

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

<b>Tab 17 CS/SB 1118 by BI, Simmons; (Compare to CS/CS/1ST ENG/H 0509) Transportation Network Company Insurance</b>						
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
<b>Tab 18 SB 1298 by Brandes; (Similar to CS/H 1181) Bad Faith Assertions of Patent Infringement</b>						
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
<b>Tab 19 SB 120 by Abruzzo (CO-INTRODUCERS) Sobel, Soto, Latvala, Margolis, Hutson, Bullard, Ring, Thompson, Clemens, Gibson; (Similar to H 0045) Prohibited Discrimination</b>						
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	<b>SB 14</b> Altman	<p>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.</p> <p>SM JU 02/09/2016 Fav/CS ATD AP</p>	Fav/CS Yea 9 Nays 1
2	<b>SB 30</b> Garcia (Identical H 3503)	<p>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.</p> <p>SM JU 02/09/2016 Fav/CS AHS AP</p>	Fav/CS Yea 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	<b>SB 48</b>	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.	Fav/CS Yea 10 Nays 0		
SM					
JU	02/09/2016 Fav/CS				
AHS					
AP					
4	<b>SB 62</b>	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.	Favorable Yea 9 Nays 1	
SM					
JU	02/09/2016 Favorable				
CA					
FP					
5	<b>SB 16</b>	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.	Favorable Yea 9 Nays 1
SM					
JU	02/09/2016 Favorable				
AED					
AP					

**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	<b>SB 38</b>	<p>Soto (Identical H 3521)</p> <p>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.</p>	<p>Favorable Yea 9 Nays 0</p>
7	<b>SB 20</b>	<p>Diaz de la Portilla (Similar CS/H 3517)</p> <p>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.</p>	<p>Favorable Yea 10 Nays 0</p>
8	<b>CS/SB 342</b>	<p>Banking and Insurance / Gibson (Similar S 94, Compare CS/H 237)</p> <p>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.</p>	<p>Favorable Yea 9 Nays 0</p>

**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	<b>CS/SB 730</b>	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.	Fav/CS Yea 10 Nays 0
CF	01/20/2016 Fav/CS		
JU	02/09/2016 Fav/CS		
FP			
10	<b>CS/SB 948</b>	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.	Favorable Yea 10 Nays 0
CM	01/19/2016 Fav/CS		
JU	02/09/2016 Favorable		
FP			
11	<b>CS/SB 1220</b>	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.	Fav/CS Yea 7 Nays 3
GO	01/26/2016 Fav/CS		
JU	02/09/2016 Fav/CS		
FP			
12	<b>SB 1436</b>	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.	Fav/CS Yea 9 Nays 1
JU	02/09/2016 Fav/CS		
GO			
RC			

**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	<b>SB 1692</b>	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.	Fav/CS Yea 10 Nays 0
JU	02/09/2016 Fav/CS		
ACJ			
FP			
14	<b>SB 668</b>	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.	Not Considered
JU	02/09/2016 Not Considered		
ACJ			
AP			
15	<b>SB 794</b>	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.	Fav/CS Yea 9 Nays 1
JU	02/09/2016 Fav/CS		
CF			
RC			
16	<b>SB 1034</b>	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.	Not Considered
HP	01/19/2016 Favorable		
JU	02/09/2016 Not Considered		
RC			

**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	<b>CS/SB 1118</b> 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 Yea 7 Nays 3
18	<b>SB 1298</b> 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
<b>Pending Reconsideration:</b>			
19	<b>SB 120</b> 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 Yea 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.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Other Related Meeting Documents			

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## 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

SPECIAL MASTER'S FINAL REPORT – CS/SB 14

January 6, 2016

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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

SPECIAL MASTER'S FINAL REPORT – CS/SB 14

January 6, 2016

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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.

SPECIAL MASTER'S FINAL REPORT – CS/SB 14

January 6, 2016

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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.

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

December 1, 2011

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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.

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

December 1, 2011

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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

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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



LEGISLATIVE ACTION

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

The Committee on Judiciary (Ring) recommended the following:

1                   **Senate Amendment (with title amendment)**

2

3                   Delete lines 57 - 63

4 and insert:

5                   \$650,000 to a new category titled "Relief: Estate of Dr.  
6                   Sherrill Lynn Aversa" as compensation to the Estate of Dr.  
7                   Sherrill Lynn Aversa for the death of Dr. Sherrill Lynn Aversa,  
8                   which amount includes attorney fees and costs.

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



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

14  
15 ===== T I T L E A M E N D M E N T =====  
16 And the title is amended as follows:

17 Delete lines 44 - 47

18 and insert:

19 amount of \$800,000 solely against the department, with no  
20 finding of comparative negligence against any other party, and  
21 WHEREAS, the department has paid \$150,000 to the Estate of  
22 Dr. Aversa consistent with the statutory limits of liability set  
23 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".

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](http://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 NATURAL 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.

SPECIAL MASTER'S FINAL REPORT – CS/SB 30

January 13, 2016

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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.

SPECIAL MASTER'S FINAL REPORT – SB 58

December 18, 2014

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**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

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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

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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.

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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 increasing 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 report 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 cause 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.

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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 medications 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



LEGISLATIVE ACTION

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

The Committee on Judiciary (Bean) recommended the following:

1                   **Senate Amendment**

2

3                   Delete lines 10 - 92

4 and insert:

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

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



12 in their home, and

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

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

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

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

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

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

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

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

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

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



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

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

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

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

52 WHEREAS, on April 14, 2006, a lawsuit, Case No. 2006 CA  
53 003727, was filed in the 15th Judicial Circuit in and for Palm  
54 Beach County on behalf of C.M.H., by and through his parents,  
55 alleging negligence on the part of DCF and its providers, which  
56 allowed the perpetration of sexual abuse against and the  
57 victimization of C.M.H. by J.W., and

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

61 WHEREAS, on January 2, 2014, after a jury trial and  
62 verdict, the court entered a judgment against DCF for  
63 \$5,176,543.08, including costs, and

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

**The Florida Senate**  
State Senator René García  
38<sup>th</sup> District

Please reply to:

District Office:

1490 West 68 Street  
Suite # 201  
Hialeah, FL 33014  
Phone# (305) 364-3100

December 14<sup>th</sup>, 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

**Committees:** Appropriations Subcommittee on Health & Human Services, Chairman, Appropriations, Children, Families, and Elderly Affairs, Health Policy, Agriculture, Education Pre-K – 12, Joint Legislative Budget Committee and Communications, Energy and Public Utilities.



## 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.

## SPECIAL MASTER'S FINAL REPORT – CS/SB 48

January 25, 2016

Page 2

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.<sup>1</sup> 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.<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup> In March 2002, before Survivor and Victim turned 2 years old, their biological mother was arrested for domestic violence.<sup>4</sup>

In August 2003, when the children were 3 years old, the biological mother's rights were terminated.<sup>5</sup> 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.<sup>6</sup>

### ***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.<sup>7</sup> 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.

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

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 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.<sup>8</sup> However, the home study was not completed for about 15 months.<sup>9</sup> No explanation for the lengthier time period for the Texas home study was provided during the special master proceeding.<sup>10</sup> 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."<sup>11, 12</sup> 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

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

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

<sup>10</sup> 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.).

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

<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> 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."<sup>15</sup>

#### **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."<sup>16</sup>

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

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<sup>13</sup> 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.).

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

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

<sup>16</sup> 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.<sup>17</sup> Finally, the psychologist opined that it would be detrimental to wake the children up and confront them as it was then after midnight.<sup>18</sup>

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.<sup>19</sup>

Apparently, department staff concluded that Victim was confusing her foster father with her biological father.<sup>20</sup> 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.<sup>21</sup>

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."<sup>22</sup> The review further found that Victim and Survivor should have been interviewed away from the Barahonas to get a more candid understanding

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<sup>17</sup> Notes by David Palachi (Jan. 28, 2005) (Bates 4509).

<sup>18</sup> *Id.*

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

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

<sup>21</sup> Notes by David Palachi (Feb. 9, 2005) (Bates 4503).

<sup>22</sup> 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.<sup>23</sup>

#### ***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.”<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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.”<sup>27</sup>

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<sup>23</sup> *Id.*

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

<sup>25</sup> Chronological Notes Reports, Feb. 23, 2006 (Bates 4527-4528).

<sup>26</sup> Chronological Notes Reports, Feb. 23, 2006 (Bates 4524-4526).

<sup>27</sup> 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.”<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup>

#### ***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.<sup>32</sup> 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]

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<sup>28</sup> Chronological Notes Reports, Feb. 23, 2006 (Bates 4520-4521).

<sup>29</sup> Section 39.303(1), F.S., (2005).

<sup>30</sup> Chronological Notes Reports, Mar. 13, 2006 (Bates 4515-4516).

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

<sup>32</sup> 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.<sup>33</sup>

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."<sup>34</sup>

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.<sup>35</sup> 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."<sup>36</sup> Whether the guardian ad litem reported his concerns to the dependency court is unknown.<sup>37</sup>

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."<sup>38</sup>

#### ***G. Survivor and Victim Adopted, May 2009***

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

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<sup>33</sup> *Id.*

<sup>34</sup> Investigative Summary (Apr. 12, 2007) (Bates 4616-4618).

<sup>35</sup> 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).

<sup>36</sup> *Id.*

<sup>37</sup> 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.

<sup>38</sup> 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.<sup>39</sup> 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 to ....RESPONSE 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."<sup>40</sup>

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<sup>39</sup> 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.

<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup> In response to these concerns, "the judge told DCF to have another evaluation, and to begin therapy ASAP."<sup>43</sup>

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.<sup>44</sup>

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.<sup>45</sup> 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.<sup>46</sup>

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<sup>41</sup> Guardian Ad Litem Case Log, Dec. 14, 2004 (BATES 4914).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

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

<sup>45</sup> 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).

<sup>46</sup> *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 hording 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.<sup>47</sup>

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.<sup>48</sup> 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.<sup>49</sup> The

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<sup>47</sup> *Id.*

<sup>48</sup> *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).

<sup>49</sup> 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.”<sup>50</sup> 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.”<sup>51</sup>

### ***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.<sup>52</sup> 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.”<sup>53</sup>

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.<sup>54</sup> The report further stated that Victim “is sure that terrible things are going to happen to her.”<sup>55</sup> 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.”<sup>56</sup> 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.’”<sup>57</sup>

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<sup>50</sup> *Id.*

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

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

<sup>53</sup> Dr. Vanessa Archer, Archer Psychological Solutions, Inc., Psychological Evaluation (Sept. 7, 2005).

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

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *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.”<sup>58</sup>

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.<sup>59</sup>

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:

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

<sup>59</sup> *The Nubia Report: The Investigative Panel’s Findings and Recommendations*, 5

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- 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.<sup>60</sup> 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,<sup>61</sup> 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*.<sup>62</sup> The investigative panel's findings include the following:

- Dr. Archer failed to consider critical information about potential signs of abuse, making her reports incomplete.<sup>63</sup>
- 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.<sup>64</sup>
- There was no centralized system to ensure the dissemination of critical information to all parties overseeing the care of Survivor and Victim.<sup>65</sup>

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

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

<sup>62</sup> *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>.

<sup>63</sup> David Lawrence, Jr., et al., *supra* note 60.

<sup>64</sup> *Id.* at 5.

<sup>65</sup> *Id.*

- The guardian ad litem, school personnel, and a nurse practitioner raised serious concerns that should have required “intense and coordinated follow-up.”<sup>66</sup>
- 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.<sup>67</sup>
- There is evidence of multiple instances in which the Barahonas did not ensure the health of Survivor and Victim.<sup>68</sup>
- 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.”<sup>69</sup>
- Post-adoption services should have been identified by Our Kids after a post-adoption call to the Hotline in June 2010.<sup>70</sup>
- 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.<sup>71</sup>

#### ***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

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<sup>66</sup> *Id.* at 6.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 7.

<sup>69</sup> *Id.* at 8.

<sup>70</sup> *Id.*

<sup>71</sup> *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."<sup>72</sup> Whether a duty of care exists is a question of law.<sup>73</sup> The Department of Children and Families has a duty to reasonably investigate complaints of child abuse and neglect, which is recognized by case law.<sup>74</sup> Once a duty is found to

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

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

<sup>74</sup> *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.<sup>75</sup> 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.<sup>76</sup>

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.’”<sup>77</sup> 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.”<sup>78</sup>

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

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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).

<sup>75</sup> *Yamuni*, 529 So. 2d at 262.

<sup>76</sup> *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”).

<sup>77</sup> *Amora*, 944 So. 2d at 431.

<sup>78</sup> *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.<sup>79</sup> 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.<sup>80</sup>

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.<sup>81</sup> The applicable rights protected by statute include the "constitutional right to

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<sup>79</sup> *Howlett v. Rose*, 496 U.S. 356 (1990).

<sup>80</sup> 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.

<sup>81</sup> *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.”<sup>82</sup>

Proving a civil rights violation is different than proving negligence.<sup>83</sup> 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.”<sup>84</sup>

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

RELATED ISSUES:

A claim bill is an act of legislative grace, not an entitlement.<sup>86</sup> 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.”<sup>87</sup> Consistently, the legislative proceedings relating to claim<sup>88</sup> bills are “separate and apart from the constraints of an earlier lawsuit.”<sup>89</sup>

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

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<sup>82</sup> *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)).

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

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

<sup>85</sup> 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.

<sup>86</sup> *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).

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

<sup>88</sup> *Searcy, et al.*, *supra* note 86.

<sup>89</sup> *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?<sup>90</sup>

The claimants declined my request to explain the responsibility of others for the abuse of Survivor and Victim and Victim's death.<sup>91</sup> 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

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<sup>90</sup> 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.*

<sup>91</sup> 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.

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foster care or dependency system, or children in it.”<sup>92</sup> 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.<sup>93</sup>

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.<sup>94</sup>

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.<sup>95</sup> Thus, the department would have been responsible only for that portion of damages equivalent to its percentage of fault.<sup>96, 97</sup>

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<sup>92</sup> 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.

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

<sup>94</sup> 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.

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

<sup>96</sup> *Id.* at 1185.

<sup>97</sup> 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 Steemer 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.<sup>98</sup> 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 . . .

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<sup>98</sup> 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.).

SPECIAL MASTER'S FINAL REPORT – CS/SB 48

January 25, 2016

Page 26

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.



LEGISLATIVE ACTION

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

The Committee on Judiciary (Brandes) recommended the following:

1                   **Senate Amendment (with title amendment)**

2

3                   Delete lines 155 - 156

4 and insert:

5                   guardians of Survivor, in the amount of \$1.125 million, and to  
6                   Richard Milstein, as personal representative of the Estate of  
7                   Victim, in the amount of \$2.625

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

9

10 And the title is amended as follows:

11                   Delete line 140



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.

A handwritten signature in cursive ink that reads "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

SPECIAL MASTER'S FINAL REPORT – SB 62

December 30, 2015

Page 2

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

December 2, 2011

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
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

SPECIAL MASTER'S FINAL REPORT – SB 22 (2012)

December 2, 2011

Page 4

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.

SPECIAL MASTER'S FINAL REPORT – SB 22 (2012)

December 2, 2011

Page 5

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

SPECIAL MASTER'S FINAL REPORT – SB 22 (2012)

December 2, 2011

Page 6

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:

SPECIAL MASTER'S FINAL REPORT – SB 22 (2012)

December 2, 2011

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- \$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.

SPECIAL MASTER'S FINAL REPORT – SB 22 (2012)

December 2, 2011

Page 9

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 evidence is inconclusive regarding the use of emergency lights, Senate Bill 22 should be amended accordingly.

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

SPECIAL MASTER'S FINAL REPORT – SB 22 (2012)

December 2, 2011

Page 10

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 black ink 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](http://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

SB62

Bill Number (if applicable)

Topic Claims Bill / Jennifer Wohlgemuth Amendment Barcode (if applicable)

Name Frank Winkles

Job Title attorney

Address 1110 Flores de Avila  
Street

Phone 813 390 7441

City Tampa State  Zip

Email: frank@winkleslaw.com

Speaking:  For  Against  Information

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

Representing Claimant / Jennifer Wohlgemuth

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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.

SPECIAL MASTER'S FINAL REPORT – SB 16

JANUARY 13, 2016

Page 2

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), DeVaughn 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”

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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

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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

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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

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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 black ink that reads "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](http://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.

SPECIAL MASTER'S FINAL REPORT – HB 3521 – Representative Bruce  
Antone  
January 27, 2016  
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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

February 9, 2015

Page 3



**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

SPECIAL MASTER'S FINAL REPORT – SB 24 (2015)

February 9, 2015

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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.

SPECIAL MASTER'S FINAL REPORT – SB 24 (2015)

February 9, 2015

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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

SPECIAL MASTER'S FINAL REPORT – SB 24 (2015)

February 9, 2015

Page 7

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

### SENATOR DARREN SOTO

Minority Caucus Rules Chair  
14th District

**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

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,

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](http://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 Campos<sup>1</sup> in

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<sup>1</sup> Remington Campos was living at the home but was not at home at the time of the initial home invasion.

SPECIAL MASTER'S FINAL REPORT – SB 20

January 8, 2016

Page 2

which all three lived along with Alex Zaldivar.<sup>2</sup> 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 plaintiffs<sup>3</sup> 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.

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<sup>2</sup> 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.

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

SPECIAL MASTER'S FINAL REPORT – SB 20

January 8, 2016

Page 3

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.

SPECIAL MASTER'S FINAL REPORT – SB 20

January 8, 2016

Page 4

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,<sup>4</sup> 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."<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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*<sup>8</sup> which was treated favorably in Florida in *Everton v. Willard*. In *Schuster*, the court states that law enforcement

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<sup>4</sup> 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*.

<sup>5</sup> 28 Fla. Jur 2d Government Tort Liability § 49

<sup>6</sup> 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.

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

<sup>8</sup> 15 N.E.2d 534

SPECIAL MASTER'S FINAL REPORT – SB 20

January 8, 2016

Page 5

“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.”<sup>9</sup>

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.

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<sup>9</sup> Id. at 537

SPECIAL MASTER'S FINAL REPORT – SB 20

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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	<b>Fav/CS</b>
2. McAloon	Cibula	JU	<b>Favorable</b>
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.<sup>1</sup>

<sup>1</sup> Section 83.50, F.S.

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

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.<sup>5</sup>

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.<sup>6</sup>

### **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 require 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."

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<sup>2</sup> Section 83.595(4), F.S.

<sup>3</sup> Section 83.67(5), F.S.

<sup>4</sup> Section 404.056(4), F.S.

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

<sup>6</sup> 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 damaged 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.<sup>7</sup>

**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.

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

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<sup>7</sup> 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

1                   A bill to be entitled

2                   An act relating to renters insurance; creating s.  
3                   83.491, F.S.; requiring a residential rental agreement  
4                   to specify whether renters insurance is required;  
5                   specifying provisions that must be included if  
6                   insurance is or is not required; providing that  
7                   failure to include a certain notice in a rental  
8                   agreement does not create a private cause of action or  
9                   nullify any part of the rental agreement; providing an  
10                  effective date.

11

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

13

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

16                  83.491 Renters insurance.—A rental agreement entered into  
17                  on or after January 1, 2017, must specify whether a tenant is  
18                  required to obtain renters insurance and must provide in the  
19                  agreement a line for the tenant's initials immediately following  
20                  that provision.

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

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

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

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

Page 1 of 2

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

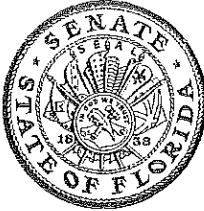
597-02607-16

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,

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](http://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 Date342

Bill Number (if applicable)

Topic Renter's Insurance

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title

Address 104 W. Jefferson StreetPhone 850.224.3427

Street

Tallahassee FL32301

Zip

Email Kelly@rlbookpa.com

City

State

Speaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing Florida Apartment AssociationAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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

**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.	Hendon	Hendon	CF	<b>Fav/CS</b>
2.	Davis	Cibula	JU	<b>Fav/CS</b>
3.			FP	

**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.<sup>1</sup> 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

<sup>1</sup> 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.<sup>2</sup>

Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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,<sup>6</sup> an annual guardianship report,<sup>7</sup> and an annual accounting of the ward's property.<sup>8</sup> The reports provide evidence of the guardian's faithful execution of his or her fiduciary duties.<sup>9</sup>

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.<sup>10</sup>

## 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.<sup>11</sup> A professional guardian must register annually with the Statewide Public Guardianship Office.<sup>12</sup> Currently, there are 428 professional guardians who are registered with the Statewide Public Guardianship Office.<sup>13</sup> 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

<sup>2</sup> See generally, s. 744.102(12), F.S.

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

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

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

<sup>6</sup> Section 744.362, F.S.

<sup>7</sup> Section 744.367, F.S.

<sup>8</sup> Section 744.3678, F.S.

<sup>9</sup> Section 744.368, F.S.

<sup>10</sup> Section 744.446(4), F.S.

<sup>11</sup> Section 744.102(17), F.S.

<sup>12</sup> Section 744.1083(1) and (2), F.S.

<sup>13</sup> 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.<sup>14</sup>

A professional guardian is subject to a level 2 background check,<sup>15</sup> an investigation of the guardian's credit history,<sup>16</sup> and is required to demonstrate competency to act as a professional guardian by taking an examination approved by the Department of Elderly Affairs.<sup>17</sup> 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.<sup>18</sup>

### **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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> A person serving as a public guardian is considered a professional guardian for purposes of regulation, education, and registration.<sup>22</sup> Public guardianship offices are located in all 20 judicial circuits in the state.<sup>23</sup>

### **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.<sup>24</sup>

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<sup>14</sup> Section 744.1085(3), F.S.

<sup>15</sup> Section 744.1085(5), F.S.

<sup>16</sup> Section 744.1085(4), F.S.

<sup>17</sup> Section 744.1085(6), F.S.

<sup>18</sup> Section 744.1085(10), F.S.

<sup>19</sup> Chapter 99-277 L.O.F.

<sup>20</sup> Section 744.703(1), F.S.

<sup>21</sup> Section 744.704(1), F.S.

<sup>22</sup> Section 744.102(17), F.S.

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

<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup> 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.<sup>29</sup>

### Court Proceedings

The court retains jurisdiction over all guardianships and shall review the appropriateness and extent of a guardianship annually.<sup>30</sup> 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.<sup>31</sup>

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.<sup>32</sup> Fees and costs incurred are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.<sup>33</sup>

A ward has the right to be restored to capacity at the earliest possible time.<sup>34</sup> 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.<sup>35</sup> 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

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<sup>25</sup> Section 744.331(5)(c), F.S.

<sup>26</sup> Section 744.331(6), F.S.

<sup>27</sup> Section 744.331(6)(b), F.S.

<sup>28</sup> Section 744.344(3), F.S.

<sup>29</sup> Section 744.344(4), F.S.

<sup>30</sup> Section 744.372, F.S.

<sup>31</sup> Section 744.3715, F.S.

<sup>32</sup> Section 744.108(1), F.S.

<sup>33</sup> Section 744.108(8), F.S.

<sup>34</sup> Section 744.3215(1)(c), F.S.

<sup>35</sup> Section 744.464(2)(b), F.S.

court.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>

## 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.<sup>39</sup> 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.”<sup>40</sup> 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.”<sup>41</sup>

### 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.

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<sup>36</sup> Section 744.464(2)(d), F.S.

<sup>37</sup> Section 744.464(2)(e), F.S.

<sup>38</sup> 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](http://www.guardianship.org/IRL/Resources/Handouts/Charting%20a%20New%20Course_Restoration%20Report.pdf) (last visited Feb. 4, 2016).

<sup>39</sup> 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).

<sup>40</sup> *Id.*

<sup>41</sup> *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.

---

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

---



LEGISLATIVE ACTION

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

The Committee on Judiciary (Ring) recommended the following:

1                   **Senate Amendment (with title amendment)**

2

3                   Delete line 17

4 and insert:

5 guardians.—A natural person who is a resident, as specified in  
6 s. 744.309(1), may be appointed as a professional

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

8 And the title is amended as follows:

9

10                  Delete line 3

11 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

1                   A bill to be entitled

2                   An act relating to professional guardians; creating s.  
3                   744.1087, F.S.; limiting a professional guardian's  
4                   appointments to no more than 50 wards for which the  
5                   professional guardian receives compensation;  
6                   prohibiting a professional guardian that has more than  
7                   50 wards for which the professional guardian receives  
8                   compensation from being appointed another ward after a  
9                   certain date until the professional guardian has fewer  
10                  than 50 wards; providing an effective date.

11

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

13

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

16                  744.1087 Maximum number of wards for professional  
17                  guardians.—A natural person may be appointed as a professional  
18                  guardian for up to 50 wards for which he or she receives  
19                  compensation. If, as of July 1, 2016, such guardian has more  
20                  than 50 wards for which he or she receives compensation, the  
21                  guardian may not be appointed additional wards for which he or  
22                  she receives compensation until he or she has fewer than 50  
23                  wards.

24                  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](http://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

105

Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name DOUG FRANKS

Job Title \_\_\_\_\_

Address 1034 Justice LnPhone 678 570 3010

Street

Acworth GA

State

Zip

Email info@mathworks.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing Ernestine & Franks & AARP.netAppearing 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**  
**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	<b>Fav/CS</b>
2. McAloon	Cibula	JU	<b>Favorable</b>
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.<sup>1</sup> 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.<sup>2</sup> Secondhand goods are defined as personal property previously owned or used, which is purchased, consigned, or traded as used

<sup>1</sup> See Chapter 538, F.S.

<sup>2</sup> Section 538.03(g), F.S.

property.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> Each application for registration must be accompanied by a fee equal to the amount of federal and state costs for processing the required fingerprints.<sup>6</sup> The secondhand dealer's registration must be conspicuously displayed at his or her registered location.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

Secondhand dealers are required to hold all secondhand goods for at least 15 days after they acquire the property.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

---

<sup>3</sup> Section 538.03(1)(h), F.S.

<sup>4</sup> Section 538.03(1)(h), F.S.

<sup>5</sup> Section 538.09, F.S.

<sup>6</sup> Section 538.09, F.S.

<sup>7</sup> Section 538.09(3), F.S.

<sup>8</sup> Section 538.04, F.S.

<sup>9</sup> Section 538.04, F.S.

<sup>10</sup> Sections 538.04(1)(a)-(d), F.S.

<sup>11</sup> Section 538.06(1), F.S.

<sup>12</sup> Section 538.06(3), F.S.

<sup>13</sup> Section 538.05, F.S.

<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>
- A victim may file a civil action for replevin against the secondhand dealer.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup>

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.<sup>22</sup> 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

---

<sup>15</sup> Section 538.07, F.S.

<sup>16</sup> Section 538.06(4), F.S.

<sup>17</sup> Section 538.08, F.S.

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

<sup>19</sup> Section 78.055, F.S.; s. 538.08, F.S.

<sup>20</sup> Section 538.08(2), F.S.

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

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

postpone the case.<sup>23</sup> 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.<sup>24</sup>

### 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 metals<sup>25</sup>, 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.<sup>26</sup>

**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 interpleader<sup>27</sup> 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.

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<sup>23</sup> Section 51.011, F.S.

<sup>24</sup> Section 51.011(2), F.S.

<sup>25</sup> "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."

<sup>26</sup> 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."

<sup>27</sup> 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.

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

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LEGISLATIVE ACTION

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

The Committee on Judiciary (Bean) recommended the following:

1                   **Senate Amendment (with title amendment)**

2

3                   Delete lines 103 - 127

4 and insert:

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

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



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

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

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

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

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

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

33 Section 4. Paragraph (h) of subsection (1) of section  
34 538.03, Florida Statutes, is amended to read:

35 538.03 Definitions; applicability.—

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

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



memos as defined in s. 501.95. The term does ~~such secondhand goods~~ 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:

61 Delete lines 12 - 16  
62 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



70       secondhand goods at a registered location; providing  
71       an

By the Committee on Commerce and Tourism; and Senator Richter

577-02272-16

2016948c1

1                   A bill to be entitled

2                   An act relating to secondhand dealers; amending s.  
 3                   538.04, F.S.; requiring that the record of a  
 4                   secondhand dealer transaction include digital photos  
 5                   of the items; amending s. 538.06, F.S.; increasing the  
 6                   required holding period for certain goods acquired by  
 7                   a dealer; defining the term "antique"; amending s.  
 8                   538.08, F.S.; authorizing an action in replevin  
 9                   against a secondhand dealer based on a right of  
 10                  possession to stolen goods; revising the form for a  
 11                  complaint for return of stolen goods; providing that a  
 12                  claimant in a replevin action is entitled to a certain  
 13                  summary procedure; providing that a secondhand dealer  
 14                  commits a noncriminal violation when an owner or  
 15                  lienor prevails in a replevin action under certain  
 16                  circumstances; providing a penalty; providing an  
 17                  effective date.

18  
 Be It Enacted by the Legislature of the State of Florida:

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

23                  538.04 Recordkeeping requirements; penalties.—

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

Page 1 of 5

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

577-02272-16

2016948c1

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

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

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

43                  538.06 Holding period.—

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

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

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

54  
 55                  Such holding periods are not applicable when the person known by  
 56                  the secondhand dealer to be the person from whom the goods were  
 57                  acquired desires to redeem, repurchase, or recover the goods,  
 58                  provided the dealer can produce the record of the original  
 59                  transaction with verification that the customer is the person  
 60                  from whom the goods were originally acquired.

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

Page 2 of 5

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

577-02272-16

2016948c1

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

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

66 538.08 Stolen goods; complaint petition for return.—

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

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

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

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

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

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

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

Page 3 of 5

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

577-02272-16

2016948c1

91 ... (give reasons)....

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

94

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

101 (3) Upon the filing of the complaint petition, the court  
 102 shall set a hearing to be held at the earliest possible time.

103 The claimant is entitled to the summary procedure provided in s.  
 104 51.011. Upon the receipt of the complaint a petition for a writ  
 105 by a secondhand dealer, the secondhand dealer shall hold the  
 106 property at issue until the court determines the respective  
 107 interests of the parties.

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

116 (5) A secondhand dealer commits a noncriminal violation,  
 117 punishable pursuant to s. 775.083 by a fine of up to \$2,500, if:  
 118 (a) The owner or lienor who prevailed in the replevin  
 119 action made a written demand for return of the property and

Page 4 of 5

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

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](http://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

Amendment Barcode (if applicable)

Name Sarah CarrollJob Title PartnerAddress 123 S. Adams StreetPhone 671-4401

Street

Tallahassee

State

FL

Zip

Email Carroll@S0Strategy.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing Florida Sheriffs AssociationAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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

**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 a 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.<sup>1</sup> This right applies to records of the legislative, executive, and judicial branches.<sup>2</sup>

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 record<sup>3</sup> at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.<sup>4</sup> The Public Records Act also applies to a private contractor if that private business acts on behalf of a governmental entity.<sup>5</sup>

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.<sup>6</sup> Nor may an agency require an individual to put his or her request in writing as a condition of production.<sup>7</sup> 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.<sup>8</sup>

### 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.”

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<sup>1</sup> FLA. CONST. art I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> 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.”

<sup>4</sup> Section 119.07(1)(a), F.S.

<sup>5</sup> 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).

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

<sup>7</sup> *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).

<sup>8</sup> 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.<sup>9</sup> 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;<sup>10</sup>
- Producing records after redacting exempt information or providing the statutory citation for an exemption if the entire document is exempt;<sup>11</sup>
- Maintaining records that are the subject of public records litigation;<sup>12</sup>
- Ensuring that those records are secure if public records are provided by remote electronic means;<sup>13</sup>
- Providing supervision if someone wishes to photograph records;<sup>14</sup> and
- Providing certified copies of public records upon payment of a fee.<sup>15</sup>

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.<sup>16</sup> If a court orders an agency to open its records for inspection, the agency must comply within 48 hours.<sup>17</sup>

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.<sup>18</sup> An unjustified delay in turning over public records is considered an

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<sup>9</sup> Section 119.021, F.S.

<sup>10</sup> Section 119.07(1)(c), F.S.

<sup>11</sup> Section 119.07(1)(d)-(f), F.S.

<sup>12</sup> Section 119.07(1)(g)-(i), F.S.

<sup>13</sup> Section 119.07(2), F.S.

<sup>14</sup> Section 119.07(3), F.S.

<sup>15</sup> Section 119.07(4), F.S.

<sup>16</sup> Section 119.11(1), F.S.

<sup>17</sup> Section 119.11(2), F.S.

<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> 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.<sup>21</sup> The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial.<sup>22</sup> In addition, granting attorney fees makes it more likely that public agencies will comply with public records laws.<sup>23</sup>

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.<sup>24</sup> 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

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<sup>19</sup> 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).

<sup>20</sup> *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).

<sup>21</sup> *Mazer v. Orange County*, 811 So. 2d 857, 859 (Fla. 5th DCA 2002).

<sup>22</sup> *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).

<sup>23</sup> *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

<sup>24</sup> *Id.*

<sup>25</sup> 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.<sup>25</sup>

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.<sup>26</sup> The Town of Gulf Stream has allegedly spent 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.<sup>27</sup> 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.<sup>28</sup>

Citizen's Awareness Foundation and its sister group, Our Public Records, LLC, have filed more than 140 lawsuits across 27 counties.<sup>29</sup> 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.<sup>30</sup>

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<sup>25</sup> 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>.

<sup>26</sup> 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/>.

<sup>27</sup> *Supra* at 25.

<sup>28</sup> *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/flsdc/9:2015cv80182/456973/47/>.

<sup>29</sup> 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/>.

<sup>30</sup> *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.<sup>31</sup>

### **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.<sup>32</sup> Contractors can be individuals or business entities.<sup>33</sup> 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.<sup>34</sup> These duties include keeping public records, providing the public an opportunity to inspect or copy a public record, and redacting exempt information.<sup>35</sup> A public agency is required to enforce the terms of its contract if a contractor fails to abide by public records laws.<sup>36</sup> 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.<sup>37</sup>

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.<sup>38</sup> 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.<sup>39</sup> 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."<sup>40</sup>

### **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

<sup>31</sup> *Consumer Rights, LLC*, at 886-887.

<sup>32</sup> 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.

<sup>33</sup> Section 119.0701(1)(a), F.S.

<sup>34</sup> Section 119.0701, F.S. *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

<sup>35</sup> Section 119.0701(2), F.S.

<sup>36</sup> Section 119.0701(3), F.S.

<sup>37</sup> 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.

<sup>38</sup> See ss. 119.011(2), 119.0701(1), and 119.11, F.S..

<sup>39</sup> 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).

<sup>40</sup> *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.<sup>41</sup> 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.<sup>42</sup>

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.<sup>43</sup>

### **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.<sup>44</sup> 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.”<sup>45</sup>

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.”<sup>46</sup> 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.”<sup>47</sup> 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.

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<sup>41</sup> *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

<sup>42</sup> *Id.* at 1032.

<sup>43</sup> *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).

<sup>44</sup> *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).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *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.<sup>48</sup>

The denial of attorney fees was affirmed by the First District Court of Appeal on December 16, 2015.<sup>49</sup>

### **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:

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<sup>48</sup> *Id.*

<sup>49</sup> *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.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2016	.	
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The Committee on Judiciary (Bean) recommended the following:

1                   **Senate Amendment (with title amendment)**

2  
3                   Delete everything after the enacting clause  
4 and insert:

5                   Section 1. Section 119.12, Florida Statutes, is amended to  
6 read:

7                   119.12 Attorney Attorney's fees.—

8                   (1) If a civil action is filed against an agency to enforce  
9 the provisions of this chapter and if the court determines that  
10 the complainant provided written notice clearly and  
11 conspicuously identifying the public record request to the



859582

12 agency's custodian of public records at least 5 business days  
13 before filing the civil action, except as provided under  
14 subsection (3), and that the such agency unlawfully refused to  
15 permit a public record to be inspected or copied, the court  
16 shall assess and award, against the agency responsible, the  
17 reasonable costs of enforcement, including reasonable attorney  
18 attorneys' fees, against the responsible agency.

19 (2) The court may not assess and award any reasonable costs  
20 of enforcement, including reasonable attorney fees, against the  
21 responsible agency if the court determines that:

22 (a) The civil action or the request to inspect or copy a  
23 public record was frivolous, malicious, or reasonably appears to  
24 have been intended to harass the agency, or was brought or made  
25 for the primary purpose of causing a violation of this chapter;  
26 or

27 (b) Any alleged delay or error in permitting a public  
28 record to be inspected or copied was a technical violation of  
29 this chapter which constituted harmless error under the  
30 circumstances.

31 (3) The complainant is not required to provide written  
32 notice of the public record request to the agency's custodian of  
33 public records as provided in subsection (1) if the agency does  
34 not post the contact information for the agency's custodian of  
35 public records in the agency's primary administrative building  
36 in which public records are routinely created, sent, received,  
37 maintained, and requested or on the agency's website.

38 Section 2. This act shall take effect upon becoming a law.  
39

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



859582

41 And the title is amended as follows:

42 Delete everything before the enacting clause  
43 and insert:

44                   A bill to be entitled  
45                   An act relating to public records; amending s. 119.12,  
46                   F.S.; requiring a complainant to provide specified  
47                   written notice to an agency's custodian of public  
48                   records in order to be awarded the reasonable costs of  
49                   enforcement in a civil action for enforcement of ch.  
50                   119, F.S.; specifying circumstances under which a  
51                   court may not assess and award the reasonable costs of  
52                   enforcement against a responsible agency; providing an  
53                   exception to the requirement that a complainant  
54                   provide written notice before filing a civil action;  
55                   providing an effective date.

By the Committee on Governmental Oversight and Accountability;  
and Senator Garcia

585-02626-16

20161220c1

1 A bill to be entitled

2 An act relating to public records; amending s. 119.12,  
3 F.S.; specifying the circumstances under which a court  
4 may assess and award the reasonable costs of  
5 enforcement against an agency in a civil action to  
6 enforce ch. 119, F.S.; providing an effective date.

7

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

9

10 Section 1. Section 119.12, Florida Statutes, is amended to  
11 read:

12 119.12 Attorney ~~Attorney's~~ fees.—If a civil action is filed  
13 against an agency to enforce the provisions of this chapter, and  
14 if the court determines that the complainant provided written  
15 notice of the public records request to the agency's custodian  
16 of public records at least 5 business days before filing the  
17 civil action and that such agency unlawfully refused to permit a  
18 public record to be inspected or copied, the court may ~~shall~~  
19 assess and award, ~~against the agency responsible~~, the reasonable  
20 costs of enforcement, including reasonable attorney ~~attorneys'~~  
21 fees, ~~against the responsible agency~~. However, if the court  
22 determines that the request to inspect or copy a public record  
23 was made in bad faith or was frivolous, the court may not award  
24 any reasonable costs of enforcement, including reasonable  
25 attorney fees, against the responsible agency.

26 Section 2. This act shall take effect upon becoming a law.

**The Florida Senate**  
State Senator René García  
38<sup>th</sup> District

Please reply to:

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

January 27<sup>th</sup>, 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

CUTLER BAY

FL

33189

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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date

12/20

Bill Number (if applicable)

Topic Ch 119 - Attorneys fees

Name Mitchell Bleckman

Amendment Barcode (if applicable)

Job Title Attorney

Address 2525 Ponce de Leon Blvd.  
Street

Phone 305 498 0089

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email mbleckman@ashlaw.com

Speaking:  For  Against  Information

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

Representing the 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.

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## 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

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Diane VelazquezJob Title CommissionerAddress 120 Main StreetPhone 407 432-6715

Street

Apopka, Fl. 32703

City

State

Zip

Email DVelazquez@Apopka.fl.Speaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing City of ApopkaAppearing 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 Robemary Wilson

Job Title Commissioner

Address 150 N. Lakeshore Dr

Street

Ocoee

21

34761

City

State

Zip

Phone 407-948-2155

Email rwilson@ci.ocoe.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.

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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 J. Jemmene

Job Title Commissioner Town of Oakland

Address 220 N. Tubb St

Street

Phone 407 877 5961

Oakland

FL

347180

Email Jemmene@Oaklandtown.us.com

City

State

Zip

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.

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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 Donald "Donny" Shroyer

Job Title Councilman

Address 1300 9th street

Street

St. Cloud

PL

34769

City

State

Zip

Phone (407) 301-6228

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

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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 JOE DURSO

Job Title MAYOR - CITY of Longwood

Address 175 W. WARREN AVE

Street

Phone 407-722-1155

Longwood  
City

FL  
State

32780  
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.

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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 Lacey

Job Title Mayor, Winter Springs

Address 1126 E. SR 434  
Street

Phone 407-327-5956

Winter Springs FL

32708

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.

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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 HESSEY

Job Title CITY COMMISSIONER ALTAMONTE SPRINGS

Address 1396 Black Willow Rd

Phone 407-617-1449

Street

Altamonte Springs FL 32714

State

Zip

Email gardnerh@fla.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.

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

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  
Street

EDGEWOOD      Fl.      32809  
City                      State                      Zip

Speaking:  For  Against  Information

Phone 407-851-2920

Email rbagshaw@edgewood-Fl.gov

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)

859 582

Amendment Barcode (if applicable)

Topic Public RecordsName Jimmie WilliamsJob Title City Councilman HomesteadAddress 504 NW 3rd Ave  
StreetHomestead FL

State

33030

Zip

Phone 305-282-4467Email JWilliams@cityofhomesteadSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing City of HomesteadAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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

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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)

859582

Amendment Barcode (if applicable)

Topic Public Records

Name Kraig Conn

Job Title \_\_\_\_\_

Address 301 S. Brangham

Street

Tall FL 32301

City

State

Zip

Phone 222 9684

Email Kconn@FlaGics.  
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.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

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

TAC  
City

PL  
State

32301  
Zip

Email LYOUNANS@PL-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.**

S.001/1001A/MA

## THE FLORIDA SENATE

## APPEARANCE RECORD

2/9/14

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

Meeting Date

CS/SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name CHARLIE LATHAMJob Title MAYORAddress 11 N. THIRD ST.  
StreetPhone 904-910-4601JACKSONVILLE BEACH, FL 32250  
City State ZipEmail CLATHAM@JAXBEACH.NETSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing CITY OF JACKSONVILLE BEACHAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

NOT FOR PUBLIC RECORD

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

2-9-16

Meeting Date

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

1220

Topic Public Records

Bill Number (if applicable)

Name Doslyn Buckner

859582

Job Title Councilwoman

Amendment Barcode (if applicable)

Address 201 Westwood Drive

Phone 305-971-2360

Street

Miami Dade, FL

State

33166

Zip

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.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/9/16  
Meeting Date

SB 1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Nelson Rodriguez

Job Title Councilman Town of Miami Lakes

Address 601 Main Street  
Street

Phone \_\_\_\_\_

Miami Lakes FL

33014  
Zip

Email Rodriguez.N@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.**

S-001 10/14/11

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

29-16

Meeting Date

1220

Topic Public Records

Bill Number (if applicable)

B59582

Name Richard L Block

Amendment Barcode (if applicable)

Job Title Councilman

Address 6131 NW 40th Street  
Street

Phone 305 975 1772

VIRGINIA GARDENS FL 33166  
City State Zip

Email marrest@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

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

1220

Meeting Date

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

Phone 850-212-8895

Street

Tallahassee

FL

32301

City

State

Zip

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**

2/9/16

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

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 INGLESIDE AVE

Street

TALLAHASSEE, FL

City

State

32303

Zip

Phone (850) 224-9262

Email rubinjan@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.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date

Topic SB 1220

Bill Number (if applicable)

Name Richie Kuper

Amendment Barcode (if applicable)

Job Title Miami Dade League of Girls

Address 19 W-Flagler ST  
Street  
M. F

Phone 31416-4155

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.

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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 Diane Velazquez

Job Title Commissioner

Address 120 Main Street

Phone 407-432-2715

Street

Apopka, Fl. 32703

Zip

City

State

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-001 100-1000-100

## 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 Rosemary Wilson

Job Title Comm Bicher

Address 150 N. Lakeshore Dr.

Phone 407-948-2155

Street

Ocoee

City

01

State

34761

Zip

Email RWilson@ci.Ocoee.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

(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. McMullenJob Title CmssrAddress 220 N. Twib St  
StreetPhone 4078775967Oakland Fl  
CityState 34780  
ZipEmail Jmcmullen@oaklandusa.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing Town of OaklandAppearing 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 Donald "Donny" ShrayerJob Title CouncilmanAddress 1300 9th street  
StreetCity St. CloudState FLZip 34769Phone (407) 801-4228Email dshrayer@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

(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 JOE DURSOJob Title Mayor - CITY of LongwoodAddress 175 W WARREN AVE  
StreetLongwood  
CityFL

State

32750

Zip

Phone 407-722-1155Email j.durso@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 434  
StreetCity Winter Springs State FLZip 32708Phone 407-327-5956Email 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 HESSEYJob Title City Commissioner - Altamonte SpringsAddress 1396 Black Willow Trail

Street

Altamonte Springs, FL 32714

City

State

Zip

Phone 407-617-1449Email gardenershach.fl.comSpeaking:  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**

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 RAY BAGSHAW

Job Title mayor City of EDGEWOOD

Address 405 Larue Ave

Phone 407-851-2920

Street

EDGEWoOD

FL

32809

City

State

Zip

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	<u>Fav/CS</u>
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;<sup>1</sup> repeat violence;<sup>2</sup> dating violence;<sup>3</sup> sexual violence;<sup>4</sup> 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

<sup>1</sup> Section 741.30(1), F.S.

<sup>2</sup> Section 784.046(2), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *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.<sup>5</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>6</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>7</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>8</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>9</sup>

Only the Legislature may create an exemption to public records requirements.<sup>10</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>11</sup> 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

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<sup>5</sup> FLA. CONST. art. I, s. 24(a).

<sup>6</sup> *Id.*

<sup>7</sup> Chapter 119, F.S.

<sup>8</sup> 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).

<sup>9</sup> Section 119.07(1)(a), F.S.

<sup>10</sup> 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).

<sup>11</sup> FLA. CONST. art. I, s. 24(c).

substantive provisions<sup>12</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

### **Clerk of the Court**

The clerk of the court is considered to be the county recorder.<sup>17</sup> As county recorder, the clerk must record all instruments in one general series called “official records.”<sup>18</sup>

The clerk of the circuit court is responsible for:

- Keeping and maintaining all court documents and electronic filings in the clerk’s office;<sup>19</sup>
- Affixing a stamp, which may be electronic, to each document indicating the date and time that the submission was filed;<sup>20</sup>
- Maintaining a progress docket on which the filing of each pleading or motion is noted;<sup>21</sup> and
- Implementing an electronic filing process.<sup>22</sup>

The clerk may keep minutes of court proceedings.<sup>23</sup>

All instruments recorded in the official records must always be available to the public for inspection.<sup>24</sup> The term “public records” includes each official record.<sup>25</sup>

### **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.<sup>26</sup>

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<sup>12</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>13</sup> FLA. CONST. art. I, s. 24(c).

<sup>14</sup> 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.

<sup>15</sup> Section 119.15(3), F.S.

<sup>16</sup> Section 119.15(6)(b), F.S.

<sup>17</sup> Section 28.222(1), F.S.

<sup>18</sup> 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.

<sup>19</sup> Section 28.13, F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 28.211, F.S.

<sup>22</sup> Section 28.22205, F.S.

<sup>23</sup> Section 28.212, F.S.

<sup>24</sup> Section 28.222, F.S.

<sup>25</sup> Section 28.001(2), F.S.

<sup>26</sup> 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.<sup>27</sup>

## **Injunctions**

A person may petition the court for several types of injunctions for protection, including injunctions against domestic violence;<sup>28</sup> repeat violence;<sup>29</sup> dating violence;<sup>30</sup> sexual violence;<sup>31</sup> and stalking.<sup>32</sup>

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.<sup>33</sup>

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.<sup>34</sup>

Dating violence is violence between individuals who have or have had a continuing and significant romantic relationship.<sup>35</sup> 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.<sup>36</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> Section 741.30(1), F.S.

<sup>29</sup> Section 784.046(2), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Section 784.0485(1), F.S.

<sup>33</sup> Section 741.28(2), F.S.

<sup>34</sup> Section 784.046(1)(b), F.S.

<sup>35</sup> Section 784.046(1)(d), F.S.

<sup>36</sup> Section 784.046(1)(c), F.S.

A form for a petition for injunction against domestic violence is provided in Florida law.<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup>

### **Florida Family Law Rules of Procedure**

The Florida Family Law Rules of Procedure protect from disclosure certain sensitive information recorded in family law cases.<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup>

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,<sup>43</sup> and the address is then considered a confidential court record.<sup>44</sup>

A family law court may consider closing proceedings or records or sealing records, including ordering the conditional sealing of financial information.<sup>45</sup>

The Federal Parent Locator Service (FPLS) helps state and local child support agencies locate parents for participation in child support.<sup>46</sup> 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.<sup>47</sup> In parent locator cases, a state court may override a family violence indicator to

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<sup>37</sup> Section 741.30(3)(b), F.S., provides a petition for injunction for protection against domestic violence.

<sup>38</sup> Sections 741.30(4) and 784.046(5), F.S.

<sup>39</sup> Section 741.30(5)(a), F.S.

<sup>40</sup> RULE 12.012, FLA. FAM. L. R. P.

<sup>41</sup> RULES 12.004(c) and 12.007(c), FLA. FAM. L. R. P.

<sup>42</sup> 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.

<sup>43</sup> Section 741.30(3)(b), F.S., authorizes a petitioner to furnish his or her address in a separate confidential filing.

<sup>44</sup> RULE 12.007(b), FLA. FAM. L. R. P.

<sup>45</sup> RULE 12.400 (a) through (c), FLA. FAM. L. R. P.

<sup>46</sup> 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).

<sup>47</sup> RULE 12.650(b)(4), FLA. FAM. L. R. P.

release information from the FPLS.<sup>48</sup> 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.<sup>49</sup>

### **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;<sup>50</sup> repeat violence;<sup>51</sup> dating violence;<sup>52</sup> sexual violence;<sup>53</sup> 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.<sup>54</sup>

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

<sup>48</sup> 42 U.S.C. s. 653; RULE 12.650(a), FLA. FAM. L. R. P.

<sup>49</sup> RULE 12.650(b)(4)(i), FLA. FAM. L. R. P.

<sup>50</sup> Section 741.30(1), F.S.

<sup>51</sup> Section 784.046(2), F.S.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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 ....<sup>57</sup>

## **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.

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<sup>55</sup> *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 570 (Fla. 1999).

<sup>56</sup> *Id.*

<sup>57</sup> *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.

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

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LEGISLATIVE ACTION

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

The Committee on Judiciary (Soto) recommended the following:

1                   **Senate Amendment (with title amendment)**

2

3                   Delete lines 30 - 90

4 and insert:

5 to matters or cases governed by the Florida ~~Rules of~~ Family Law  
6 Rules of Procedure, the Florida Rules of Juvenile Procedure, or  
7 the Florida Probate Rules.

8                   (b) Any records specified in this subsection made available  
9 by the county recorder or clerk of the court on a publicly  
10 available Internet website for general public display before  
11 ~~prior to~~ June 5, 2002, must be removed if the affected party



12 identifies the record and requests that it be removed. Such  
13 request must be in writing and delivered by mail, facsimile, or  
14 electronic transmission, or in person to the county recorder or  
15 clerk of the court. The request must specify the identification  
16 page number of the document to be removed. A ~~N~~ fee may not be  
17 charged for the removal of a document pursuant to such request.

18 (c) No later than 30 days after June 5, 2002, notice of the  
19 right of any affected party to request removal of records  
20 pursuant to this subsection shall be conspicuously and clearly  
21 displayed by the county recorder or clerk of the court on the  
22 publicly available ~~Internet~~ website on which images or copies of  
23 the county's public records are placed and in the office of each  
24 county recorder or clerk of the court. In addition, no later  
25 than 30 days after June 5, 2002, the county recorder or the  
26 clerk of the court must have published, on two separate dates, a  
27 notice of such right in a newspaper of general circulation in  
28 the county where the county recorder's office is located as  
29 provided for in chapter 50. Such notice must contain appropriate  
30 instructions for making the removal request in person, by mail,  
31 by facsimile, or by electronic transmission. The notice shall  
32 state, in substantially similar form, that any person has a  
33 right to request that a county recorder or clerk of the court  
34 remove an image or copy of a public record, including an  
35 official record, from a publicly available ~~Internet~~ website if  
36 that image or copy is of a military discharge; a death  
37 certificate; or a court file, record, or paper relating to  
38 matters or cases governed by the Florida ~~Rules of~~ Family Law  
39 Rules of Procedure, the Florida Rules of Juvenile Procedure, or  
40 the Florida Probate Rules. Such request must be made in writing



283512

41 and delivered by mail, facsimile, or electronic transmission, or  
42 in person to the county recorder or clerk of the court. The  
43 request must identify the document identification page number of  
44 the document to be removed. A ~~No~~ fee may not ~~will~~ be charged for  
45 the removal of a document pursuant to such request.

46 (d) Any affected person may petition the circuit court for  
47 an order directing compliance with this subsection.

48 (e) By January 1, 2006, each county recorder or clerk of  
49 the court shall provide for electronic retrieval, at a minimum,  
50 of images of documents referenced as the index required to be  
51 maintained on the county's official records website by this  
52 section.

53 (f) 1. A public record that relates to a matter or case  
54 governed by the Florida Family Law Rules of Procedure which may  
55 not be placed on a publicly available website or which must be  
56 removed from such a website pursuant to this subsection is  
57 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
58 of the State Constitution.

59 2. This paragraph is subject to the Open Government Sunset  
60 Review Act in accordance with s. 119.15 and shall stand repealed  
61 on October 2, 2021, unless reviewed and saved from repeal  
62 through reenactment by the Legislature.

63 Section 2. The Legislature finds that it is a public  
64 necessity that a public record that relates to a matter or case  
65 governed by the Florida Family Law Rules of Procedure which may  
66 not be

67  
68  
69 ===== T I T L E A M E N D M E N T =====



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

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.

Page 1 of 6

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

36-01577-16

20161436

33 (b) Any records specified in this subsection made available  
34 by the county recorder or clerk of the court on a publicly  
35 available ~~Internet~~ website for general public display before  
36 ~~prior~~ to June 5, 2002, must be removed if the affected party  
37 identifies the record and requests that it be removed. Such  
38 request must be in writing and delivered by mail, facsimile, or  
39 electronic transmission, or in person to the county recorder or  
40 clerk of the court. The request must specify the identification  
41 page number of the document to be removed. A ~~No~~ fee may not be  
42 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

Page 2 of 6

**CODING:** Words ~~strieken~~ are deletions; words underlined are additions.

36-01577-16

20161436

62 certificate; or a court file, record, or paper relating to  
 63 matters or cases governed by the Florida Rules of Family Law,  
 64 the Florida Rules of Juvenile Procedure, or the Florida Probate  
 65 Rules. Such request must be made in writing and delivered by  
 66 mail, facsimile, or electronic transmission, or in person to the  
 67 county recorder or clerk of the court. The request must identify  
 68 the document identification page number of the document to be  
 69 removed. A fee may not will be charged for the removal of a  
 70 document pursuant to such request.

71 (d) Any affected person may petition the circuit court for  
 72 an order directing compliance with this subsection.

73 (e) By January 1, 2006, each county recorder or clerk of  
 74 the court shall provide for electronic retrieval, at a minimum,  
 75 of images of documents referenced as the index required to be  
 76 maintained on the county's official records website by this  
 77 section.

78 (f) 1. A public record that relates to a matter or case  
 79 governed by the Florida Rules of Family Law which may not be  
 80 placed on a publicly available website or that must be removed  
 81 from such a website pursuant to this subsection is confidential  
 82 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 83 Constitution.

84 2. This paragraph is subject to the Open Government Sunset  
 85 Review Act in accordance with s. 119.15 and shall stand repealed  
 86 on October 2, 2021, unless reviewed and saved from repeal  
 87 through reenactment by the Legislature.

88 Section 2. The Legislature finds that it is a public  
 89 necessity that a public record that relates to a matter or case  
 90 governed by the Florida Rules of Family Law which may not be

Page 3 of 6

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

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91 placed on a publicly available website or that must be removed  
 92 from such a website pursuant to s. 28.2221(5), Florida Statutes,  
 93 be made confidential and exempt from s. 119.07(1), Florida  
 94 Statutes, and s. 24(a), Article I of the State Constitution. The  
 95 Legislature finds that such records often contain material that  
 96 is of a personal, sensitive nature and that the damage to the  
 97 privacy interests of persons involved in such matters or cases  
 98 by making such information public outweighs any public benefit  
 99 in making such information accessible. Additionally, such  
 100 records may contain financial information that may facilitate  
 101 identity theft or other criminal activity, and making such  
 102 records confidential and exempt would prevent such activity.

103 Section 3. Paragraph (g) is added to subsection (3) of  
 104 section 119.0714, Florida Statutes, to read:

105 119.0714 Court files; court records; official records.—

106 (3) OFFICIAL RECORDS.—A person who prepares or files a  
 107 record for recording in the official records as provided in  
 108 chapter 28 may not include in that record a social security  
 109 number or a bank account, debit, charge, or credit card number  
 110 unless otherwise expressly required by law.

111 (g) 1. A petition for an injunction that is dismissed  
 112 without a hearing or at an ex parte hearing due to failure to  
 113 state a claim, lack of jurisdiction, or any reason having to do  
 114 with the sufficiency of the petition itself without an  
 115 injunction being issued, and the contents thereof, are  
 116 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 117 of the State Constitution.

118 2.a. A petition described in subparagraph 1. dismissed on  
 119 or after the effective date of this act, and the contents

Page 4 of 6

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

36-01577-16

20161436\_\_

120 thereof, must be removed from all publically accessible records  
121 upon dismissal.

122 b. A petition described in subparagraph 1. dismissed before  
123 the effective date of this act, and the contents thereof, shall  
124 be removed upon request by an individual named in the petition  
125 as a respondent. The request must be in the form of a signed,  
126 legibly written request specifying the case name, case number,  
127 document heading, and page number. The request must be delivered  
128 by mail, facsimile, electronic transmission, or in person to the  
129 clerk of the court. A fee may not be charged for the removal  
130 pursuant to the request.

131 3. This paragraph is subject to the Open Government Sunset  
132 Review Act in accordance with s. 119.15 and shall stand repealed  
133 on October 2, 2021, unless reviewed and saved from repeal  
134 through reenactment by the Legislature.

135 Section 4. The Legislature finds that it is a public  
136 necessity that a petition for an injunction that is dismissed  
137 without a hearing or at an ex parte hearing due to failure to  
138 state a claim, lack of jurisdiction, or any reason having to do  
139 with the sufficiency of the petition itself without an  
140 injunction being issued, and the contents thereof, be made  
141 confidential and exempt from s. 119.07(1), Florida Statutes, and  
142 s. 24(a), Article I of the State Constitution. The Legislature  
143 finds that the existence of such a petition and of the  
144 unverified allegations contained in such a petition could be  
145 defamatory to an individual and cause unwarranted damage to the  
146 reputation of such individual and that correction of the public  
147 record by the removal of such a petition is the sole means of  
148 protecting the reputation of an individual named in such a

Page 5 of 6

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

36-01577-16

20161436\_\_

149 petition.

150 Section 5. The Division of Law Revision and Information is  
151 directed to replace the phrase "the effective date of this act"  
152 wherever it occurs in this act with such date.

153 Section 6. This act shall take effect upon becoming a law.

Page 6 of 6

**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:** 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. <u>McAloon</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2. _____	_____	<u>ACJ</u>	_____
3. _____	_____	<u>FP</u>	_____

## **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.<sup>1</sup> 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.<sup>2</sup>

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

<sup>1</sup> 38 U.S.C. § 301(b).

<sup>2</sup> 38 U.S.C. § 303.

methods of making investigations and medical examinations; and the manner and form of adjudications and awards.<sup>3</sup> Decisions administered by the agency are subject to judicial review in the United States Court of Appeals for the Federal Circuit.<sup>4</sup>

### **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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

### **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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> The assessment collected is deposited in an account available for administrative expenses to administer veterans' benefits programs.<sup>13</sup>

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

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<sup>3</sup> 38 U.S.C. § 501(a).

<sup>4</sup> 38 U.S.C. § 502.

<sup>5</sup> 38 U.S.C. §§ 5901-04; 38 C.F.R. § 14.629(b)(1).

<sup>6</sup> 38 U.S.C. § 5901; 38 C.F.R. § 14.629(b)(1).

<sup>7</sup> 38 U.S.C. § 5904(a)(2); 38 C.F.R. § 14.629(b)(2).

<sup>8</sup> 38 U.S.C. § 5904(a)(5); 38 C.F.R. § 14.636(f).

<sup>9</sup> 38 C.F.R. § 14.636(f).

<sup>10</sup> 38 C.F.R. § 14.636(h)(1).

<sup>11</sup> 38 U.S.C. § 5904(a)(6)(A); 38 C.F.R. § 14.636(h)(1).

<sup>12</sup> 38 U.S.C. § 5904(a)(6)(B); 38 C.F.R. § 14.636(h)(1).

<sup>13</sup> 38 U.S.C. § 5904(a)(6)(E).

or she represents.<sup>14</sup> 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.”<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

### **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.

<sup>14</sup> 38 U.S.C. § 5904 (a)(6)(D).

<sup>15</sup> 38 U.S.C. § 5905.

<sup>16</sup> U.S. Dept. of Veterans Affairs, *Board of Veteran’s Appeals Annual Report Fiscal Year 2014*, (July 2015).

<sup>17</sup> 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.

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

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464856

LEGISLATIVE ACTION

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

The Committee on Judiciary (Bean) recommended the following:

1                   **Senate Amendment (with title amendment)**

2  
3                   Delete everything after the enacting clause  
4 and insert:

5                   Section 1. Section 295.24, Florida Statutes, is created to  
6 read:

7                   295.24 Prohibited reimbursement of assessments; penalty.—A  
8 person who is recognized as an agent or attorney pursuant to 38  
9 U.S.C. s. 5904 and representing a claimant may not, directly or  
10 indirectly, request, receive, or obtain reimbursement from the  
11 claimant for assessments charged to the agent or attorney by the



464856

12 United States Department of Veterans Affairs pursuant to 38  
13 U.S.C. s. 5904(6) (A). A person who violates this section commits  
14 a misdemeanor of the second degree, punishable as provided in s.  
15 775.082 or s. 775.083.

16       Section 2. This act shall take effect October 1, 2016.

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

18 And the title is amended as follows:

19       Delete everything before the enacting clause  
20 and insert:

21                   A bill to be entitled  
22                   An act relating to reimbursement of assessments;  
23                   creating s. 295.24, F.S.; prohibiting an agent or  
24                   attorney representing a claimant from directly or  
25                   indirectly requesting, receiving, or obtaining  
26                   reimbursement from the claimant for assessments  
27                   charged to the agent or attorney by the United States  
28                   Department of Veterans Affairs; providing penalties;  
29                   providing an effective date.

By Senator Altman

16-01254-16

20161692\_\_

1 A bill to be entitled

2 An act relating to the protection of veterans;  
3 creating s. 295.24, F.S.; prohibiting an agent or  
4 attorney retained for purposes of a veteran's claims  
5 assistance from seeking reimbursement for a specified  
6 assessment from the claimant; providing a penalty;  
7 providing an effective date.

8

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

10

11 Section 1. Section 295.24, Florida Statutes, is created to  
12 read:

13 295.24 Agents or attorneys retained for veterans' claims  
14 assistance; prohibition; penalty.-

15 (1) A person who is recognized as an agent or attorney by  
16 the United States Secretary of Veterans Affairs for purposes of  
17 preparing, presenting, and prosecuting claims under laws  
18 administered by the United States Department of Veterans Affairs  
19 and is charged an assessment pursuant to 38 U.S.C. s.  
20 5904(a)(6)(A) may not, directly or indirectly, request, receive,  
21 or obtain reimbursement for such assessment from the claimant he  
22 or she represents.

23 (2) A person who violates this section commits a felony of  
24 the third degree, punishable as provided in s. 775.082, s.  
25 775.083, or s. 775.084.

26 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,

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](http://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

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

FL

32399

City

State

Zip

Phone (850) 487-1533

Email exdir@fdva.state.fl.us

Speaking:  For  Against  InformationWaive 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  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**  
**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.<sup>1</sup> 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.<sup>2</sup>

### **Bases for Alimony**

Chapter 61, F.S., addresses dissolution of marriage proceedings. Alimony is based on both financial need and the ability to pay.<sup>3</sup> 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.

---

<sup>1</sup> 24A AM. JR. 2D *Divorce and Separation* §615.

<sup>2</sup> Section 61.071, F.S.

<sup>3</sup> 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.<sup>4</sup>

The court may consider adultery by either spouse in a decision to award alimony.<sup>5</sup>

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.<sup>6</sup>

## **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.<sup>7</sup>

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.<sup>8</sup>

Florida law appears to create a presumption in favor of permanent periodic alimony following a long-term marriage.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>
- 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.<sup>12</sup>

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<sup>4</sup> Section 61.08(2)(a) through (j), F.S.

<sup>5</sup> Section 61.08(1), F.S.

<sup>6</sup> Section 61.08(3), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 61.08(4), F.S.

<sup>9</sup> Section 61.08(8), F.S.

<sup>10</sup> Section 61.08(4), F.S.

<sup>11</sup> Colo. Rev. Stat. Ann. s. 14-10-114.

<sup>12</sup> 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.<sup>13</sup>
- 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.<sup>14</sup>
- 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.<sup>15</sup>
- 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.<sup>16</sup>
- Utah: Prohibits alimony awards for a duration longer than the length of the marriage, unless the court finds extenuating circumstances.<sup>17</sup>

### **Forms of Alimony**

Florida law recognizes various forms of alimony, including bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.<sup>18</sup> See the table on the next page for additional information on the various types of alimony authorized under current law.

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<sup>13</sup> Me. Rev. Stat. Ann. title 19-A, s. 951A.

<sup>14</sup> N.Y. Dom. Rel. Law s. 236.

<sup>15</sup> Tex. Fam. Code Ann. Sections 8.054 and 8.055.

<sup>16</sup> Mass. Gen. Laws Chapter 208, Section 49.

<sup>17</sup> Utah Code Ann. s. 30-3-5.

<sup>18</sup> 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>  <i>How Established</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.  Requires inclusion of a specific and defined 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.  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.<sup>19</sup>

### *Substantial Change of Circumstance*

A motion for modification may be made by either party for the court to consider a substantial change in circumstances.<sup>20</sup> If the court modifies support on this basis, the court may modify support retroactively to the date of the filing of the action.<sup>21</sup>

### *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.<sup>22</sup>

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.<sup>23</sup>

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<sup>19</sup> Section 61.08(8), F.S.

<sup>20</sup> 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)).

<sup>21</sup> Section 61.14(1)(a), F.S.

<sup>22</sup> Section 61.14(b), F.S.

<sup>23</sup> Section 61.14(1)(b)1., F.S.

## Child Support Enforcement

Congress passed into law Title IV-D of the Social Security Act<sup>24</sup> to require states to provide specific child support enforcement services to receive federal funding under the Aid for Dependent Children (AFDC) Program.<sup>25</sup> 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.<sup>26</sup> The trust fund is administered by the state Department of Revenue.<sup>27</sup> The clerk of the court of each circuit operates a depository for alimony transactions, support, maintenance, and support payments.<sup>28</sup> A fee is collected for payments made in non-Title IV-D cases to fund the depository.<sup>29</sup>

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.<sup>30</sup>

## 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.”<sup>31</sup> 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.<sup>32</sup> 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.

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<sup>24</sup> 42 USC §§ 651-669 (1988).

<sup>25</sup> 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).

<sup>26</sup> Section 61.1814(1), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> Section 61.181(1)(a), F.S.

<sup>29</sup> Section 61.181(2)(a) and (b), F.S.

<sup>30</sup> Uniform Law Commission, *Uniform Collaborative Law Rules/Act Short Summary* (on file with the Senate Judiciary Committee).

<sup>31</sup> Section 61.13(2)(c)1., F.S.

<sup>32</sup> 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.<sup>33</sup>

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.<sup>34</sup>

### ***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.<sup>35</sup>

Several state legislatures recently amended laws on child custody to encourage equal time-sharing. Arkansas codified a preference for joint custody.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>

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<sup>33</sup> Section 61.13(3), F.S.

<sup>34</sup> Section 61.13(3)(t), F.S.

<sup>35</sup> National Conference of State Legislatures, *Shared/Joint Custody Enactments 2012* (Feb. 2015).

<sup>36</sup> AR s. 901.

<sup>37</sup> South Dakota House Bill 1055 (Chapter 141).

<sup>38</sup> 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 of 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.<sup>39</sup> 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;

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<sup>39</sup> *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>		<b>Presumptive Alimony Amount Ranges</b>							
		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
<b>\$20,000</b>	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	
<b>\$15,000</b>	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	
<b>\$10,000</b>	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	
<b>\$8,000</b>	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	
<b>\$7,000</b>	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	
<b>\$6,000</b>	High	\$300	\$500	\$1,000	\$1,200	\$1,500	\$2,000	\$2,000	
	Low	\$225	\$375	\$750	\$900	\$1,125	\$1,500	\$1,500	
<b>\$5,000</b>	High	\$240	\$400	\$800	\$960	\$1,200	\$1,600	\$1,600	
	Low	\$180	\$300	\$600	\$720	\$900	\$1,200	\$1,200	
<b>\$4,000</b>	High	\$180	\$300	\$600	\$720	\$900	\$1,200	\$1,200	
	Low	\$135	\$225	\$450	\$540	\$675	\$900	\$900	
<b>\$3,000</b>	High	\$120	\$200	\$400	\$480	\$600	\$800	\$800	
	Low	\$90	\$150	\$300	\$360	\$450	\$600	\$600	
<b>Length of Marriage</b>		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.<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup> 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.<sup>43</sup>

### **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.

<sup>40</sup> *Thomas v. Thomas*, 418 So. 2d 316, (Fla. 4th DCA 1982).

<sup>41</sup> *Id.* at 316-317.

<sup>42</sup> *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.

<sup>43</sup> *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.<sup>44</sup> In this case, the obligor retired early at the age of 63, after 40 years of steady employment.<sup>45</sup>

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.

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<sup>44</sup> *Ward v. Ward*, 502 So. 2d 477, 478 (FLA. 3D DCA 1987).

<sup>45</sup> *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.<sup>46</sup>

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.<sup>47</sup> “A marital settlement agreement entered into by the parties and ratified by a final judgment is a contract, subject to the laws of contract.”<sup>48</sup>

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<sup>46</sup> 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.

<sup>47</sup> 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)).

<sup>48</sup> *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.<sup>49</sup>

## **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.

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<sup>49</sup> 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.

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

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LEGISLATIVE ACTION

Senate

House

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The Committee on Judiciary (Soto) recommended the following:

1                   **Senate Amendment (with title amendment)**

2  
3                   Delete everything after the enacting clause  
4 and insert:

5                   Section 1. Blue Ribbon Task Force.—The Blue Ribbon Task  
6 Force, a task force as defined in s. 20.03, Florida Statutes, is  
7 created within the Department of Children and Families for a  
8 duration of 1 year. The task force is created for the express  
9 purpose of comprehensively reviewing the alimony laws in this  
10 state as compared with all other states, reviewing historical  
11 trends in alimony, reviewing the conditions that affect alimony



12 awards, and providing findings and recommendations.

13 (1) The task force is composed of 12 members, as follows:

14 (a) The Chief Justice of the Florida Supreme Court or his  
15 or her designee, who shall serve as chair of the task force.

16 (b) The Attorney General or his or her designee.

17 (c) The Secretary of the Department of Children and  
18 Families or his or her designee.

19 (d) Five members of the general public, two of whom must be  
20 attorneys licensed in this state with a specialization in family  
21 law, all five appointed by the Governor.

22 (e) Four members from the Legislature, one each appointed  
23 by the President of the Senate, the Senate Minority Leader, the  
24 Speaker of the House of Representatives, and the House of  
25 Representatives Minority Leader.

26  
27 To the extent that it is possible, the commission should consist  
28 of an equal number of male and female members.

29 (2) Members of the task force shall serve without  
30 compensation, but are entitled to reimbursement for per diem and  
31 travel expenses pursuant to s. 112.061, Florida Statutes.

32 (3) The task force, at a minimum, shall study and report on  
33 the following issues:

34 (a) The scope of alimony laws in this state as compared  
35 with those in other states.

36 (b) The historical trends in alimony awards.

37 (c) The current economic conditions that have affected  
38 trends in state alimony awards.

39 (4) The Chief Justice of the Florida Supreme Court or his  
40 or her designee shall submit a report to the Governor, the



41 President of the Senate, and the Speaker of the House of  
42 Representatives by July 1, 2017, containing the task force's  
43 recommendations regarding the comprehensive reviews it must  
44 conduct. If the task force recommends revisions to state law,  
45 the report must include proposed language and policy reasons.  
46 Upon submission of the report, the task force shall expire.

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

48  
49 ===== T I T L E    A M E N D M E N T =====  
50 And the title is amended as follows:

51       Delete everything before the enacting clause  
52 and insert:

53                   A bill to be entitled  
54       An act relating to alimony; creating the Blue Ribbon  
55       Task Force within the Department of Children and  
56       Families; specifying membership of the task force;  
57       authorizing reimbursement for per diem and travel  
58       expenses; prescribing duties of the task force;  
59       requiring submission of a report to the Governor and  
60       the Legislature by a specified date; providing for  
61       expiration of the task force; providing an effective  
62       date.



LEGISLATIVE ACTION

Senate

House

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The Committee on Judiciary (Diaz de la Portilla) recommended the following:

1                   **Senate Amendment (with title amendment)**

2  
3                   Delete lines 242 - 257

4 and insert:

5                   shall be \$0.

6                   (b) Presumptive alimony duration range.-The low end of the  
7                   presumptive alimony duration range shall be calculated by using  
8                   the following formula:

9  
10                   0.25 x the years of marriage



399458

11  
12 The high end of the presumptive alimony duration range shall be  
13 calculated by using the following formula:

14  
15 0.75 x the years of marriage

16  
17 (c) Exceptions to alimony guidelines.—

18 1. If a court establishes the duration of the alimony award  
19 at 50 percent or less of the length of the marriage, the court  
20 shall use the actual years of the marriage, up to a maximum of  
21 25 years, to calculate the high end of the presumptive alimony  
22 amount range.

23 2. A court may award alimony in an amount that equalizes  
24 the income of the parties until the obligor retires upon  
25 reaching the age for eligibility for full retirement benefits  
26 under s. 216 of the Social Security Act, 42 U.S.C. s. 416, or  
27 upon reaching the customary retirement age for his or her  
28 occupation if:

29 a. The duration of the marriage was at least 20 years;  
30 b. Pursuant to the mutual agreement or consent of the  
31 parties to the marriage, one spouse substantially refrained from  
32 economic, educational, or employment opportunities primarily for  
33 the purpose of contributing to the marriage through homemaking  
34 or child care activities; and

35 c. The spouse seeking alimony even with additional  
36 education faces dramatically reduced opportunities to advance in  
37 a career.

38  
39 This subparagraph should not be applied in a manner that



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40 discourages a spouse from seeking additional education or  
41 employment opportunities.

42

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

44 And the title is amended as follows:

45 Delete line 17

46 and insert:

47 circumstances; specifying exceptions to the guidelines  
48 for the amount and duration of alimony awards;  
49 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

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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

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59 effective date of a modification or termination of an  
 60 award; amending s. 61.30, F.S.; requiring that a child  
 61 support award be adjusted to reduce the combined  
 62 alimony and child support award under certain  
 63 circumstances; creating s. 61.192, F.S.; providing for  
 64 motions to advance the trial of certain actions if a  
 65 specified period has passed since the initial service  
 66 on the respondent; amending ss. 61.1827 and 409.2579,  
 67 F.S.; conforming cross-references; providing  
 68 applicability; providing an effective date.  
 69

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

71 Section 1. Section 61.071, Florida Statutes, is amended to  
 72 read:  
 73     61.071 Alimony pendente lite; suit money.—In every  
 74 proceeding for dissolution of the marriage, a party may claim  
 75 alimony and suit money in the petition or by motion, and if the  
 76 petition is well founded, the court shall allow a reasonable sum  
 77 therefor. If a party in any proceeding for dissolution of  
 78 marriage claims alimony or suit money in his or her answer or by  
 79 motion, and the answer or motion is well founded, the court  
 80 shall allow a reasonable sum therefor. After determining there  
 81 is a need for alimony and that there is an ability to pay  
 82 alimony, the court shall consider the alimony factors in s.  
 83 61.08(4)(b)1.-14. and make specific written findings of fact  
 84 regarding the relevant factors that justify an award of alimony  
 85 under this section. The court may not use the presumptive  
 86 alimony guidelines in s. 61.08 to calculate alimony under this

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section.

88     Section 2. Section 61.08, Florida Statutes, is amended to  
 89 read:

90         (Substantial rewording of section. See  
 91         s. 61.08, F.S., for present text.)

92         61.08 Alimony.—

93         (1) DEFINITIONS.—As used in this section, unless the  
 94 context otherwise requires, the term:

95         (a)1. "Gross income" means recurring income from any source  
 96 and includes, but is not limited to:

97         a. Income from salaries.

98         b. Wages, including tips declared by the individual for  
 99         purposes of reporting to the Internal Revenue Service or tips  
 100         imputed to bring the employee's gross earnings to the minimum  
 101         wage for the number of hours worked, whichever is greater.

102         c. Commissions.

103         d. Payments received as an independent contractor for labor  
 104         or services, which payments must be considered income from self-  
 105         employment.

106         e. Bonuses.

107         f. Dividends.

108         g. Severance pay.

109         h. Pension payments and retirement benefits actually  
 110         received.

111         i. Royalties.

112         j. Rental income, which is gross receipts minus ordinary  
 113         and necessary expenses required to produce the income.

114         k. Interest.

115         l. Trust income and distributions which are regularly

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117 received, relied upon, or readily available to the beneficiary.

118 m. Annuity payments.

119 n. Capital gains.

120 o. Any money drawn by a self-employed individual for

121 personal use that is deducted as a business expense, which

122 moneys must be considered income from self-employment.

123 p. Social security benefits, including social security

124 benefits actually received by a party as a result of the

125 disability of that party.

126 q. Workers' compensation benefits.

127 r. Unemployment insurance benefits.

128 s. Disability insurance benefits.

129 t. Funds payable from any health, accident, disability, or

130 casualty insurance to the extent that such insurance replaces

131 wages or provides income in lieu of wages.

132 u. Continuing monetary gifts.

133 v. Income from general partnerships, limited partnerships,

134 closely held corporations, or limited liability companies;

135 except that if a party is a passive investor, has a minority

136 interest in the company, and does not have any managerial duties

137 or input, the income to be recognized may be limited to actual

138 cash distributions received.

139 w. Expense reimbursements or in-kind payments or benefits

140 received by a party in the course of employment, self-

141 employment, or operation of a business which reduces personal

142 living expenses.

143 x. Overtime pay.

144 y. Income from royalties, trusts, or estates.

145 z. Spousal support received from a previous marriage.

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146 aa. Gains derived from dealings in property, unless the

147 gain is nonrecurring.

148 2. "Gross income" does not include:

149 a. Child support payments received.

150 b. Benefits received from public assistance programs.

151 c. Social security benefits received by a parent on behalf

152 of a minor child as a result of the death or disability of a

153 parent or stepparent.

154 d. Earnings or gains on retirement accounts, including

155 individual retirement accounts; except that such earnings or

156 gains shall be included as income if a party takes a

157 distribution from the account. If a party is able to take a

158 distribution from the account without being subject to a federal

159 tax penalty for early distribution and the party chooses not to

160 take such a distribution, the court may consider the

161 distribution that could have been taken in determining the

162 party's gross income.

163 3.a. For income from self-employment, rent, royalties,

164 proprietorship of a business, or joint ownership of a

165 partnership or closely held corporation, the term "gross income"

166 equals gross receipts minus ordinary and necessary expenses, as

167 defined in sub subparagraph b., which are required to produce

168 such income.

169 b. "Ordinary and necessary expenses," as used in sub-

170 subparagraph a., does not include amounts allowable by the

171 Internal Revenue Service for the accelerated component of

172 depreciation expenses or investment tax credits or any other

173 business expenses determined by the court to be inappropriate

174 for determining gross income for purposes of calculating

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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.

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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  $(0.015 \times \text{the years of marriage}) \times \text{the difference between the}$   
225  $\text{monthly gross incomes of the parties}$

226 The high end of the presumptive alimony amount range shall be  
227 calculated by using the following formula:

228  $(0.020 \times \text{the years of marriage}) \times \text{the difference between the}$   
229  $\text{monthly gross incomes of the parties}$

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233 For purposes of calculating the presumptive alimony amount  
 234 range, 20 years of marriage shall be used in calculating the low  
 235 end and high end for marriages of 20 years or more. In  
 236 calculating the difference between the parties' monthly gross  
 237 income, the income of the party seeking alimony shall be  
 238 subtracted from the income of the other party. If the  
 239 application of the formulas to establish a guideline range  
 240 results in a negative number, the presumptive alimony amount  
 241 shall be \$0. If a court establishes the duration of the alimony  
 242 award at 50 percent or less of the length of the marriage, the  
 243 court shall use the actual years of the marriage, up to a  
 244 maximum of 25 years, to calculate the high end of the  
 245 presumptive alimony amount range.

246 (b) Presumptive alimony duration range.—The low end of the  
 247 presumptive alimony duration range shall be calculated by using  
 248 the following formula:

249  
 250 0.25 x the years of marriage

251 The high end of the presumptive alimony duration range shall be  
 252 calculated by using the following formula:

253  
 254 0.75 x the years of marriage

255 (4) ALIMONY AWARD.—

256 (a) Marriages of 2 years or less.—For marriages of 2 years  
 257 or less, there is a rebuttable presumption that no alimony shall  
 258 be awarded. The court may award alimony for a marriage with a

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262 duration of 2 years or less only if the court makes written  
 263 findings that there is a clear and convincing need for alimony,  
 264 there is an ability to pay alimony, and that the failure to  
 265 award alimony would be inequitable. The court shall then  
 266 establish the alimony award in accordance with paragraph (b).  
 267 (b) Marriages of more than 2 years.—Absent an agreement of  
 268 the parties, alimony shall presumptively be awarded in an amount  
 269 within the alimony amount range calculated in paragraph (3)(a).  
 270 Absent an agreement of the parties, alimony shall presumptively  
 271 be awarded for a duration within the alimony duration range  
 272 calculated in paragraph (3)(b). In determining the amount and  
 273 duration of the alimony award, the court shall consider all of  
 274 the following factors upon which evidence was presented:  
 275 1. The financial resources of the recipient spouse,  
 276 including the actual or potential income from nonmarital or  
 277 marital property or any other source and the ability of the  
 278 recipient spouse to meet his or her reasonable needs  
 279 independently.  
 280 2. The financial resources of the payor spouse, including  
 281 the actual or potential income from nonmarital or marital  
 282 property or any other source and the ability of the payor spouse  
 283 to meet his or her reasonable needs while paying alimony.  
 284 3. The standard of living of the parties during the  
 285 marriage with consideration that there will be two households to  
 286 maintain after the dissolution of the marriage and that neither  
 287 party may be able to maintain the same standard of living after  
 288 the dissolution of the marriage.  
 289 4. The equitable distribution of marital property,  
 290 including whether an unequal distribution of marital property

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291 was made to reduce or alleviate the need for alimony.

292 5. Both parties' income, employment, and employability,  
 293 obtainable through reasonable diligence and additional training  
 294 or education, if necessary, and any necessary reduction in  
 295 employment due to the needs of an unemancipated child of the  
 296 marriage or the circumstances of the parties.

297 6. Whether a party could become better able to support  
 298 himself or herself and reduce the need for ongoing alimony by  
 299 pursuing additional educational or vocational training along  
 300 with all of the details of such educational or vocational plan,  
 301 including, but not limited to, the length of time required and  
 302 the anticipated costs of such educational or vocational  
 303 training.

304 7. Whether one party has historically earned higher or  
 305 lower income than the income reflected at the time of trial and  
 306 the duration and consistency of income from overtime or  
 307 secondary employment.

308 8. Whether either party has foregone or postponed economic,  
 309 educational, or employment opportunities during the course of  
 310 the marriage.

311 9. Whether either party has caused the unreasonable  
 312 depletion or dissipation of marital assets.

313 10. The amount of temporary alimony and the number of  
 314 months that temporary alimony was paid to the recipient spouse.

315 11. The age, health, and physical and mental condition of  
 316 the parties, including consideration of significant health care  
 317 needs or uninsured or unreimbursed health care expenses.

318 12. Significant economic or noneconomic contributions to  
 319 the marriage or to the economic, educational, or occupational

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320 advancement of a party, including, but not limited to, services  
 321 rendered in homemaking, child care, education, and career  
 322 building of the other party, payment by one spouse of the other  
 323 spouse's separate debts, or enhancement of the other spouse's  
 324 personal or real property.

325 13. The tax consequence of the alimony award.

326 14. Any other factor necessary to do equity and justice  
 327 between the parties.

328 (c) Deviation from guidelines.—The court may establish an  
 329 award of alimony that is outside the presumptive alimony amount  
 330 or alimony duration ranges only if the court considers all of  
 331 the factors in paragraph (b) and makes specific written findings  
 332 concerning the relevant factors justifying that the application  
 333 of the presumptive alimony amount or alimony duration ranges, as  
 334 applicable, is inappropriate or inequitable.

335 (d) Order establishing alimony award.—After consideration  
 336 of the presumptive alimony amount and duration ranges in  
 337 accordance with paragraphs (3)(a) and (b) and the factors upon  
 338 which evidence was presented in accordance with paragraph (b),  
 339 the court may establish an alimony award. An order establishing  
 340 an alimony award must clearly set forth both the amount and the  
 341 duration of the award. The court shall also make a written  
 342 finding that the payor has the financial ability to pay the  
 343 award.

344 (5) IMPUTATION OF INCOME.—If a party is voluntarily  
 345 unemployed or underemployed, alimony shall be calculated based  
 346 on a determination of potential income unless the court makes  
 347 specific written findings regarding the circumstances that make  
 348 it inequitable to impute income.

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349       (6) NOMINAL ALIMONY.—Notwithstanding subsections (1), (3),  
 350 and (4), the court may make an award of nominal alimony in the  
 351 amount of \$1 per year if, at the time of trial, a party who has  
 352 traditionally provided the primary source of financial support  
 353 to the family temporarily lacks the ability to pay support but  
 354 is reasonably anticipated to have the ability to pay support in  
 355 the future. The court may also award nominal alimony for an  
 356 alimony recipient who is presently able to work but for whom a  
 357 medical condition with a reasonable degree of medical certainty  
 358 may inhibit or prevent his or her ability to work during the  
 359 duration of the alimony period. The duration of the nominal  
 360 alimony shall be established within the presumptive durational  
 361 range based upon the length of the marriage subject to the  
 362 alimony factors in paragraph (4)(b). Before the expiration of  
 363 the durational period, nominal alimony may be modified in  
 364 accordance with s. 61.14 as to amount to a full alimony award  
 365 using the alimony guidelines and factors in accordance with s.  
 366 61.08.

367       (7) TAXABILITY AND DEDUCTIBILITY OF ALIMONY.—

368       (a) Unless otherwise stated in the judgment or order for  
 369 alimony or in an agreement incorporated thereby, alimony shall  
 370 be deductible from income by the payor under s. 215 of the  
 371 Internal Revenue Code and includable in the income of the payee  
 372 under s. 71 of the Internal Revenue Code.

373       (b) When making a judgment or order for alimony, the court  
 374 may, in its discretion after weighing the equities and tax  
 375 efficiencies, order alimony be nondeductible from income by the  
 376 payor and nonincludable in the income of the payee.

377       (c) The parties may, in a marital settlement agreement,

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378       separation agreement, or related agreement, specifically agree  
 379 in writing that alimony be nondeductible from income by the  
 380 payor and nonincludable in the income of the payee.

381       (8) MAXIMUM COMBINED AWARD.—In no event shall a combined  
 382 award of alimony and child support constitute more than 55  
 383 percent of the payor's net income, calculated without any  
 384 consideration of alimony or child support obligations.

385       (9) SECURITY OF AWARD.—To the extent necessary to protect  
 386 an award of alimony, the court may order any party who is  
 387 ordered to pay alimony to purchase or maintain a decreasing term  
 388 life insurance policy or a bond, or to otherwise secure such  
 389 alimony award with any other assets that may be suitable for  
 390 that purpose, in an amount adequate to secure the alimony award.  
 391 Any such security may be awarded only upon a showing of special  
 392 circumstances. If the court finds special circumstances and  
 393 awards such security, the court must make specific evidentiary  
 394 findings regarding the availability, cost, and financial impact  
 395 on the obligated party. Any security may be modifiable in the  
 396 event the underlying alimony award is modified and shall be  
 397 reduced in an amount commensurate with any reduction in the  
 398 alimony award.

399       (10) TERMINATION OF AWARD.—An alimony award shall terminate  
 400 upon the death of either party or the remarriage of the obligee.

401       (11) MODIFICATION OF AWARD.—A court may subsequently modify  
 402 or terminate the amount of an award of alimony initially  
 403 established under this section in accordance with s. 61.14.  
 404 However, a court may not modify the duration of an award of  
 405 alimony initially established under this section.

406       (12) PAYMENT OF AWARD.—

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407 (a) With respect to an order requiring the payment of  
 408 alimony entered on or after January 1, 1985, unless paragraph  
 409 (c) or paragraph (d) applies, the court shall direct in the  
 410 order that the payments of alimony be made through the  
 411 appropriate depository as provided in s. 61.181.

412 (b) With respect to an order requiring the payment of  
 413 alimony entered before January 1, 1985, upon the subsequent  
 414 appearance, on or after that date, of one or both parties before  
 415 the court having jurisdiction for the purpose of modifying or  
 416 enforcing the order or in any other proceeding related to the  
 417 order, or upon the application of either party, unless paragraph  
 418 (c) or paragraph (d) applies, the court shall modify the terms  
 419 of the order as necessary to direct that payments of alimony be  
 420 made through the appropriate depository as provided in s.  
 421 61.181.

422 (c) If there is no minor child, alimony payments do not  
 423 need to be directed through the depository.

424 (d) 1. If there is a minor child of the parties and both  
 425 parties so request, the court may order that alimony payments do  
 426 not need to be directed through the depository. In this case,  
 427 the order of support shall provide, or be deemed to provide,  
 428 that either party may subsequently apply to the depository to  
 429 require that payments be made through the depository. The court  
 430 shall provide a copy of the order to the depository.

431 2. If subparagraph 1. applies, either party may  
 432 subsequently file with the clerk of the court a verified motion  
 433 alleging a default or arrearages in payment stating that the  
 434 party wishes to initiate participation in the depository  
 435 program. The moving party shall copy the other party with the

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436 motion. No later than 15 days after filing the motion, the court  
 437 shall conduct an evidentiary hearing establishing the default  
 438 and arrearages, if any, and issue an order directing the clerk  
 439 of the circuit court to establish, or amend an existing, family  
 440 law case history account, and further advising the parties that  
 441 future payments must thereafter be directed through the  
 442 depository.

443 3. In IV-D cases, the Title IV-D agency shall have the same  
 444 rights as the obligee in requesting that payments be made  
 445 through the depository.

446 Section 3. Paragraph (c) of subsection (2) and subsection  
 447 (3) of section 61.13, Florida Statutes, are amended, present  
 448 subsections (4) through (8) of that section are redesignated as  
 449 subsections (5) through (9), respectively, and a new subsection  
 450 (4) is added to that section, to read:

451 61.13 Support of children; parenting and time-sharing;  
 452 powers of court.—

453 (2)

454 (c) The court shall determine all matters relating to  
 455 parenting and time-sharing of each minor child of the parties in  
 456 accordance with the best interests of the child and in  
 457 accordance with the Uniform Child Custody Jurisdiction and  
 458 Enforcement Act, except that modification of a parenting plan  
 459 and time-sharing schedule requires a showing of a substantial,  
 460 material, and unanticipated change of circumstances.

461 1. Absent good cause, it is the public policy of this state  
 462 that the best interest of each minor child is served by a time-  
 463 sharing schedule that provides for substantially equal time-  
 464 sharing with both parents. It is the public policy of this state

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 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

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 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

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523 primary consideration. A determination of parental  
 524 responsibility, a parenting plan, or a time-sharing schedule may  
 525 not be modified without a showing of a substantial, material,  
 526 and unanticipated change in circumstances and a determination  
 527 that the modification is in the best interests of the child.  
 528 Determination of the best interests of the child shall be made  
 529 by evaluating all of the factors affecting the welfare and  
 530 interests of the particular minor child and the circumstances of  
 531 that family, including, ~~but not limited to~~:

532 (a) The demonstrated capacity or and disposition of each  
 533 parent to facilitate and encourage a close and continuing  
 534 parent-child relationship, to honor the time-sharing schedule,  
 535 and to be reasonable when changes are required.

536 (b) The anticipated division of parental responsibilities  
 537 after the litigation, including the extent to which parental  
 538 responsibilities will be delegated to third parties.

539 (c) The demonstrated capacity and disposition of each  
 540 parent to determine, consider, and act upon the needs of the  
 541 child as opposed to the needs or desires of the parent.

542 (d) The length of time the child has lived in a stable,  
 543 satisfactory environment and the desirability of maintaining  
 544 continuity.

545 (e) The geographic viability of the parenting plan, with  
 546 special attention paid to the needs of school-age children and  
 547 the amount of time to be spent traveling to carry out effectuate  
 548 the parenting plan. This factor does not create a presumption  
 549 for or against relocation of either parent with a child.

550 (f) The moral fitness of the parents.

551 (g) The mental and physical health of the parents.

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552 (h) The home, school, and community record of the child.  
 553 (i) The reasonable preference of the child, if the court  
 554 deems the child to be of sufficient intelligence, understanding,  
 555 and experience to express a preference.  
 556 (j) The demonstrated knowledge, capacity, or and  
 557 disposition of each parent to be informed of the circumstances  
 558 of the minor child, including, but not limited to, the child's  
 559 friends, teachers, medical care providers, daily activities, and  
 560 favorite things.  
 561 (k) The demonstrated capacity or and disposition of each  
 562 parent to provide a consistent routine for the child, such as  
 563 discipline, and daily schedules for homework, meals, and  
 564 bedtime.  
 565 (l) The demonstrated capacity of each parent to communicate  
 566 with the other parent and keep the other parent informed of  
 567 issues and activities regarding the minor child, and the  
 568 willingness of each parent to adopt a unified front on all major  
 569 issues when dealing with the child.  
 570 (m) Evidence of domestic violence, sexual violence, child  
 571 abuse, child abandonment, or child neglect, regardless of  
 572 whether a prior or pending action relating to those issues has  
 573 been brought. If the court accepts evidence of prior or pending  
 574 actions regarding domestic violence, sexual violence, child  
 575 abuse, child abandonment, or child neglect, the court must  
 576 specifically acknowledge in writing that such evidence was  
 577 considered when evaluating the best interests of the child.  
 578 (n) Evidence that either parent has knowingly provided  
 579 false information to the court regarding any prior or pending  
 580 action regarding domestic violence, sexual violence, child

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581 abuse, child abandonment, or child neglect.

582 (o) The demonstrated capacity or disposition of each parent  
 583 to perform or ensure the performance of particular parenting  
 584 tasks customarily performed by the other each parent and the  
 585 division of parental responsibilities before the institution of  
 586 litigation and during the pending litigation, including the  
 587 extent to which parenting responsibilities were undertaken by  
 588 third parties.

589 (p) The demonstrated capacity and disposition of each  
 590 parent to participate and be involved in the child's school and  
 591 extracurricular activities.

592 (q) The demonstrated capacity and disposition of each  
 593 parent to maintain an environment for the child which is free  
 594 from substance abuse.

595 (r) The capacity and disposition of each parent to protect  
 596 the child from the ongoing litigation as demonstrated by not  
 597 discussing the litigation with the child, not sharing documents  
 598 or electronic media related to the litigation with the child,  
 599 and refraining from disparaging comments about the other parent  
 600 to the child.

601 (s) The developmental stages and needs of the child and the  
 602 demonstrated capacity and disposition of each parent to meet the  
 603 child's developmental needs.

604 (t) The amount of time-sharing requested by each parent.

605 (u) The frequency that a parent would likely leave the  
 606 child in the care of a nonrelative on evenings and weekends when  
 607 the other parent would be available and willing to provide care.

608 (v) ~~(t)~~ Any other factor that is relevant to the  
 609 determination of a specific parenting plan, including the time-

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610 sharing schedule.

611 (4) A court order must be supported by written findings of  
 612 fact if the order establishes an initial permanent time-sharing  
 613 schedule that does not provide for substantially equal time-  
 614 sharing.

615 Section 4. Subsection (1) of section 61.14, Florida  
 616 Statutes, is amended to read:

617 61.14 Enforcement and modification of support, maintenance,  
 618 or alimony agreements or orders.—

619 (1) (a) When the parties enter into an agreement for  
 620 payments for, or instead of, support, maintenance, or alimony,  
 621 whether in connection with a proceeding for dissolution or  
 622 separate maintenance or with any voluntary property settlement,  
 623 or when a party is required by court order to make any payments,  
 624 and the circumstances or the financial ability of either party  
 625 changes or the child who is a beneficiary of an agreement or  
 626 court order as described herein reaches majority after the  
 627 execution of the agreement or the rendition of the order, either  
 628 party may apply to the circuit court of the circuit in which the  
 629 parties, or either of them, resided at the date of the execution  
 630 of the agreement or reside at the date of the application, or in  
 631 which the agreement was executed or in which the order was  
 632 rendered, for an order decreasing or increasing the amount of  
 633 support, maintenance, or alimony, and the court has jurisdiction  
 634 to make orders as equity requires, with due regard to the  
 635 changed circumstances or the financial ability of the parties or  
 636 the child, decreasing, increasing, or confirming the amount of  
 637 separate support, maintenance, or alimony provided for in the  
 638 agreement or order. However, a court may not decrease or

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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.

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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

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697 financial interdependence.

698 d. The extent to which the obligee or the other person has  
699 supported the other, in whole or in part.

700 e. The extent to which the obligee or the other person has  
701 performed valuable services for the other.

702 f. The extent to which the obligee or the other person has  
703 performed valuable services for the other's company or employer.

704 g. Whether the obligee and the other person have worked  
705 together to create or enhance anything of value.

706 h. Whether the obligee and the other person have jointly  
707 contributed to the purchase of any real or personal property.

708 i. Evidence in support of a claim that the obligee and the  
709 other person have an express agreement regarding property  
710 sharing or support.

711 j. Evidence in support of a claim that the obligee and the  
712 other person have an implied agreement regarding property  
713 sharing or support.

714 k. Whether the obligee and the other person have provided  
715 support to the children of one another, regardless of any legal  
716 duty to do so.

717 l. Whether the obligor's failure, in whole or in part, to  
718 comply with all court-ordered financial obligations to the  
719 obligee constituted a significant factor in the establishment of  
720 the supportive relationship.

721 3. In any proceeding to modify an alimony award based upon  
722 a supportive relationship, the obligor has the burden of proof  
723 to establish, by a preponderance of the evidence, that a  
724 supportive relationship exists or has existed within the  
725 previous year before the date of the filing of the petition for

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726 modification or termination. The obligor is not required to  
727 prove cohabitation of the obligee and the third party.

728 4. Notwithstanding paragraph (f), if a reduction or  
729 termination is granted under this paragraph, the reduction or  
730 termination is retroactive to the date of filing of the petition  
731 for reduction or termination.

732 5.3. This paragraph does not abrogate the requirement that  
733 every marriage in this state be solemnized under a license, does  
734 not recognize a common law marriage as valid, and does not  
735 recognize a de facto marriage. This paragraph recognizes only  
736 that relationships do exist that provide economic support  
737 equivalent to a marriage and that alimony terminable on  
738 remarriage may be reduced or terminated upon the establishment  
739 of equivalent equitable circumstances as described in this  
740 paragraph. The existence of a conjugal relationship, though it  
741 may be relevant to the nature and extent of the relationship, is  
742 not necessary for the application of the provisions of this  
743 paragraph.

744 (c)1. For purposes of this section, the remarriage of an  
745 alimony obligor does not constitute a substantial change in  
746 circumstance or a basis for a modification of alimony.

747 2. The financial information, including, but not limited  
748 to, information related to assets and income, of a subsequent  
749 spouse of a party paying or receiving alimony is inadmissible  
750 and may not be considered as a part of any modification action  
751 unless a party is claiming that his or her income has decreased  
752 since the marriage. If a party makes such a claim, the financial  
753 information of the subsequent spouse is discoverable and  
754 admissible only to the extent necessary to establish whether the

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 755 party claiming that his or her income has decreased is diverting  
 756 income or assets to the subsequent spouse that might otherwise  
 757 be available for the payment of alimony. However, this  
 758 subparagraph may not be used to prevent the discovery of or  
 759 admissibility in evidence of the income or assets of a party  
 760 when those assets are held jointly with a subsequent spouse.  
 761 This subparagraph is not intended to prohibit the discovery or  
 762 admissibility of a joint tax return filed by a party and his or  
 763 her subsequent spouse in connection with a modification of  
 764 alimony.

765 (d)1. An obligor may file a petition for modification or  
 766 termination of an alimony award based upon his or her actual  
 767 retirement.

768 a. A substantial change in circumstance is deemed to exist  
 769 if:

770 (I) The obligor has reached the age for eligibility to  
 771 receive full retirement benefits under s. 216 of the Social  
 772 Security Act, 42 U.S.C. s. 416, and has retired; or

773 (II) The obligor has reached the customary retirement age  
 774 for his or her occupation and has retired from that occupation.

775 An obligor may file an action within 1 year of his or her  
 776 anticipated retirement date and the court shall determine the  
 777 customary retirement date for the obligor's profession. However,  
 778 a determination of the customary retirement age is not an  
 779 adjudication of a petition for a modification of an alimony  
 780 award.

781 b. If an obligor voluntarily retires before reaching any of  
 782 the ages described in sub subparagraph a., the court shall  
 783 determine whether the obligor's retirement is reasonable upon

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

15-00669A-16 2016668  
 784 consideration of the obligor's age, health, and motivation for  
 785 retirement and the financial impact on the obligee. A finding of  
 786 reasonableness by the court shall constitute a substantial  
 787 change in circumstance.

788 2. Upon a finding of a substantial change in circumstance,  
 789 there is a rebuttable presumption that an obligor's existing  
 790 alimony obligation shall be modified or terminated. The court  
 791 shall modify or terminate the alimony obligation, or make a  
 792 determination regarding whether the rebuttable presumption has  
 793 been overcome, based upon the following factors applied to the  
 794 current circumstances of the obligor and obligee:

795 a. The age of the parties.  
 796 b. The health of the parties.  
 797 c. The assets and liabilities of the parties.  
 798 d. The earned or imputed income of the parties as provided  
 799 in s. 61.08(1)(a) and (5).

800 e. The ability of the parties to maintain part-time or  
 801 full-time employment.

802 f. Any other factor deemed relevant by the court.

803 3. The court may temporarily reduce or suspend the  
 804 obligor's payment of alimony while his or her petition for  
 805 modification or termination under this paragraph is pending.

806 (e) A party who unreasonably pursues or defends an action  
 807 for modification of alimony shall be required to pay the  
 808 reasonable attorney fees and costs of the prevailing party.  
 809 Further, a party obligated to pay prevailing party attorney fees  
 810 and costs in connection with unreasonably pursuing or defending  
 811 an action for modification is not entitled to an award of  
 812 attorney fees and costs in accordance with s. 61.16.

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

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

Page 29 of 32

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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

Page 30 of 32

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15-00669A-16

2016668

871 paragraph, the term "authorized person" includes a parent with  
 872 whom the child does not currently reside, unless a court has  
 873 entered an order under s. 741.30, s. 741.31, or s. 784.046.

874 Section 8. Subsection (1) of section 409.2579, Florida  
 875 Statutes, is amended to read:

876 409.2579 Safeguarding Title IV-D case file information.—

877 (1) Information concerning applicants for or recipients of  
 878 Title IV-D child support services is confidential and exempt  
 879 from the provisions of s. 119.07(1). The use or disclosure of  
 880 such information by the IV-D program is limited to purposes  
 881 directly connected with:

882 (a) The administration of the plan or program approved  
 883 under part A, part B, part D, part E, or part F of Title IV;  
 884 under Title II, Title X, Title XIV, Title XVI, Title XIX, or  
 885 Title XX; or under the supplemental security income program  
 886 established under Title XVI of the Social Security Act;

887 (b) Any investigation, prosecution, or criminal or civil  
 888 proceeding connected with the administration of any such plan or  
 889 program;

890 (c) The administration of any other federal or federally  
 891 assisted program which provides service or assistance, in cash  
 892 or in kind, directly to individuals on the basis of need;

893 (d) Reporting to an appropriate agency or official,  
 894 information on known or suspected instances of physical or  
 895 mental injury, child abuse, sexual abuse or exploitation, or  
 896 negligent treatment or maltreatment of a child who is the  
 897 subject of a support enforcement activity under circumstances  
 898 which indicate that the child's health or welfare is threatened  
 899 thereby; and

Page 31 of 32

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

2016668

15-00669A-16

900 (e) Mandatory disclosure of identifying and location  
 901 information as provided in s. 61.13(8) s. 61.13(7) by the IV-D  
 902 program when providing Title IV-D services.

903 Section 9. The amendments made by this act to chapter 61,  
 904 Florida Statutes, apply to all initial determinations of alimony  
 905 and all alimony modification actions that are pending as of the  
 906 effective date of this act, and to all initial determinations of  
 907 alimony and all alimony modification actions brought on or after  
 908 the effective date of this act. The enacting of this act may not  
 909 serve as the sole basis for a party to seek a modification of an  
 910 alimony award existing before the effective date of this act.

911 Section 10. This act shall take effect October 1, 2016.

Page 32 of 32

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



## 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

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

**SENATOR KELLI STARGEL**  
15th District

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,

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](http://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 Barkley Dr  
Street

Phone 850 321 0660

Tallahassee FL 32309  
City State Zip

Email benjamin.dowdarrow  
*OSU adh*

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.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

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 Pkwy #64  
Street

Tallahassee

FL

32311

City

State

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.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

February 9, 2016

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

SB 668

Meeting Date

Bill Number (if applicable)  
306652

Topic Alimony Reform Bill, Amendment Proposed by Senator Soto

Amendment Barcode (if applicable)

Name Steven J Schang, Jr, MD, FACP, FACC

Job Title Retired Cardiologist Permanent Alimony Payor

Address 707 E 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.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-9-16  
Meeting Date

668  
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Barbara D'Ercole

Job Title MS

Address 625 E. Bernard St

Phone 222-3969

Street

Tallahassee

FL

32308

City

State

Zip

Email barbaradercole1@

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2-7  
Meeting Date

1668  
Bill Number (if applicable)

Topic Alimony reform, Child Custody

Amendment Barcode (if applicable)

Name Suzanne Przystawski

Job Title Attorney

Address 33300 Tenksbury  
Street

Leesburg      State FL      Zip 34788

Phone 352-489-3575

City

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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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

Rockledge  
City

FL  
State

32955  
Zip

Phone 321-960-0184

Email sunnppeg@yahoo.com

Speaking:  For  Against  Information

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

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

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 Vicki Stoughton

Job Title Physical Therapist Assistant

Address 1540 Coral St.  
Street

Phone 321-543-8751

Merritt 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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-10-16  
Meeting Date

668  
Bill Number (if applicable)

Topic SB 668 ALIMONY Amendment Barcode (if applicable)

Name MICHAEL MINERVA 89 years old

Job Title Retired

Address 435 CARRIAGE CT.  
Street

Wendell Island FL 32353  
City State Zip

Phone 221 452 6257  
~~221 452 6257~~

Email: hox

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**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 Street 954-644-2328 Phone

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

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

Phone 321-750-8287

Street

Merritt Island FL 32952

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing S-PLF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2/9/10  
Meeting Date

668  
Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name Arthur Wheeler

Job Title

Address 110 SW 6th ave

Phone 5616679954

Street

Beth Bay FL 33493

Email Cojanlik@aol.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

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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)

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.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/9/16

Meeting Date

SB 668

Bill Number (if applicable)

Topic Time sharing and alimony

Amendment Barcode (if applicable)

Name Linda Mirkowitz

Job Title Advocate

Address 2542 Arthur's Court

Phone (850) 559-1312

Street

Tallahassee

City

State

Zip

Email L.MIRKowitz@ash.com

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**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 mandy.dakota2015@gmail.com

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date

6/68

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  
Street

Pensacola FL 32503  
City State Zip

Phone 850-619-5957

Email o

Speaking:  For  Against  Information

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

Representing League of Women Voters

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date

668  
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Camille Fiveash

Job Title

Address 5789 TRUCK AU

Phone 850-686-452

Street

Milton Fl

32570

City

State

Zip

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1968  
Bill Number (if applicable)

Meeting Date

Topic Alimony

Amendment Barcode (if applicable)

Name Kathy AdRison

Job Title

Address 560 Camille Gardens  
Street

Milton FL

City / State

Zip

Phone (850) 791-3224

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

FEBRUARY 9, 2016

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

Meeting Date

SB688

Bill Number (if applicable)

Topic Family Law

Amendment Barcode (if applicable)

Name LARRY BOTAK

Job Title \_\_\_\_\_

Address 11215-320 STE

Phone 813-299-0665

Street

TREASURE ISLAND, FL

33706

City

State

Zip

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.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/9/2016

Meeting Date

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**

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

February 9, 2016

SB 668

Meeting Date

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2/9/16  
Meeting Date

SB668

Bill Number (if applicable)

306652

Amendment Barcode (if applicable)

Topic Alimony Reform

Name Natalie Sohn

Job Title Opponent Doctor

Address 8714 Thousand Pines Circle  
Street

Phone 561 346-4219

West Palm Beach FL 33411  
City State Zip

Email NSobagn@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.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

SB 668

Meeting Date

Topic Alimony Reform

Bill Number (if applicable)

306652

Name ALAN FRISHER

Amendment Barcode (if applicable)

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2/9/16

Meeting Date

SB 1068  
Bill Number (if applicable)

Topic Alimony Reform

306652

Amendment Barcode (if applicable)

Name Natalie Rivera

Job Title Teacher

Address 2519 W. Kathleen St.  
Street

Phone 813-727-8083

Tampa FL 33607  
City State Zip

Email nshultz77@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.

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

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 Fla. 33544

City

State

Zip

Phone 813-948-1891

Email dshultzmd@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.

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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)

668

Bill Number (if applicable)

Topic Family Law

Amendment Barcode (if applicable)

Name Abigail BEEBE

Job Title Attorney

Address

Street

West Palm Beach FL

City

State

Zip

Phone 561 370 3691

Email abigail@abebe.com

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

Representing Family Law Section FL Fla Bar

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.

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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)

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 6550 N. Wickham Rd 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

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

SB 668

Bill Number (if applicable)

Topic Family Law Reform

Amendment Barcode (if applicable)

Name Terry Power

Job Title FINANCIAL

Address 6550 N. Wickham Rd

Phone 321 813-774-3366

Street

City

Melbourne

State

FL

32948

Zip

Email TPCofVictim@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

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

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THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2-9-16

Meeting Date

SB668

Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name Tarie Mac Miller

Job Title Rep. Women Against Gerrymandering

Address 15822 Aurora Lake Cir Phone 8135453342

Street

Wimauma

FL

33598

Email TarieMac@Verizon.net

City

State

Zip

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."<sup>1</sup>

<sup>1</sup> 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.<sup>2</sup>

## **Parenting Plan**

A parenting plan must include a time-sharing schedule for the parents and child.<sup>3</sup> Issues that may be addressed in the plan include the child's education, health care, and physical, social, and emotional well-being.<sup>4</sup>

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.<sup>5</sup>

## **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.<sup>6</sup> In contrast, if a court orders sole parental responsibility, one parent makes all decisions regarding the child.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

---

<sup>2</sup> Section 61.13(3), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 61.046(14), F.S.

<sup>5</sup> Section 61.13(2)(b), F.S.

<sup>6</sup> Section 61.046(17), F.S.

<sup>7</sup> Section 61.046(18), F.S.

<sup>8</sup> Section 61.13 (2)(c)2., F.S.

<sup>9</sup> Section 61.113(2)(c)a., F.S.

<sup>10</sup> 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.”<sup>11</sup> 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.<sup>12</sup>

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.<sup>13</sup>

### 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.

---

<sup>11</sup> Section 61.13(2)(c)1., F.S.

<sup>12</sup> Section 61.13(3), F.S.

<sup>13</sup> 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.

---

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

---



LEGISLATIVE ACTION

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

The Committee on Judiciary (Ring) recommended the following:

1                   **Senate Amendment**

2

3                   Delete line 29

4 and insert:

5 responsible for health care decisionmaking. If the court orders  
6 shared parental responsibility, the plan

By Senator Ring

29-00432-16

2016794

1                   A bill to be entitled  
2                   An act relating to dissolution of marriage parenting  
3                   plans; amending s. 61.13, F.S.; requiring that  
4                   parenting plans provide that either parent may consent  
5                   to mental health treatment for the child; providing  
6                   that the consenting parent shall be financially  
7                   responsible for certain costs of such treatment;  
8                   providing an effective date.  
9

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

11  
12                  Section 1. Paragraph (b) of subsection (2) of section  
13                  61.13, Florida Statutes, is amended to read:  
14                  61.13 Support of children; parenting and time-sharing;  
15                  powers of court.—  
16                  (2)  
17                  (b) A parenting plan approved by the court must, at a  
18                  minimum, describe in adequate detail how the parents will share  
19                  and be responsible for the daily tasks associated with the  
20                  upbringing of the child; include the time-sharing schedule  
21                  arrangements that specify the time that the minor child will  
22                  spend with each parent; designate responsibility a designation  
23                  of who will be responsible for any and all forms of health care,  
24                  school-related matters, including the address to be used for  
25                  school-boundary determination and registration, and other  
26                  activities; and describe in adequate detail the methods and  
27                  technologies that the parents will use to communicate with the  
28                  child. The parenting plan must also designate who will be  
29                  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

30                  must provide that either parent may consent to mental health  
31                  treatment for the child. The parent who consents to such  
32                  treatment shall be financially responsible for costs that exceed  
33                  those covered by the health insurance provided as required under  
34                  paragraph (1) (b).

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

36

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 ink 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](http://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

State

Zip

City

Email

Speaking:  For  Against  Information

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

Representing

Pinellas County 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.*

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

2/9

Meeting Date

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

MeNal Mew

794

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Cynthia Dhoebi

Job Title \_\_\_\_\_

Address 110 8th place  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing myselfAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

**The Florida Senate**  
**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	<b>Favorable</b>
2. Davis	Cibula	JU	<b>Pre-meeting</b>
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.<sup>1</sup> The act is administered by the Department of Health (department) through the Volunteer Health Services Program.<sup>2</sup> Volunteers complete an enrollment application with the department which requires a personal reference and background checks.<sup>3</sup>

<sup>1</sup> 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>.

<sup>2</sup> 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.

<sup>3</sup> 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.<sup>4</sup>

Health care providers under the act include:<sup>5</sup>

- A birth center licensed under ch. 383, F.S.<sup>6</sup>
- An ambulatory surgical center licensed under ch. 395, F.S.<sup>7</sup>
- A hospital licensed under ch. 395, F.S.<sup>8</sup>
- A physician or physician assistant licensed under ch. 458, F.S.<sup>9</sup>
- An osteopathic physician or osteopathic physician assistant licensed under ch. 459, F.S.<sup>10</sup>
- A chiropractic physician licensed under ch. 460, F.S.<sup>11</sup>
- A podiatric physician licensed under ch. 461, F.S.<sup>12</sup>
- 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.<sup>13</sup>
- A dentist or dental hygienist licensed under ch. 466, F.S.<sup>14</sup>
- A midwife licensed under ch. 467, F.S.<sup>15</sup>
- A health maintenance organization certificated under part I of ch. 641, F.S.<sup>16</sup>
- A health care professional association and its employees or a corporate medical group and its employees.<sup>17</sup>
- 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.<sup>18</sup>

<sup>4</sup> Section 766.1115(3)(a), F.S.

<sup>5</sup> Section 766.1115(3)(d), F.S.

<sup>6</sup> Section 766.1115(3)(d)1., F.S.

<sup>7</sup> Section 766.1115(3)(d)2., F.S.

<sup>8</sup> Section 766.1115(3)(d)3., F.S.

<sup>9</sup> Section 766.1115(3)(d)4., F.S.

<sup>10</sup> Section 766.1115(3)(d)5., F.S.

<sup>11</sup> Section 766.1115(3)(d)6., F.S.

<sup>12</sup> Section 766.1115(3)(d)7., F.S.

<sup>13</sup> Section 766.1115(3)(d)8., F.S.

<sup>14</sup> Section 766.1115(3)(d)13., F.S.

<sup>15</sup> Section 766.1115(3)(d)9., F.S.

<sup>16</sup> Section 766.1115(3)(d)10., F.S.

<sup>17</sup> Section 766.1115(3)(d)11., F.S.

<sup>18</sup> 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.<sup>19</sup>
- 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.<sup>20</sup>
- 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.<sup>21</sup>

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.<sup>22</sup>
- The health care provider must accept all referred patients; however, the contract may specify limits on the number of patients to be referred.<sup>23</sup>

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.<sup>24</sup>

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.<sup>25</sup> The Florida Department of Financial Services, Division of Risk Management, reported

<sup>19</sup> Section 766.1115(3)(d)14., F.S.

<sup>20</sup> Section 766.1115(3)(d)15., F.S.

<sup>21</sup> Section 766.1115(3)(c), F.S.

<sup>22</sup> Section 766.1115(4), F.S.

<sup>23</sup> Rule 64I-2.003(2), F.A.C.

<sup>24</sup> Section 766.1115(5), F.S.

<sup>25</sup> 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.<sup>26</sup>

### **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.<sup>27</sup> 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."<sup>28</sup>

### **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

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<sup>26</sup> Id at A-1.

<sup>27</sup> Chapter 2015-232, Laws of Fla., line item 441.

<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup> 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 HRS<sup>34</sup> 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.<sup>35</sup>

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<sup>29</sup> Section 768.28(5), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).

<sup>32</sup> *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).

<sup>33</sup> *Id.* at 703.

<sup>34</sup> Florida Department of Health and Rehabilitative Services.

<sup>35</sup> *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 clinic<sup>36</sup> 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.<sup>37</sup>

#### 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.

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<sup>36</sup> 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.

<sup>37</sup> 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.

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

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LEGISLATIVE ACTION

Senate

House

•  
•  
•  
•  
•

The Committee on Judiciary (Bean) recommended the following:

1                   **Senate Amendment**

2

3                   Delete line 85

4 and insert:

5                   15. A pharmacy or pharmacist licensed under chapter 465.

6                   16.15. Any other health care professional, practitioner,

By Senator Simmons

10-01528-16

20161034

A bill to be entitled

An act relating to health care providers; amending s. 766.1115, F.S.; revising the definitions of the terms "contract" and "health care provider"; deleting an obsolete date; extending sovereign immunity to employees or agents of a health care provider that executes a contract with a governmental contractor; clarifying that a receipt of specified notice must be acknowledged by a patient or the patient's representative at the initial visit; requiring the posting of notice that a specified health care provider is an agent of a governmental contractor; amending s. 768.28, F.S.; revising the definition of the term "officer, employee, or agent" to include employees or agents of a health care provider; providing an effective date.

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

Section 1. Paragraphs (a) and (d) of subsection (3) and subsections (4) and (5) of section 766.1115, Florida Statutes, are amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

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

(a) "Contract" means an agreement executed in compliance with this section between a health care provider and a governmental contractor for volunteer, uncompensated services which allows the health care provider to deliver health care

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services to low-income recipients as an agent of the governmental contractor. ~~The contract must be for volunteer, uncompensated services, except as provided in paragraph (4)(g).~~ For services to qualify as volunteer, uncompensated services under this section, the health care provider, or any employee or agent of 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 a public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract, except as provided in paragraph (4)(g). A free clinic as described in subparagraph (d)14. may receive a legislative appropriation, a grant through a legislative appropriation, or a grant from a governmental entity or nonprofit corporation to support the delivery of contracted services by volunteer health care providers, including the employment of health care providers to supplement, coordinate, or support the delivery of such services. The appropriation or grant for the free clinic does not constitute compensation under this paragraph from the governmental contractor for services provided under the contract, nor does receipt or use of the appropriation or grant constitute the acceptance of compensation under this paragraph for the specific services provided to the low-income recipients covered by the contract.

(d) "Health care provider" or "provider" means:

1. A birth center licensed under chapter 383.
2. An ambulatory surgical center licensed under chapter 395.
3. A hospital licensed under chapter 395.

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59        4. A physician or physician assistant licensed under  
 60 chapter 458.  
 61        5. An osteopathic physician or osteopathic physician  
 62 assistant licensed under chapter 459.  
 63        6. A chiropractic physician licensed under chapter 460.  
 64        7. A podiatric physician licensed under chapter 461.  
 65        8. A registered nurse, nurse midwife, licensed practical  
 66 nurse, or advanced registered nurse practitioner licensed or  
 67 registered under part I of chapter 464 or any facility which  
 68 employs nurses licensed or registered under part I of chapter  
 69 464 to supply all or part of the care delivered under this  
 70 section.  
 71        9. A midwife licensed under chapter 467.  
 72        10. A health maintenance organization certificated under  
 73 part I of chapter 641.  
 74        11. A health care professional association ~~and its~~  
 75 ~~employees~~ or a corporate medical group ~~and its employees~~.  
 76        12. Any other medical facility the primary purpose of which  
 77 is to deliver human medical diagnostic services or which  
 78 delivers nonsurgical human medical treatment, and which includes  
 79 an office maintained by a provider.  
 80        13. A dentist or dental hygienist licensed under chapter  
 81 466.  
 82        14. A free clinic that delivers only medical diagnostic  
 83 services or nonsurgical medical treatment free of charge to all  
 84 low-income recipients.  
 85        15. Any other health care professional, practitioner,  
 86 provider, or facility under contract with a governmental  
 87 contractor, including a student enrolled in an accredited

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88        program that prepares the student for licensure as any one of  
 89 the professionals listed in subparagraphs 4.-9.  
 90  
 91 The term includes any nonprofit corporation qualified as exempt  
 92 from federal income taxation under s. 501(a) of the Internal  
 93 Revenue Code, and described in s. 501(c) of the Internal Revenue  
 94 Code, which delivers health care services provided by licensed  
 95 professionals listed in this paragraph, any federally funded  
 96 community health center, and any volunteer corporation or  
 97 volunteer health care provider that delivers health care  
 98 services.  
 99        (4) CONTRACT REQUIREMENTS.—A health care provider that  
 100 executes a contract with a governmental contractor to deliver  
 101 health care services ~~on or after April 17, 1992~~, as an agent of  
 102 the governmental contractor, or any employee or agent of such  
 103 health care provider, is an agent for purposes of s. 768.28(9),  
 104 while acting within the scope of duties under the contract, if  
 105 the contract complies with the requirements of this section and  
 106 regardless of whether the individual treated is later found to  
 107 be ineligible. A health care provider, or any employee or agent  
 108 of such health care provider, shall continue to be an agent for  
 109 purposes of s. 768.28(9) for 30 days after a determination of  
 110 ineligibility to allow for treatment until the individual  
 111 transitions to treatment by another health care provider. A  
 112 health care provider, or any employee or agent of such health  
 113 care provider, under contract with the state may not be named as  
 114 a defendant in any action arising out of medical care or  
 115 treatment ~~provided on or after April 17, 1992~~, under contracts  
 116 entered into under this section. The contract must provide that:

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117 (a) The right of dismissal or termination of any health  
 118 care provider delivering services under the contract is retained  
 119 by the governmental contractor.

120 (b) The governmental contractor has access to the patient  
 121 records of any health care provider delivering services under  
 122 the contract.

123 (c) Adverse incidents and information on treatment outcomes  
 124 must be reported by any health care provider to the governmental  
 125 contractor if the incidents and information pertain to a patient  
 126 treated under the contract. The health care provider shall  
 127 submit the reports required by s. 395.0197. If an incident  
 128 involves a professional licensed by the Department of Health or  
 129 a facility licensed by the Agency for Health Care  
 130 Administration, the governmental contractor shall submit such  
 131 incident reports to the appropriate department or agency, which  
 132 shall review each incident and determine whether it involves  
 133 conduct by the licensee that is subject to disciplinary action.  
 134 All patient medical records and any identifying information  
 135 contained in adverse incident reports and treatment outcomes  
 136 which are obtained by governmental entities under this paragraph  
 137 are confidential and exempt from the provisions of s. 119.07(1)  
 138 and s. 24(a), Art. I of the State Constitution.

139 (d) Patient selection and initial referral must be made by  
 140 the governmental contractor or the provider. Patients may not be  
 141 transferred to the provider based on a violation of the  
 142 antidumping provisions of the Omnibus Budget Reconciliation Act  
 143 of 1989, the Omnibus Budget Reconciliation Act of 1990, or  
 144 chapter 395.

145 (e) If emergency care is required, the patient need not be

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146 referred before receiving treatment, but must be referred within  
 147 48 hours after treatment is commenced or within 48 hours after  
 148 the patient has the mental capacity to consent to treatment,  
 149 whichever occurs later.

150 (f) The provider is subject to supervision and regular  
 151 inspection by the governmental contractor.

152 ~~(g) As an agent of the governmental contractor for purposes~~  
 153 ~~of s. 768.28(9), while acting within the scope of duties under~~  
 154 ~~the contract. A health care provider licensed under chapter 466,~~  
 155 ~~as an agent of the governmental contractor for purposes of s.~~  
 156 ~~768.28(9), may allow a patient, or a parent or guardian of the~~  
 157 ~~patient, to voluntarily contribute a monetary amount to cover~~  
 158 ~~costs of dental laboratory work related to the services provided~~  
 159 ~~to the patient within the scope of duties under the contract.~~  
 160 This contribution may not exceed the actual cost of the dental  
 161 laboratory charges.

162

163 A governmental contractor that is also a health care provider is  
 164 not required to enter into a contract under this section with  
 165 respect to the health care services delivered by its employees.

166 (5) NOTICE OF AGENCY RELATIONSHIP.—The governmental  
 167 contractor must provide written notice to each patient, or the  
 168 patient's legal representative, receipt of which must be  
 169 acknowledged in writing at the initial visit, that the provider  
 170 is an agent of the governmental contractor and that the  
 171 exclusive remedy for injury or damage suffered as the result of  
 172 any act or omission of the provider or of any employee or agent  
 173 thereof acting within the scope of duties pursuant to the  
 174 contract is by commencement of an action pursuant to the

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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".

---

Senator David Simmons  
Florida Senate, District 10

## THE FLORIDA SENATE

## APPEARANCE RECORD

2-9-16

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

Meeting Date

1034

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Mike Fischer

Job Title \_\_\_\_\_

Address Po Box 1147  
StreetCity TLH State FL Zip 32303Phone 222-6344Email Mike@redfishconsult.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing FLORIDA INDEPENDENT PHARMACY NETWORKAppearing 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)

2/9/16

Meeting Date

SB 1034

Bill Number (if applicable)

582748

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Bill Minicy

Job Title VP

Address 3375-1 Capital Circle NE  
Street

Tallahassee

FL  
State

32309  
Zip

Phone 850-322-7740

Email bill.minicy@ppsonline.com

Speaking:  For  Against  Information

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

Representing PPSC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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	<b>Fav/CS</b>
2. Brown	Cibula	JU	<b>Fav/CS</b>
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.<sup>1</sup>

### 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.<sup>2</sup> 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.<sup>3</sup>

<sup>1</sup>See 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).

<sup>2</sup> The "livery" exclusion in Florida is mentioned in the definition of "motor vehicle insurance," contained in s. 627.041, F.S.

<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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."<sup>6</sup>

### **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.<sup>7</sup>

### **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.<sup>8</sup> 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.<sup>9</sup> Palm Beach County adopted an ordinance subjecting TNCs and drivers to background check and insurance requirements.<sup>10</sup> The ordinance adopted by the city of Sarasota treats TNCs as taxi companies. In so doing, drivers are subject to insurance, background checks,

<sup>4</sup> 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/>.

<sup>5</sup> 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](http://www.naic.org/meetings1503/committees_c_sharing_econ_wg_2015_spring_nm_additional_materials.pdf)

<sup>6</sup> See UBER, INSURANCE ALIGNED (Mar. 24, 2015), <https://newsroom.uber.com/introducing-the-tnc-insurance-compromise-model-bill/>.

<sup>7</sup> See s. 324.032(1), F.S.

<sup>8</sup> See Broward County Passes Uber, Lyft Ordinance, NBC 6 SOUTH FLORIDA, Apr. 28, 2015,

<http://www.nbciami.com/news/local/Broward-County-to-Vote-on-Uber-Lyft-Ordinance-301529861.html>.

<sup>9</sup> 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/>.

<sup>10</sup> 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.<sup>11</sup>

### **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 network<sup>12</sup> to connect TNC riders<sup>13</sup> with TNC drivers<sup>14</sup> 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

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<sup>11</sup> 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 MYSTCOAST, July 6, 2015, [http://www.mystcoast.com/news/local/sarasota-uber-drivers-face-tougher-regulations/article\\_2ae27ee0-245b-11e5-a38f-a7017122a16e.html](http://www.mystcoast.com/news/local/sarasota-uber-drivers-face-tougher-regulations/article_2ae27ee0-245b-11e5-a38f-a7017122a16e.html) .

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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.<sup>15</sup>

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 limousines<sup>16</sup> and is subject to criminal penalties for failing to comply.<sup>17</sup>

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.

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<sup>15</sup> Section 627.736(1), F.S., requires personal injury protection of \$10,000 in medical and disability benefits and \$5,000 in death benefits.

<sup>16</sup> Section 324.032(1), F.S., requires minimum coverage of \$125,000/250,000/50,000.

<sup>17</sup> 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.<sup>18</sup>

**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:**

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<sup>18</sup> 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.



LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/11/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

1                   **Senate Amendment**

2

3                   Delete lines 168 - 188

4 and insert:

5                   (b) The following automobile insurance requirements apply  
6                   while a driver is logged on to the transportation network  
7                   company's digital network and is available to receive  
8                   transportation requests but is not engaged in a prearranged  
9                   ride:

10                   1. Primary automobile liability insurance in the amount of  
11                   at least \$50,000 for death and bodily injury per person,



791940

12 \$100,000 for death and bodily injury per incident, and \$25,000  
13 for property damage; and  
14 2. Personal injury protection benefits that provide the  
15 minimum coverage amounts required under ss. 627.730-627.7405.  
16 (c) The following automobile liability insurance  
17 requirements apply while a driver is engaged in a prearranged  
18 ride:  
19 1. Primary automobile liability insurance that provides at  
20 least \$1 million for death, bodily injury, and property damage;  
21 and  
22 2. Personal injury protection benefits that provide the  
23 minimum coverage amounts where required of a limousine under ss.  
24 627.730-627.7405.



LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/11/2016	.	
	.	
	.	
	.	

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The Committee on Judiciary (Brandes) recommended the following:

1                   **Senate Amendment to Amendment (791940)**

2

3                   Delete lines 7 - 8

4 and insert:

5 company's digital network but is not engaged in a prearranged



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

1                   **Senate Amendment (with title amendment)**

2

3                   Delete line 306

4 and insert:

5                   (5) A transportation network company shall provide an  
6 electronic notice to transportation network company drivers  
7 which states that it is illegal for a transportation network  
8 company driver to solicit or accept a ride if the ride is not  
9 arranged through a transportation network company's digital  
10 network, and that such rides may not be covered by a  
11 transportation network company driver's or a transportation



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12 network company's insurance policy.

13 (6) The Financial Services Commission may adopt rules to

14

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

16 And the title is amended as follows:

17 Delete line 43

18 and insert:

19 that connect to its digital network; requiring a  
20 transportation network company to provide a specified  
21 notice to transportation network company drivers;  
22 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

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**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

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62 the vehicle in which each was a driver or a passenger.

63 4. The names and addresses of witnesses.

64 5. The name, badge number, and law enforcement agency of  
65 the officer investigating the crash.

66 6. The names of the insurance companies for the respective  
67 parties involved in the crash.

68 7. A statement as to whether, at the time of the accident,  
69 any driver was providing a prearranged ride or logged into a  
70 digital network of a transportation network company, as those  
71 terms are defined in s. 627.748.

72 (c) In any crash for which a Florida Traffic Crash Report,  
73 Long Form is not required by this section and which occurs on  
74 the public roadways of this state, the law enforcement officer  
75 shall complete a short-form crash report or provide a driver  
76 exchange-of-information form, to be completed by all drivers and  
77 passengers involved in the crash, which requires the  
78 identification of each vehicle that the drivers and passengers  
79 were in. The short-form report must include:

80 1. The date, time, and location of the crash.

81 2. A description of the vehicles involved.

82 3. The names and addresses of the parties involved,  
83 including all drivers and passengers, and the identification of  
84 the vehicle in which each was a driver or a passenger.

85 4. The names and addresses of witnesses.

86 5. The name, badge number, and law enforcement agency of  
87 the officer investigating the crash.

88 6. The names of the insurance companies for the respective  
89 parties involved in the crash.

90 7. A statement as to whether, at the time of the accident,

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91 any driver was providing a prearranged ride or logged into a  
92 digital network of a transportation network company, as those  
93 terms are defined in s. 627.748.

94 (3)  
95 (e) Any driver who provides a false statement to a law  
96 enforcement officer in connection with the information that is  
97 required to be reported under subparagraph (1)(b)7. or  
98 subparagraph (1)(c)7. commits a misdemeanor of the second  
99 degree, punishable as provided in s. 775.082 or s. 775.083.

100 Section 2. Section 627.748, Florida Statutes, is created to  
101 read:

102 627.748 Transportation network company insurance.—

103 (1) It is the intent of the Legislature to provide for  
104 statewide uniformity of laws governing the insurance  
105 requirements imposed on transportation network companies and  
106 transportation network company drivers.

107 (2) For purposes of this section, the term:

108 (a) "Digital network" means an online application,  
109 software, website, or system offered or used by a transportation  
110 network company which enables the prearrangement of rides with  
111 transportation network company drivers.

112 (b) "Personal vehicle" means a vehicle, however titled,  
113 which is used by a transportation network company driver in  
114 connection with providing transportation network company service  
115 and which:

116 1. Is owned, leased, or otherwise authorized for use by the  
117 transportation network company driver; and  
118 2. Is not a taxi, jitney, limousine, or for-hire vehicle as  
119 that term is defined in s. 320.01(15).

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

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20161118c1

120 Notwithstanding any other law, a vehicle that is let or rented  
 121 to another for consideration may be used as a personal vehicle.  
 122  
 123 (c) "Prearranged ride" means the provision of  
 124 transportation by a driver to or on behalf of a rider, beginning  
 125 when a driver accepts a request for a ride by a rider through a  
 126 digital network controlled by a transportation network company,  
 127 continuing while the driver transports the rider, and ending  
 128 when the last rider departs from the personal vehicle. A  
 129 prearranged ride does not include transportation provided using  
 130 a taxi, jitney, limousine, for-hire vehicle as defined in s.  
 131 320.01(15), or street hail service.  
 132  
 133 (d) "Transportation network company" or "company" means a  
 134 corporation, partnership, sole proprietorship, or other entity  
 135 operating in this state which uses a digital network to connect  
 136 transportation network company riders to transportation network  
 137 company drivers who provide prearranged rides. A transportation  
 138 network company does not include an individual, corporation,  
 139 partnership, sole proprietorship, or other entity arranging  
 140 nonemergency medical transportation for individuals qualifying  
 141 for Medicaid or Medicare pursuant to a contract with the state  
 142 or a managed care organization.  
 143  
 144 (e) "Transportation network company driver" or "driver"  
 145 means an individual who:  
 146  
 147 1. Receives connections to potential riders and related  
 148 services from a transportation network company in exchange for  
 149 any form of compensation, including payment of a fee to the  
 150 transportation network company; and  
 151  
 152 2. Uses a personal vehicle to offer or provide a  
 153  
 154

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20161118c1

149 prearranged ride to riders upon connection through a digital  
 150 network controlled by a transportation network company in return  
 151 for compensation, including payment of a fee.  
 152  
 153 (f) "Transportation network company rider" or "rider" means  
 154 an individual who directly or indirectly uses a transportation  
 155 network company's digital network to connect with a  
 156 transportation network company driver who provides  
 157 transportation services to the individual in the driver's  
 158 personal vehicle.  
 159  
 160 (3) (a) A transportation network company driver, or a  
 161 transportation network company on the driver's behalf, shall  
 162 maintain primary automobile insurance that recognizes that the  
 163 driver is a transportation network company driver or that the  
 164 driver otherwise uses a personal vehicle to transport riders for  
 165 compensation. Such primary automobile insurance must cover the  
 166 driver as required under this section, including while the  
 167 driver is logged on to the transportation network company's  
 168 digital network but is not engaged in a prearranged ride, and  
 169 while the driver is engaged in a prearranged ride.  
 170  
 171 (b) The following automobile insurance coverage  
 172 requirements apply while a transportation network company driver  
 173 is logged on to the transportation network company's digital  
 174 network but is not engaged in a prearranged ride, and while the  
 175 driver is engaged in a prearranged ride:  
 176  
 177 1. Primary automobile liability insurance coverage of at  
 178 least \$125,000 for death and bodily injury per person, \$250,000  
 179 for death and bodily injury per incident, and \$50,000 for  
 180 property damage; and  
 181  
 182 2. Primary automobile insurance coverage that meets the  
 183  
 184

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 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

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597-02311-16  
 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:

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 236       1. The type and limits of insurance coverage provided by  
 237       the transportation network company;  
 238       2. The type of automobile insurance coverage that the  
 239       driver must maintain while the driver uses a personal vehicle in  
 240       connection with the transportation network company; and  
 241       3. That the provision of rides for compensation, whether  
 242       prearranged or otherwise, which is not covered by this section  
 243       subjects the driver to the coverage requirements imposed by s.  
 244       324.032(1) and that failure to meet such limits subjects the  
 245       driver to penalties provided in s. 324.221, up to and including  
 246       a misdemeanor of the second degree.  
 247       (k) An insurer that provides personal automobile insurance  
 248       policies under this part may exclude from coverage under a  
 249       policy issued to an owner or operator of a personal vehicle any  
 250       loss or injury that occurs while a driver is logged on to a  
 251       transportation network company's digital network or while a  
 252       driver is engaged in a prearranged ride. Such right to exclude  
 253       coverage applies to any coverage under an automobile insurance  
 254       policy, including, but not limited to:  
 255       1. Liability coverage for bodily injury and property  
 256       damage.  
 257       2. Personal injury protection coverage.  
 258       3. Uninsured and underinsured motorist coverage.  
 259       4. Medical payments coverage.  
 260       5. Comprehensive physical damage coverage.  
 261       6. Collision physical damage coverage.  
 262       (l) The exclusions authorized under paragraph (k) apply  
 263       notwithstanding any financial responsibility requirements under  
 264       chapter 324. This section does not require that a personal

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 265       automobile insurance policy provide coverage while the driver is  
 266       logged on to the transportation network company's digital  
 267       network, while the driver is engaged in a prearranged ride, or  
 268       while the driver otherwise uses a personal vehicle to transport  
 269       riders for compensation. However, an insurer may elect to  
 270       provide coverage by contract or endorsement for such driver's  
 271       personal vehicle used for such purposes.  
 272       (m) An insurer that excludes coverage as authorized under  
 273       paragraph (k):  
 274       1. Does not have a duty to defend or indemnify an excluded  
 275       claim. This section does not invalidate or limit an exclusion  
 276       contained in a policy, including any policy in use or approved  
 277       for use in this state before July 1, 2017.  
 278       2. Has a right of contribution against other insurers that  
 279       provide automobile insurance to the same driver in satisfaction  
 280       of the coverage requirements of this section at the time of  
 281       loss, if the insurer defends or indemnifies a claim against a  
 282       driver which is excluded under the terms of its policy.  
 283       (n) In a claims investigation, a transportation network  
 284       company and any insurer providing coverage for a claim under  
 285       this section shall cooperate to facilitate the exchange of  
 286       relevant information with directly involved parties and insurers  
 287       of the transportation network company driver, if applicable.  
 288       Such information must provide:  
 289       1. The precise times that a driver logged on and off the  
 290       transportation network company's digital network during the 12-  
 291       hour period immediately before and immediately after the  
 292       accident.  
 293       2. A clear description of the coverage, any exclusions, and

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294       the limits provided under automobile insurance maintained under  
295       this section.

296       (o) If a transportation network company's insurer makes a  
297       payment for a claim covered under comprehensive coverage or  
298       collision coverage, the transportation network company shall  
299       cause its insurer to issue the payment directly to the entity  
300       repairing the vehicle or jointly to the owner of the vehicle and  
301       the primary lienholder on the covered vehicle.

302       (4) Unless agreed to in a written contract, a  
303       transportation network company is not deemed to control, direct,  
304       or manage the personal vehicles that, or the transportation  
305       network company drivers who, connect to its digital network.

306       (5) The Financial Services Commission may adopt rules to  
307       administer this section.

308       Section 3. PREEMPTION.—Notwithstanding any other law,  
309       transportation network company insurance requirements are  
310       governed exclusively by this section and any rules adopted by  
311       the Financial Services Commission to administer this section. A  
312       political subdivision of this state may not adopt any ordinance  
313       imposing insurance requirements on a transportation network  
314       company or driver. All such ordinances, whether existing or  
315       proposed, are preempted and superseded by general law.

316       Section 4. This act shall take effect January 1, 2017.



LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/11/2016	.	
	.	
	.	
	.	

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The Committee on Judiciary (Brandes) recommended the following:

1                   **Senate Amendment to Amendment (791940)**

2

3                   Delete lines 7 - 8

4 and insert:

5 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".

---

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

1/18

Bill Number (if applicable)

791940

Amendment Barcode (if applicable)

Topic SB 1118

Name CHRISTOPHER EMANUEL

Job Title Policy Director

Address 100 S Bronough St  
Street

TLH

FL

32301

Phone 933 1223

City

State

Zip

Email CSERMANUEL@FLSENATE.COM

Speaking:  For  Against  Information

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

Representing Florida Rivers & Power

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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

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

1118

Meeting Date

Bill Number (if applicable)

Topic TNC Insurance

791946

Name Elyn Bagdonoff

Amendment Barcode (if applicable)

Job Title LobbyistAddress 908 S Andrew AvePhone 954-767-8333

Street

Fl. Lauderdale FL 33316

City

State

Zip

Email elyn.bagdonoff@gmail.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing Florida Taxi AssociationAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.****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

Topic TNC

Name Louis Mandarino

Job Title President

Address 44113 N. Hespeler Dr.

Street

Memphis

TN

33611

City

State

Zip

Speaking:  For  Against  Information

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

Representing

Florida Taxpayers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2/9/16

Meeting Date

1118

Bill Number (if applicable)

791940

Topic TNC Insurance

Amendment Barcode (if applicable)

Name BRAD NAIL

Job Title Risk Manager

Address 1717 Rhode Island Ave NW, 4th Floor  
Street

Phone (202) 224-5071

Washington

DC

20036

City

State

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.*

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16  
Meeting Date

SB 1118  
Bill Number (if applicable)

Topic SB 1118 Amendment Barcode (if applicable)

Name TM AUBORG

Job Title PUBLIC POLICY MANAGER / LYFT

Address Phone 770-595-0190  
Street

City State Zip

Email TM.Auborg@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.*

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

*9/18*  
Meeting Date

*1118*  
Bill Number (if applicable)

Topic *TNC* *Manufacturing*

Amendment Barcode (if applicable)

Name *Louis Mireles*

Job Title *Technician*

Address *1113 N. 4th Street, Suite 300*

Phone \_\_\_\_\_

Street

City

State

Zip

*Temple*

*FL*

*33610*

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing *Florida Taxpayers 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**

2/9/16

Meeting Date

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

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

Street

Ft. Lauderdale FL

City

33301

Zip

Phone 954-253-7320

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. <u>Maida</u>	<u>Cibula</u>	<u>JU</u>	<b>Pre-meeting</b>
2. _____	_____	<u>RI</u>	_____
3. _____	_____	<u>FP</u>	_____

## **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.”<sup>1</sup> Federal patent laws grant patentees a limited monopoly in the form of a property right,<sup>2</sup> providing inventors with a “legal right, for a limited time, to exclude others from using, selling, offering to sell, or manufacturing the invention.”<sup>3</sup> 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.”<sup>4</sup> 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.”<sup>5</sup>

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<sup>1</sup> U.S. Const. art. I, s. 8, cl. 8.

<sup>2</sup> See *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2124 (2014); see also 35 U.S.C. s. 261 (2012).

<sup>3</sup> *Litton Systems, Inc. v. Honeywell, Inc.*, 145 F.3d 1472, 1474 (Fed. Cir. 1998).

<sup>4</sup> 35 U.S.C. s. 112 (2012).

<sup>5</sup> See *Festo Corp. v. Shoketsu Kinzoku 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 ....”<sup>6</sup> 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.”<sup>7</sup> 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.<sup>8</sup> As articulated by the U.S. Supreme Court, federal jurisdiction over a state law claim will lie if 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.<sup>9</sup> Nevertheless, some patent-related actions may properly remain in state court.<sup>10</sup>

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,<sup>11</sup> federal patent law does not “occupy the field.”<sup>12</sup> Rather, patent law is subject to conflict preemption.<sup>13</sup> 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.<sup>14</sup>

## 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.<sup>15</sup> Having purchased a patent—rather than developing a patentable product—these “patent trolls” assert their newly-acquired patents against

<sup>6</sup> 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)).

<sup>7</sup> *Christianson v. Colt Industries Operating Corp.*, 486 U.S. at 807-8.

<sup>8</sup> *See Gunn v. Minton*, 133 S. Ct. 1059, 1064-5 (2013).

<sup>9</sup> *Id.* at 1065.

<sup>10</sup> *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).

<sup>11</sup> *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)).

<sup>12</sup> *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).

<sup>13</sup> *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.”).

<sup>14</sup> *Globetrotter Software, Inc. v. Elan Comptuer Group, Inc.*, 362 F.3d 1367, 1377 (Fed. Cir. 2004)

<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> Even if a targeted business believes the patent infringement claim lacks merit, it often chooses not to litigate.<sup>18</sup> 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.<sup>19</sup> In 2011, patent troll suits cost American technology companies over \$29 billion.<sup>20</sup> Much of this burden falls on small and medium-sized companies.<sup>21</sup>

### Patent Troll Prevention Act

Recognizing that the “frivolous filing of bad faith patent claims … have led to technical, complex, and especially expensive litigation,”<sup>22</sup> the Florida Legislature passed the Patent Troll Prevention Act (“Act”), Part VII of ch. 501, F.S.<sup>23</sup> Under this law, a person may not make a bad faith assertion of patent infringement.<sup>24</sup> 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.<sup>25</sup>

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;

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<sup>16</sup> 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).

<sup>17</sup> 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2539280) (last accessed February 5, 2016).

<sup>18</sup> Eric Rogers, Young Jeon, *supra*, at 299.

<sup>19</sup> *Id.*

<sup>20</sup> James E. Bessen & Michael J. Meurer, *The Direct Costs from NPE Disputes*, 99 CORNELL L. REV. 387, 412-13 (2014).

<sup>21</sup> James E. Bessen & Michael J. Meurer, *supra*, at 388. 398.

<sup>22</sup> Section 501.991(2), F.S.

<sup>23</sup> Sections 7-13, Ch. 2015-92, Laws of Fla, codified as sections 501.991-997, F.S.

<sup>24</sup> Section 501.993, F.S.

<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup>

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.<sup>28</sup>

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)<sup>29</sup> or 42 U.S.C. s. 262<sup>30</sup> 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.<sup>31</sup> Many of these new laws are modeled after a statute first adopted in Vermont,<sup>32</sup> which itself prohibits bad faith assertions of patent infringement.<sup>33</sup> Other states have outlawed assertions that “confirm false, misleading, or deceptive information,”<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup>

<sup>26</sup> *Id.* at subsection (2).

<sup>27</sup> Section 501.994, F.S.

<sup>28</sup> Section 501.995, F.S.

<sup>29</sup> 35 U.S.C. s. 271(e) relates to the use, offering for sale, or sale of veterinary biological products.

<sup>30</sup> 42 U.S.C. s. 262 regulates biological products regarding the prevention, treatment, or cure of a disease or condition of human beings.

<sup>31</sup> Patent Progress' Guide to State Patent Legislation (Feb. 1, 2016), available at <http://www.patentprogress.org/patent-progress-legislation-guides/patent-progress-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.

<sup>32</sup> Gugliuzza, *supra* note 17, at 1582 n. 18.

<sup>33</sup> Vt. Stat. tit. 9, s. 4197(a) (2014).

<sup>34</sup> *See, e.g.*, Wis. Stat. s. 100.197(2)(b) (2014).

<sup>35</sup> *See, e.g.*, Tenn. Code. s. 29-10-102(a)(3) (2014); Gugliuzza, *supra* note 17, at 1582-83.

<sup>36</sup> *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.

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

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LEGISLATIVE ACTION

Senate

House

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The Committee on Judiciary (Brandes) recommended the following:

1                   **Senate Amendment (with title amendment)**

2  
3                   Delete everything after the enacting clause  
4 and insert:

5                   Section 1. Section 501.991, Florida Statutes, is amended to  
6 read:

7                   501.991 Legislative intent; construction.—

8                   (1) The Legislature recognizes that it is preempted from  
9 passing any law that conflicts with federal patent law. However,  
10 the Legislature recognizes that the state is dedicated to  
11 building an entrepreneurial and business-friendly economy where



12 businesses and consumers alike are protected from abuse and  
13 fraud. This includes protection from abusive and bad faith  
14 demands and litigation.

15 (2) Patents encourage research, development, and  
16 innovation. Patent holders have a legitimate right to enforce  
17 their patents. The Legislature does not wish to interfere with  
18 good faith patent litigation or the good faith enforcement of  
19 patents. However, the Legislature recognizes a growing issue:  
20 the frivolous filing of bad faith patent claims that have led to  
21 technical, complex, and especially expensive litigation.

22 (3) The expense of patent litigation, which may cost  
23 millions of dollars, can be a significant burden on companies  
24 and small businesses. Not only do bad faith patent infringement  
25 claims impose undue burdens on individual businesses, they  
26 undermine the state's effort to attract and nurture  
27 technological innovations. Funds spent to help avoid the threat  
28 of bad faith litigation are no longer available for serving  
29 communities through investing in producing new products, helping  
30 businesses expand, or hiring new workers. The Legislature wishes  
31 to help businesses avoid these costs by encouraging good faith  
32 assertions of patent infringement and the expeditious and  
33 efficient resolution of patent claims.

34 (4) This part may not be construed to:

35 (a) Limit the rights and remedies available to the state or  
36 a person under any other law;

37 (b) Alter or restrict the Attorney General's authority  
38 under any other law regarding claims of patent infringement; or

39 (c) Prohibit a person who owns, or has a right to license  
40 or enforce, a patent from:



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



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

99        (f) The claim or assertion of patent infringement is  
100 unenforceable, and the person knew, or should have known, that  
101 the claim or assertion was unenforceable.

102        (g) The claim or assertion of patent infringement is  
103 deceptive.

104        (h) The person, including its subsidiaries or affiliates,  
105 has previously filed or threatened to file one or more lawsuits  
106 based on the same or a similar claim of patent infringement and:

107        1. The threats or lawsuits lacked the information listed  
108 under paragraph (a); or

109        2. The person sued to enforce the claim of patent  
110 infringement and a court found the claim to be meritless.

111        (i) Any other factor the court finds relevant.

112        (2) Meets one or more of the following criteria A court may  
113 consider the following factors as evidence that a person has not  
114 made a bad faith assertion of patent infringement:

115        (a) The demand letter falsely asserts that the sender has  
116 filed a lawsuit in connection with the claim contained the  
117 information listed under paragraph (1)(a).

118        (b) The demand letter asserts a claim that is objectively  
119 baseless due to any of the following:

120        1. The sender, or a person whom the sender represents,  
121 lacks a current right to license the patent to, or enforce the  
122 patent against, the target.

123        2. The patent is invalid or unenforceable pursuant to a  
124 final judgment or an administrative order.

125        3. The infringing activity alleged in the demand letter  
126 occurred after the expiration of the patent The demand letter  
127 did not contain the information listed under paragraph (1)(a),



618428

128 the target requested the information, and the person provided  
129 the information within a reasonable period.

130 (c) The demand letter is likely to materially mislead a  
131 reasonable person because it does not contain sufficient  
132 information to inform the target of all of the following:

133 1. The identity of the person asserting the claim,  
134 including the name and address of such person.

135 2. The patent alleged to have been infringed, including the  
136 patent number of such patent.

137 3. At least one product, service, or technology of the  
138 target alleged to infringe the patent, or at least one activity  
139 of the target which is alleged to infringe the patent. The person  
140 engaged in a good faith effort to establish that the target has  
141 infringed the patent and negotiated an appropriate remedy.

142 (d) The person made a substantial investment in the use of  
143 the patented invention or discovery or in a product or sale of a  
144 product or item covered by the patent.

145 (e) The person is the inventor or joint inventor of the  
146 patented invention or discovery, or in the case of a patent  
147 filed by and awarded to an assignee of the original inventor or  
148 joint inventors, is the original assignee.

149 (f) The person has:

150 1. Demonstrated good faith business practices in previous  
151 efforts to enforce the patent, or a substantially similar  
152 patent; or

153 2. Successfully enforced the patent, or a substantially  
154 similar patent, through litigation.

155 (g) Any other factor the court finds relevant.

156 Section 4. Section 501.994, Florida Statutes, is repealed.



618428

157       Section 5. Section 501.995, Florida Statutes, is amended to  
158 read:

159       501.995 Private right of action.—A person aggrieved by a  
160 violation of this part may bring an action in a court of  
161 competent jurisdiction. A court may award the following remedies  
162 to a prevailing plaintiff in an action brought pursuant to this  
163 section:

164       (1) Equitable relief;

165       (2) Actual damages;

166       (3) Costs and fees, including reasonable attorney fees; and

167       (4) Punitive damages in an amount not to exceed \$75,000.

168       However, such punitive damages may only be awarded if the court  
169       determines that the person asserting the patent infringement  
170       claim has repeatedly violated this chapter ~~Punitive damages in~~  
171       an amount equal to \$50,000 or three times the total damages,  
172       costs, and fees, whichever is greater.

173       Section 6. Section 501.997, Florida Statutes, is repealed.

174       Section 7. This act shall take effect upon becoming law.

176 ===== T I T L E    A M E N D M E N T =====  
177       And the title is amended as follows:

178       Delete everything before the enacting clause  
179 and insert:

180                   A bill to be entitled

181       An act relating to bad faith assertions of patent  
182       infringement; amending s. 501.991, F.S.; providing for  
183       construction; amending s. 501.992, F.S.; revising  
184       definitions; amending s. 501.993, F.S.; prohibiting a  
185       person from sending a demand letter to a target which



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.



LEGISLATIVE ACTION

Senate

House

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The Committee on Judiciary (Brandes) recommended the following:

1                   **Senate Amendment to Amendment (618428) (with title**  
2 **amendment)**

3                   Delete line 173.

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

5  
6                   And the title is amended as follows:

7                   Delete lines 193 - 194

8                   and insert:

9                   Prevention Act;

By Senator Brandes

22-01205A-16

20161298

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

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

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33 businesses and consumers alike are protected from abuse and  
34 fraud. This includes protection from abusive and bad faith  
35 demands and litigation.

36 (2) Patents encourage research, development, and  
37 innovation. Patent holders have a legitimate right to enforce  
38 their patents. The Legislature does not wish to interfere with  
39 good faith patent litigation or the good faith enforcement of  
40 patents. However, the Legislature recognizes a growing issue:  
41 the frivolous filing of bad faith patent claims that have led to  
42 technical, complex, and especially expensive litigation.

43       (3) The expense of patent litigation, which may cost  
44 millions of dollars, can be a significant burden on companies  
45 and small businesses. Not only do bad faith patent infringement  
46 claims impose undue burdens on individual businesses, they  
47 undermine the state's effort to attract and nurture  
48 technological innovations. Funds spent to help avoid the threat  
49 of bad faith litigation are no longer available for serving  
50 communities through investing in producing new products, helping  
51 businesses expand, or hiring new workers. The Legislature wishes  
52 to help businesses avoid these costs by encouraging good faith  
53 assertions of patent infringement and the expeditious and  
54 efficient resolution of patent claims.

55 (4) This part may not be construed to:

56                   (a) Limit the rights and remedies available to the state or  
57 a person under any other law;

58 (b) Alter or restrict the Attorney General's authority

59 under any other law regarding claims of patent infringement; or

(c) Prohibit a person who owns, or has a right to license

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62       1. Notifying other parties of such person's ownership of, or rights under, the patent;  
 63       2. Offering the patent to other parties for license or sale;  
 64       3. Notifying other parties of such parties' infringement of the patent as provided by 35 U.S.C. s. 287; or  
 65       4. Seeking compensation for past or present infringement of, or license to, the patent.

66       Section 2. Subsections (2) and (3) of section 501.992, Florida Statutes, are amended to read:

67       501.992 Definitions.—As used in this part, the term:

68       (2) "Institution of higher education" means an educational institution as defined in 20 U.S.C. s. 1001(a).

69       (2)(3) "Target" means a person residing in, incorporated in, or organized under the laws of this state who purchases, rents, leases, or otherwise obtains a product or service in the commercial market which is not for resale in the commercial market and who:

70       (a) Has received a demand letter or against whom a written assertion or allegation of patent infringement has been made; or

71       (b) Has been threatened in writing with litigation or against whom a lawsuit has been filed alleging patent infringement.

72       Section 3. Section 501.993, Florida Statutes, is amended to read:

73       501.993 Bad faith assertions of patent infringement.—A person may not send a demand letter to a target which makes make a bad faith assertion of patent infringement. A demand letter makes a bad faith assertion of patent infringement if it:

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91       (1) Includes a claim that the target, or a person affiliated with the target, has infringed a patent and that the target is legally liable for such infringement; and A court may consider the following factors as evidence that a person has made a bad faith assertion of patent infringement:

92       (a) The demand letter does not contain the following information:

93       1. The patent number;

94       2. The name and address of the patent owner and assignee, if any; and

95       3. Factual allegations concerning the specific areas in which the target's products, services, or technology infringe or are covered by the claims in the patent.

96       (b) Before sending the demand letter, the person failed to conduct an analysis comparing the claims in the patent to the target's products, services, or technology, or the analysis did not identify specific areas in which the target's products, services, and technology were covered by the claims of the patent.

97       (c) The demand letter lacked the information listed under paragraph (a), the target requested the information, and the person failed to provide the information within a reasonable period.

98       (d) The demand letter requested payment of a license fee or response within an unreasonable period.

99       (e) The person offered to license the patent for an amount that is not based on a reasonable estimate of the value of the license.

100       (f) The claim or assertion of patent infringement is

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120 unenforceable, and the person knew, or should have known, that  
 121 the claim or assertion was unenforceable.

122 (g) The claim or assertion of patent infringement is  
 123 deceptive.

124 (h) The person, including its subsidiaries or affiliates,  
 125 has previously filed or threatened to file one or more lawsuits  
 126 based on the same or a similar claim of patent infringement and:

127 1. The threats or lawsuits lacked the information listed  
 128 under paragraph (a); or

129 2. The person sued to enforce the claim of patent  
 130 infringement and a court found the claim to be meritless.

131 (i) Any other factor the court finds relevant.

132 (2) Meets one or more of the following criteria A court may  
 133 consider the following factors as evidence that a person has not  
 134 made a bad faith assertion of patent infringement:

135 (a) The demand letter fails to identify the target or fails to  
 136 contain the information listed under paragraph (1)(a).

137 (b) The demand letter asserts a claim that is objectively  
 138 baseless due to any of the following:

139 1. The sender, or a person whom the sender represents,  
 140 lacks a current right to license the patent to, or enforce the  
 141 patent against, the target.

142 2. The patent is invalid or unenforceable pursuant to a  
 143 final judgment or an administrative order.

144 3. The infringing activity alleged in the demand letter  
 145 occurred after the expiration of the patent The demand letter  
 146 did not contain the information listed under paragraph (1)(a),  
 147 the target requested the information, and the person provided  
 148

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149 the information within a reasonable period.

150 (c) The demand letter is likely to materially mislead a  
 151 reasonable person because it does not contain sufficient  
 152 information to inform the target of all of the following:

153 1. The identity of the person asserting the claim.

154 2. The patent alleged to have been infringed.

155 3. At least one product, service, or technology of the  
 156 target alleged to infringe the patent, or at least one activity  
 157 of the end user which is alleged to infringe the patent The  
 158 person engaged in a good faith effort to establish that the  
 159 target has infringed the patent and negotiated an appropriate  
 160 remedy.

161 (d) The person made a substantial investment in the use of  
 162 the patented invention or discovery or in a product or sale of a  
 163 product or item covered by the patent.

164 (e) The person is the inventor or joint inventor of the  
 165 patented invention or discovery, or in the case of a patent  
 166 filed by and awarded to an assignee of the original inventor or  
 167 joint inventors, is the original assignee.

168 (f) The person has:

169 1. Demonstrated good faith business practices in previous  
 170 efforts to enforce the patent, or a substantially similar  
 171 patent; or

172 2. Successfully enforced the patent, or a substantially  
 173 similar patent, through litigation.

174 (g) Any other factor the court finds relevant.

175 Section 4. Section 501.994, Florida Statutes, is repealed.

176 Section 5. Section 501.995, Florida Statutes, is amended to  
 177 read:

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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".

---

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.  
Street

Phone 850-558-1050

TCH FL 32311  
City State Zip

Email jennifer.martin@fcua.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

Street

Suite 602

City

State

Zip

Phone 850 222 8900

Email SS@cardenospartners.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

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

S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2/9/16

Meeting Date

SB1298

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Wendrow Pollack

Job Title \_\_\_\_\_

Address 401 E. Jackson St. Suite 2700  
Street

Phone 813-273-5000

Tampa City FL State 33602 Zip

Email wpollack@gray-rubinson.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

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

S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

Meeting Date  
3/9/2016

Bill Number (if applicable)  
17-081

Topic Bad Faith Credit Reporting

Amendment Barcode (if applicable)

Name Kim Sorenson

Job Title VP, Gen. Affairs

Address 1001 Thirteenth St. E.  
Street

South Bend  
City

FL  
State

32302  
Zip

Phone (574) 234-4767

Email Kim.Sorenson@fb.org

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)

Meeting Date

1298

Bill Number (if applicable)

Topic Patent Infringement

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 100 S Brumley St

Phone \_\_\_\_\_

Street

Tallahassee

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing 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 727 S. Adams St.

Street

Phone 222-4082

Tallahassee

FL

32301

Email samantha@frf.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Retail Federation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

***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	<b>Unfavorable</b>
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 1964<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

### 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.<sup>4</sup> The Act passed the U.S. Senate in 2013,<sup>5</sup> but the Act was defeated in a House committee.<sup>6</sup> The Act would have exempted religious organizations from its provisions regulating employment.<sup>7</sup>

### 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.<sup>8</sup> 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.<sup>9</sup> The Court then remanded

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<sup>1</sup> 42 U.S.C. 2000e et. seq.

<sup>2</sup> 42 U.S.C. 2000e-2.

<sup>3</sup> Katherine McAnallen, NCSL Legisbrief, *Sexual Orientation in Employment Discrimination Laws*, Vol. 23, No. 34 (Sept. 2015).

<sup>4</sup> Alex Reed, *Redressing LGBT Employment Discrimination Via Executive Order*, 29 NOTRE DAME J.L. ETHICS & PUB. POL'Y 133, 133-135.

<sup>5</sup> 159 CONG. REC. S10, 129-39 (daily ed. Nov. 7, 2013).

<sup>6</sup> Section 815 (Nov. 12, 2013).

<sup>7</sup> 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 . . .".

<sup>8</sup> *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 78 (1988).

<sup>9</sup> *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 . . .”<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup>

### **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.<sup>15</sup> The Florida Legislature added pregnancy as a protected status under the FCRA in 2015.<sup>16</sup>

Similar to Title VII, the FCRA specifically provides a number of actions that, if undertaken by an employer, are considered unlawful employment practices.<sup>17</sup> 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.<sup>18</sup>

### ***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.<sup>19</sup> After a person files a claim of

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<sup>10</sup> *Id.* at 82.

<sup>11</sup> *Rene v. MGM Grand Hotel, Inc.*, 305 F.3d 1061, 1064 (2002).

<sup>12</sup> *Id.* at 1066.

<sup>13</sup> *Id.* at 1065-1067.

<sup>14</sup> Executive Order 13672 (July 21, 2014).

<sup>15</sup> Section 760.10(1)(a), F.S.

<sup>16</sup> SB 982 (Ch. 2015-68, L.O.F.)

<sup>17</sup> Section 760.10(2) through (8), F.S.

<sup>18</sup> Kendra D. Presswood, *Interpreting the Florida Civil Rights Act of 1992*, 87 F.L.A. B.J. 36, 36 (Dec. 2013).

<sup>19</sup> Section 760.11(1), F.S.

discrimination with the FCHR, the FCHR investigates the complaint.<sup>20</sup> The FCHR then must make a reasonable cause determination within 180 days after the filing of the complaint.<sup>21</sup> If the FCHR finds reasonable cause, the plaintiff may bring either a civil action or request an administrative hearing.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup> DOAH will issue a recommended order, which the FCHR may reject, adopt, or modify by issuing a final order.<sup>25</sup>

### ***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.<sup>26</sup>

#### **Civil Remedies If the Person Pursues a Legal Action**

State law authorizes awards of back pay, compensatory damages, and punitive damages.<sup>27</sup> Compensatory damages include damages for mental anguish, loss of dignity, and any other intangible injuries.<sup>28</sup> Punitive damages are capped at \$100,000 regardless of the size of the employer.<sup>29</sup> The state and its agencies and subdivisions of the state are not liable for punitive damages<sup>30</sup> or recovery amounts in excess of the limited waiver of sovereign immunity.<sup>31</sup>

#### ***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.<sup>32</sup>

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<sup>20</sup> Section 760.11(3), F.S.

<sup>21</sup> Section 760.11(3), F.S.

<sup>22</sup> Section 760.11(4), F.S.

<sup>23</sup> Section 760.11(5), F.S.

<sup>24</sup> Section 760.11(7), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Section 760.11(6), F.S.

<sup>27</sup> Section 760.11(5), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Section 760.11(5), F.S.

<sup>31</sup> *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.

<sup>32</sup> Section 760.10(1), F.S.

Entities prohibited from engaging in unlawful employment practices include labor organizations and employment agencies.<sup>33</sup>

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.<sup>34</sup>

### **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.<sup>35</sup>

#### *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.<sup>36</sup> 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.<sup>37</sup>

### **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.

<sup>33</sup> Section 760.10(2) through (8), F.S.

<sup>34</sup> Section 760.10(9), F.S.

<sup>35</sup> 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).

<sup>36</sup> 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](http://www.hrc.org/state_maps) (last viewed Jan. 23, 2016).

<sup>37</sup> 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 bill 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.<sup>38</sup>

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.

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<sup>38</sup> 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.<sup>39</sup>

### **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.

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

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<sup>39</sup> Florida Commission on Human Relations, *Fiscal Impact Analysis on SB 120*.



LEGISLATIVE ACTION

Senate

House

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•  
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•  
•

The Committee on Judiciary (Bean) recommended the following:

1                   **Senate Amendment (with title amendment)**

2  
3                   Delete everything after the enacting clause  
4 and insert:

5                   Section 1. This act may be cited as the "Florida  
6 Competitive Workforce Act."

7                   Section 2. Subsection (1) of section 760.01, Florida  
8 Statutes, is republished, and subsection (2) of that section is  
9 amended, to read:

10                  760.01 Purposes; construction; title.—

11                  (1) Sections 760.01-760.11 and 509.092 shall be cited as



12 the "Florida Civil Rights Act of 1992."

13 (2) The general purposes of the Florida Civil Rights Act of  
14 1992 are to secure for all individuals within the state freedom  
15 from discrimination because of race, color, religion, sex,  
16 pregnancy, national origin, age, sexual orientation, gender  
17 identity or expression, handicap, or marital status and thereby  
18 to protect their interest in personal dignity, to make available  
19 to the state their full productive capacities, to secure the  
20 state against domestic strife and unrest, to preserve the public  
21 safety, health, and general welfare, and to promote the  
22 interests, rights, and privileges of individuals within the  
23 state.

24 Section 3. Section 760.02, Florida Statutes, is reordered  
25 and amended to read:

26 760.02 Definitions.—For the purposes of ss. 760.01-760.11  
27 and 509.092, the term:

28 (7) ~~(1)~~ "Florida Civil Rights Act of 1992" means ss. 760.01-  
29 760.11 and 509.092.

30 (2) "Commission" means the Florida Commission on Human  
31 Relations created by s. 760.03.

32 (3) "Commissioner" or "member" means a member of the  
33 commission.

34 (4) "Discriminatory practice" means any practice made  
35 unlawful by the Florida Civil Rights Act of 1992.

36 (10) ~~(5)~~ "National origin" includes ancestry.

37 (11) ~~(6)~~ "Person" includes an individual, association,  
38 corporation, joint apprenticeship committee, joint-stock  
39 company, labor union, legal representative, mutual company,  
40 partnership, receiver, trust, trustee in bankruptcy, or



41 unincorporated organization; any other legal or commercial  
42 entity; the state; or any governmental entity or agency.

43 (5)-(7) "Employer" means any person employing 15 or more  
44 employees for each working day in each of 20 or more calendar  
45 weeks in the current or preceding calendar year, and any agent  
46 of such a person.

47 (6)-(8) "Employment agency" means any person regularly  
48 undertaking, with or without compensation, to procure employees  
49 for an employer or to procure for employees opportunities to  
50 work for an employer, and includes an agent of such a person.

51 (8) "Gender identity or expression" means gender-related  
52 identity, appearance, or behavior, regardless of whether such  
53 gender-related identity, appearance, or behavior is different  
54 from that traditionally associated with the person's physiology  
55 or assigned sex at birth, and which gender-related identity can  
56 be shown by the person providing evidence, including, but not  
57 limited to:

58 (a) Medical history, care, or treatment of the gender-  
59 related identity;

60 (b) Consistent and uniform assertion of the gender-related  
61 identity; or

62 (c) Other evidence that the gender-related identity is a  
63 sincerely held part of a person's core identity and is not being  
64 asserted for an improper purpose.

65 (9) "Labor organization" means any organization which  
66 exists for the purpose, in whole or in part, of collective  
67 bargaining or of dealing with employers concerning grievances,  
68 terms or conditions of employment, or other mutual aid or  
69 protection in connection with employment.



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.



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99        (13) "Sexual orientation" means an individual's  
100      heterosexuality, homosexuality, or bisexuality.

101      Section 4. Section 760.05, Florida Statutes, is amended to  
102      read:

103      760.05 Functions of the commission.—The commission shall  
104      promote and encourage fair treatment and equal opportunity for  
105      all persons regardless of race, color, religion, sex, pregnancy,  
106      national origin, age, sexual orientation, gender identity or  
107      expression, handicap, or marital status and mutual understanding  
108      and respect among all members of society. The commission all  
109      ~~economic, social, racial, religious, and ethnic groups; and~~  
110      shall endeavor to eliminate discrimination against, and  
111      antagonism between, persons on the basis of race, color,  
112      religion, sex, pregnancy, national origin, age, sexual  
113      orientation, gender identity or expression, handicap, or marital  
114      ~~status religious, racial, and ethnic groups and their members.~~

115      Section 5. Section 760.07, Florida Statutes, is amended to  
116      read:

117      760.07 Remedies for unlawful discrimination.—Any violation  
118      of any Florida statute making unlawful discrimination because of  
119      race, color, religion, gender, pregnancy, national origin, age,  
120      sexual orientation, gender identity or expression, handicap, or  
121      marital status in the areas of education, employment, housing,  
122      or public accommodations gives rise to a cause of action for all  
123      relief and damages described in s. 760.11(5), unless greater  
124      damages are expressly provided for. If the statute prohibiting  
125      unlawful discrimination provides an administrative remedy, the  
126      action for equitable relief and damages provided for in this  
127      section may be initiated only after the plaintiff has exhausted



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128 his or her administrative remedy. The term "public  
129 accommodations" does not include lodge halls or other similar  
130 facilities of private organizations which are made available for  
131 public use occasionally or periodically. The right to trial by  
132 jury is preserved in any case in which the plaintiff is seeking  
133 actual or punitive damages.

134 Section 6. Section 760.08, Florida Statutes, is amended to  
135 read:

136 760.08 Discrimination in places of public accommodation.—  
137 All persons are entitled to the full and equal enjoyment of the  
138 goods, services, facilities, privileges, advantages, and  
139 accommodations of any place of public accommodation without  
140 discrimination or segregation on the ground of race, color,  
141 national origin, sex, sexual orientation, gender identity or  
142 expression, pregnancy, handicap, familial status, or religion.

143 Section 7. Subsections (1) and (2), paragraphs (a) and (b)  
144 of subsection (3), subsections (4), (5), and (6), paragraph (a)  
145 of subsection (8), and subsection (9) of section 760.10, Florida  
146 Statutes, are amended, and subsection (10) of that section is  
147 republished, to read:

148 760.10 Unlawful employment practices.—

149 (1) It is an unlawful employment practice for an employer:

150 (a) To discharge or to fail or refuse to hire any  
151 individual, or otherwise to discriminate against any individual  
152 with respect to compensation, terms, conditions, or privileges  
153 of employment, because of such individual's race, color,  
154 religion, sex, pregnancy, national origin, age, sexual  
155 orientation, gender identity or expression, handicap, or marital  
156 status.



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157        (b) To limit, segregate, or classify employees or  
158 applicants for employment in any way that which would deprive or  
159 tend to deprive any individual of employment opportunities, or  
160 adversely affect any individual's status as an employee, because  
161 of such individual's race, color, religion, sex, pregnancy,  
162 national origin, age, sexual orientation, gender identity or  
163 expression, handicap, or marital status.

164        (2) It is an unlawful employment practice for an employment  
165 agency to fail or refuse to refer for employment, or otherwise  
166 to discriminate against, any individual because of race, color,  
167 religion, sex, pregnancy, national origin, age, sexual  
168 orientation, gender identity or expression, handicap, or marital  
169 status or to classify or refer for employment any individual on  
170 the basis of race, color, religion, sex, pregnancy, national  
171 origin, age, sexual orientation, gender identity or expression,  
172 handicap, or marital status.

173        (3) It is an unlawful employment practice for a labor  
174 organization:

175        (a) To exclude or to expel from its membership, or  
176 otherwise to discriminate against, any individual because of  
177 race, color, religion, sex, pregnancy, national origin, age,  
178 sexual orientation, gender identity or expression, handicap, or  
179 marital status.

180        (b) To limit, segregate, or classify its membership or  
181 applicants for membership, or to classify or fail or refuse to  
182 refer for employment any individual, in any way that would  
183 deprive or tend to deprive any individual of employment  
184 opportunities, or adversely affect any individual's status as an  
185 employee or as an applicant for employment, because of such



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186 individual's race, color, religion, sex, pregnancy, national  
187 origin, age, sexual orientation, gender identity or expression,  
188 handicap, or marital status.

189 (4) It is an unlawful employment practice for any employer,  
190 labor organization, or joint labor-management committee  
191 controlling apprenticeship or other training or retraining,  
192 including on-the-job training programs, to discriminate against  
193 any individual because of race, color, religion, sex, pregnancy,  
194 national origin, age, sexual orientation, gender identity or  
195 expression, handicap, or marital status in admission to, or  
196 employment in, any program established to provide apprenticeship  
197 or other training.

198 (5) Whenever, in order to engage in a profession,  
199 occupation, or trade, it is required that a person receive a  
200 license, certification, or other credential; or become a member or  
201 an associate of any club, association, or other organization; or  
202 or pass any examination, it is an unlawful employment practice  
203 for any person to discriminate against any other person seeking  
204 such license, certification, or other credential; or seeking to  
205 become a member or associate of such club, association, or other  
206 organization; or seeking to take or pass such examination,  
207 because of such other person's race, color, religion, sex,  
208 pregnancy, national origin, age, sexual orientation, gender  
209 identity or expression, handicap, or marital status.

210 (6) It is an unlawful employment practice for an employer,  
211 a labor organization, an employment agency, or a joint labor-  
212 management committee to print, or cause to be printed or  
213 published, any notice or advertisement relating to employment,  
214 membership, classification, referral for employment, or



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215 apprenticeship or other training which indicates, indicating any  
216 preference, limitation, specification, or discrimination, based  
217 on race, color, religion, sex, pregnancy, national origin, age,  
218 sexual orientation, gender identity or expression, absence of  
219 handicap, or marital status.

220 (8) Notwithstanding any other provision of this section, it  
221 is not an unlawful employment practice under ss. 760.01-760.10  
222 for an employer, employment agency, labor organization, or joint  
223 labor-management committee to:

224 (a) Take or fail to take any action on the basis of  
225 religion, sex, pregnancy, national origin, age, sexual  
226 orientation, gender identity or expression, handicap, or marital  
227 status in those certain instances in which religion, sex,  
228 condition of pregnancy, national origin, age, sexual  
229 orientation, gender identity or expression, absence of a  
230 particular handicap, or marital status is a bona fide  
231 occupational qualification reasonably necessary for the  
232 performance of the particular employment to which such action or  
233 inaction is related.

234 (9) (a) This section does shall not apply to any religious  
235 corporation, association, educational institution, or society  
236 which conditions opportunities in the area of employment or  
237 public accommodation to members of that religious corporation,  
238 association, educational institution, or society or to persons  
239 who subscribe to its tenets or beliefs.

240 (b) This section does shall not prohibit a religious  
241 corporation, association, educational institution, or society  
242 from giving preference in employment to individuals of a  
243 particular religion to perform work connected with the carrying



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244 on by such corporations, associations, educational institutions,  
245 or societies of its various activities.

246 (c) This section and s. 760.08 do not limit the free  
247 exercise of religion guaranteed by the United States  
248 Constitution and the State Constitution.

249 (10) Each employer, employment agency, and labor  
250 organization shall post and keep posted in conspicuous places  
251 upon its premises a notice provided by the commission setting  
252 forth such information as the commission deems appropriate to  
253 effectuate the purposes of ss. 760.01-760.10.

254 Section 8. Section 509.092, Florida Statutes, is amended to  
255 read:

256 509.092 Public lodging establishments and public food  
257 service establishments; rights as private enterprises.—

258 (1) Public lodging establishments and public food service  
259 establishments are private enterprises, and the operator has the  
260 right to refuse accommodations or service to any person who is  
261 objectionable or undesirable to the operator, but such refusal  
262 may not be based upon race, creed, color, sex, pregnancy,  
263 physical disability, sexual orientation, gender identity or  
264 expression, or national origin.

265 (2) A person aggrieved by a violation of this section or a  
266 violation of a rule adopted under this section has a right of  
267 action pursuant to s. 760.11.

268 (3) This section does not limit the free exercise of  
269 religion guaranteed by the United States Constitution and the  
270 State Constitution.

271 Section 9. Section 760.22, Florida Statutes, is amended to  
272 read:



273        760.22 Definitions.—As used in this part ss. 760.20-760.37,  
274 the term:

275        (1) "Commission" means the Florida Commission on Human  
276 Relations.

277        (2) "Covered multifamily dwelling" means:

278        (a) A building that which consists of four or more units  
279 and has an elevator; or

280        (b) The ground floor units of a building that which  
281 consists of four or more units and does not have an elevator.

282        (3) "Discriminatory housing practice" means an act that is  
283 unlawful under the terms of this part ss. 760.20-760.37.

284        (4) "Dwelling" means any building or structure, or portion  
285 thereof, which is occupied as, or designed or intended for  
286 occupancy as, a residence by one or more families, and any  
287 vacant land that which is offered for sale or lease for the  
288 construction or location on the land of any such building or  
289 structure, or portion thereof.

290        (5) "Familial status" is established when an individual who  
291 has not attained the age of 18 years is domiciled with:

292        (a) A parent or other person having legal custody of such  
293 individual; or

294        (b) A designee of a parent or other person having legal  
295 custody, with the written permission of such parent or other  
296 person.

297        (6) "Family" includes a single individual.

298        (7) "Gender identity or expression" has the same meaning as  
299 provided in s. 760.02.

300        (8)-(7) "Handicap" means:

301        (a) A ~~person has a~~ physical or mental impairment that which



302 substantially limits one or more major life activities for a  
303 person who has, or he or she has a record of having, or is  
304 regarded as having that, such physical or mental impairment; or  
305 (b) A person has a developmental disability as defined in  
306 s. 393.063.

307 (9)-(8) "Person" includes one or more individuals,  
308 corporations, partnerships, associations, labor organizations,  
309 legal representatives, mutual companies, joint-stock companies,  
310 trusts, unincorporated organizations, trustees, trustees in  
311 bankruptcy, receivers, and fiduciaries.

312 (10) "Sexual orientation" has the same meaning as provided  
313 in s. 760.02.

314 (11)-(9) "Substantially equivalent" means an administrative  
315 subdivision of the State of Florida meeting the requirements of  
316 24 C.F.R. part 115, s. 115.6.

317 (12)-(10) "To rent" includes to lease, to sublease, to let,  
318 and otherwise to grant for a consideration the right to occupy  
319 premises not owned by the occupant.

320 Section 10. Subsections (1) - (5) of section 760.23,  
321 Florida Statutes, are amended to read:

322 760.23 Discrimination in the sale or rental of housing and  
323 other prohibited practices.—

324 (1) It is unlawful to refuse to sell or rent after the  
325 making of a bona fide offer, to refuse to negotiate for the sale  
326 or rental of, or otherwise to make unavailable or deny a  
327 dwelling to any person because of race, color, national origin,  
328 sex, sexual orientation, gender identity or expression,  
329 handicap, familial status, or religion.

330 (2) It is unlawful to discriminate against any person in



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331 the terms, conditions, or privileges of sale or rental of a  
332 dwelling, or in the provision of services or facilities in  
333 connection therewith, because of race, color, national origin,  
334 sex, sexual orientation, gender identity or expression,  
335 handicap, familial status, or religion.

336 (3) It is unlawful to make, print, or publish, or cause to  
337 be made, printed, or published, any notice, statement, or  
338 advertisement with respect to the sale or rental of a dwelling  
339 that indicates any preference, limitation, or discrimination  
340 based on race, color, national origin, sex, sexual orientation,  
341 gender identity or expression, handicap, familial status, or  
342 religion or an intention to make any such preference,  
343 limitation, or discrimination.

344 (4) It is unlawful to represent to any person because of  
345 the person's race, color, national origin, sex, sexual  
346 orientation, gender identity or expression, handicap, familial  
347 status, or religion that any dwelling is not available for  
348 inspection, sale, or rental when such dwelling is in fact so  
349 available.

350 (5) It is unlawful, for profit, to induce or attempt to  
351 induce any person to sell or rent any dwelling by a  
352 representation regarding the entry or prospective entry into the  
353 neighborhood of a person or persons of a particular race, color,  
354 national origin, sex, sexual orientation, gender identity or  
355 expression, handicap, familial status, or religion.

356 Section 11. Section 760.24, Florida Statutes, is amended to  
357 read:

358 760.24 Discrimination in the provision of brokerage  
359 services.—It is unlawful to deny any person access to, or



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360 membership or participation in, any multiple-listing service,  
361 real estate brokers' organization, or other service,  
362 organization, or facility relating to the business of selling or  
363 renting dwellings, or to discriminate against him or her in the  
364 terms or conditions of such access, membership, or  
365 participation, because on account of race, color, national  
366 origin, sex, sexual orientation, gender identity or expression,  
367 handicap, familial status, or religion.

368 Section 12. Subsection (1) and paragraph (a) of subsection  
369 (2) of section 760.25, Florida Statutes, are amended to read:

370 760.25 Discrimination in the financing of housing or in  
371 residential real estate transactions.—

372 (1) It is unlawful for any bank, building and loan  
373 association, insurance company, or other corporation,  
374 association, firm, or enterprise the business of which consists  
375 in whole or in part of the making of commercial real estate  
376 loans to deny a loan or other financial assistance to a person  
377 applying for the loan for the purpose of purchasing,  
378 constructing, improving, repairing, or maintaining a dwelling,  
379 or to discriminate against him or her in the fixing of the  
380 amount, interest rate, duration, or other term or condition of  
381 such loan or other financial assistance, because of the race,  
382 color, national origin, sex, sexual orientation, gender identity  
383 or expression, handicap, familial status, or religion of such  
384 person or of any person associated with him or her in connection  
385 with such loan or other financial assistance or the purposes of  
386 such loan or other financial assistance, or because of the race,  
387 color, national origin, sex, sexual orientation, gender identity  
388 or expression, handicap, familial status, or religion of the



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389 present or prospective owners, lessees, tenants, or occupants of  
390 the dwelling or dwellings in relation to which such loan or  
391 other financial assistance is to be made or given.

392 (2) (a) It is unlawful for any person or entity whose  
393 business includes engaging in residential real estate  
394 transactions to discriminate against any person in making  
395 available such a transaction, or in the terms or conditions of  
396 such a transaction, because of race, color, national origin,  
397 sex, sexual orientation, gender identity or expression,  
398 handicap, familial status, or religion.

399 Section 13. Section 760.26, Florida Statutes, is amended to  
400 read:

401 760.26 Prohibited discrimination in land use decisions and  
402 in permitting of development.—It is unlawful to discriminate in  
403 land use decisions or in the permitting of development based on  
404 race, color, national origin, sex, sexual orientation, gender  
405 identity or expression, disability, familial status, religion,  
406 or, except as otherwise provided by law, the source of financing  
407 of a development or proposed development.

408 Section 14. Paragraph (a) of subsection (5) of section  
409 760.29, Florida Statutes, is amended to read:

410 760.29 Exemptions.—

411 (5) Nothing in ss. 760.20-760.37:

412 (a) Prohibits a person engaged in the business of  
413 furnishing appraisals of real property from taking into  
414 consideration factors other than race, color, national origin,  
415 sex, sexual orientation, gender identity or expression,  
416 handicap, familial status, or religion.

417 Section 15. Subsection (1) of section 760.60, Florida



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418 Statutes, is amended to read:

419 760.60 Discriminatory practices of certain clubs  
420 prohibited; remedies.—

421 (1) It is unlawful for a person to discriminate against any  
422 individual because of race, color, religion, gender, national  
423 origin, handicap, age above the age of 21, sexual orientation,  
424 gender identity or expression, or marital status in evaluating  
425 an application for membership in a club that has more than 400  
426 members, that provides regular meal service, and that regularly  
427 receives payment for dues, fees, use of space, facilities,  
428 services, meals, or beverages directly or indirectly from  
429 nonmembers for business purposes. It is unlawful for a person,  
430 on behalf of such a club, to publish, circulate, issue, display,  
431 post, or mail any advertisement, notice, or solicitation that  
432 contains a statement to the effect that the accommodations,  
433 advantages, facilities, membership, or privileges of the club  
434 are denied to any individual because of race, color, religion,  
435 gender, national origin, handicap, age above the age of 21,  
436 sexual orientation, gender identity or expression, or marital  
437 status. This subsection does not apply to fraternal or  
438 benevolent organizations, ethnic clubs, or religious  
439 organizations where business activity is not prevalent.

440 Section 16. Paragraph (e) of subsection (1) of section  
441 419.001, Florida Statutes, is amended to read:

442 419.001 Site selection of community residential homes.—

443 (1) For the purposes of this section, the term:

444 (e) "Resident" means any of the following: a frail elder as  
445 defined in s. 429.65; a person who has a handicap as defined in  
446 s. 760.22(8) (a) ~~s. 760.22(7) (a)~~; a person who has a



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447 developmental disability as defined in s. 393.063; a  
448 nondangerous person who has a mental illness as defined in s.  
449 394.455; or a child who is found to be dependent as defined in  
450 s. 39.01 or s. 984.03, or a child in need of services as defined  
451 in s. 984.03 or s. 985.03.

452       Section 17. This act shall take effect July 1, 2016.

453

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

455 And the title is amended as follows:

456       Delete everything before the enacting clause  
457 and insert:

458                   A bill to be entitled

459       An act relating to prohibited discrimination; creating  
460 the "Florida Competitive Workforce Act"; amending s.  
461 760.01, F.S.; revising provisions to include sexual  
462 orientation and gender identity or expression as  
463 impermissible grounds for discrimination; amending s.  
464 760.02, F.S.; adding definitions; amending ss. 760.05,  
465 760.07, and 760.08, F.S.; adding sexual orientation  
466 and gender identity or expression as impermissible  
467 grounds for discrimination; conforming terminology;  
468 amending s. 760.10, F.S.; adding sexual orientation  
469 and gender identity or expression as impermissible  
470 grounds for discrimination; providing an exception for  
471 constitutionally protected free exercise of religion;  
472 amending s. 509.092, F.S.; adding sexual orientation  
473 and gender identity or expression as impermissible  
474 grounds for discrimination in public lodging  
475 establishments and public food service establishments;



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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.



LEGISLATIVE ACTION

Senate

House

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The Committee on Judiciary (Stargel) recommended the following:

1                   **Senate Amendment to Amendment (828464) (with title**  
2 **amendment)**

3                   Between lines 253 and 254

4                   insert:

5                   Section 8. Section 760.101, Florida Statutes, is created to  
6                   read:

7                   760.101 Exemption from part.—

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

9                   (a) "Closely held for-profit entity" means an entity for  
10                   which no ownership interest is publicly traded and in which at



12 least 50 percent of the ownership interest is concentrated in 10  
13 or fewer owners.

14 (b) "Nonprofit entity" means an organization that qualifies  
15 for tax-exempt status under 26 U.S.C. s. 501.

16 (c) "Religious institution" has the same meaning as in s.  
17 496.404(23).

18 (2) Notwithstanding s. 760.07 or s. 760.35, a cause of  
19 action may not be brought against a closely held for-profit  
20 entity, a nonprofit entity, or a religious institution for a  
21 violation of this part, part II of this chapter, or s. 509.092  
22 for discrimination on the basis of gender identity or expression  
23 or sexual orientation, as those terms are defined in s. 760.02,  
24 if the entity or institution asserts a religious viewpoint or  
25 belief as the reason for the violation.

26  
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 Between lines 471 and 472

30 insert:

31 creating s. 760.101, F.S.; defining terms; prohibiting  
32 a cause of action from being brought against any  
33 closely held for-profit entity, nonprofit entity, or  
34 religious institution for specified violations under  
35 certain circumstances;



LEGISLATIVE ACTION

Senate

House

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The Committee on Judiciary (Soto) recommended the following:

1                   **Senate Amendment (with title amendment)**

2  
3                   Delete everything after the enacting clause  
4 and insert:

5                   Section 1. This act may be cited as the "Florida  
6 Competitive Workforce Act."

7                   Section 2. Subsection (1) of section 760.01, Florida  
8 Statutes, is republished, and subsection (2) of that section is  
9 amended, to read:

10                  760.01 Purposes; construction; title.—

11                  (1) Sections 760.01-760.11 and 509.092 shall be cited as



12 the "Florida Civil Rights Act of 1992."

13 (2) The general purposes of the Florida Civil Rights Act of  
14 1992 are to secure for all individuals within the state freedom  
15 from discrimination because of race, color, religion, sex,  
16 pregnancy, national origin, age, sexual orientation, gender  
17 identity or expression, disability handicap, or marital status  
18 and thereby to protect their interest in personal dignity, to  
19 make available to the state their full productive capacities, to  
20 secure the state against domestic strife and unrest, to preserve  
21 the public safety, health, and general welfare, and to promote  
22 the interests, rights, and privileges of individuals within the  
23 state.

24 Section 3. Section 760.02, Florida Statutes, is reordered  
25 and amended to read:

26 760.02 Definitions.—For the purposes of ss. 760.01-760.11  
27 and 509.092, the term:

28 (7)+(1) "Florida Civil Rights Act of 1992" means ss. 760.01-  
29 760.11 and 509.092.

30 (2) "Commission" means the Florida Commission on Human  
31 Relations created by s. 760.03.

32 (3) "Commissioner" or "member" means a member of the  
33 commission.

34 (4) "Discriminatory practice" means any practice made  
35 unlawful by the Florida Civil Rights Act of 1992.

36 (10)+(5) "National origin" includes ancestry.

37 (11)+(6) "Person" includes an individual, association,  
38 corporation, joint apprenticeship committee, joint-stock  
39 company, labor union, legal representative, mutual company,  
40 partnership, receiver, trust, trustee in bankruptcy, or



41 unincorporated organization; any other legal or commercial  
42 entity; the state; or any governmental entity or agency.

43 (5)-(7) "Employer" means any person employing 15 or more  
44 employees for each working day in each of 20 or more calendar  
45 weeks in the current or preceding calendar year, and any agent  
46 of such a person.

47 (6)-(8) "Employment agency" means any person regularly  
48 undertaking, with or without compensation, to procure employees  
49 for an employer or to procure for employees opportunities to  
50 work for an employer, and includes an agent of such a person.

51 (8) "Gender identity or expression" means gender-related  
52 identity, appearance, or behavior, regardless of whether such  
53 gender-related identity, appearance, or behavior is different  
54 from that traditionally associated with the person's physiology  
55 or assigned sex at birth, and which gender-related identity can  
56 be shown by the person providing evidence, including, but not  
57 limited to:

58 (a) Medical history, care, or treatment of the gender-  
59 related identity;

60 (b) Consistent and uniform assertion of the gender-related  
61 identity; or

62 (c) Other evidence that the gender-related identity is a  
63 sincerely held part of a person's core identity and is not being  
64 asserted for an improper purpose.

65 (9) "Labor organization" means any organization which  
66 exists for the purpose, in whole or in part, of collective  
67 bargaining or of dealing with employers concerning grievances,  
68 terms or conditions of employment, or other mutual aid or  
69 protection in connection with employment.



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.



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99        (13) "Sexual orientation" means an individual's  
100      heterosexuality, homosexuality, or bisexuality.

101      Section 4. Section 760.05, Florida Statutes, is amended to  
102      read:

103      760.05 Functions of the commission.—The commission shall  
104      promote and encourage fair treatment and equal opportunity for  
105      all persons regardless of race, color, religion, sex, pregnancy,  
106      national origin, age, sexual orientation, gender identity or  
107      expression, disability handicap, or marital status and mutual  
108      understanding and respect among all members of society. The  
109      commission all economic, social, racial, religious, and ethnic  
110      groups; and shall endeavor to eliminate discrimination against,  
111      and antagonism between, persons on the basis of race, color,  
112      religion, sex, pregnancy, national origin, age, sexual  
113      orientation, gender identity or expression, disability, or  
114      marital status religious, racial, and ethnic groups and their  
115      members.

116      Section 5. Section 760.07, Florida Statutes, is amended to  
117      read:

118      760.07 Remedies for unlawful discrimination.—Any violation  
119      of any Florida statute making unlawful discrimination because of  
120      race, color, religion, gender, pregnancy, national origin, age,  
121      sexual orientation, gender identity or expression, disability  
122      handicap, or marital status in the areas of education,  
123      employment, housing, or public accommodations gives rise to a  
124      cause of action for all relief and damages described in s.  
125      760.11(5), unless greater damages are expressly provided for. If  
126      the statute prohibiting unlawful discrimination provides an  
127      administrative remedy, the action for equitable relief and



128 damages provided for in this section may be initiated only after  
129 the plaintiff has exhausted his or her administrative remedy.  
130 The term "public accommodations" does not include lodge halls or  
131 other similar facilities of private organizations which are made  
132 available for public use occasionally or periodically. The right  
133 to trial by jury is preserved in any case in which the plaintiff  
134 is seeking actual or punitive damages.

135 Section 6. Section 760.08, Florida Statutes, is amended to  
136 read:

137 760.08 Discrimination in places of public accommodation.—  
138 All persons are entitled to the full and equal enjoyment of the  
139 goods, services, facilities, privileges, advantages, and  
140 accommodations of any place of public accommodation without  
141 discrimination or segregation on the ground of race, color,  
142 national origin, sex, sexual orientation, gender identity or  
143 expression, pregnancy, disability, handicap, familial status, or  
144 religion.

145 Section 7. Subsections (1) and (2), paragraphs (a) and (b)  
146 of subsection (3), subsections (4), (5), and (6), paragraph (a)  
147 of subsection (8), and subsection (9) of section 760.10, Florida  
148 Statutes, are amended, and subsection (10) of that section is  
149 republished, to read:

150 760.10 Unlawful employment practices.—

151 (1) It is an unlawful employment practice for an employer:  
152 (a) To discharge or to fail or refuse to hire any  
153 individual, or otherwise to discriminate against any individual  
154 with respect to compensation, terms, conditions, or privileges  
155 of employment, because of such individual's race, color,  
156 religion, sex, pregnancy, national origin, age, sexual



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157 orientation, gender identity or expression, disability handicap,  
158 or marital status.

159 (b) To limit, segregate, or classify employees or  
160 applicants for employment in any way that which would deprive or  
161 tend to deprive any individual of employment opportunities, or  
162 adversely affect any individual's status as an employee, because  
163 of such individual's race, color, religion, sex, pregnancy,  
164 national origin, age, sexual orientation, gender identity or  
165 expression, disability handicap, or marital status.

166 (2) It is an unlawful employment practice for an employment  
167 agency to fail or refuse to refer for employment, or otherwise  
168 to discriminate against, any individual because of race, color,  
169 religion, sex, pregnancy, national origin, age, sexual  
170 orientation, gender identity or expression, disability handicap,  
171 or marital status or to classify or refer for employment any  
172 individual on the basis of race, color, religion, sex,  
173 pregnancy, national origin, age, sexual orientation, gender  
174 identity or expression, disability handicap, or marital status.

175 (3) It is an unlawful employment practice for a labor  
176 organization:

177 (a) To exclude or to expel from its membership, or  
178 otherwise to discriminate against, any individual because of  
179 race, color, religion, sex, pregnancy, national origin, age,  
180 sexual orientation, gender identity or expression, disability  
181 handicap, or marital status.

182 (b) To limit, segregate, or classify its membership or  
183 applicants for membership, or to classify or fail or refuse to  
184 refer for employment any individual, in any way that would  
185 deprive or tend to deprive any individual of employment



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186 opportunities, or adversely affect any individual's status as an  
187 employee or as an applicant for employment, because of such  
188 individual's race, color, religion, sex, pregnancy, national  
189 origin, age, sexual orientation, gender identity or expression,  
190 disability handicap, or marital status.

191 (4) It is an unlawful employment practice for any employer,  
192 labor organization, or joint labor-management committee  
193 controlling apprenticeship or other training or retraining,  
194 including on-the-job training programs, to discriminate against  
195 any individual because of race, color, religion, sex, pregnancy,  
196 national origin, age, sexual orientation, gender identity or  
197 expression, disability handicap, or marital status in admission  
198 to, or employment in, any program established to provide  
199 apprenticeship or other training.

200 (5) Whenever, in order to engage in a profession,  
201 occupation, or trade, it is required that a person receive a  
202 license, certification, or other credential; or become a member or  
203 an associate of any club, association, or other organization; or  
204 or pass any examination, it is an unlawful employment practice  
205 for any person to discriminate against any other person seeking  
206 such license, certification, or other credential; seeking to  
207 become a member or associate of such club, association, or other  
208 organization; or seeking to take or pass such examination,  
209 because of such other person's race, color, religion, sex,  
210 pregnancy, national origin, age, sexual orientation, gender  
211 identity or expression, disability handicap, or marital status.

212 (6) It is an unlawful employment practice for an employer,  
213 a labor organization, an employment agency, or a joint labor-  
214 management committee to print, or cause to be printed or



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215 published, any notice or advertisement relating to employment,  
216 membership, classification, referral for employment, or  
217 apprenticeship or other training which indicates, ~~indicating~~ any  
218 preference, limitation, specification, or discrimination, based  
219 on race, color, religion, sex, pregnancy, national origin, age,  
220 sexual orientation, gender identity or expression, absence of  
221 disability handicap, or marital status.

222 (8) Notwithstanding any other provision of this section, it  
223 is not an unlawful employment practice under ss. 760.01-760.10  
224 for an employer, employment agency, labor organization, or joint  
225 labor-management committee to:

226 (a) Take or fail to take any action on the basis of  
227 religion, sex, pregnancy, national origin, age, sexual  
228 orientation, gender identity or expression, disability handicap,  
229 or marital status in those certain instances in which religion,  
230 sex, condition of pregnancy, national origin, age, sexual  
231 orientation, gender identity or expression, absence of a  
232 particular disability handicap, or marital status is a bona fide  
233 occupational qualification reasonably necessary for the  
234 performance of the particular employment to which such action or  
235 inaction is related.

236 (9) (a) This section does shall not apply to any religious  
237 corporation, association, educational institution, or society  
238 which conditions opportunities in the area of employment or  
239 public accommodation to members of that religious corporation,  
240 association, educational institution, or society or to persons  
241 who subscribe to its tenets or beliefs.

242 (b) This section does shall not prohibit a religious  
243 corporation, association, educational institution, or society



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244 from giving preference in employment to individuals of a  
245 particular religion to perform work connected with the carrying  
246 on by such corporations, associations, educational institutions,  
247 or societies of its various activities.

248 (c) This section and s. 760.08 do not limit the free  
249 exercise of religion guaranteed by the United States  
250 Constitution and the State Constitution.

251 (10) Each employer, employment agency, and labor  
252 organization shall post and keep posted in conspicuous places  
253 upon its premises a notice provided by the commission setting  
254 forth such information as the commission deems appropriate to  
255 effectuate the purposes of ss. 760.01-760.10.

256 Section 8. Section 509.092, Florida Statutes, is amended to  
257 read:

258 509.092 Public lodging establishments and public food  
259 service establishments; rights as private enterprises.—

260 (1) Public lodging establishments and public food service  
261 establishments are private enterprises, and the operator has the  
262 right to refuse accommodations or service to any person who is  
263 objectionable or undesirable to the operator, but such refusal  
264 may not be based upon race, creed, color, sex, pregnancy,  
265 physical disability, sexual orientation, gender identity or  
266 expression, or national origin.

267 (2) A person aggrieved by a violation of this section or a  
268 violation of a rule adopted under this section has a right of  
269 action pursuant to s. 760.11.

270 (3) This section does not limit the free exercise of  
271 religion guaranteed by the United States Constitution and the  
272 State Constitution.



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273       Section 9. Section 760.22, Florida Statutes, is reordered  
274 and amended to read:

275       760.22 Definitions.—As used in this part ss. 760.20-760.37,  
276 the term:

277       (1) "Commission" means the Florida Commission on Human  
278 Relations.

279       (2) "Covered multifamily dwelling" means:

280       (a) A building that which consists of four or more units  
281 and has an elevator; or

282       (b) The ground floor units of a building that which  
283 consists of four or more units and does not have an elevator.

284       (4)(3) "Discriminatory housing practice" means an act that  
285 is unlawful under the terms of this part ss. 760.20-760.37.

286       (5)(4) "Dwelling" means any building or structure, or  
287 portion thereof, which is occupied as, or designed or intended  
288 for occupancy as, a residence by one or more families, and any  
289 vacant land that which is offered for sale or lease for the  
290 construction or location on the land of any such building or  
291 structure, or portion thereof.

292       (6)(5) "Familial status" is established when an individual  
293 who has not attained the age of 18 years is domiciled with:

294       (a) A parent or other person having legal custody of such  
295 individual; or

296       (b) A designee of a parent or other person having legal  
297 custody, with the written permission of such parent or other  
298 person.

299       (7)(6) "Family" includes a single individual.

300       (8) "Gender identity or expression" has the same meaning as  
301 provided in s. 760.02.



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302        (3)-(7) "Disability Handicap" means:

303        (a) ~~A person has~~ a physical or mental impairment that which  
304 substantially limits one or more major life activities for a  
305 person who has, ~~or he or she~~ has a record of having, or is  
306 regarded as having that, such physical or mental impairment; or  
307        (b) ~~A person has~~ a developmental disability as defined in  
308 s. 393.063.

309        (9)-(8) "Person" includes one or more individuals,  
310 corporations, partnerships, associations, labor organizations,  
311 legal representatives, mutual companies, joint-stock companies,  
312 trusts, unincorporated organizations, trustees, trustees in  
313 bankruptcy, receivers, and fiduciaries.

314        (10) "Sexual orientation" has the same meaning as provided  
315 in s. 760.02.

316        (11)-(9) "Substantially equivalent" means an administrative  
317 subdivision of the State of Florida meeting the requirements of  
318 24 C.F.R. part 115, s. 115.6.

319        (12)-(10) "To rent" includes to lease, to sublease, to let,  
320 and otherwise to grant for a consideration the right to occupy  
321 premises not owned by the occupant.

322        Section 10. Subsections (1) - (5) of section 760.23,  
323 Florida Statutes, are amended to read:

324        760.23 Discrimination in the sale or rental of housing and  
325 other prohibited practices.-

326        (1) It is unlawful to refuse to sell or rent after the  
327 making of a bona fide offer, to refuse to negotiate for the sale  
328 or rental of, or otherwise to make unavailable or deny a  
329 dwelling to any person because of race, color, national origin,  
330 sex, sexual orientation, gender identity or expression,



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331 disability handicap, familial status, or religion.

332 (2) It is unlawful to discriminate against any person in  
333 the terms, conditions, or privileges of sale or rental of a  
334 dwelling, or in the provision of services or facilities in  
335 connection therewith, because of race, color, national origin,  
336 sex, sexual orientation, gender identity or expression,  
337 disability handicap, familial status, or religion.

338 (3) It is unlawful to make, print, or publish, or cause to  
339 be made, printed, or published, any notice, statement, or  
340 advertisement with respect to the sale or rental of a dwelling  
341 that indicates any preference, limitation, or discrimination  
342 based on race, color, national origin, sex, sexual orientation,  
343 gender identity or expression, disability handicap, familial  
344 status, or religion or an intention to make any such preference,  
345 limitation, or discrimination.

346 (4) It is unlawful to represent to any person because of  
347 the person's race, color, national origin, sex, sexual  
348 orientation, gender identity or expression, disability handicap,  
349 familial status, or religion that any dwelling is not available  
350 for inspection, sale, or rental when such dwelling is in fact so  
351 available.

352 (5) It is unlawful, for profit, to induce or attempt to  
353 induce any person to sell or rent any dwelling by a  
354 representation regarding the entry or prospective entry into the  
355 neighborhood of a person or persons of a particular race, color,  
356 national origin, sex, sexual orientation, gender identity or  
357 expression, disability handicap, familial status, or religion.

358 Section 11. Section 760.24, Florida Statutes, is amended to  
359 read:



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360        760.24 Discrimination in the provision of brokerage  
361 services.—It is unlawful to deny any person access to, or  
362 membership or participation in, any multiple-listing service,  
363 real estate brokers' organization, or other service,  
364 organization, or facility relating to the business of selling or  
365 renting dwellings, or to discriminate against him or her in the  
366 terms or conditions of such access, membership, or  
367 participation, because on account of race, color, national  
368 origin, sex, sexual orientation, gender identity or expression,  
369 disability handicap, familial status, or religion.

370        Section 12. Subsection (1) and paragraph (a) of subsection  
371 (2) of section 760.25, Florida Statutes, are amended to read:

372        760.25 Discrimination in the financing of housing or in  
373 residential real estate transactions.—

374        (1) It is unlawful for any bank, building and loan  
375 association, insurance company, or other corporation,  
376 association, firm, or enterprise the business of which consists  
377 in whole or in part of the making of commercial real estate  
378 loans to deny a loan or other financial assistance to a person  
379 applying for the loan for the purpose of purchasing,  
380 constructing, improving, repairing, or maintaining a dwelling,  
381 or to discriminate against him or her in the fixing of the  
382 amount, interest rate, duration, or other term or condition of  
383 such loan or other financial assistance, because of the race,  
384 color, national origin, sex, sexual orientation, gender identity  
385 or expression, disability handicap, familial status, or religion  
386 of such person or of any person associated with him or her in  
387 connection with such loan or other financial assistance or the  
388 purposes of such loan or other financial assistance, or because



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389 of the race, color, national origin, sex, sexual orientation,  
390 gender identity or expression, disability handicap, familial  
391 status, or religion of the present or prospective owners,  
392 lessees, tenants, or occupants of the dwelling or dwellings in  
393 relation to which such loan or other financial assistance is to  
394 be made or given.

395 (2) (a) It is unlawful for any person or entity whose  
396 business includes engaging in residential real estate  
397 transactions to discriminate against any person in making  
398 available such a transaction, or in the terms or conditions of  
399 such a transaction, because of race, color, national origin,  
400 sex, sexual orientation, gender identity or expression,  
401 disability handicap, familial status, or religion.

402 Section 13. Section 760.26, Florida Statutes, is amended to  
403 read:

404 760.26 Prohibited discrimination in land use decisions and  
405 in permitting of development.—It is unlawful to discriminate in  
406 land use decisions or in the permitting of development based on  
407 race, color, national origin, sex, sexual orientation, gender  
408 identity or expression, disability, familial status, religion,  
409 or, except as otherwise provided by law, the source of financing  
410 of a development or proposed development.

411 Section 14. Paragraph (a) of subsection (5) of section  
412 760.29, Florida Statutes, is amended to read:

413 760.29 Exemptions.—

414 (5) Nothing in ss. 760.20-760.37:

415 (a) Prohibits a person engaged in the business of  
416 furnishing appraisals of real property from taking into  
417 consideration factors other than race, color, national origin,



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418 sex, sexual orientation, gender identity or expression,  
419 disability handicap, familial status, or religion.

420 Section 15. Subsection (1) of section 760.60, Florida  
421 Statutes, is amended to read:

422 760.60 Discriminatory practices of certain clubs  
423 prohibited; remedies.—

424 (1) It is unlawful for a person to discriminate against any  
425 individual because of race, color, religion, gender, national  
426 origin, disability handicap, age above the age of 21, sexual  
427 orientation, gender identity or expression, or marital status in  
428 evaluating an application for membership in a club that has more  
429 than 400 members, that provides regular meal service, and that  
430 regularly receives payment for dues, fees, use of space,  
431 facilities, services, meals, or beverages directly or indirectly  
432 from nonmembers for business purposes. It is unlawful for a  
433 person, on behalf of such a club, to publish, circulate, issue,  
434 display, post, or mail any advertisement, notice, or  
435 solicitation that contains a statement to the effect that the  
436 accommodations, advantages, facilities, membership, or  
437 privileges of the club are denied to any individual because of  
438 race, color, religion, gender, national origin, disability  
439 handicap, age above the age of 21, sexual orientation, gender  
440 identity or expression, or marital status. This subsection does  
441 not apply to fraternal or benevolent organizations, ethnic  
442 clubs, or religious organizations where business activity is not  
443 prevalent.

444 Section 16. Paragraph (e) of subsection (1) of section  
445 419.001, Florida Statutes, is amended to read:

446 419.001 Site selection of community residential homes.—



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447 (1) For the purposes of this section, the term:  
448 (e) "Resident" means any of the following: a frail elder as  
449 defined in s. 429.65; a person who has a disability handicap as  
450 defined in s. 760.22(3)(a) ~~s. 760.22(7)(a)~~; a person who has a  
451 developmental disability as defined in s. 393.063; a  
452 nondangerous person who has a mental illness as defined in s.  
453 394.455; or a child who is found to be dependent as defined in  
454 s. 39.01 or s. 984.03, or a child in need of services as defined  
455 in s. 984.03 or s. 985.03.

456 Section 17. This act shall take effect July 1, 2016.

457

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

459 And the title is amended as follows:

460 Delete everything before the enacting clause  
461 and insert:

462 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



476        constitutionally protected free exercise of religion;  
477        revising terminology; amending s. 509.092, F.S.;  
478        adding sexual orientation and gender identity or  
479        expression as impermissible grounds for discrimination  
480        in public lodging establishments and public food  
481        service establishments; providing an exception for  
482        constitutionally protected free exercise of religion;  
483        revising terminology; amending s. 760.22, F.S.; adding  
484        and revising definitions; amending ss. 760.23, 760.24,  
485        760.25, 760.26, 760.29, and 760.60, F.S.; adding  
486        sexual orientation and gender identity or expression  
487        as impermissible grounds for discrimination; revising  
488        terminology; amending s. 419.001, F.S.; conforming a  
489        cross-reference; providing an effective date.



LEGISLATIVE ACTION

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

The Committee on Judiciary (Stargel) recommended the following:

1                   **Senate Amendment to Amendment (873568) (with title**  
2 **amendment)**

3                   Between lines 255 and 256

4                   insert:

5                   Section 8. Section 760.101, Florida Statutes, is created to  
6 read:

7                   760.101 Exemption from part.—

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

9                   (a) "Closely held for-profit entity" means an entity for  
10 which no ownership interest is publicly traded and in which at



12 least 50 percent of the ownership interest is concentrated in 10  
13 or fewer owners.

14 (b) "Nonprofit entity" means an organization that qualifies  
15 for tax-exempt status under 26 U.S.C. s. 501.

16 (c) "Religious institution" has the same meaning as in s.  
17 496.404(23).

18 (2) Notwithstanding s. 760.07 or s. 760.35, a cause of  
19 action may not be brought against a closely held for-profit  
20 entity, a nonprofit entity, or a religious institution for a  
21 violation of this part, part II of this chapter, or s. 509.092  
22 for discrimination on the basis of gender identity or expression  
23 or sexual orientation, as those terms are defined in s. 760.02,  
24 if the entity or institution asserts a religious viewpoint or  
25 belief as the reason for the violation.

26  
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 Delete line 477

30 and insert:

31 revising terminology; creating s. 760.101, F.S.;  
32 defining terms; prohibiting a cause of action from  
33 being brought against any closely held for-profit  
34 entity, nonprofit entity, or religious institution for  
35 specified violations under certain circumstances;  
36 amending s. 509.092, F.S.;



LEGISLATIVE ACTION

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

The Committee on Judiciary (Simmons) recommended the following:

1                   **Senate Amendment (with title amendment)**

2  
3                   Delete everything after the enacting clause  
4 and insert:

5                   Section 1. This act may be cited as the "Florida  
6 Competitive Workforce Act."

7                   Section 2. Subsection (1) of section 760.01, Florida  
8 Statutes, is republished, and subsection (2) of that section is  
9 amended, to read:

10                  760.01 Purposes; construction; title.—

11                  (1) Sections 760.01-760.11 and 509.092 shall be cited as



12 the "Florida Civil Rights Act of 1992."

13 (2) The general purposes of the Florida Civil Rights Act of  
14 1992 are to secure for all individuals within the state freedom  
15 from discrimination because of race, color, religion, sex,  
16 pregnancy, national origin, age, sexual orientation, gender  
17 identity, handicap, or marital status and thereby to protect  
18 their interest in personal dignity, to make available to the  
19 state their full productive capacities, to secure the state  
20 against domestic strife and unrest, to preserve the public  
21 safety, health, and general welfare, and to promote the  
22 interests, rights, and privileges of individuals within the  
23 state.

24 Section 3. Section 760.02, Florida Statutes, is reordered  
25 and amended to read:

26 760.02 Definitions.—For the purposes of ss. 760.01-760.11  
27 and 509.092, the term:

28 (7) (1) "Florida Civil Rights Act of 1992" means ss. 760.01-  
29 760.11 and 509.092.

30 (2) "Commission" means the Florida Commission on Human  
31 Relations created by s. 760.03.

32 (3) "Commissioner" or "member" means a member of the  
33 commission.

34 (4) "Discriminatory practice" means any practice made  
35 unlawful by the Florida Civil Rights Act of 1992.

36 (10) (5) "National origin" includes ancestry.

37 (11) (6) "Person" includes an individual, association,  
38 corporation, joint apprenticeship committee, joint-stock  
39 company, labor union, legal representative, mutual company,  
40 partnership, receiver, trust, trustee in bankruptcy, or



41 unincorporated organization; any other legal or commercial  
42 entity; the state; or any governmental entity or agency.

43 (5)-(7) "Employer" means any person employing 15 or more  
44 employees for each working day in each of 20 or more calendar  
45 weeks in the current or preceding calendar year, and any agent  
46 of such a person.

47 (6)-(8) "Employment agency" means any person regularly  
48 undertaking, with or without compensation, to procure employees  
49 for an employer or to procure for employees opportunities to  
50 work for an employer, and includes an agent of such a person.

51 (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

58 (a) Consistent and uniform assertion of the gender-related identity; or

60 (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.

63 (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.

68 (1)-(10) "Aggrieved person" means any person who files a  
69 complaint with the Florida Commission on Human Relations



70 ~~Commission.~~

71       (12) (11) "Public accommodations" means places of public  
72 accommodation, lodgings, facilities principally engaged in  
73 selling food for consumption on the premises, gasoline stations,  
74 places of exhibition or entertainment, and other such covered  
75 establishments. The term does not include lodge halls, churches,  
76 synagogues, worship centers, or other similar facilities of  
77 private organizations even if they are made available for public  
78 use occasionally or periodically. Each of the following  
79 establishments which serves the public is a place of public  
80 accommodation within the meaning of this section:

81       (a) Any inn, hotel, motel, or other establishment that  
82 ~~which~~ provides lodging to transient guests, other than an  
83 establishment located within a building that which contains not  
84 more than four rooms for rent or hire and that which is actually  
85 occupied by the proprietor of such establishment as his or her  
86 residence.

87       (b) Any restaurant, cafeteria, lunchroom, lunch counter,  
88 soda fountain, or other facility principally engaged in selling  
89 food for consumption on the premises, including, but not limited  
90 to, any such facility located on the premises of any retail  
91 establishment, or any gasoline station.

92       (c) Any motion picture theater, theater, concert hall,  
93 sports arena, stadium, or other place of exhibition or  
94 entertainment.

95       (d) Any establishment that which is physically located  
96 within the premises of any establishment otherwise covered by  
97 this subsection, or within the premises of which is physically  
98 located any such covered establishment, and that which holds



99 itself out as serving patrons of such covered establishment.

100        (13) "Sexual orientation" means an individual's human  
101        heterosexuality, homosexuality, or bisexuality.

102        Section 4. Section 760.05, Florida Statutes, is amended to  
103 read:

104        760.05 Functions of the commission.—The commission shall  
105 promote and encourage fair treatment and equal opportunity for  
106 all persons regardless of race, color, religion, sex, pregnancy,  
107 national origin, age, sexual orientation, gender identity,  
108 handicap, or marital status and mutual understanding and respect  
109 among all members of society. The commission all economic,  
110 social, racial, religious, and ethnic groups; and shall endeavor  
111 to eliminate discrimination against, and antagonism between,  
112 persons on the basis of improper considerations relating to  
113 race, color, religion, sex, pregnancy, national origin, age,  
114 sexual orientation, gender identity, handicap, or marital status  
115 religious, racial, and ethnic groups and their members.

116        Section 5. Section 760.07, Florida Statutes, is amended to  
117 read:

118        760.07 Remedies for unlawful discrimination.—Any violation  
119 of any Florida statute making unlawful discrimination because of  
120 race, color, religion, gender, pregnancy, national origin, age,  
121 sexual orientation, gender identity, handicap, or marital status  
122 in the areas of education, employment, housing, or public  
123 accommodations gives rise to a cause of action for all relief  
124 and damages described in s. 760.11(5), unless greater damages  
125 are expressly provided for. If the statute prohibiting unlawful  
126 discrimination provides an administrative remedy, the action for  
127 equitable relief and damages provided for in this section may be



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128 initiated only after the plaintiff has exhausted his or her  
129 administrative remedy. ~~The term "public accommodations" does not~~  
130 ~~include lodge halls or other similar facilities of private~~  
131 ~~organizations which are made available for public use~~  
132 ~~occasionally or periodically.~~ The right to trial by jury is  
133 preserved in any case in which the plaintiff is seeking actual  
134 or punitive damages.

135 Section 6. Section 760.08, Florida Statutes, is amended to  
136 read:

137 760.08 Discrimination in places of public accommodation.—  
138 All persons are entitled to the full and equal enjoyment of the  
139 goods, services, facilities, privileges, advantages, and  
140 accommodations of any place of public accommodation without  
141 discrimination or segregation on the ground of race, color,  
142 national origin, sex, sexual orientation, gender identity,  
143 pregnancy, handicap, familial status, or religion.

144 Section 7. Subsections (1) and (2), paragraphs (a) and (b)  
145 of subsection (3), subsections (4), (5), and (6), paragraph (a)  
146 of subsection (8), and subsection (9) of section 760.10, Florida  
147 Statutes, are amended, and subsection (10) of that section is  
148 republished, to read:

149 760.10 Unlawful employment practices.—

150 (1) It is an unlawful employment practice for an employer:

151 (a) To discharge or to fail or refuse to hire any  
152 individual, or otherwise to discriminate against any individual  
153 with respect to compensation, terms, conditions, or privileges  
154 of employment, because of such individual's race, color,  
155 religion, sex, pregnancy, national origin, age, sexual  
156 orientation, gender identity, handicap, or marital status.



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157        (b) To limit, segregate, or classify employees or  
158 applicants for employment in any way that which would deprive or  
159 tend to deprive any individual of employment opportunities, or  
160 adversely affect any individual's status as an employee, because  
161 of such individual's race, color, religion, sex, pregnancy,  
162 national origin, age, sexual orientation, gender identity,  
163 handicap, or marital status.

164        (2) It is an unlawful employment practice for an employment  
165 agency to fail or refuse to refer for employment, or otherwise  
166 to discriminate against, any individual because of race, color,  
167 religion, sex, pregnancy, national origin, age, sexual  
168 orientation, gender identity, handicap, or marital status or to  
169 classify or refer for employment any individual on the basis of  
170 race, color, religion, sex, pregnancy, national origin, age,  
171 sexual orientation, gender identity, handicap, or marital  
172 status.

173        (3) It is an unlawful employment practice for a labor  
174 organization:

175        (a) To exclude or to expel from its membership, or  
176 otherwise to discriminate against, any individual because of  
177 race, color, religion, sex, pregnancy, national origin, age,  
178 sexual orientation, gender identity, handicap, or marital  
179 status.

180        (b) To limit, segregate, or classify its membership or  
181 applicants for membership, or to classify or fail or refuse to  
182 refer for employment any individual, in any way that would  
183 deprive or tend to deprive any individual of employment  
184 opportunities, or adversely affect any individual's status as an  
185 employee or as an applicant for employment, because of such



186 individual's race, color, religion, sex, pregnancy, national  
187 origin, age, sexual orientation, gender identity, handicap, or  
188 marital status.

189 (4) It is an unlawful employment practice for any employer,  
190 labor organization, or joint labor-management committee  
191 controlling apprenticeship or other training or retraining,  
192 including on-the-job training programs, to discriminate against  
193 any individual because of race, color, religion, sex, pregnancy,  
194 national origin, age, sexual orientation, gender identity,  
195 handicap, or marital status in admission to, or employment in,  
196 any program established to provide apprenticeship or other  
197 training.

198 (5) Whenever, in order to engage in a profession,  
199 occupation, or trade, it is required that a person receive a  
200 license, certification, or other credential; or become a member or  
201 an associate of any club, association, or other organization; or  
202 or pass any examination, it is an unlawful employment practice  
203 for any person to discriminate against any other person seeking  
204 such license, certification, or other credential; seeking to  
205 become a member or associate of such club, association, or other  
206 organization; or seeking to take or pass such examination,  
207 because of such other person's race, color, religion, sex,  
208 pregnancy, national origin, age, sexual orientation, gender  
209 identity, handicap, or marital status.

210 (6) It is an unlawful employment practice for an employer,  
211 a labor organization, an employment agency, or a joint labor-  
212 management committee to print, or cause to be printed or  
213 published, any notice or advertisement relating to employment,  
214 membership, classification, referral for employment, or



215 apprenticeship or other training which indicates, indicating any  
216 preference, limitation, specification, or discrimination, based  
217 on a person's race, color, religion, sex, pregnancy, national  
218 origin, age, sexual orientation, gender identity, absence of  
219 handicap, or marital status.

220 (8) Notwithstanding any other provision of this section, it  
221 is not an unlawful employment practice under ss. 760.01-760.10  
222 for an employer, employment agency, labor organization, or joint  
223 labor-management committee to:

224 (a) Take or fail to take any action on the basis of a  
225 person's religion, sex, pregnancy, national origin, age, sexual  
226 orientation, gender identity, handicap, or marital status in  
227 those certain instances in which religion, sex, condition of  
228 pregnancy, national origin, age, sexual orientation, gender  
229 identity, absence of a particular handicap, or marital status is  
230 a bona fide occupational qualification reasonably necessary for  
231 the performance of the particular employment to which such  
232 action or inaction is related.

233 (9) (a) This section does shall not apply to any religious  
234 corporation, association, educational institution, organization,  
235 or society which conditions opportunities in the area of  
236 employment or public accommodation to members of that religious  
237 corporation, association, educational institution, organization,  
238 or society or to persons who subscribe to its tenets or beliefs.

239 (b) This section does shall not prohibit a religious  
240 corporation, association, educational institution, organization,  
241 or society from giving preference in employment to individuals  
242 of a particular religion to perform work connected with the  
243 carrying on by such corporations, associations, educational



244 institutions, or societies of its various activities.

245 (c) This section and s. 760.08 are subject to ss. 761.01,  
246 761.02, 761.03, 761.04, and 761.05, any other state or federal  
247 statutes protecting the free exercise of religion, and may not  
248 be interpreted to limit the free exercise of religion and  
249 assembly guaranteed by the United States Constitution and the  
250 State Constitution.

251 (10) Each employer, employment agency, and labor  
252 organization shall post and keep posted in conspicuous places  
253 upon its premises a notice provided by the commission setting  
254 forth such information as the commission deems appropriate to  
255 effectuate the purposes of ss. 760.01-760.10.

256 Section 8. Section 509.092, Florida Statutes, is amended to  
257 read:

258 509.092 Public lodging establishments and public food  
259 service establishments; rights as private enterprises.—

260 (1) Public lodging establishments and public food service  
261 establishments are private enterprises, and the operator has the  
262 right to refuse accommodations or service to any person who is  
263 objectionable or undesirable to the operator, but such refusal  
264 may not be based upon the person's race, creed, color, sex,  
265 pregnancy, physical disability, sexual orientation, gender  
266 identity, or national origin.

267 (2) A person aggrieved by a violation of this section or a  
268 violation of a rule adopted under this section has a right of  
269 action pursuant to s. 760.11.

270 (3) This section is subject to ss. 761.01, 761.02, 761.03,  
271 761.04, and 761.05, any other state or federal statutes  
272 protecting the free exercise of religion, and may not be



273 interpreted to limit the free exercise of religion and assembly  
274 guaranteed by the United States Constitution and the State  
275 Constitution.

276 Section 9. Section 760.22, Florida Statutes, is amended to  
277 read:

278 760.22 Definitions.—As used in this part ss. 760.20-760.37,  
279 the term:

280 (1) "Commission" means the Florida Commission on Human  
281 Relations.

282 (2) "Covered multifamily dwelling" means:

283 (a) A building that which consists of four or more units  
284 and has an elevator; or

285 (b) The ground floor units of a building that which  
286 consists of four or more units and does not have an elevator.

287 (3) "Discriminatory housing practice" means an act that is  
288 unlawful under the terms of this part ss. 760.20-760.37.

289 (4) "Dwelling" means any building or structure, or portion  
290 thereof, which is occupied as, or designed or intended for  
291 occupancy as, a residence by one or more families, and any  
292 vacant land that which is offered for sale or lease for the  
293 construction or location on the land of any such building or  
294 structure, or portion thereof.

295 (5) "Familial status" is established when an individual who  
296 has not attained the age of 18 years is domiciled with:

297 (a) A parent or other person having legal custody of such  
298 individual; or

299 (b) A designee of a parent or other person having legal  
300 custody, with the written permission of such parent or other  
301 person.



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302 (6) "Family" includes a single individual.

303 (7) "Gender identity" has the same meaning as provided in  
304 s. 760.02.

305 (8) ~~(7)~~ "Handicap" means:

306 (a) A ~~person has~~ physical or mental impairment that which  
307 substantially limits one or more major life activities for a  
308 person who has, ~~or he or she~~ has a record of having, or is  
309 regarded as having that, such physical or mental impairment; or

310 (b) A ~~person has~~ developmental disability as defined in  
311 s. 393.063.

312 (9) ~~(8)~~ "Person" includes one or more individuals,  
313 corporations, partnerships, associations, labor organizations,  
314 legal representatives, mutual companies, joint-stock companies,  
315 trusts, unincorporated organizations, trustees, trustees in  
316 bankruptcy, receivers, and fiduciaries.

317 (10) "Sexual orientation" has the same meaning as provided  
318 in s. 760.02.

319 (11) ~~(9)~~ "Substantially equivalent" means an administrative  
320 subdivision of the State of Florida meeting the requirements of  
321 24 C.F.R. part 115, s. 115.6.

322 (12) ~~(10)~~ "To rent" includes to lease, to sublease, to let,  
323 and otherwise to grant for a consideration the right to occupy  
324 premises not owned by the occupant.

325 Section 10. Subsections (1) - (5) of section 760.23,  
326 Florida Statutes, are amended to read:

327 760.23 Discrimination in the sale or rental of housing and  
328 other prohibited practices.—

329 (1) It is unlawful to refuse to sell or rent after the  
330 making of a bona fide offer, to refuse to negotiate for the sale



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331 or rental of, or otherwise to make unavailable or deny a  
332 dwelling to any person because of race, color, national origin,  
333 sex, sexual orientation, gender identity, handicap, familial  
334 status, or religion.

335 (2) It is unlawful to discriminate against any person in  
336 the terms, conditions, or privileges of sale or rental of a  
337 dwelling, or in the provision of services or facilities in  
338 connection therewith, because of race, color, national origin,  
339 sex, sexual orientation, gender identity, handicap, familial  
340 status, or religion.

341 (3) It is unlawful to make, print, or publish, or cause to  
342 be made, printed, or published, any notice, statement, or  
343 advertisement with respect to the sale or rental of a dwelling  
344 that indicates any preference, limitation, or discrimination  
345 based on a person's race, color, national origin, sex, sexual  
346 orientation, gender identity, handicap, familial status, or  
347 religion or an intention to make any such preference,  
348 limitation, or discrimination.

349 (4) It is unlawful to represent to any person because of  
350 the person's race, color, national origin, sex, sexual  
351 orientation, gender identity, handicap, familial status, or  
352 religion that any dwelling is not available for inspection,  
353 sale, or rental when such dwelling is in fact so available.

354 (5) It is unlawful, for profit, to induce or attempt to  
355 induce any person to sell or rent any dwelling by a  
356 representation regarding the entry or prospective entry into the  
357 neighborhood of a person or persons of a particular race, color,  
358 national origin, sex, sexual orientation, gender identity,  
359 handicap, familial status, or religion.



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360       Section 11. Section 760.24, Florida Statutes, is amended to  
361 read:

362       760.24 Discrimination in the provision of brokerage  
363 services.—It is unlawful to deny any person access to, or  
364 membership or participation in, any multiple-listing service,  
365 real estate brokers' organization, or other service,  
366 organization, or facility relating to the business of selling or  
367 renting dwellings, or to discriminate against him or her in the  
368 terms or conditions of such access, membership, or  
369 participation, because on account of race, color, national  
370 origin, sex, sexual orientation, gender identity, handicap,  
371 familial status, or religion.

372       Section 12. Subsection (1) and paragraph (a) of subsection  
373 (2) of section 760.25, Florida Statutes, are amended to read:

374       760.25 Discrimination in the financing of housing or in  
375 residential real estate transactions.—

376       (1) It is unlawful for any bank, building and loan  
377 association, insurance company, or other corporation,  
378 association, firm, or enterprise the business of which consists  
379 in whole or in part of the making of commercial real estate  
380 loans to deny a loan or other financial assistance to a person  
381 applying for the loan for the purpose of purchasing,  
382 constructing, improving, repairing, or maintaining a dwelling,  
383 or to discriminate against him or her in the fixing of the  
384 amount, interest rate, duration, or other term or condition of  
385 such loan or other financial assistance, because of the race,  
386 color, national origin, sex, sexual orientation, gender  
387 identity, handicap, familial status, or religion of such person  
388 or of any person associated with him or her in connection with



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389 such loan or other financial assistance or the purposes of such  
390 loan or other financial assistance, or because of the race,  
391 color, national origin, sex, sexual orientation, gender  
392 identity, handicap, familial status, or religion of the present  
393 or prospective owners, lessees, tenants, or occupants of the  
394 dwelling or dwellings in relation to which such loan or other  
395 financial assistance is to be made or given.

396 (2) (a) It is unlawful for any person or entity whose  
397 business includes engaging in residential real estate  
398 transactions to discriminate against any person in making  
399 available such a transaction, or in the terms or conditions of  
400 such a transaction, because of race, color, national origin,  
401 sex, sexual orientation, gender identity, handicap, familial  
402 status, or religion.

403 Section 13. Section 760.26, Florida Statutes, is amended to  
404 read:

405 760.26 Prohibited discrimination in land use decisions and  
406 in permitting of development.—It is unlawful to discriminate in  
407 land use decisions or in the permitting of development based on  
408 a person's race, color, national origin, sex, sexual  
409 orientation, gender identity, disability, familial status,  
410 religion, or, except as otherwise provided by law, the source of  
411 financing of a development or proposed development.

412 Section 14. Paragraph (a) of subsection (5) of section  
413 760.29, Florida Statutes, is amended to read:

414 760.29 Exemptions.—

415 (5) Nothing in ss. 760.20-760.37:

416 (a) Prohibits a person engaged in the business of  
417 furnishing appraisals of real property from taking into



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418 consideration factors other than race, color, national origin,  
419 sex, sexual orientation, gender identity, handicap, familial  
420 status, or religion.

421 Section 15. Subsection (1) of section 760.60, Florida  
422 Statutes, is amended to read:

423 760.60 Discriminatory practices of certain clubs  
424 prohibited; remedies.—

425 (1) It is unlawful for a person to discriminate against any  
426 individual because of race, color, religion, gender, national  
427 origin, handicap, age above the age of 21, sexual orientation,  
428 gender identity, or marital status in evaluating an application  
429 for membership in a club that has more than 400 members, that  
430 provides regular meal service, and that regularly receives  
431 payment for dues, fees, use of space, facilities, services,  
432 meals, or beverages directly or indirectly from nonmembers for  
433 business purposes. It is unlawful for a person, on behalf of  
434 such a club, to publish, circulate, issue, display, post, or  
435 mail any advertisement, notice, or solicitation that contains a  
436 statement to the effect that the accommodations, advantages,  
437 facilities, membership, or privileges of the club are denied to  
438 any individual because of race, color, religion, gender,  
439 national origin, handicap, age above the age of 21, sexual  
440 orientation, gender identity, or marital status. This subsection  
441 does not apply to fraternal or benevolent organizations, ethnic  
442 clubs, or religious organizations where business activity is not  
443 prevalent.

444 Section 16. Paragraph (e) of subsection (1) of section  
445 419.001, Florida Statutes, is amended to read:

446 419.001 Site selection of community residential homes.—



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447 (1) For the purposes of this section, the term:  
448 (e) "Resident" means any of the following: a frail elder as  
449 defined in s. 429.65; a person who has a handicap as defined in  
450 s. 760.22(8)(a) ~~s. 760.22(7)(a)~~; a person who has a  
451 developmental disability as defined in s. 393.063; a  
452 nondangerous person who has a mental illness as defined in s.  
453 394.455; or a child who is found to be dependent as defined in  
454 s. 39.01 or s. 984.03, or a child in need of services as defined  
455 in s. 984.03 or s. 985.03.

456 Section 17. This act shall take effect July 1, 2016.

457

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

459 And the title is amended as follows:

460 Delete everything before the enacting clause  
461 and insert:

462 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,



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476       F.S.; adding sexual orientation and gender identity as  
477       impermissible grounds for discrimination; conforming  
478       terminology; amending s. 760.10, F.S.; adding sexual  
479       orientation and gender identity as impermissible  
480       grounds for discrimination; providing an exception for  
481       constitutionally protected free exercise of religion;  
482       amending s. 509.092, F.S.; adding sexual orientation  
483       and gender identity as impermissible grounds for  
484       discrimination in public lodging establishments and  
485       public food service establishments; providing an  
486       exception for constitutionally protected free exercise  
487       of religion; amending s. 760.22, F.S.; adding  
488       definitions; amending ss. 760.23, 760.24, 760.25,  
489       760.26, 760.29, and 760.60, F.S.; adding sexual  
490       orientation and gender identity as impermissible  
491       grounds for discrimination; amending s. 419.001, F.S.;  
492       conforming a cross-reference; providing an effective  
493       date.



LEGISLATIVE ACTION

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

The Committee on Judiciary (Stargel) recommended the following:

1                   **Senate Amendment to Amendment (131762) (with title**  
2 **amendment)**

3                   Between lines 255 and 256

4                   insert:

5                   Section 8. Section 760.101, Florida Statutes, is created to  
6 read:

7                   760.101 Exemption from part.—

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

9                   (a) "Closely held for-profit entity" means an entity for  
10 which no ownership interest is publicly traded and in which at



12 least 50 percent of the ownership interest is concentrated in 10  
13 or fewer owners.

14 (b) "Nonprofit entity" means an organization that qualifies  
15 for tax-exempt status under 26 U.S.C. s. 501.

16 (c) "Religious institution" has the same meaning as in s.  
17 496.404(23).

18 (2) Notwithstanding s. 760.07 or s. 760.35, a cause of  
19 action may not be brought against a closely held for-profit  
20 entity, a nonprofit entity, or a religious institution for a  
21 violation of this part, part II of this chapter, or s. 509.092  
22 for discrimination on the basis of gender identity or sexual  
23 orientation, as those terms are defined in s. 760.02, if the  
24 entity or institution asserts a religious viewpoint or belief as  
25 the reason for the violation.

26  
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 Delete line 481

30 and insert:

31 creating s. 760.101, F.S.; defining terms; prohibiting  
32 a cause of action from being brought against any  
33 closely held for-profit entity, nonprofit entity, or  
34 religious institution for specified violations under  
35 certain circumstances;

By Senator Abruzzo

25-00121-16 201

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 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; 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; 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 or expression as impermissible grounds for discrimination; amending s. 419.001, F.S.; conforming a cross-reference; providing an effective date.

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

25-00121-16 2016120

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

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 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, or based on the perception 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

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

25-00121-16

2016120

59 Relations created by s. 760.03.

60 (3) "Commissioner" or "member" means a member of the  
61 commission.

62 (4) "Discriminatory practice" means any practice made  
63 unlawful by the Florida Civil Rights Act of 1992.

64 (10)-(5) "National origin" includes ancestry.

65 (11)-(6) "Person" includes an individual, association,  
66 corporation, joint apprenticeship committee, joint-stock  
67 company, labor union, legal representative, mutual company,  
68 partnership, receiver, trust, trustee in bankruptcy, or  
69 unincorporated organization; any other legal or commercial  
70 entity; the state; or any governmental entity or agency.

71 (5)-(7) "Employer" means any person employing 15 or more  
72 employees for each working day in each of 20 or more calendar  
73 weeks in the current or preceding calendar year, and any agent  
74 of such a person.

75 (6)-(8) "Employment agency" means any person regularly  
76 undertaking, with or without compensation, to procure employees  
77 for an employer or to procure for employees opportunities to  
78 work for an employer, and includes an agent of such a person.

79 (8) "Gender identity or expression" means gender-related  
80 identity, appearance, or behavior, regardless of whether such  
81 gender-related identity, appearance, or behavior is different  
82 from that traditionally associated with the person's physiology  
83 or assigned sex at birth, and which gender-related identity can  
84 be shown by the person providing evidence, including, but not  
85 limited to:

86 (a) Medical history, care, or treatment of the gender-  
87 related identity;

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88 (b) Consistent and uniform assertion of the gender-related  
89 identity; or

90 (c) Other evidence that the gender-related identity is a  
91 sincerely held part of a person's core identity and is not being  
92 asserted for an improper purpose.

93 (9) "Labor organization" means any organization which  
94 exists for the purpose, in whole or in part, of collective  
95 bargaining or of dealing with employers concerning grievances,  
96 terms or conditions of employment, or other mutual aid or  
97 protection in connection with employment.

98 (1)-(10) "Aggrieved person" means any person who files a  
99 complaint with the Florida Commission on Human Relations  
100 Commission.

101 (12)-(11) "Public accommodations" means places of public  
102 accommodation, lodgings, facilities principally engaged in  
103 selling food for consumption on the premises, gasoline stations,  
104 places of exhibition or entertainment, and other covered  
105 establishments. Each of the following establishments which  
106 serves the public is a place of public accommodation within the  
107 meaning of this section:

108 (a) Any inn, hotel, motel, or other establishment that  
109 which provides lodging to transient guests, other than an  
110 establishment located within a building that which contains not  
111 more than four rooms for rent or hire and that which is actually  
112 occupied by the proprietor of such establishment as his or her  
113 residence.

114 (b) Any restaurant, cafeteria, lunchroom, lunch counter,  
115 soda fountain, or other facility principally engaged in selling  
116 food for consumption on the premises, including, but not limited

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117 to, any such facility located on the premises of any retail  
 118 establishment, or any gasoline station.

119 (c) Any motion picture theater, theater, concert hall,  
 120 sports arena, stadium, or other place of exhibition or  
 121 entertainment.

122 (d) Any establishment that which is physically located  
 123 within the premises of any establishment otherwise covered by  
 124 this subsection, or within the premises of which is physically  
 125 located any such covered establishment, and that which holds  
 126 itself out as serving patrons of such covered establishment.

127 (13) "Sexual orientation" means an individual's actual or  
 128 perceived heterosexuality, homosexuality, or bisexuality.

129 Section 4. Section 760.05, Florida Statutes, is amended to  
 130 read:

131 760.05 Functions of the commission.—The commission shall  
 132 promote and encourage fair treatment and equal opportunity for  
 133 all persons regardless of race, color, religion, sex, pregnancy,  
 134 national origin, age, sexual orientation, gender identity or  
 135 expression, handicap, or marital status and mutual understanding  
 136 and respect among all members of society. The commission all  
 137 economic, social, racial, religious, and ethnic groups, and  
 138 shall endeavor to eliminate discrimination against, and  
 139 antagonism between, persons on the basis of, or based on the  
 140 perception of, race, color, religion, sex, pregnancy, national  
 141 origin, age, sexual orientation, gender identity or expression,  
 142 handicap, or marital status religious, racial, and ethnic groups  
 143 and their members.

144 Section 5. Section 760.07, Florida Statutes, is amended to  
 145 read:

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146 760.07 Remedies for unlawful discrimination.—Any violation  
 147 of any Florida statute making unlawful discrimination because  
 148 of, or based on the perception of, race, color, religion,  
 149 gender, pregnancy, national origin, age, sexual orientation,  
 150 gender identity or expression, handicap, or marital status in  
 151 the areas of education, employment, housing, or public  
 152 accommodations gives rise to a cause of action for all relief  
 153 and damages described in s. 760.11(5), unless greater damages  
 154 are expressly provided for. If the statute prohibiting unlawful  
 155 discrimination provides an administrative remedy, the action for  
 156 equitable relief and damages provided for in this section may be  
 157 initiated only after the plaintiff has exhausted his or her  
 158 administrative remedy. The term "public accommodations" does not  
 159 include lodge halls or other similar facilities of private  
 160 organizations which are made available for public use  
 161 occasionally or periodically. The right to trial by jury is  
 162 preserved in any case in which the plaintiff is seeking actual  
 163 or punitive damages.

164 Section 6. Section 760.08, Florida Statutes, is amended to  
 165 read:

166 760.08 Discrimination in places of public accommodation.—  
 167 All persons are entitled to the full and equal enjoyment of the  
 168 goods, services, facilities, privileges, advantages, and  
 169 accommodations of any place of public accommodation without  
 170 discrimination or segregation on the ground of, or based on the  
 171 perception of, race, color, national origin, sex, sexual  
 172 orientation, gender identity or expression, pregnancy, handicap,  
 173 familial status, or religion.

174 Section 7. Subsections (1) and (2), paragraphs (a) and (b)

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175 of subsection (3), subsections (4), (5), and (6), paragraph (a)  
 176 of subsection (8), and subsection (9) of section 760.10, Florida  
 177 Statutes, are amended, and subsection (10) of that section is  
 178 republished, to read:

179 760.10 Unlawful employment practices.—

180 (1) It is an unlawful employment practice for an employer:

181 (a) To discharge or to fail or refuse to hire any  
 182 individual, or otherwise to discriminate against any individual  
 183 with respect to compensation, terms, conditions, or privileges  
 184 of employment, because of, or based on the perception of, such  
 185 individual's race, color, religion, sex, pregnancy, national  
 186 origin, age, sexual orientation, gender identity or expression,  
 187 handicap, or marital status.

188 (b) To limit, segregate, or classify employees or  
 189 applicants for employment in any way that ~~which~~ would deprive or  
 190 tend to deprive any individual of employment opportunities, or  
 191 adversely affect any individual's status as an employee, because  
 192 of, or based on the perception of, such individual's race,  
 193 color, religion, sex, pregnancy, national origin, age, sexual  
 194 orientation, gender identity or expression, handicap, or marital  
 195 status.

196 (2) It is an unlawful employment practice for an employment  
 197 agency to fail or refuse to refer for employment, or otherwise  
 198 to discriminate against, any individual because of, or based on  
 199 the perception of, race, color, religion, sex, pregnancy,  
 200 national origin, age, sexual orientation, gender identity or  
 201 expression, handicap, or marital status or to classify or refer  
 202 for employment any individual on the basis of, or based on the  
 203 perception of, race, color, religion, sex, pregnancy, national

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204 origin, age, sexual orientation, gender identity or expression,  
 205 handicap, or marital status.

206 (3) It is an unlawful employment practice for a labor  
 207 organization:

208 (a) To exclude or to expel from its membership, or  
 209 otherwise to discriminate against, any individual because of, or  
 210 based on the perception of, race, color, religion, sex,  
 211 pregnancy, national origin, age, sexual orientation, gender  
 212 identity or expression, handicap, or marital status.

213 (b) To limit, segregate, or classify its membership or  
 214 applicants for membership, or to classify or fail or refuse to  
 215 refer for employment any individual, in any way that would  
 216 deprive or tend to deprive any individual of employment  
 217 opportunities, or adversely affect any individual's status as an  
 218 employee or as an applicant for employment, because of, or based  
 219 on the perception of, such individual's race, color, religion,  
 220 sex, pregnancy, national origin, age, sexual orientation, gender  
 221 identity or expression, handicap, or marital status.

222 (4) It is an unlawful employment practice for any employer,  
 223 labor organization, or joint labor-management committee  
 224 controlling apprenticeship or other training or retraining,  
 225 including on-the-job training programs, to discriminate against  
 226 any individual because of, or based on the perception of, race,  
 227 color, religion, sex, pregnancy, national origin, age, sexual  
 228 orientation, gender identity or expression, handicap, or marital  
 229 status in admission to, or employment in, any program  
 230 established to provide apprenticeship or other training.

231 (5) Whenever, in order to engage in a profession,  
 232 occupation, or trade, it is required that a person receive a

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233 license, certification, or other credential; ~~or~~ become a member or  
 234 an associate of any club, association, or other organization; ~~or~~  
 235 or pass any examination, it is an unlawful employment practice  
 236 for any person to discriminate against any other person seeking  
 237 such license, certification, or other credential; ~~or~~ seeking to  
 238 become a member or associate of such club, association, or other  
 239 organization; ~~or~~ seeking to take or pass such examination,  
 240 because of, or based on the perception of, such other person's  
 241 race, color, religion, sex, pregnancy, national origin, age,  
 242 sexual orientation, gender identity or expression, handicap, or  
 243 marital status.

244 (6) It is an unlawful employment practice for an employer,  
 245 a labor organization, an employment agency, or a joint labor-  
 246 management committee to print, or cause to be printed or  
 247 published, any notice or advertisement relating to employment,  
 248 membership, classification, referral for employment, or  
 249 apprenticeship or other training which indicates, indicating any  
 250 preference, limitation, specification, or discrimination, based  
 251 on a person's actual or perceived race, color, religion, sex,  
 252 pregnancy, national origin, age, sexual orientation, gender  
 253 identity or expression, absence of handicap, or marital status.

254 (8) Notwithstanding any other provision of this section, it  
 255 is not an unlawful employment practice under ss. 760.01-760.10  
 256 for an employer, employment agency, labor organization, or joint  
 257 labor-management committee to:

258 (a) Take or fail to take any action on the basis of a  
 259 person's actual or perceived religion, sex, pregnancy, national  
 260 origin, age, sexual orientation, gender identity or expression,  
 261 handicap, or marital status in those certain instances in which

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262 religion, sex, condition of pregnancy, national origin, age,  
 263 sexual orientation, gender identity or expression, absence of a  
 264 particular handicap, or marital status is a bona fide  
 265 occupational qualification reasonably necessary for the  
 266 performance of the particular employment to which such action or  
 267 inaction is related.

268 (9) (a) This section does shall not apply to any religious  
 269 corporation, association, educational institution, or society  
 270 which conditions opportunities in the area of employment or  
 271 public accommodation to members of that religious corporation,  
 272 association, educational institution, or society or to persons  
 273 who subscribe to its tenets or beliefs.

274 (b) This section does shall not prohibit a religious  
 275 corporation, association, educational institution, or society  
 276 from giving preference in employment to individuals of a  
 277 particular religion to perform work connected with the carrying  
 278 on by such corporations, associations, educational institutions,  
 279 or societies of its various activities.

280 (c) This section and s. 760.08 do not limit the free  
 281 exercise of religion guaranteed by the United States  
 282 Constitution and the State Constitution.

283 (10) Each employer, employment agency, and labor  
 284 organization shall post and keep posted in conspicuous places  
 285 upon its premises a notice provided by the commission setting  
 286 forth such information as the commission deems appropriate to  
 287 effectuate the purposes of ss. 760.01-760.10.

288 Section 8. Section 509.092, Florida Statutes, is amended to  
 289 read:

290 509.092 Public lodging establishments and public food

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291 service establishments; rights as private enterprises.—

292 (1) Public lodging establishments and public food service  
 293 establishments are private enterprises, and the operator has the  
 294 right to refuse accommodations or service to any person who is  
 295 objectionable or undesirable to the operator, but such refusal  
 296 may not be based upon the person's actual or perceived race,  
 297 creed, color, sex, pregnancy, physical disability, sexual  
 298 orientation, gender identity or expression, or national origin.

299 (2) A person aggrieved by a violation of this section or a  
 300 violation of a rule adopted under this section has a right of  
 301 action pursuant to s. 760.11.

302 (3) This section does not limit the free exercise of  
 303 religion guaranteed by the United States Constitution and the  
 304 State Constitution.

305 Section 9. Section 760.22, Florida Statutes, is amended to  
 306 read:

307 760.22 Definitions.—As used in this part ss. 760.20-760.37,  
 308 the term:

309 (1) "Commission" means the Florida Commission on Human  
 310 Relations.

311 (2) "Covered multifamily dwelling" means:

312 (a) A building that which consists of four or more units  
 313 and has an elevator; or

314 (b) The ground floor units of a building that which  
 315 consists of four or more units and does not have an elevator.

316 (3) "Discriminatory housing practice" means an act that is  
 317 unlawful under the terms of this part ss. 760.20-760.37.

318 (4) "Dwelling" means any building or structure, or portion  
 319 thereof, which is occupied as, or designed or intended for

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320 occupancy as, a residence by one or more families, and any  
 321 vacant land that which is offered for sale or lease for the  
 322 construction or location on the land of any such building or  
 323 structure, or portion thereof.

324 (5) "Familial status" is established when an individual who  
 325 has not attained the age of 18 years is domiciled with:

326 (a) A parent or other person having legal custody of such  
 327 individual; or

328 (b) A designee of a parent or other person having legal  
 329 custody, with the written permission of such parent or other  
 330 person.

331 (6) "Family" includes a single individual.

332 (7) "Gender identity or expression" has the same meaning as  
 333 provided in s. 760.02.

334 (8) ~~(7)~~ "Handicap" means:

335 (a) A person has a physical or mental impairment that which  
 336 substantially limits one or more major life activities for a  
 337 person who has, or he or she has a record of having, or is  
 338 regarded as having that, such physical or mental impairment; or

339 (b) A person has a developmental disability as defined in  
 340 s. 393.063.

341 (9) ~~(8)~~ "Person" includes one or more individuals,  
 342 corporations, partnerships, associations, labor organizations,  
 343 legal representatives, mutual companies, joint-stock companies,  
 344 trusts, unincorporated organizations, trustees, trustees in  
 345 bankruptcy, receivers, and fiduciaries.

346 (10) "Sexual orientation" has the same meaning as provided  
 347 in s. 760.02.

348 (11) ~~(9)~~ "Substantially equivalent" means an administrative

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349 subdivision of the State of Florida meeting the requirements of  
 350 24 C.F.R. part 115, s. 115.6.

351 (12)(10) "To rent" includes to lease, to sublease, to let,  
 352 and otherwise to grant for a consideration the right to occupy  
 353 premises not owned by the occupant.

354 Section 10. Subsections (1) - (5) of section 760.23,  
 355 Florida Statutes, are amended to read:

356 760.23 Discrimination in the sale or rental of housing and  
 357 other prohibited practices.-

358 (1) It is unlawful to refuse to sell or rent after the  
 359 making of a bona fide offer, to refuse to negotiate for the sale  
 360 or rental of, or otherwise to make unavailable or deny a  
 361 dwelling to any person because of, or based on the perception  
 362 of, race, color, national origin, sex, sexual orientation,  
 363 gender identity or expression, handicap, familial status, or  
 364 religion.

365 (2) It is unlawful to discriminate against any person in  
 366 the terms, conditions, or privileges of sale or rental of a  
 367 dwelling, or in the provision of services or facilities in  
 368 connection therewith, because of, or based on the perception of,  
 369 race, color, national origin, sex, sexual orientation, gender  
 370 identity or expression, handicap, familial status, or religion.

371 (3) It is unlawful to make, print, or publish, or cause to  
 372 be made, printed, or published, any notice, statement, or  
 373 advertisement with respect to the sale or rental of a dwelling  
 374 that indicates any preference, limitation, or discrimination  
 375 based on a person's actual or perceived race, color, national  
 376 origin, sex, sexual orientation, gender identity or expression,  
 377 handicap, familial status, or religion or an intention to make

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378 any such preference, limitation, or discrimination.

379 (4) It is unlawful to represent to any person because of,  
 380 or based on the perception of, the person's race, color,  
 381 national origin, sex, sexual orientation, gender identity or  
 382 expression, handicap, familial status, or religion that any  
 383 dwelling is not available for inspection, sale, or rental when  
 384 such dwelling is in fact so available.

385 (5) It is unlawful, for profit, to induce or attempt to  
 386 induce any person to sell or rent any dwelling by a  
 387 representation regarding the entry or prospective entry into the  
 388 neighborhood of a person or persons of, or perceived to be of, a  
 389 particular race, color, national origin, sex, sexual  
 390 orientation, gender identity or expression, handicap, familial  
 391 status, or religion.

392 Section 11. Section 760.24, Florida Statutes, is amended to  
 393 read:

394 760.24 Discrimination in the provision of brokerage  
 395 services.-It is unlawful to deny any person access to, or  
 396 membership or participation in, any multiple-listing service,  
 397 real estate brokers' organization, or other service,  
 398 organization, or facility relating to the business of selling or  
 399 renting dwellings, or to discriminate against him or her in the  
 400 terms or conditions of such access, membership, or  
 401 participation, because on account of, or based on the perception  
 402 of, race, color, national origin, sex, sexual orientation,  
 403 gender identity or expression, handicap, familial status, or  
 404 religion.

405 Section 12. Subsection (1) and paragraph (a) of subsection  
 406 (2) of section 760.25, Florida Statutes, are amended to read:

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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

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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

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465 membership in a club that has more than 400 members, that  
466 provides regular meal service, and that regularly receives  
467 payment for dues, fees, use of space, facilities, services,  
468 meals, or beverages directly or indirectly from nonmembers for  
469 business purposes. It is unlawful for a person, on behalf of  
470 such a club, to publish, circulate, issue, display, post, or  
471 mail any advertisement, notice, or solicitation that contains a  
472 statement to the effect that the accommodations, advantages,  
473 facilities, membership, or privileges of the club are denied to  
474 any individual because of, or based on the perception of, race,  
475 color, religion, gender, national origin, handicap, age above  
476 the age of 21, sexual orientation, gender identity or  
477 expression, or marital status. This subsection does not apply to  
478 fraternal or benevolent organizations, ethnic clubs, or  
479 religious organizations where business activity is not  
480 prevalent.

481 Section 16. Paragraph (e) of subsection (1) of section  
482 419.001, Florida Statutes, is amended to read:

483 419.001 Site selection of community residential homes.—

484 (1) For the purposes of this section, the term:

485 (e) "Resident" means any of the following: a frail elder as  
486 defined in s. 429.65; a person who has a handicap as defined in  
487 s. 760.22(8)(a) s. 760.22(7)(a); a person who has a  
488 developmental disability as defined in s. 393.063; a  
489 nondangerous person who has a mental illness as defined in s.  
490 394.455; or a child who is found to be dependent as defined in  
491 s. 39.01 or s. 984.03, or a child in need of services as defined  
492 in s. 984.03 or s. 985.03.

493 Section 17. This act shall take effect July 1, 2016.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/9/2016

Meeting Date

Topic *Prohibited Discrimination*

0120

SB120  
Bill Number (if applicable)

Name *DAVE SINGER*

Amendment Barcode (if applicable)

Job Title *Voter*

Address *17326 133rd Trail N.*  
Street

Phone *561-601-1225*

City *Jupiter*

State *FL*

Zip *33478*

Email *2ds@bellsouth.net*

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

2/9/16  
Meeting Date

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

SB126  
Bill Number (if applicable)

Topic \_\_\_\_\_ Amendment Barcode (if applicable) \_\_\_\_\_

Name John JonnisonJob Title Executive Vice President of CIO CORPORATIONAddress 4241 Bayshore Blvd  
StreetTAMPA FL 33611  
City State ZipSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing TECH DATA (tonnison 149)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)

2/8/16

Meeting Date

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 Phone \_\_\_\_\_

Street

City

State

Zip

Tallahassee

FL

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)

Topic Competative Protection Workforce Act Amendment Barcode (if applicable)Name Gabriel Garcia-VeraJob Title FL Field CoordinatorAddress 8330 Biscayne Blvd Phone \_\_\_\_\_

Street

City MiamiState FLZip 33138

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing Nat. Latina Institute for Repro. HealthAppearing 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**

February 8, 2016

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 J.C. Flores

Job Title Reg VP of Govt Affairs

Address 150 S. Monroe St. Ste 400

Phone 850-572-5500

Street

Wt

Pl

32301

City

State

Zip

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

Representing AT&amp;T

Appearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

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

Email P.SL7@patrickslevin.com

City

State

Zip

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

February 9, 2016

SB 120

Meeting Date

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

Email Bethany.Linderman@bcbsfl.com

City

State

Zip

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/9/16  
Meeting Date

120

Bill Number (if applicable)

Topic Discrimination

Amendment Barcode (if applicable)

Name Rich Tempth

Job Title

Address 135 S. Monroe

Phone 850-224-6926

Street

Tallahassee

FL  
State

32301  
Zip

Email

City

Speaking:  For  Against  Information

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

Representing Florick AFL-CIO

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/9/2016  
Meeting Date

020  
Bill Number (if applicable)

Topic Prohibited Dissemination

Amendment Barcode (if applicable)

Name LES CANTRELL

Job Title LAW ENFORCEMENT Retired

Address 200 RiverBend Rd.  
Street

Phone 386-679-9272

Ormond Beach A  
City State Zip 32174

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2-9-16  
Meeting Date

120

Bill Number (if applicable)

Topic DISCRIMINATION

Amendment Barcode (if applicable)

Name LARRY DUPRET

Job Title PICK CAR DRIVER

Address 8301 N River Highlands PL  
Street

Phone 813-984-8828

City TAMPA State FL Zip 33617

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing SBIF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

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

Phone 813-493-7665

Street

Tampa

71 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

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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)

120

Bill Number (if applicable)

Meeting Date

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Aaron Carmella

Job Title \_\_\_\_\_

Address 625 Grove St N

Phone 850-228-9831

Street

St Petersburg

FL

33701

City

State

Zip

Email Acarri89@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

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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)

SB 120

Bill Number (if applicable)

Topic PROHIBITED DISCRIMINATION

Amendment Barcode (if applicable)

Name FERNIC ANGEL

Job Title \_\_\_\_\_

Address 21180 VIA EDEN  
StreetPhone 708-955-6254BOCA RATON FL. 33433  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing SECFAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

2/9/16

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

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

Phone 407 451 5460

Street

City

State

Zip

Orlando, FL 32803

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

2/9/16

Meeting Date

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

120

Bill Number (if applicable)

Topic Marriage

Amendment Barcode (if applicable)

Name Nadine Smith

Job Title CEO

Address PO BOX 13184

Phone \_\_\_\_\_

Street

St. Petersburg

State FL

Zip 33733

City

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

2-9-16

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

Meeting Date

SB 128

Bill Number (if applicable)

Topic Prohibit Discrimination

Amendment Barcode (if applicable)

Name Raymond Guillory

Job Title

Address 129 Park Dr.  
Street

Phone 8504503748

Pensacola FL 32507  
City State Zip

Email rayguillory110@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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2/9/16

Meeting Date

SB 120

Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Linelle Lott

Job Title Government Affairs Consultant

Address 200 W. College Ave, Suite 300

Phone 904-314-5450

Street

Tallahassee,

FL

32301

Email lott@thefiorentinogroup.com

City

State

Zip

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

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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 SimmermeyerJob Title Electronics TechnicianAddress 1312 Aronomink Lane  
StreetOrlando FL 32828  
City State ZipPhone 407-234-4626Email how2buyamerican@gmail.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing Central - Florida AFL-CIOAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

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

2-9-16

Meeting Date

0120

Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Nickenga CampbellJob Title Bus OperatorAddress 11221 Justin Oak Dr.

Street

JaxFl

State

30221

Zip

Phone 904-755-4564

City

Email NickuCampbell12174@Gmail.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing My SelfAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2-9-16  
Meeting Date

0120

Bill Number (if applicable)

Topic Prohibited Discremination

Amendment Barcode (if applicable)

Name Cynthia Van Zandt

Job Title Instructional Assistant

Address Land O Lakes 25448 Gaddy Dr  
Street

Land O Lake FL 34639  
City State Zip

Phone 813-748-5485

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

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

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

1-9-16  
Meeting Date0120

Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Kathy HileyJob Title Clerk @ USPSAddress 657 Sweetbriar DrPhone 813-748-5467

Street

Oldsmar

City

Florida

State

34677

Zip

Email Katherinehiley50@gmail.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing SelfAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

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

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

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

3-9-16  
Meeting Date120  
Bill Number (if applicable)Topic The Employment Discrimination

Amendment Barcode (if applicable)

Name Bulma DePenaJob Title MsAddress 625 E. Broad STPhone 222-3969

Street

TallahasseeFL 32308

State

Zip

Email bulmaderena1@flsenate.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing FL NWAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

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

Phone 954-826-1155

City

State

Zip

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

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

FL

State

Zip

Email

City

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

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

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

2/09/16

Meeting Date

SB 120

Bill Number (if applicable)

Topic

SB 120

Amendment Barcode (if applicable)

Name Vicki StoughtonJob Title Physical Therapist AssistantAddress 1540 Coral St.  
StreetMenitt Island Fl  
City

State

32952  
ZipPhone 321-543-8751Email stovicki@gmail.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

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 FL

32955 Zip

Email sunapey@yahoo.com

Speaking:  For  Against  Information

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

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

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 5200 SE 145 St.  
Street

Summerfield

FL  
State

34491  
Zip

Phone 352-347-3284

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

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  
Street

Ocala  
City

FL  
State

34482  
Zip

Phone 352-572-7598

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

2-9-16

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

Meeting Date

SB120

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Rosana Bustin

Job Title Lead Pastor of Visitation

Address 5280 S.E. 145th St

Street

Summerfield, FL 34491

City

State

Zip

Phone 352-245-2560

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

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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)

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  
Street

Phone 305 546-1190

MIAMI FL 33162  
City State Zip

Email marilyn.rivera5@gmail.com

Speaking:  For  Against  Information

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

Representing South Florida Ministers Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

2/9/14  
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 COMPETITIVE WORKFORCE

Amendment Barcode (if applicable)

Name REV. ABRAHAM RIVERAJob Title EXECUTIVE BOARD MEMBERAddress 1255 NE 118 ST  
StreetMIAMI FL 33162  
City State ZipPhone 786-704-3412Email abrahamrivera@me.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing MiSSION MIAMIAppearing 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**

2/9/16

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

SB120

Meeting Date

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

Tallahassee

FL

32399

City

State

Zip

Email cheyanne.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.*

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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)

SB 120

Bill Number (if applicable)

Topic SB 120

Amendment Barcode (if applicable)

Name Richard Harrison

Job Title Farmer

Address 717 Hwy 7

Phone 850-557-4322

Street

Marianna

FL

32448

Zip

City

State

Email: r.harrison.922@yahoo.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

2/9/16

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

SB120

Meeting DateBill Number (if applicable)Topic Competitive Workforce ActAmendment Barcode (if applicable)Name Michelle WilsonJob Title Executive DirectorAddress 4075 Esplanade Way, Room 110Phone 8504887082StreetTallahasseeFL32399CityStateZipEmail  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.*

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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)

*#120*

*Bill Number (if applicable)*

Meeting Date

Topic DISCRIMINATION

*Amendment Barcode (if applicable)*

Name MIN. NATHANIEL J. WILCOX

Job Title MINISTER

Address 3111 N.W. 135 ST  
Street

MIAMI FL 33054  
City State Zip

Phone (786) 488-2979

Email n.wilcox.222@aa.ca

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

6-9-16

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 Legalizing Discrimination

Amendment Barcode (if applicable)

Name Anthony Swain

Job Title Retired Engineer

Address 1914 NW 43st  
Street

Miami

FL

33141

Phone 786-975-7420

City

State

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 - Apostolic Round Center

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

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

2/9/15  
Meeting DateSB 120  
Bill Number (if applicable)Topic Legalizing Discrimination Against Christians  
Name Charlene E. Coffman

Amendment Barcode (if applicable)

Job Title

Address 2323 N. State St.  
Street Bunnell, FL 32110  
City State Zip

Phone 386.5855484

Email

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

Representing Christian Family Coalition

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.

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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)

SB 120

Bill Number (if applicable)

Topic Prohibited Discrimination

Amendment Barcode (if applicable)

Name Pastor Asia Roberts

Job Title

Address 2741 Englewood Drive  
Street Largo FL 33771

Phone 954 625 9568

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2/9/16  
Meeting Date

0120

Bill Number (if applicable)

Topic HB 0120

Amendment Barcode (if applicable)

Name Rodríguez, 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 Templeelias@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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

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

Street

Bradenton FL

City

State

Zip

Phone \_\_\_\_\_

Email PastorTweems@q101.com

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2/9/16  
Meeting Date

SB/20

Bill Number (if applicable)

Topic \_\_\_\_\_ Amendment Barcode (if applicable) \_\_\_\_\_

Name Chris Winkor

Job Title Pastor

Address 195 Blackstone Creek  
Street Orlando FL 34716

Phone \_\_\_\_\_

City Orlando State FL Zip 34716

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing South Isle Pastors Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

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

02/09/16  
Meeting DateSB 170  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Armando V. PomarJob Title ConsultantAddress 7710 Abbott Ave

Street

Phone 786-285-4090

City

State

Zip

Email armandovpomar@faboo.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing SelfAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

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

Leesburg FL 34748  
City State Zip

Phone \_\_\_\_\_

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/2015  
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

Phone \_\_\_\_\_

Bradenton FL 34208  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2-9-2016  
Meeting Date

SB120  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name James Conaway

Job Title \_\_\_\_\_

Address 1314 12th Street

Phone \_\_\_\_\_

Street

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

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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 FordJob Title Executive AssistantAddress 318 Cardiff Court

Street

Panama City

State

32404Phone 404-509-8258

City

Zip

Email natasha@quendonetworK@gmail.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing Natasha Oquendo networkAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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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)

SB120

Bill Number (if applicable)

Topic Florida Competitive Workforce Act

Amendment Barcode (if applicable)

Name Natasha OquendoJob Title PastorAddress 318 Cardiff CourtPhone 850.586.6494

Street

Panama City FL 32404

City

State

Zip

Email natashaoquendonetw  
rRKE@gmail.comSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing Natasha Oquendo NetworkAppearing at request of Chair:  Yes  NoLobbyist registered with Legislature:  Yes  No

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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)

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

2/9/14

Meeting Date

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

120

Bill Number (if applicable)

Topic Trans.

Amendment Barcode (if applicable)

Name Greg Pound

Job Title \_\_\_\_\_

Address 9166 Sunrise Dr.

Phone \_\_\_\_\_

Street

Largo

Fla.

33773

City

State

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

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

2/11/16

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 Ingrid DelaporteJob Title Associate for Social Concerns & Pro-LifeAddress 201 W Park Av  
Street

Phone \_\_\_\_\_

Tallahassee   
CityFl  
State32361  
Zip

Email \_\_\_\_\_

Speaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing Florida Conference of Catholic BishopsAppearing 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**

2/9/16

Meeting Date

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

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  
Street

Ft. Lauderdale FL 33301  
City State Zip

Phone 954-253-7320

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

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S-001 (10/14/14)

THE FLORIDA SENATE

**APPEARANCE RECORD**

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

8/9/16

Meeting Date

1118

Bill Number (if applicable)

Topic TNC Insurance

Amendment Barcode (if applicable)

Name Louis Minardi

Job Title President

Address 4413 N. Hesperides St  
Street

Phone \_\_\_\_\_

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/8/16  
Meeting Date

SB 1118  
Bill Number (if applicable)

Topic SB 1118 Amendment Barcode (if applicable)

Name JIM ALBORG

Job Title PUBLIC POLICY MANAGER / LYFT

Address Street Phone 770-595-0190

City State Zip

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

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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