222(2), F.S. Official records consist of each instrument that the clerk is required or authorized to record. Sections 28.001(1), F.S.

¹⁹ Section 28.13, F.S.

²⁰ *Id.*

²¹ Section 28.211, F.S.

²² Section 28.22205, F.S.

²³ Section 28.212, F.S.

²⁴ Section 28.222, F.S.

²⁵ Section 28.001(2), F.S.

²⁶ Section 28.2221(5)(a), F.S.

Specifically, a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law may not be placed on a public website.²⁷

Injunctions

A person may petition the court for several types of injunctions for protection, including injunctions against domestic violence;²⁸ repeat violence;²⁹ dating violence;³⁰ sexual violence;³¹ and stalking.³²

Domestic violence is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.³³

Repeat violence constitutes two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.³⁴

Dating violence is violence between individuals who have or have had a continuing and significant romantic relationship.³⁵ The existence of a dating relationship is determined based on the following:

- A dating relationship must have existed within the past 6 months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement; and
- The frequency and type of interaction must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

Sexual violence is any one incident of:

- Sexual battery;
- A lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age;
- Luring or enticing a child;
- Sexual performance by a child; or
- Any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges were filed, reduced, or dismissed by the state attorney.³⁶

²⁷ *Id.*

²⁸ Section 741.30(1), F.S.

²⁹ Section 784.046(2), F.S.

³⁰ *Id.*

³¹ *Id.*

³² Section 784.0485(1), F.S.

³³ Section 741.28(2), F.S.

³⁴ Section 784.046(1)(b), F.S.

³⁵ Section 784.046(1)(d), F.S.

³⁶ Section 784.046(1)(c), F.S.

A form for a petition for injunction against domestic violence is provided in Florida law.³⁷ A similar form for a petition for injunction for protection against the other types of violence noted above is provided in sections 784.046(4)(b) and 784.0485(3)(b), F.S.

Upon the filing of a petition for injunction, the court must hold a hearing at the earliest possible time.³⁸

If an immediate and present danger of domestic violence appears to exist, the court may grant a temporary injunction ex parte prior to the full hearing.³⁹

Florida Family Law Rules of Procedure

The Florida Family Law Rules of Procedure protect from disclosure certain sensitive information recorded in family law cases.⁴⁰ Rule 12.004(a), Florida Family Law Rules of Procedure, authorizes a judge hearing a family law case to access and review files of any related case. However, parties, judges, and court personnel are prohibited from disclosing confidential information and documents contained in related case files unless disclosure complies with state and federal law.⁴¹

Identifying information, as sensitive information, in any pleading or exhibit, such as account numbers, social security numbers, employee identification numbers, driver's license numbers, passport numbers, or other personal identifying information is considered to be sensitive information, may not be filed with the court.⁴²

A petitioner for a domestic violence injunction may request that his or her address be kept confidential and exempt from public records disclosure pursuant to statute,⁴³ and the address is then considered a confidential court record.⁴⁴

A family law court may consider closing proceedings or records or sealing records, including ordering the conditional sealing of financial information.⁴⁵

The Federal Parent Locator Service (FPLS) helps state and local child support agencies locate parents for participation in child support.⁴⁶ A family violence indicator is a notation in the FPLS that has been placed on a record when a state has reasonable evidence of domestic violence or child abuse.⁴⁷ In parent locator cases, a state court may override a family violence indicator to

³⁷ Section 741.30(3)(b), F.S., provides a petition for injunction for protection against domestic violence.

³⁸ Sections 741.30(4) and 784.046(5), F.S.

³⁹ Section 741.30(5)(a), F.S.

⁴⁰ RULE 12.012, FLA. FAM. L. R. P.

⁴¹ RULES 12.004(c) and 12.007(c), FLA. FAM. L. R. P.

⁴² RULE 12.130(c), FLA. FAM. L. R. P., referencing RULE 2.425, FLA. R.J.A., which restricts the filing of sensitive information, including identifying information.

⁴³ Section 741.30(3)(b), F.S., authorizes a petitioner to furnish his or her address in a separate confidential filing.

⁴⁴ RULE 12.007(b), FLA. FAM. L. R. P.

⁴⁵ RULE 12.400 (a) through (c), FLA. FAM. L. R. P.

⁴⁶ The Federal Office of Child Support Enforcement administers the program. More at <http://www.acf.hhs.gov/programs/css/fpls> (Last visited Feb. 8, 2016).

⁴⁷ RULE 12.650(b)(4), FLA. FAM. L. R. P.

release information from the FPLS.⁴⁸ The state clerk of the court, however, must ensure the protection of records of open cases relating to family violence. All court records in these proceedings are confidential and not available for public inspection until the court issues a final judgment.⁴⁹

III. Effect of Proposed Changes:

This bill creates two new public records exemptions. The bill provides that the following records are confidential and exempt from disclosure:

- A public record relating to a matter or case governed by the Florida Family Law Rules of Procedure; and
- A petition for an injunction that is dismissed without a hearing or at an ex parte hearing due to failure to state a claim, lack of jurisdiction, or any reason having to do with the sufficiency of the petition itself without an injunction being issued, and the contents of the petition.

This bill would apply to all types of injunctions for protection, including injunctions against domestic violence;⁵⁰ repeat violence;⁵¹ dating violence;⁵² sexual violence;⁵³ and stalking.

The main types of cases governed by the Florida Family Law Rules of Procedure are matters arising from dissolution of marriage, annulment, support including child support, paternity, adoption, and injunctions for protection.⁵⁴

The bill includes statements of public necessity. Regarding the public records exemption on family law cases, the public necessity asserted to justify the exemption is that the records:

- Often contain material that is of a personal, sensitive nature and that a person's privacy and potential for damage outweighs any public benefit in making the information accessible; and
- May include financial information the disclosure of which could lead to identity theft or other criminal activity.

Regarding the public records exemption on injunctions that are dismissed, the public necessity asserted to justify the exemption is that the records may be defamatory to the person named in the petition and cause unwarranted damage to his or her reputation.

The bill requires petitions for a protective injunction that are confidential and exempt under this bill to be removed from publically available websites. The process for removal, however, differs depending on when the petition is placed on a website. If a petition is placed on a website, and later dismissed on or after the effective date of the bill, the webmaster with the clerk of the court or county recorder must remove the petition and any related documents. If the petition is placed on the website prior to the effective date of the bill, it is the responsibility of the person named in the petition to request removal. The request must be in writing, signed, and include the case

⁴⁸ 42 U.S.C. s. 653; RULE 12.650(a), FLA. FAM. L. R. P.

⁴⁹ RULE 12.650(b)(4)(i), FLA. FAM. L. R. P.

⁵⁰ Section 741.30(1), F.S.

⁵¹ Section 784.046(2), F.S.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ RULE 12.010(a)(1), FLA. FAM. L. R. P.

name and number, document heading, and page number. The person requesting removal must deliver the request by mail, fax, electronic transmission, or in person to the clerk of the court. The clerk may not charge a fee for removal.

Both public record exemptions are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2021, unless reviewed and saved from repeal through legislative reenactment.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require counties or municipalities to take an action requiring the significant expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c), of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because the bill creates new public records exemptions, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s.24(c), of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. The bill creates a two new public records exemptions and includes a public necessity statement for each exemption.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 24(c), of the Florida Constitution, requires all proposed public records exemptions to be no broader than the stated purpose or public necessity.

All public records exemption bills must include a statement of public necessity. The justification of necessity provided in this bill for a petition for injunction is that disclosure could otherwise defame and damage the reputation of the person identified in the petition. Other court cases, such as criminal charges filed but dismissed, may similarly damage the

reputation of the person named as a defendant. This bill does not include those cases with this exemption, however. If this exemption is challenged, a court may consider as suspect the statement of public necessity in light of the lack of an exemption afforded to other court filings which are later dismissed.

Whether a court may consider the public records exemption for all family law records to be overbroad is unknown. The Florida Supreme Court struck down an exemption afforded to a public hospital's governing board meetings when a strategic plan is discussed.⁵⁵ In so doing, the Court held that a strategic plan may cover any range of topics relating to the operation of facilities, some of which may not necessitate confidential treatment.⁵⁶ The scope of coverage of the exemption in the bill, for "a matter or case governed by the Florida Family Law Rules of Procedure which may not be placed on a publicly available website" may be too broad. Moreover, the Florida Family Law Rules of Procedure includes a number of restrictions and blanket prohibitions on disclosure of certain information recorded in family law cases. The Legislature may wish to consider narrowing the exemption to weaken arguments that the bill is overly broad.

The First Amendment Foundation (FAF) asserts:

According to the required statement of public necessity ... this exemption is necessary because family law records frequently contain information of a sensitive, personal nature, including financial information. This statement ... ignores the fact that there are numerous existing exemptions for this information that specifically apply to family law records. To close access to an entire record because it contains some information which is exempt – if not exempt and confidential – from disclosure also ignores well-settled law in this state that requires a custodial agency to redact information that is exempt and provide access to the remainder of the document. We believe this exemption is unconstitutionally overbroad ...⁵⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill creates two public records exemptions designed to protect the privacy of persons named in the documents. The bill may preserve the reputation of these persons. The exemption provided to records maintained in family law cases may prevent information in these documents from being used for identity theft, although that may already be kept confidential under the Florida Family Law Rules of Procedure.

⁵⁵ *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 570 (Fla. 1999).

⁵⁶ *Id.*

⁵⁷ *Letter from the First Amendment Foundation to the Honorable Oscar Braynon re: SB 1436 Exemption/Family Law Records* (Jan. 14, 2016) (on file with the Senate Judiciary Committee).

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: 28.2221 and 119.0714.

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 February 9, 2016:

This CS corrects and replaces the term “Florida Rules of Family Law” with “Florida Family Law Rules of Procedure” in several places in the bill.

B. Amendments:

None.



283512

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 30 - 90

and insert:

to matters or cases governed by the Florida ~~Rules of~~ Family Law
Rules of Procedure, the Florida Rules of Juvenile Procedure, or
the Florida Probate Rules.

(b) Any records specified in this subsection made available
by the county recorder or clerk of the court on a publicly
available ~~Internet~~ website for general public display before
~~prior to~~ June 5, 2002, must be removed if the affected party



283512

identifies the record and requests that it be removed. Such request must be in writing and delivered by mail, facsimile, or electronic transmission, or in person to the county recorder or clerk of the court. The request must specify the identification page number of the document to be removed. A ~~No~~ fee may not be charged for the removal of a document pursuant to such request.

(c) No later than 30 days after June 5, 2002, notice of the right of any affected party to request removal of records pursuant to this subsection shall be conspicuously and clearly displayed by the county recorder or clerk of the court on the publicly available ~~Internet~~ website on which images or copies of the county's public records are placed and in the office of each county recorder or clerk of the court. In addition, no later than 30 days after June 5, 2002, the county recorder or the clerk of the court must have published, on two separate dates, a notice of such right in a newspaper of general circulation in the county where the county recorder's office is located as provided for in chapter 50. Such notice must contain appropriate instructions for making the removal request in person, by mail, by facsimile, or by electronic transmission. The notice shall state, in substantially similar form, that any person has a right to request that a county recorder or clerk of the court remove an image or copy of a public record, including an official record, from a publicly available ~~Internet~~ website if that image or copy is of a military discharge; a death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida ~~Rules of~~ Family Law Rules of Procedure, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules. Such request must be made in writing



283512

and delivered by mail, facsimile, or electronic transmission, or in person to the county recorder or clerk of the court. The request must identify the document identification page number of the document to be removed. A No fee may not will be charged for the removal of a document pursuant to such request.

(d) Any affected person may petition the circuit court for an order directing compliance with this subsection.

(e) By January 1, 2006, each county recorder or clerk of the court shall provide for electronic retrieval, at a minimum, of images of documents referenced as the index required to be maintained on the county's official records website by this section.

(f)1. A public record that relates to a matter or case governed by the Florida Family Law Rules of Procedure which may not be placed on a publicly available website or which must be removed from such a website pursuant to this subsection is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that a public record that relates to a matter or case governed by the Florida Family Law Rules of Procedure which may not be

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



283512

70 And the title is amended as follows:
71 Delete line 6
72 and insert:
73 by the Florida Family Law Rules of Procedure;
74 providing for

By Senator Braynon

36-01577-16

20161436__

A bill to be entitled

An act relating to public records; amending s.

28.2221, F.S.; making technical changes; providing an exemption from public records requirements for certain official records relating to matters or cases governed by the Florida Rules of Family Law; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; amending s. 119.0714, F.S.; providing an exemption from public records requirements for a petition for an injunction that is dismissed and the petition's contents; providing for removal of petitions that were dismissed before the effective date of the act from publicly accessible records; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Subsection (5) of section 28.2221, Florida Statutes, is amended to read:

28.2221 Electronic access to official records.—

(5) (a) A ~~No~~ county recorder or clerk of the court may not place an image or copy of a public record, including an official record, on a publicly available ~~Internet~~ website for general public display if that image or copy is of a military discharge; a death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.

36-01577-16

20161436__

(b) Any records specified in this subsection made available by the county recorder or clerk of the court on a publicly available ~~Internet~~ website for general public display before ~~prior to~~ June 5, 2002, must be removed if the affected party identifies the record and requests that it be removed. Such request must be in writing and delivered by mail, facsimile, or electronic transmission, or in person to the county recorder or clerk of the court. The request must specify the identification page number of the document to be removed. A ~~No~~ fee may not be charged for the removal of a document pursuant to such request.

(c) No later than 30 days after June 5, 2002, notice of the right of any affected party to request removal of records pursuant to this subsection shall be conspicuously and clearly displayed by the county recorder or clerk of the court on the publicly available ~~Internet~~ website on which images or copies of the county's public records are placed and in the office of each county recorder or clerk of the court. In addition, no later than 30 days after June 5, 2002, the county recorder or the clerk of the court must have published, on two separate dates, a notice of such right in a newspaper of general circulation in the county where the county recorder's office is located as provided for in chapter 50. Such notice must contain appropriate instructions for making the removal request in person, by mail, by facsimile, or by electronic transmission. The notice shall state, in substantially similar form, that any person has a right to request that a county recorder or clerk of the court remove an image or copy of a public record, including an official record, from a publicly available ~~Internet~~ website if that image or copy is of a military discharge; a death

36-01577-16

20161436__

certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or in person to the county recorder or clerk of the court. The request must identify the document identification page number of the document to be removed. A No fee may not will be charged for the removal of a document pursuant to such request.

(d) Any affected person may petition the circuit court for an order directing compliance with this subsection.

(e) By January 1, 2006, each county recorder or clerk of the court shall provide for electronic retrieval, at a minimum, of images of documents referenced as the index required to be maintained on the county's official records website by this section.

(f)1. A public record that relates to a matter or case governed by the Florida Rules of Family Law which may not be placed on a publicly available website or that must be removed from such a website pursuant to this subsection is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that a public record that relates to a matter or case governed by the Florida Rules of Family Law which may not be

36-01577-16

20161436__

placed on a publicly available website or that must be removed from such a website pursuant to s. 28.2221(5), Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that such records often contain material that is of a personal, sensitive nature and that the damage to the privacy interests of persons involved in such matters or cases by making such information public outweighs any public benefit in making such information accessible. Additionally, such records may contain financial information that may facilitate identity theft or other criminal activity, and making such records confidential and exempt would prevent such activity.

Section 3. Paragraph (g) is added to subsection (3) of section 119.0714, Florida Statutes, to read:

119.0714 Court files; court records; official records.—

(3) OFFICIAL RECORDS.—A person who prepares or files a record for recording in the official records as provided in chapter 28 may not include in that record a social security number or a bank account, debit, charge, or credit card number unless otherwise expressly required by law.

(g)1. A petition for an injunction that is dismissed without a hearing or at an ex parte hearing due to failure to state a claim, lack of jurisdiction, or any reason having to do with the sufficiency of the petition itself without an injunction being issued, and the contents thereof, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2.a. A petition described in subparagraph 1. dismissed on or after the effective date of this act, and the contents

36-01577-16 20161436__

thereof, must be removed from all publically accessible records
upon dismissal.

b. A petition described in subparagraph 1. dismissed before
the effective date of this act, and the contents thereof, shall
be removed upon request by an individual named in the petition
as a respondent. The request must be in the form of a signed,
legibly written request specifying the case name, case number,
document heading, and page number. The request must be delivered
by mail, facsimile, electronic transmission, or in person to the
clerk of the court. A fee may not be charged for the removal
pursuant to the request.

3. This paragraph is subject to the Open Government Sunset
Review Act in accordance with s. 119.15 and shall stand repealed
on October 2, 2021, unless reviewed and saved from repeal
through reenactment by the Legislature.

Section 4. The Legislature finds that it is a public
necessity that a petition for an injunction that is dismissed
without a hearing or at an ex parte hearing due to failure to
state a claim, lack of jurisdiction, or any reason having to do
with the sufficiency of the petition itself without an
injunction being issued, and the contents thereof, be made
confidential and exempt from s. 119.07(1), Florida Statutes, and
s. 24(a), Article I of the State Constitution. The Legislature
finds that the existence of such a petition and of the
unverified allegations contained in such a petition could be
defamatory to an individual and cause unwarranted damage to the
reputation of such individual and that correction of the public
record by the removal of such a petition is the sole means of
protecting the reputation of an individual named in such a

36-01577-16 20161436__

petition.

Section 5. The Division of Law Revision and Information is
directed to replace the phrase "the effective date of this act"
wherever it occurs in this act with such date.

Section 6. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 4, 2016

I respectfully request that **Senate Bill # 1436**, relating to Public Records, be placed on the:

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

A handwritten signature in black ink, appearing to read "Oscar Braynon II".

Senator Oscar Braynon II
Florida Senate, District 36

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 1692

INTRODUCER: Judiciary Committee and Senator Altman

SUBJECT: Protection of Veterans

DATE: February 11, 2016

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. McAloon	Cibula	JU	Fav/CS
2. _____	_____	ACJ	_____
3. _____	_____	FP	_____

I. Summary:

CS/SB 1692 prohibits an agent or attorney from requesting or obtaining reimbursement of an assessment imposed by the United States Department of Veterans Affairs.

Under federal law, the VA may impose the assessment on an agent or attorney who represents a claimant seeking veteran's benefits. This assessment may not exceed the lesser of \$100 or 5 percent of the compensation of the attorney or agent. Under the bill, an agent or attorney who requests or obtains reimbursement of the assessment from the claimant commits a second degree misdemeanor.

II. Present Situation:

Background

The United States Department of Veterans Affairs (VA) provides veterans with various benefits including disability, pension, health care, and life insurance. The purpose of the VA is to administer the laws providing benefits and other services to veterans and the dependents and the beneficiaries of veterans.¹ The Secretary of the United State Department of Veterans Affairs is responsible for the proper execution and administration of all laws administered by the VA and for the control, direction, and management of the VA.²

An administrative dispute system was implemented in which the agency has authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered. The authority includes: prescribing regulations with respect to the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits under such laws; the forms of application by claimants under such laws; the

¹ 38 U.S.C. § 301(b).

² 38 U.S.C. § 303.

methods of making investigations and medical examinations; and the manner and form of adjudications and awards.³ Decisions administered by the agency are subject to judicial review in the United States Court of Appeals for the Federal Circuit.⁴

Accredited Agent or Attorney

The VA determines who is qualified to represent or assist veterans in their claim for benefits. A person must apply and be approved by the VA in order to advise or assist a veteran who is bringing a claim for benefits.⁵ A person may not assist claimants in the preparation, presentation, and prosecution of claims for VA benefits as an agent or attorney unless he or she has first been accredited by the VA for such purpose.⁶ A person does not have to be an attorney to become accredited as an agent. An individual desiring accreditation as an agent or attorney must establish that he or she is of good character and reputation, is qualified to render valuable assistance to claimants, and is otherwise competent to advise and assist claimants in the preparation, presentation, and prosecution of their claim.⁷

Accredited Agent or Attorney Fees

The VA may prescribe reasonable restrictions on the amount of fees that an agent or attorney may charge a claimant for services rendered in the preparation, presentation, and prosecution of a claim.⁸ A fee that does not exceed 20 percent of the past-due amount of benefits awarded on a claim is presumed to be reasonable. A fee that exceeds 33 1/3 percent of any past-due benefits awarded is presumed to be unreasonable.⁹

The fee agreement between the veteran and the agent or attorney may provide for the VA to pay the representation fee directly to the accredited agent or attorney out of the benefit award if the fee is 20 percent or less of the total benefit award.¹⁰ For making a direct payment of the agent or attorney's fee, an assessment may be charged and collected against an accredited agent or attorney in any case where the accredited agent or attorney is paid from past-due benefits owed to the veteran claimant.¹¹ The amount of the assessment is equal to 5 percent of the amount of the fee required to be paid to the accredited agent or attorney, and may not exceed \$100.¹² The assessment collected is deposited in an account available for administrative expenses to administer veterans' benefits programs.¹³

An accredited agent or attorney, who is charged an assessment for making a direct payment, may not directly or indirectly request or receive reimbursement for the assessment from the veteran he

³ 38 U.S.C. § 501(a).

⁴ 38 U.S.C. § 502.

⁵ 38 U.S.C. §§ 5901-04; 38 C.F.R. § 14.629(b)(1).

⁶ 38 U.S.C. § 5901; 38 C.F.R. § 14.629(b)(1).

⁷ 38 U.S.C. § 5904(a)(2); 38 C.F.R. § 14.629(b)(2).

⁸ 38 U.S.C. § 5904(a)(5); 38 C.F.R. § 14.636(f).

⁹ 38 C.F.R. § 14.636(f).

¹⁰ 38 C.F.R. § 14.636(h)(1).

¹¹ 38 U.S.C. § 5904(a)(6)(A); 38 C.F.R. § 14.636(h)(1).

¹² 38 U.S.C. § 5904(a)(6)(B); 38 C.F.R. § 14.636(h)(1).

¹³ 38 U.S.C. § 5904(a)(6)(E).

or she represents.¹⁴ The United States Code provides, “[w]hoever wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed and due to the claimant or beneficiary, shall be fined as provided in title 18, or imprisoned not more than one year, or both.”¹⁵ Therefore, it is possible that an accredited agent or attorney can face criminal penalties under federal law if he or she directly or indirectly requests or receives reimbursement from the veteran claimant for the assessment imposed.

Board of Veterans Appeals Case Load

The Board of Veterans Appeals handles a large volume of claims for veteran’s benefits. In 2014, the board received 137,766 notices of disagreement.¹⁶ In the same year, the board rendered 55,532 decisions. This figure is up from the amount of notices received in 2013 which was 118,053 and the figure for decisions rendered was 41,910. The Department of Veterans affairs estimates that the number of notices received in 2015 is 146,032, and the figure for decisions rendered will reach 57,600.

III. Effect of Proposed Changes:

Under federal law, the United States Department of Veterans Affairs may impose an assessment on an agent or attorney who represents a claimant seeking veteran’s benefits. This assessment may not exceed the lesser of \$100 or 5 percent of the compensation of the attorney or agent.

The bill prohibits an agent or attorney from requesting or obtaining reimbursement of the assessment from the claimant. An agent or attorney who violates the prohibition commits a second degree misdemeanor, punishable by up to 60 days in jail, a \$500 fine, or both.¹⁷

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:

Article V, section 15 of the Florida Constitution vests the power to discipline lawyers in the Florida Supreme Court, and Florida Bar Rule 4-1.5(a) prohibits fees that are illegal.

¹⁴ 38 U.S.C. § 5904 (a)(6)(D).

¹⁵ 38 U.S.C. § 5905.

¹⁶ U.S. Dept. of Veterans Affairs, *Board of Veteran’s Appeals Annual Report Fiscal Year 2014*, (July 2015).

¹⁷ Sections 775.082(4)(b), 775.083(1)(e0, F.S.

Because charging the claimant the fee described in the bill is already illegal under federal law, The Florida Bar rules regulate this conduct. A court may find that this law is an indirect attempt to discipline a lawyer for what is otherwise an unethical billing practice that subjects the attorney to professional discipline. If so, the court could find the statute to violate the court's exclusive jurisdiction to discipline attorneys.

However, the law is applied evenly to individuals who are not attorneys. An accredited representative does not have to be an attorney, and therefore, the law also regulates conduct by non-attorneys. Additionally, the law does not speak to whether or not an attorney found guilty of charging the administrative fee must be professionally disciplined. Therefore, a court may find that the law does not regulate attorneys at all.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

To the extent that the bill results in additional enforcement actions against agents and attorneys, judicial workloads will increase.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 295.24 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Judiciary on February 9, 2016:

- Reduces the criminal penalty an agent or attorney may face for a violation of this section from a third degree felony to a second degree misdemeanor.

B. Amendments:

None.

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



464856

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 295.24, Florida Statutes, is created to
read:

295.24 Prohibited reimbursement of assessments; penalty.—A
person who is recognized as an agent or attorney pursuant to 38
U.S.C. s. 5904 and representing a claimant may not, directly or
indirectly, request, receive, or obtain reimbursement from the
claimant for assessments charged to the agent or attorney by the



464856

United States Department of Veterans Affairs pursuant to 38
U.S.C. s. 5904(6)(A). A person who violates this section commits
a misdemeanor of the second degree, punishable as provided in s.
775.082 or s. 775.083.

Section 2. This act shall take effect October 1, 2016.

===== 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 reimbursement of assessments;
creating s. 295.24, F.S.; prohibiting an agent or
attorney representing a claimant from directly or
indirectly requesting, receiving, or obtaining
reimbursement from the claimant for assessments
charged to the agent or attorney by the United States
Department of Veterans Affairs; providing penalties;
providing an effective date.

By Senator Altman

16-01254-16

20161692__

A bill to be entitled

An act relating to the protection of veterans;
creating s. 295.24, F.S.; prohibiting an agent or
attorney retained for purposes of a veteran's claims
assistance from seeking reimbursement for a specified
assessment from the claimant; providing a penalty;
providing an effective date.

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

Section 1. Section 295.24, Florida Statutes, is created to
read:

295.24 Agents or attorneys retained for veterans' claims
assistance; prohibition; penalty.-

(1) A person who is recognized as an agent or attorney by
the United States Secretary of Veterans Affairs for purposes of
preparing, presenting, and prosecuting claims under laws
administered by the United States Department of Veterans Affairs
and is charged an assessment pursuant to 38 U.S.C. s.
5904(a)(6)(A) may not, directly or indirectly, request, receive,
or obtain reimbursement for such assessment from the claimant he
or she represents.

(2) A person who violates this section commits a felony of
the third degree, punishable as provided in s. 775.082, s.
775.083, or s. 775.084.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

January 15, 2016

The Honorable Miguel Diaz de la Portilla
Senate Committee on Judiciary, Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Diaz de la Portilla:

I respectfully request that SB 1692, related to *Protection of Veterans*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman". The signature is fluid and cursive.

Thad Altman

CC: Tom Cibula, Staff Director, 515 Knott Building
Joyce Butler, Committee Administrative Assistant

TA/dw

REPLY TO:

- ☐ 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- ☐ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

2/9/16

Meeting Date

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

SB 1692

Bill Number (if applicable)

Topic Protection of Veterans

Amendment Barcode (if applicable)

Name Colonel Mike Prendergast

Job Title Executive Director

Address The Capitol, Suite 2105

Street

Tallahassee

City

FL

State

32399

Zip

Phone (850) 487-1533

Email exdir@fdva.state.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Department of Veterans' Affairs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 668

INTRODUCER: Senator Stargel

SUBJECT: Family Law

DATE: February 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 668 makes various changes to laws relating to the amount and duration of alimony awards, grounds, and procedures for modifying an alimony award due to a substantial change in circumstances, and timesharing with children.

Alimony

Regarding alimony awarded to assist a party with legal fees and costs in a dissolution of marriage case, this bill requires the court to consider need and ability to pay, and the same bases for alimony required of all alimony determinations in dissolution cases.

With respect to alimony amounts, the bill establishes presumptive alimony ranges, for courts to use in determining the amount and duration of alimony awards. The presumptive amounts are determined by formulas based in part on the difference between the parties' gross incomes and the duration of their marriage. However, the combination of alimony and child support may not exceed 55 percent of the obligor's income. The bill also generally limits the duration of an alimony award to 25 to 75 percent of the duration of the parties' marriage.

The bill specifies events that constitute a substantial change in circumstances which are grounds for modifying or terminating an alimony award. These grounds include increases in the recipient's income, the involuntary underemployment or unemployment of the obligor, and the obligor's retirement. This bill authorizes an obligor to request that the court preapprove the customary retirement date for the obligor's profession 1 year in advance of retirement. The bill also lessens the proof required to show the existence of a supportive relationship between an alimony recipient and another person.

To protect an award of alimony, the court may order an obligor to purchase a security, such as a life insurance policy or a bond. Security is modifiable if the underlying alimony award is modified.

Time-sharing

Current law provides that the public policy of the state is for each minor to have frequent and continuing contact with both parents after the parents separate or divorce. The bill provides instead that the public policy of the state is that absent good cause, substantially equal time-sharing with both parents is in the best interest of the child. A court must include written findings in an order that establishes an initial permanent time-sharing schedule that provides other than substantially equal time-sharing.

Current law provides a list of factors for the court to apply in determining or modifying time-sharing, based on the best interests of the child. The bill requires a court to use these factors, which are slightly modified, along with two new ones in determining whether a party has overcome the presumption favoring equal time-sharing. The new factors are:

- The amount of time-sharing requested by each parent; and
- The frequency with which a parent would likely leave the child in the care of a nonrelative on evenings and weekends when the other parent would otherwise provide care.

II. Present Situation:

Alimony Pendente Lite

Alimony pendente lite is temporary alimony awarded after a marital party files for dissolution of marriage. The right to temporary alimony ends when the divorce becomes final, which is after the appeal process has run.¹ Florida law stipulates that a party may request alimony pendente lite through petition or motion, and if well-founded, the court must order a reasonable amount.²

Bases for Alimony

Chapter 61, F.S., addresses dissolution of marriage proceedings. Alimony is based on both financial need and the ability to pay.³ After making an initial determination to award alimony, the court must consider:

- The standard of living established during the marriage.
- The length of marriage.
- Ages and physical and emotional condition of the parties.
- Financial resources of the parties.
- Earning capacity, education level, vocational skill, and employability of the parties.
- Marital contributions, including homemaking, child care, and education and career building of the other party.
- Responsibilities of each party towards minor children.

¹ 24A AM. JR. 2D *Divorce and Separation* §615.

² Section 61.071, F.S.

³ Section 61.08(2), F.S.

- Tax treatment and consequences of alimony awards.
- All sources of income.
- Any other factor that advances equity and justice.⁴

The court may consider adultery by either spouse in a decision to award alimony.⁵

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.⁶

Determination of Alimony Based on Length of Marriage

Limitations on Alimony in Florida

In determining the duration or form of an alimony award, the court applies presumptions based on the duration of the marriage. The length of marriage runs from the date of marriage until the date of the filing for dissolution of marriage.⁷

Florida law categorizes marriage lengths as follows:

- A short-term marriage is a marriage of less than 7 years.
- A moderate-term marriage is a marriage of more than 7 but less than 17 years.
- A long-term marriage is a marriage of 17 years or more.⁸

Florida law appears to create a presumption in favor of permanent periodic alimony following a long-term marriage.⁹ A similar presumption appears to exist in favor of durational alimony following a moderate-term marriage or following a long-term marriage if permanent alimony is not appropriate. Durational alimony generally may not exceed the length of the marriage.¹⁰

The law appears to disfavor permanent alimony following a moderate-term marriage by requiring clear and convincing evidence for an award of permanent alimony. Permanent alimony for a short-term marriage is reserved for exceptional circumstances.

Limitations on Alimony Based on Duration of Marriage in Other States

Some states have limited alimony based on the duration of the marriage:

- Colorado: Provides a table that calculates the term of support for marriages of at least 3 years and up to 20 years in length. After 20 years of marriage, the court may award an indefinite term of alimony.¹¹
- Delaware: Permits alimony for a period of up to 50 percent of the length of marriage, except that if a party is married for 20 years or longer, alimony may be indefinite.¹²

⁴ Section 61.08(2)(a) through (j), F.S.

⁵ Section 61.08(1), F.S.

⁶ Section 61.08(3), F.S.

⁷ *Id.*

⁸ Section 61.08(4), F.S.

⁹ Section 61.08(8), F.S.

¹⁰ Section 61.08(4), F.S.

¹¹ Colo. Rev. Stat. Ann. s. 14-10-114.

¹² Del. Code Ann. title 14, s. 1512

- Maine: Provides a rebuttable presumption that general support may not be awarded if the parties were married for less than 10 years as of the date of the filing of the petition.¹³
- New York: Establishes an advisory schedule for alimony maintenance, expressed as a percentage of the length of marriage for which alimony is payable. Length of marriage of up to and including 15 years of marriage, 15 to 30 percent; more than 15 and up to and including 20 years of marriage, 30 to 40 percent; more than 20 years, 35 to 50 percent.¹⁴
- Texas: Disfavors alimony for marriages of less than 10 years unless the obligee meets certain conditions and if so, caps the duration of alimony at 5 years. Alimony is capped at 20 percent of the payor's gross income, or \$2,500 a month, whichever is less.¹⁵
- Massachusetts: No longer authorizes permanent alimony in most dissolution of marriage cases. Limits permanent alimony awards to marriages of 20 years or longer if the award is otherwise appropriate. Reserves the possibility of permanent alimony for shorter marriages if an award is in the interests of justice.¹⁶
- Utah: Prohibits alimony awards for a duration longer than the length of the marriage, unless the court finds extenuating circumstances.¹⁷

Forms of Alimony

Florida law recognizes various forms of alimony, including bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.¹⁸ See the table on the next page for additional information on the various types of alimony authorized under current law.

¹³ Me. Rev. Stat. Ann. title 19-A, s. 951A.

¹⁴ N.Y. Dom. Rel. Law s. 236.

¹⁵ Tex. Fam. Code Ann. Sections 8.054 and 8.055.

¹⁶ Mass. Gen. Laws Chapter 208, Section 49.

¹⁷ Utah Code Ann. s. 30-3-5.

¹⁸ Section 61.08(1), F.S.

Forms of Alimony				
	<i>Bridge-the-gap</i>	<i>Rehabilitative</i>	<i>Durational</i>	<i>Permanent</i>
<i>Purpose</i>	Allows a party to transition from being married to being single upon showing legitimate short-term need.	Assists a party in becoming self-sufficient through skills training, education, or work experience.	Provides a party with economic assistance for a set period of time after a marriage of short or moderate duration, or a marriage of long duration if no need exists for a permanent award.	Provides for the needs and necessities of life as established during the marriage for a party who lacks the financial ability to maintain needs.
<i>Length of Time</i>	Up to 2 years.	Temporary.	Set period of time but not to exceed length of marriage.	Permanent.
<i>Modifiable/ Termination</i>	Not modifiable in amount or duration. Can terminate upon death or remarriage of recipient.	Modifiable upon a showing of a substantial change in circumstances, including cohabitation. Can be terminated upon noncompliance or completion of the rehabilitative plan.	Modifiable or terminated based on a substantial change in circumstances, including cohabitation. Length of award may not change unless exceptional circumstances are shown. Terminates upon death or remarriage of recipient.	Modifiable upon a substantial change in circumstances, including cohabitation. Terminates upon death or remarriage of recipient.
<i>How Established</i>		Requires inclusion of a specific and defined rehabilitative plan.		Awardable if appropriate for a marriage of long duration, upon a showing of clear and convincing evidence for a marriage of moderate duration, and with written findings of exceptional circumstances for a marriage of short duration.

Modification and Termination of Alimony

Four bases exist for a court to reconsider an alimony award, including whether to terminate alimony:

- A substantial change in circumstances of either party;
- Cohabitation by the obligee;
- Remarriage by the obligee; or
- Death of either party.¹⁹

Substantial Change of Circumstance

A motion for modification may be made by either party for the court to consider a substantial change in circumstances.²⁰ If the court modifies support on this basis, the court may modify support retroactively to the date of the filing of the action.²¹

Cohabitation

To modify alimony on an assertion of cohabitation between the alimony obligee and a third party, the court must find:

- The existence of a supportive relationship between the recipient and a third party; and
- That the recipient lives with the third party.

To determine whether a relationship is supportive, the court will examine:

- The extent to which the obligee and the third party hold themselves out as a married couple;
- The length of time that the third party has resided with the obligee;
- Whether the obligee and the third party have jointly purchased property;
- The extent to which the obligee and third party commingle financial assets; and
- The extent to which one of the parties supports the other party.²²

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.²³

¹⁹ Section 61.08(8), F.S.

²⁰ Section 61.14(1)(a), F.S. Courts have found a substantial change in circumstance where an obligor's health deteriorated due to two heart attacks. He was unable to continue gainful employment and received social security disability income as his full income (*Scott v. Scott*, 2012 WL 5621672, 1 (Fla. 5th DCA 2012)). An obligor demonstrated a showing of a substantial change in circumstance through a detrimental impact on his business in manufacturing cathode ray television tubes due to advancing technology that made his product obsolete. The court also noted that the obligor was forced to remove money from family trust accounts to meet his alimony obligation. (*Shawfrank v. Shawfrank*, 97 So. 3d 934, 937 (Fla. 1st DCA 2012)). The court found a substantial change in circumstance where financial affidavits showed that the obligee's income jumped from \$1,710 to \$4,867 a month, making her income higher than the obligor's income of \$3,418 a month. (*Koski v. Koski*, 98 So. 3d 93, 94 (Fla. 4th DCA 2012)).

²¹ Section 61.14(1)(a), F.S.

²² Section 61.14(b), F.S.

²³ Section 61.14(1)(b)1., F.S.

Child Support Enforcement

Congress passed into law Title IV-D of the Social Security Act²⁴ to require states to provide specific child support enforcement services to receive federal funding under the Aid for Dependent Children (AFDC) Program.²⁵ Services are available to single-parent families on public assistance who are entitled to child support from the other parent.

Florida established the Child Support Enforcement Application and Program Revenue Trust Fund to provide a trust fund for deposits of Title IV-D program income.²⁶ The trust fund is administered by the state Department of Revenue.²⁷ The clerk of the court of each circuit operates a depository for alimony transactions, support, maintenance, and support payments.²⁸ A fee is collected for payments made in non-Title IV-D cases to fund the depository.²⁹

privileged against use in any subsequent litigation. ... Collaborative Law is governed by a patchwork of state laws, state Supreme Court rules, local rules, and ethics opinions. The Uniform Collaborative Law Rules/Act (UCLR/A) is intended to create a uniform national framework for the use of Collaborative Law; one which includes important consumer protections and enforceable privilege provisions.³⁰

Parenting and Time-sharing

Florida Law

The public policy of the state is for each minor child to have “frequent and continuing contact with both parents.”³¹ Additionally, a court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.³² In determining timesharing with each parent, a court must consider the best interests of the child based on a specific list of statutory factors. These factors include:

- The demonstrated capacity of each parent to have a close and continuing parent-child relationship, honor the time-sharing schedule, and be reasonable when changes are required.
- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child, including developmental needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

²⁴ 42 USC §§ 651-669 (1988).

²⁵ Ashish Prasad, *Rights Without Remedies: Section 1983 Enforcement of Title IV-D of the Social Security Act*, 60 U.CHI. L. REV. 197, 197 (1993).

²⁶ Section 61.1814(1), F.S.

²⁷ *Id.*

²⁸ Section 61.181(1)(a), F.S.

²⁹ Section 61.181(2)(a) and (b), F.S.

³⁰ Uniform Law Commission, *Uniform Collaborative Law Rules/Act Short Summary* (on file with the Senate Judiciary Committee).

³¹ Section 61.13(2)(c)1., F.S.

³² Section 61.13 (2)(c)2., F.S.

- The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- The moral fitness and the mental and physical health of the parents.
- The reasonable preference of the child, if the child is of sufficient intelligence, understanding, and experience to express a preference.
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime, and to be involved in the child's school and extracurricular activities.
- The demonstrated capacity of each parent to keep the other parent informed about the minor child, and the willingness of each parent to adopt a unified front on major issues.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has knowingly provided false information about these issues. If the court accepts evidence of prior or pending actions on these issues, the court must acknowledge in writing that the evidence was considered in evaluating best interests.
- The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before and during litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.³³

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.³⁴

Time-sharing in other States

No state statutes require a court to order equal time-sharing or joint custody of minor children. However, a number of states, in addition to Florida, provide in law a presumption that joint custody is in the best interest of the child. These states are the District of Columbia, Idaho, Minnesota, New Mexico, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin. Other states provide the presumption only if the parents agree. These states are Alabama, California, Connecticut, Maine, Michigan, Mississippi, Nevada, New Hampshire, and Vermont.³⁵

Several state legislatures recently amended laws on child custody to encourage equal time-sharing. Arkansas codified a preference for joint custody.³⁶ The South Dakota Legislature passed a law that permits the court to order joint physical custody when the court has awarded joint legal custody if it is in the best interest of the child.³⁷ The Utah Legislature enacted a rebuttable presumption for joint legal custody. Grounds for rebutting the presumption include domestic violence and physical or mental needs of a parent or child.³⁸

³³ Section 61.13(3), F.S.

³⁴ Section 61.13(3)(t), F.S.

³⁵ National Conference of State Legislatures, *Shared/Joint Custody Enactments 2012* (Feb. 2015).

³⁶ AR s. 901.

³⁷ South Dakota House Bill 1055 (Chapter 141).

³⁸ Utah HB 88 (Chapter 269); HB 107 (Chapter 271).

III. Effect of Proposed Changes:

This bill makes various changes to laws applicable to dissolution of marriage cases in the areas alimony, support, and time-sharing.

Alimony Awarded During a Pending Suit—Alimony Pendente Lite

Alimony pendente lite is temporary alimony awarded after a marital party files for dissolution of marriage. The bill requires the court to consider the bases for alimony (without the formula) after determining a need for alimony pendente lite and an ability to pay.

Alimony Awarded through a Final Court Order

Under the bill, a court must determine the amount of an alimony award in a multi-step process, from making initial findings, applying guidelines, and considering other factors, including factors which might justify a deviation from guidelines. The bill also establishes presumptive alimony duration ranges which range from 25 to 75 percent of the length of the marriage. The bill does not maintain the distinctions in current law relating to the duration or purposes of bridge-the-gap, rehabilitative, durational, or permanent alimony.

Initial Findings

In determining alimony, a court must make initial written findings based on:

- The amount of each party's monthly gross income, including potential income and actual or potential income from nonmarital property distributed to each party; and
- The years of marriage.

The courts must look at net income, rather than gross income, in calculating alimony and support. In instances in which trial courts have erroneously used a party's gross income, the appellate courts have routinely reversed those decisions.³⁹ In instances in which an obligor is self-employed, the court may start with gross income and subtract from it ordinary business expenses to arrive at net income.

This bill specifies that income considered in alimony calculations is gross income. Gross income is recurring income from any source and includes:

- Income from salaries, overtime pay, and wages, including tips declared to the IRS or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater, commissions, bonuses; and dividends, and severance pay;
- Pension pay and retirement benefits actually received;
- Spousal support received from a previous marriage;
- Trust income and distributions regularly received, relied upon, or readily available to the beneficiary, royalties, income from estates, annuity payments, capital gains, recurring gains derived from dealings in property, rental income (gross receipts minus ordinary and necessary expenses required to produce the income), interest, and continuing monetary gifts;

³⁹ *Kingsbury v. Kingsbury*, 116 So. 3d 473, 474 (Fla. 1st DCA 2013); *Vanzant v. Vanzant*, 82 So. 3d 991, 993 (Fla. 1st DCA 2011); *Vega v. Vega*, 877 So. 2d 882, 883 (Fla. 3d DCA 2004).

- Payments received as an independent contractor for labor or services, which must be considered income from self-employment; money drawn by a self-employed person for personal use that is deducted as a business expense, and expense reimbursements or in-kind payments or benefits received by a party in the course of employment, self-employment, or operation of a business which reduces personal living expenses;
- Workers' compensation; unemployment benefits, social security benefits, including those actually received based on disability, disability insurance benefits and funds paid from health, accident, disability, or casualty insurance if the insurance replaces wages; and
- Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies, except that if the party is a passive investor with a minority interest in the company, income is limited to actual cash distributions received.

Gross income does not include:

- Child support payments received;
- Public assistance benefits;
- Social security benefits received by a parent on behalf of a minor child due to death or disability of a parent or stepparent; and
- Earnings or gains on retirement accounts, including individual retirement accounts, except that the earnings or gains are income if a party takes a distribution from the account, and if a party is able to take a distribution tax-free and chooses not to, the court may consider as income the distribution that could have been taken.

For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income equals gross receipts minus ordinary and necessary expenses. Ordinary and necessary expenses do not include amounts allowable by the IRS for the accelerated component of depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating alimony.

The bill defines "potential income" as income which could be earned by a party using best efforts, and includes potential income from employment, investment of assets, or use of property in a financially prudent manner. Potential income from employment is income a party could reasonably expect to earn working at a locally available, full-time job based on the person's education, training, and experience. A person is considered to be underemployed if he or she is not working full-time in a position which is appropriate based on his or her education, training, and experience, and which is available in the local area. A person is not underemployed if he or she is enrolled in an educational program that can reasonably expect to result in a degree or certification and higher income within the foreseeable future. A court generally must impute income to a party who is voluntarily unemployed or underemployed.

The court must consider years of marriage based on whole years, calculated from the date of marriage until the date of the filing for dissolution.

This bill creates a rebuttable presumption against alimony for marriages of 2 years or less. The party seeking alimony may rebut the presumption by showing:

- The party seeking alimony has a clear and convincing need for alimony;

- The party from whom alimony is sought has an ability to pay alimony; and
- An inequity would result if the court does not award alimony.

If the court finds that the party rebuts the presumption, the court must provide written findings. Alimony will then be awarded under the formula.

Alimony Guidelines

This bill establishes formulas for use by the court after making its initial findings in alimony determinations, unless the parties agree to an amount otherwise. After making initial findings, the court will calculate the presumptive alimony ranges based upon two formulas. The formulas provide a presumptive range for alimony as follows:

- At the low end of the range: $0.015 \times \text{the years of marriage} \times \text{the difference between the monthly gross income of the parties}$; and
- At the high end of the range: $0.020 \times \text{the years of marriage} \times \text{the difference between the monthly gross income of the parties}$.

<i>Difference in the Parties' Monthly Incomes</i>	Presumptive Alimony Amount Ranges							
\$20,000	High	\$1,200	\$2,000	\$4,000	\$4,800	\$6,000	\$8,000	\$8,000
	Low	\$900	\$1,500	\$3,000	\$3,600	\$4,500	\$6,000	\$6,000
\$15,000	High	\$900	\$1,500	\$3,000	\$3,600	\$4,500	\$6,000	\$6,000
	Low	\$675	\$1,125	\$2,250	\$2,700	\$3,375	\$4,500	\$4,500
\$10,000	High	\$600	\$1,000	\$2,000	\$2,400	\$3,000	\$4,000	\$4,000
	Low	\$450	\$750	\$1,500	\$1,800	\$2,250	\$3,000	\$3,000
\$8,000	High	\$480	\$800	\$1,600	\$1,920	\$2,400	\$3,200	\$3,200
	Low	\$360	\$600	\$1,200	\$1,440	\$1,800	\$2,400	\$2,400
\$7,000	High	\$420	\$700	\$1,400	\$1,680	\$2,100	\$2,800	\$2,800
	Low	\$315	\$525	\$1,050	\$1,260	\$1,575	\$2,100	\$2,100
\$6,000	High	\$360	\$600	\$1,200	\$1,440	\$1,800	\$2,400	\$2,400
	Low	\$270	\$450	\$900	\$1,080	\$1,350	\$1,800	\$1,800
\$5,000	High	\$300	\$500	\$1,000	\$1,200	\$1,500	\$2,000	\$2,000
	Low	\$225	\$375	\$750	\$900	\$1,125	\$1,500	\$1,500
\$4,000	High	\$240	\$400	\$800	\$960	\$1,200	\$1,600	\$1,600
	Low	\$180	\$300	\$600	\$720	\$900	\$1,200	\$1,200
\$3,000	High	\$180	\$300	\$600	\$720	\$900	\$1,200	\$1,200
	Low	\$135	\$225	\$450	\$540	\$675	\$900	\$900
\$2,000	High	\$120	\$200	\$400	\$480	\$600	\$800	\$800
	Low	\$90	\$150	\$300	\$360	\$450	\$600	\$600
<i>Length of Marriage</i>		3 Years	5 Years	10 Years	12 Years	15 Years	20 Years	25 Years

The formula bases the years of marriage at 20 for both the low and the high end of the range. However, if a court establishes the duration of the alimony award at 50 percent or less of the length of the marriage, the court is required to use the actual years of marriage, up to 25 years to calculate the high end of a presumptive alimony amount range.

The court retains flexibility to determine alimony within the presumptive alimony ranges.

Bases for Alimony (Considered by the Court after Presumptive Alimony is Calculated):

Presumptive alimony may then be established by the court within the presumptive ranges, based on the following:

- The financial resources of the obligee and the obligor, including the actual or potential income from nonmarital or marital property or any other source and the ability of each spouse to meet his or her reasonable needs;
- The standard of living of the parties during the marriage considering that there will be two households to maintain after the dissolution of marriage and that neither party may be able to maintain the same standard of living they had while married;
- The equitable distribution of marital property, including whether an unequal distribution of marital property was made to reduce or alleviate the need for alimony;
- Both parties' income, employment, and employability, obtainable through reasonable diligence and additional training or education, and any necessary reduction in employment due to parenting or circumstances of the parties;
- Whether a party could reduce the need for alimony by pursuing additional educational or vocational training, including the length of time required and anticipated costs of training;
- Whether one party has historically earned higher or lower income than that at the time of trial;
- Whether a party has foregone or postponed economic, educational, or employment opportunities during the course of the marriage;
- Whether either party has caused the unreasonable depletion or dissipation of marital assets;
- The amount of temporary alimony and the number of months temporary alimony was paid to the recipient spouse;
- The age, health, and physical and mental condition of the parties, including health care needs and costs;
- Significant economic or noneconomic contributions to the marriage or to the economic, educational, or occupational advancement of a party, including services rendered in homemaking, child care, education, and career building of the other party, payment by one spouse of the other spouse's separate debts, or enhancement of the other spouse's personal or real property;
- The tax consequence of the alimony award; and
- Any other factor necessary to provide equity and justice between the parties.

If the court awards alimony, the court must include in written findings that the obligor has the financial ability to pay alimony.

Under no circumstance may a court order alimony and child support that, when combined, constitutes more than 55 percent of the obligor's net income. This change appears to codify case law, as appellate courts have reversed awards of trial courts where the percent of income

awarded as support is considered unreasonable. The Fourth District Court of Appeal found that the trial court committed an abuse of discretion in awarding combined alimony and child support totaling 58 percent of the obligor's net income.⁴⁰ The appellate court noted that the trial court had legitimate grounds on which to order permanent alimony. The former wife earned only a two-year college degree and supported her husband as a teacher's aide while he secured a law school education. She then became a homemaker. However, the court noted that the excessive award left the obligor with just \$330 a month on which to live after paying for rent and a car loan.⁴¹

In *Casella v. Casella*, the same appellate court ruled clearly excessive an award of combined alimony and child support that approached 70 percent of the husband's net income.⁴² A 1990 case, the court reversed the trial court on the basis that the award left the obligor with just \$800 a month on which to live.

To protect an award of alimony, the court may require an obligor to purchase or maintain a decreasing term life insurance policy or a bond, or provide other security to protect the alimony award. To award security, a court must find the existence of special circumstances and make specific evidentiary findings about the availability, cost, and financial impact on the obligor. Security is modifiable if the underlying alimony award is reduced.

Deviation from Guidelines

The court may determine an award of alimony that is outside the presumptive alimony amount or alimony duration ranges only if the court makes specific written findings that the application of the ranges is inappropriate or inequitable after considering all the factors used as the bases of alimony.

Even if the court does not intend to award alimony at the time, the court may reserve the issue of alimony by awarding alimony of \$1.00 a year under the durational guidelines if:

- A party who has traditionally been the breadwinner temporarily lacks the ability to pay support but is reasonably anticipated to have the ability to pay in the future; or
- A party is presently able to work but for whom a medical condition with a reasonable degree of medical certainty may inhibit the ability to pay in the future.

The courts routinely award nominal alimony to reserve the issue of alimony at a later date.⁴³

Tax and Alimony

Unless otherwise stated in the agreement between the parties or by the court through judgment or order, alimony is deductible from income by the obligor and included in the income of the obligee for tax purposes.

⁴⁰ *Thomas v. Thomas*, 418 So. 2d 316, (Fla. 4th DCA 1982).

⁴¹ *Id.* at 316-317.

⁴² *Casella v. Casella*, 569 So. 2d 848, 849 (Fla. 4th DCA 1990). The court stopped short of ruling that a particular percentage constitutes a bright-line rule, and instead, ruled that each case must be determined individually.

⁴³ *Lightcap v. Lightcap*, 14 So. 3d 259, 260 (Fla. 3d DCA 2009). "Here the trial court did not abuse its discretion when it granted the former wife nominal alimony. Nominal alimony would permit her to apply for modification upon a proper showing if and when the former husband achieves his full earning potential in the future."

The agreement between the parties may provide or the court, after considering equities and tax efficiencies, may order alimony to be nondeductible from income by the obligor and not includable in the income of the obligee.

Payment of Alimony in Depository

Under the bill, for orders on alimony entered into on or after January 1, 1985, the court must order that payments of alimony be made through a depository. For orders on alimony entered before January 1, 1985, upon appearance by one or both parties before the court to modify or enforce the order, the court must modify the order require that alimony payments to be made through the depository.

Alimony payments do not need to be directed through the depository:

- If there is no minor child; or
- If there is a minor child and both parties agree to payment without the depository.

However, a payee may subsequently file an affidavit with the clerk of the court a verified motion that an obligor has been in default or arrearages in payment. No later than 15 days after receiving the motion, the court must:

- Hold an evidentiary hearing establishing the default and arrearages;
- Issue an order that the clerk establish or amend an existing family law case history account; and
- Advise the parties that future payments must be directed through the depository.

A Title IV-D agency, currently the Department of Revenue, can also request payments to be made through the depository.

Substantial Change in Circumstance Justifying the Modification of Alimony

Existing law authorizes the court to modify alimony upon a showing of a substantial change in circumstances. However, a court may not decrease or increase the duration of alimony provided for in the agreement or order.

Under the bill, upon the filing of a petition by the obligor, the court may temporarily reduce or suspend the obligor's payment of alimony while the petition is pending. However, if either party unreasonably pursues or defends an action, the other party is entitled to pay reasonable attorney fees and costs of the prevailing party.

Rebuttable Presumption

This bill creates a rebuttable presumption that alimony must be modified or terminated if the courts finds that the obligor's retirement is a substantial change in circumstance.

The presumption can be rebutted by the following factors:

- The age of the parties;
- The health of the parties;

- Assets and liabilities of the parties;
- Earned or imputed income of the parties;
- The ability of the parties to maintain part-time or full-time employment; and
- Any other factor deemed relevant by the court.

New Grounds for a Substantial Change in Circumstance

This bill establishes new substantial changes in circumstance:

- If the actual income of a party exceeds by at least 10 percent the amount the court imputed to the party when the court initially determined alimony, the other party may seek an immediate modification of alimony. An increase in an obligor's income alone does not constitute a basis for modification unless at the time the court established alimony, the court determined that the obligor was underemployed or unemployed but did not impute income at his or her maximum potential income.
- If an obligor becomes involuntarily underemployed or unemployed for 6 months after the court enters its final order for alimony, the obligor is entitled to pursue an immediate modification of alimony.
- Retirement is a substantial change in circumstance if:
 - The obligor has reached the age for eligibility to receive full retirement benefits under the Social Security Act and has retired;
 - The obligor has reached the customary retirement age for his or her occupation and has retired from that occupation; or
 - The obligor retires early and the court determines that the retirement is reasonable based upon the obligor's age, health, motivation for retirement, and impact on the obligee.

At least one court has refused modification of alimony on the basis that an obligor voluntarily retired early. Here the court held that the obligor did not establish voluntary retirement as a circumstance beyond his control.⁴⁴ In this case, the obligor retired early at the age of 63, after 40 years of steady employment.⁴⁵

An obligor may file an action within a year of his or her anticipated retirement date for the court to determine the customary retirement date for the obligor's profession. Allowing the obligor to file in advance of retirement helps the obligor to plan.

Remarriage of Obligor is not a Substantial Change in Circumstance

The bill clarifies that remarriage of the obligor is not a substantial change in circumstance.

Financial information of a subsequent spouse of a party paying or receiving alimony is inadmissible and may not be considered as part of any modification action unless a party is claiming that his or her income has decreased since the marriage. If the party makes this claim, financial information is admissible for a limited purpose.

⁴⁴ *Ward v. Ward*, 502 So. 2d 477, 478 (FLA. 3D DCA 1987).

⁴⁵ *Id.*

Supportive Relationship

Regarding the change in circumstance that is the presence of a supportive relationship between an obligee and another person, this bill expands the requirement that the relationship currently exist, to one which existed within the previous year before the date of the filing of the petition for modification or termination of alimony.

The bill adds as a factor for the court to use in determining to modify alimony based on a supportive relationship whether the obligor's failure, in whole or in part, to comply with all court-ordered financial obligations contributed to the need to have a supportive relationship.

This bill requires the obligor to demonstrate by a preponderance of the evidence that a supportive relationship exists or has existed within the previous year before the filing date of the petition for modification. The obligor is not required to prove the cohabitation of the obligee. These changes reduce the burden on an obligor to show a supportive relationship.

If an obligor prevails in a showing of a supportive relationship, reduction or termination of alimony is retroactive to the date of the filing of the petition.

Advancing Trial

The court must give priority to cases that have remained pending for more than 2 years from the initial date a party files a petition if a party requests that the case advance to trial.

Time-sharing

The bill provides additional guidelines for the court to use in determining a time-sharing schedule of a minor child.

Current law provides that the public policy of the state is for each minor to have frequent and continuing contact with both parents after the parents separate or divorce. The bill provides instead that the public policy of the state is that absent good cause, substantially equal time-sharing with both parents is in the best interest of the child. A court must include written findings in an order that establishes an initial permanent time-sharing schedule that provides other than substantially equal time-sharing.

Current law provides a list of factors for the court to consider in establishing or modifying time-sharing schedule, based on the best interests of the child. In addition to the factors presently provided in law, this bill adds the following:

- The amount of timesharing requested by each parent; and
- The frequency that a parent would likely leave the child in the care of a nonrelative on evenings and weekends when the other parent would be available and willing to provide care.

The bill also revises several existing factors. Under existing law, a court must consider and favor the parent having the "demonstrated capacity" of performing various parenting duties. The bill requires a court to also consider the disposition of a parent to perform new parenting roles after a divorce.

Under the bill, if the initial permanent time-sharing schedule does not provide for substantially equal time-sharing, the court order must include written findings of fact justifying the departure.

Application of the Bill to Alimony Awards

The provisions of the bill apply to:

- All initial alimony determinations and all alimony modification actions pending as of October 1, 2016; and
- All future initial determinations of alimony and alimony modification actions.

The enactment of the bill may not serve as the sole basis for a party to seek modification of an alimony award which existed prior to October 1, 2016.⁴⁶

The bill takes effect October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not affect cities or counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Most alimony awards are based on marital settlement agreements (MSAs), which are incorporated into final judgments in dissolution of marriage cases. Courts consider these MSAs as contracts. Courts interpret challenges to MSAs on the same basis as other forms of contract.⁴⁷ “A marital settlement agreement entered into by the parties and ratified by a final judgment is a contract, subject to the laws of contract.”⁴⁸

⁴⁶ The application of the bill to existing alimony awards is substantially different than the application of CS/CS/SB 718, 2nd Engrossed (2013), an alimony reform bill that was vetoed by Governor Scott. The prior alimony reform bill provided that the bill itself constituted a “substantial change in circumstances for which an obligor may seek . . . a modification of the amount or duration of alimony.” CS/CS/SB 718, 2nd Engrossed (2013), lines 936-939.

⁴⁷ The First District Court of Appeal applied contract law in determining whether to admit parol evidence, or evidence outside the contract (MSA), on the basis that the contract language contains a latent ambiguity (*Toussaint v. Toussaint*, 107 So. 3d 474, 477-478 (Fla. 1st DCA 2013)). A latent ambiguity, requiring extrinsic evidence, existed where an MSA failed to address financing of college education and the contract otherwise provided for equal payments for education costs (*Riera v. Riera*, 86 So. 3d 1163, 1166—67 (Fla. 3d DCA 2012)). The court found no breach of contract from the plain language of the MSA. (*McCord v. McCord*, 94 So. 3d 719 (Fla. 2nd DCA 2012)).

⁴⁸ *Ferguson v. Ferguson*, 54 So. 3d 553, 556 (Fla. 3d DCA 2011).

Although existing s. 61.14, F.S., gives courts broad authority to modify MSAs, the power of the legislature to reach back to existing contracts is restricted by Article I, s. 10, of the Florida Constitution which provides, in part: “No ... ex post facto law or law impairing the obligation of contracts shall be passed.” As such, the extent to which the Legislature may authorize the provisions of the bill to apply to preexisting alimony awards is not clear.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill more clearly defines gross income, provides guidelines for alimony, and establishes new bases for a substantial change in circumstance justifying a modification of alimony. In addition to the changes in alimony law, the bill revises public policy on time-sharing to provide for substantially equal time-sharing. These changes may reduce litigation time and costs.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) expects an increase in judicial workload from various provisions of the bill. Specifically, this bill requires a court to calculate alimony based upon a formula. Additionally, the bill imposes attorney fees and costs on a party who unreasonably pursues or defends an action for modification of alimony, if the party prevails. This requirement may necessitate additional hearings for a court to determine the reasonableness of a modification request. OSCA, however, cannot accurately determine the fiscal impact of the bill at this time.⁴⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.071, 61.08, 61.13, 61.14, 61.1827, 61.30, and 409.2579.

This bill creates section 61.192 of the Florida Statutes.

⁴⁹ Office of the State Courts Administrator, *2016 Judicial Impact Statement* (Dec. 21, 2015).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial 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.



306652

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Blue Ribbon Task Force.—The Blue Ribbon Task Force, a task force as defined in s. 20.03, Florida Statutes, is created within the Department of Children and Families for a duration of 1 year. The task force is created for the express purpose of comprehensively reviewing the alimony laws in this state as compared with all other states, reviewing historical trends in alimony, reviewing the conditions that affect alimony



306652

awards, and providing findings and recommendations.

(1) The task force is composed of 12 members, as follows:

(a) The Chief Justice of the Florida Supreme Court or his or her designee, who shall serve as chair of the task force.

(b) The Attorney General or his or her designee.

(c) The Secretary of the Department of Children and Families or his or her designee.

(d) Five members of the general public, two of whom must be attorneys licensed in this state with a specialization in family law, all five appointed by the Governor.

(e) Four members from the Legislature, one each appointed by the President of the Senate, the Senate Minority Leader, the Speaker of the House of Representatives, and the House of Representatives Minority Leader.

To the extent that it is possible, the commission should consist of an equal number of male and female members.

(2) Members of the task force shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, Florida Statutes.

(3) The task force, at a minimum, shall study and report on the following issues:

(a) The scope of alimony laws in this state as compared with those in other states.

(b) The historical trends in alimony awards.

(c) The current economic conditions that have affected trends in state alimony awards.

(4) The Chief Justice of the Florida Supreme Court or his or her designee shall submit a report to the Governor, the



306652

President of the Senate, and the Speaker of the House of
Representatives by July 1, 2017, containing the task force's
recommendations regarding the comprehensive reviews it must
conduct. If the task force recommends revisions to state law,
the report must include proposed language and policy reasons.
Upon submission of the report, the task force shall expire.

Section 2. This act shall take effect July 1, 2016.

===== 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 alimony; creating the Blue Ribbon
Task Force within the Department of Children and
Families; specifying membership of the task force;
authorizing reimbursement for per diem and travel
expenses; prescribing duties of the task force;
requiring submission of a report to the Governor and
the Legislature by a specified date; providing for
expiration of the task force; providing an effective
date.



399458

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Judiciary (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete lines 242 - 257

and insert:

shall be \$0.

(b) Presumptive alimony duration range.—The low end of the presumptive alimony duration range shall be calculated by using the following formula:

0.25 x the years of marriage



399458

The high end of the presumptive alimony duration range shall be calculated by using the following formula:

0.75 x the years of marriage

(c) Exceptions to alimony guidelines.-

1. If a court establishes the duration of the alimony award at 50 percent or less of the length of the marriage, the court shall use the actual years of the marriage, up to a maximum of 25 years, to calculate the high end of the presumptive alimony amount range.

2. A court may award alimony in an amount that equalizes the income of the parties until the obligor retires upon reaching the age for eligibility for full retirement benefits under s. 216 of the Social Security Act, 42 U.S.C. s. 416, or upon reaching the customary retirement age for his or her occupation if:

a. The duration of the marriage was at least 20 years;

b. Pursuant to the mutual agreement or consent of the parties to the marriage, one spouse substantially refrained from economic, educational, or employment opportunities primarily for the purpose of contributing to the marriage through homemaking or child care activities; and

c. The spouse seeking alimony even with additional education faces dramatically reduced opportunities to advance in a career.

This subparagraph should not be applied in a manner that



399458

discourages a spouse from seeking additional education or
employment opportunities.

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

And the title is amended as follows:

 Delete line 17

and insert:

 circumstances; specifying exceptions to the guidelines
 for the amount and duration of alimony awards;
 providing for awards of nominal alimony

By Senator Stargel

15-00669A-16

2016668__

1 A bill to be entitled
 2 An act relating to family law; amending s. 61.071,
 3 F.S.; requiring a court to consider certain alimony
 4 factors and make specific written findings of fact
 5 under certain circumstances; prohibiting a court from
 6 using certain presumptive alimony guidelines in
 7 calculating alimony pendente lite; amending s. 61.08,
 8 F.S.; defining terms; requiring a court to make
 9 specified initial written findings in a dissolution of
 10 marriage proceeding where a party has requested
 11 alimony; requiring a court to make specified findings
 12 before ruling on a request for alimony; providing for
 13 determinations of presumptive alimony amount range and
 14 duration range; providing presumptions concerning
 15 alimony awards depending on the duration of marriages;
 16 providing for imputation of income in certain
 17 circumstances; providing for awards of nominal alimony
 18 in certain circumstances; providing for taxability and
 19 deductibility of alimony awards; prohibiting a
 20 combined award of alimony and child support from
 21 constituting more than a specified percentage of a
 22 payor's net income; authorizing the court to order a
 23 party to protect an alimony award by specified means;
 24 providing for termination of an award; authorizing a
 25 court to modify or terminate the amount of an initial
 26 alimony award; prohibiting a court from modifying the
 27 duration of an alimony award; providing for payment of
 28 awards; amending s. 61.13, F.S.; revising public
 29 policy; revising the factors that are used to

Page 1 of 32

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

15-00669A-16

2016668__

30 determine the best interests of a child; requiring a
 31 court order to be supported by written findings of
 32 fact for a specified initial permanent time-sharing
 33 schedule; amending s. 61.14, F.S.; prohibiting a court
 34 from changing the duration of alimony; authorizing a
 35 party to pursue an immediate modification of alimony
 36 in certain circumstances; revising factors to be
 37 considered in determining whether an existing award of
 38 alimony should be reduced or terminated because of an
 39 alleged supportive relationship; providing for burden
 40 of proof for claims concerning the existence of
 41 supportive relationships; providing for the effective
 42 date of a reduction or termination of an alimony
 43 award; providing that the remarriage of an alimony
 44 obligor is not a substantial change in circumstance;
 45 providing that the financial information of a spouse
 46 of a party paying or receiving alimony is inadmissible
 47 and undiscoverable; providing an exception; providing
 48 for modification or termination of an award based on a
 49 party's retirement; providing a presumption upon a
 50 finding of a substantial change in circumstance;
 51 specifying factors to be considered in determining
 52 whether to modify or terminate an award based on a
 53 substantial change in circumstance; providing for a
 54 temporary suspension of an obligor's payment of
 55 alimony while his or her petition for modification or
 56 termination is pending; providing for an award of
 57 attorney fees and costs for unreasonably pursuing or
 58 defending a modification of an award; providing for an

Page 2 of 32

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

15-00669A-16

2016668

effective date of a modification or termination of an award; amending s. 61.30, F.S.; requiring that a child support award be adjusted to reduce the combined alimony and child support award under certain circumstances; creating s. 61.192, F.S.; providing for motions to advance the trial of certain actions if a specified period has passed since the initial service on the respondent; amending ss. 61.1827 and 409.2579, F.S.; conforming cross-references; providing applicability; providing an effective date.

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

Section 1. Section 61.071, Florida Statutes, is amended to read:

61.071 Alimony pendente lite; suit money.—In every proceeding for dissolution of the marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow a reasonable sum therefor. If a party in any proceeding for dissolution of marriage claims alimony or suit money in his or her answer or by motion, and the answer or motion is well founded, the court shall allow a reasonable sum therefor. After determining there is a need for alimony and that there is an ability to pay alimony, the court shall consider the alimony factors in s. 61.08(4)(b)1.-14. and make specific written findings of fact regarding the relevant factors that justify an award of alimony under this section. The court may not use the presumptive alimony guidelines in s. 61.08 to calculate alimony under this

15-00669A-16

2016668

section.

Section 2. Section 61.08, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 61.08, F.S., for present text.)

61.08 Alimony.—

(1) DEFINITIONS.—As used in this section, unless the context otherwise requires, the term:

(a)1. "Gross income" means recurring income from any source and includes, but is not limited to:

a. Income from salaries.

b. Wages, including tips declared by the individual for purposes of reporting to the Internal Revenue Service or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater.

c. Commissions.

d. Payments received as an independent contractor for labor or services, which payments must be considered income from self-employment.

e. Bonuses.

f. Dividends.

g. Severance pay.

h. Pension payments and retirement benefits actually received.

i. Royalties.

j. Rental income, which is gross receipts minus ordinary and necessary expenses required to produce the income.

k. Interest.

l. Trust income and distributions which are regularly

15-00669A-16 2016668

received, relied upon, or readily available to the beneficiary.

m. Annuity payments.

n. Capital gains.

o. Any money drawn by a self-employed individual for personal use that is deducted as a business expense, which moneys must be considered income from self-employment.

p. Social security benefits, including social security benefits actually received by a party as a result of the disability of that party.

q. Workers' compensation benefits.

r. Unemployment insurance benefits.

s. Disability insurance benefits.

t. Funds payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages.

u. Continuing monetary gifts.

v. Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies; except that if a party is a passive investor, has a minority interest in the company, and does not have any managerial duties or input, the income to be recognized may be limited to actual cash distributions received.

w. Expense reimbursements or in-kind payments or benefits received by a party in the course of employment, self-employment, or operation of a business which reduces personal living expenses.

x. Overtime pay.

y. Income from royalties, trusts, or estates.

z. Spousal support received from a previous marriage.

15-00669A-16 2016668

aa. Gains derived from dealings in property, unless the gain is nonrecurring.

2. "Gross income" does not include:

a. Child support payments received.

b. Benefits received from public assistance programs.

c. Social security benefits received by a parent on behalf of a minor child as a result of the death or disability of a parent or stepparent.

d. Earnings or gains on retirement accounts, including individual retirement accounts; except that such earnings or gains shall be included as income if a party takes a distribution from the account. If a party is able to take a distribution from the account without being subject to a federal tax penalty for early distribution and the party chooses not to take such a distribution, the court may consider the distribution that could have been taken in determining the party's gross income.

3.a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, the term "gross income" equals gross receipts minus ordinary and necessary expenses, as defined in sub-subparagraph b., which are required to produce such income.

b. "Ordinary and necessary expenses," as used in sub-subparagraph a., does not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating

15-00669A-16

2016668

175 alimony.

176 (b) "Potential income" means income which could be earned
 177 by a party using his or her best efforts and includes potential
 178 income from employment and potential income from the investment
 179 of assets or use of property. Potential income from employment
 180 is the income which a party could reasonably expect to earn by
 181 working at a locally available, full-time job commensurate with
 182 his or her education, training, and experience. Potential income
 183 from the investment of assets or use of property is the income
 184 which a party could reasonably expect to earn from the
 185 investment of his or her assets or the use of his or her
 186 property in a financially prudent manner.

187 (c)1. "Underemployed" means a party is not working full-
 188 time in a position which is appropriate, based upon his or her
 189 educational training and experience, and available in the
 190 geographical area of his or her residence.

191 2. A party is not considered "underemployed" if he or she
 192 is enrolled in an educational program that can be reasonably
 193 expected to result in a degree or certification within a
 194 reasonable period, so long as the educational program is:

195 a. Expected to result in higher income within the
 196 foreseeable future.

197 b. A good faith educational choice based upon the previous
 198 education, training, skills, and experience of the party and the
 199 availability of immediate employment based upon the educational
 200 program being pursued.

201 (d) "Years of marriage" means the number of whole years,
 202 beginning from the date of the parties' marriage until the date
 203 of the filing of the action for dissolution of marriage.

15-00669A-16

2016668

204 (2) INITIAL FINDINGS.—When a party has requested alimony in
 205 a dissolution of marriage proceeding, before granting or denying
 206 an award of alimony, the court shall make initial written
 207 findings as to:

208 (a) The amount of each party's monthly gross income,
 209 including, but not limited to, the actual or potential income,
 210 and also including actual or potential income from nonmarital or
 211 marital property distributed to each party.

212 (b) The years of marriage as determined from the date of
 213 marriage through the date of the filing of the action for
 214 dissolution of marriage.

215 (3) ALIMONY GUIDELINES.—After making the initial findings
 216 described in subsection (2), the court shall calculate the
 217 presumptive alimony amount range and the presumptive alimony
 218 duration range. The court shall make written findings as to the
 219 presumptive alimony amount range and presumptive alimony
 220 duration range.

221 (a) Presumptive alimony amount range.—The low end of the
 222 presumptive alimony amount range shall be calculated by using
 223 the following formula:

224 (0.015 x the years of marriage) x the difference between the
 225 monthly gross incomes of the parties

226 The high end of the presumptive alimony amount range shall be
 227 calculated by using the following formula:

228 (0.020 x the years of marriage) x the difference between the
 229 monthly gross incomes of the parties

15-00669A-16

2016668

For purposes of calculating the presumptive alimony amount range, 20 years of marriage shall be used in calculating the low end and high end for marriages of 20 years or more. In calculating the difference between the parties' monthly gross income, the income of the party seeking alimony shall be subtracted from the income of the other party. If the application of the formulas to establish a guideline range results in a negative number, the presumptive alimony amount shall be \$0. If a court establishes the duration of the alimony award at 50 percent or less of the length of the marriage, the court shall use the actual years of the marriage, up to a maximum of 25 years, to calculate the high end of the presumptive alimony amount range.

(b) Presumptive alimony duration range.—The low end of the presumptive alimony duration range shall be calculated by using the following formula:

0.25 x the years of marriage

The high end of the presumptive alimony duration range shall be calculated by using the following formula:

0.75 x the years of marriage

(4) ALIMONY AWARD.—

(a) Marriages of 2 years or less.—For marriages of 2 years or less, there is a rebuttable presumption that no alimony shall be awarded. The court may award alimony for a marriage with a

15-00669A-16

2016668

duration of 2 years or less only if the court makes written findings that there is a clear and convincing need for alimony, there is an ability to pay alimony, and that the failure to award alimony would be inequitable. The court shall then establish the alimony award in accordance with paragraph (b).

(b) Marriages of more than 2 years.—Absent an agreement of the parties, alimony shall presumptively be awarded in an amount within the alimony amount range calculated in paragraph (3)(a). Absent an agreement of the parties, alimony shall presumptively be awarded for a duration within the alimony duration range calculated in paragraph (3)(b). In determining the amount and duration of the alimony award, the court shall consider all of the following factors upon which evidence was presented:

1. The financial resources of the recipient spouse, including the actual or potential income from nonmarital or marital property or any other source and the ability of the recipient spouse to meet his or her reasonable needs independently.

2. The financial resources of the payor spouse, including the actual or potential income from nonmarital or marital property or any other source and the ability of the payor spouse to meet his or her reasonable needs while paying alimony.

3. The standard of living of the parties during the marriage with consideration that there will be two households to maintain after the dissolution of the marriage and that neither party may be able to maintain the same standard of living after the dissolution of the marriage.

4. The equitable distribution of marital property, including whether an unequal distribution of marital property

15-00669A-16

2016668

was made to reduce or alleviate the need for alimony.

5. Both parties' income, employment, and employability, obtainable through reasonable diligence and additional training or education, if necessary, and any necessary reduction in employment due to the needs of an unemancipated child of the marriage or the circumstances of the parties.

6. Whether a party could become better able to support himself or herself and reduce the need for ongoing alimony by pursuing additional educational or vocational training along with all of the details of such educational or vocational plan, including, but not limited to, the length of time required and the anticipated costs of such educational or vocational training.

7. Whether one party has historically earned higher or lower income than the income reflected at the time of trial and the duration and consistency of income from overtime or secondary employment.

8. Whether either party has foregone or postponed economic, educational, or employment opportunities during the course of the marriage.

9. Whether either party has caused the unreasonable depletion or dissipation of marital assets.

10. The amount of temporary alimony and the number of months that temporary alimony was paid to the recipient spouse.

11. The age, health, and physical and mental condition of the parties, including consideration of significant health care needs or uninsured or unreimbursed health care expenses.

12. Significant economic or noneconomic contributions to the marriage or to the economic, educational, or occupational

15-00669A-16

2016668

advancement of a party, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party, payment by one spouse of the other spouse's separate debts, or enhancement of the other spouse's personal or real property.

13. The tax consequence of the alimony award.

14. Any other factor necessary to do equity and justice between the parties.

(c) Deviation from guidelines.—The court may establish an award of alimony that is outside the presumptive alimony amount or alimony duration ranges only if the court considers all of the factors in paragraph (b) and makes specific written findings concerning the relevant factors justifying that the application of the presumptive alimony amount or alimony duration ranges, as applicable, is inappropriate or inequitable.

(d) Order establishing alimony award.—After consideration of the presumptive alimony amount and duration ranges in accordance with paragraphs (3) (a) and (b) and the factors upon which evidence was presented in accordance with paragraph (b), the court may establish an alimony award. An order establishing an alimony award must clearly set forth both the amount and the duration of the award. The court shall also make a written finding that the payor has the financial ability to pay the award.

(5) IMPUTATION OF INCOME.—If a party is voluntarily unemployed or underemployed, alimony shall be calculated based on a determination of potential income unless the court makes specific written findings regarding the circumstances that make it inequitable to impute income.

15-00669A-16

2016668

(6) NOMINAL ALIMONY.—Notwithstanding subsections (1), (3), and (4), the court may make an award of nominal alimony in the amount of \$1 per year if, at the time of trial, a party who has traditionally provided the primary source of financial support to the family temporarily lacks the ability to pay support but is reasonably anticipated to have the ability to pay support in the future. The court may also award nominal alimony for an alimony recipient who is presently able to work but for whom a medical condition with a reasonable degree of medical certainty may inhibit or prevent his or her ability to work during the duration of the alimony period. The duration of the nominal alimony shall be established within the presumptive durational range based upon the length of the marriage subject to the alimony factors in paragraph (4)(b). Before the expiration of the durational period, nominal alimony may be modified in accordance with s. 61.14 as to amount to a full alimony award using the alimony guidelines and factors in accordance with s. 61.08.

(7) TAXABILITY AND DEDUCTIBILITY OF ALIMONY.—

(a) Unless otherwise stated in the judgment or order for alimony or in an agreement incorporated thereby, alimony shall be deductible from income by the payor under s. 215 of the Internal Revenue Code and includable in the income of the payee under s. 71 of the Internal Revenue Code.

(b) When making a judgment or order for alimony, the court may, in its discretion after weighing the equities and tax efficiencies, order alimony be nondeductible from income by the payor and nonincludable in the income of the payee.

(c) The parties may, in a marital settlement agreement,

15-00669A-16

2016668

separation agreement, or related agreement, specifically agree in writing that alimony be nondeductible from income by the payor and nonincludable in the income of the payee.

(8) MAXIMUM COMBINED AWARD.—In no event shall a combined award of alimony and child support constitute more than 55 percent of the payor's net income, calculated without any consideration of alimony or child support obligations.

(9) SECURITY OF AWARD.—To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a decreasing term life insurance policy or a bond, or to otherwise secure such alimony award with any other assets that may be suitable for that purpose, in an amount adequate to secure the alimony award. Any such security may be awarded only upon a showing of special circumstances. If the court finds special circumstances and awards such security, the court must make specific evidentiary findings regarding the availability, cost, and financial impact on the obligated party. Any security may be modifiable in the event the underlying alimony award is modified and shall be reduced in an amount commensurate with any reduction in the alimony award.

(10) TERMINATION OF AWARD.—An alimony award shall terminate upon the death of either party or the remarriage of the obligee.

(11) MODIFICATION OF AWARD.—A court may subsequently modify or terminate the amount of an award of alimony initially established under this section in accordance with s. 61.14. However, a court may not modify the duration of an award of alimony initially established under this section.

(12) PAYMENT OF AWARD.—

15-00669A-16

2016668

(a) With respect to an order requiring the payment of alimony entered on or after January 1, 1985, unless paragraph (c) or paragraph (d) applies, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to an order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless paragraph (c) or paragraph (d) applies, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments do not need to be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments do not need to be directed through the depository. In this case, the order of support shall provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If subparagraph 1. applies, either party may subsequently file with the clerk of the court a verified motion alleging a default or arrearages in payment stating that the party wishes to initiate participation in the depository program. The moving party shall copy the other party with the

15-00669A-16

2016668

motion. No later than 15 days after filing the motion, the court shall conduct an evidentiary hearing establishing the default and arrearages, if any, and issue an order directing the clerk of the circuit court to establish, or amend an existing, family law case history account, and further advising the parties that future payments must thereafter be directed through the depository.

3. In IV-D cases, the Title IV-D agency shall have the same rights as the obligee in requesting that payments be made through the depository.

Section 3. Paragraph (c) of subsection (2) and subsection (3) of section 61.13, Florida Statutes, are amended, present subsections (4) through (8) of that section are redesignated as subsections (5) through (9), respectively, and a new subsection (4) is added to that section, to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

1. Absent good cause, it is the public policy of this state that the best interest of each minor child is served by a time-sharing schedule that provides for substantially equal time-sharing with both parents. It is the public policy of this state

15-00669A-16

2016668__

465 ~~that each minor child has frequent and continuing contact with~~
 466 ~~both parents after the parents separate or the marriage of the~~
 467 ~~parties is dissolved and~~ to encourage parents to share the
 468 rights and responsibilities, and joys, of childrearing. There is
 469 no presumption for or against the father or mother of the child
 470 or for or against any specific time-sharing schedule when
 471 creating or modifying the parenting plan of the child.

472 2. The court shall order that the parental responsibility
 473 for a minor child be shared by both parents unless the court
 474 finds that shared parental responsibility would be detrimental
 475 to the child. Evidence that a parent has been convicted of a
 476 misdemeanor of the first degree or higher involving domestic
 477 violence, as defined in s. 741.28 and chapter 775, or meets the
 478 criteria of s. 39.806(1)(d), creates a rebuttable presumption of
 479 detriment to the child. If the presumption is not rebutted after
 480 the convicted parent is advised by the court that the
 481 presumption exists, shared parental responsibility, including
 482 time-sharing with the child, and decisions made regarding the
 483 child, may not be granted to the convicted parent. However, the
 484 convicted parent is not relieved of any obligation to provide
 485 financial support. If the court determines that shared parental
 486 responsibility would be detrimental to the child, it may order
 487 sole parental responsibility and make such arrangements for
 488 time-sharing as specified in the parenting plan as will best
 489 protect the child or abused spouse from further harm. Whether or
 490 not there is a conviction of any offense of domestic violence or
 491 child abuse or the existence of an injunction for protection
 492 against domestic violence, the court shall consider evidence of
 493 domestic violence or child abuse as evidence of detriment to the

15-00669A-16

2016668__

494 child.

495 a. In ordering shared parental responsibility, the court
 496 may consider the expressed desires of the parents and may grant
 497 to one party the ultimate responsibility over specific aspects
 498 of the child's welfare or may divide those responsibilities
 499 between the parties based on the best interests of the child.
 500 Areas of responsibility may include education, health care, and
 501 any other responsibilities that the court finds unique to a
 502 particular family.

503 b. The court shall order sole parental responsibility for a
 504 minor child to one parent, with or without time-sharing with the
 505 other parent if it is in the best interests of the minor child.

506 3. Access to records and information pertaining to a minor
 507 child, including, but not limited to, medical, dental, and
 508 school records, may not be denied to either parent. Full rights
 509 under this subparagraph apply to either parent unless a court
 510 order specifically revokes these rights, including any
 511 restrictions on these rights as provided in a domestic violence
 512 injunction. A parent having rights under this subparagraph has
 513 the same rights upon request as to form, substance, and manner
 514 of access as are available to the other parent of a child,
 515 including, without limitation, the right to in-person
 516 communication with medical, dental, and education providers.

517 (3) For purposes of establishing or modifying parental
 518 responsibility and creating, developing, approving, or modifying
 519 a parenting plan, including a time-sharing schedule, which
 520 governs each parent's relationship with his or her minor child
 521 and the relationship between each parent with regard to his or
 522 her minor child, the best interest of the child shall be the

15-00669A-16

2016668__

primary consideration. A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. Determination of the best interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, ~~but not limited to:~~

(a) The demonstrated capacity or ~~and~~ disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.

(b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

(c) The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(e) The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to carry out ~~effectuate~~ the parenting plan. This factor does not create a presumption for or against relocation of either parent with a child.

(f) The moral fitness of the parents.

(g) The mental and physical health of the parents.

15-00669A-16

2016668__

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

(j) The demonstrated knowledge, capacity, or ~~and~~ disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.

(k) The demonstrated capacity or ~~and~~ disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime.

(l) The demonstrated capacity of each parent to communicate with the other parent and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.

(m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

(n) Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child

15-00669A-16

2016668__

abuse, child abandonment, or child neglect.

(o) The demonstrated capacity or disposition of each parent to perform or ensure the performance of particular parenting tasks customarily performed by the other each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

(p) The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.

(q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

(r) The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

(s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

(t) The amount of time-sharing requested by each parent.

(u) The frequency that a parent would likely leave the child in the care of a nonrelative on evenings and weekends when the other parent would be available and willing to provide care.

(v) ~~(t)~~ Any other factor that is relevant to the determination of a specific parenting plan, including the time-

15-00669A-16

2016668__

sharing schedule.

(4) A court order must be supported by written findings of fact if the order establishes an initial permanent time-sharing schedule that does not provide for substantially equal time-sharing.

Section 4. Subsection (1) of section 61.14, Florida Statutes, is amended to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)(a) When the parties enter into an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, or when a party is required by court order to make any payments, and the circumstances or the financial ability of either party changes or the child who is a beneficiary of an agreement or court order as described herein reaches majority after the execution of the agreement or the rendition of the order, either party may apply to the circuit court of the circuit in which the parties, or either of them, resided at the date of the execution of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, for an order decreasing or increasing the amount of support, maintenance, or alimony, and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties or the child, decreasing, increasing, or confirming the amount of separate support, maintenance, or alimony provided for in the agreement or order. However, a court may not decrease or

15-00669A-16

2016668

639 increase the duration of alimony provided for in the agreement
 640 or order. A party is entitled to pursue an immediate
 641 modification of alimony if the actual income earned by the other
 642 party exceeds by at least 10 percent the amount imputed to that
 643 party at the time the existing alimony award was determined and
 644 such circumstance shall constitute a substantial change in
 645 circumstances sufficient to support a modification of alimony.
 646 However, an increase in an alimony obligor's income alone does
 647 not constitute a basis for a modification to increase alimony
 648 unless at the time the alimony award was established it was
 649 determined that the obligor was underemployed or unemployed and
 650 the court did not impute income to that party at his or her
 651 maximum potential income. If an alimony obligor becomes
 652 involuntarily underemployed or unemployed for a period of 6
 653 months following the entry of the last order requiring the
 654 payment of alimony, the obligor is entitled to pursue an
 655 immediate modification of his or her existing alimony
 656 obligations and such circumstance shall constitute a substantial
 657 change in circumstance sufficient to support a modification of
 658 alimony. A finding that medical insurance is reasonably
 659 available or the child support guidelines schedule in s. 61.30
 660 may constitute changed circumstances. Except as otherwise
 661 provided in s. 61.30(11)(c), the court may modify an order of
 662 support, maintenance, or alimony by increasing or decreasing the
 663 support, maintenance, or alimony retroactively to the date of
 664 the filing of the action or supplemental action for modification
 665 as equity requires, giving due regard to the changed
 666 circumstances or the financial ability of the parties or the
 667 child.

15-00669A-16

2016668

668 (b)1. The court may reduce or terminate an award of alimony
 669 upon specific written findings by the court that since the
 670 granting of a divorce and the award of alimony a supportive
 671 relationship exists or has existed within the previous year
 672 before the date of the filing of the petition for modification
 673 or termination between the obligee and another a person with
 674 ~~whom the obligee resides. On the issue of whether alimony should~~
 675 ~~be reduced or terminated under this paragraph, the burden is on~~
 676 ~~the obligor to prove by a preponderance of the evidence that a~~
 677 ~~supportive relationship exists.~~

678 2. In determining whether an existing award of alimony
 679 should be reduced or terminated because of an alleged supportive
 680 relationship between an obligee and a person who is not related
 681 by consanguinity or affinity ~~and with whom the obligee resides,~~
 682 the court shall elicit the nature and extent of the relationship
 683 in question. The court shall give consideration, without
 684 limitation, to circumstances, including, but not limited to, the
 685 following, in determining the relationship of an obligee to
 686 another person:

687 a. The extent to which the obligee and the other person
 688 have held themselves out as a married couple by engaging in
 689 conduct such as using the same last name, using a common mailing
 690 address, referring to each other ~~in terms such as "my husband"~~
 691 ~~or "my wife,"~~ "my spouse" or otherwise conducting themselves in
 692 a manner that evidences a permanent supportive relationship.

693 b. The period of time that the obligee has resided with the
 694 other person in a permanent place of abode.

695 c. The extent to which the obligee and the other person
 696 have pooled their assets or income or otherwise exhibited

15-00669A-16

2016668__

financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

1. Whether the obligor's failure, in whole or in part, to comply with all court-ordered financial obligations to the obligee constituted a significant factor in the establishment of the supportive relationship.

3. In any proceeding to modify an alimony award based upon a supportive relationship, the obligor has the burden of proof to establish, by a preponderance of the evidence, that a supportive relationship exists or has existed within the previous year before the date of the filing of the petition for

15-00669A-16

2016668__

modification or termination. The obligor is not required to prove cohabitation of the obligee and the third party.

4. Notwithstanding paragraph (f), if a reduction or termination is granted under this paragraph, the reduction or termination is retroactive to the date of filing of the petition for reduction or termination.

5.3- This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of the provisions of this paragraph.

(c)1. For purposes of this section, the remarriage of an alimony obligor does not constitute a substantial change in circumstance or a basis for a modification of alimony.

2. The financial information, including, but not limited to, information related to assets and income, of a subsequent spouse of a party paying or receiving alimony is inadmissible and may not be considered as a part of any modification action unless a party is claiming that his or her income has decreased since the marriage. If a party makes such a claim, the financial information of the subsequent spouse is discoverable and admissible only to the extent necessary to establish whether the

15-00669A-16

2016668

party claiming that his or her income has decreased is diverting income or assets to the subsequent spouse that might otherwise be available for the payment of alimony. However, this subparagraph may not be used to prevent the discovery of or admissibility in evidence of the income or assets of a party when those assets are held jointly with a subsequent spouse. This subparagraph is not intended to prohibit the discovery or admissibility of a joint tax return filed by a party and his or her subsequent spouse in connection with a modification of alimony.

(d)1. An obligor may file a petition for modification or termination of an alimony award based upon his or her actual retirement.

a. A substantial change in circumstance is deemed to exist if:

(I) The obligor has reached the age for eligibility to receive full retirement benefits under s. 216 of the Social Security Act, 42 U.S.C. s. 416, and has retired; or

(II) The obligor has reached the customary retirement age for his or her occupation and has retired from that occupation. An obligor may file an action within 1 year of his or her anticipated retirement date and the court shall determine the customary retirement date for the obligor's profession. However, a determination of the customary retirement age is not an adjudication of a petition for a modification of an alimony award.

b. If an obligor voluntarily retires before reaching any of the ages described in sub-subparagraph a., the court shall determine whether the obligor's retirement is reasonable upon

15-00669A-16

2016668

consideration of the obligor's age, health, and motivation for retirement and the financial impact on the obligee. A finding of reasonableness by the court shall constitute a substantial change in circumstance.

2. Upon a finding of a substantial change in circumstance, there is a rebuttable presumption that an obligor's existing alimony obligation shall be modified or terminated. The court shall modify or terminate the alimony obligation, or make a determination regarding whether the rebuttable presumption has been overcome, based upon the following factors applied to the current circumstances of the obligor and obligee:

a. The age of the parties.

b. The health of the parties.

c. The assets and liabilities of the parties.

d. The earned or imputed income of the parties as provided in s. 61.08(1)(a) and (5).

e. The ability of the parties to maintain part-time or full-time employment.

f. Any other factor deemed relevant by the court.

3. The court may temporarily reduce or suspend the obligor's payment of alimony while his or her petition for modification or termination under this paragraph is pending.

(e) A party who unreasonably pursues or defends an action for modification of alimony shall be required to pay the reasonable attorney fees and costs of the prevailing party. Further, a party obligated to pay prevailing party attorney fees and costs in connection with unreasonably pursuing or defending an action for modification is not entitled to an award of attorney fees and costs in accordance with s. 61.16.

15-00669A-16

2016668

813 (f) There is a rebuttable presumption that a modification
 814 or termination of an alimony award is retroactive to the date of
 815 the filing of the petition, unless the obligee demonstrates that
 816 the result is inequitable.

817 (g) ~~(e)~~ For each support order reviewed by the department as
 818 required by s. 409.2564(11), if the amount of the child support
 819 award under the order differs by at least 10 percent but not
 820 less than \$25 from the amount that would be awarded under s.
 821 61.30, the department shall seek to have the order modified and
 822 any modification shall be made without a requirement for proof
 823 or showing of a change in circumstances.

824 (h) ~~(d)~~ The department may ~~shall have authority to~~ adopt
 825 rules to implement this section.

826 Section 5. Paragraph (d) is added to subsection (11) of
 827 section 61.30, Florida Statutes, to read:

828 61.30 Child support guidelines; retroactive child support.—

829 (11)

830 (d) Whenever a combined alimony and child support award
 831 constitutes more than 55 percent of the payor's net income,
 832 calculated without any consideration of alimony or child support
 833 obligations, the court shall adjust the award of child support
 834 to ensure that the 55 percent cap is not exceeded.

835 Section 6. Section 61.192, Florida Statutes, is created to
 836 read:

837 61.192 Advancing trial.—In an action brought pursuant to
 838 this chapter, if more than 2 years have passed since the initial
 839 petition was served on the respondent, either party may move the
 840 court to advance the trial of their action on the docket. This
 841 motion may be made at any time after 2 years have passed since

15-00669A-16

2016668

842 the petition was served, and once made the court must give the
 843 case priority on the court's calendar.

844 Section 7. Subsection (1) of section 61.1827, Florida
 845 Statutes, is amended to read:

846 61.1827 Identifying information concerning applicants for
 847 and recipients of child support services.—

848 (1) Any information that reveals the identity of applicants
 849 for or recipients of child support services, including the name,
 850 address, and telephone number of such persons, held by a non-
 851 Title IV-D county child support enforcement agency is
 852 confidential and exempt from s. 119.07(1) and s. 24(a) of Art. I
 853 of the State Constitution. The use or disclosure of such
 854 information by the non-Title IV-D county child support
 855 enforcement agency is limited to the purposes directly connected
 856 with:

857 (a) Any investigation, prosecution, or criminal or civil
 858 proceeding connected with the administration of any non-Title
 859 IV-D county child support enforcement program;

860 (b) Mandatory disclosure of identifying and location
 861 information as provided in s. 61.13(8) ~~s. 61.13(7)~~ by the non-
 862 Title IV-D county child support enforcement agency when
 863 providing non-Title IV-D services;

864 (c) Mandatory disclosure of information as required by ss.
 865 409.2577, 61.181, 61.1825, and 61.1826 and Title IV-D of the
 866 Social Security Act; or

867 (d) Disclosure to an authorized person, as defined in 45
 868 C.F.R. s. 303.15, for purposes of enforcing any state or federal
 869 law with respect to the unlawful taking or restraint of a child
 870 or making or enforcing a parenting plan. As used in this

15-00669A-16

2016668__

paragraph, the term "authorized person" includes a parent with whom the child does not currently reside, unless a court has entered an order under s. 741.30, s. 741.31, or s. 784.046.

Section 8. Subsection (1) of section 409.2579, Florida Statutes, is amended to read:

409.2579 Safeguarding Title IV-D case file information.—

(1) Information concerning applicants for or recipients of Title IV-D child support services is confidential and exempt from the provisions of s. 119.07(1). The use or disclosure of such information by the IV-D program is limited to purposes directly connected with:

(a) The administration of the plan or program approved under part A, part B, part D, part E, or part F of Title IV; under Title II, Title X, Title XIV, Title XVI, Title XIX, or Title XX; or under the supplemental security income program established under Title XVI of the Social Security Act;

(b) Any investigation, prosecution, or criminal or civil proceeding connected with the administration of any such plan or program;

(c) The administration of any other federal or federally assisted program which provides service or assistance, in cash or in kind, directly to individuals on the basis of need;

(d) Reporting to an appropriate agency or official, information on known or suspected instances of physical or mental injury, child abuse, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is the subject of a support enforcement activity under circumstances which indicate that the child's health or welfare is threatened thereby; and

15-00669A-16

2016668__

(e) Mandatory disclosure of identifying and location information as provided in s. 61.13(8) ~~s. 61.13(7)~~ by the IV-D program when providing Title IV-D services.

Section 9. The amendments made by this act to chapter 61, Florida Statutes, apply to all initial determinations of alimony and all alimony modification actions that are pending as of the effective date of this act, and to all initial determinations of alimony and all alimony modification actions brought on or after the effective date of this act. The enacting of this act may not serve as the sole basis for a party to seek a modification of an alimony award existing before the effective date of this act.

Section 10. This act shall take effect October 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

SENATOR KELLI STARGEL
15th District

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

November 4, 2015

The Honorable Miguel Diaz de la Portilla
Senate Judiciary Committee, Chair
406 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Diaz de la Portilla:

I respectfully request that SB 668, related to *Family Law*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel". The signature is fluid and cursive, with a large loop at the end of the last name.

Kelli Stargel
State Senator, District 15

Cc: Tom Cibula/ Staff Director
Joyce Butler/ AA

REPLY TO:

- ☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- ☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16
Meeting Date

668
Bill Number (if applicable)

Topic Family Reform

Amendment Barcode (if applicable)

Name Benjamin Dowd-Arrow

Job Title graduate instructor

Address 3665 Barbary Dr
Street

Phone 850 321 0660

Tallahassee FL 32309
City State Zip

Email benjamin.dowd-arrow@unh.edu

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Unite Women dot org

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16

Meeting Date

0668

Bill Number (if applicable)

Topic

FAMILY REFORM

Amendment Barcode (if applicable)

Name

Dr. Genevieve Brackin

Job Title

professor

Address

3539 Apalachee Parkway #64

Street

Tallahassee

City

FL

State

32311

Zip

Phone

585-943-8529

Email

gbrackin@fsu.edu

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.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

February 9, 2016

Meeting Date

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

SB 668

Bill Number (if applicable)

306652

Amendment Barcode (if applicable)

Topic Alimony Reform Bill, Amendment Proposed by Senator Soto

Name Steven J Schang, Jr, MD, FACP, FACC

Job Title Retired Cardiologist Permanent Alimony Payor

Address 707 E Cervantes St Suite B123

Street

Pensacola

City

FL

State

32501

Zip

Phone 850-324-6915

Email steven@schang.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-16
Meeting Date

668
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Barbara D. Derane

Job Title MS

Address 625 E. Bernard St

Phone 222-3969

Tallahassee FL 32308
City State Zip

Email barbaraderane1@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-7

Meeting Date

1668

Bill Number (if applicable)

Topic Alimony reform, Child Custody

Name Suzanne Przyslawski

Job Title Attorney

Address 33300 Tenksbury

Street

Leesburg FL 34788

City

State

Zip

Phone 352-489-3575

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16

Meeting Date

SB668

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Peggy Johnson

Job Title _____

Address 1205 Heritage Acres Blvd.

Street

Phone 321-960-0184

Rockledge

City

FL

State

32955

Zip

Email sunnpq@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-10-16

Meeting Date

5B 668
Bill Number (if applicable)

Topic ALImony

Amendment Barcode (if applicable)

Name Vicki Stoughton

Job Title Physical Therapist Assistant

Address 1540 Coral St.
Street

Phone 321-543-8751

Mem.H Island FL 32952
City State Zip

Email StoVicki@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-10-16
Meeting Date

668
Bill Number (if applicable)

Topic SB 668 ALIMONY

Amendment Barcode (if applicable)

Name MICHAEL MINIERVA 89 years old

Job Title Retired

Address 435 CHARIOT CT.
Street

Phone 321 452 6757

Merrell Island FL 32953
City State Zip

Email none

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-9-16

Meeting Date

SB 668

Bill Number (if applicable)

Topic Alimony Reform SB 668

Amendment Barcode (if applicable)

Name Robin Patrawicz

Job Title Attorney, Senior Advisor, Teacher, Business Owner

Address 405 Sassafras Lane

Phone 954-644-2323

Street

Mount Dora

City

FL

State

32757

Zip

Email robin.patrawicz@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-10-16

Meeting Date

SB 668

Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Jordan Miles

Job Title Student

Address 1498 Stafford Avenue
Street
Merritt Island FL 32952
City State Zip

Phone 321-750-8287

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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/19
Meeting Date

668
Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name Arthia Wheeler

Job Title _____

Address 110 SW 6th Ave

Phone 561 667 9954

Beth Bay FL 33493
City State Zip

Email coramalik@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-16

Meeting Date

SB 668

Bill Number (if applicable)

Topic Family Law

Amendment Barcode (if applicable)

Name JAN RUBINO

Job Title _____

Address 726 INGLESIDE AVE

Street

Phone (850) 224-9262

TALLAHASSEE

FL

32303

City

State

Zip

Email rubinojan@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16

Meeting Date

SB 668

Bill Number (if applicable)

Topic Time sharing and alimony

Amendment Barcode (if applicable)

Name Linda M. Elowitz

Job Title Advocate

Address 2542 Arthur's Court

Phone 850 559-1312

Street

Tallahassee

City

State

Zip

Email LMElowitz@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 9, 2016
Meeting Date

SB 668
Bill Number (if applicable)

Topic Alimony: Timesharing Children

Amendment Barcode (if applicable)

Name Lisa Rawson, CDR USN (ret)

Job Title Retired Navy Commander

Address 360 Andrew Jackson
Street

Phone 850 982-8736

Gulf Breeze FL 32561
City State Zip

Email mandydakota2015@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

668
Bill Number (if applicable)

Topic Alimony • Child Timesharing

Amendment Barcode (if applicable)

Name Deborah Gray

Job Title RN / BSN • Child Advocacy

Address 2301 Whaley Ave

Phone 850-619-5957

Street

Pensacola FL 32503

City

State

Zip

Email @

Speaking: ☐ For ☒ ^{NA} 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
APPEARANCE RECORD

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

Meeting Date

668
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Camille Fiveash

Job Title

Address 5789 TRULUCK AL

Phone 850-686-1452

umilton FL 32570
City State Zip

Email camille.fiveash@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

1968
Bill Number (if applicable) _____

Topic Alimony

Amendment Barcode (if applicable) _____

Name Kathy Addison

Job Title _____

Address 560 Camille Gardens

Phone (850) 791-3224

Street

Milton / FL

City

State

Zip

Email 50bluemoonka@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

FEBRUARY 9, 2016

Meeting Date

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

SB688

Bill Number (if applicable)

Topic FAMILY LAW

Amendment Barcode (if applicable)

Name LARRY BUTAH

Job Title _____

Address 11215-3RD STE

Phone 813-299-0665

TREASURE ISLAND, FL 33706
City State Zip

Email LARRY.BUTAH@VERIZON.NET

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA FAMILY LAW REFORM

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/2016

Meeting Date

6
SB 688

Bill Number (if applicable)

Topic Reform of Alimony Statute

Amendment Barcode (if applicable)

Name John Fromularo

Job Title Financial Advisor

Address 4 Portofino Drive, Suite 2008

Phone 8509821910

Street

Pensacola Beach

FL

32561

Email jfromularo@gmail.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Alimony Reform

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

February 9, 2016

Meeting Date

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

SB 668

Bill Number (if applicable)

Topic Family Law, requiring a court to consider certain alimony factors...

Amendment Barcode (if applicable)

Name Steven J Schang, MD, FACP, FACC

Job Title Retired Cardiologist paying permanent alimony to underemployed ex-wife

Address 707 East Cervantes St Suite B123

Phone 850-324-6915

Street

Pensacola

FL

32501

Email steven@schang.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16

Meeting Date

SB 668

Bill Number (if applicable)

306652

Amendment Barcode (if applicable)

Topic ALIMONY REFORM

Name Natalie Sohn

Job Title OBGYN DOCTOR

Address 8714 THOUSAND PINES CIRCLE
Street

Phone 561 346-4219

WEST PALM BEACH FL 33411
City State Zip

Email N.Sobgyn@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

SB 668

Bill Number (if applicable)

306652

Amendment Barcode (if applicable)

Topic Alimony Reform

Name ALAN FRISHER

Job Title President - Family LAW Reform

Address 6550 N. Wickham Rd

Street

City Melbourne

State FL

Zip 32940

Phone 321-242-7526

Email ALAN.FRISHER@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Family LAW Reform

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

2/9/16

Meeting Date

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

SB 6008
Bill Number (if applicable)

306652
Amendment Barcode (if applicable)

Topic Alimony Reform

Name Natalie Rivera

Job Title Teacher

Address 2519 W. Kathleen St.
Street
Tampa FL 33607
City State Zip

Phone 813-727-8083

Email nsheh27@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Alimony Reform Bill

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/14

Meeting Date

SB 668

Bill Number (if applicable)

306652

Amendment Barcode (if applicable)

Topic Fla. Alimony Reform

Name Deborah Shultz

Job Title Medical Doctor

Address 27205 Hawks Nest Circle

Street

Wesley Chapel

City

Fla.

State

33544

Zip

Phone 813-948-1891

Email dshultemd@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Alimony Reform

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

668

Bill Number (if applicable)

Topic

Family Law

Amendment Barcode (if applicable)

Name

ABIGAIL BEEBE

Job Title

Attorney

Address

Street

West Palm Bch FL 33401

City

State

Zip

Phone

561 370 3691

Email

abigailcabebe@law.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

Family Law Section of Fla Bar

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/2016

Meeting Date

SB 668

Bill Number (if applicable)

Topic

Family Law Reform

Amendment Barcode (if applicable)

Name

TARIE MacMillan

Job Title

JEWELRY VICE PRESIDENT FAMILY LAW REFORM

Address

Street

6550 N. WICKHAM RD

Phone

City

MELBOURNE FL

State

Zip

Email

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

FAMILY LAW REFORM

Appearing at request of Chair:



Yes

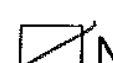


No

Lobbyist registered with Legislature:



Yes



No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/2014

Meeting Date

SB 668

Bill Number (if applicable)

Topic

Family Law Reform

Amendment Barcode (if applicable)

Name

Terry Power

Job Title

FINANCIAL

Address

Street

6550 N. Wickham Rd

Phone

324 813-774-3366

City

Melbourne

State

FL

Zip

32948

Email

TPC Attorney GWR

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 meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-9-16

Meeting Date

SB 668

Bill Number (if applicable)

Topic

Alimony Reform

Amendment Barcode (if applicable)

Name

Tarie Mac Miller

Job Title

Pres Women Against Bernal

Address

15822 Aurora Lake Cir

Phone 813 545 3342

Street

Wilmauna

FL

33598

City

State

Zip

Email tariemac@verizon.net

Speaking:

☒ For

☐ Against

☐ Information

Waive Speaking:

☐ In Support

☐ Against

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

Representing

Family Law Reform

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 794

INTRODUCER: Judiciary Committee and Senator Ring

SUBJECT: Dissolution of Marriage Parenting Plans

DATE: February 11, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			CF	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 794 revises what must be included in a parenting plan approved by the court. Current law requires parenting plans to adequately describe time-sharing arrangements and parental responsibility in the child's daily upbringing, health care, school-related matters and other activities, and the methods and technologies of communicating with the child.

Under the bill, if a court orders shared parental responsibility, the parenting plan must authorize either parent to consent to mental health treatment for the child. However, the parent who consents to mental health treatment is financially responsible for any costs that exceed costs not covered by health insurance.

II. Present Situation:

Dissolution of Marriage Actions and Minor Children

In instances in which parents to a minor child are parties to a legal dissolution of marriage, the court must approve or determine a parenting plan. A parenting plan is a plan in writing created to "govern the relationship between the parents relating to decisions that must be made regarding the minor child."¹

¹ Section 61.046(14), F.S.

A court can only modify a determination of parental responsibility, a parenting plan, or a time-sharing schedule upon a showing of a substantial, material, and unanticipated change in circumstances. Additionally, the court must determine that modification is in the best interests of the child.²

Parenting Plan

A parenting plan must include a time-sharing schedule for the parents and child.³ Issues that may be addressed in the plan include the child's education, health care, and physical, social, and emotional well-being.⁴

More specifically:

A parenting plan approved by the court must, at a minimum, describe in adequate detail how the parents will share and be responsible for the daily tasks associated with the upbringing of the child; the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent; ***a designation of who will be responsible for any and all forms of health care***, school-related matters including the address to be used for school-boundary determination and registration, and other activities; and the methods and technologies that the parents will use to communicate with the child.⁵

Shared or Sole Parental Responsibility

If a court orders shared parental responsibility, both parents retain full parental rights and responsibilities regarding the child. With shared parental responsibility, major decision-making about the child is jointly shared by the parents.⁶ In contrast, if a court orders sole parental responsibility, one parent makes all decisions regarding the child.⁷

In determining parental responsibility, the court must consider the best interests of the child. A court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.⁸ In ordering shared parental responsibility, the court may consider the wishes of the parents and grant one party exclusive responsibility over certain aspects of the child's welfare, including health care.⁹ Similarly, the court is required to order sole parental responsibility to one parent with or without timesharing if it is in the best interests of the child.¹⁰

² Section 61.13(3), F.S.

³ *Id.*

⁴ Section 61.046(14), F.S.

⁵ Section 61.13(2)(b), F.S.

⁶ Section 61.046(17), F.S.

⁷ Section 61.046(18), F.S.

⁸ Section 61.13 (2)(c)2., F.S.

⁹ Section 61.113(2)(c)a., F.S.

¹⁰ Section 61.13(2)(c)2.b. F.S.

Parental Time-sharing

The public policy of the state is for each minor child to have “frequent and continuing contact with both parents.”¹¹ In determining timesharing with each parent, a court must consider the best interests of the child based on a specific list of factors.

Factors for the court to consider in determining the best interest of the child include:

- The demonstrated capacity of each parent to have a close and continuing parent-child relationship, honor the time-sharing schedule, and be reasonable when changes are required.
- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child, including developmental needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- The moral fitness and the mental and physical health of the parents.
- The reasonable preference of the child, if the child is of sufficient intelligence, understanding, and experience to express a preference.
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime, and to be involved in the child’s school and extracurricular activities.
- The demonstrated capacity of each parent to keep the other parent informed about the minor child, and the willingness of each parent to adopt a unified front on major issues.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has knowingly provided false information about these issues. If the court accepts evidence of prior or pending actions on these issues, the court must acknowledge in writing that the evidence was considered in evaluating best interests.
- The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before and during litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.¹²

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.¹³

III. Effect of Proposed Changes:

This bill revises what must be included in a parenting plan approved by the court. Current law requires parenting plans to adequately describe time-sharing arrangements and parental responsibility in the child’s daily upbringing, health care, school-related matters and other activities, and the methods and technologies of communicating with the child.

¹¹ Section 61.13(2)(c)1., F.S.

¹² Section 61.13(3), F.S.

¹³ Section 61.13(3)(t), F.S.

The bill requires a parenting plan to allow either parent to consent to mental health treatment for the child. The scope of what is meant by mental health treatment, however, is not defined. Under the bill, a parent who consents to mental health treatment is financially responsible for any costs that exceed costs covered by health insurance.

The bill takes effect July 1, 2016.

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:

This bill may result in more children receiving psychological treatment.

C. Government Sector Impact:

If this bill results in disputes between parents over the necessity of psychological treatment or the appropriate type of treatment, those disputes might require resolution by a court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 61.13 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 February 9, 2016:

This CS clarifies that the provision in the bill which requires parenting plans to authorize either parent's approval of mental health treatment only applies in instances involving shared parental responsibility.

- B. **Amendments:**

None.



943498

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment

Delete line 29
and insert:
responsible for health care decisionmaking. If the court orders
shared parental responsibility, the plan

By Senator Ring

29-00432-16

2016794__

A bill to be entitled

An act relating to dissolution of marriage parenting plans; amending s. 61.13, F.S.; requiring that parenting plans provide that either parent may consent to mental health treatment for the child; providing that the consenting parent shall be financially responsible for certain costs of such treatment; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(b) A parenting plan approved by the court must, at a minimum, describe in adequate detail how the parents will share and be responsible for the daily tasks associated with the upbringing of the child; include the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent; designate responsibility a ~~designation of who will be responsible~~ for any and all forms of health care, school-related matters, including the address to be used for school-boundary determination and registration, and other activities; and describe in adequate detail the methods and technologies that the parents will use to communicate with the child. The parenting plan must also designate who will be responsible for health care decisionmaking; however, the plan

Page 1 of 2

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

29-00432-16

2016794__

must provide that either parent may consent to mental health treatment for the child. The parent who consents to such treatment shall be financially responsible for costs that exceed those covered by the health insurance provided as required under paragraph (1)(b).

Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Education
Children, Families, and Elder Affairs
Commerce and Tourism

SENATOR JEREMY RING
29th District

January 13, 2016

Honorable Miguel Diaz de la Portilla
Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Mr. Chairman,

I am writing to respectfully request your cooperation in placing Senate Bill 794, relating to Dissolution of Marriage Plans, on the Judiciary agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Tom Cibula, Staff Director
Joyce Butler, Committee Administrative Assistant

REPLY TO:

- ☐ 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- ☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

794

Bill Number (if applicable)

Topic

parenting

Amendment Barcode (if applicable)

Name

Greg Pound

Job Title

Address

9160 Sunrise Dr

Phone

Street

Largo

Fla

33773

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

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

Representing

Pineellas Cocnty Florida Government Corruption

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9
Meeting Date

794
Bill Number (if applicable)

mental health

Topic _____

Amendment Barcode (if applicable) _____

Name Cynthia W. [unclear]

Job Title _____

Address 110 SW 10th Ave
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1034

INTRODUCER: Senator Simmons

SUBJECT: Health Care Providers

DATE: February 8, 2016

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Lloyd	Stovall	HP	Favorable
2. Davis	Cibula	JU	Pre-meeting
3. _____	_____	RC	_____

I. Summary:

SB 1034 allows a free clinic using volunteer health care providers to receive a grant or legislative appropriation to support the delivery of services while retaining the sovereign immunity protections under existing law. This financial support may be used to employ providers to supplement, coordinate, or otherwise support the volunteers. The bill also provides that employees and agents of the free clinics are protected from lawsuits under the state's sovereign immunity protections.

II. Present Situation:

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the act). It was enacted in 1992 to encourage health care providers to provide care to low-income persons.¹ The act is administered by the Department of Health (department) through the Volunteer Health Services Program.² Volunteers complete an enrollment application with the department which requires a personal reference and background checks.³

¹ Low-income persons are defined in the act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department. Section 766.1115(3)(e), F.S. A single individual whose annual income does not exceed \$23,540 is at 200 percent of the federal poverty level using Medicaid data. See *2015 Poverty Guidelines, Annual Guidelines* (September 3, 2015), available at <http://aspe.hhs.gov/poverty/15poverty.cfm>.

² See Florida Dep't of Health, Division of Public Health Statistics and Performance Management, *Volunteer Health Services*, available at <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/index.html> (last visited Jan. 8, 2016); and Rule Chapter 64I-2, F.A.C.

³ Florida Dep't of Health, Division of Public Health Statistics and Performance Management, *Volunteer Services Policy*, pp. 12-13, available at <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/VHS2PolicyDOHP380-7-14.pdf> (last visited Feb. 5, 2016).

The act extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who, as agents of the state, provide volunteer, uncompensated health care services to low-income individuals. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the act.

A contract under the act must pertain to volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient or any public or private third-party payor for the specific services provided to the low-income recipients covered by the contract.⁴

Health care providers under the act include:⁵

- A birth center licensed under ch. 383, F.S.⁶
- An ambulatory surgical center licensed under ch. 395, F.S.⁷
- A hospital licensed under ch. 395, F.S.⁸
- A physician or physician assistant licensed under ch. 458, F.S.⁹
- An osteopathic physician or osteopathic physician assistant licensed under ch. 459, F.S.¹⁰
- A chiropractic physician licensed under ch. 460, F.S.¹¹
- A podiatric physician licensed under ch. 461, F.S.¹²
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of ch. 464, F.S., or any facility that employs nurses licensed or registered under part I of ch. 464, F.S., to supply all or part of the care delivered under the act.¹³
- A dentist or dental hygienist licensed under ch. 466, F.S.¹⁴
- A midwife licensed under ch. 467, F.S.¹⁵
- A health maintenance organization certificated under part I of ch. 641, F.S.¹⁶
- A health care professional association and its employees or a corporate medical group and its employees.¹⁷
- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.¹⁸

⁴ Section 766.1115(3)(a), F.S.

⁵ Section 766.1115(3)(d), F.S.

⁶ Section 766.1115(3)(d)1., F.S.

⁷ Section 766.1115(3)(d)2., F.S.

⁸ Section 766.1115(3)(d)3., F.S.

⁹ Section 766.1115(3)(d)4., F.S.

¹⁰ Section 766.1115(3)(d)5., F.S.

¹¹ Section 766.1115(3)(d)6., F.S.

¹² Section 766.1115(3)(d)7., F.S.

¹³ Section 766.1115(3)(d)8., F.S.

¹⁴ Section 766.1115(3)(d)13., F.S.

¹⁵ Section 766.1115(3)(d)9., F.S.

¹⁶ Section 766.1115(3)(d)10., F.S.

¹⁷ Section 766.1115(3)(d)11., F.S.

¹⁸ Section 766.1115(3)(d)12., F.S.

- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.¹⁹
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as a physician, physician assistant, nurse, or midwife.²⁰
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, that delivers health care services provided by the listed licensed professionals, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

A governmental contractor is defined in the act as the department, a county health department, a special taxing district having health care responsibilities, or a hospital owned and operated by a governmental entity.²¹

The act further specifies additional contract requirements. The contract must provide that:

- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract.
- The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
- The health care provider must report adverse incidents and information on treatment outcomes.
- The governmental contractor or the health care provider must make patient selection and initial referrals.
- The health care provider is subject to supervision and regular inspection by the governmental contractor.²²
- The health care provider must accept all referred patients; however, the contract may specify limits on the number of patients to be referred.²³

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of legal actions alleging medical negligence.²⁴

According to the department, from July 1, 2014, through June 30, 2015, 12,569 licensed health care volunteers (plus an additional 9,938 clinic staff volunteers) provided 373,588 health care patient visits with a total value of donated goods and services of more than \$271 million, under the act.²⁵ The Florida Department of Financial Services, Division of Risk Management, reported

¹⁹ Section 766.1115(3)(d)14., F.S.

²⁰ Section 766.1115(3)(d)15., F.S.

²¹ Section 766.1115(3)(c), F.S.

²² Section 766.1115(4), F.S.

²³ Rule 64I-2.003(2), F.A.C.

²⁴ Section 766.1115(5), F.S.

²⁵ Florida Dep't of Health, *Volunteer Health Services 2014-2015 Annual Report* (December 1, 2015), available at <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/VHS1415annualreport.pdf> (last visited Jan. 7, 2016).

that as of January 7, 2015, that 10 claims had been filed against the Volunteer Health Care Provider Program under s. 766.1115, F.S., since February 15, 2000.²⁶

Legislative Appropriation to Free and Charitable Clinics

The use of prior fiscal year appropriations by the Florida Association of Free and Charitable Clinics under the act had been restricted to clinic capacity building purposes via the contract with the department which distributed the appropriations. Clinic capacity building was limited to products or processes that increase skills, infrastructure, and resources of clinics. The department did not authorize these funds to be used to build capacity through the employment of clinical personnel.

The department cautiously interpreted the provision in the act relating to volunteer, uncompensated services, which states that a health care provider must receive no compensation from the governmental contractor for any services provided under the contract. Accordingly, the department's interpretation precluded the use of the appropriation for this purpose.

The Florida Association of Free and Charitable Clinics received a \$9.5 million appropriation in the 2015-2016 General Appropriations Act through the department.²⁷ However, this fiscal year's appropriation was vetoed by the Governor "because the funds could not be used for services, and therefore it is not a statewide priority for improving cost, quality, and access in healthcare."²⁸

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of those governments unless the immunity is expressly waived.

Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to \$200,000 for one incident and the total for all recoveries related to one

²⁶ Id at A-1.

²⁷ Chapter 2015-232, Laws of Fla., line item 441.

²⁸ Governor Rick Scott, *Veto Message to Secretary of State Ken Detzner* (June 23, 2015), p. 35, available at <http://www.flgov.com/wp-content/uploads/2015/06/Transmittal%20Letter%206.23.15%20-%20SB%202500-A.pdf> (last visited Jan. 7, 2016).

incident is limited to \$300,000.²⁹ The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.³⁰

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.³¹ In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.³²

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.³³ The court explained:

Whether CMS [Children's Medical Services] physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. . . . CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS³⁴ Manual and CMS Consultant's Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.

Our conclusion is buttressed by HRS's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.³⁵

²⁹ Section 768.28(5), F.S.

³⁰ *Id.*

³¹ *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).

³² *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).

³³ *Id.* at 703.

³⁴ Florida Department of Health and Rehabilitative Services.

³⁵ *Stoll*, 694 So. 2d at 703 (Fla. 1997) (internal citations omitted).

III. Effect of Proposed Changes:

Access to Health Care Act (Section 1)

The bill authorizes a free clinic³⁶ to receive and use appropriations or grants from a governmental entity or nonprofit corporation to support the delivery of contracted services by volunteer health care providers under the Access to Health Care Act without those funds being deemed compensation which might jeopardize the sovereign immunity protections afforded in the act. The bill authorizes these appropriations or grants to be used for the employment of health care providers to supplement, coordinate, or support the delivery of services by volunteer health care providers. The receipt and use of the appropriation or grant, according to the bill, does not constitute the acceptance of compensation for the specific services provided to the low-income recipients covered by the contract.

The bill inserts the phrase “employees or agents” in several provisions in the act to clarify that employees and agents of a health care provider, which typically are paid by a health care provider, fall within the sovereign immunity protections of the contracted health care provider when acting pursuant to the contract. Subsection (5) of the act currently recognizes employees and agents of a health care provider. This subsection requires the governmental contractor to provide written notice to each patient, or the patient’s legal representative, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider *or any employee or agent thereof* acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to the provisions of s. 768.28, F.S.

The bill provides for efficiencies in health care delivery under the contract by requiring the patient, or the patient’s legal representative, to acknowledge in writing receipt of the notice of agency relationship between the government contractor and the health care provider at the initial visit only. Thereafter, the notice requirement is met by posting the notice in a place conspicuous to all persons. According to a Department of Health analysis of the bill, patients are currently informed that the provider is an agent of a governmental contractor at each visit.³⁷

Sovereign Immunity (Section 2)

Section 768.28, F.S., which pertains to the waiver of sovereign immunity in tort actions, is amended to specifically include a health care provider’s employees or agents in the definition of an “officer, employee, or agent.” This is done to avoid any potential ambiguity between the provisions in that section of law and the Access to Health Care Act.

Additional Provisions and Effective Date

The bill removes obsolete language and makes technical and grammatical changes.

³⁶ A free clinic for purposes of this provision is a clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.

³⁷ Florida Department of Health, *Senate Bill 1034 Legislative Bill Analysis* (Dec. 7, 2015) (on file with the Senate Committee on Judiciary).

The effective date of the bill is July 1, 2016.

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:

Contracted free clinics may receive governmental funding in the form of an appropriation or grant without the concern of restrictions on such funding for certain uses that might be imposed by the act. The receipt of any such funding is speculative at this point, and therefore, the amount is indeterminate.

Private health care providers currently delivering services to uninsured individuals may see a reduction in their uncompensated care costs as these individuals seek care in these clinics with expanded resources.

C. Government Sector Impact:

The department will be responsible for management of the contracts with the clinics.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 766.1115 and 768.28.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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



582748

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment

Delete line 85
and insert:

15. A pharmacy or pharmacist licensed under chapter 465.

16.~~15.~~ Any other health care professional, practitioner,

By Senator Simmons

10-01528-16

20161034__

1 A bill to be entitled
 2 An act relating to health care providers; amending s.
 3 766.1115, F.S.; revising the definitions of the terms
 4 "contract" and "health care provider"; deleting an
 5 obsolete date; extending sovereign immunity to
 6 employees or agents of a health care provider that
 7 executes a contract with a governmental contractor;
 8 clarifying that a receipt of specified notice must be
 9 acknowledged by a patient or the patient's
 10 representative at the initial visit; requiring the
 11 posting of notice that a specified health care
 12 provider is an agent of a governmental contractor;
 13 amending s. 768.28, F.S.; revising the definition of
 14 the term "officer, employee, or agent" to include
 15 employees or agents of a health care provider;
 16 providing an effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Paragraphs (a) and (d) of subsection (3) and
 21 subsections (4) and (5) of section 766.1115, Florida Statutes,
 22 are amended to read:
 23 766.1115 Health care providers; creation of agency
 24 relationship with governmental contractors.—
 25 (3) DEFINITIONS.—As used in this section, the term:
 26 (a) "Contract" means an agreement executed in compliance
 27 with this section between a health care provider and a
 28 governmental contractor for volunteer, uncompensated services
 29 which allows the health care provider to deliver health care

Page 1 of 7

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

10-01528-16

20161034__

30 services to low-income recipients as an agent of the
 31 governmental contractor. ~~The contract must be for volunteer,~~
 32 ~~uncompensated services, except as provided in paragraph (4)(g).~~
 33 For services to qualify as volunteer, uncompensated services
 34 under this section, the health care provider, or any employee or
 35 agent of the health care provider, must receive no compensation
 36 from the governmental contractor for any services provided under
 37 the contract and must not bill or accept compensation from the
 38 recipient, or a public or private third-party payor, for the
 39 specific services provided to the low-income recipients covered
 40 by the contract, except as provided in paragraph (4)(g). A free
 41 clinic as described in subparagraph (d)14. may receive a
 42 legislative appropriation, a grant through a legislative
 43 appropriation, or a grant from a governmental entity or
 44 nonprofit corporation to support the delivery of contracted
 45 services by volunteer health care providers, including the
 46 employment of health care providers to supplement, coordinate,
 47 or support the delivery of such services. The appropriation or
 48 grant for the free clinic does not constitute compensation under
 49 this paragraph from the governmental contractor for services
 50 provided under the contract, nor does receipt or use of the
 51 appropriation or grant constitute the acceptance of compensation
 52 under this paragraph for the specific services provided to the
 53 low-income recipients covered by the contract.
 54 (d) "Health care provider" or "provider" means:
 55 1. A birth center licensed under chapter 383.
 56 2. An ambulatory surgical center licensed under chapter
 57 395.
 58 3. A hospital licensed under chapter 395.

Page 2 of 7

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

10-01528-16

20161034__

4. A physician or physician assistant licensed under chapter 458.

5. An osteopathic physician or osteopathic physician assistant licensed under chapter 459.

6. A chiropractic physician licensed under chapter 460.

7. A podiatric physician licensed under chapter 461.

8. A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this section.

9. A midwife licensed under chapter 467.

10. A health maintenance organization certificated under part I of chapter 641.

11. A health care professional association ~~and its employees~~ or a corporate medical group ~~and its employees~~.

12. Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.

13. A dentist or dental hygienist licensed under chapter 466.

14. A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.

15. Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited

10-01528-16

20161034__

program that prepares the student for licensure as any one of the professionals listed in subparagraphs 4.-9.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services ~~on or after April 17, 1992~~, as an agent of the governmental contractor, or any employee or agent of such health care provider, is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider, or any employee or agent of such health care provider, shall continue to be an agent for purposes of s. 768.28(9) for 30 days after a determination of ineligibility to allow for treatment until the individual transitions to treatment by another health care provider. A health care provider, or any employee or agent of such health care provider, under contract with the state may not be named as a defendant in any action arising out of medical care or treatment ~~provided on or after April 17, 1992~~, under contracts entered into under this section. The contract must provide that:

10-01528-16

20161034__

(a) The right of dismissal or termination of any health care provider delivering services under the contract is retained by the governmental contractor.

(b) The governmental contractor has access to the patient records of any health care provider delivering services under the contract.

(c) Adverse incidents and information on treatment outcomes must be reported by any health care provider to the governmental contractor if the incidents and information pertain to a patient treated under the contract. The health care provider shall submit the reports required by s. 395.0197. If an incident involves a professional licensed by the Department of Health or a facility licensed by the Agency for Health Care Administration, the governmental contractor shall submit such incident reports to the appropriate department or agency, which shall review each incident and determine whether it involves conduct by the licensee that is subject to disciplinary action. All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities under this paragraph are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d) Patient selection and initial referral must be made by the governmental contractor or the provider. Patients may not be transferred to the provider based on a violation of the antidumping provisions of the Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990, or chapter 395.

(e) If emergency care is required, the patient need not be

Page 5 of 7

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

10-01528-16

20161034__

referred before receiving treatment, but must be referred within 48 hours after treatment is commenced or within 48 hours after the patient has the mental capacity to consent to treatment, whichever occurs later.

(f) The provider is subject to supervision and regular inspection by the governmental contractor.

(g) ~~As an agent of the governmental contractor for purposes of s. 768.28(9), while acting within the scope of duties under the contract,~~ A health care provider licensed under chapter 466, as an agent of the governmental contractor for purposes of s. 768.28(9), may allow a patient, or a parent or guardian of the patient, to voluntarily contribute a monetary amount to cover costs of dental laboratory work related to the services provided to the patient within the scope of duties under the contract. This contribution may not exceed the actual cost of the dental laboratory charges.

A governmental contractor that is also a health care provider is not required to enter into a contract under this section with respect to the health care services delivered by its employees.

(5) NOTICE OF AGENCY RELATIONSHIP.—The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing at the initial visit, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to ~~the~~

Page 6 of 7

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

10-01528-16

20161034__

175 ~~provisions of s. 768.28. Thereafter, or~~ with respect to any
176 federally funded community health center, the notice
177 requirements may be met by posting in a place conspicuous to all
178 persons a notice that the health care provider, or federally
179 funded community health center, is an agent of the governmental
180 contractor and that the exclusive remedy for injury or damage
181 suffered as the result of any act or omission of the provider or
182 of any employee or agent thereof acting within the scope of
183 duties pursuant to the contract is by commencement of an action
184 pursuant to ~~the provisions of s. 768.28.~~

185 Section 2. Paragraph (b) of subsection (9) of section
186 768.28, Florida Statutes, is amended to read:

187 768.28 Waiver of sovereign immunity in tort actions;
188 recovery limits; limitation on attorney fees; statute of
189 limitations; exclusions; indemnification; risk management
190 programs.—

191 (9)

192 (b) As used in this subsection, the term:

193 1. "Employee" includes any volunteer firefighter.

194 2. "Officer, employee, or agent" includes, but is not
195 limited to, any health care provider, and its employees or
196 agents, when providing services pursuant to s. 766.1115; any
197 nonprofit independent college or university located and
198 chartered in this state which owns or operates an accredited
199 medical school, and its employees or agents, when providing
200 patient services pursuant to paragraph (10)(f); and any public
201 defender or her or his employee or agent, including, among
202 others, an assistant public defender and an investigator.

203 Section 3. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 19, 2016

I respectfully request that **Senate Bill 1034**, relating to Health Care Providers, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons", is written over a horizontal line.

Senator David Simmons
Florida Senate, District 10

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-16

Meeting Date

1034

Bill Number (if applicable)

Topic _____

Name Mike Fischer

Amendment Barcode (if applicable)

Job Title _____

Address PO BOX 1127
Street

Phone 222-6344

TLH FL 32303
City State Zip

Email mike@redfishconsult.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA INDEPENDENT PHARMACY NETWORK

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16

Meeting Date

SB 1034

Bill Number (if applicable)

582748

Amendment Barcode (if applicable)

Topic _____

Name

Bill Mincy

Job Title

VP

Address

3375-I Capital Circle NE

Street

Tallahassee

City

FL

State

32309

Zip

Phone

850-322-7740

Email

bill.mincy@ppsonline.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

PPSC

~~Florida Department of Transportation~~
~~Florida Department of Transportation~~
~~Florida Department of Transportation~~

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 1118

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Simmons

SUBJECT: Transportation Network Company Insurance

DATE: February 11, 2016

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1118 specifies minimum insurance requirements for ridesharing companies, also known as transportation network companies (TNCs), such as Uber, Lyft, and SideCar. Transportation network companies use smartphone technology to connect individuals who want to purchase rides with private drivers. Most personal automobile insurance policies do not provide coverage when a vehicle is being used to transport passengers for a fee.

When a driver is logged on a TNC's digital network or engaged in a prearranged ride, the following minimum insurance requirements apply:

- \$125,000 for death and bodily injury per person;
- \$250,000 for death and bodily injury per incident; and
- \$50,000 for property damage.

When a TNC driver is not logged on the TNC's digital network or engaged in a prearranged ride, the following minimum insurance requirements apply:

- \$25,000 for death and bodily injury per person;
- \$50,000 for death and bodily injury per incident; and
- \$10,000 for property damage.

The bill also requires TNCs or TNC drivers to maintain personal injury protection insurance under the Florida Motor Vehicle No-Fault Law.

In addition to the insurance coverage requirements, the TNC must electronically notify TNC drivers:

- That it is illegal for a TNC driver to solicit or accept a ride if the ride is not arranged through the TNC's digital network; and
- That if a TNC driver provides a ride not arranged through the TNC network, the ride is not covered by the TNC driver's or the TNC's insurance policy.

The bill preempts local ordinances imposing insurance requirements on transportation network companies.

II. Present Situation:

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

Some state and local governments have taken steps to recognize and regulate companies using these new technologies. At least 29 states have enacted legislation regarding transportation network companies.¹

Transportation Network Companies

Ridesharing companies, or transportation network companies, use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application and indicates the driver is ready to accept passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and proceeds to pick up the passenger. Once at the destination, payment is made through the phone application.

TNC drivers generally use their personal vehicles to transport passengers. Most personal automobile policies contain a "livery" exclusion that excludes coverage if the vehicle is carrying passengers for hire.² Consequently, most personal automobile insurance policies do not cover damage or loss when a car is being used for commercial ridesharing. Some ridesharing companies provide insurance for portions of the time when the driver is operating the vehicle. For example, Uber advertises coverage in the amounts of \$1 million of liability per incident, \$1 million of uninsured/underinsured motorist coverage per incident, and comprehensive and collision insurance if the driver holds personal comprehensive and collision coverage on the vehicle. Uber advertises that its insurance policy applies from the moment a driver accepts a trip to its conclusion.³

¹See PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA, PCI APPLAUDS INNOVATION AND COMMON SENSE APPROACH TO FIXING TRANSPORTATION NETWORK COMPANY INSURANCE GAPS: 29 STATES HAVE ENACTED RIDE HAILING LEGISLATION, <http://www.pciaa.net/industry-issues/transportation-network-companies> (last visited Jan. 12, 2016).

² The "livery" exclusion in Florida is mentioned in the definition of "motor vehicle insurance," contained in s. 627.041, F.S.

³ See UBER, INSURANCE FOR UBERX WITH RIDESHARING (Feb. 10, 2014) <http://blog.uber.com/ridesharinginsurance>.

Coverage provided by ridesharing companies, however, is often secondary to a driver's personal insurance policy. Secondary coverage means that the ridesharing company policy provides coverage when the personal policy does not. This can lead to situations where drivers and passengers are involved in accidents and there is no insurance coverage.

In 2015, stakeholders agreed to create model legislation on regulations for TNCs.⁴ The model legislation is known as the TNC Insurance Compromise Model Bill. The model bill establishes parameters for insurance coverage for TNCs. Coverage varies under the bill, but during the time in which a driver has accepted a ride request and is transporting a passenger, the bill requires \$1 million in liability coverage for death, bodily injury, and property damage.⁵ Premiums may be paid by the TNC driver, the TNC, or a combination of both. The bill identifies and defines various terms relevant to these transactions, including the terms "personal vehicle," "digital network," "transportation network company," "driver," and "prearranged ride."⁶

Insurance Amounts Required for Taxis, Limousines and other For-hire Transportation Services

Taxis and limousines must maintain a motor vehicle liability policy with minimum limits of \$125,000 per person for bodily injury, up to \$250,000 per incident for bodily injury, and \$50,000 for property damage.⁷

Local Ordinances

In 2015, several counties in Florida adopted ordinances regulating transportation network companies (TNCs). Broward adopted an ordinance requiring TNCs and drivers to undergo vehicle inspections, background checks including fingerprinting, purchase of a chauffeur's license, and purchase of 24/7 insurance.⁸ Lee County adopted an ordinance that subjects TNCs to the same requirements as those imposed on taxi and limousine services. The ordinance requires drivers to undergo background checks and requires vehicle registration and the purchase of specified insurance.⁹ Palm Beach County adopted an ordinance subjecting TNCs and drivers to background check and insurance requirements.¹⁰ The ordinance adopted by the city of Sarasota treats TNCs as taxi companies. In so doing, drivers are subject to insurance, background checks,

⁴ Stakeholders in agreement include the companies of Allstate, American Insurance Association, Lyft, State Farm, and Uber Technologies. UBER, INSURANCE ALIGNED (Mar. 24, 2015), <https://newsroom.uber.com/introducing-the-tnc-insurance-compromise-model-bill/>.

⁵ See NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, SUPPLEMENTAL HANDOUT: TNC INSURANCE COMPROMISE MODEL BILL UPDATED MARCH 26, http://www.naic.org/meetings1503/committees_c_sharing_econ_wg_2015_spring_nm_additional_materials.pdf

⁶ See UBER, INSURANCE ALIGNED (Mar. 24, 2015), <https://newsroom.uber.com/introducing-the-tnc-insurance-compromise-model-bill/>.

⁷ See s. 324.032(1), F.S.

⁸ See *Broward County Passes Uber, Lyft Ordinance*, NBC 6 SOUTH FLORIDA, Apr. 28, 2015, <http://www.nbcmiami.com/news/local/Broward-County-to-Vote-on-Uber-Lyft-Ordinance-301529861.html>.

⁹ See Heather Wysocki, *Lee County Oks regulation for Uber, Lyft services*, NEWS-PRESS.COM, Mar. 17, 2015, <http://www.news-press.com/story/money/2015/03/17/lee-county-oks-regulation-for-uber-lyft-services/24901931/>.

¹⁰ See Jenn Strathman, *Uber allowed to operate in Palm Beach County with some regulations: Drivers must have background checks and Insurance*, WPTV 5 WEST PALM BEACH, updated Mar. 10, 2015, <http://www.wptv.com/money/consumer/uber-allowed-to-operate-in-palm-beach-county-with-some-regulations>.

and a \$35 license fee. The ordinance additionally requires vehicle inspections and prohibits the use of vehicles over 10 years old.¹¹

III. Effect of Proposed Changes:

Insurance Requirements

The bill provides uniform statewide minimum insurance requirements for Transportation Network Companies (TNCs) and TNC drivers. The bill applies the framework of the TNC Insurance Compromise Model Bill, and imposes insurance requirements similar to those required of companies providing taxi services.

The bill replicates many of the same definitions and parameters established in the Model Bill. For example, a TNC is defined as an entity that uses a digital network¹² to connect TNC riders¹³ with TNC drivers¹⁴ who provide prearranged rides. A prearranged ride:

- Begins when the driver accepts a request for a ride by a rider through a digital network controlled by a TNC;
- Continues while the driver transports the rider; and
- Ends when the last rider departs from the vehicle.

A prearranged ride does not include a ride from a taxi, jitney, limousine, or other for-hire vehicles that transport people or goods for compensation.

The term “transportation network company” does not include entities arranging nonemergency medical transportation for individuals qualifying for Medicare or Medicaid pursuant to a contract with a state or managed care organization.

Insurance coverage can be maintained by the TNC, the TNC driver, or a combination of both. Coverage maintained by the TNC must obligate the TNC to defend the claim. The coverage may not be contingent on the denial of the claim by the TNC driver’s personal policy. In other words, the insurance must be primary.

The bill identifies two time periods during which insurance is required. The first time period is during the time when a driver is logged on to the transportation network company’s digital

¹¹ See Emily Le Coz, *Sarasota poised to regulate Uber*, HERALD-TRIBUNE, last modified Sept. 3, 2015, <http://www.heraldtribune.com/article/20150903/ARTICLE/150909881>; Aaron Eggleston, *Sarasota Uber drivers face tougher regulations*, WWSB 7 MYSUNCOAST, July 6, 2015, http://www.mysuncoast.com/news/local/sarasota-uber-drivers-face-tougher-regulations/article_2ae27ee0-245b-11e5-a38f-a7017122a16e.html.

¹² The bill defines a “digital network” as an online application, software, website, or system offered by or used by a TNC which enables rides with TNC drivers.

¹³ The bill defines a TNC “rider” as an individual who directly or indirectly uses a TNC’s digital network to connect with a TNC driver who provides transportation services in the TNC driver’s personal vehicle. The bill defines personal vehicle as a vehicle used by the TNC driver in connection with providing TNC services and which is owned, leased, or otherwise authorized for use by the TNC driver. The bill provides that a vehicle that is let or rented to another for consideration may be used as a personal vehicle.

¹⁴ The bill defines a TNC “driver” as an individual who receives connections to potential riders and related services from a TNC in exchange for any form of compensation to the TNC and uses a personal vehicle to offer or provide a prearranged ride upon connection through a digital network controlled by a TNC in return for compensation.

network or providing a prearranged ride. The second time period applies at all times other than when a driver is logged on to the TNC network or providing a prearranged ride.

During the first time period, the bill requires transportation network companies or drivers to maintain a minimum of primary automobile liability insurance in the same amounts as is required of taxi and limousine companies. These limits are:

- \$125,000 for death and bodily injury per person;
- \$250,000 for death and bodily injury per incident; and
- \$50,000 for property damage.

During the second time period, the following insurance requirements apply and are the responsibility of the driver:

- \$25,000 for death and bodily injury per person;
- \$50,000 for death and bodily injury per incident; and
- \$10,000 for property damage.

The bill also requires a company or a driver to maintain personal injury protection under the Florida Motor Vehicle No-Fault Law.¹⁵

If a driver carries insurance as required by this bill, the driver is deemed to comply with other statutory insurance requirements.

Responsibilities of the TNC and the TNC Driver

The bill requires a TNC to disclose in writing the following to a TNC driver:

- The type and limits of insurance coverage provided by the TNC;
- The type of automobile insurance coverage that the driver must maintain while the driver uses a personal vehicle in connection with the TNC; and
- The fact that if a driver provides rides for compensation not covered by the bill the driver must maintain the same coverage limits required of other for-hire passenger transportation vehicles such as taxicabs, jitneys, and limousines¹⁶ and is subject to criminal penalties for failing to comply.¹⁷

The TNC must also provide, through electronic notice, a statement to TNC drivers:

- That if a TNC driver provides a ride not arranged through the TNC network, the ride is not covered by the TNC driver's or the TNC's insurance policy; and
- That it is illegal for a TNC driver to solicit or accept a ride if the ride is not arranged through the TNC's digital network.

Although the required notice states that rides not arranged through a TNC's digital network are illegal, the bill does not specify a penalty for the illegal conduct.

¹⁵ Section 627.736(1), F.S., requires personal injury protection of \$10,000 in medical and disability benefits and \$5,000 in death benefits.

¹⁶ Section 324.032(1), F.S., requires minimum coverage of \$125,000/250,000/50,000.

¹⁷ A driver who fails to comply with the insurance requirements commits a second-degree misdemeanor, punishable by up to 60 days in jail and up to a \$500 fine. Sections 324.221(1) and (2), 775.082(4)(b), and 775.083(1)(e), F.S.

The bill requires the TNC driver to carry proof of insurance required under the bill at all times during the TNC driver's use of a personal vehicle. In the event of an accident, the bill requires the TNC driver to:

- Provide the insurance coverage information to the directly involved parties, automobile insurers, and investigating law enforcement officers. Proof of financial responsibility may be provided through a digital telephone application controlled by a TNC.
- Disclose, upon request, to the directly involved parties, automobile insurers, and investigating law enforcement officers whether the TNC driver was logged on to the TNC digital network or engaged in a prearranged ride at the time of the accident.

Insurer Exclusions

The bill authorizes an insurer that provides personal automobile insurance policies to exclude from coverage any loss or injury that occurs while a TNC driver is logged onto the TNC's digital network or while a driver is engaged in a prearranged ride. The right to exclude coverage includes:

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

If an insurer excludes such coverages, the insurer does not have the duty to defend or indemnify the excluded claim. The bill does not invalidate or limit exclusions contained in policies in use or approved before July 1, 2017. The insurer has a right of contribution against other insurers that provide automobile insurance to the same driver if the insurer defends or indemnifies a claim which is excluded under the terms of its policy.

The bill does not require a personal automobile insurance policy to provide coverage while the driver is logged into the TNC digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a personal vehicle to transport riders for compensation. The bill allows an insurer to provide coverage by contract or endorsement when a personal vehicle is used for such purposes.

Claims Investigations

The bill requires a TNC and any insurer potentially providing coverage for a claim to cooperate to facilitate the exchange of information. The information must provide the precise times that a driver logged on and off the TNC's digital network during the 12 hour periods immediately before and after the accident and provide a clear description of automobile insurance maintained.

A driver who provides a false statement to a law enforcement officer in connection with an accident that may involve a TNC driver commits a second-degree misdemeanor.

Preemption

The bill provides that TNC insurance requirements are governed exclusively by the provisions of the bill and any rules adopted by the Financial Services Commission. A political subdivision may not adopt ordinances imposing insurance requirements on TNCs or TNC drivers. Any existing ordinances are preempted.

Other Provisions

Section 316.066, F.S., requires law enforcement officers to submit crash reports to the Department of Highway Safety and Motor Vehicles after an accident. The reports must include information relating to drivers, passengers, witnesses, and insurance. This bill amends s. 316.066, F.S., to require crash reports submitted to the Department of Highway Safety and Motor Vehicles by law enforcement officers to include a statement as to whether any driver was provided a prearranged ride or logged into a TNC's digital network at the time of the accident. A driver that provides a false statement in connection with such information commits a second degree misdemeanor.

The insurance required under this bill must be provided by an insurer authorized to do business in Florida which is a member of the Florida Insurance Guaranty Association or by an eligible surplus lines insurer that has a "superior," "excellent," "exceptional," or equivalent rating by a rating agency acceptable to the Office of Insurance Regulation.

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

The bill provides that a TNC is not deemed to control, direct, or manage the personal vehicles or TNC drivers who connect to the TNC's digital network. This declaration may minimize a TNC's exposure to lawsuits based on the negligence of its drivers.

The bill provides that the Financial Services Commission may adopt rules to administer the provisions of the bill.

This bill takes effect July 1, 2017.

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

This bill preempts and supersedes local ordinances, but the bill does not appear to impose a mandate on a city or county.

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 imposes insurance requirements on TNCs which do not currently exist in law. The cost of complying with insurance requirements is not known. If the cost of insurance mandated by the bill is significant, the bill may have a negative effect on the businesses that are unable to absorb the costs or pass the costs onto their customers.

C. Government Sector Impact:

The bill preempts local ordinances that address transportation network companies (TNC). The preemption clause provides that TNC insurance requirements are governed exclusively by the bill and any rules adopted by the Financial Services Commission. Although rules may need to be adopted, the Department of Financial Services and the Office of Insurance Regulation do not expect a fiscal impact from the provisions of the bill.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 316.066 of the Florida Statutes.

This bill creates section 627.748 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 February 9, 2016:

¹⁸ Department of Financial Services, *Fiscal Impact Statement* (Jan. 11, 2016); Office of Insurance Regulation, *2016 Legislative Bill Analysis* (Jan. 15, 2016).

The CS requires the TNC to provide, through electronic notice, a statement to TNC drivers:

- That it is illegal for a TNC driver to solicit or accept a ride if the ride is not arranged through the TNC's digital network; and
- That if a TNC driver provides a ride not arranged through the TNC network, the ride is not covered by the TNC driver's or the TNC's insurance policy.

CS by Banking and Insurance on January 19, 2016:

The CS changes the required insurance requirements to \$125,000 for death and bodily injury per person, \$250,000 for death and bodily injury per incident, \$50,000 for property damage, and coverage that meets the requirements of the Florida No-Fault Law for time periods in which the driver is logged on to the TNC's digital network and for time periods in which the driver is providing a prearranged ride. At all other times, the coverage requirements are \$25,000 for death and bodily injury per person, \$50,000 for death and bodily injury per incident, \$10,000 for property damage, and coverage that meets the requirements of the Florida No-Fault Law.

The CS provides that information about whether a driver is logged on a digital network must be included in crash reports submitted to the Department of Highway Safety and Motor Vehicles by law enforcement officers.

The CS removed a reference to A.M. Best Company and gave the Office of Insurance Regulation the discretion to rely on other rating agencies to determine financial strength ratings of surplus lines insurers.

B. Amendments:

None.



791940

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/11/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment

Delete lines 168 - 188
and insert:

(b) The following automobile insurance requirements apply while a driver is logged on to the transportation network company's digital network and is available to receive transportation requests but is not engaged in a prearranged ride:

1. Primary automobile liability insurance in the amount of at least \$50,000 for death and bodily injury per person,



791940

\$100,000 for death and bodily injury per incident, and \$25,000
for property damage; and

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

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

1. Primary automobile liability insurance that provides at
least \$1 million for death, bodily injury, and property damage;
and

2. Personal injury protection benefits that provide the
minimum coverage amounts where required of a limousine under ss.
627.730-627.7405.



221222

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/11/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment to Amendment (791940)

Delete lines 7 - 8
and insert:
company's digital network but is not engaged in a prearranged



540696

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete line 306
and insert:

(5) A transportation network company shall provide an electronic notice to transportation network company drivers which states that it is illegal for a transportation network company driver to solicit or accept a ride if the ride is not arranged through a transportation network company's digital network, and that such rides may not be covered by a transportation network company driver's or a transportation



540696

network company's insurance policy.

(6) The Financial Services Commission may adopt rules to

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

And the title is amended as follows:

Delete line 43

and insert:

that connect to its digital network; requiring a
transportation network company to provide a specified
notice to transportation network company drivers;
authorizing the

By the Committee on Banking and Insurance; and Senator Simmons

597-02311-16

20161118c1

1 A bill to be entitled
 2 An act relating to transportation network company
 3 insurance; amending s. 316.066, F.S.; requiring a
 4 statement in certain crash reports as to whether any
 5 driver at the time of the accident was providing a
 6 prearranged ride or logged into a digital network of a
 7 transportation network company; providing a criminal
 8 penalty for a driver who provides a false statement to
 9 a law enforcement officer in connection with certain
 10 information; creating s. 627.748, F.S.; providing
 11 legislative intent; defining terms; requiring a
 12 transportation network company driver, or the
 13 transportation network company on the driver's behalf,
 14 to maintain certain primary automobile insurance under
 15 certain circumstances; providing coverage requirements
 16 under specified circumstances; requiring a
 17 transportation network company to maintain certain
 18 insurance and obligate the insurer to defend a certain
 19 claim if specified insurance by the driver lapses or
 20 does not provide the required coverage; providing that
 21 certain coverage may not be contingent on a claim
 22 denial; specifying requirements for insurers who
 23 provide certain automobile insurance; requiring a
 24 transportation network company driver to carry proof
 25 of certain insurance coverage at all times during his
 26 or her use of a personal vehicle and to disclose
 27 specified information in the event of an accident;
 28 requiring a transportation network company to make
 29 certain disclosures to transportation network company
 30 drivers; authorizing insurers to exclude certain
 31 coverages during specified periods for policies issued
 32 to transportation network company drivers for personal

Page 1 of 11

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

597-02311-16

20161118c1

33 vehicles; requiring a transportation network company
 34 and certain insurers to cooperate during a claims
 35 investigation to facilitate the exchange of specified
 36 information; requiring a transportation network
 37 company to cause its insurer to issue payments for
 38 claims directly to specified entities under certain
 39 circumstances; providing that unless agreed to in a
 40 written contract, a transportation network company is
 41 not deemed to control, direct, or manage the personal
 42 vehicles or transportation network company drivers
 43 that connect to its digital network; authorizing the
 44 Financial Services Commission to adopt rules;
 45 providing for preemption of local laws and regulations
 46 pertaining to transportation network company
 47 insurance; providing an effective date.

48
 49 Be It Enacted by the Legislature of the State of Florida:

50
 51 Section 1. Paragraphs (b) and (c) of subsection (1) of
 52 section 316.066, Florida Statutes, are amended, and paragraph
 53 (e) is added to subsection (3) of that section, to read:
 54 316.066 Written reports of crashes.—
 55 (1)
 56 (b) The Florida Traffic Crash Report, Long Form must
 57 include:
 58 1. The date, time, and location of the crash.
 59 2. A description of the vehicles involved.
 60 3. The names and addresses of the parties involved,
 61 including all drivers and passengers, and the identification of

Page 2 of 11

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

597-02311-16

20161118c1

the vehicle in which each was a driver or a passenger.

4. The names and addresses of witnesses.

5. The name, badge number, and law enforcement agency of the officer investigating the crash.

6. The names of the insurance companies for the respective parties involved in the crash.

7. A statement as to whether, at the time of the accident, any driver was providing a prearranged ride or logged into a digital network of a transportation network company, as those terms are defined in s. 627.748.

(c) In any crash for which a Florida Traffic Crash Report, Long Form is not required by this section and which occurs on the public roadways of this state, the law enforcement officer shall complete a short-form crash report or provide a driver exchange-of-information form, to be completed by all drivers and passengers involved in the crash, which requires the identification of each vehicle that the drivers and passengers were in. The short-form report must include:

1. The date, time, and location of the crash.

2. A description of the vehicles involved.

3. The names and addresses of the parties involved, including all drivers and passengers, and the identification of the vehicle in which each was a driver or a passenger.

4. The names and addresses of witnesses.

5. The name, badge number, and law enforcement agency of the officer investigating the crash.

6. The names of the insurance companies for the respective parties involved in the crash.

7. A statement as to whether, at the time of the accident,

597-02311-16

20161118c1

any driver was providing a prearranged ride or logged into a digital network of a transportation network company, as those terms are defined in s. 627.748.

(3)

(e) Any driver who provides a false statement to a law enforcement officer in connection with the information that is required to be reported under subparagraph (1)(b)7. or subparagraph (1)(c)7. commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Section 627.748, Florida Statutes, is created to read:

627.748 Transportation network company insurance.—

(1) It is the intent of the Legislature to provide for statewide uniformity of laws governing the insurance requirements imposed on transportation network companies and transportation network company drivers.

(2) For purposes of this section, the term:

(a) "Digital network" means an online application, software, website, or system offered or used by a transportation network company which enables the prearrangement of rides with transportation network company drivers.

(b) "Personal vehicle" means a vehicle, however titled, which is used by a transportation network company driver in connection with providing transportation network company service and which:

1. Is owned, leased, or otherwise authorized for use by the transportation network company driver; and

2. Is not a taxi, jitney, limousine, or for-hire vehicle as that term is defined in s. 320.01(15).

597-02311-16

20161118c1

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

(c) "Prearranged ride" means the provision of transportation by a driver to or on behalf of a rider, beginning when a driver accepts a request for a ride by a rider through a digital network controlled by a transportation network company, continuing while the driver transports the rider, and ending when the last rider departs from the personal vehicle. A prearranged ride does not include transportation provided using a taxi, jitney, limousine, for-hire vehicle as defined in s. 320.01(15), or street hail service.

(d) "Transportation network company" or "company" means a corporation, partnership, sole proprietorship, or other entity operating in this state which uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides. A transportation network company does not include an individual, corporation, partnership, sole proprietorship, or other entity arranging nonemergency medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization.

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

1. Receives connections to potential riders and related services from a transportation network company in exchange for any form of compensation, including payment of a fee to the transportation network company; and
2. Uses a personal vehicle to offer or provide a

597-02311-16

20161118c1

prearranged ride to riders upon connection through a digital network controlled by a transportation network company in return for compensation, including payment of a fee.

(f) "Transportation network company rider" or "rider" means an individual who directly or indirectly uses a transportation network company's digital network to connect with a transportation network company driver who provides transportation services to the individual in the driver's personal vehicle.

(3) (a) A transportation network company driver, or a transportation network company on the driver's behalf, shall maintain primary automobile insurance that recognizes that the driver is a transportation network company driver or that the driver otherwise uses a personal vehicle to transport riders for compensation. Such primary automobile insurance must cover the driver as required under this section, including while the driver is logged on to the transportation network company's digital network but is not engaged in a prearranged ride, and while the driver is engaged in a prearranged ride.

(b) The following automobile insurance coverage requirements apply while a transportation network company driver is logged on to the transportation network company's digital network but is not engaged in a prearranged ride, and while the driver is engaged in a prearranged ride:

1. Primary automobile liability insurance coverage of at least \$125,000 for death and bodily injury per person, \$250,000 for death and bodily injury per incident, and \$50,000 for property damage; and
2. Primary automobile insurance coverage that meets the

597-02311-16

20161118c1

178 minimum requirements under ss. 627.730-627.7405.

179 (c) At all times other than the periods specified in
 180 paragraph (b), the following automobile insurance requirements
 181 apply if a driver has an agreement with a transportation network
 182 company to provide any form of transportation service to riders:

183 1. Primary automobile liability insurance coverage of at
 184 least \$25,000 for death and bodily injury per person, \$50,000
 185 for death and bodily injury per incident, and \$10,000 for
 186 property damage; and

187 2. Primary automobile insurance that provides the minimum
 188 requirements under ss. 627.730-627.7405.

189 (d) The coverage requirements of paragraphs (b) and (c) may
 190 be satisfied by automobile insurance maintained by the
 191 transportation network company driver, by the transportation
 192 network company, or by a combination of both.

193 (e) If the insurance maintained by a driver under paragraph
 194 (b) lapses or does not provide the required coverage, the
 195 transportation network company must maintain insurance that
 196 provides the coverage required by this section beginning with
 197 the first dollar of a claim and must obligate the insurer to
 198 defend such a claim in this state.

199 (f) Coverage under an automobile insurance policy
 200 maintained by the transportation network company may not be
 201 contingent on a denial of a claim under the driver's personal
 202 automobile liability insurance policy, nor shall a personal
 203 automobile insurer be required to first deny a claim.

204 (g) Automobile insurance required by this section must be
 205 provided by an insurer authorized to do business in this state
 206 which is a member of the Florida Insurance Guaranty Association

597-02311-16

20161118c1

207 or an eligible surplus lines insurer that has a superior, an
 208 excellent, an exceptional, or an equivalent financial strength
 209 rating by a rating agency acceptable to the office.

210 (h) Automobile insurance that satisfies the requirements of
 211 this section is deemed to satisfy the financial responsibility
 212 requirements imposed under chapter 324 and the security
 213 requirements imposed under s. 627.733. However, the provision of
 214 transportation to persons for compensation that is not covered
 215 under this section subjects a vehicle and driver to the
 216 requirements of chapters 320 and 324.

217 (i) A transportation network company driver shall carry
 218 proof of insurance coverage that meets the requirements of
 219 paragraphs (b) and (c) at all times during his or her use of a
 220 personal vehicle. In the event of an accident:

221 1. The driver shall provide the insurance coverage
 222 information to the directly involved parties, automobile
 223 insurers, and investigating law enforcement officers. Proof of
 224 financial responsibility may be provided through a digital
 225 telephone application under s. 316.646 which is controlled by a
 226 transportation network company.

227 2. Upon request, the driver shall disclose to the directly
 228 involved parties, automobile insurers, and investigating law
 229 enforcement officers whether the driver, at the time of the
 230 accident, was logged on to the transportation network company's
 231 digital network or engaged in a prearranged ride.

232 (j) Before a driver may accept a request for a prearranged
 233 ride on the transportation network company's digital network,
 234 the transportation network company shall disclose in writing to
 235 each transportation network company driver:

597-02311-16

20161118c1

1. The type and limits of insurance coverage provided by the transportation network company;

2. The type of automobile insurance coverage that the driver must maintain while the driver uses a personal vehicle in connection with the transportation network company; and

3. That the provision of rides for compensation, whether prearranged or otherwise, which is not covered by this section subjects the driver to the coverage requirements imposed by s. 324.032(1) and that failure to meet such limits subjects the driver to penalties provided in s. 324.221, up to and including a misdemeanor of the second degree.

(k) An insurer that provides personal automobile insurance policies under this part may exclude from coverage under a policy issued to an owner or operator of a personal vehicle any loss or injury that occurs while a driver is logged on to a transportation network company's digital network or while a driver is engaged in a prearranged ride. Such right to exclude coverage applies to any coverage under an automobile insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property damage.

2. Personal injury protection coverage.

3. Uninsured and underinsured motorist coverage.

4. Medical payments coverage.

5. Comprehensive physical damage coverage.

6. Collision physical damage coverage.

(l) The exclusions authorized under paragraph (k) apply notwithstanding any financial responsibility requirements under chapter 324. This section does not require that a personal

597-02311-16

20161118c1

automobile insurance policy provide coverage while the driver is logged on to the transportation network company's digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a personal vehicle to transport riders for compensation. However, an insurer may elect to provide coverage by contract or endorsement for such driver's personal vehicle used for such purposes.

(m) An insurer that excludes coverage as authorized under paragraph (k):

1. Does not have a duty to defend or indemnify an excluded claim. This section does not invalidate or limit an exclusion contained in a policy, including any policy in use or approved for use in this state before July 1, 2017.

2. Has a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of this section at the time of loss, if the insurer defends or indemnifies a claim against a driver which is excluded under the terms of its policy.

(n) In a claims investigation, a transportation network company and any insurer providing coverage for a claim under this section shall cooperate to facilitate the exchange of relevant information with directly involved parties and insurers of the transportation network company driver, if applicable. Such information must provide:

1. The precise times that a driver logged on and off the transportation network company's digital network during the 12-hour period immediately before and immediately after the accident.

2. A clear description of the coverage, any exclusions, and

597-02311-16

20161118c1

the limits provided under automobile insurance maintained under
this section.

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

(4) Unless agreed to in a written contract, a
transportation network company is not deemed to control, direct,
or manage the personal vehicles that, or the transportation
network company drivers who, connect to its digital network.

(5) The Financial Services Commission may adopt rules to
administer this section.

Section 3. PREEMPTION.—Notwithstanding any other law,
transportation network company insurance requirements are
governed exclusively by this section and any rules adopted by
the Financial Services Commission to administer this section. A
political subdivision of this state may not adopt any ordinance
imposing insurance requirements on a transportation network
company or driver. All such ordinances, whether existing or
proposed, are preempted and superseded by general law.

Section 4. This act shall take effect January 1, 2017.



221222

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/11/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment to Amendment (791940)

Delete lines 7 - 8
and insert:
company's digital network but is not engaged in a prearranged



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 20, 2016

I respectfully request that **Senate Bill 1118**, relating to Transportation Network Companies, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons", is written over a horizontal line.

Senator David Simmons
Florida Senate, District 10

THE FLORIDA SENATE

APPEARANCE RECORD

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

FEB 9TH

Meeting Date

1118

Bill Number (if applicable)

791940

Amendment Barcode (if applicable)

Topic SB 1118

Name CHRISTOPHER EMANUEL

Job Title Policy Director

Address 1310 S BRUNOWICH ST

Street

Phone 933 1223

TLH

City

FL

State

32301

Zip

Email CSEMANUEL@FLORIDA

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA CHAIRMAN OF POWERFUL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

1118

Bill Number (if applicable)

791940

Amendment Barcode (if applicable)

Topic TNC Insurance

Name Elynn Bogdanoff

Job Title lobbyist

Address 908 S Andrew Ave

Street

FL Lauderdale

City

FL

State

33316

Zip

Phone 954 767 8800

Email elynn.bogdanoff@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing Florida Taxi 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)

2/21/16
Meeting Date

1118
Bill Number (if applicable)

Topic TNC

791940
Amendment Barcode (if applicable)

Name Louis Minardi

Job Title President

Address 4413 N. Hesperides St
Street

Phone 83 9 77546

Tampa FL 33611
City State Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Taxicab 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)

2/9/16

Meeting Date

1118

Bill Number (if applicable)

791940

Amendment Barcode (if applicable)

Topic TMC Insurance

Name BRAD NAIL

Job Title RISK MANAGER

Address 1717 Rhode Island Ave NW, 4th Floor
Street

Phone (617) 686-5071

Washington
City

DC
State

20036
Zip

Email brad.nail@uber.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Uber

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/8/16

Meeting Date

SB 1118

Bill Number (if applicable)

Topic SB 1118

Amendment Barcode (if applicable)

Name TAM ALBORO

Job Title PUBLIC POLICY MANAGER / LYFT

Address

Street

Phone 770-595-0190

City

State

Zip

Email TALBORO@LYFT.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing LYFT

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Phone

Street

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

1118

Bill Number (if applicable)

Topic TNC Insurance

Amendment Barcode (if applicable)

Name Daphne Sainvil

Job Title Legislative Coordinator

Address 115 S. Andrews Ave, Rm 426

Phone 954-253-7320

Street

Ft. Lauderdale FL

33301

City

State

Zip

Email dsainvil@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
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 1298

INTRODUCER: Senator Brandes

SUBJECT: Bad Faith Assertions of Patent Infringement

DATE: February 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maida	Cibula	JU	Pre-meeting
2.			RI	
3.			FP	

I. Summary:

Senate Bill 1298 amends the Patent Troll Prevention Act by revising the criteria by which a demand letter is deemed to be a bad faith assertion of patent infringement, removing any private cause of action under the Act, granting the Attorney General with the exclusive authority to bring an action to enjoin or punish “patent troll” violations, and making universities and their technology affiliates subject to actions for bad faith assertions of patent infringement.

II. Present Situation:

Patent Law and Federal Preemption

The U.S. Constitution authorizes Congress “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to ... Inventors the exclusive Right to their ... Discoveries.”¹ Federal patent laws grant patentees a limited monopoly in the form of a property right,² providing inventors with a “legal right, for a limited time, to exclude others from using, selling, offering to sell, or manufacturing the invention.”³ In order to promote progress as set forth by the U.S. Constitution, patent laws require inventors to describe their work in “full, clear, concise, and exact terms.”⁴ This strikes a “delicate balance” whereby inventors may rely on the aegis of the law while the public is “encouraged to pursue innovations, creations, and new ideas beyond the inventor’s exclusive rights.”⁵

¹ U.S. Const. art. I, s. 8, cl. 8.

² See *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2124 (2014); see also 35 U.S.C. s. 261 (2012).

³ *Litton Systems, Inc. v. Honeywell, Inc.*, 145 F.3d 1472, 1474 (Fed. Cir. 1998).

⁴ 35 U.S.C. s. 112 (2012).

⁵ See *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722, 731-2 (2002) (citing *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 150 (1989)); see also *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, 230-1 (1964) (“Thus the patent system is one in which uniform federal standards are carefully used to promote invention while at the same time preserving free competition.”).

As patents are creatures of the U.S. Constitution and acts of Congress, most issues related to patents reside exclusively within the province of the federal government. For example, federal district courts have original jurisdiction over any civil actions “arising under any Act of Congress relating to patents,” and “[n]o State court shall have jurisdiction over any claim for relief arising under any Act of Congress”⁶ Interpreting 28 U.S.C. section 1338(a), the Supreme Court held that cases “arising under” federal patent law require a plaintiff to “set up some right, title or interest under the patent laws, or at least make it appear that some right or privilege will be defeated by one construction, or sustained by the opposite construction of those laws.”⁷ As such, if a party brings a lawsuit alleging patent infringement, a federal court—and only a federal court—would possess subject matter jurisdiction. Even cases technically arising under state law may still be under the exclusive ambit of federal courts.⁸ As articulated by the U.S. Supreme Court, federal jurisdiction over a state law claim will lie of a federal issue is: 1) necessarily raised, 2) actually disputed, 3) substantial, and 4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.⁹ Nevertheless, some patent-related actions may properly remain in state court.¹⁰

Whether federal law preempts state laws prohibiting a bad faith assertion of patent infringement is an open question. Although a patent grant is within the exclusive purview of federal law,¹¹ federal patent law does not “occupy the field.”¹² Rather, patent law is subject to conflict preemption.¹³ As such, there may be room for states to regulate the improper or unfair use of patents. This includes state laws creating tort liability pursuant to “objectively baseless” patent infringement claims.¹⁴

Patent Trolls

“Patent assertion entities,” often referred to more pejoratively as “patent trolls,” make no products themselves but instead file dubious patent infringement lawsuits purely to extract money from commercially-productive companies.¹⁵ Having purchased a patent—rather than developing a patentable product—these “patent trolls” assert their newly-acquired patents against

⁶ 28 U.S.C. s. 1338(a) (2012); *see also* *Biotechnology Industry Organization v. District of Columbia*, 496 F.3d 1362, 1367 (Fed. Cir. 2007) (“This court has exclusive jurisdiction to review cases which arise under the patent laws.”) (citing *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 807 (1988)).

⁷ *Christianson v. Colt Industries Operating Corp.*, 486 U.S. at 807-8.

⁸ *See Gunn v. Minton*, 133 S. Ct. 1059, 1064-5 (2013).

⁹ *Id.* at 1065.

¹⁰ *See Milprint, Inc. v. Curwood, Inc.*, 422 F. Supp. 579 (E.D. Wis. 1976) *aff’d*, 562 F. 2d 418 (7th Cir. 1977) (holding that a contract action based upon patent license agreements and involving defense of patent noninfringement or invalidity may be brought and maintained in state court).

¹¹ *Sukumar v. Nautilus, Inc.*, 829 F. Supp. 2d 386, 394 (W.D. Va. 2011) (citing *Abbott Labs v. Brennan*, 952 F.2d 1346, 1355 (Fed. Cir. 1991)).

¹² *See Aronson v. Quick Point Pencil Co.*, 440 U.S. 257, 262 (1979) (“State law is not displaced merely because the contract relates to intellectual property which may or may not be patentable; the states are free to regulate the use of such intellectual property in any manner not inconsistent with federal law.”) (citing *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 479 (1974)). Note that federal law occupies the field if one can reasonably infer that Congress left no room to supplement it. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992).

¹³ *Sukumar v. Nautilus*, 829 F. Supp. 2d at 396-7 (“Where it is physically impossible to comply with both federal and state law, it is evident that federal law must prevail.”).

¹⁴ *Globetrotter Software, Inc. v. Elan Comptuer Group, Inc.*, 362 F.3d 1367, 1377 (Fed. Cir. 2004)

¹⁵ Eric Rogers, Young Jeon, *Inhibiting Patent Trolling: A New Approach for Applying Rule 11*, 12 NW. J. TECH. & INTELL. PROP. 291, 294 (2014).

companies that use the patented technology in their business operations.¹⁶ Patent trolls typically function by sending notices of alleged patent infringement to large numbers of businesses threatening litigation if those businesses refuse to pay a licensing fee.¹⁷ Even if a targeted business believes the patent infringement claim lacks merit, it often chooses not to litigate.¹⁸ Justifying unpredictable litigation costs can be difficult, so targets often eliminate the threat by paying the patent troll a sum far less than the cost of successfully defending the lawsuit.¹⁹ In 2011, patent troll suits cost American technology companies over \$29 billion.²⁰ Much of this burden falls on small and medium-sized companies.²¹

Patent Troll Prevention Act

Recognizing that the “frivolous filing of bad faith patent claims ... have led to technical, complex, and especially expensive litigation,”²² the Florida Legislature passed the Patent Troll Prevention Act (“Act”), Part VII of ch. 501, F.S.²³ Under this law, a person may not make a bad faith assertion of patent infringement.²⁴ In determining whether an assertion of patent infringement violates the act, a court may consider a number of factors, including, but not limited to, whether:

- The factual allegations concerning the specific areas in which the products litigated are actually covered by the patent;
- The demand letter requests payment of a license fee or response within an unreasonable period;
- The demand offers to license the patent for an amount that is not based on a reasonable estimate the value of the license;
- The claim or assertion of patent infringement is unenforceable, and the claimant knew, or should have known, that the claim was unenforceable;
- The claim of patent infringement is deceptive;
- The claimant has previously filed, or threatened to file, one or more lawsuits based upon the same or similar claim of patent infringement; and
- Any other factor the court considers relevant.²⁵

Alternatively, the Act provides statutorily-defined factors evincing the absence of bad faith, including whether:

- The demand letter contains required identifying and contact information;
- The demand provides required information within a reasonable period;

¹⁶ Thomas A. Hemphill, *There Paradox of Patent Assertion Entities*, American Enterprise Institute (August 12, 2013), available at <http://www.aei.org/publication/the-paradox-of-patent-assertion-entities/> (last accessed February 5, 2016).

¹⁷ See Paul R. Gugliuzza, *Patent Trolls and Preemption*, Boston University School of Law Public Law & Legal Theory Paper No. 15-03, 1-4 (Jan. 20, 2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2539280 (last accessed February 5, 2016).

¹⁸ Eric Rogers, Young Jeon, *supra*, at 299.

¹⁹ *Id.*

²⁰ James E. Bessen & Michael J. Meurer, *The Direct Costs from NPE Disputes*, 99 CORNELL L. REV. 387, 412-13 (2014).

²¹ James E. Bessen & Michael J. Meurer, *supra*, at 388. 398.

²² Section 501.991(2), F.S.

²³ Sections 7-13, Ch. 2015-92, Laws of Fla, codified as sections 501.991-997, F.S.

²⁴ Section 501.993, F.S.

²⁵ Section 501.993(1), F.S.

- The claimant made a good faith effort to establish that the target of the lawsuit has actually infringed the patent and negotiated an appropriate remedy;
- The claimant made a substantial investment in the use of the patented invention or discovery in a product or sale of a product or item covered by the patent;
- The claimant is the inventor or joint inventor of the patented invention or discovery, or alternatively the original assignee; or
- Any other factor the court finds relevant.²⁶

The target of a bad faith patent infringement action may request a protective order requiring the initial claimant to post a bond in an amount equal to the less of \$250,000 or a good faith estimate of the target's expense of litigation, including attorney fees.²⁷

The Act creates a private right of action, which may be brought in a court of competent jurisdiction. A court may award equitable relief, damages, costs and fees, and punitive damages of either 1) \$50,000, or 2) three times the total damages, costs, and fees.²⁸

Lastly, institutions of higher education, technology transfer organizations owned by institutions of higher education, and other patent infringement assertions arising under 35 U.S.C. s. 271(e)(2)²⁹ or 42 U.S.C. s. 262³⁰ are exempt from liability under the Act.

Other State Laws

As of February 1, 2016, 27 states—including Florida—have passed statutes regulating bad faith patent infringement assertions.³¹ Many of these new laws are modeled after a statute first adopted in Vermont,³² which itself prohibits bad faith assertions of patent infringement.³³ Other states have outlawed assertions that “confirm false, misleading, or deceptive information,”³⁴ or have defined specific acts as illegal, such as making infringement assertions that “lack a reasonable basis in fact or law” or failing to provide, in a letter alleging patent infringement, “factual allegations” about how, exactly, the recipient infringes the patent.³⁵ The Vermont statute is currently facing a legal challenge based, in part, on federal preemption. A pending petition seeks a writ of certiorari with the United States Supreme Court.³⁶

²⁶ *Id.* at subsection (2).

²⁷ Section 501.994, F.S.

²⁸ Section 501.995, F.S.

²⁹ 35 U.S.C. s. 271(e) relates to the use, offering for sale, or sale of veterinary biological products.

³⁰ 42 U.S.C. s. 262 regulates biological products regarding the prevention, treatment, or cure of a disease or condition of human beings.

³¹ Patent Progress' Guide to State Patent Legislation (Feb. 1, 2016), available at <http://www.patentprogress.org/patent-progress-legislation-guides/patent-progresss-guide-state-patent-legislation/> (last accessed February 5, 2016); see also Utah Code s. 78B-6-1901; Wash. Rev. Code. s. 19.350.900; and Va. Code. s. 59.1-215.2.

³² Gugliuzza, *supra* note 17, at 1582 n. 18.

³³ Vt. Stat. tit. 9, s. 4197(a) (2014).

³⁴ See, e.g., Wis. Stat. s. 100.197(2)(b) (2014).

³⁵ See, e.g., Tenn. Code. s. 29-10-102(a)(3) (2014); Gugliuzza, *supra* note 17, at 1582-83.

³⁶ *Vermont v. MPHJ Technology Investments, LLC*, 803 F.3d 635 (Fed. Cir. 2015) (affirming a lower court decision, holding, in part, that the company's counterclaim that federal law preempts the Vermont statute arose under federal patent law).

III. Effect of Proposed Changes:

SB 1298 amends the Patent Troll Prevention Act in several ways. Most significantly, it removes the current criteria necessary to show a bad faith assertion of a patent infringement and replaces it with an “objectively baseless” standard, among other things. More specifically, the bill prohibits patent infringement demand letters that:

- Falsely assert that the sender has filed a lawsuit in connection with the claim;
- Assert a claim that is objectively baseless due to any of the following:
 - The sender, or a person whom the sender represents, lacks a current right to license the patent to, or enforce the patent against, the target;
 - The patent is invalid or unenforceable; or
 - The infringing activity occurred after the expiration of the patent.
- Likely materially mislead a reasonable person because it lacks 1) the identity of the person asserting the claim, 2) the patent alleged to have been infringed, and 3) at least one product, service, or technology of the target alleged to infringe the patent, or at least one activity of the end user which is alleged to infringe the patent.

The bill repeals ss. 501.994 and 501.995, F.S. This eliminates the current private cause of action under the Act and further eliminates the award of punitive damages or a protective order for a prevailing target. Moreover, plaintiffs are no longer required to post a bond in an amount equal to the lesser of \$250,000 or a good faith estimate of the target’s expense of litigation. The repeal of the bond requirement may allow smaller companies previously lacking sufficient bond-paying-capital to initiate lawsuits based upon patent infringement.

In lieu of private causes of action, the bill authorizes the Attorney General, with reasonable cause to believe that a bad faith patent infringement claim has been made, to bring an action seeking to enjoin the person from engaging in that act. The bill authorizes the Attorney General to seek, among other things, civil penalties, court costs, and restitution.

Finally, the bill repeals section 501.997, F.S. As such, universities and technology transfer organizations owned by or affiliated with a university are subject to enforcement actions for a bad faith assertion of patent infringement.

The bill takes effect on July 1, 2016.

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.

D. Other Constitutional Issues:

As stated earlier, federal patent law does not occupy the field. Rather, patent law is subject to conflict preemption. As such, there may be room for states to regulate the improper or unfair use of patents. This includes state laws creating tort liability pursuant to “objectively baseless” patent infringement claims. Because SB 1298 includes “objectively baseless” language in Section 3, it may well survive a preemption challenge.

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

None.

B. Private Sector Impact:

The bill imposes no direct costs to the private sector, but it also eases restrictions on filing patent infringement lawsuits.

C. Government Sector Impact:

Because the bill eliminates the Patent Troll Prevention Act’s private cause of action—giving that authority to the Attorney General—the use of government resources may rise corresponding to actions filed by the Attorney General.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.991, 501.992, 501.993, 501.995, and 501.996.

This bill repeals the following sections of the Florida Statutes: 501.994 and 501.997.

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.



618428

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 501.991, Florida Statutes, is amended to
read:

501.991 Legislative intent; construction.—

(1) The Legislature recognizes that it is preempted from
passing any law that conflicts with federal patent law. However,
the Legislature recognizes that the state is dedicated to
building an entrepreneurial and business-friendly economy where



618428

businesses and consumers alike are protected from abuse and fraud. This includes protection from abusive and bad faith demands and litigation.

(2) Patents encourage research, development, and innovation. Patent holders have a legitimate right to enforce their patents. The Legislature does not wish to interfere with good faith patent litigation or the good faith enforcement of patents. However, the Legislature recognizes a growing issue: the frivolous filing of bad faith patent claims that have led to technical, complex, and especially expensive litigation.

(3) The expense of patent litigation, which may cost millions of dollars, can be a significant burden on companies and small businesses. Not only do bad faith patent infringement claims impose undue burdens on individual businesses, they undermine the state's effort to attract and nurture technological innovations. Funds spent to help avoid the threat of bad faith litigation are no longer available for serving communities through investing in producing new products, helping businesses expand, or hiring new workers. The Legislature wishes to help businesses avoid these costs by encouraging good faith assertions of patent infringement and the expeditious and efficient resolution of patent claims.

(4) This part may not be construed to:

(a) Limit the rights and remedies available to the state or a person under any other law;

(b) Alter or restrict the Attorney General's authority under any other law regarding claims of patent infringement; or

(c) Prohibit a person who owns, or has a right to license or enforce, a patent from:



618428

41 1. Notifying other parties of such person's ownership of,
42 or rights under, the patent;

43 2. Offering the patent to other parties for license or
44 sale;

45 3. Notifying other parties of such parties' infringement of
46 the patent as provided by 35 U.S.C. s. 287; or

47 4. Seeking compensation for past or present infringement
48 of, or license to, the patent.

49 Section 2. Subsections (1) and (3) of section 501.992,
50 Florida Statutes, are amended to read:

51 501.992 Definitions.—As used in this part, the term:

52 (1) "Demand letter" means a ~~letter, e-mail, or other~~
53 written communication, including e-mail, asserting or claiming
54 that a person has engaged in patent infringement.

55 (3) "Target" means a person residing in, incorporated in,
56 or organized under the laws of this state who purchases, rents,
57 leases, or otherwise obtains a product or service in the
58 commercial market which is not for resale in the commercial
59 market ~~and who:~~

60 ~~(a) Has received a demand letter or against whom a written~~
61 ~~assertion or allegation of patent infringement has been made; or~~

62 ~~(b) Has been threatened in writing with litigation or~~
63 ~~against whom a lawsuit has been filed alleging patent~~
64 ~~infringement.~~

65 Section 3. Section 501.993, Florida Statutes, is amended to
66 read:

67 501.993 Bad faith assertions of patent infringement.—A
68 person may not send a demand letter to a target which makes ~~make~~
69 a bad faith assertion of patent infringement. A demand letter



618428

70 makes a bad faith assertion of patent infringement if it:

71 (1) Includes a claim that the target, or a person
72 affiliated with the target, has infringed a patent and that the
73 target is legally liable for such infringement; and ~~A court may~~
74 ~~consider the following factors as evidence that a person has~~
75 ~~made a bad faith assertion of patent infringement:~~

76 ~~(a) The demand letter does not contain the following~~
77 ~~information:~~

- 78 ~~1. The patent number;~~
79 ~~2. The name and address of the patent owner and assignee,~~
80 ~~if any; and~~
81 ~~3. Factual allegations concerning the specific areas in~~
82 ~~which the target's products, services, or technology infringe or~~
83 ~~are covered by the claims in the patent.~~

84 ~~(b) Before sending the demand letter, the person failed to~~
85 ~~conduct an analysis comparing the claims in the patent to the~~
86 ~~target's products, services, or technology, or the analysis did~~
87 ~~not identify specific areas in which the target's products,~~
88 ~~services, and technology were covered by the claims of the~~
89 ~~patent.~~

90 ~~(c) The demand letter lacked the information listed under~~
91 ~~paragraph (a), the target requested the information, and the~~
92 ~~person failed to provide the information within a reasonable~~
93 ~~period.~~

94 ~~(d) The demand letter requested payment of a license fee or~~
95 ~~response within an unreasonable period.~~

96 ~~(e) The person offered to license the patent for an amount~~
97 ~~that is not based on a reasonable estimate of the value of the~~
98 ~~license.~~



618428

~~(f) The claim or assertion of patent infringement is unenforceable, and the person knew, or should have known, that the claim or assertion was unenforceable.~~

~~(g) The claim or assertion of patent infringement is deceptive.~~

~~(h) The person, including its subsidiaries or affiliates, has previously filed or threatened to file one or more lawsuits based on the same or a similar claim of patent infringement and:~~

~~1. The threats or lawsuits lacked the information listed under paragraph (a); or~~

~~2. The person sued to enforce the claim of patent infringement and a court found the claim to be meritless.~~

~~(i) Any other factor the court finds relevant.~~

~~(2) Meets one or more of the following criteria A court may consider the following factors as evidence that a person has not made a bad faith assertion of patent infringement:~~

~~(a) The demand letter falsely asserts that the sender has filed a lawsuit in connection with the claim contained the information listed under paragraph (1)(a).~~

~~(b) The demand letter asserts a claim that is objectively baseless due to any of the following:~~

~~1. The sender, or a person whom the sender represents, lacks a current right to license the patent to, or enforce the patent against, the target.~~

~~2. The patent is invalid or unenforceable pursuant to a final judgment or an administrative order.~~

~~3. The infringing activity alleged in the demand letter occurred after the expiration of the patent The demand letter did not contain the information listed under paragraph (1)(a),~~



618428

~~the target requested the information, and the person provided the information within a reasonable period.~~

(c) The demand letter is likely to materially mislead a reasonable person because it does not contain sufficient information to inform the target of all of the following:

1. The identity of the person asserting the claim, including the name and address of such person.

2. The patent alleged to have been infringed, including the patent number of such patent.

3. At least one product, service, or technology of the target alleged to infringe the patent, or at least one activity of the target which is alleged to infringe the patent ~~The person engaged in a good faith effort to establish that the target has infringed the patent and negotiated an appropriate remedy.~~

~~(d) The person made a substantial investment in the use of the patented invention or discovery or in a product or sale of a product or item covered by the patent.~~

~~(e) The person is the inventor or joint inventor of the patented invention or discovery, or in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventors, is the original assignee.~~

~~(f) The person has:~~

~~1. Demonstrated good faith business practices in previous efforts to enforce the patent, or a substantially similar patent; or~~

~~2. Successfully enforced the patent, or a substantially similar patent, through litigation.~~

~~(g) Any other factor the court finds relevant.~~

Section 4. Section 501.994, Florida Statutes, is repealed.



618428

Section 5. Section 501.995, Florida Statutes, is amended to read:

501.995 Private right of action.—A person aggrieved by a violation of this part may bring an action in a court of competent jurisdiction. A court may award the following remedies to a prevailing plaintiff in an action brought pursuant to this section:

- (1) Equitable relief;
- (2) Actual damages;
- (3) Costs and fees, including reasonable attorney fees; and
- (4) Punitive damages in an amount not to exceed \$75,000.

However, such punitive damages may only be awarded if the court determines that the person asserting the patent infringement claim has repeatedly violated this chapter ~~Punitive damages in an amount equal to \$50,000 or three times the total damages, costs, and fees, whichever is greater.~~

Section 6. Section 501.997, Florida Statutes, is repealed.

Section 7. This act shall take effect upon becoming law.

===== 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 bad faith assertions of patent infringement; amending s. 501.991, F.S.; providing for construction; amending s. 501.992, F.S.; revising definitions; amending s. 501.993, F.S.; prohibiting a person from sending a demand letter to a target which



618428

186 makes a bad faith assertion of patent infringement;
187 specifying what constitutes such a demand letter;
188 repealing s. 501.994, F.S., relating to the
189 requirement that a plaintiff post a specified bond in
190 certain circumstances; amending s. 501.995, F.S.;
191 revising provisions authorizing the bringing of
192 actions and specified remedies under the Patent Troll
193 Prevention Act; repealing s. 501.997, F.S., relating
194 to an exemption for institutions of higher learning;
195 providing an effective date.



632174

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment to Amendment (618428) (with title amendment)

Delete line 173.

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

And the title is amended as follows:

Delete lines 193 - 194

and insert:

Prevention Act;

By Senator Brandes

22-01205A-16

20161298__

A bill to be entitled

An act relating to bad faith assertions of patent infringement; amending s. 501.991, F.S.; providing for construction; amending s. 501.992, F.S.; deleting and revising definitions; amending s. 501.993, F.S.; prohibiting a person from sending a demand letter to a target which makes a bad faith assertion of patent infringement; specifying what constitutes such a demand letter; repealing s. 501.994, F.S., relating to the requirement that a plaintiff post a specified bond in certain circumstances; amending s. 501.995, F.S.; specifying that the Patent Troll Prevention Act does not create a private right of action; deleting provisions authorizing the bringing of actions and specified remedies; amending s. 501.996, F.S.; providing for enforcement by the Attorney General; specifying that the Attorney General may seek certain civil relief; deleting a provision stating that a violation is an unfair or deceptive trade practice under ch. 501, F.S.; repealing s. 501.997, F.S., relating to an exemption for institutions of higher learning; providing an effective date.

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

Section 1. Section 501.991, Florida Statutes, is amended to read:

501.991 Legislative intent; construction.—

(1) The Legislature recognizes that it is preempted from passing any law that conflicts with federal patent law. However, the Legislature recognizes that the state is dedicated to building an entrepreneurial and business-friendly economy where

22-01205A-16

20161298__

businesses and consumers alike are protected from abuse and fraud. This includes protection from abusive and bad faith demands and litigation.

(2) Patents encourage research, development, and innovation. Patent holders have a legitimate right to enforce their patents. The Legislature does not wish to interfere with good faith patent litigation or the good faith enforcement of patents. However, the Legislature recognizes a growing issue: the frivolous filing of bad faith patent claims that have led to technical, complex, and especially expensive litigation.

(3) The expense of patent litigation, which may cost millions of dollars, can be a significant burden on companies and small businesses. Not only do bad faith patent infringement claims impose undue burdens on individual businesses, they undermine the state's effort to attract and nurture technological innovations. Funds spent to help avoid the threat of bad faith litigation are no longer available for serving communities through investing in producing new products, helping businesses expand, or hiring new workers. The Legislature wishes to help businesses avoid these costs by encouraging good faith assertions of patent infringement and the expeditious and efficient resolution of patent claims.

(4) This part may not be construed to:

(a) Limit the rights and remedies available to the state or a person under any other law;

(b) Alter or restrict the Attorney General's authority under any other law regarding claims of patent infringement; or

(c) Prohibit a person who owns, or has a right to license or enforce, a patent from:

22-01205A-16

20161298__

62 1. Notifying other parties of such person's ownership of,
 63 or rights under, the patent;

64 2. Offering the patent to other parties for license or
 65 sale;

66 3. Notifying other parties of such parties' infringement of
 67 the patent as provided by 35 U.S.C. s. 287; or

68 4. Seeking compensation for past or present infringement
 69 of, or license to, the patent.

70 Section 2. Subsections (2) and (3) of section 501.992,
 71 Florida Statutes, are amended to read:

72 501.992 Definitions.—As used in this part, the term:

73 ~~(2) "Institution of higher education" means an educational~~
 74 ~~institution as defined in 20 U.S.C. s. 1001(a).~~

75 (2)(3) "Target" means a person residing in, incorporated
 76 in, or organized under the laws of this state who purchases,
 77 rents, leases, or otherwise obtains a product or service in the
 78 commercial market which is not for resale in the commercial
 79 market and who:

80 ~~(a) Has received a demand letter or against whom a written~~
 81 ~~assertion or allegation of patent infringement has been made; or~~

82 ~~(b) Has been threatened in writing with litigation or~~
 83 ~~against whom a lawsuit has been filed alleging patent~~
 84 ~~infringement.~~

85 Section 3. Section 501.993, Florida Statutes, is amended to
 86 read:

87 501.993 Bad faith assertions of patent infringement.—A
 88 person may not send a demand letter to a target which makes make
 89 a bad faith assertion of patent infringement. A demand letter
 90 makes a bad faith assertion of patent infringement if it:

22-01205A-16

20161298__

91 (1) Includes a claim that the target, or a person
 92 affiliated with the target, has infringed a patent and that the
 93 target is legally liable for such infringement; and A court may
 94 consider the following factors as evidence that a person has
 95 made a bad faith assertion of patent infringement.

96 ~~(a) The demand letter does not contain the following~~
 97 ~~information:~~

98 ~~1. The patent number;~~

99 ~~2. The name and address of the patent owner and assignee,~~
 100 ~~if any; and~~

101 ~~3. Factual allegations concerning the specific areas in~~
 102 ~~which the target's products, services, or technology infringe or~~
 103 ~~are covered by the claims in the patent.~~

104 ~~(b) Before sending the demand letter, the person failed to~~
 105 ~~conduct an analysis comparing the claims in the patent to the~~
 106 ~~target's products, services, or technology, or the analysis did~~
 107 ~~not identify specific areas in which the target's products,~~
 108 ~~services, and technology were covered by the claims of the~~
 109 ~~patent.~~

110 ~~(c) The demand letter lacked the information listed under~~
 111 ~~paragraph (a), the target requested the information, and the~~
 112 ~~person failed to provide the information within a reasonable~~
 113 ~~period.~~

114 ~~(d) The demand letter requested payment of a license fee or~~
 115 ~~response within an unreasonable period.~~

116 ~~(e) The person offered to license the patent for an amount~~
 117 ~~that is not based on a reasonable estimate of the value of the~~
 118 ~~license.~~

119 ~~(f) The claim or assertion of patent infringement is~~

22-01205A-16

20161298__

unenforceable, and the person knew, or should have known, that the claim or assertion was unenforceable.

~~(g) The claim or assertion of patent infringement is deceptive.~~

~~(h) The person, including its subsidiaries or affiliates, has previously filed or threatened to file one or more lawsuits based on the same or a similar claim of patent infringement and:~~

~~1. The threats or lawsuits lacked the information listed under paragraph (a); or~~

~~2. The person sued to enforce the claim of patent infringement and a court found the claim to be meritless.~~

~~(i) Any other factor the court finds relevant.~~

(2) Meets one or more of the following criteria A court may consider the following factors as evidence that a person has not made a bad faith assertion of patent infringement:

(a) The demand letter falsely asserts that the sender has filed a lawsuit in connection with the claim contained the information listed under paragraph (1)(a).

(b) The demand letter asserts a claim that is objectively baseless due to any of the following:

1. The sender, or a person whom the sender represents, lacks a current right to license the patent to, or enforce the patent against, the target.

2. The patent is invalid or unenforceable pursuant to a final judgment or an administrative order.

3. The infringing activity alleged in the demand letter occurred after the expiration of the patent ~~The demand letter did not contain the information listed under paragraph (1)(a), the target requested the information, and the person provided~~

22-01205A-16

20161298__

the information within a reasonable period.

(c) The demand letter is likely to materially mislead a reasonable person because it does not contain sufficient information to inform the target of all of the following:

1. The identity of the person asserting the claim.

2. The patent alleged to have been infringed.

3. At least one product, service, or technology of the target alleged to infringe the patent, or at least one activity of the end user which is alleged to infringe the patent The person engaged in a good faith effort to establish that the target has infringed the patent and negotiated an appropriate remedy.

~~(d) The person made a substantial investment in the use of the patented invention or discovery or in a product or sale of a product or item covered by the patent.~~

~~(e) The person is the inventor or joint inventor of the patented invention or discovery, or in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventors, is the original assignee.~~

~~(f) The person has:~~

~~1. Demonstrated good faith business practices in previous efforts to enforce the patent, or a substantially similar patent; or~~

~~2. Successfully enforced the patent, or a substantially similar patent, through litigation.~~

~~(g) Any other factor the court finds relevant.~~

Section 4. Section 501.994, Florida Statutes, is repealed.

Section 5. Section 501.995, Florida Statutes, is amended to read:

22-01205A-16

20161298__

178 501.995 No private right of action.~~This part does not~~
 179 ~~create a private right of action. A person aggrieved by a~~
 180 ~~violation of this part may bring an action in a court of~~
 181 ~~competent jurisdiction. A court may award the following remedies~~
 182 ~~to a prevailing plaintiff in an action brought pursuant to this~~
 183 ~~section:~~
 184 ~~(1) Equitable relief;~~
 185 ~~(2) Damages;~~
 186 ~~(3) Costs and fees, including reasonable attorney fees; and~~
 187 ~~(4) Punitive damages in an amount equal to \$50,000 or three~~
 188 ~~times the total damages, costs, and fees, whichever is greater.~~
 189 Section 6. Section 501.996, Florida Statutes, is amended to
 190 read:
 191 501.996 Enforcement by Attorney General; injunction; civil
 192 penalty.~~Notwithstanding any other provisions of this chapter,~~
 193 if the Attorney General has reasonable cause to believe that a
 194 person is in violation of s. 501.993, he or she may bring an
 195 action to enjoin the person from engaging in the violation,
 196 continuing the violation, or committing any act in furtherance
 197 of the violation. The Attorney General may also seek other
 198 appropriate civil relief, including, but not limited to:
 199 (1) The imposition of a civil penalty of up to \$50,000 for
 200 each violation of s. 501.993;
 201 (2) Court costs, reasonable attorney fees, and reasonable
 202 costs of investigation; and
 203 (3) Restitution to a target for damages, court costs,
 204 attorney fees, and other reasonable expenses related to
 205 defending against the bad faith assertion of patent infringement
 206 ~~A violation of this part is an unfair or deceptive trade~~

Page 7 of 8

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

22-01205A-16

20161298__

207 ~~practice under part II of this chapter.~~
 208 Section 7. Section 501.997, Florida Statutes, is repealed.
 209 Section 8. This act shall take effect July 1, 2016.

Page 8 of 8

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



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 11, 2016

I respectfully request that **Senate Bill #1298**, relating to **Bad Faith Assertions of Patent Infringement**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", is written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

SB 1298

Bill Number (if applicable)

Topic Patent Infringement

Amendment Barcode (if applicable)

Name Jennifer Martin

Job Title Director of Governmental Affairs

Address 3692 Coolidge Ct.

Phone 850-558-1050

Street

TLH

City

FL

State

32311

Zip

Email jennifer.martin@lscu.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Credit Union 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)

7-9-16

Meeting Date

1298

Bill Number (if applicable)

Topic Patent law

Amendment Barcode (if applicable)

Name Stephen Shiver

Job Title Partner

Address 215 S Monroe St

Phone 850 222 8900

Su. La 602 32303

City State Zip

Email ss@cardenaspartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Caterpillar Corporation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16

Meeting Date

5131298

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Woodrow Pollack

Job Title _____

Address 401 E. Jackson St. Suite 2700

Phone 813-273-5000

Street

Tampa

City

FL

State

33602

Zip

Email wpollack@gray-robinson.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Business Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-7-2016

Meeting Date

98
1289

Bill Number (if applicable)

Topic Bad Public Patrol Reform

Amendment Barcode (if applicable)

Name Kim Sanders

Job Title VP Gen. Affairs

Address 1001 Thornhill Rd.

Phone 904-912-9700

Street

Suite 201

City

FL

State

32308

Zip

Email kim.sanders@fla.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1298

Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date

Topic Patent Infringement

Name Carolyn Johnson

Job Title Policy Director

Address 130 S Brundage St

Street

Tallahassee

City

State

Zip

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

1298

Bill Number (if applicable)

Topic Bad Faith Assertions of Patent Infringement Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title Vice President & General Counsel

Address 227 S. Adams St.

Phone 722-4082

Street

Tallahassee

FL

32301

City

State

Zip

Email samantha@frf.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 120

INTRODUCER: Senator Abruzzo and others

SUBJECT: Prohibited Discrimination

DATE: January 25, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Unfavorable
2.			GO	
3.			AGG	
4.			FP	

I. Summary:

SB 120 amends the Florida Civil Rights Act (FCRA) by expressly prohibiting discrimination based on actual or perceived sexual orientation and gender identity or expression. The FCRA currently prohibits discrimination based on race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status. Discrimination is prohibited in the FCRA under current law in the areas of education, employment, housing, and public accommodations. Individuals protected by the FCRA are commonly known as members of a protected class.

Under current law and the bill, the provisions of FCRA governing employment discrimination do not apply to religious organizations. With respect to public accommodations, employment, and public lodging and food service establishments, the bill further states that it does not “limit the free exercise of religion guaranteed by the United States Constitution and the State Constitution.” What specific individuals or activities are protected by the statement, however, are not specified.

Current law prohibits and penalizes discrimination against a person who actually has a protected status. This bill additionally prohibits and penalizes discrimination based on the *perception* that a person belongs to a class protected under the FCRA. This change may significantly expand the population of persons authorized to bring claims of discrimination under the FCRA. However, a claim based on a perception, rather than an actual status, may be more difficult to prove.

II. Present Situation:

Title VII of the Civil Rights Act of 1964¹ and Federal Action

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination based on race, color, religion, national origin, or sex. Title VII applies to employers having 15 or more employees and outlines a number of unlawful employment practices. Title VII makes it unlawful for employers to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on race, color, religion, national origin, or sex.² The status of pregnancy is subsumed as a protected class in the category of sex discrimination. Title VII does not grant sexual orientation or gender identity protected status. Although the Equal Employment Opportunity Commission (EEOC) has produced guidelines stating that Title VII covers sexual orientation, many federal courts decline to interpret sexual orientation as protected under Title VII.³

Employment Non-Discrimination Act (ENDA)

Proposed federal legislation establishing the federal Employment Non-Discrimination Act (ENDA) would prohibit discrimination in hiring and employment on the basis of sexual orientation or gender identity. The Act would have applied to employers who have at least 15 employees. Although the Act was filed in Congress many times since 1994 (with transgender language added in 2009), the bill never passed both houses of Congress.⁴ The Act passed the U.S. Senate in 2013,⁵ but the Act was defeated in a House committee.⁶ The Act would have exempted religious organizations from its provisions regulating employment.⁷

Case Law on Title VII and Sexual Orientation

Despite the lack of the inclusion of sexual orientation and gender identity under Title VII, some courts have interpreted Title VII to provide some protection on other grounds. Still, this interpretation has been infrequent. In 1998, the United States Supreme Court interpreted Title VII as applying to same-sex sexual harassment. In *Oncale v. Sundowner Offshore Services, Inc.*, the Court determined that Title VII's inclusion of sex as a protected status protects men as well as women.⁸ Where the plaintiff was repeatedly targeted by fellow employees for sex-related, humiliating actions, threatened with rape, and called a name suggesting homosexuality, the Court concluded that the plaintiff was discriminated against based on sex.⁹ The Court then remanded

¹ 42 U.S.C. 2000e et. seq.

² 42 U.S.C. 2000e-2.

³ Katherine McAnallen, NCSL Legisbrief, *Sexual Orientation in Employment Discrimination Laws*, Vol. 23, No. 34 (Sept. 2015).

⁴ Alex Reed, *Redressing LGBT Employment Discrimination Via Executive Order*, 29 NOTRE DAME J.L. ETHICS & PUB. POL'Y 133, 133-135.

⁵ 159 CONG. REC. S10, 129-39 (daily ed. Nov. 7, 2013).

⁶ Section 815 (Nov. 12, 2013).

⁷ Sec. 6.(a) of the Act provided "This Act shall not apply to a corporation, association, educational institution or institution of learning, or society that is exempt from the religious discrimination provisions of title VII of the Civil Rights Act of 1964"

⁸ *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 78 (1988).

⁹ *Id.* at 81.

the case back to the district court of appeals for further proceedings “[B]ecause we conclude that sex discrimination consisting of same-sex sexual harassment is actionable under Title VII”¹⁰

In 2002, the United States Court of Appeals for the Ninth Circuit heard a case in which a plaintiff alleged that he was sexually harassed and assaulted by fellow colleagues based on his sexual orientation.¹¹ Although the plaintiff sought relief under the theory that Title VII includes sexual orientation, the court ruled instead that his case was actionable based on a sexual harassment claim.¹² The court noted that Title VII prohibits offensive sexual conduct when the conduct is sufficiently severe or pervasive. As such, the court ruled that sexual orientation of the victim was irrelevant.¹³

In 2014, President Barack Obama signed an Executive Order adding sexual orientation and gender identity protections for federal employees. The Executive Order:

- Prohibits a federal contractor from firing or harassing an employee on the basis of sexual orientation or gender identity; and
- Explicitly bans discrimination against transgender employees of the federal government.¹⁴

Florida Civil Rights Act

The 1992 Florida Legislature enacted the Florida Civil Rights Act (FCRA) to protect persons from discrimination in education, employment, housing, and public accommodations. In addition to the classes of race, color, religion, sex, and national origin protected in Title VII of the federal Civil Rights Act of 1964, the FCRA includes age, handicap, and marital status as protected classes.¹⁵ The Florida Legislature added pregnancy as a protected status under the FCRA in 2015.¹⁶

Similar to Title VII, the FCRA specifically provides a number of actions that, if undertaken by an employer, are considered unlawful employment practices.¹⁷ Courts interpreting the FCRA typically follow federal precedent because the FCRA is generally patterned after Title VII. Still, differences between the state and federal law persist. As noted above, the FCRA includes age, handicap, and marital status as protected categories. Although Title VII does not include these statuses, other federal laws address age and disability, albeit in a different manner.¹⁸

Procedure for Filing Claims of Discrimination

A person who believes that he or she has been the target of unlawful discrimination may file a complaint with the Florida Commission on Human Rights (FCHR). The person must file the complaint within 365 days of the alleged violation.¹⁹ After a person files a claim of

¹⁰ *Id.* at 82.

¹¹ *Rene v. MGM Grand Hotel, Inc.*, 305 F.3d 1061, 1064 (2002).

¹² *Id.* at 1066.

¹³ *Id.* at 1065-1067.

¹⁴ Executive Order 13672 (July 21, 2014).

¹⁵ Section 760.10(1)(a), F.S.

¹⁶ SB 982 (Ch. 2015-68, L.O.F.)

¹⁷ Section 760.10(2) through (8), F.S.

¹⁸ Kendra D. Presswood, *Interpreting the Florida Civil Rights Act of 1992*, 87 FLA. B.J. 36, 36 (Dec. 2013).

¹⁹ Section 760.11(1), F.S.

discrimination with the FCHR, the FCHR investigates the complaint.²⁰ The FCHR then must make a reasonable cause determination within 180 days after the filing of the complaint.²¹ If the FCHR finds reasonable cause, the plaintiff may bring either a civil action or request an administrative hearing.²² A plaintiff is required to file a state claim in civil court under the Florida Civil Rights Act within 1 year of the determination of reasonable cause by the FCHR.²³

If the FCHR returns a finding of no reasonable cause, the complainant may request an administrative hearing with the Division of Administrative Hearings (DOAH) within 35 days of the finding.²⁴ DOAH will issue a recommended order, which the FCHR may reject, adopt, or modify by issuing a final order.²⁵

Remedies

Administrative Remedies If the Commission Pursues Administrative Action

Affirmative relief includes prohibition of the practice and back pay. The FCHR may also award reasonable attorney's fees to the prevailing party.²⁶

Civil Remedies If the Person Pursues a Legal Action

State law authorizes awards of back pay, compensatory damages, and punitive damages.²⁷ Compensatory damages include damages for mental anguish, loss of dignity, and any other intangible injuries.²⁸ Punitive damages are capped at \$100,000 regardless of the size of the employer.²⁹ The state and its agencies and subdivisions of the state are not liable for punitive damages³⁰ or recovery amounts in excess of the limited waiver of sovereign immunity.³¹

Religious Exemption for an Unlawful Employment Practice

An employer commits an unlawful employment practice if, based on a person's protected status, he or she:

- Discharges or refuses to hire a person or discriminates in the area of terms or conditions of employment; or
- Limits, segregates, or classifies an employee or applicant in such a way as to deprive him or her of an opportunity.³²

²⁰ Section 760.11(3), F.S.

²¹ Section 760.11(3), F.S.

²² Section 760.11(4), F.S.

²³ Section 760.11(5), F.S.

²⁴ Section 760.11(7), F.S.

²⁵ *Id.*

²⁶ Section 760.11(6), F.S.

²⁷ Section 760.11(5), F.S.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Section 760.11(5), F.S.

³¹ *Id.* Section 768.28(5), F.S., provides that damages against a state, its agencies, or subdivisions are capped at \$200,000 per claim or \$300,000 per incident. A plaintiff may pursue a claim bill to recover in excess of these caps, but claim bills are subject to the prerogative of the Legislature.

³² Section 760.10(1), F.S.

Entities prohibited from engaging in unlawful employment practices include labor organizations and employment agencies.³³

Certain entities are exempt from the provisions on unlawful employment practices. These are religious corporations, associations, educational institutions, and societies which condition opportunities to members who subscribe to their tenets or beliefs.³⁴

Anti-Discrimination Provisions in Local Government or Other States Based on Gender Identity or Sexual Orientation

Ordinances in Local Government in the State

A number of counties in Florida prohibit discrimination based on gender identity or sexual orientation. These counties include Alachua, Broward, Hillsborough, Leon, Miami-Dade, Monroe, Orange, Palm Beach, Pinellas, and Volusia Counties. Numerous municipalities also prohibit discrimination on this basis.³⁵

Anti-Discrimination Laws in Other States

Nineteen other states, the District of Columbia, and Puerto Rico provide protections against discrimination in employment and housing in state law based on sexual orientation and gender identity.³⁶ In addition to having a state law prohibiting discrimination based on sexual orientation, New York prohibits gender identity discrimination by public employers through executive order.³⁷

III. Effect of Proposed Changes:

SB 120 amends the Florida Civil Rights Act (FCRA) by expressly prohibiting discrimination based on sexual orientation and gender identity or expression. The FCRA currently prohibits discrimination based on race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status in the areas of education, employment, housing, and public accommodations.

The bill defines the term “gender identity or expression” as gender-related identity, appearance, or behavior, regardless of whether it is different from that traditionally associated with the person’s physiology or assigned sex at birth, and which can be shown by:

- Medical history, care, or treatment of the gender identity;
- Consistent and uniform assertion of the gender-related identity; or
- Evidence that the gender-related identity is a sincerely held part of a person’s core identity and is not being asserted for an improper purpose.

³³ Section 760.10(2) through (8), F.S.

³⁴ Section 760.10(9), F.S.

³⁵ Municipalities include Atlantic Beach, Dunedin, Gainesville, Gulfport, Juno Beach, Key West, Lake Worth, Largo, Miami, Miami Beach, Oakland Park, Orlando, Tampa, Venice, West Palm Beach and Wilton Manors. Equality Florida, <http://www.eqfl.org/Discrimination> (last visited Jan. 23, 2016).

³⁶ These states are California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Utah, Vermont, and Washington. McAnallen, *supra* note 3. Human Rights Campaign, *Statewide Housing Laws & Policies*, http://www.hrc.org/state_maps (last viewed Jan. 23, 2016).

³⁷ McAnallen, *supra* note 3.

The term “sexual orientation” is defined as a person’s actual or perceived heterosexuality, homosexuality, or bisexuality. The person asserting this status does not appear to have to provide an indicia of proof of sexual orientation. The way in which gender identity or expression is defined appears to require some indicia of proof on the part of the person asserting this status. How a person could provide proof under a claim that he or she was discriminated against based on a perception of that status is unknown.

The bills states with respect to public accommodations, employment, and public lodging and food service establishment that the bill does not “limit the free exercise of religion guaranteed by the United States Constitution and the State Constitution.” What specific individuals or activities are protected by the statement, however, are not specified.

Under the bill, sexual orientation and gender identity or expression are afforded the same protection as other statuses or classes identified in the FCRA. Based on the status of sexual orientation and gender identity or expression, a person may not be discriminated against:

- By public lodging and food service establishments;
- With respect to education, housing, or public accommodation; or
- With respect to employment, provided that any discriminatory act constitutes an unlawful employment practice.³⁸

Current law prohibits and penalizes discrimination against a person who actually has a protected status. This bill additionally prohibits and penalizes discrimination based on the *perception* that a person belongs to any of the protected classes included in the FCRA. This change may significantly expand the population of persons authorized to bring claims based on discrimination under the FCRA. Still, proving discrimination based on a perception, rather than an actual protected status, may be more difficult for a plaintiff to demonstrate.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁸ Unlawful employment practices include discharging or failing to or refusing to hire a person, or discriminating in compensation, benefits, terms, conditions, or privileges of employment; and limiting or classifying an employee or applicant in such a way as to deprive the person of employment opportunities. The prohibition on unlawful employment practices applies also to employment agencies and labor organizations. *See* s. 760.10, F.S.

D. Other Constitutional Issues:

Current law provides an exemption from the prohibition on unlawful employment practices. The exemption is afforded to religious organizations or other entities which provide opportunities to members who subscribe to the same tenets or beliefs. In addition to the current exemption afforded to organizations, this bill appears to provide another exemption. This exemption is provided to persons who are exercising their constitutional free exercise of religion in the areas of employment and public accommodations. Whether this bill better enables a person to assert the free exercise of religion as a defense to an action based on a civil rights discrimination is unknown.

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

None.

B. Private Sector Impact:

Current law prohibits and penalizes discrimination against a person who actually has a protected status. This bill additionally prohibits and penalizes discrimination based on the perception that a person belongs to a protected class. This change may significantly expand the population of persons authorized to bring claims based on discrimination under the FCRA, which could increase costs in litigation for employers and owners of public accommodations. Still, proving discrimination based on a perception, rather than an actual protected status, would be more difficult to prove.

C. Government Sector Impact:**Florida Commission on Human Relations (FCHR)**

This bill expands the types of classes receiving protected status under the FCRA. The Florida Commission on Human Relations anticipates that this expansion would result in an increased caseload of about 100 to 110 cases. The FCHR requests an additional 3 FTE positions (1 attorney, 1 investigator, and 1 support staff) to support the increase in workload. The total amount requested on a recurring basis is as follows:

Job Title	Amount/FTE	Expenses
Senior Attorney	\$72, 278	\$10,367
Investigation Specialist	\$56, 776	\$10,367
Secretary Specialist	\$29, 029	\$9,042
	Total: \$158,083	\$29,776

The total amount requested for FTE and Expenses on a recurring basis is \$187,859. The total amount requested on non-recurring basis is \$17,434. The FCRA indicates that these

amounts would need to be funded through General Revenue funds because the federal government will not fund these types of cases.³⁹

State Agencies

Some of the expected increase in cases brought to the FCRA is due to the addition of gender identity or expression and sexual orientation as a protected class. Expanding claims beyond discrimination based on an actual protected status to one that is perceived may also significantly expand the population of claimants. This change could increase costs in litigation for state agency employers. Still, proving discrimination based on a perception, rather than an actual protected status, would be more difficult to prove.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill prohibits discrimination for all types of protected classes in the areas of employment and public accommodation based on a perception of a person belonging to a protected class. This represents a significant expansion from current law, which prohibits discrimination based on actual status only. How perception would be demonstrated is unknown.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 419.001, 509.092, 760.01, 760.02, 760.05, 760.07, 760.08, 760.10, 509.092, 760.22, 760.23, 760.24, 760.25, 760.26, 760.29, and 760.60.

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.

³⁹ Florida Commission on Human Relations, *Fiscal Impact Analysis on SB 120*.



828464

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as the "Florida
Competitive Workforce Act."

Section 2. Subsection (1) of section 760.01, Florida
Statutes, is republished, and subsection (2) of that section is
amended, to read:

760.01 Purposes; construction; title.—

(1) Sections 760.01-760.11 and 509.092 shall be cited as



828464

the "Florida Civil Rights Act of 1992."

(2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

Section 3. Section 760.02, Florida Statutes, is reordered and amended to read:

760.02 Definitions.—For the purposes of ss. 760.01-760.11 and 509.092, the term:

(7)~~(1)~~ "Florida Civil Rights Act of 1992" means ss. 760.01-760.11 and 509.092.

(2) "Commission" means the Florida Commission on Human Relations created by s. 760.03.

(3) "Commissioner" or "member" means a member of the commission.

(4) "Discriminatory practice" means any practice made unlawful by the Florida Civil Rights Act of 1992.

(10)~~(5)~~ "National origin" includes ancestry.

(11)~~(6)~~ "Person" includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, or



828464

unincorporated organization; any other legal or commercial entity; the state; or any governmental entity or agency.

(5)~~(7)~~ "Employer" means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(6)~~(8)~~ "Employment agency" means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

(8) "Gender identity or expression" means gender-related identity, appearance, or behavior, regardless of whether such gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, and which gender-related identity can be shown by the person providing evidence, including, but not limited to:

(a) Medical history, care, or treatment of the gender-related identity;

(b) Consistent and uniform assertion of the gender-related identity; or

(c) Other evidence that the gender-related identity is a sincerely held part of a person's core identity and is not being asserted for an improper purpose.

(9) "Labor organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.



828464

70 (1)~~(10)~~ "Aggrieved person" means any person who files a
71 complaint with the Florida Commission on Human Relations
72 ~~Commission~~.

73 (12)~~(11)~~ "Public accommodations" means places of public
74 accommodation, lodgings, facilities principally engaged in
75 selling food for consumption on the premises, gasoline stations,
76 places of exhibition or entertainment, and other covered
77 establishments. Each of the following establishments which
78 serves the public is a place of public accommodation within the
79 meaning of this section:

80 (a) Any inn, hotel, motel, or other establishment that
81 ~~which~~ provides lodging to transient guests, other than an
82 establishment located within a building that ~~which~~ contains not
83 more than four rooms for rent or hire and that ~~which~~ is actually
84 occupied by the proprietor of such establishment as his or her
85 residence.

86 (b) Any restaurant, cafeteria, lunchroom, lunch counter,
87 soda fountain, or other facility principally engaged in selling
88 food for consumption on the premises, including, but not limited
89 to, any such facility located on the premises of any retail
90 establishment, or any gasoline station.

91 (c) Any motion picture theater, theater, concert hall,
92 sports arena, stadium, or other place of exhibition or
93 entertainment.

94 (d) Any establishment that ~~which~~ is physically located
95 within the premises of any establishment otherwise covered by
96 this subsection, or within the premises of which is physically
97 located any such covered establishment, and that ~~which~~ holds
98 itself out as serving patrons of such covered establishment.



828464

(13) "Sexual orientation" means an individual's
heterosexuality, homosexuality, or bisexuality.

Section 4. Section 760.05, Florida Statutes, is amended to
read:

760.05 Functions of the commission.—The commission shall
promote and encourage fair treatment and equal opportunity for
all persons regardless of race, color, religion, sex, pregnancy,
national origin, age, sexual orientation, gender identity or
expression, handicap, or marital status and mutual understanding
and respect among all members of society. ~~The commission all
economic, social, racial, religious, and ethnic groups; and
shall endeavor to eliminate discrimination against, and
antagonism between, persons on the basis of race, color,
religion, sex, pregnancy, national origin, age, sexual
orientation, gender identity or expression, handicap, or marital
status religious, racial, and ethnic groups and their members.~~

Section 5. Section 760.07, Florida Statutes, is amended to
read:

760.07 Remedies for unlawful discrimination.—Any violation
of any Florida statute making unlawful discrimination because of
race, color, religion, gender, pregnancy, national origin, age,
sexual orientation, gender identity or expression, handicap, or
marital status in the areas of education, employment, housing,
or public accommodations gives rise to a cause of action for all
relief and damages described in s. 760.11(5), unless greater
damages are expressly provided for. If the statute prohibiting
unlawful discrimination provides an administrative remedy, the
action for equitable relief and damages provided for in this
section may be initiated only after the plaintiff has exhausted



828464

his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 6. Section 760.08, Florida Statutes, is amended to read:

760.08 Discrimination in places of public accommodation.— All persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of race, color, national origin, sex, sexual orientation, gender identity or expression, pregnancy, handicap, familial status, or religion.

Section 7. Subsections (1) and (2), paragraphs (a) and (b) of subsection (3), subsections (4), (5), and (6), paragraph (a) of subsection (8), and subsection (9) of section 760.10, Florida Statutes, are amended, and subsection (10) of that section is republished, to read:

760.10 Unlawful employment practices.—

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status.



828464

(b) To limit, segregate, or classify employees or applicants for employment in any way that ~~which~~ would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status or to classify or refer for employment any individual on the basis of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status.

(3) It is an unlawful employment practice for a labor organization:

(a) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status.

(b) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee or as an applicant for employment, because of such



828464

individual's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status.

(4) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status in admission to, or employment in, any program established to provide apprenticeship or other training.

(5) Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a license, certification, or other credential; or become a member or an associate of any club, association, or other organization; or or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential; or seeking to become a member or associate of such club, association, or other organization; or or seeking to take or pass such examination, because of such other person's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status.

(6) It is an unlawful employment practice for an employer, a labor organization, an employment agency, or a joint labor-management committee to print, or cause to be printed or published, any notice or advertisement relating to employment, membership, classification, referral for employment, or



828464

apprenticeship or other training which indicates, ~~indicating~~ any preference, limitation, specification, or discrimination, based on race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, absence of handicap, or marital status.

(8) Notwithstanding any other provision of this section, it is not an unlawful employment practice under ss. 760.01-760.10 for an employer, employment agency, labor organization, or joint labor-management committee to:

(a) Take or fail to take any action on the basis of religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status in those certain instances in which religion, sex, condition of pregnancy, national origin, age, sexual orientation, gender identity or expression, absence of a particular handicap, or marital status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.

(9) (a) This section does ~~shall~~ not apply to any religious corporation, association, educational institution, or society which conditions opportunities in the area of employment or public accommodation to members of that religious corporation, association, educational institution, or society or to persons who subscribe to its tenets or beliefs.

(b) This section does ~~shall~~ not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying



828464

on by such corporations, associations, educational institutions,
or societies of its various activities.

(c) This section and s. 760.08 do not limit the free
exercise of religion guaranteed by the United States
Constitution and the State Constitution.

(10) Each employer, employment agency, and labor
organization shall post and keep posted in conspicuous places
upon its premises a notice provided by the commission setting
forth such information as the commission deems appropriate to
effectuate the purposes of ss. 760.01-760.10.

Section 8. Section 509.092, Florida Statutes, is amended to
read:

509.092 Public lodging establishments and public food
service establishments; rights as private enterprises.—

(1) Public lodging establishments and public food service
establishments are private enterprises, and the operator has the
right to refuse accommodations or service to any person who is
objectionable or undesirable to the operator, but such refusal
may not be based upon race, creed, color, sex, pregnancy,
physical disability, sexual orientation, gender identity or
expression, or national origin.

(2) A person aggrieved by a violation of this section or a
violation of a rule adopted under this section has a right of
action pursuant to s. 760.11.

(3) This section does not limit the free exercise of
religion guaranteed by the United States Constitution and the
State Constitution.

Section 9. Section 760.22, Florida Statutes, is amended to
read:



828464

760.22 Definitions.—As used in this part ~~ss. 760.20-760.37~~,
the term:

(1) "Commission" means the Florida Commission on Human
Relations.

(2) "Covered multifamily dwelling" means:

(a) A building that ~~which~~ consists of four or more units
and has an elevator; or

(b) The ground floor units of a building that ~~which~~
consists of four or more units and does not have an elevator.

(3) "Discriminatory housing practice" means an act that is
unlawful under the terms of this part ~~ss. 760.20-760.37~~.

(4) "Dwelling" means any building or structure, or portion
thereof, which is occupied as, or designed or intended for
occupancy as, a residence by one or more families, and any
vacant land that ~~which~~ is offered for sale or lease for the
construction or location on the land of any such building or
structure, or portion thereof.

(5) "Familial status" is established when an individual who
has not attained the age of 18 years is domiciled with:

(a) A parent or other person having legal custody of such
individual; or

(b) A designee of a parent or other person having legal
custody, with the written permission of such parent or other
person.

(6) "Family" includes a single individual.

(7) "Gender identity or expression" has the same meaning as
provided in s. 760.02.

~~(8)-(7)~~ "Handicap" means:

(a) A ~~person has a~~ physical or mental impairment that ~~which~~



828464

substantially limits one or more major life activities for a
person who has, ~~or he or she~~ has a record of having, or is
regarded as having that, ~~such~~ physical or mental impairment; or

(b) A ~~person has a~~ developmental disability as defined in
s. 393.063.

(9) ~~(8)~~ "Person" includes one or more individuals,
corporations, partnerships, associations, labor organizations,
legal representatives, mutual companies, joint-stock companies,
trusts, unincorporated organizations, trustees, trustees in
bankruptcy, receivers, and fiduciaries.

(10) "Sexual orientation" has the same meaning as provided
in s. 760.02.

(11) ~~(9)~~ "Substantially equivalent" means an administrative
subdivision of the State of Florida meeting the requirements of
24 C.F.R. part 115, s. 115.6.

(12) ~~(10)~~ "To rent" includes to lease, to sublease, to let,
and otherwise to grant for a consideration the right to occupy
premises not owned by the occupant.

Section 10. Subsections (1) - (5) of section 760.23,
Florida Statutes, are amended to read:

760.23 Discrimination in the sale or rental of housing and
other prohibited practices.—

(1) It is unlawful to refuse to sell or rent after the
making of a bona fide offer, to refuse to negotiate for the sale
or rental of, or otherwise to make unavailable or deny a
dwelling to any person because of race, color, national origin,
sex, sexual orientation, gender identity or expression,
handicap, familial status, or religion.

(2) It is unlawful to discriminate against any person in



828464

the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, sexual orientation, gender identity or expression, handicap, familial status, or religion.

(3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, sexual orientation, gender identity or expression, handicap, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

(4) It is unlawful to represent to any person because of the person's race, color, national origin, sex, sexual orientation, gender identity or expression, handicap, familial status, or religion that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) It is unlawful, for profit, to induce or attempt to induce any person to sell or rent any dwelling by a representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, sex, sexual orientation, gender identity or expression, handicap, familial status, or religion.

Section 11. Section 760.24, Florida Statutes, is amended to read:

760.24 Discrimination in the provision of brokerage services.—It is unlawful to deny any person access to, or



828464

membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, because ~~on account~~ of race, color, national origin, sex, sexual orientation, gender identity or expression, handicap, familial status, or religion.

Section 12. Subsection (1) and paragraph (a) of subsection (2) of section 760.25, Florida Statutes, are amended to read:

760.25 Discrimination in the financing of housing or in residential real estate transactions.—

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national origin, sex, sexual orientation, gender identity or expression, handicap, familial status, or religion of such person or of any person associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the race, color, national origin, sex, sexual orientation, gender identity or expression, handicap, familial status, or religion of the



828464

present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(2)(a) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, sex, sexual orientation, gender identity or expression, handicap, familial status, or religion.

Section 13. Section 760.26, Florida Statutes, is amended to read:

760.26 Prohibited discrimination in land use decisions and in permitting of development.—It is unlawful to discriminate in land use decisions or in the permitting of development based on race, color, national origin, sex, sexual orientation, gender identity or expression, disability, familial status, religion, or, except as otherwise provided by law, the source of financing of a development or proposed development.

Section 14. Paragraph (a) of subsection (5) of section 760.29, Florida Statutes, is amended to read:

760.29 Exemptions.—

(5) Nothing in ss. 760.20-760.37:

(a) Prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, national origin, sex, sexual orientation, gender identity or expression, handicap, familial status, or religion.

Section 15. Subsection (1) of section 760.60, Florida



828464

Statutes, is amended to read:

760.60 Discriminatory practices of certain clubs prohibited; remedies.—

(1) It is unlawful for a person to discriminate against any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, sexual orientation, gender identity or expression, or marital status in evaluating an application for membership in a club that has more than 400 members, that provides regular meal service, and that regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from nonmembers for business purposes. It is unlawful for a person, on behalf of such a club, to publish, circulate, issue, display, post, or mail any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, sexual orientation, gender identity or expression, or marital status. This subsection does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.

Section 16. Paragraph (e) of subsection (1) of section 419.001, Florida Statutes, is amended to read:

419.001 Site selection of community residential homes.—

(1) For the purposes of this section, the term:

(e) "Resident" means any of the following: a frail elder as defined in s. 429.65; a person who has a handicap as defined in s. 760.22(8)(a) ~~s. 760.22(7)(a)~~; a person who has a



828464

developmental disability as defined in s. 393.063; a
nondangerous person who has a mental illness as defined in s.
394.455; or a child who is found to be dependent as defined in
s. 39.01 or s. 984.03, or a child in need of services as defined
in s. 984.03 or s. 985.03.

Section 17. This act shall take effect July 1, 2016.

===== 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 prohibited discrimination; creating
the "Florida Competitive Workforce Act"; amending s.
760.01, F.S.; revising provisions to include sexual
orientation and gender identity or expression as
impermissible grounds for discrimination; amending s.
760.02, F.S.; adding definitions; amending ss. 760.05,
760.07, and 760.08, F.S.; adding sexual orientation
and gender identity or expression as impermissible
grounds for discrimination; conforming terminology;
amending s. 760.10, F.S.; adding sexual orientation
and gender identity or expression as impermissible
grounds for discrimination; providing an exception for
constitutionally protected free exercise of religion;
amending s. 509.092, F.S.; adding sexual orientation
and gender identity or expression as impermissible
grounds for discrimination in public lodging
establishments and public food service establishments;



828464

476 providing an exception for constitutionally protected
477 free exercise of religion; amending s. 760.22, F.S.;
478 adding definitions; amending ss. 760.23, 760.24,
479 760.25, 760.26, 760.29, and 760.60, F.S.; adding
480 sexual orientation and gender identity or expression
481 as impermissible grounds for discrimination; amending
482 s. 419.001, F.S.; conforming a cross-reference;
483 providing an effective date.



744324

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Judiciary (Stargel) recommended the following:

Senate Amendment to Amendment (828464) (with title amendment)

Between lines 253 and 254
insert:

Section 8. Section 760.101, Florida Statutes, is created to
read:

760.101 Exemption from part.—

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

(a) "Closely held for-profit entity" means an entity for
which no ownership interest is publicly traded and in which at



744324

least 50 percent of the ownership interest is concentrated in 10 or fewer owners.

(b) "Nonprofit entity" means an organization that qualifies for tax-exempt status under 26 U.S.C. s. 501.

(c) "Religious institution" has the same meaning as in s. 496.404(23).

(2) Notwithstanding s. 760.07 or s. 760.35, a cause of action may not be brought against a closely held for-profit entity, a nonprofit entity, or a religious institution for a violation of this part, part II of this chapter, or s. 509.092 for discrimination on the basis of gender identity or expression or sexual orientation, as those terms are defined in s. 760.02, if the entity or institution asserts a religious viewpoint or belief as the reason for the violation.

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

And the title is amended as follows:

Between lines 471 and 472
insert:

creating s. 760.101, F.S.; defining terms; prohibiting
a cause of action from being brought against any
closely held for-profit entity, nonprofit entity, or
religious institution for specified violations under
certain circumstances;



873568

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as the "Florida
Competitive Workforce Act."

Section 2. Subsection (1) of section 760.01, Florida
Statutes, is republished, and subsection (2) of that section is
amended, to read:

760.01 Purposes; construction; title.—

(1) Sections 760.01-760.11 and 509.092 shall be cited as



873568

the "Florida Civil Rights Act of 1992."

(2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, disability ~~handicap~~, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

Section 3. Section 760.02, Florida Statutes, is reordered and amended to read:

760.02 Definitions.—For the purposes of ss. 760.01-760.11 and 509.092, the term:

(7)~~(1)~~ "Florida Civil Rights Act of 1992" means ss. 760.01-760.11 and 509.092.

(2) "Commission" means the Florida Commission on Human Relations created by s. 760.03.

(3) "Commissioner" or "member" means a member of the commission.

(4) "Discriminatory practice" means any practice made unlawful by the Florida Civil Rights Act of 1992.

(10)~~(5)~~ "National origin" includes ancestry.

(11)~~(6)~~ "Person" includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, or



873568

unincorporated organization; any other legal or commercial entity; the state; or any governmental entity or agency.

(5)~~(7)~~ "Employer" means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(6)~~(8)~~ "Employment agency" means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

(8) "Gender identity or expression" means gender-related identity, appearance, or behavior, regardless of whether such gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, and which gender-related identity can be shown by the person providing evidence, including, but not limited to:

(a) Medical history, care, or treatment of the gender-related identity;

(b) Consistent and uniform assertion of the gender-related identity; or

(c) Other evidence that the gender-related identity is a sincerely held part of a person's core identity and is not being asserted for an improper purpose.

(9) "Labor organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.



873568

70 (1)~~(10)~~ "Aggrieved person" means any person who files a
71 complaint with the Florida Commission on Human Relations
72 ~~Commission~~.

73 (12)~~(11)~~ "Public accommodations" means places of public
74 accommodation, lodgings, facilities principally engaged in
75 selling food for consumption on the premises, gasoline stations,
76 places of exhibition or entertainment, and other covered
77 establishments. Each of the following establishments which
78 serves the public is a place of public accommodation within the
79 meaning of this section:

80 (a) Any inn, hotel, motel, or other establishment that
81 ~~which~~ provides lodging to transient guests, other than an
82 establishment located within a building that ~~which~~ contains not
83 more than four rooms for rent or hire and that ~~which~~ is actually
84 occupied by the proprietor of such establishment as his or her
85 residence.

86 (b) Any restaurant, cafeteria, lunchroom, lunch counter,
87 soda fountain, or other facility principally engaged in selling
88 food for consumption on the premises, including, but not limited
89 to, any such facility located on the premises of any retail
90 establishment, or any gasoline station.

91 (c) Any motion picture theater, theater, concert hall,
92 sports arena, stadium, or other place of exhibition or
93 entertainment.

94 (d) Any establishment that ~~which~~ is physically located
95 within the premises of any establishment otherwise covered by
96 this subsection, or within the premises of which is physically
97 located any such covered establishment, and that ~~which~~ holds
98 itself out as serving patrons of such covered establishment.



873568

(13) "Sexual orientation" means an individual's heterosexuality, homosexuality, or bisexuality.

Section 4. Section 760.05, Florida Statutes, is amended to read:

760.05 Functions of the commission.—The commission shall promote and encourage fair treatment and equal opportunity for all persons regardless of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, disability ~~handicap~~, or marital status and mutual understanding and respect among all members of society. ~~The commission all economic, social, racial, religious, and ethnic groups; and~~ shall endeavor to eliminate discrimination against, and antagonism between, persons on the basis of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, disability, or marital status ~~religious, racial, and ethnic groups and their members.~~

Section 5. Section 760.07, Florida Statutes, is amended to read:

760.07 Remedies for unlawful discrimination.—Any violation of any Florida statute making unlawful discrimination because of race, color, religion, gender, pregnancy, national origin, age, sexual orientation, gender identity or expression, disability ~~handicap~~, or marital status in the areas of education, employment, housing, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and



873568

damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 6. Section 760.08, Florida Statutes, is amended to read:

760.08 Discrimination in places of public accommodation.— All persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of race, color, national origin, sex, sexual orientation, gender identity or expression, pregnancy, disability ~~handicap~~, familial status, or religion.

Section 7. Subsections (1) and (2), paragraphs (a) and (b) of subsection (3), subsections (4), (5), and (6), paragraph (a) of subsection (8), and subsection (9) of section 760.10, Florida Statutes, are amended, and subsection (10) of that section is republished, to read:

760.10 Unlawful employment practices.—

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, sexual



873568

orientation, gender identity or expression, disability ~~handicap~~,
or marital status.

(b) To limit, segregate, or classify employees or
applicants for employment in any way that ~~which~~ would deprive or
tend to deprive any individual of employment opportunities, or
adversely affect any individual's status as an employee, because
of such individual's race, color, religion, sex, pregnancy,
national origin, age, sexual orientation, gender identity or
expression, disability ~~handicap~~, or marital status.

(2) It is an unlawful employment practice for an employment
agency to fail or refuse to refer for employment, or otherwise
to discriminate against, any individual because of race, color,
religion, sex, pregnancy, national origin, age, sexual
orientation, gender identity or expression, disability ~~handicap~~,
or marital status or to classify or refer for employment any
individual on the basis of race, color, religion, sex,
pregnancy, national origin, age, sexual orientation, gender
identity or expression, disability ~~handicap~~, or marital status.

(3) It is an unlawful employment practice for a labor
organization:

(a) To exclude or to expel from its membership, or
otherwise to discriminate against, any individual because of
race, color, religion, sex, pregnancy, national origin, age,
sexual orientation, gender identity or expression, disability
~~handicap~~, or marital status.

(b) To limit, segregate, or classify its membership or
applicants for membership, or to classify or fail or refuse to
refer for employment any individual, in any way that would
deprive or tend to deprive any individual of employment



873568

opportunities, or adversely affect any individual's status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, disability ~~handicap~~, or marital status.

(4) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, disability ~~handicap~~, or marital status in admission to, or employment in, any program established to provide apprenticeship or other training.

(5) Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a license, certification, or other credential; ~~or~~ become a member or an associate of any club, association, or other organization; ~~or~~ or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential; ~~or~~ seeking to become a member or associate of such club, association, or other organization; ~~or~~ or seeking to take or pass such examination, because of such other person's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, disability ~~handicap~~, or marital status.

(6) It is an unlawful employment practice for an employer, a labor organization, an employment agency, or a joint labor-management committee to print, or cause to be printed or



873568

published, any notice or advertisement relating to employment, membership, classification, referral for employment, or apprenticeship or other training which indicates, ~~indicating~~ any preference, limitation, specification, or discrimination, based on race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, absence of disability handicap, or marital status.

(8) Notwithstanding any other provision of this section, it is not an unlawful employment practice under ss. 760.01-760.10 for an employer, employment agency, labor organization, or joint labor-management committee to:

(a) Take or fail to take any action on the basis of religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, disability handicap, or marital status in those certain instances in which religion, sex, condition of pregnancy, national origin, age, sexual orientation, gender identity or expression, absence of a particular disability handicap, or marital status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.

(9) (a) This section does ~~shall~~ not apply to any religious corporation, association, educational institution, or society which conditions opportunities in the area of employment or public accommodation to members of that religious corporation, association, educational institution, or society or to persons who subscribe to its tenets or beliefs.

(b) This section does ~~shall~~ not prohibit a religious corporation, association, educational institution, or society



873568

from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporations, associations, educational institutions, or societies of its various activities.

(c) This section and s. 760.08 do not limit the free exercise of religion guaranteed by the United States Constitution and the State Constitution.

(10) Each employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice provided by the commission setting forth such information as the commission deems appropriate to effectuate the purposes of ss. 760.01-760.10.

Section 8. Section 509.092, Florida Statutes, is amended to read:

509.092 Public lodging establishments and public food service establishments; rights as private enterprises.—

(1) Public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon race, creed, color, sex, pregnancy, physical disability, sexual orientation, gender identity or expression, or national origin.

(2) A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action pursuant to s. 760.11.

(3) This section does not limit the free exercise of religion guaranteed by the United States Constitution and the State Constitution.



873568

Section 9. Section 760.22, Florida Statutes, is reordered and amended to read:

760.22 Definitions.—As used in this part ~~ss. 760.20–760.37~~, the term:

(1) “Commission” means the Florida Commission on Human Relations.

(2) “Covered multifamily dwelling” means:

(a) A building that ~~which~~ consists of four or more units and has an elevator; or

(b) The ground floor units of a building that ~~which~~ consists of four or more units and does not have an elevator.

~~(4)(3)~~ “Discriminatory housing practice” means an act that is unlawful under the terms of this part ~~ss. 760.20–760.37~~.

~~(5)(4)~~ “Dwelling” means any building or structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that ~~which~~ is offered for sale or lease for the construction or location on the land of any such building or structure, or portion thereof.

~~(6)(5)~~ “Familial status” is established when an individual who has not attained the age of 18 years is domiciled with:

(a) A parent or other person having legal custody of such individual; or

(b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.

~~(7)(6)~~ “Family” includes a single individual.

(8) “Gender identity or expression” has the same meaning as provided in s. 760.02.



873568

(3)~~(7)~~ "Disability Handicap" means:

(a) A ~~person has a~~ physical or mental impairment that which substantially limits one or more major life activities for a person who has, ~~or he or she~~ has a record of having, or is regarded as having that, ~~such~~ physical or mental impairment; or

(b) A ~~person has a~~ developmental disability as defined in s. 393.063.

(9)~~(8)~~ "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(10) "Sexual orientation" has the same meaning as provided in s. 760.02.

(11)~~(9)~~ "Substantially equivalent" means an administrative subdivision of the State of Florida meeting the requirements of 24 C.F.R. part 115, s. 115.6.

(12)~~(10)~~ "To rent" includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Section 10. Subsections (1) - (5) of section 760.23, Florida Statutes, are amended to read:

760.23 Discrimination in the sale or rental of housing and other prohibited practices.—

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, sexual orientation, gender identity or expression,



873568

disability ~~handicap~~, familial status, or religion.

(2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, sexual orientation, gender identity or expression, disability ~~handicap~~, familial status, or religion.

(3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, sexual orientation, gender identity or expression, disability ~~handicap~~, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

(4) It is unlawful to represent to any person because of the person's race, color, national origin, sex, sexual orientation, gender identity or expression, disability ~~handicap~~, familial status, or religion that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) It is unlawful, for profit, to induce or attempt to induce any person to sell or rent any dwelling by a representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, sex, sexual orientation, gender identity or expression, disability ~~handicap~~, familial status, or religion.

Section 11. Section 760.24, Florida Statutes, is amended to read:



873568

760.24 Discrimination in the provision of brokerage services.—It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, because ~~on account~~ of race, color, national origin, sex, sexual orientation, gender identity or expression, disability ~~handicap~~, familial status, or religion.

Section 12. Subsection (1) and paragraph (a) of subsection (2) of section 760.25, Florida Statutes, are amended to read:

760.25 Discrimination in the financing of housing or in residential real estate transactions.—

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national origin, sex, sexual orientation, gender identity or expression, disability ~~handicap~~, familial status, or religion of such person or of any person associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because



873568

of the race, color, national origin, sex, sexual orientation,
gender identity or expression, disability handicap, familial
status, or religion of the present or prospective owners,
lessees, tenants, or occupants of the dwelling or dwellings in
relation to which such loan or other financial assistance is to
be made or given.

(2)(a) It is unlawful for any person or entity whose
business includes engaging in residential real estate
transactions to discriminate against any person in making
available such a transaction, or in the terms or conditions of
such a transaction, because of race, color, national origin,
sex, sexual orientation, gender identity or expression,
disability handicap, familial status, or religion.

Section 13. Section 760.26, Florida Statutes, is amended to
read:

760.26 Prohibited discrimination in land use decisions and
in permitting of development.—It is unlawful to discriminate in
land use decisions or in the permitting of development based on
race, color, national origin, sex, sexual orientation, gender
identity or expression, disability, familial status, religion,
or, except as otherwise provided by law, the source of financing
of a development or proposed development.

Section 14. Paragraph (a) of subsection (5) of section
760.29, Florida Statutes, is amended to read:

760.29 Exemptions.—

(5) Nothing in ss. 760.20-760.37:

(a) Prohibits a person engaged in the business of
furnishing appraisals of real property from taking into
consideration factors other than race, color, national origin,



873568

sex, sexual orientation, gender identity or expression,
disability handicap, familial status, or religion.

Section 15. Subsection (1) of section 760.60, Florida
Statutes, is amended to read:

760.60 Discriminatory practices of certain clubs
prohibited; remedies.—

(1) It is unlawful for a person to discriminate against any
individual because of race, color, religion, gender, national
origin, disability handicap, age above the age of 21, sexual
orientation, gender identity or expression, or marital status in
evaluating an application for membership in a club that has more
than 400 members, that provides regular meal service, and that
regularly receives payment for dues, fees, use of space,
facilities, services, meals, or beverages directly or indirectly
from nonmembers for business purposes. It is unlawful for a
person, on behalf of such a club, to publish, circulate, issue,
display, post, or mail any advertisement, notice, or
solicitation that contains a statement to the effect that the
accommodations, advantages, facilities, membership, or
privileges of the club are denied to any individual because of
race, color, religion, gender, national origin, disability
handicap, age above the age of 21, sexual orientation, gender
identity or expression, or marital status. This subsection does
not apply to fraternal or benevolent organizations, ethnic
clubs, or religious organizations where business activity is not
prevalent.

Section 16. Paragraph (e) of subsection (1) of section
419.001, Florida Statutes, is amended to read:

419.001 Site selection of community residential homes.—



873568

(1) For the purposes of this section, the term:

(e) "Resident" means any of the following: a frail elder as defined in s. 429.65; a person who has a disability ~~handicap~~ as defined in s. 760.22(3)(a) ~~s. 760.22(7)(a)~~; a person who has a developmental disability as defined in s. 393.063; a nondangerous person who has a mental illness as defined in s. 394.455; or a child who is found to be dependent as defined in s. 39.01 or s. 984.03, or a child in need of services as defined in s. 984.03 or s. 985.03.

Section 17. This act shall take effect July 1, 2016.

===== 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 prohibited discrimination; creating the "Florida Competitive Workforce Act"; amending s. 760.01, F.S.; revising provisions to include sexual orientation and gender identity or expression as impermissible grounds for discrimination; revising terminology; amending s. 760.02, F.S.; adding definitions; amending ss. 760.05, 760.07, and 760.08, F.S.; adding sexual orientation and gender identity or expression as impermissible grounds for discrimination; conforming and revising terminology; amending s. 760.10, F.S.; adding sexual orientation and gender identity or expression as impermissible grounds for discrimination; providing an exception for



873568

constitutionally protected free exercise of religion;
revising terminology; amending s. 509.092, F.S.;
adding sexual orientation and gender identity or
expression as impermissible grounds for discrimination
in public lodging establishments and public food
service establishments; providing an exception for
constitutionally protected free exercise of religion;
revising terminology; amending s. 760.22, F.S.; adding
and revising definitions; amending ss. 760.23, 760.24,
760.25, 760.26, 760.29, and 760.60, F.S.; adding
sexual orientation and gender identity or expression
as impermissible grounds for discrimination; revising
terminology; amending s. 419.001, F.S.; conforming a
cross-reference; providing an effective date.



906078

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/09/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Stargel) recommended the following:

Senate Amendment to Amendment (873568) (with title amendment)

Between lines 255 and 256

insert:

Section 8. Section 760.101, Florida Statutes, is created to read:

760.101 Exemption from part.—

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

(a) "Closely held for-profit entity" means an entity for which no ownership interest is publicly traded and in which at



906078

least 50 percent of the ownership interest is concentrated in 10
or fewer owners.

(b) "Nonprofit entity" means an organization that qualifies
for tax-exempt status under 26 U.S.C. s. 501.

(c) "Religious institution" has the same meaning as in s.
496.404(23).

(2) Notwithstanding s. 760.07 or s. 760.35, a cause of
action may not be brought against a closely held for-profit
entity, a nonprofit entity, or a religious institution for a
violation of this part, part II of this chapter, or s. 509.092
for discrimination on the basis of gender identity or expression
or sexual orientation, as those terms are defined in s. 760.02,
if the entity or institution asserts a religious viewpoint or
belief as the reason for the violation.

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

And the title is amended as follows:

Delete line 477

and insert:

revising terminology; creating s. 760.101, F.S.;
defining terms; prohibiting a cause of action from
being brought against any closely held for-profit
entity, nonprofit entity, or religious institution for
specified violations under certain circumstances;
amending s. 509.092, F.S.;



131762

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/10/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as the "Florida
Competitive Workforce Act."

Section 2. Subsection (1) of section 760.01, Florida
Statutes, is republished, and subsection (2) of that section is
amended, to read:

760.01 Purposes; construction; title.—

(1) Sections 760.01-760.11 and 509.092 shall be cited as



131762

the "Florida Civil Rights Act of 1992."

(2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

Section 3. Section 760.02, Florida Statutes, is reordered and amended to read:

760.02 Definitions.—For the purposes of ss. 760.01-760.11 and 509.092, the term:

~~(7)(1)~~ "Florida Civil Rights Act of 1992" means ss. 760.01-760.11 and 509.092.

(2) "Commission" means the Florida Commission on Human Relations created by s. 760.03.

(3) "Commissioner" or "member" means a member of the commission.

(4) "Discriminatory practice" means any practice made unlawful by the Florida Civil Rights Act of 1992.

~~(10)(5)~~ "National origin" includes ancestry.

~~(11)(6)~~ "Person" includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, or



131762

unincorporated organization; any other legal or commercial entity; the state; or any governmental entity or agency.

(5)~~(7)~~ "Employer" means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(6)~~(8)~~ "Employment agency" means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

(8) "Gender identity" means gender-related identity, appearance, or behavior, regardless of whether such gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, and which gender-related identity can be shown by the person providing clear evidence based upon medical history, care, or treatment of the gender-related identity; and

(a) Consistent and uniform assertion of the gender-related identity; or

(b) Other evidence that the gender-related identity is a sincerely held part of a person's core identity and is not being asserted for an improper purpose.

(9) "Labor organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.

(1)~~(10)~~ "Aggrieved person" means any person who files a complaint with the Florida Commission on Human Relations



131762

Commission.

(12)(11) "Public accommodations" means places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other such covered establishments. The term does not include lodge halls, churches, synagogues, worship centers, or other similar facilities of private organizations even if they are made available for public use occasionally or periodically. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this section:

(a) Any inn, hotel, motel, or other establishment that ~~which~~ provides lodging to transient guests, other than an establishment located within a building that ~~which~~ contains not more than four rooms for rent or hire and that ~~which~~ is actually occupied by the proprietor of such establishment as his or her residence.

(b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.

(c) Any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.

(d) Any establishment that ~~which~~ is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and that ~~which~~ holds



131762

itself out as serving patrons of such covered establishment.

(13) "Sexual orientation" means an individual's human
heterosexuality, homosexuality, or bisexuality.

Section 4. Section 760.05, Florida Statutes, is amended to
read:

760.05 Functions of the commission.—The commission shall
promote and encourage fair treatment and equal opportunity for
all persons regardless of race, color, religion, sex, pregnancy,
national origin, age, sexual orientation, gender identity,
handicap, or marital status and mutual understanding and respect
among all members of society. The commission ~~all economic,~~
~~social, racial, religious, and ethnic groups; and~~ shall endeavor
to eliminate discrimination against, and antagonism between,
persons on the basis of improper considerations relating to
race, color, religion, sex, pregnancy, national origin, age,
sexual orientation, gender identity, handicap, or marital status
~~religious, racial, and ethnic groups and their members.~~

Section 5. Section 760.07, Florida Statutes, is amended to
read:

760.07 Remedies for unlawful discrimination.—Any violation
of any Florida statute making unlawful discrimination because of
race, color, religion, gender, pregnancy, national origin, age,
sexual orientation, gender identity, handicap, or marital status
in the areas of education, employment, housing, or public
accommodations gives rise to a cause of action for all relief
and damages described in s. 760.11(5), unless greater damages
are expressly provided for. If the statute prohibiting unlawful
discrimination provides an administrative remedy, the action for
equitable relief and damages provided for in this section may be



131762

initiated only after the plaintiff has exhausted his or her administrative remedy. ~~The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically.~~ The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 6. Section 760.08, Florida Statutes, is amended to read:

760.08 Discrimination in places of public accommodation.— All persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of race, color, national origin, sex, sexual orientation, gender identity, pregnancy, handicap, familial status, or religion.

Section 7. Subsections (1) and (2), paragraphs (a) and (b) of subsection (3), subsections (4), (5), and (6), paragraph (a) of subsection (8), and subsection (9) of section 760.10, Florida Statutes, are amended, and subsection (10) of that section is republished, to read:

760.10 Unlawful employment practices.—

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity, handicap, or marital status.



131762

(b) To limit, segregate, or classify employees or applicants for employment in any way that ~~which~~ would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity, handicap, or marital status.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity, handicap, or marital status or to classify or refer for employment any individual on the basis of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity, handicap, or marital status.

(3) It is an unlawful employment practice for a labor organization:

(a) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity, handicap, or marital status.

(b) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee or as an applicant for employment, because of such



131762

individual's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity, handicap, or marital status.

(4) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity, handicap, or marital status in admission to, or employment in, any program established to provide apprenticeship or other training.

(5) Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a license, certification, or other credential; or become a member or an associate of any club, association, or other organization; or or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential; or seeking to become a member or associate of such club, association, or other organization; or or seeking to take or pass such examination, because of such other person's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity, handicap, or marital status.

(6) It is an unlawful employment practice for an employer, a labor organization, an employment agency, or a joint labor-management committee to print, or cause to be printed or published, any notice or advertisement relating to employment, membership, classification, referral for employment, or



131762

apprenticeship or other training which indicates, ~~indicating~~ any preference, limitation, specification, or discrimination, based on a person's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity, absence of handicap, or marital status.

(8) Notwithstanding any other provision of this section, it is not an unlawful employment practice under ss. 760.01-760.10 for an employer, employment agency, labor organization, or joint labor-management committee to:

(a) Take or fail to take any action on the basis of a person's religion, sex, pregnancy, national origin, age, sexual orientation, gender identity, handicap, or marital status in those certain instances in which religion, sex, condition of pregnancy, national origin, age, sexual orientation, gender identity, absence of a particular handicap, or marital status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.

(9) (a) This section does ~~shall~~ not apply to any religious corporation, association, educational institution, organization, or society which conditions opportunities in the area of employment or public accommodation to members of that religious corporation, association, educational institution, organization, or society or to persons who subscribe to its tenets or beliefs.

(b) This section does ~~shall~~ not prohibit a religious corporation, association, educational institution, organization, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporations, associations, educational



131762

institutions, or societies of its various activities.

(c) This section and s. 760.08 are subject to ss. 761.01, 761.02, 761.03, 761.04, and 761.05, any other state or federal statutes protecting the free exercise of religion, and may not be interpreted to limit the free exercise of religion and assembly guaranteed by the United States Constitution and the State Constitution.

(10) Each employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice provided by the commission setting forth such information as the commission deems appropriate to effectuate the purposes of ss. 760.01-760.10.

Section 8. Section 509.092, Florida Statutes, is amended to read:

509.092 Public lodging establishments and public food service establishments; rights as private enterprises.—

(1) Public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon the person's race, creed, color, sex, pregnancy, physical disability, sexual orientation, gender identity, or national origin.

(2) A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action pursuant to s. 760.11.

(3) This section is subject to ss. 761.01, 761.02, 761.03, 761.04, and 761.05, any other state or federal statutes protecting the free exercise of religion, and may not be



131762

interpreted to limit the free exercise of religion and assembly
guaranteed by the United States Constitution and the State
Constitution.

Section 9. Section 760.22, Florida Statutes, is amended to
read:

760.22 Definitions.—As used in this part ~~ss. 760.20-760.37~~,
the term:

(1) "Commission" means the Florida Commission on Human
Relations.

(2) "Covered multifamily dwelling" means:

(a) A building that ~~which~~ consists of four or more units
and has an elevator; or

(b) The ground floor units of a building that ~~which~~
consists of four or more units and does not have an elevator.

(3) "Discriminatory housing practice" means an act that is
unlawful under the terms of this part ~~ss. 760.20-760.37~~.

(4) "Dwelling" means any building or structure, or portion
thereof, which is occupied as, or designed or intended for
occupancy as, a residence by one or more families, and any
vacant land that ~~which~~ is offered for sale or lease for the
construction or location on the land of any such building or
structure, or portion thereof.

(5) "Familial status" is established when an individual who
has not attained the age of 18 years is domiciled with:

(a) A parent or other person having legal custody of such
individual; or

(b) A designee of a parent or other person having legal
custody, with the written permission of such parent or other
person.



131762

(6) "Family" includes a single individual.

(7) "Gender identity" has the same meaning as provided in s. 760.02.

(8)~~(7)~~ "Handicap" means:

(a) A ~~person has a~~ physical or mental impairment that ~~which~~ substantially limits one or more major life activities for a person who has, ~~or he or she~~ has a record of having, or is regarded as having that, ~~such~~ physical or mental impairment; or

(b) A ~~person has a~~ developmental disability as defined in s. 393.063.

(9)~~(8)~~ "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(10) "Sexual orientation" has the same meaning as provided in s. 760.02.

(11)~~(9)~~ "Substantially equivalent" means an administrative subdivision of the State of Florida meeting the requirements of 24 C.F.R. part 115, s. 115.6.

(12)~~(10)~~ "To rent" includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Section 10. Subsections (1) - (5) of section 760.23, Florida Statutes, are amended to read:

760.23 Discrimination in the sale or rental of housing and other prohibited practices.—

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale



131762

or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, sexual orientation, gender identity, handicap, familial status, or religion.

(2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, sexual orientation, gender identity, handicap, familial status, or religion.

(3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on a person's race, color, national origin, sex, sexual orientation, gender identity, handicap, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

(4) It is unlawful to represent to any person because of the person's race, color, national origin, sex, sexual orientation, gender identity, handicap, familial status, or religion that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) It is unlawful, for profit, to induce or attempt to induce any person to sell or rent any dwelling by a representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, sex, sexual orientation, gender identity, handicap, familial status, or religion.



131762

Section 11. Section 760.24, Florida Statutes, is amended to read:

760.24 Discrimination in the provision of brokerage services.—It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, because ~~on account~~ of race, color, national origin, sex, sexual orientation, gender identity, handicap, familial status, or religion.

Section 12. Subsection (1) and paragraph (a) of subsection (2) of section 760.25, Florida Statutes, are amended to read:

760.25 Discrimination in the financing of housing or in residential real estate transactions.—

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national origin, sex, sexual orientation, gender identity, handicap, familial status, or religion of such person or of any person associated with him or her in connection with



131762

such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the race, color, national origin, sex, sexual orientation, gender identity, handicap, familial status, or religion of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(2)(a) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, sex, sexual orientation, gender identity, handicap, familial status, or religion.

Section 13. Section 760.26, Florida Statutes, is amended to read:

760.26 Prohibited discrimination in land use decisions and in permitting of development.—It is unlawful to discriminate in land use decisions or in the permitting of development based on a person's race, color, national origin, sex, sexual orientation, gender identity, disability, familial status, religion, or, except as otherwise provided by law, the source of financing of a development or proposed development.

Section 14. Paragraph (a) of subsection (5) of section 760.29, Florida Statutes, is amended to read:

760.29 Exemptions.—

(5) Nothing in ss. 760.20-760.37:

(a) Prohibits a person engaged in the business of furnishing appraisals of real property from taking into



131762

consideration factors other than race, color, national origin, sex, sexual orientation, gender identity, handicap, familial status, or religion.

Section 15. Subsection (1) of section 760.60, Florida Statutes, is amended to read:

760.60 Discriminatory practices of certain clubs prohibited; remedies.—

(1) It is unlawful for a person to discriminate against any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, sexual orientation, gender identity, or marital status in evaluating an application for membership in a club that has more than 400 members, that provides regular meal service, and that regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from nonmembers for business purposes. It is unlawful for a person, on behalf of such a club, to publish, circulate, issue, display, post, or mail any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, sexual orientation, gender identity, or marital status. This subsection does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.

Section 16. Paragraph (e) of subsection (1) of section 419.001, Florida Statutes, is amended to read:

419.001 Site selection of community residential homes.—



131762

(1) For the purposes of this section, the term:

(e) "Resident" means any of the following: a frail elder as defined in s. 429.65; a person who has a handicap as defined in s. 760.22(8)(a) ~~s. 760.22(7)(a)~~; a person who has a developmental disability as defined in s. 393.063; a nondangerous person who has a mental illness as defined in s. 394.455; or a child who is found to be dependent as defined in s. 39.01 or s. 984.03, or a child in need of services as defined in s. 984.03 or s. 985.03.

Section 17. This act shall take effect July 1, 2016.

===== 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 prohibited discrimination; creating the "Florida Competitive Workforce Act"; amending s. 760.01, F.S.; revising provisions to include sexual orientation and gender identity as impermissible grounds for discrimination; amending s. 760.02, F.S.; adding and revising definitions; amending s. 760.05, F.S.; adding sexual orientation and gender identity as impermissible grounds for discrimination; revising the Florida Commission on Human Relations' functions; amending s. 760.07, F.S.; adding sexual orientation and gender identity as impermissible grounds for discrimination; deleting a provision relating to the term "public accommodations"; amending s. 760.08,



131762

F.S.; adding sexual orientation and gender identity as impermissible grounds for discrimination; conforming terminology; amending s. 760.10, F.S.; adding sexual orientation and gender identity as impermissible grounds for discrimination; providing an exception for constitutionally protected free exercise of religion; amending s. 509.092, F.S.; adding sexual orientation and gender identity as impermissible grounds for discrimination in public lodging establishments and public food service establishments; providing an exception for constitutionally protected free exercise of religion; amending s. 760.22, F.S.; adding definitions; amending ss. 760.23, 760.24, 760.25, 760.26, 760.29, and 760.60, F.S.; adding sexual orientation and gender identity as impermissible grounds for discrimination; amending s. 419.001, F.S.; conforming a cross-reference; providing an effective date.



978134

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/10/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Stargel) recommended the following:

Senate Amendment to Amendment (131762) (with title amendment)

Between lines 255 and 256

insert:

Section 8. Section 760.101, Florida Statutes, is created to read:

760.101 Exemption from part.—

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

(a) "Closely held for-profit entity" means an entity for which no ownership interest is publicly traded and in which at



978134

least 50 percent of the ownership interest is concentrated in 10 or fewer owners.

(b) "Nonprofit entity" means an organization that qualifies for tax-exempt status under 26 U.S.C. s. 501.

(c) "Religious institution" has the same meaning as in s. 496.404(23).

(2) Notwithstanding s. 760.07 or s. 760.35, a cause of action may not be brought against a closely held for-profit entity, a nonprofit entity, or a religious institution for a violation of this part, part II of this chapter, or s. 509.092 for discrimination on the basis of gender identity or sexual orientation, as those terms are defined in s. 760.02, if the entity or institution asserts a religious viewpoint or belief as the reason for the violation.

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

And the title is amended as follows:

Delete line 481

and insert:

creating s. 760.101, F.S.; defining terms; prohibiting a cause of action from being brought against any closely held for-profit entity, nonprofit entity, or religious institution for specified violations under certain circumstances;

By Senator Abruzzo

25-00121-16

2016120__

1 A bill to be entitled
 2 An act relating to prohibited discrimination; creating
 3 the "Florida Competitive Workforce Act"; amending s.
 4 760.01, F.S.; revising provisions to include sexual
 5 orientation and gender identity or expression and the
 6 perception of race, color, religion, sex, national
 7 origin, age, sexual orientation, gender identity or
 8 expression, handicap, or marital status as
 9 impermissible grounds for discrimination; amending s.
 10 760.02, F.S.; adding definitions; amending ss. 760.05,
 11 760.07, and 760.08, F.S.; adding sexual orientation
 12 and gender identity or expression as impermissible
 13 grounds for discrimination; conforming terminology;
 14 amending s. 760.10, F.S.; adding sexual orientation
 15 and gender identity or expression as impermissible
 16 grounds for discrimination; providing an exception for
 17 constitutionally protected free exercise of religion;
 18 amending s. 509.092, F.S.; adding sexual orientation
 19 and gender identity or expression as impermissible
 20 grounds for discrimination in public lodging
 21 establishments and public food service establishments;
 22 providing an exception for constitutionally protected
 23 free exercise of religion; amending s. 760.22, F.S.;
 24 adding definitions; amending ss. 760.23, 760.24,
 25 760.25, 760.26, 760.29, and 760.60, F.S.; adding
 26 sexual orientation and gender identity or expression
 27 as impermissible grounds for discrimination; amending
 28 s. 419.001, F.S.; conforming a cross-reference;
 29 providing an effective date.

Page 1 of 17

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

25-00121-16

2016120__

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. This act may be cited as the "Florida
 34 Competitive Workforce Act."
 35 Section 2. Subsection (1) of section 760.01, Florida
 36 Statutes, is republished, and subsection (2) of that section is
 37 amended, to read:
 38 760.01 Purposes; construction; title.—
 39 (1) Sections 760.01-760.11 and 509.092 shall be cited as
 40 the "Florida Civil Rights Act of 1992."
 41 (2) The general purposes of the Florida Civil Rights Act of
 42 1992 are to secure for all individuals within the state freedom
 43 from discrimination because of, or based on the perception of,
 44 race, color, religion, sex, pregnancy, national origin, age,
 45 sexual orientation, gender identity or expression, handicap, or
 46 marital status and thereby to protect their interest in personal
 47 dignity, to make available to the state their full productive
 48 capacities, to secure the state against domestic strife and
 49 unrest, to preserve the public safety, health, and general
 50 welfare, and to promote the interests, rights, and privileges of
 51 individuals within the state.
 52 Section 3. Section 760.02, Florida Statutes, is reordered
 53 and amended to read:
 54 760.02 Definitions.—For the purposes of ss. 760.01-760.11
 55 and 509.092, the term:
 56 (7) (1) "Florida Civil Rights Act of 1992" means ss. 760.01-
 57 760.11 and 509.092.
 58 (2) "Commission" means the Florida Commission on Human

Page 2 of 17

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

25-00121-16

2016120__

Relations created by s. 760.03.

(3) "Commissioner" or "member" means a member of the commission.

(4) "Discriminatory practice" means any practice made unlawful by the Florida Civil Rights Act of 1992.

~~(10)(5)~~ "National origin" includes ancestry.

~~(11)(6)~~ "Person" includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, or unincorporated organization; any other legal or commercial entity; the state; or any governmental entity or agency.

~~(5)(7)~~ "Employer" means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

~~(6)(8)~~ "Employment agency" means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

(8) "Gender identity or expression" means gender-related identity, appearance, or behavior, regardless of whether such gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, and which gender-related identity can be shown by the person providing evidence, including, but not limited to:

(a) Medical history, care, or treatment of the gender-related identity;

25-00121-16

2016120__

(b) Consistent and uniform assertion of the gender-related identity; or

(c) Other evidence that the gender-related identity is a sincerely held part of a person's core identity and is not being asserted for an improper purpose.

(9) "Labor organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.

~~(1)(10)~~ "Aggrieved person" means any person who files a complaint with the Florida Commission on Human Relations Commission.

~~(12)(11)~~ "Public accommodations" means places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this section:

(a) Any inn, hotel, motel, or other establishment that ~~which~~ provides lodging to transient guests, other than an establishment located within a building that ~~which~~ contains not more than four rooms for rent or hire and that ~~which~~ is actually occupied by the proprietor of such establishment as his or her residence.

(b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited

25-00121-16

2016120__

to, any such facility located on the premises of any retail establishment, or any gasoline station.

(c) Any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.

(d) Any establishment ~~that which~~ is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and ~~that which~~ holds itself out as serving patrons of such covered establishment.

(13) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, or bisexuality.

Section 4. Section 760.05, Florida Statutes, is amended to read:

760.05 Functions of the commission.—The commission shall promote and encourage fair treatment and equal opportunity for all persons regardless of race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status and mutual understanding and respect among all members of society. ~~The commission all economic, social, racial, religious, and ethnic groups, and~~ shall endeavor to eliminate discrimination against, and antagonism between, persons on the basis of, or based on the perception of, race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status ~~religious, racial, and ethnic groups and their members.~~

Section 5. Section 760.07, Florida Statutes, is amended to read:

Page 5 of 17

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

25-00121-16

2016120__

760.07 Remedies for unlawful discrimination.—Any violation of any Florida statute making unlawful discrimination because of, or based on the perception of, race, color, religion, gender, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status in the areas of education, employment, housing, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 6. Section 760.08, Florida Statutes, is amended to read:

760.08 Discrimination in places of public accommodation.—All persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of, or based on the perception of, race, color, national origin, sex, sexual orientation, gender identity or expression, pregnancy, handicap, familial status, or religion.

Section 7. Subsections (1) and (2), paragraphs (a) and (b)

Page 6 of 17

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

25-00121-16

2016120

of subsection (3), subsections (4), (5), and (6), paragraph (a) of subsection (8), and subsection (9) of section 760.10, Florida Statutes, are amended, and subsection (10) of that section is republished, to read:

760.10 Unlawful employment practices.—

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of, or based on the perception of, such individual's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status.

(b) To limit, segregate, or classify employees or applicants for employment in any way that ~~which~~ would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of, or based on the perception of, such individual's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of, or based on the perception of, race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status or to classify or refer for employment any individual on the basis of, or based on the perception of, race, color, religion, sex, pregnancy, national

25-00121-16

2016120

origin, age, sexual orientation, gender identity or expression, handicap, or marital status.

(3) It is an unlawful employment practice for a labor organization:

(a) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of, or based on the perception of, race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status.

(b) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee or as an applicant for employment, because of, or based on the perception of, such individual's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status.

(4) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of, or based on the perception of, race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status in admission to, or employment in, any program established to provide apprenticeship or other training.

(5) Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a

25-00121-16

2016120__

license, certification, or other credential; ~~it~~ become a member or an associate of any club, association, or other organization; ~~it~~ or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential; ~~it~~ seeking to become a member or associate of such club, association, or other organization; ~~it~~ or seeking to take or pass such examination, because of, or based on the perception of, such other person's race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status.

(6) It is an unlawful employment practice for an employer, a labor organization, an employment agency, or a joint labor-management committee to print, or cause to be printed or published, any notice or advertisement relating to employment, membership, classification, referral for employment, or apprenticeship or other training which indicates, ~~indicating~~ any preference, limitation, specification, or discrimination, ~~based on a person's actual or perceived~~ race, color, religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, absence of handicap, or marital status.

(8) Notwithstanding any other provision of this section, it is not an unlawful employment practice under ss. 760.01-760.10 for an employer, employment agency, labor organization, or joint labor-management committee to:

(a) Take or fail to take any action on the basis of a person's actual or perceived religion, sex, pregnancy, national origin, age, sexual orientation, gender identity or expression, handicap, or marital status in those certain instances in which

25-00121-16

2016120__

religion, sex, condition of pregnancy, national origin, age, sexual orientation, gender identity or expression, absence of a particular handicap, or marital status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.

(9) (a) This section does ~~shall~~ not apply to any religious corporation, association, educational institution, or society which conditions opportunities in the area of employment or public accommodation to members of that religious corporation, association, educational institution, or society or to persons who subscribe to its tenets or beliefs.

(b) This section does ~~shall~~ not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporations, associations, educational institutions, or societies of its various activities.

(c) This section and s. 760.08 do not limit the free exercise of religion guaranteed by the United States Constitution and the State Constitution.

(10) Each employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice provided by the commission setting forth such information as the commission deems appropriate to effectuate the purposes of ss. 760.01-760.10.

Section 8. Section 509.092, Florida Statutes, is amended to read:

509.092 Public lodging establishments and public food

25-00121-16

2016120__

service establishments; rights as private enterprises.-

(1) Public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon the person's actual or perceived race, creed, color, sex, pregnancy, physical disability, sexual orientation, gender identity or expression, or national origin.

(2) A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action pursuant to s. 760.11.

(3) This section does not limit the free exercise of religion guaranteed by the United States Constitution and the State Constitution.

Section 9. Section 760.22, Florida Statutes, is amended to read:

760.22 Definitions.-As used in this part ~~ss. 760.20-760.37~~, the term:

(1) "Commission" means the Florida Commission on Human Relations.

(2) "Covered multifamily dwelling" means:

(a) A building ~~that which~~ consists of four or more units and has an elevator; or

(b) The ground floor units of a building ~~that which~~ consists of four or more units and does not have an elevator.

(3) "Discriminatory housing practice" means an act that is unlawful under the terms of this part ~~ss. 760.20-760.37~~.

(4) "Dwelling" means any building or structure, or portion thereof, which is occupied as, or designed or intended for

25-00121-16

2016120__

occupancy as, a residence by one or more families, and any vacant land ~~that which~~ is offered for sale or lease for the construction or location on the land of any such building or structure, or portion thereof.

(5) "Familial status" is established when an individual who has not attained the age of 18 years is domiciled with:

(a) A parent or other person having legal custody of such individual; or

(b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.

(6) "Family" includes a single individual.

(7) "Gender identity or expression" has the same meaning as provided in s. 760.02.

~~(8)~~(7) "Handicap" means:

(a) ~~A person has a~~ physical or mental impairment ~~that which~~ substantially limits one or more major life activities for a person who has, or he or she has a record of having, or is regarded as having ~~that, such~~ physical or mental impairment; or

(b) ~~A person has a~~ developmental disability as defined in s. 393.063.

~~(9)~~(8) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(10) "Sexual orientation" has the same meaning as provided in s. 760.02.

~~(11)~~(9) "Substantially equivalent" means an administrative

25-00121-16

2016120__

subdivision of the State of Florida meeting the requirements of
24 C.F.R. part 115, s. 115.6.

~~(12)-(10)~~ "To rent" includes to lease, to sublease, to let,
and otherwise to grant for a consideration the right to occupy
premises not owned by the occupant.

Section 10. Subsections (1) - (5) of section 760.23,
Florida Statutes, are amended to read:

760.23 Discrimination in the sale or rental of housing and
other prohibited practices.—

(1) It is unlawful to refuse to sell or rent after the
making of a bona fide offer, to refuse to negotiate for the sale
or rental of, or otherwise to make unavailable or deny a
dwelling to any person because of, or based on the perception
of, race, color, national origin, sex, sexual orientation,
gender identity or expression, handicap, familial status, or
religion.

(2) It is unlawful to discriminate against any person in
the terms, conditions, or privileges of sale or rental of a
dwelling, or in the provision of services or facilities in
connection therewith, because of, or based on the perception of,
race, color, national origin, sex, sexual orientation, gender
identity or expression, handicap, familial status, or religion.

(3) It is unlawful to make, print, or publish, or cause to
be made, printed, or published, any notice, statement, or
advertisement with respect to the sale or rental of a dwelling
that indicates any preference, limitation, or discrimination
based on a person's actual or perceived race, color, national
origin, sex, sexual orientation, gender identity or expression,
handicap, familial status, or religion or an intention to make

Page 13 of 17

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

25-00121-16

2016120__

any such preference, limitation, or discrimination.

(4) It is unlawful to represent to any person because of,
or based on the perception of, the person's race, color,
national origin, sex, sexual orientation, gender identity or
expression, handicap, familial status, or religion that any
dwelling is not available for inspection, sale, or rental when
such dwelling is in fact so available.

(5) It is unlawful, for profit, to induce or attempt to
induce any person to sell or rent any dwelling by a
representation regarding the entry or prospective entry into the
neighborhood of a person or persons of, or perceived to be of, a
particular race, color, national origin, sex, sexual
orientation, gender identity or expression, handicap, familial
status, or religion.

Section 11. Section 760.24, Florida Statutes, is amended to
read:

760.24 Discrimination in the provision of brokerage
services.—It is unlawful to deny any person access to, or
membership or participation in, any multiple-listing service,
real estate brokers' organization, or other service,
organization, or facility relating to the business of selling or
renting dwellings, or to discriminate against him or her in the
terms or conditions of such access, membership, or
participation, because on account of, or based on the perception
of, race, color, national origin, sex, sexual orientation,
gender identity or expression, handicap, familial status, or
religion.

Section 12. Subsection (1) and paragraph (a) of subsection
(2) of section 760.25, Florida Statutes, are amended to read:

Page 14 of 17

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

25-00121-16

2016120__

407 760.25 Discrimination in the financing of housing or in
 408 residential real estate transactions.—
 409 (1) It is unlawful for any bank, building and loan
 410 association, insurance company, or other corporation,
 411 association, firm, or enterprise the business of which consists
 412 in whole or in part of the making of commercial real estate
 413 loans to deny a loan or other financial assistance to a person
 414 applying for the loan for the purpose of purchasing,
 415 constructing, improving, repairing, or maintaining a dwelling,
 416 or to discriminate against him or her in the fixing of the
 417 amount, interest rate, duration, or other term or condition of
 418 such loan or other financial assistance, because of, or based on
 419 the perception of, the race, color, national origin, sex, sexual
 420 orientation, gender identity or expression, handicap, familial
 421 status, or religion of such person or of any person associated
 422 with him or her in connection with such loan or other financial
 423 assistance or the purposes of such loan or other financial
 424 assistance, or because of, or based on the perception of, the
 425 race, color, national origin, sex, sexual orientation, gender
 426 identity or expression, handicap, familial status, or religion
 427 of the present or prospective owners, lessees, tenants, or
 428 occupants of the dwelling or dwellings in relation to which such
 429 loan or other financial assistance is to be made or given.
 430 (2)(a) It is unlawful for any person or entity whose
 431 business includes engaging in residential real estate
 432 transactions to discriminate against any person in making
 433 available such a transaction, or in the terms or conditions of
 434 such a transaction, because of, or based on the perception of,
 435 race, color, national origin, sex, sexual orientation, gender

Page 15 of 17

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

25-00121-16

2016120__

436 identity or expression, handicap, familial status, or religion.
 437 Section 13. Section 760.26, Florida Statutes, is amended to
 438 read:
 439 760.26 Prohibited discrimination in land use decisions and
 440 in permitting of development.—It is unlawful to discriminate in
 441 land use decisions or in the permitting of development based on
 442 a person's actual or perceived race, color, national origin,
 443 sex, sexual orientation, gender identity or expression,
 444 disability, familial status, religion, or, except as otherwise
 445 provided by law, the source of financing of a development or
 446 proposed development.
 447 Section 14. Paragraph (a) of subsection (5) of section
 448 760.29, Florida Statutes, is amended to read:
 449 760.29 Exemptions.—
 450 (5) Nothing in ss. 760.20-760.37:
 451 (a) Prohibits a person engaged in the business of
 452 furnishing appraisals of real property from taking into
 453 consideration factors other than race, color, national origin,
 454 sex, sexual orientation, gender identity or expression,
 455 handicap, familial status, or religion.
 456 Section 15. Subsection (1) of section 760.60, Florida
 457 Statutes, is amended to read:
 458 760.60 Discriminatory practices of certain clubs
 459 prohibited; remedies.—
 460 (1) It is unlawful for a person to discriminate against any
 461 individual because of, or based on the perception of, race,
 462 color, religion, gender, national origin, handicap, age above
 463 the age of 21, sexual orientation, gender identity or
 464 expression, or marital status in evaluating an application for

Page 16 of 17

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

25-00121-16

2016120__

membership in a club that has more than 400 members, that provides regular meal service, and that regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from nonmembers for business purposes. It is unlawful for a person, on behalf of such a club, to publish, circulate, issue, display, post, or mail any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because of, or based on the perception of, race, color, religion, gender, national origin, handicap, age above the age of 21, sexual orientation, gender identity or expression, or marital status. This subsection does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.

Section 16. Paragraph (e) of subsection (1) of section 419.001, Florida Statutes, is amended to read:

419.001 Site selection of community residential homes.—

(1) For the purposes of this section, the term:

(e) "Resident" means any of the following: a frail elder as defined in s. 429.65; a person who has a handicap as defined in s. 760.22(8)(a) ~~s. 760.22(7)(a)~~; a person who has a developmental disability as defined in s. 393.063; a nondangerous person who has a mental illness as defined in s. 394.455; or a child who is found to be dependent as defined in s. 39.01 or s. 984.03, or a child in need of services as defined in s. 984.03 or s. 985.03.

Section 17. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/2016

Meeting Date

0120

5B120

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Street

City

State

Zip

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

SB120

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JOHN LONNISON

Job Title EXECUTIVE VICE PRESIDENT of CIO

TECH DATA CORPORATION

Address 4201 BAYSHORE BLVD

Street

Phone _____

TAMPA

FL

33611

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing TECH DATA (TAMPA 109)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/8/16

Meeting Date

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

120

Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Carlos Guillermo Smith

Job Title Government Affairs Manager

Address 4434 Gearhart Rd #2902

Street

Tallahassee

City

State

FL

Zip

Phone _____

Email carloss@eqfl.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Equality Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

120

Bill Number (if applicable)

Competative

Topic ~~Reproductive Protection~~ Workforce Act

Amendment Barcode (if applicable)

Name Gabriel Garcia-Vera

Job Title FL Field Coordinator

Address 8330 Biscayne Blvd

Street

Phone

Miami

FL

33138

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Nat. Latina Institute for Repro. Health

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)

February 8, 2016

SB 120

Meeting Date

Bill Number (if applicable)

Topic Florida Competitive Workforce Act

Amendment Barcode (if applicable)

Name J.C. Flores

Job Title Reg VP of Govt Affs

Address 150 S. Monroe St. Ste 400

Phone 850-572-5500

Street

City

State

Zip

Email

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

Representing

ATT

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

February 9, 2016

SB 120

Meeting Date

Bill Number (if applicable)

Topic Florida Competitive Workforce Act

Amendment Barcode (if applicable)

Name Patrick Slevin

Job Title Campaign Manager, Florida Businesses for a Competitive Workforce

Address 200 West College Avenue, Suite 210

Phone (850) 391-5040

Street

Tallahassee

Florida

32301

City

State

Zip

Email P.SL7@patricksslevin.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Businesses for a Competitive Workforce

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)

February 9, 2016

Meeting Date

SB 120

Bill Number (if applicable)

Topic Florida Competitive Workforce Act

Amendment Barcode (if applicable)

Name Bethany Linderman

Job Title Government Relations Policy Consultant, Florida Blue

Address 4800 Deerwood Campus Parkway, DC 3-4

Phone 813-822-7624

Street

Jacksonville

Florida

32246

City

State

Zip

Email Bethany.Linderman@bcbsfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Blue

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16
Meeting Date

120
Bill Number (if applicable)

Topic Discrimination

Amendment Barcode (if applicable)

Name Rich Templin

Job Title _____

Address 135 S. Monroe
Street

Phone 850-224-6926

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 Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/2016
Meeting Date

0120
Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name LES CANTRELL

Job Title LAW ENFORCEMENT RETIRED

Address 200 RIVERBEND RD.
Street

Phone 386-679-9272

ORMOND BEACH FL 32174
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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-9-16

Meeting Date

120

Bill Number (if applicable)

Topic DISCRIMINATION

Amendment Barcode (if applicable)

Name LARRY DUPRE

Job Title PKG CAR DRIVER

Address 8301 N RIVER HIGHLANDS PL

Phone 813-984-8828

TAMPA FL 33617

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.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.9.16

Meeting Date

120

Bill Number (if applicable)

Topic Discrimination

Amendment Barcode (if applicable)

Name Ken Williams

Job Title Driver

Address 7411 Meadow Drive
Street

Phone 813-493-7685

Tampa FL 33634
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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2.9.2016

Meeting Date

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

120

Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Aaron Carmella

Job Title _____

Address 625 Grove St N
Street
St Petersburg FL 33701
City State Zip

Phone 850-228-9831

Email aacarm89@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-2016

Meeting Date

SB 120

Bill Number (if applicable)

Topic PROHIBITED DISCRIMINATION

Amendment Barcode (if applicable)

Name FRANK ANGEL

Job Title _____

Address 21180 VIA EDEN

Street

Phone 708-955-6254

BOCA RATON

City

FL.

State

33433

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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

120

Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Hannah Willard

Job Title _____

Address 630 Hillcrest St Apt 10

Street

Phone 407 451 8460

Orlando, FL 32803

City

State

Zip

Email hannah@eqfl.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

120

Bill Number (if applicable)

Topic NAACP

Amendment Barcode (if applicable)

Name Nadine Smith

Job Title Ceo

Address PO BOX 13184

Phone _____

Street

St. Petersburg FL 33733

City

State

Zip

Email Nadine@eqfl.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Equality Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-16

Meeting Date

SB 128

Bill Number (if applicable)

Topic Prohibit Discrimination

Amendment Barcode (if applicable)

Name Raymond Guillory

Job Title _____

Address 129 Park Dr.

Phone 850 450 3748

Street

Pensacola

FL

32507

City

State

Zip

Email rayguillory11@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16

Meeting Date

SB 120

Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Edgar Castro

Job Title Lobbyist

Address 123 S Adams St

Street

Phone _____

Tallahassee

FL

City

State

Zip

Email Castro@sostrategy.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Miami Beach

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

SB 120

Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Linlee Ott

Job Title Government Affairs Consultant

Address 200 W. College Ave, Suite 300

Phone 904-314-5450

Street

Tallahassee,

City

FL

State

32301

Zip

Email lott@thefloridiansgroup.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CSX

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2-9-16

Meeting Date

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

SB120

Bill Number (if applicable)

Topic Florida Competitive Workforce Act

Amendment Barcode (if applicable)

Name Roger Simmermaker

Job Title Electronics Technician

Address 13112 Aronomink Lane

Street

Orlando

City

FL

State

32828

Zip

Phone 407-234-4626

Email how2buyamerican@
gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Central - Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-14
Meeting Date

0120
Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Nickena Campbell

Job Title Bus Operator

Address 11221 Justin Oaks Dr.
Street

Phone 904-755-4564

Jax FL 32221
City State Zip

Email NckeyCampbell12174@
Gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing my 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.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-16
Meeting Date

0120
Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Cynthia Van Zandt

Job Title Instructional Assistant

Address Land O Lakes 25448 Geddy Dr
Street

Phone 813-748-5485

Land O Lake FL 34639
City State Zip

Email bearpawcindy@yahoo

Speaking: ☒ For ☐ Against ☐ Information

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

Representing USEP

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)

1-9-16

Meeting Date

0120

Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Kathy Hiley

Job Title Clerk @ USPS

Address 657 Sweetbriar Dr

Phone 813-748-5467

Street

Oldsmar

Florida

34677

City

State

Zip

Email Katherinehiley50@gmail

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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

SB120

Bill Number (if applicable)

Topic Competitive Workforce Act

Amendment Barcode (if applicable)

Name Michael Rayner

Job Title _____

Address P O Box 2133

Street

Fort Lauderdale, FL 33303

City

State

Zip

Phone 954 899-0877

Email merajner@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-16
Meeting Date

120
Bill Number (if applicable)

Topic No Employment Discrimination

Amendment Barcode (if applicable)

Name Barbara Deane

Job Title Ms

Address 625 E. Broadway ST

Phone 222-3969

Tallahassee FL 32308
City State Zip

Email barbaradeane1@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/2016
Meeting Date

120
Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Eddy Labrador

Job Title Director, Intergovernmental Affairs

Address 115 S. Andrews Avenue, Rm 424
Street
Fort Lauderdale FL 33301
City State Zip

Phone 954-826-1155

Email elabrador@

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

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

2/9/16

Meeting Date

120

Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Amber Kelly Legislative Affairs

Job Title 4853 S. Orange Ave.

Address ↓

Phone (407) 418-0250

Street

Orlando

City

FL

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL 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

APPEARANCE RECORD

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

2/9/16
Meeting Date

SB 120
Bill Number (if applicable)

Topic SB 120

Amendment Barcode (if applicable)

Name Vicki Stoughton

Job Title Physical Therapist Assistant

Address 1540 Coral St.
Street

Phone 321-543-8757

Menitt Island FL 32952
City State Zip

Email stovicki@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16

Meeting Date

SB 0120

Bill Number (if applicable)

Topic Discrimination

Amendment Barcode (if applicable)

Name Peggy Johnson

Job Title _____

Address 1205 Heritage Acres Blvd

Street

Phone 321-960-0184

Rockledge

City

FL

State

32955

Zip

Email sunapeg@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-16

Meeting Date

SB120

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name GERALD BUSTIN

Job Title PASTOR

Address ~~Box~~ 5300 SE 145 St.

Phone 352-347-3284

Summertide FL 34491
City State Zip

Email gtbii@prodigy.net

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/2014

Meeting Date

SB 120

Bill Number (if applicable)

Topic SB 120

Amendment Barcode (if applicable)

Name Randy Osborne

Job Title Director

Address 2775 NW 49 Ave

Phone 352-572-7598

Street

Ocala

City

FL

State

34482

Zip

Email randy.victory360@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Eagle Forum

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-16

Meeting Date

SB120

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name

Joana Austin

Job Title

Ed Pastor of Visitation

Address

5200 S.E. 145th St

Phone 352-245-2560

Street

Summerfield, FL 34491

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing

Open Door Community Church

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

SB-120

Bill Number (if applicable)

Topic COMPETITIVE WORKFORCE

Amendment Barcode (if applicable)

Name ^{REV} MARILYN RIVERA

Job Title HEAD of GOVERNMENT AFFAIRS

Address 1255 NE 178 ST

Phone 305 546-1190

Street

MIAMI

City

FL

State

33162

Zip

Email marilynrivera5@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SOUTH FLORIDA MINISTERS ASSO.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

SB-120

Bill Number (if applicable)

Topic COMPETITIVE WORKFORCE

Amendment Barcode (if applicable)

Name REV. ABRAHAM RIVERA

Job Title EXECUTIVE BOARD MEMBER

Address 1255 NE 178 ST
Street

Phone 786-704-3412

MIAMI FL 33162
City State Zip

Email abrahamrivera@me.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing MISSION MIAMI

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

SB120

Bill Number (if applicable)

Topic Competitive Workforce Act

Amendment Barcode (if applicable)

Name Cheyenne CostillaJob Title General CounselAddress 4075 Esplanade Way, Room 110Phone 8504887082

Street

TallahasseeFL32399

City

State

Zip

Email cheyenne.costilla@fchr.myflorida.comSpeaking: ☐ For ☐ Against ☒ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Commission on Human RelationsAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 9, 2016
Meeting Date

SB 120
Bill Number (if applicable)

Topic SB 120

Amendment Barcode (if applicable)

Name Richard Harrison

Job Title Farmer

Address 717 Hwy 71

Phone 850-537-4322

Street

Marianna

FL

32448

City

State

Zip

Email rharrison22@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

SB120

Bill Number (if applicable)

Topic Competitive Workforce Act

Amendment Barcode (if applicable)

Name Michelle WilsonJob Title Executive DirectorAddress 4075 Esplanade Way, Room 110Phone 8504887082

Street

TallahasseeFL32399

City

State

Zip

Email michelle.wilson@fchr.myflorida.comSpeaking: ☐ For ☐ Against ☒ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Commission on Human RelationsAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-2016

Meeting Date

#120

Bill Number (if applicable)

Topic DISCRIMINATION

Amendment Barcode (if applicable)

Name MIN. NATHANIEL J. WILCOX

Job Title MINISTER

Address 3111 N.W. 135 ST

Phone (786) 488-2979

Street

MIAMI

City

FL

State

33054

Zip

Email NWILCOX222@AOL.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing MYSELF

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)

6-9-16

Meeting Date

SB 120

Bill Number (if applicable)

Topic Legalizing Discrimination

Amendment Barcode (if applicable)

Name Anthony Swain

Job Title Retired Engineer

Address 1914 NW 43 St

Phone 786-925-7470

Street

Miami

City

FL

State

33141

Zip

Email swainanthony78@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Christian Family Coalition - Apostatic Renewal Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/9/15
Meeting Date

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

SB/20
Bill Number (if applicable)

Topic Legalizing Discrimination Against Christians
Name Charlene E. Coffman

Amendment Barcode (if applicable)

Job Title

Address

Street

City

State

Zip

Phone

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing

Christian Family Coalition

Appearing at request of Chair: ☒ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

SB 120

Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Pastor Asia Roberts

Job Title _____

Address 2841 Englewood Drive

Phone 954 625 9568

Street

Largo FL 33771

City

State

Zip

Email asia1098@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Church El Olam

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16
Meeting Date

0/20
Bill Number (if applicable)

Topic HB 0/20

Amendment Barcode (if applicable)

Name Rodriguez, Gilberto

Job Title Temple Elijah (Center of Power Authority and Dominion)

Address 21021 STATE ROAD 54
Street

Phone 813-701-8903

Lot 2, FL 33558
City State Zip

Email Temple.elias@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Christian Family Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16

Meeting Date

SB 120

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Terry Weems

Job Title Pastor

Address P.O. Box 722

Phone _____

Street

Bradenton

City

State

FL

Zip

34206

Email PastorTWeems@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16
Meeting Date

SB-120
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable) _____

Name Chris Walker

Job Title Pastor

Address 195 Blackstone Creek
Street
Orlando FL 32836
City State Zip

Phone _____

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing South Lake Pastors 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/09/14
Meeting Date

SB 120
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Armando V. Pomar

Job Title Consultant

Address 7710 Abbott Ave

Phone 786-285-4090

Street

M. Beach FL.

3314
Zip

Email armandovpomar
@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16

Meeting Date

120

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DANNIE WILLIAMS

Job Title SR. PASTOR

Address 2795 SOUTH ST
Street

Phone _____

LEE BURG FL 34748
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing KINGDOM COVENANT FELLOWSHIP

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/8/2013
Meeting Date

SB 120
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable) _____

Name Howard Proctor

Job Title Pastor

Address 3415 9th St East
Street
Bradenton FL 34208
City State Zip

Phone _____

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-9-2016

Meeting Date

SB120

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name James Conway

Job Title

Address 1314 12th Street

Street

Phone

Sarasota Fla

City

State

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

02-09-16

Meeting Date

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

SB 120

Bill Number (if applicable)

Topic Florida Competitive Workforce Act

Amendment Barcode (if applicable)

Name Andrea Ford

Job Title Executive Assistant

Address 318 Cardiff Court

Phone 404-509-8258

Street

Panama City

FL

32404

City

State

Zip

Email natasha.oquendo@network@gmail.com
~~andrea.ford@flsenate.com~~

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Natasha Oquendo netWORK

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

02-09-16

Meeting Date

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

SB/20

Bill Number (if applicable)

Topic Florida Competitive Workforce Act

Amendment Barcode (if applicable)

Name Natasha Oquendo

Job Title Pastor

Address 318 Cardiff Court

Street

Phone 850-586-6494

Panama City

City

FL. 32404

State

Zip

Email natasha.oquendo@netub
rk@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Natasha Oquendo Network

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/16
Meeting Date

120
Bill Number (if applicable)

Topic Sexual Orientation

Amendment Barcode (if applicable)

Name Anthony Verdugo

Job Title E.D.

Address 6850 SW 24 St.
Street
Miami FL 33155
City State Zip

Phone _____

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/14

Meeting Date

120

Bill Number (if applicable)

Topic Trans

Amendment Barcode (if applicable)

Name Greg Poond

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo

City

Fla.

State

33773

Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Saving Families

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16

Meeting Date

120

Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Av

Phone _____

Street

Tallahassee

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 Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/16

Meeting Date

1118

Bill Number (if applicable)

Topic TNC Insurance

Amendment Barcode (if applicable)

Name Daphne Sainvil

Job Title Legislative Coordinator

Address 115 S Andrews Ave, Rm. 426

Phone 954-253-7320

Street

Ft. Lauderdale FL

33301

City

State

Zip

Email dsainvil@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

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

2/9/16

Meeting Date

1118

Bill Number (if applicable)

Topic TNC Insurance

Amendment Barcode (if applicable)

Name Louis Minardi

Job Title President

Address 4413 N. Asperides St

Phone _____

Street

Tampa

City

FL

State

33614

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Taxicab 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)

2/8/16

Meeting Date

SB 1118

Bill Number (if applicable)

Topic SB 1118

Amendment Barcode (if applicable)

Name TM ALBORG

Job Title PUBLIC POLICY MANAGER / LYFT

Address

Street

Phone 770-595-0190

City

State

Zip

Email TALborg@Lyft.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing LYFT

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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)

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 2/9/2016 4:05:15 PM

Ends: 2/9/2016 6:00:11 PM Length: 01:54:57

4:05:14 PM Meeting called to order by Chair Diaz de la Portilla
4:05:18 PM Roll call by Administrative Assistant Joyce Butler
4:05:25 PM Quorum present
4:05:38 PM Tab 8, SB 62 introduced by Chair Diaz de la Portilla
4:05:44 PM Explanation of SB 62, Relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office by Senator Montford
4:08:34 PM Comments from Chair Diaz de la Portilla
4:08:41 PM Speaker Frank Winkles, Attorney in support
4:09:39 PM Comments from Chair Diaz de la Portilla
4:09:47 PM Senator Montford waives closure
4:09:51 PM Roll call by Administrative Assistant Joyce Butler
4:10:01 PM SB 62 reported favorably
4:10:14 PM Tab 14, CS/SB 948 introduced by Chair Diaz de la Portilla
4:10:30 PM Explanation of SB CS/SB 948, Secondhand Dealers by Representative Passidomo
4:11:50 PM Comments from Chair Diaz de la Portilla
4:11:57 PM Amendment Barcode # 847994 introduced by Chair Diaz de la Portilla
4:12:04 PM Representative Passidomo states that the Amendment will be withdrawn
4:12:24 PM Sarah Carroll waives in support
4:12:44 PM Comments from Chair Diaz de la Portilla
4:12:50 PM Representative Passidomo waives closure
4:12:53 PM Roll call on CS/SB 948 by Administrative Assistant Joyce Butler
4:13:05 PM CS/SB 948 reported favorably
4:13:15 PM Tab 7, SB 48 introduced by Chair Diaz de la Portilla
4:13:21 PM Explanation of SB 48, Relief of "Survivor: and the Estate of "Victim" by the Department of Children and Families by Senator Flores
4:17:39 PM Comments from Chair Diaz de la Portilla
4:17:51 PM Late-filed Amendment Barcode #196086 introduced by Chair Diaz de la Portilla
4:17:55 PM Explanation of Amendment by Senator Flores
4:18:00 PM Comments from Chair Diaz de la Portilla
4:18:14 PM Amendment Barcode #196086 adopted
4:18:26 PM Closure by Senator Flores
4:19:07 PM Roll call on CS/SB 48 by Administrative Assistant Joyce Butler
4:19:17 PM CS/SB 48 reported favorably
4:19:26 PM Tab 15, CS/SB 1220 introduced by Chair Diaz de la Portilla
4:19:48 PM Explanation of CS/SB 1220, Public Records by Senator Garcia
4:20:11 PM Strike all Amendment Barcode #859582 introduced by Chair Diaz de la Portilla
4:20:21 PM Explanation on Amendment Barcode #859582 by Senator Garcia
4:23:48 PM Comments from Chair Diaz de la Portilla
4:23:55 PM Question from Senator Soto
4:24:06 PM Response from Senator Garcia
4:25:44 PM Follow-up question from Senator Soto
4:26:15 PM Response from Senator Garcia

4:27:33 PM Question from Senator Ring
 4:28:06 PM Comments from Chair Diaz de la Portilla
 4:28:16 PM Question from Senator Joyner
 4:28:33 PM Response from Senator Garcia
 4:30:44 PM Comments from Chair Diaz de la Portilla
 4:31:04 PM Speaker Mayor Peggy Bell
 4:32:15 PM Speaker Mitchell Brecman Attorney, Town of Cutler Bay and Villages of Pinecrest
 4:33:57 PM Commissioner Diane Velazquez, City of Apopka waives in support
 4:34:04 PM Commissioner Rosemary Wilson, City of Ocoee waives in support
 4:34:16 PM Commissioner Joseph McMullin, Town of Oakland waives in support
 4:34:25 PM Councilman Donald Shroyer, City of St. Cloud waives in support
 4:34:35 PM Mayor, Joe Durso, City of Longwood waives in support
 4:34:39 PM Mayor Charles Lacey, City of Winter Springs waives in support
 4:34:48 PM City Commissioner Gardner Hussey, City of Altamonte Springs waives in support
 4:34:54 PM Mayor Ray Bagshaw, City of Edgewood waives in support
 4:35:00 PM City Councilman Jimmie Williams, City of Homestead waives in support
 4:35:08 PM Speaker Kraig Conn, Florida League of Cities
 4:36:03 PM Laura Youmans, Legislative Advocate, Florida Association of Counties waives in support
 4:36:10 PM Mayor Charlie Latham, City of Jacksonville Beach waives in support
 4:36:20 PM Councilwoman Roslyn Buckner, City of Miami Springs waives in support
 4:36:30 PM Councilman Nelson Rodriguez, City of Miami Lakes waives in support
 4:36:47 PM Richard Black, Miami Dade League of Cities waives in support
 4:37:02 PM Speaker Dean Ridings, President & CEO, The Florida Press Association in opposition
 4:37:45 PM Question from Senator Soto
 4:37:53 PM Response from Mr. Ridings
 4:38:12 PM Comments from Chair Diaz de la Portilla
 4:38:21 PM Response from Mr. Ridings
 4:39:01 PM Comments from Chair Diaz de la Portilla
 4:39:08 PM Speaker Rich Templin, Florida AFL-CIO
 4:42:28 PM Jan Rubino, Florida League of Women Voters waives in opposition
 4:42:54 PM Richard Kuper, Miami Dade League of Cities waives in support
 4:43:14 PM Comments from Chair Diaz de la Portilla
 4:43:19 PM Closure waived on Amendment
 4:43:24 PM Amendment Barcode #859582 adopted
 4:43:29 PM Comments from Chair Diaz de la Portilla
 4:43:32 PM Question from Senator Soto
 4:44:05 PM Comments from Senator Joyner
 4:45:14 PM Comments from Chair Diaz de la Portilla
 4:45:39 PM Closure by Senator Garcia
 4:45:59 PM Roll call on CS/CS/SB 1220 by Administrative Assistant Joyce Butler
 4:46:44 PM CS/CS/SB 1220 reported favorably
 4:47:04 PM Tab 6, SB 30 introduced by Chair Diaz de la Portilla
 4:47:11 PM Explanation of SB 30, Relief of C.M.H. by the Department of Children and Families by Senator Garcia
 4:47:49 PM Amendment Barcode #391648 introduced by Chair Diaz de la Portilla
 4:48:02 PM Explanation of Amendment by Senator Garcia
 4:48:20 PM Comments from Chair Diaz de la Portilla
 4:48:24 PM Closure waived on Amendment
 4:48:29 PM Amendment Barcode #391648 adopted
 4:48:42 PM Comments from Chair Diaz de la Portilla
 4:48:46 PM Closure waived

4:48:50 PM Roll call on CS/SB 30 by Administrative Assistant Joyce Butler
4:48:59 PM CS/SB 30 reported favorably
4:49:14 PM Tab 12, CS/SB 342 introduced by Chair Diaz de la Portilla
4:49:19 PM Explanation of CS/SB 342, Renters Insurance by Senator Gibson
4:50:08 PM Comments from Chair Diaz de la Portilla
4:50:17 PM Kelly Mallette, Florida Apartment Association waives in support
4:50:26 PM Comments from Chair Diaz de la Portilla
4:50:28 PM Closure waived
4:50:31 PM Roll call by Administrative Assistant Joyce Butler
4:50:43 PM CS/SB 342 reported favorably
4:50:51 PM Tab 16, SB 1436 introduced by Chair Diaz de la Portilla
4:51:02 PM Explanation of SB 1436, Public Records by Senator Braynon
4:51:44 PM Late-filed Amendment Barcode #283512 introduced by Chair Diaz de la Portilla
4:51:58 PM Explanation of Amendment by Senator Braynon
4:52:07 PM Comments from Chair Diaz de la Portilla
4:52:13 PM Amendment Barcode #283512 adopted without objection
4:52:25 PM Closure waived
4:52:27 PM Roll call on CS/SB 1436 by Administrative Assistant Joyce Butler
4:52:43 PM CS/SB 1436 reported favorably
4:52:57 PM Tab 13, CS/B 730 introduced by Chair Diaz de la Portilla
4:53:03 PM Explanation of CS/SB 730, Professional Guardians by Daniel Bruno, Senator Margolis
Aide
4:53:30 PM Comments from Chair Diaz de la Portilla
4:53:33 PM Question from Senator Joyner
4:53:40 PM Response from Mr. Bruno
4:54:56 PM Follow-up question from Senator Joyner
4:55:10 PM Comments from Chair Diaz de la Portilla
4:55:15 PM Amendment Barcode #965422 introduced by Chair Diaz de la Portilla
4:55:21 PM Explanation of Amendment Barcode #965422 by Mr. Bruno
4:55:29 PM Comments from Chair Diaz de la Portilla
4:55:40 PM Amendment Barcode #965422 adopted without objection
4:56:09 PM Speaker Doug Franks
4:58:50 PM Comments from Chair Diaz de la Portilla
4:59:00 PM Closure waived
4:59:02 PM Roll call on CS/CS/SB 730 by Administrative Assistant Joyce Butler
4:59:15 PM CS/CS/SB 730 reported favorably
4:59:29 PM Tab 17, SB 1692 introduced by Chair Diaz de la Portilla
4:59:40 PM Explanation of CS/SB 1692, Protection of Veterans by Devon West, Senator Altman's
Aide
5:00:21 PM Comments from Chair Diaz de la Portilla
5:00:26 PM Amendment Barcode #464856 introduced by Chair Diaz de la Portilla
5:00:36 PM Explanation of Amendment Barcode #464856 by Ms. West
5:00:49 PM Comments from Chair Diaz de la Portilla
5:00:56 PM Amendment Barcode #464856 adopted
5:01:01 PM Comments from Chair Diaz de la Portilla
5:01:09 PM Colonel Mike Prendergast, Executive Director, The Florida Department of Veterans'
Affairs waives in support
5:01:19 PM Comments from Chair Diaz de la Portilla
5:01:21 PM Closure waived
5:01:25 PM Roll call on CS/SB 1692 by Administrative Assistant Joyce Butler
5:01:35 PM CS/SB 1692 reported favorably
5:01:48 PM Tab 5, SB 14 introduced by Chair Diaz de la Portilla

5:02:14 PM Explanation of SB 14, Relief of the Estate of Dr. Sherrill Lynn Aversa by the Department of Transportation by Devon West, Senator Altman's Aide

5:02:42 PM Comments from Chair Diaz de la Portilla

5:02:56 PM Amendment Barcode #280610 introduced by Chair Diaz de la Portilla

5:03:00 PM Explanation of Amendment Barcode #280610 by Ms. West

5:03:20 PM Amendment Barcode #280610 adopted

5:03:22 PM Comments from Chair Diaz de la Portilla

5:03:30 PM Closure waived

5:03:33 PM Roll call on CS/SB 14 by Administrative Assistant Joyce Butler

5:03:41 PM CS/SB 14 reported favorably

5:04:13 PM Tab 9, SB 16 introduced by Chair Diaz de la Portilla

5:04:37 PM Explanation of SB 16, Relief of Dennis Darling, Sr. and Wendy Smith by Senator Joyner

5:05:12 PM Comments from Chair Diaz de la Portilla

5:05:25 PM Closure waived

5:05:26 PM Roll call on SB 16 by Administrative Assistant Joyce Butler

5:05:36 PM SB 16 reported favorably

5:06:02 PM Comments from Senator Simmons regarding Motion to Reconsider SB 120

5:06:54 PM Comments regarding debate on Motion from Chair Diaz de la Portilla

5:07:28 PM Senator Ring on debate on the Motion

5:10:22 PM Comments from Chair Diaz de la Portilla

5:10:31 PM Comments from Senator Joyner

5:12:11 PM Comments from Senator Soto

5:12:52 PM Comments from Chair Diaz de la Portilla

5:13:00 PM Comments from Senator Abruzzo regarding reconsideration of bill

5:17:44 PM Comments from Chair Diaz de la Portilla

5:19:09 PM Senator Simmons withdraws motion for reconsideration and TP'd SB 120

5:19:46 PM Motion passes to TP SB 120

5:20:09 PM Tab 10, SB 38 introduced by Chair Diaz de la Portilla

5:20:15 PM Explanation of SB 38, Relief of J.D.S. by the Agency for Persons with Disabilities

5:20:42 PM Comments from Chair Diaz de la Portilla

5:20:54 PM Closure waived

5:20:57 PM Roll call SB 38 by Administrative Assistant Joyce Butler

5:21:08 PM SB 38 reported favorably

5:21:37 PM Tab 19, SB 794 introduced by Chair Diaz de la Portilla

5:21:45 PM Explanation of SB 794, Dissolution of Marriage Parenting Plans by Senator Ring

5:22:40 PM Comments from Chair Diaz de la Portilla

5:22:44 PM Question from Senator Joyner

5:22:52 PM Response from Senator Ring

5:24:48 PM Follow-up question from Senator Joyner

5:25:09 PM Response from Senator Ring

5:27:06 PM Follow-up question from Senator Joyner

5:27:44 PM Response from Senator Ring

5:28:09 PM Comments from Chair Diaz de la Portilla

5:28:33 PM Speaker Greg Pound, Pinellas County Florida Government Corruption

5:29:51 PM Speaker Cynthia Wheeler in opposition

5:31:26 PM Comments from Chair Diaz de la Portilla

5:31:36 PM Late-filed Amendment introduced

5:31:48 PM Explanation of Late-filed Amendment by Senator Ring

5:32:18 PM Comments from Chair Diaz de la Portilla

5:32:25 PM Amendment adopted

5:32:36 PM Comments from Chair Diaz de la Portilla

5:32:43 PM Closure by Senator Ring on bill as amended

5:32:55 PM Roll call on CS/SB 794 by Administrative Assistant Joyce Butler
5:33:36 PM CS/SB 794 reported favorably
5:33:57 PM Tab 21 CS/SB 1118 introduced by Chair Diaz de la Portilla
5:34:09 PM Explanation of CS/SB 118, Transportation Network Company Insurance by Senator Simmons
5:38:42 PM Comments from Chair Diaz de la Portilla
5:38:45 PM Question from Senator Brandes
5:38:54 PM Response from Senator Simmons
5:40:13 PM Comments from Chair Diaz de la Portilla
5:40:15 PM Question from Senator Joyner
5:40:31 PM Response from Senator Simmons
5:41:17 PM Follow-up question from Senator Joyner
5:41:25 PM Response from Senator Simmons
5:42:35 PM Follow-up question from Senator Joyner
5:42:45 PM Response from Senator Simmons
5:44:39 PM Comments from Chair Diaz de la Portilla
5:44:46 PM Amendment Barcode #791940 introduced by Chair Diaz de la Portilla
5:44:54 PM Explanation of Amendment Barcode #791940 by Senator Brandes
5:45:34 PM Amendment to Amendment Barcode #221222 introduced by Chair Diaz de la Portilla
5:45:43 PM Explanation of Amendment to Amendment Barcode #221222 by Senator Brandes
5:46:13 PM Comments from Chair Diaz de la Portilla
5:46:19 PM Question from Senator Joyner
5:46:26 PM Response from Senator Brandes
5:46:40 PM Comments from Chair Diaz de la Portilla
5:46:54 PM Amendment to Amendment adopted
5:47:21 PM Comments from Chair Diaz de la Portilla
5:47:44 PM Comments from Senator Simmons regarding Amendment being unfriendly
5:48:58 PM Speaker cards to the Amendment per Chair
5:49:14 PM Ellyn Bogdanoff, Lobbyist, Florida Taxi Association in opposition of Amendment
5:50:21 PM Question from Senator Brandes
5:50:33 PM Response from Ms. Bogdanoff
5:50:35 PM Speaker Louis Minardi, President, Florida Taxi Association in opposition
5:51:17 PM Question from Senator Brandes
5:51:24 PM Response from Mr. Minardi
5:52:03 PM Follow-up question from Senator Brandes
5:52:10 PM Response from Mr. Minardi
5:52:17 PM Additional question from Senator Brandes
5:52:24 PM Response from Mr. Minardi
5:52:32 PM Christopher Emmanuel, Policy Director waives in support
5:52:41 PM Speaker Brad Nail, Risk Manager, Uber speaking in support of Amendment
5:54:01 PM Question from Senator Joyner
5:54:10 PM Response from Mr. Nail
5:54:13 PM Follow-up question from Senator Joyner
5:54:22 PM Response from Mr. Nail
5:54:40 PM Follow-up question from Senator Joyner
5:54:49 PM Response from Mr. Nail
5:55:09 PM Motion to vote on time certain on the Amendment
5:55:21 PM Senator Simmons moves for Amendment for time certain on Amendment at 5:56 and bill 5:58
5:55:50 PM Motion adopted
5:55:53 PM Comments from Chair Diaz de la Portilla
5:56:02 PM Amendment not adopted

5:56:20 PM Late file introduced
5:56:27 PM Explanation of Amendment Barcode #540696 by Senator Brandes
5:56:37 PM Comments from Chair Diaz de la Portilla
5:56:46 PM Comments from Senator Simmons regarding being in agreement with Amendment
5:57:17 PM Comments from Chair Diaz de la Portilla
5:57:26 PM Amendment adopted
5:57:35 PM Tim Alborg, Public Policy Manager/LYFT waives in opposition
5:57:53 PM Louis Minardi, President, Florida Taxicab Association waives in support
5:58:01 PM Daphna Sainvil, Legislative Coordinator, Broward County waives in support
5:58:11 PM Roll call on CS/CS/SB 1118 by Administrative Assistant Joyce Butler
5:58:30 PM CS/CS/SB 1118 reported favorably
5:58:44 PM Tab 11, SB 20 introduced by Chair Diaz de la Portilla
5:58:59 PM Explanation of SB 20, Relief of Zaldivar and Campos by Orange County by Senator Diaz de la Portilla
5:59:11 PM Roll call on SB 20 by Administrative Assistant Joyce Butler
5:59:15 PM SB 20 reported favorably
5:59:36 PM Comments from Chair regarding SB 120 failing on 5-5 vote
5:59:51 PM Senator Simmons moves to adjourn without objection