The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Monday, April 8, 2013
TIME: 4:00 —6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Lee, Chair; Senator Soto, Vice Chair; Senators Bradley, Gardiner, Joyner, Latvala, Richter, Ring, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 706** Montford (Identical CS/H 341)	Uninsured Motorist Insurance Coverage; Providing that, under certain circumstances, specified persons who elect non-stacking limitations on their uninsured motorist insurance coverage are conclusively presumed to have made an informed, knowing acceptance of the limitations on behalf of all insureds, etc. BI 03/14/2013 Favorable JU 04/01/2013 Not Considered JU 04/08/2013 RC	
2	**CS/SB 1016** Health Policy / Hays (Similar CS/H 1205)	Sovereign Immunity for Dentists and Dental Hygienists; Requiring a contract with a governmental contractor for health care services to include a provision for a health care provider licensed under ch. 466, F.S., as an agent of the governmental contractor, to allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient without forfeiting sovereign immunity; prohibiting the contribution from exceeding the actual amount of the dental laboratory charges, etc. HP 03/14/2013 Fav/CS JU 04/01/2013 Not Considered JU 04/08/2013 RC	
3	**SB 1398** Hukill (Compare CS/H 1025)	Appraisers; Defining a qualifying classroom hour; requiring all courses to be completed in a classroom or through an online course that has received certain approvals, etc. RI 03/21/2013 Favorable JU 04/01/2013 Not Considered JU 04/08/2013	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 288** Bradley (Similar CS/H 311)	Costs of Prosecution, Investigation, and Representation; Providing for the withholding of unpaid costs of prosecution and representation from the return of a cash bond posted on behalf of a criminal defendant; requiring a notice on bond forms of such possible withholding; providing for assessment of costs of prosecution against a juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld, etc. CJ 02/05/2013 Favorable JU 04/01/2013 Not Considered JU 04/08/2013 ACJ AP	
5	**SJR 570** Bradley (Identical HJR 747)	Revising Age Limits for Justices and Judges; Proposing amendments to the State Constitution to increase the age after which a justice or judge may no longer serve in a judicial office, to provide for the amendment to apply to justices and judges appointed on or after a specified date, etc. JU 04/01/2013 Not Considered JU 04/08/2013 ACJ AP RC	
6	**SB 590** Joyner (Identical H 941, Compare CS/H 943)	Fees and Costs Incurred in Guardianship Proceedings; Providing that fees and costs incurred by an attorney who has rendered services to a ward in compensation proceedings are payable from guardianship assets; directing that the examining committee be paid from state funds as court-appointed expert witnesses if a petition for incapacity is dismissed; requiring that a petitioner reimburse the state for expert witness fees if the court finds the petition to have been filed in bad faith, etc. JU 04/01/2013 Not Considered JU 04/08/2013 CF ACJ AP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 986** Soto (Identical H 235)	Requirements for Driver Licenses; Including notice of the approval of an application for Deferred Action for Childhood Arrivals status issued by the United States Citizenship and Immigration Services as valid proof of identity for purposes of applying for a driver license, etc. TR 03/14/2013 Favorable JU 04/01/2013 Not Considered JU 04/08/2013 RC	
8	**CS/CS/SB 52** Communications, Energy, and Public Utilities / Transportation / Detert (Similar CS/H 13, S 74, Compare H 849, S 152, S 396, S 708)	Use of Wireless Communications Devices While Driving; Creating the “Florida Ban on Texting While Driving Law”; prohibiting the operation of a motor vehicle while using a wireless communications device for certain purposes; defining the term “wireless communications device”; specifying information that is admissible as evidence of a violation; providing for enforcement as a secondary action; providing for points to be assessed against a driver license for the unlawful use of a wireless communications device within a school safety zone or resulting in a crash, etc. TR 02/06/2013 Fav/CS CU 03/06/2013 Fav/CS JU 04/08/2013	
9	**CS/CS/SB 398** Banking and Insurance / Health Policy / Bean (Similar CS/H 625)	Physician Assistants; Authorizing a supervisory physician to delegate to a licensed physician assistant the authority to order medications for the supervisory physician’s patient in a facility licensed under provisions relating to Hospital Licensing and Regulation; providing that an order is not a prescription; authorizing a licensed physician assistant to order medication under the direction of the supervisory physician, etc. HP 02/21/2013 Fav/CS BI 03/14/2013 Fav/CS JU 04/08/2013	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**CS/SB 672** Criminal Justice / Evers (Identical CS/H 4019)	Juvenile Justice; Deleting a requirement that the Department of Corrections and counties develop programs under which a judge may order juveniles who have committed delinquent acts to tour correctional facilities; repealing provisions relating to the creation, duties, and qualifications of the youth custody officer position within the Department of Juvenile Justice, etc. CJ 03/04/2013 Not Considered CJ 03/11/2013 Fav/CS JU 04/08/2013 ACJ AP	
11	**CS/CS/SB 726** Health Policy / Community Affairs / Simmons (Compare CS/H 655)	Regulation of Family or Medical Leave Benefits for Employees; Prohibiting a political subdivision from requiring or otherwise regulating family or medical leave benefits for employees; preempting regulation of family or medical leave benefits to the state; providing that the act does not prohibit a political subdivision from establishing family or medical leave benefits for its employees; providing that the act does not prohibit a federally authorized or recognized tribal government from requiring family or medical leave benefits under certain conditions, etc. CA 03/07/2013 Temporarily Postponed CA 03/14/2013 Fav/CS HP 03/20/2013 Fav/CS JU 04/08/2013	
12	**CS/SB 964** Children, Families, and Elder Affairs / Abruzzo (Similar CS/H 887, Compare H 477)	Termination of Parental Rights; Providing that a parent's rights may be terminated if the court determines, by clear and convincing evidence, that the child was conceived during an act of unlawful sexual battery; creating a presumption that termination of parental rights is in the best interest of the child if the child was conceived as a result of an unlawful sexual battery; providing that a petition to terminate parental rights may be filed at any time, etc. CF 03/12/2013 Fav/CS CJ 04/01/2013 Favorable JU 04/08/2013	
13	**CS/SB 1404** Criminal Justice / Stargel (Similar CS/H 1173)	Florida Communications Fraud Act; Establishing a statute of limitations for criminal and civil causes of actions under the act; specifying circumstances that toll the statute of limitations, etc. CJ 04/01/2013 Fav/CS JU 04/08/2013 AP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**SM 1478** Thompson (Similar HM 151)	Haitian Family Reunification Parole Program; Urging the United States Department of Homeland Security to create the Haitian Family Reunification Parole Program, etc. JU 04/08/2013	
15	**CS/SB 1644** Children, Families, and Elder Affairs / Flores (Similar CS/H 1325, Compare H 1327, Link CS/S 1734)	Victims of Human Trafficking; Providing for the expungement of the criminal history record of a victim of human trafficking; providing that an expunged conviction is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings; providing for electronic appearances of petitioners and attorneys at hearings; authorizing a person whose records are expunged to lawfully deny or fail to acknowledge the arrests covered by the expunged record, etc. CF 03/18/2013 Fav/CS JU 04/08/2013	
16	**CS/SB 292** Commerce and Tourism / Richter (Similar CS/CS/H 55)	Deceptive and Unfair Trade Practices; Requiring a claimant to provide a demand letter to the motor vehicle dealer as a condition precedent to initiating civil litigation against such dealer under the Florida Deceptive and Unfair Trade Practices Act; providing an additional opportunity for claimants to comply with specified provisions; providing that attorney fees and other costs incurred by a claimant before compliance with certain provisions are not recoverable; requiring that a specified notice be provided to consumers before provisions may apply, etc. CM 02/19/2013 Fav/CS JU 04/08/2013	
17	**SB 962** Gardiner (Similar CS/H 953)	Warrants; Providing that arrest and search warrants are deemed electronically issued and signed by a judge at the time the judge affixes his or her electronic signature to the warrant, etc. JU 04/08/2013 CJ	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	**SB 1412** Richter (Similar H 7015)	Expert Testimony; Providing that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion as to the facts at issue in a case under certain circumstances; requiring the courts of this state to interpret and apply the principles of expert testimony in conformity with specified United States Supreme Court decisions; subjecting pure opinion testimony to such requirements, etc. JU 04/08/2013 RC	
19	**CS/SB 1666** Banking and Insurance / Latvala (Compare CS/H 87, S 1380)	Mortgage Foreclosures; Providing that the second publication of the notice of sale may be published on a publicly accessible website of the clerk of the court in lieu of publication in any other form of media; requiring that a publicly accessible Internet website must be approved for legal publication, advertisement, and notice by the Florida Clerks of Court Operations Corporation; providing that between two specified dates, a retired justice or retired judge is not subject to certain limitations otherwise applicable to retired employees, etc. BI 03/20/2013 Fav/CS JU 04/08/2013 AP RC	
20	**CS/SB 1634** Ethics and Elections / Lee (Compare H 593, CS/S 544) **(If Received)**	Legislative Lobbying Expenditures; Amending s. 11.045, F.S., and reenacting subsections (4)-(8), relating to lobbying before the Legislature; revising the term “expenditure” to exclude the use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, to exempt such use from legislative lobbying requirements; providing exceptions when a member or an employee of the Legislature may accept certain expenditures made by a lobbyist or a principal; providing for the future expiration and the reversion as of a specified date of statutory text, etc. EE 04/01/2013 Fav/CS JU 04/08/2013 If received RC	
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 706
INTRODUCER:	Senator Montford
SUBJECT:	Uninsured Motorist Insurance Coverage
DATE:	March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Favorable**
2.	Shankle	Cibula	JU	**Pre-meeting**
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 706 deals with the rejection of stackable Uninsured Motorist (UM) benefits. Current law states that when the named insured, applicant, or lessee signs a form rejecting UM coverage, a conclusive presumption arises that "there was an informed knowing acceptance of such limitations" of coverage. The bill specifies that the signed form gives rise to a conclusive presumption that the rejection of stackable coverage benefits was made "on behalf of all insureds." The bill addresses the decision of the Florida First District Court of Appeal in *Travelers Commercial Insurance Company v. Harrington.*[1]

This bill substantially amends section 627.727, Florida Statutes.

II. Present Situation:

Uninsured Motorist Coverage

Uninsured Motorist or UM coverage provides a basis for persons to directly insure themselves against the effects of bodily injuries caused by others who are legally liable but uninsured or underinsured. Such coverage pays for medical expenses and lost wages, after personal injury protection coverage is exhausted and includes payment for pain and suffering.[2] Uninsured Motorist also provides "excess coverage" which means that when a motorist is injured because of the negligence of another, the injured party is able to collect from the liability insurance of the

[1] *Travelers Commercial Insurance Company v. Harrington* , 86 So. 3d 1274 (Fla. 1st DCA 1012).

[2] The insurer providing UM coverage has liability for damages in tort for pain and suffering only if the injury or disease is described in s. 627.737(2), F.S.

negligent motorist and from his or her own uninsured motorist insurance if the negligent motorist is unable to provide full reimbursement.

Bodily injury liability policies must include UM coverage at limits equal to those for Bodily Injury (BI) liability insurance, unless the coverage is rejected or lower limits are elected by the insured. The rejection or selection of lower UM coverage limits must be made in writing on a form approved by the Office of Insurance Regulation. If a named insured signs the form, "it will be conclusively presumed that there was an informed knowing rejection of coverage or election of lower limits on behalf of all insureds."[3]

Uninsured Motorist coverage is available in "stackable" and "non-stackable" coverages. Stackable UM coverage means that the coverage limits for each car insured under a motorist's policy may be added together. Non-stackable UM coverage only pays up to the limits for one insured vehicle. Section 627.727(9), F.S., states that, "[i]nsurers may offer policies of uninsured motorist coverage…establishing that if the insured accepts the offer…coverage provided as to two or more motor vehicles shall not be added together to determine the limit of insurance coverage available to an injured person for any one accident…." If the insured elects non-stackable coverage, the insurer must provide at least a 20 percent coverage premium discount to the policyholder to account for the reduced coverage available under the policy.[4] Under s. 627.727(9), F.S., UM coverage is stackable unless the insured waives stackable coverage in writing. The written waiver establishes a conclusive presumption that "there was an informed, knowing acceptance of such limitations."[5]

In *Travelers Commercial Insurance Company v. Harrington*, the First District Court of Appeal affirmed a trial court decision determining that stackable coverage benefits are available to an insured claimant under an insurance policy where the purchaser executed a signed waiver of stacking benefits, but the insured claimant did not waive such benefits.[6] In *Harrington*, the daughter of an insured was injured in a car accident and sought recovery under an insurance policy purchased by her father who had purchased UM benefits but rejected stackable benefits in writing. The Court ruled that Ms. Harrington could recover stackable coverage benefits because the statutory language for a waiver of stackable UM coverage does not apply to other insureds under the policy who do not execute the rejection of stacking coverage.[7]

The Court compared the provision governing written rejection[8] of coverage in subsection (1) of s. 627.727, F.S., with the provision in subsection (9) governing written rejection of stackable coverage. The court noted that the conclusive presumption in subsection (1) that is created when the insured executes a signed, written form declining UM coverage or electing limits of such coverage that are lower than the BI coverage is "on behalf of all insureds." The Court reasoned

[3] See s. 627.727(1), F.S. The conclusive presumption related to the insured's rejection of UM Coverage or election to obtain UM Coverage with lower limits than BI coverage was enacted in CS/HB 319 by the 1984 Legislature. *See* chapter 84-41, s. 1, Laws of Fla.
[4] Section 627.727(9), F.S.
[5] The conclusive presumption related to the insured's rejection of stackable UM Coverage or election to obtain UM Coverage with lower limits than BI coverage was enacted in HB 1029 by the 1987 Legislature. *See* chapter 87-213, s. 1, Laws of Fla.
[6] *Harrington*, 86 So. 3d at 1278.
[7] *Id*. at 1277-1278.
[8] Or election of UM Coverage limits that are less than Bodily Injury coverage limits under the policy.

that the conclusive presumption in subsection (9) that is created when the insured executes a signed, written form declining stackable coverage only applies to the named insured because the statute does not specify that it is made on behalf of all insureds under the policy.[9] The District Court of Appeal certified the stacking issue to the Florida Supreme Court, which has accepted jurisdiction.[10]

III. Effect of Proposed Changes:

The bill amends s. 627.727, F.S., regarding the rejection of stackable Uninsured Motorist benefits. Current law states that when the named insured, applicant, or lessee signs a form rejecting coverage, a conclusive presumption arises that "there was an informed knowing acceptance of such limitations" of coverage. The bill specifies that the signed form gives rise to a conclusive presumption that the rejection of stackable coverage benefits was made "on behalf of all insureds."

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The *Harrington* decision of the First District Court of Appeals may reduce the availability of non-stackable coverage. If the named insured or an applicant for an insurance policy cannot waive stackable UM coverage on behalf of other insureds under the policy, the loss costs associated with unstacked UM coverage are likely to rise. Florida law requires that insurers provide at least a 20 percent UM coverage premium discount if stackable benefits are waived. If the difference in loss costs between stacked and unstacked UM coverage loss costs is less than 20 percent, insurers may cease

[9] *Id*.
[10] Florida Supreme Court Case Number SC12–1257.

offering unstacked UM coverage. Consumers who want to purchase UM coverage would then be deprived of the choice of selecting the less expensive unstacked version of such coverage.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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.

By Senator Montford

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A bill to be entitled

An act relating to uninsured motorist insurance coverage; amending s. 627.727, F.S.; providing that, under certain circumstances, specified persons who elect non-stacking limitations on their uninsured motorist insurance coverage are conclusively presumed to have made an informed, knowing acceptance of the limitations on behalf of all insureds; providing an effective date.

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

Section 1. Subsection (9) of section 627.727, Florida Statutes, is amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.—

(9) Insurers may offer policies of uninsured motorist coverage containing policy provisions, in language approved by the office, establishing that if the insured accepts this offer:

(a) The coverage provided as to two or more motor vehicles shall not be added together to determine the limit of insurance coverage available to an injured person for any one accident, except as provided in paragraph (c).

(b) If at the time of the accident the injured person is occupying a motor vehicle, the uninsured motorist coverage available to her or him is the coverage available as to that motor vehicle.

(c) If the injured person is occupying a motor vehicle which is not owned by her or him or by a family member residing

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with her or him, the injured person is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle as to which she or he is a named insured or insured family member. Such coverage shall be excess over the coverage on the vehicle the injured person is occupying.

(d) The uninsured motorist coverage provided by the policy does not apply to the named insured or family members residing in her or his household who are injured while occupying any vehicle owned by such insureds for which uninsured motorist coverage was not purchased.

(e) If, at the time of the accident the injured person is not occupying a motor vehicle, she or he is entitled to select any one limit of uninsured motorist coverage for any one vehicle afforded by a policy under which she or he is insured as a named insured or as an insured resident of the named insured's household.

In connection with the offer authorized by this subsection, insurers shall inform the named insured, applicant, or lessee, on a form approved by the office, of the limitations imposed under this subsection and that such coverage is an alternative to coverage without such limitations. If this form is signed by a named insured, applicant, or lessee, it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations on behalf of all insureds. When the named insured, applicant, or lessee has initially accepted such limitations, such acceptance shall apply to any policy which renews, extends, changes, supersedes, or replaces an existing policy unless the named insured requests deletion of such limitations and pays the

appropriate premium for such coverage. Any insurer who provides coverage which includes the limitations provided in this subsection shall file revised premium rates with the office for such uninsured motorist coverage to take effect prior to initially providing such coverage. The revised rates shall reflect the anticipated reduction in loss costs attributable to such limitations but shall in any event reflect a reduction in the uninsured motorist coverage premium of at least 20 percent for policies with such limitations. Such filing shall not increase the rates for coverage which does not contain the limitations authorized by this subsection, and such rates shall remain in effect until the insurer demonstrates the need for a change in uninsured motorist rates pursuant to s. 627.0651.

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

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 1016

INTRODUCER: Health Policy Committee and Senator Hays

SUBJECT: Sovereign Immunity for Dentists and Dental Hygienist

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	**Fav/CS**
2.	Munroe	Cibula	JU	**Pre-meeting**
3.			AHS	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1016 authorizes a dentist, who is a government contracted health care provider under the Access to Health Care Act, to allow a patient, or a parent or guardian of a patient to voluntarily contribute a fee to cover costs of dental laboratory work. The contribution may not exceed the actual cost of the laboratory fee. When the voluntary contribution is accepted from the patient for dental laboratory fees, it is not considered compensation for services so that sovereign immunity protection is not lost.

This bill substantially amends section 766.1115, Florida Statutes.

II. Present Situation:

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the Act). The Act was enacted in 1992 to encourage health care providers to provide care to low-income persons.[1] This section extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who provide volunteer, uncompensated health care services to low-income individuals as an agent of the state. 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.

Health care providers under the Act include:[2]

- A birth center licensed under chapter 383, F.S.[3]
- An ambulatory surgical center licensed under chapter 395, F.S.[4]
- A hospital licensed under chapter 395, F.S.[5]
- A physician or physician assistant licensed under chapter 458, F.S.[6]
- An osteopathic physician or osteopathic physician assistant licensed under chapter 459, F.S.[7]
- A chiropractic physician licensed under chapter 460, F.S.[8]
- A podiatric physician licensed under chapter 461, F.S.[9]
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464, F.S., or any facility which employs nurses licensed or registered under part I of chapter 464, F.S., to supply all or part of the care delivered under this section.[10]
- A dentist or dental hygienist licensed under chapter 466, F.S.[11]
- A midwife licensed under chapter 467, F.S.[12]
- A health maintenance organization certificated under part I of chapter 641, F.S.[13]
- A health care professional association and its employees or a corporate medical group and its employees.[14]

[1] Low-income persons are defined in the Act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department.
[2] Section 766.1115(3)(d), F.S.
[3] Section 766.1115(3)(d)1., F.S.
[4] Section 766.1115(3)(d)2., F.S.
[5] Section 766.1115(3)(d)3., F.S.
[6] Section 766.1115(3)(d)4., F.S.
[7] Section 766.1115(3)(d)5., F.S.
[8] Section 766.1115(3)(d)6., F.S.
[9] Section 766.1115(3)(d)7., F.S.
[10] Section 766.1115(3)(d)8., F.S.
[11] Section 766.1115(3)(d)9., F.S.
[12] Section 766.1115(3)(d)10., F.S.
[13] Section 766.1115(3)(d)11., F.S.
[14] Section 766.1115(3)(d)12., F.S.

- 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.[15]
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.[16]
- 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 any one of the professionals listed in subparagraphs 766.1115(3)(d)4-9, F.S.[17]
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by 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 of Health (DOH or department), a county health department, a special taxing district with health care responsibilities, or a hospital owned and operated by a governmental entity.[18]

The definition of contract under the Act provides that the contract must be for 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.[19]

The Act further specifies 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 must make patient selection and initial referrals.
- The health care provider must accept all referred patients, however the contract may specify limits on the number of patients to be referred.
- Patient care, including any follow-up or hospital care, is subject to approval by the governmental contractor.
- The health care provider is subject to supervision and regular inspection by the governmental contractor.

[15] Section 766.1115(3)(d)13., F.S.
[16] Section 766.1115(3)(d)14., F.S.
[17] Section 766.1115(3)(d)15., F.S.
[18] Section 766.1115(3)(c), F.S.
[19] Section 766.1115(3)(a), F.S.

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 actions related to medical negligence.

The individual accepting services through this contracted provider must not have medical or dental care coverage for the illness, injury, or condition in which medical or dental care is sought.[20] The services not covered under this program include experimental procedures and clinically unproven procedures. The governmental contractor shall determine whether or not a procedure is covered.

The health care provider may not subcontract for the provision of services under this chapter.[21]

Currently, s. 766.1115, F.S., is interpreted differently across the state. In certain parts of the state one medical director interprets this law to mean that as long as there is transparency and clear proof that the volunteer provider is providing services, without receiving personal compensation, then the patient can pay a nominal amount per visit to assist in covering laboratory fees. In other parts of the state, a medical director suggests that if any monetary amount is accepted then sovereign immunity is lost. Patients sometimes offer to pay a nominal contribution to cover some of the cost of laboratory fees that the provider incurs to pay outside providers for items such as dentures for the patient. In many areas, the dentist is paying the cost of these fees from his or her own resources.[22]

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 such governments unless the immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the right to waive such 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, unless such officer, employee, or agent acted 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. Subsection (5) limits the recovery of any one person to $200,000 for one incidence and limits all recovery related to one incidence to a total of $300,000. The sovereign immunity recovery caps do not prevent a

[20] Rule 64I-2.002, F.A.C.
[21] *Id.*
[22] Staff of Committee on Health Policy's discussion with representatives from the Florida Dental Association on March 8, 2013.

plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.[23]

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.[24] 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.25

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.[26] The court explained:

> Whether the [Children's Medical Services(CMS)] 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. *National Sur. Corp. v. Windham*, 74 So. 2d 549, 550 (Fla. 1954) ("The [principal's] right to control depends upon the terms of the contract of employment…") The CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS[27] Manual and CMS Consultants 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.[28]

[23] Section 768.28(5), F.S.
[24] *Stoll v. Noel*, 694 So. 2d 701, 703(Fla. 1997).
[25] *Id.* (quoting The Restatement of Agency).
[26] *Stoll v. Noel*, 694 So. 2d 701 at 703.
[27] Florida Department of Health and Rehabilitative Services.
[28] Stoll v. Noel, 694 So. 2d 701, 703(Fla. 1997).

III. Effect of Proposed Changes:

The bill authorizes a dentist, who is a government contracted health care provider under the Access to Health Care Act, to allow a patient, or a parent or guardian of a patient to voluntarily contribute a fee to cover costs of dental laboratory work. The contribution may not exceed the actual cost of the laboratory fee. When the voluntary contribution is accepted from the patient for dental laboratory fees it is not considered compensation for services so that sovereign immunity protection is not lost.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact is expected to be minimal since many areas in the state already allow voluntary contributions.[29]

C. Government Sector Impact:

Additional documentation and billing may be required to avoid the appearance that voluntary contributions are compensation to the practitioner. It could be unclear whether the activities of the dentist's staff to coordinate lab services may be characterized as paid work to the extent a fee or partial fee was provided for these services. This can be problematic if the dentist is volunteering through a professional association. Mistakes could result in litigation on the issue of compensation to the health care provider.[30]

[29] *See* Department of Health Bill Analysis for SB 1016 (dated March 11, 2013) on file with the Senate Health Policy Committee and notes from telephone call with staff on March 12, 2013.
[30] *See* Department of Health Bill Analysis for SB 1016(dated March 11, 2013) on file with the Senate Health Policy Committee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None

VIII. Additional Information:

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

CS by Health Policy on March 14, 2013:
The CS removes the definition for the term "uncompensated services." The CS authorizes a dentist, who is a government contracted health care provider, to allow a patient, parent, or guardian to voluntarily contribute a fee to cover costs of dental laboratory work.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 627.6474, Florida Statutes, is amended to read:

627.6474 Provider contracts.—

(1) A health insurer may ~~shall~~ not require a contracted health care practitioner as defined in s. 456.001(4) to accept the terms of other health care practitioner contracts with the insurer or any other insurer, or health maintenance organization, under common management and control with the insurer, including Medicare and Medicaid practitioner contracts

and those authorized by s. 627.6471, s. 627.6472, s. 636.035, or s. 641.315, except for a practitioner in a group practice as defined in s. 456.053 who must accept the terms of a contract negotiated for the practitioner by the group, as a condition of continuation or renewal of the contract. Any contract provision that violates this section is void. A violation of this subsection ~~section~~ is not subject to the criminal penalty specified in s. 624.15.

(2)(a) A contract between a health insurer and a dentist licensed under chapter 466 for the provision of services to an insured may not contain any provision that requires the dentist to provide services to the insured under such contract at a fee set by the health insurer unless such services are covered services under the applicable contract.

(b) Covered services are those services that are listed as a benefit that the insured is entitled to receive under the contract. An insurer may not provide merely de minimis reimbursement or coverage in order to avoid the requirements of this section. Fees for covered services shall be set in good faith and must not be nominal.

(c) A health insurer may not require as a condition of the contract that the dentist participate in a discount medical plan under part II of chapter 636.

Section 2. Subsection (13) is added to section 636.035, Florida Statutes, to read:

636.035 Provider arrangements.—

(13)(a) A contract between a prepaid limited health service organization and a dentist licensed under chapter 466 for the provision of services to a subscriber of the prepaid limited

health service organization may not contain any provision that requires the dentist to provide services to the subscriber of the prepaid limited health service organization at a fee set by the prepaid limited health service organization unless such services are covered services under the applicable contract.

(b) Covered services are those services that are listed as a benefit that the subscriber is entitled to receive under the contract. A prepaid limited health service organization may not provide merely de minimis reimbursement or coverage in order to avoid the requirements of this section. Fees for covered services shall be set in good faith and must not be nominal.

(c) A prepaid limited health service organization may not require as a condition of the contract that the dentist participate in a discount medical plan under part II of this chapter.

Section 3. Subsection (11) is added to section 641.315, Florida Statutes, to read:

641.315 Provider contracts.—

(11)(a) A contract between a health maintenance organization and a dentist licensed under chapter 466 for the provision of services to a subscriber of the health maintenance organization may not contain any provision that requires the dentist to provide services to the subscriber of the health maintenance organization at a fee set by the health maintenance organization unless such services are covered services under the applicable contract.

(b) Covered services are those services that are listed as a benefit that the subscriber is entitled to receive under the contract. A health maintenance organization may not provide

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merely de minimis reimbursement or coverage in order to avoid the requirements of this section. Fees for covered services shall be set in good faith and must not be nominal.

(c) A health maintenance organization may not require as a condition of the contract that the dentist participate in a discount medical plan under part II of chapter 636.

Section 4. Paragraph (a) of subsection (3) of section 766.1115, Florida Statutes, is amended, and paragraph (h) is added to subsection (4) of that section, 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 which allows~~. This contract shall allow~~ the health care provider to deliver health care services to low-income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services under this section, 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 ~~any~~ public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services on or after April 17, 1992, as an agent of the governmental contractor is an agent for purposes of s.

768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider under contract with the state may not be named as a defendant in any action arising out of medical care or treatment provided on or after April 17, 1992, under contracts entered into under this section. The contract must provide that:

(h) As an agent of the governmental contractor for purposes of s. 768.28(9), while acting within the scope of duties under the contract, a health care provider licensed under chapter 466 may allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient. This contribution may not exceed the actual cost of the dental laboratory charges and is deemed in compliance with this section.

A governmental contractor that is also a health care provider is not required to enter into a contract under this section with respect to the health care services delivered by its employees.

Section 5. The amendments to ss. 627.6474, 636.035, and 641.315, Florida Statutes, apply to contracts entered into or renewed on or after July 1, 2013.

Section 6. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to dentistry; amending s. 627.6474, F.S.; prohibiting a contract between a health insurer and a dentist from requiring the dentist to provide services at a fee set by the insurer under certain circumstances; providing that covered services are those services listed as a benefit that the insured is entitled to receive under a contract; prohibiting an insurer from providing merely de minimis reimbursement or coverage; requiring that fees for covered services be set in good faith and not be nominal; prohibiting a health insurer from requiring as a condition of a contract that a dentist participate in a discount medical plan; amending s. 636.035, F.S.; prohibiting a contract between a prepaid limited health service organization and a dentist from requiring the dentist to provide services at a fee set by the organization under certain circumstances; providing that covered services are those services listed as a benefit that a subscriber of a prepaid limited health service organization is entitled to receive under a contract; prohibiting a prepaid limited health service organization from providing merely de minimis reimbursement or coverage; requiring that fees for covered services be set in good faith and not be nominal; prohibiting the prepaid limited health service organization from requiring as a condition of a contract that a dentist participate in a discount

medical plan; amending s. 641.315, F.S.; prohibiting a contract between a health maintenance organization and a dentist from requiring the dentist to provide services at a fee set by the organization under certain circumstances; providing that covered services are those services listed as a benefit that a subscriber of a health maintenance organization is entitled to receive under a contract; prohibiting a health maintenance organization from providing merely de minimis reimbursement or coverage; requiring that fees for covered services be set in good faith and not be nominal; prohibiting the health maintenance organization from requiring as a condition of a contract that a dentist participate in a discount medical plan; providing for application of the act; amending s. 766.1115, F.S.; revising a definition; requiring a contract with a governmental contractor for health care services to include a provision for a health care provider licensed under ch. 466, F.S., as an agent of the governmental contractor, to allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient without forfeiting sovereign immunity; prohibiting the contribution from exceeding the actual amount of the dental laboratory charges; providing that the contribution complies with the requirements of s. 766.1115, F.S.; providing for applicability; providing an effective date.

By the Committee on Health Policy; and Senator Hays

588-02376-13 20131016c1

A bill to be entitled

An act relating to sovereign immunity for dentists and dental hygienists; amending s. 766.1115, F.S.; revising a definition; requiring a contract with a governmental contractor for health care services to include a provision for a health care provider licensed under ch. 466, F.S., as an agent of the governmental contractor, to allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient without forfeiting sovereign immunity; prohibiting the contribution from exceeding the actual amount of the dental laboratory charges; providing that the contribution complies with the requirements of s. 766.1115, F.S.; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 766.1115, Florida Statutes, is amended, and paragraph (h) is added to subsection (4) of that section, 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 which allows~~. This contract shall allow~~ the health care provider to deliver health care services to low-

Florida Senate - 2013 **CS for SB 1016**

588-02376-13 20131016c1

income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services under this section, 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 ~~any~~ public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services on or after April 17, 1992, as an agent of the governmental contractor is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider under contract with the state may not be named as a defendant in any action arising out of medical care or treatment provided on or after April 17, 1992, under contracts entered into under this section. The contract must provide that:

(h) As an agent of the governmental contractor for purposes of s. 768.28(9), while acting within the scope of duties under the contract, a health care provider licensed under chapter 466 may allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient. This contribution may not exceed the actual cost of the dental laboratory charges and is deemed in compliance with this

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

section.

A governmental contractor that is also a health care provider is not required to enter into a contract under this section with respect to the health care services delivered by its employees.

Section 2. This act shall take effect July 1, 2013.

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 1398
INTRODUCER:	Senator Hukill
SUBJECT:	Appraisers
DATE:	March 29, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.	Eichin	Cibula	JU	
3.				
4.				
5.				
6.				

I. Summary:

SB 1398 alters the education requirement for an appraiser's license issued by the Florida Real Estate Appraisal Board (board) within the Division of Real Estate of the Department of Business and Professional Regulation. The bill requires that appraiser license applicants complete academic education courses in a classroom or through online distance education. Current law does not permit an applicant to meet required classroom hours through online distance education.

The board may determine that an online distance education course has met the same requirements as a classroom course if the International Distance Education Certification Center approves the course for its course design and delivery method. The federal Appraiser Qualifications Board also must approve the course through its Course Approval Program.

This bill substantially amends section 475.617, Florida Statutes.

II. Present Situation:

Real estate appraisers in Florida are regulated by the Florida Real Estate Appraisal Board (board) within the Division of Real Estate of the Department of Business and Professional Regulation (department), which administers and enforces the provisions of part II of chapter 475, F.S. The board is authorized to:

- Regulate the issuance of licenses, certifications, registrations, and permits;
- Discipline appraisers;
- Establish qualifications for licenses, certifications, registrations, and permits;
- Regulate approved courses;
- Establish standards for real estate appraisals; and

- Establish standards for and regulate supervisory appraisers.[1]

The board's headquarters is located in Orlando, Florida.

Section 475.611(1)(a), F.S., defines the term "appraisal" or "appraisal services" to mean:

> the services provided by certified or licensed appraisers or registered trainee appraisers, and includes:
> 1. "Appraisal assignment" denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.
> 2. "Analysis assignment" denotes appraisal services that relate to the employer's or client's individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.
> 3. "Appraisal review assignment" denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser's appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser's opinion of value.

Appraiser License Classifications

Section 475.611(1)(k), F.S., defines a "certified general appraiser" to mean a person who is certified by the department as qualified to issue appraisal reports for any type of real property.

Section 475.611(1)(l), F.S., defines a "certified residential appraiser" to mean:

> a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

Section 475.611(1)(u), F.S., defines the term "supervisory appraiser" to mean:

> a licensed appraiser, a certified residential appraiser, or a certified general appraiser responsible for the direct supervision of one or more registered trainee appraisers and fully responsible for appraisals and appraisal reports prepared by those registered trainee appraisers.

Section 475.611(1)(q), F.S., defines the term "licensed appraiser" to mean "a person who is licensed by the department as qualified to issue appraisal reports for residential real property of

[1] Section 475.613(2), Florida Statutes.

one to four residential units or on such real estate or real property as may be authorized by federal regulation.

Section 475.611(1)(q), F.S., also prohibits, as of July 1, 2003, the department from issuing licenses for the category of licensed appraiser.

According to the department, there are remaining licensed appraisers, but the number continues to decline.

Section 475.611(1)(r), F.S., defines the term "registered trainee appraiser" to mean:

> a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a licensed or certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

Qualifications – Appraisers

Section 475.615, F.S., provides the qualifications for registration or certification of appraisers, as outlined by the Real Property Appraiser Qualification Criteria of the Appraiser Qualifications Board (AQB).[2]

In December 2011, the AQB adopted the latest version of the Real Property Appraiser Qualification Criteria with an effective date of January 1, 2015.[3] An appraiser applicant must be competent to handle appraisals with safety to those with whom they may undertake a relationship of trust and confidence. If an applicant has been denied a prior registration or certification application, or has had a license, registration, or certification revoked or suspended in any jurisdiction, the applicant is deemed not to be qualified unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears to the board that the interest of the public is not likely to be endangered by the granting of registration or certification.

Section 475.617(1), F.S., requires an applicant for registration as a trainee appraiser to present evidence to the board that she or he has successfully completed at least 100 hours of approved academic courses in subjects related to real estate appraisal, including Uniform Standards of Professional Appraisal Practice (USPAP) or its equivalent. The academic courses must be taken at a college, university, or other educational institution authorized under s 475.451, F.S. Classroom hours are defined as 50 minutes out of each 60 minute segment.

Section 475.617(2), F.S., requires an applicant for certification as a residential appraiser to present satisfactory evidence to the board that she or he has met the minimum education and

[2] The Appraiser Qualifications Board establishes the minimum education, experience, and examination qualifications for appraisers. It is a board of The Appraisal Foundation (TAF) of the Federal Financial Institutions Examination Council, which is a private, non-profit educational organization that was formed in 1987 to promote professionalism in the valuation industry.

[3] A copy of the AQB's *Real Property Appraiser Qualification Criteria* is available at: https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=taf&WebCode=RPCriteria (Last visited March 12, 2013).

experience requirements prescribed by rule of the board.[4] The applicant must have at least 2,500 hours of experience obtained over a 24-month period. The applicant must also complete 200 classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, including USPAP or its equivalent from an educational institution authorized under s. 475.451, F.S. Classroom hours are defined as 50 minutes out of each 60 minute segment.

Section 475.617(3), F.S., requires an applicant for certification as a general appraiser to present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board.[5] The applicant must have at least 3,000 hours of experience obtained over a 30-month period in real property appraisal and have successfully completed at least 300 classroom hours of academic courses from an educational institution authorized under s. 475.451, F.S.

Current law does not permit an applicant to meet the required classroom hours through online distance education.

III. Effect of Proposed Changes:

The bill amends section 475.617, F.S., to require that all academic education courses be completed in a classroom or through online distance education.

The board may determine that an online distance education course has met the same requirements as a classroom course if the International Distance Education Certification Center approves the course for its course design and delivery method. The Appraiser Qualifications Board (AQB) also must approve the course through its Course Approval Program.

The bill also amends section 475.617, F.S., to change the term "classroom hour" to "qualifying classroom hour." The term "qualifying classroom hour" is consistent with terms used throughout part II, chapter 475, F.S, and, according to the Department of Business and Professional Regulation, the terms used within the AQB criteria.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[4] See rule 61JI-10.003, F.A.C.
[5] See rule 61JI-10.004, F.A.C.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The International Distance Education Certification Center (IDECC) charges the following fees for distance learning providers seeking to certify distance learning courses:

Primary Providers
$825 for the first course
$625 for every other course taught via the same delivery method
$470 Recertification (every 3 years)
$75 Association of Real Estate License Law Officials (ARELLO) Certification add-on

Secondary Providers
$275 for the first course
$225 for every other course taught via the same delivery method
$195 Recertification (every 3 years)
$75 ARELLO Certification add-on

In addition, instructors associated with a certified distance learning course must have a Certified Distance Education Instructor (CDEI™) designation.[6] This designation requires two courses offered by the IDECC, at a cost of $200 each, and must be renewed via a refresher course every 3 years. The renewal fee is $195.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[6] *See:* https://www.idecc.org/content.cfm?page=CDEI) (Last visited March 27, 2013).

VIII. 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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LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 475.617, Florida Statutes, is amended to read:

475.617 Education and experience requirements.—

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 hours of approved qualifying education ~~academic~~ courses in subjects related to real estate appraisal, which must include coverage of the Uniform Standards of Professional Appraisal Practice, or its

equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 125 hours. All qualifying education courses may be completed through in-person classroom instruction or Internet-based instruction. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved on an hour-for-hour basis.

(2) To be certified as a residential appraiser, an applicant must present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe by rule education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on December 9, 2011 ~~February 20, 2004~~, by the Appraisal Qualifications Board of the Appraisal Foundation:

(a) Has at least 2,500 hours of experience obtained over a 24-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 200 classroom hours, inclusive of examination, of approved qualifying education ~~academic~~ courses in subjects related to real estate appraisal, which must include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal

organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. All qualifying education courses may be completed through in-person classroom instruction or Internet-based instruction. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(3) To be certified as a general appraiser, an applicant must present evidence satisfactory to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on December 9, 2011 ~~February 20, 2004~~, by the Appraisal Qualifications Board of the Appraisal Foundation:

(a) Has at least 3,000 hours of experience obtained over a 30-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 300 classroom hours, inclusive of examination, of approved qualifying education ~~academic~~ courses in subjects related to real estate appraisal, which must include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. All qualifying education courses may be completed

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through in-person classroom instruction or Internet-based instruction. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(4) A distance learning course may be approved by the board as an option to classroom hours for satisfactory completion of the academic courses required under this section. The schools authorized by this section have the option of providing classroom courses, distance learning courses, or both.

(a) A distance learning course must use a delivery method that is certified or approved by a board-authorized independent certifying organization.

(b) A distance learning course intended for use as academic education must include a written, closed-book final examination proctored by an appropriate individual who represents the public interest and is free from any conflicts of interest. As used in this paragraph, the term "written" refers to an exam that might be written on paper or administered electronically on a computer workstation or other device. Oral exams are not acceptable.

(5) ~~(4)~~ Each applicant must furnish, under oath, a detailed statement of the experience for each year of experience she or he claims. Upon request, the applicant shall furnish to the board, for its examination, copies of appraisal reports or file memoranda to support the claim for experience. Any appraisal report or file memoranda used to support a claim for experience must be maintained by the applicant for no less than 5 years after the date of certification.

(6) ~~(5)~~ The board may implement the provisions of this section by rule.

158474

Section 2. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to real estate appraisers; amending s. 475.617, F.S.; revising terminology applicable to education requirements for registered trainee appraisers, certified residential appraisers, and certified general appraisers; authorizing qualifying education courses completed by applicants for registration as a trainee or certification as a residential appraiser or general appraiser to be completed through Internet-based instruction; revising the education and experience requirements for certified residential appraisers and certified general appraisers according to certain real property appraiser qualification criteria adopted by the Appraiser Qualifications Board of the Appraisal Foundation on a specified date; authorizing the use of a distance learning course; providing requirements for a distance learning course and a final examination; providing an effective date.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 475.617, Florida Statutes, is amended to read:

475.617 Education and experience requirements.—

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 hours of approved qualifying education ~~academic~~ courses in subjects related to real estate appraisal, which must include coverage of the Uniform Standards of Professional Appraisal Practice, or its

equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 125 hours. All qualifying education courses may be completed through in-person classroom instruction or distance learning. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved on an hour-for-hour basis.

(2) To be certified as a residential appraiser, an applicant must present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe by rule education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on December 9, 2011 ~~February 20, 2004~~, by the Appraisal Qualifications Board of the Appraisal Foundation:

(a) Has at least 2,500 hours of experience obtained over a 24-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 200 classroom hours, inclusive of examination, of approved qualifying education ~~academic~~ courses in subjects related to real estate appraisal, which must include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal

43 organization, career center, accredited community college,
44 college, or university, state or federal agency or commission,
45 or proprietary real estate school that holds a permit pursuant
46 to s. 475.451. All qualifying education courses may be completed
47 through in-person classroom instruction or distance learning. A
48 classroom hour is defined as 50 minutes out of each 60-minute
49 segment. Past courses may be approved by the board and
50 substituted on an hour-for-hour basis.
51 (3) To be certified as a general appraiser, an applicant
52 must present evidence satisfactory to the board that she or he
53 has met the minimum education and experience requirements
54 prescribed by rule of the board. The board shall prescribe
55 education and experience requirements that meet or exceed the
56 following real property appraiser qualification criteria adopted
57 on December 9, 2011 ~~February 20, 2004~~, by the Appraisal
58 Qualifications Board of the Appraisal Foundation:
59 (a) Has at least 3,000 hours of experience obtained over a
60 30-month period in real property appraisal as defined by rule.
61 (b) Has successfully completed at least 300 classroom
62 hours, inclusive of examination, of approved qualifying
63 education ~~academic~~ courses in subjects related to real estate
64 appraisal, which must include a 15-hour National Uniform
65 Standards of Professional Appraisal Practice course, or its
66 equivalent, as established by rule of the board, from a
67 nationally recognized or state-recognized appraisal
68 organization, career center, accredited community college,
69 college, or university, state or federal agency or commission,
70 or proprietary real estate school that holds a permit pursuant
71 to s. 475.451. All qualifying education courses may be completed

649216

through in-person classroom instruction or distance learning. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(4) A distance learning course may be approved by the board as an option to classroom hours for satisfactory completion of the academic courses required under this section. The schools authorized by this section have the option of providing classroom courses, distance learning courses, or both.

(a) A distance learning course must use a delivery method that is certified or approved by a board-authorized independent certifying organization.

(b) A distance learning course intended for use as academic education must include a written, closed-book final examination proctored by an appropriate individual who represents the public interest and is free from any conflicts of interest. As used in this paragraph, the term "written" refers to an exam that might be written on paper or administered electronically on a computer workstation or other device. Oral exams are not acceptable.

(5) ~~(4)~~ Each applicant must furnish, under oath, a detailed statement of the experience for each year of experience she or he claims. Upon request, the applicant shall furnish to the board, for its examination, copies of appraisal reports or file memoranda to support the claim for experience. Any appraisal report or file memoranda used to support a claim for experience must be maintained by the applicant for no less than 5 years after the date of certification.

(6) ~~(5)~~ The board may implement the provisions of this section by rule.

649216

Section 2. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to real estate appraisers; amending s. 475.617, F.S.; revising terminology applicable to education requirements for registered trainee appraisers, certified residential appraisers, and certified general appraisers; authorizing qualifying education courses completed by applicants for registration as a trainee or certification as a residential appraiser or general appraiser to be completed through distance learning; revising the education and experience requirements for certified residential appraisers and certified general appraisers according to certain real property appraiser qualification criteria adopted by the Appraiser Qualifications Board of the Appraisal Foundation on a specified date; authorizing the use of a distance learning course; providing requirements for a distance learning course and a final examination; providing an effective date.

By Senator Hukill

8-01262A-13 20131398__

A bill to be entitled

An act relating to appraisers; amending s. 475.617, F.S.; defining a qualifying classroom hour; requiring all courses to be completed in a classroom or through an online course that has received certain approvals; providing an effective date.

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

Section 1. Section 475.617, Florida Statutes, is amended to read:

475.617 Education and experience requirements.—

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 hours of approved academic courses in subjects related to real estate appraisal, which must include coverage of the Uniform Standards of Professional Appraisal Practice, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 125 hours. A qualifying classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved on an hour-for-hour basis.

(2) To be certified as a residential appraiser, an applicant must present satisfactory evidence to the board that

8-01262A-13 20131398__

she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe by rule education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation:

(a) Has at least 2,500 hours of experience obtained over a 24-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 200 classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which must include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. A qualifying classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(3) To be certified as a general appraiser, an applicant must present evidence satisfactory to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation:

(a) Has at least 3,000 hours of experience obtained over a 30-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 300 classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which must include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. A qualifying classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(4) All academic education courses must be completed in a classroom or through online distance education. The board may find that an online distance education course meets the classroom hour requirement if the course has received approval from the International Distance Education Certification Center for the course design and delivery method and the approval of the Appraiser Qualifications Board through its Course Approval Program.

(5)~~(4)~~ Each applicant must furnish, under oath, a detailed statement of the experience for each year of experience she or he claims. Upon request, the applicant shall furnish to the board, for its examination, copies of appraisal reports or file memoranda to support the claim for experience. Any appraisal report or file memoranda used to support a claim for experience

must be maintained by the applicant for no less than 5 years after the date of certification.

(6)~~(5)~~ The board may implement the provisions of this section by rule.

Section 2. This act shall take effect July 1, 2013.

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 288
INTRODUCER:	Senator Bradley
SUBJECT:	Costs of Prosecution, Investigation, and Representation
DATE:	March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Favorable**
2.	Shankle	Cibula	JU	**Pre-meeting**
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

SB 288 adds costs of prosecution and costs of representation to the fees, costs, and penalties to be withheld from cash bond posted on behalf of a defendant. The bill provides clarification regarding the collection of cost payments in certain traffic cases. The bill also requires the assessment of costs of prosecution in juvenile delinquency proceedings.

This bill substantially amends the following sections of the Florida Statutes: 903.286, 938.27, and 985.032.

II. Present Situation:

Costs of Prosecution

Section 938.27, F.S., provides that convicted persons are liable for costs of prosecution at the rate of $50 in misdemeanor or criminal traffic offense cases and $100 in felony criminal cases, unless the prosecutor proves that costs are higher in the particular case before the court.[1] The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.[2]

Convicted persons are also liable for payment of investigative costs incurred by a law enforcement agency, fire department, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission.[3] Conviction, for this purpose,

[1] Section 938.27(8), F.S.
[2] *Id.*
[3] Section 938.27(1), F.S.

includes "a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld."[4]

Costs of Representation

Section 938.29, F.S., provides that convicted persons are liable for payment of the $50 public defender application fee under s. 27.52(1)(b), F.S., and attorney's fees and costs if he or she received assistance from the public defender's office, a special assistant public defender, the office of criminal conflict and civil regional counsel, or a private conflict attorney, or who has received due process services after being found indigent for costs.

Costs of representation may be imposed at the rate of $50 in misdemeanor or criminal traffic offense cases and $100 in felony criminal cases. The court may set a higher amount upon showing of sufficient proof of higher fees or costs incurred. The costs of representation are deposited into the Indigent Criminal Defense Trust Fund.[5]

The court may order payment of the assessed application fee and attorney's fees and costs as a condition of probation, of suspension of sentence, or of withholding the imposition of sentence.[6] The clerk within the county where the defendant was tried or received services from a public defender is responsible for enforcing, satisfying, compromising, settling, subordinating, releasing, or otherwise disposing of any debt or lien imposed.[7]

Clerks to Collect and Disburse Funds

Section 28.246(2), F.S., requires the clerk of the circuit court (clerk) to establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

The clerk may accept partial payments for all fees, charges, and costs in accordance with the terms of an established payment plan.[8] The clerk may enter into a payment plan when an individual is determined to be indigent for costs by the court.[9]

Criminal Traffic Case Disposition

The clerk of the court is authorized by s. 318.14, F.S., to dispose of certain misdemeanor criminal traffic violations in which the defendant shows the clerk that he or she is in compliance with the law under which the charge was made prior to the court date. Examples of these traffic offenses include operating a motor vehicle without a valid registration under s. 320.131, F.S., and presenting invalid proof of insurance under s. 316.646, F.S. The clerk is statutorily authorized to accept a nolo contendere plea, waive the misdemeanor fines, and assess costs listed in s. 318.14(10)(b), F.S.

[4] *Id.*
[5] Section 27.562, F.S.
[6] Section 938.29(1)(c), F.S.
[7] Section 938.29(3), F.S.
[8] Section 28.246(4), F.S.
[9] "A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12." Section 28.246(4), F.S.

Cash Bond Used to Pay Fines, Costs, and Fees

Section 903.286, F.S., authorizes the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent[10] to pay the following:

- Court fees;
- Court costs; and
- Criminal penalties.

If sufficient funds are not available to pay the above costs, the clerk will immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.

Clerks are not currently authorized to withhold costs of prosecution or costs of representation.

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above costs on behalf of the criminal defendant regardless of who posted the funds.

Delinquency Cases Exempt

Currently, juveniles who are adjudicated delinquent or who have had the adjudication of delinquency withheld are not required to pay the costs of prosecution although they can be required to pay for the costs of representation.[11] A lien-enforcement procedure is currently available which allows the clerk to collect the costs of representation from the parents or guardians of the child.[12]

III. Effect of Proposed Changes:

The bill adds the costs of prosecution and the costs of representation by the public defender to the list of costs a clerk is required to withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. If such payments are not made from the cash bond, the clerk is required to obtain payment from a defendant, or if sufficient funds are not available, require the defendant to enroll in a payment plan. Cash bond forms must display notice of the funds being subject to forfeiture for payment of costs of prosecution as well as other costs, fees, and fines.

The bill requires the clerk to collect and disburse costs of prosecution in all cases, regardless of whether the cases are disposed of before a judge in open court. These particular cases may include criminal traffic violations disposed of pursuant to s. 318.14(10), F.S.[13] (See the Technical Deficiencies section below.)

[10] Licensed under ch. 648, F.S.
[11] Sections 27.52 (6) and 938.29(2)(a)2., F.S.
[12] *Id.*
[13] In these cases, the defendant may elect to show proof of compliance to the clerk of the court and enter a plea of nolo contendere. The clerk is authorized by s. 318.14(10), F.S., to assess certain fees. The assessment and collection of costs of prosecution are not specified in s. 318.14(10), F.S. Although s. 938.27(6), F.S., requires the clerk to "collect and dispense

The bill also requires that costs of prosecution be assessed for juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. Although current law provides for a lien against the child's parents to aid in collecting costs of representation, there is no such provision in the bill for costs of prosecution.

The bill takes effect July 1, 2013.

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:

Costs of prosecution will be assessed by the court in delinquency cases, which is a new cost not previously assessed. This assessment may be paid by the delinquent child if he or she has the ability to pay.

C. Government Sector Impact:

This bill appears to have a positive fiscal impact on state attorneys and public defenders because:

1. The costs of prosecution and costs of representation will be withheld by the clerk from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. This provision is likely to result in a positive fiscal impact for state attorneys and public defenders.

2. The costs of prosecution will now be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely

cost payments in any case," which would include costs of prosecution and investigation listed in s. 938.27(8), F.S., state attorneys report that the costs are not being collected in the criminal traffic cases disposed of pursuant to ch. 318, F.S.

result in a positive fiscal impact as these costs were not assessed in these specific cases in the past.

3. The state attorney may experience a positive fiscal impact from the costs of prosecution collected by the clerks of court in certain traffic violation cases.

VI. Technical Deficiencies:

State attorneys have reported that costs of prosecution are not being collected in criminal traffic cases that are disposed of by the clerk of the court prior to a court appearance by the defendant as authorized in s. 318.14, F.S. If the bill is intended to address this issue, clarity could be gained by adding a cross-reference to s. 938.27(6), F.S., as amended by the bill, within s. 318.14(10), F.S.

VII. Related Issues:

None.

VIII. 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.

194054

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment

Delete line 30
and insert:

prosecution, costs of representation as provided by ss. 27.52 and 938.29,

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LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment

Delete line 38
and insert:

of prosecution, costs of representation as provided by ss. 27.52 and 938.29,

700548

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete line 131
and insert:

prosecution as provided in s. 938.27. A juvenile who is assessed such costs may satisfy them by performing community service.

Section 4. Paragraph (d) is added to subsection (1) of section 985.455, Florida Statutes, to read:

985.455 Other dispositional issues.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made

700548

at the disposition hearing:

(d) Upon a determination of the child's inability to pay, the court may order the child to perform community service in lieu of all court costs assessed against the delinquent child, including costs of prosecution, public defender application fees and costs of representation.

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

And the title is amended as follows:

Delete line 14

and insert:

or has adjudication of delinquency withheld; amending s. 985.455, F.S.; authorizing the court to order a child to perform community service in lieu of court costs assessed against the child; providing

385872

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Bradley) recommended the following:

Senate Substitute for Amendment (700548) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any

unpaid costs of prosecution, costs of representation as provided by ss. 27.52 and 938.29, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs of prosecution, costs of representation as provided by ss. 27.52 and 938.29, court fees, court costs, and criminal penalties, the clerk of the court shall immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246.

(2) All cash bond forms used in conjunction with the requirements of s. 903.09 must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk of the court for the payment of costs of prosecution, costs of representation as provided by ss. 27.52 and 938.29, court fees, court costs, and criminal penalties on behalf of the criminal defendant regardless of who posted the funds.

Section 2. Section 938.27, Florida Statutes, is amended to read:

938.27 Judgment for costs of prosecution and investigation ~~on conviction~~.—

(1) In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies. The court shall include these costs in every judgment rendered against the convicted person. For purposes of

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this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(2)(a) The court shall impose the costs of prosecution and investigation notwithstanding the defendant's present ability to pay. The court shall require the defendant to pay the costs within a specified period or pursuant to a payment plan under s. 28.246(4).

(b) The end of such period or the last such installment must not be later than:

1. The end of the period of probation or community control, if probation or community control is ordered;

2. Five years after the end of the term of imprisonment imposed, if the court does not order probation or community control; or

3. Five years after the date of sentencing in any other case.

However, the obligation to pay any unpaid amounts does not expire if not paid in full within the period specified in this paragraph.

(c) If not otherwise provided by the court under this section, costs must ~~shall~~ be paid immediately.

(3) If a defendant is placed on probation or community control, payment of any costs under this section shall be a condition of such probation or community control. The court may revoke probation or community control if the defendant fails to pay these costs.

(4) Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

(5) Any default in payment of costs may be collected by any means authorized by law for enforcement of a judgment.

(6) The clerk of the court shall collect and dispense cost payments in any case, regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law.

(7) Investigative costs that are recovered must ~~shall~~ be returned to the appropriate investigative agency that incurred the expense. Such costs include actual expenses incurred in conducting the investigation and prosecution of the criminal case; however, costs may also include the salaries of permanent employees. Any investigative costs recovered on behalf of a state agency must be remitted to the Department of Revenue for deposit in the agency operating trust fund, and a report of the payment must be sent to the agency, except that any investigative costs recovered on behalf of the Department of Law Enforcement must ~~shall~~ be deposited in the department's Forfeiture and Investigative Support Trust Fund under s. 943.362.

(8) Costs for the state attorney must ~~shall~~ be set in all cases at no less than $50 per case when a misdemeanor or


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criminal traffic offense is charged and no less than $100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred. Costs recovered on behalf of the state attorney under this section must ~~shall~~ be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.

Section 3. Section 985.032, Florida Statutes, is amended to read:

985.032 Legal representation for delinquency cases.—

(1) For cases arising under this chapter, the state attorney shall represent the state.

(2) A juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld shall be assessed costs of prosecution as provided in s. 938.27.

Section 4. Paragraph (d) is added to subsection (1) of section 985.455, Florida Statutes, to read:

985.455 Other dispositional issues.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing:

(d) Order the child, upon a determination of the child's inability to pay, to perform community service in lieu of all

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court costs assessed against the delinquent child, including costs of prosecution, public defender application fees, and costs of representation.

Section 5. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to costs of prosecution, investigation, and representation; amending s. 903.286, F.S.; providing for the withholding of unpaid costs of prosecution and representation from the return of a cash bond posted on behalf of a criminal defendant; requiring a notice on bond forms of such possible withholding; amending s. 938.27, F.S.; clarifying the types of cases that are subject to the collection and dispensing of cost payments by the clerk of the court; amending s. 985.032, F.S.; providing for assessment of costs of prosecution against a juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld; amending s. 985.455, F.S.; providing that a child adjudicated delinquent may perform community service in lieu of certain costs and fees; providing an effective date.

By Senator Bradley

7-00349A-13 2013288__

A bill to be entitled

An act relating to costs of prosecution, investigation, and representation; amending s. 903.286, F.S.; providing for the withholding of unpaid costs of prosecution and representation from the return of a cash bond posted on behalf of a criminal defendant; requiring a notice on bond forms of such possible withholding; amending s. 938.27, F.S.; clarifying the types of cases that are subject to the collection and dispensing of cost payments by the clerk of the court; amending s. 985.032, F.S.; providing for assessment of costs of prosecution against a juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld; providing an effective date.

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

Section 1. Section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any unpaid costs of prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs of

7-00349A-13 2013288__

prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties, the clerk of the court shall immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246.

(2) All cash bond forms used in conjunction with the requirements of s. 903.09 must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk of the court for the payment of costs of prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties on behalf of the criminal defendant regardless of who posted the funds.

Section 2. Section 938.27, Florida Statutes, is amended to read:

938.27 Judgment for costs of prosecution and investigation ~~on conviction~~.—

(1) In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(2)(a) The court shall impose the costs of prosecution and

investigation notwithstanding the defendant's present ability to pay. The court shall require the defendant to pay the costs within a specified period or pursuant to a payment plan under s. 28.246(4).

(b) The end of such period or the last such installment must not be later than:

1. The end of the period of probation or community control, if probation or community control is ordered;

2. Five years after the end of the term of imprisonment imposed, if the court does not order probation or community control; or

3. Five years after the date of sentencing in any other case.

However, the obligation to pay any unpaid amounts does not expire if not paid in full within the period specified in this paragraph.

(c) If not otherwise provided by the court under this section, costs must ~~shall~~ be paid immediately.

(3) If a defendant is placed on probation or community control, payment of any costs under this section shall be a condition of such probation or community control. The court may revoke probation or community control if the defendant fails to pay these costs.

(4) Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. The burden of demonstrating the financial resources of the defendant and the financial needs

of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

(5) Any default in payment of costs may be collected by any means authorized by law for enforcement of a judgment.

(6) The clerk of the court shall collect and dispense cost payments in any case regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law.

(7) Investigative costs that are recovered must ~~shall~~ be returned to the appropriate investigative agency that incurred the expense. Such costs include actual expenses incurred in conducting the investigation and prosecution of the criminal case; however, costs may also include the salaries of permanent employees. Any investigative costs recovered on behalf of a state agency must be remitted to the Department of Revenue for deposit in the agency operating trust fund, and a report of the payment must be sent to the agency, except that any investigative costs recovered on behalf of the Department of Law Enforcement must ~~shall~~ be deposited in the department's Forfeiture and Investigative Support Trust Fund under s. 943.362.

(8) Costs for the state attorney must ~~shall~~ be set in all cases at no less than $50 per case when a misdemeanor or criminal traffic offense is charged and no less than $100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred. Costs

recovered on behalf of the state attorney under this section must ~~shall~~ be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.

Section 3. Section 985.032, Florida Statutes, is amended to read:

985.032 Legal representation for delinquency cases.—

(1) For cases arising under this chapter, the state attorney shall represent the state.

(2) A juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld shall be assessed costs of prosecution as provided in s. 938.27.

Section 4. This act shall take effect July 1, 2013.

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:	SJR 570
INTRODUCER:	Senator Bradley and Senator Simmons
SUBJECT:	Revising Age Limits for Justices and Judges
DATE:	March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	**Pre-meeting**
2.			ACJ	
3.			AP	
4.			RC	
5.				
6.				

I. Summary:

SJR 570 proposes an amendment to the Florida Constitution which increases the general mandatory retirement age of judges and justices to age 75 from age 70. The amendment, however, applies to judges elected or appointed on or after January 1, 2014.

This joint resolution amends section 8, Article V of the Florida Constitution.

II. Present Situation:

Judicial Eligibility Requirements Generally

Most state constitutions prescribe eligibility requirements to serve as a judicial officer, including residence, age, and legal experience. Some states have no mandatory retirement age for judges, while other states' age limitation provisions range from 70 to 75 years of age.[1] In some states, the judicial eligibility requirements may vary depending on the court on which the judge serves, and a judge may be required to meet more stringent requirements if he or she is serving on an appellate court.[2]

[1] *See* Memorandum from John Sylvia of the West Virginia Legislative Auditor's Office, Performance Evaluation and Research Division to Honorable Edwin J. Bowman, Chairman (Jan. 5, 2005) (on file with the Senate Committee on Judiciary).

[2] G. Alan Tarr, *Designing an Appointive System: The Key Issues*, 34 FORDHAM URB. L.J. 291, 308 (Jan. 2007).

Florida Age Requirements for Judicial Office

Florida currently does not have a minimum age requirement for judicial office, but generally precludes a person from serving as a justice or judge of any court after attaining 70 years of age.[3] A justice or judge may serve after 70 years of age on a temporary assignment or to complete a term, one-half of which has been served.[4] Florida's previous constitution, the Constitution of 1885, did not provide a mandatory retirement age, but did require that justices and judges be at least 25 years old and attorneys at law.[5] This provision was removed from the Constitution effective in 1973 as part of a revision of Article V[6] and replaced with the current eligibility requirements, including the mandatory retirement age.

Constitutionality of Mandatory Retirement

A group of state court judges in Missouri challenged the Missouri Constitution's mandatory retirement provision, which required judges to retire at the age of 70.[7] The judges alleged that the provision, which was very similar to Florida's analogous requirement, violated the Federal Age Discrimination in Employment Act (ADEA)[8] and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.[9] The Court held that the ADEA excluded judges from its definition of employees because of their status as policymakers.[10] Additionally, the Court upheld Missouri's constitutional provision despite the judges' argument that it violated the Equal Protection Clause because it served the legitimate government purpose of enabling the people of Missouri to establish "a qualification for those who would be their judges."[11]

Constitutional Amendment Process

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the Constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.[12] Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.[13] If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first

[3] FLA. CONST. art. V, s. 8.
[4] *Id.*
[5] FLA. CONST. art. V, s. 3 (1885).
[6] SJR 52-D (1971), adopted in 1972 and effective Jan. 1, 1973.
[7] MO. CONST. art. V, s. 26.
[8] 29 U.S.C. ss. 621-34.
[9] *Gregory v. Ashcroft*, 501 U.S. 452, 456 (1991).
[10] *Id.* at 467.
[11] *Id.* at 473.
[12] FLA. CONST. art. XI, s. 1.
[13] FLA. CONST. art. XI, s. 5(a).

Monday in January following the election, or on such other date as may be specified in the amendment.[14]

III. Effect of Proposed Changes:

Senate Joint Resolution 570 proposes an amendment to Article V, section 8 of the Florida Constitution to increase the age at which a justice or judge may no longer serve in a judicial office. Under the joint resolution, a justice or judge may no longer serve after attaining the age of 75 rather than 70. However, a judge who attains the age of 75 years may continue to serve on a temporary assignment or to complete a judicial term.

The amendment applies to justices or judges who are elected or appointed on or after January 1, 2014. As such, a judge or justice may not be eligible to serve until age 75 if the judge or justice reaches age 70 before January 1, 2014, or the 2014 General Election, which will be held on November 4, 2014.

This joint resolution takes effect on January 1, 2014, and applies to justices or judges elected or appointed on or after that date.

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:

In order for the Legislature to submit SJR 570 to the voters for approval, the joint resolution must be agreed to by three-fifths of the membership of each house.[15] If SJR 570 is agreed to by the Legislature, it will be submitted to the voters at the 2014 General Election, which will be held on November 4, 2014. In order for SJR 570 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.[16]

[14] FLA. CONST. art. XI, s. 5(e).
[15] FLA. CONST. art. XI, s. 1.
[16] FLA. CONST. art. XI, s. 5(e).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Office of the State Courts Administrator, this joint resolution has no fiscal or workload impact on the judiciary.[17]

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.[18] Costs for advertising vary depending upon the length of the amendment.

VI. Technical Deficiencies:

Senate Joint Resolution 570 provides that it takes effect on January 1, 2014. Unless the amendment will be placed on a special election ballot, the amendment will be submitted to the electors at the 2014 General Election, which is scheduled for November 4, 2014. If retroactive application is not intended, the Legislature may wish to revise the effective date to be January 1, 2015.

VII. Related Issues:

None.

VIII. 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.

[17] Office of the State Courts Administrator, *2013 Judicial Impact Statement, SJR 570* (Mar. 5, 2013) (on file with the Senate Committee on Judiciary).
[18] FLA. CONST. art. XI, s. 5(d).

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LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with ballot amendment)

Delete line 46
and insert:
term and this section shall take effect January 1, 2015, and

====== B A L L O T S T A T E M E N T A M E N D M E N T ======
And the ballot statement is amended as follows:
Delete line 62
and insert:
proposed amendment takes effect January 1, 2015, and applies to

By Senator Bradley

7-00225-13 2013570__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 8 of Article V and the creation of a new section to Article XII of the State Constitution to increase the age after which a justice or judge may no longer serve in a judicial office, to provide for the amendment to apply to justices and judges appointed on or after a specified date, and to provide an effective date.

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

That the following amendment to Section 8 of Article V and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 8. Eligibility.—A ~~No~~ person is not ~~shall be~~ eligible for the office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. A ~~No~~ justice or judge may not ~~shall~~ serve after attaining the age of seventy-five ~~seventy~~ years except upon temporary assignment or to complete a term, one-half of which has been served. A ~~No~~ person is not eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. A ~~No~~

7-00225-13 2013570__

person is not eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a ~~no~~ person is not eligible for the office of county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a person is ~~shall be~~ eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or fewer ~~less~~ if the person is a member in good standing of the bar of Florida.

ARTICLE XII

SCHEDULE

Eligibility of justices and judges.—The amendment to Section 8 of Article V changing the age after which a justice or judge is no longer eligible for the office of justice or judge of any court except upon temporary assignment or to complete a term and this section shall take effect January 1, 2014, and apply to justices and judges elected or appointed on or after that date.

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

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTION 8

REVISING AGE LIMITS FOR JUSTICES AND JUDGES.—The State Constitution currently prohibits a justice or judge from serving in a judicial office after attaining the age of 70 years except upon temporary assignment or to complete a judicial term if one-half of the term has been served. This proposed amendment increases the age after which a justice or judge may no longer

serve to 75 years of age. However, a justice or judge who has attained the age of 75 years may continue to serve upon temporary assignment or to complete a judicial term. The proposed amendment takes effect January 1, 2014, and applies to justices or judges elected or appointed on or after that date.

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

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 590
INTRODUCER:	Senator Joyner
SUBJECT:	Fees and Costs Incurred in Guardianship Proceedings
DATE:	March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	**Pre-meeting**
2.			CF	
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

SB 590 revises various provisions relating to Florida's guardianship law. The bill:

- Allows courts, without the admission of expert witness testimony, to determine reasonable compensation for the guardian, guardian's attorney, a person employed by the guardian, or an attorney appointed to represent an alleged incapacitated person. However, expert testimony may be offered at the option of a person or party after giving notice to interested persons. If expert testimony is offered, a reasonable expert witness fee must be awarded by the court and paid from the assets of the ward.
- Grants the court discretion to appoint a guardian ad litem in any case in which a minor has a claim or settlement that exceeds $15,000, if it is necessary to protect the interests of the minor.
- Makes any settlement of a claim of a minor that exceeds $15,000 subject to the confidentiality provisions of Florida Guardianship Law.[1]
- Requires that the fees of a guardianship examining committee be paid upon court order as expert witness fees under s. 29.004(6), F.S., if the petition alleging incapacity is dismissed Section 29.004(6), F.S., authorizes courts to pay the fees of court-appointed experts from funds appropriated by the Legislature.
- Requires a petitioner found by a court to have filed a guardianship proceeding in bad faith to reimburse the state courts system for any amounts paid by a court to a committee.

[1] Chapter 744, F.S.

This bill substantially amends the following sections of the Florida Statutes: 744.108, 744.3025, and 744.331.

II. Present Situation:

Guardianship

Guardianships serve as a mechanism to protect vulnerable individuals in our society who do not have a family or loved one who is willing and able to manage their property or other personal matters. A guardian may be a court-appointed, surrogate decision-maker who makes personal or financial decisions for a minor or for an adult with mental or physical disabilities. A guardian may be described as a person "who has the legal authority and duty to care for another's person or property, esp[ecially] because of the other's infancy, incapacity, or disability."[2] Guardianships are governed completely and exclusively under statutes in Florida.[3]

Any adult may petition a court to initiate guardianship proceedings to determine the incapacity of any person.[4] An "incapacitated person" is a "person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person."[5]

A guardian is a court-appointed, surrogate decision-maker to make personal or financial decisions for a minor or an adult having mental or physical disabilities.[6] Under Florida law, a ward is defined as a person for whom a guardian has been appointed.[7]

The procedure to determine an alleged person's incapacity is prescribed by statute.[8] Any person may file, under oath, a petition in circuit court for determination of incapacity alleging that a person is incapacitated.[9] After a petition for determination of incapacity has been filed, a court must appoint an examining committee comprised of three health care professionals to examine and report the condition of the alleged incapacitated person.[10] If the examining committee determines that the alleged incapacitated person is not incapacitated, the court must dismiss the petition for determination of incapacity.[11] If the examining committee determines that the alleged incapacitated person is incapacitated, the court must hold a hearing on the petition. If after a hearing, the court determines that a person is incapacitated, the court must also find that alternatives to guardianship were considered and that no alternatives to guardianship will sufficiently address the problems of the incapacitated person and appoint a guardian.[12]

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[2] BLACK'S LAW DICTIONARY (9th ed. 2009).
[3] *Poling v. City Bank & Trust Co. of St. Petersburg*, 189 So. 2d 176, 182 (Fla 2d DCA 1966).
[4] Section 744.3201, F.S.
[5] Section 744.102(12), F.S.
[6] *See e.g.*, s. 744.102(9), F.S.
[7] Section 744.102(22), F.S.
[8] Section 744.331, F.S.
[9] *Id.* In Florida, circuit courts have exclusive jurisdiction of proceedings relating to the determination of incompetency. Section 26.012(2)(b), F.S.
[10] Section 744.331(3), F.S.
[11] Section 744.331(4), F.S.
[12] *See* s. 744.331(6)(b), F.S.

Attorney Fees and Costs Associated with Guardianship Administration

Section 744.108, F.S., outlines requirements for awarding of compensation to a guardian or attorney in connection with a guardianship. "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 for services rendered and reimbursement of costs incurred on behalf of the ward."[13] Similarly, s. 744.311(7), F.S., provides that any attorney appointed under s. 744.311(2), F.S., is entitled to a reasonable fee to be determined by the court.

Fees and costs incurred in determining compensation are part of the guardianship administration and are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.[14] The statute does not specifically address whether an attorney who has rendered services to a ward, a court-appointed counsel for the ward, is entitled to recover attorney fees and costs associated with proceedings to review and determine compensation.[15]

Additionally, it is unclear whether expert testimony is required to establish a reasonable fee for a guardian or an attorney. Section 744.108, is silent on the subject.[16] Practitioners report that many attorneys and judges interpret the current law as requiring testimony from an expert witness to establish a reasonable attorney fee unless a statute dispenses with that requirement.[17]

Cost considerations are a significant factor in many guardianships.[18] The requirement for expert testimony to be rendered at every hearing for a determination of interim guardian's fees or attorney fees adds a layer of costs that depletes the ward's estate.[19] Practitioners report that the judiciary is capable of determining a reasonable fee without expert testimony in the vast majority of cases.[20]

Settlements

Florida's public policy favors settlement.[21] A settlement agreement is a contract.[22] As a contract between bargaining parties, "[s]ettlements are highly favored and will be enforced whenever possible."[23] Generally, an adult who has not been found to lack capacity or any entity may settle a legal claim and may keep the settlement confidential. In situations where parties settle their disputes based on a filed civil action, generally, the agreement is not required to be filed with the

[13] Section 744.108(1), F.S.
[14] Section 744.108(8), F.S.
[15] Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: Proposed Revisions to Section 744.108, F.S., Relating to Expert Testimony in Determining Attorney Fees and Guardian's Fees*. (2013) (on file with the Senate Committee on Judiciary).
[16] *Id.*
[17] *Id.* (citing *Shwartz, Gold & Cohen, P.A. v. Streicher*, 549 So. 2d 1044 (Fla. 4th DCA 1989); *In re Estate of Cordiner v. Evans*, 497 So. 2d 920 (Fla. 2d DCA 1986); *Clark v. Squire, Sanders & Dempsey*, 495 So. 2d 264 (Fla. 3d DCA 1986).
[18] Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* at note 16.
[19] *Id.*
[20] *Id.*
[21] *Saleeby v. Rocky Elson Construction, Inc.*, 3 So. 3d 1078 (Fla. 2009).
[22] *Lazzaro v. Miller & Solomon General Contractors, Inc.*, 48 So. 3d 974 (Fla. 4th DCA 2010).
[23] *Hanson v. Maxfield*, 23 So. 3d 736, 739 (1st DCA 2009) (quoting *Robbie v. City of Miami*, 469 So. 2d 1384, 1385 (Fla. 1985)).

court, and therefore does not become a public record.[24] In contrast, a *minor or ward under a guardianship* may not bring or settle a personal injury claim or other legal action without court approval.[25] If a minor or incapacitated person has a guardian or other legal representative, that guardian or legal representative may sue or defend any legal action.[26] If the minor needs a guardian of the person, the guardian will be appointed as a plenary guardian without an adjudication of incapacity.[27] A minor's parent or guardian ad litem may bring an action on behalf of the minor, depending on the amount of the claim.[28] On behalf of a ward, a natural guardian may settle and consummate any settlement claim or cause of action that does not exceed $15,000.[29] Section 744.387(3)(a), F.S., provides that:

> [n]o settlement after an action has been commenced by or on behalf of a [minor] ward shall be effective unless approved by the court having jurisdiction of the action.[30]

A court may disapprove a settlement if it finds that it is not in the best interests of the minor. Under s. 744.3025, F.S., the guardian of a minor who is negotiating a settlement in excess of $15,000 with other parties must appear first before the court and obtain the court's approval of the settlement. Under s. 744.3025(1)(b), F.S., the courts are required to appoint a guardian ad litem for settlements exceeding $50,000; unless a guardian ad litem having no potential interest adverse to the minor has previously been appointed. The duty of the guardian is to protect the minor's interests as described in the Florida Probate Rules.[31]

Examining Committee

Within 5 days after a petition for determination of incapacity has been filed, a court must appoint a three-member examining committee.[32] One member must be a psychiatrist or other physician. The remaining members must be either a psychologist; gerontologist; another psychiatrist or other physician; a registered nurse; nurse practitioner; licensed social worker; a person with an advanced degree in gerontology from an accredited institution of higher education; or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion.[33] One of the members of the committee must have knowledge of the type of incapacity alleged in the petition.[34] The clerk of the court must send notice of appointment to each person appointed to the examining committee no later than 3 days after the court's appointment.[35] Examining committee members must also complete 4 hours

[24] Correspondence with attorneys in the Real Property, Probate, and Trust Law Section of The Florida Bar. *Also see*, Rule 1.442(d) Fla. R.Civ.P. ("A proposal shall be served on the party or parties to whom it is made but shall not be filed unless necessary to enforce the provisions of this rule.").
[25] Sections 744.301 and 744.387(2), F.S.
[26] Henry P. Trawick Jr., *Trawick's Florida Practice and Procedure*, s. 4:5 (2007 edition).
[27] Section 744.361(1), F.S.
[28] Sections 744.301 and 744.387(2), F.
[29] Sections 744.387(2) and (3), F.S.
[30] See also s. 768.23 and s. 768.25.
[31] Section 744.3025(1)(d), F.S.
[32] Section 744.331(3)(a), F.S.
[33] *Id.*
[34] *Id*
[35] *Id.*

of initial training and 2 hours of continuing education during each 2-year period after the initial training.[36]

The written report of each member of the examining committee is "an essential element, but not necessarily the only element used [by a court] in making a capacity or guardianship decision."[37] Each committee member's written report must among other items include an evaluation of the alleged incapacitated person's ability to retain his or her rights.[38]

Each member of the examining committee must examine the person and determine the alleged incapacitated person's ability to exercise rights specified in s. 744.3215, F.S.[39]

Rights that may be removed from a person by an order determining incapacity but not delegated to a guardian include the right:

- To vote.
- To personally apply for governmental benefits.
- To have a driver's license.
- To travel.
- To seek or retain employment.[40]

Because the law presumes one has capacity, the guardian of the person may exercise only those rights which have been removed by a court.[41] Rights that may be removed from a person by an order determining incapacity and which may be delegated to the guardian include the right:

- To contract.
- To sue and defend lawsuits.
- To apply for governmental benefits.
- To manage property or to make any gift or disposition of property.
- To determine his or her residence.
- To consent to medical and mental health treatment.
- To make decisions about his or her social environment or other social aspects of his or her life.[42]

Section 744.3215(4), F.S., also outlines certain rights that may not be delegated to a guardian without first obtaining specific authority from a court.

The written report of each member of the examining committee must also describe any matters "with respect to which the person lacks the capacity to exercise rights, the extent of that

[36] Section 744.331(3)(d), F.S.
[37] Section 744.331(3)(f), F.S.
[38] Section 744.331(3)(g), F.S. Such rights include " the rights to marry; vote; contract; manage or dispose of property; have a driver's license; determine his or her residence; consent to medical treatment; and make decisions affecting her or his social environment." *Id.*
[39] Section 744.331(3)(e), F.S.
[40] Section 744.3215(2), F.S.
[41] See s. 744.3215(3), F.S.
[42] Section 744.3215(3), F.S.

incapacity, and the factual basis for the determination that the person lacks that capacity."[43] Additionally, there is no right to an evidentiary hearing to challenge the opinions of the examining committee findings when the committee has concluded that the subject of the incapacity hearing is not incapacitated.[44] A copy of each committee member's report must be served on the petitioner and the attorney for the alleged incapacitated person within 3 days after the report is filed with the court.[45]

In construing the provisions regarding the examining committee's reports, Florida district courts of appeal have held that trial courts need only consider the reports of the examining committee.[46] If a majority of the examining committee members conclude that the alleged incapacitated person is not incapacitated, the court must dismiss the petition.[47] Florida courts have held that "where a statute prescribes a certain method of [determining a person's competency], the statute must be strictly followed."[48]

Section 744.331(7), F.S., states that the examining committee and any attorney appointed to represent the person who is facing an incapacity petition is entitled to reasonable fees to be determined by the court.[49] Section 744.331(7)(b), F.S., provides that the examining committee fees are paid from the property of the incapacitated ward or if the ward is indigent from the state. If the alleged incapacitated person, who is subject to the examination pursuant to a petition for incapacity, is found to have capacity or the petition is dismissed, it is unclear which party is responsible for the payment of the examining committee fees.[50] Section 744.331(7)(c), F.S., specifies that if the court finds the petition to have been filed in bad faith, the court may, in its discretion assess court costs and attorney fees against the petitioner.

Courts acknowledge that a gap exists in s. 744.331(7), F.S., as to who should be responsible for payment of the examining committee fees where the guardianship petition is dismissed or denied.[51] Many courts are already using another funding source to address the issue and it is also

[43] Section 744.331(3)(g)4., F.S.
[44] *Levine v. Levine*, 4 So. 3d 730, 731 (Fla. 5th DCA 2009).
[45] Section 744.331(3)(h), F.S.
[46] See *Rothman v. Rothman*, 93 So. 3d 1052, 1054 (Fla. 4th DCA) (citing *Faulkner v. Faulkner*, 65 So. 3d 1167, 1168 (Fla. 1st DCA 2011) ('"If the majority of the committee determines that the alleged incapacitated person is not incapacitated, the court must dismiss the petition to determine incapacity."'); *Levine v. Levine*, 4 So. 3d 730, 731 (Fla. 5th DCA 2009) (rejecting a request for an evidentiary hearing to challenge the opinion of the examining committee); and *Mathes v. Huelsman*, 743 So. 2d 626, 627 (Fla. 2d DCA 1999) ('"[O]nce the examining committee concluded that Mathes [the alleged incapacitated person] had full capacity, the trial court should have dismissed the petition to determine incapacity and the petition for appointment of a guardian."').
[47] Section 744.331(4), F.S.
[48] *Rothman* 93 So. 3d 1052, 1054 (Fla. 4th DCA 2012). *See also In re Keene*, 343 So. 2d 916 (Fla. 4th DCA 1977).
[49] *See also* s. 744.108(1), F.S., which provides that "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 for services rendered and reimbursement of costs incurred on behalf of the ward." Section 744.108(8), F.S., states that "[w]hen court proceedings are instituted to review or determine a guardian's or an attorney's fees under subsection (2), such proceedings are part of the guardianship administration process and the costs, including fees for the guardian's attorney, shall be determined by the court and paid from the assets of the guardianship estate unless the court finds the requested compensation under subsection (2) to be substantially unreasonable.
[50] See section 744.331(7), F.S.
[51] *Faulkner v. Faulkner*, 65 So.3d 1167, 1169 (Fla. 1st DCA 2011) (citing *Ehrlich v. Severson*, 985 So. 2d 639, 640 (Fla. 4th DCA 2008); and Levine v. Levine, 4 So. 3d 730, 731 (Fla. 5th DCA 2009)).

unknown how many proceedings result in a dismissal of the guardianship petition.[52] Court-appointed attorney fees and examining committee fees are paid from a ward's assets unless the ward is indigent or a party is found to have bad faith in bringing the petition to determine incapacity.[53] There is anecdotal information that the number of guardianship petitions that are dismissed is relatively small.[54] Some legal scholars argue that the examining committee should be paid from expert witness fees under s. 29.004(6), F.S., which awards fees to court appointed experts.[55]

III. Effect of Proposed Changes:

Attorney Fees and Costs Associated with Guardianship Administration

The bill amends s. 744.108, F.S., to allow courts to determine reasonable compensation for the guardian, guardian's attorney, a person employed by the guardian, or an attorney appointed to represent an alleged incapacitated person without the assistance of expert testimony.[56] However, expert testimony may be offered by any person or party after giving notice to interested persons. If expert testimony is offered, a reasonable expert witness fee must be awarded by the court and paid from the assets of the ward.[57]

Claims of Minors

The bill amends s. 744.3025(1), F.S., to grant the court discretion to appoint a guardian ad litem in any case in which a minor has a claim or settlement that exceeds $15,000.

The bill additionally provides that any settlement of a claim of a minor that exceeds $15,000 is subject to the confidentiality provisions of ch. 744, F.S.[58]

Fees of the Examining Committee

The bill provides that the fees of the examining committee shall be paid upon court order as expert witness fees under s. 29.004(6), F.S. Section 29.004(6), F.S., authorizes a court to pay court-appointed experts from funds appropriated by the Legislature. Additionally, the bill provides that if the court finds that a petitioner has filed a guardianship proceeding in bad faith,

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[52] Office of the State Courts Administrator, *2013 Judicial Impact Statement, SB 590* (Mar. 12, 2013) (on file with the Senate Committee on Judiciary).
[53] Section 744.331(7), F.S.
[54] Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper on Proposed Revisions to Section 744.337(7), F.S., Relating to Compensation of the Examining Committee in Incapacity Proceedings*, (2013).
[55] *Id.*
[56] An attorney appointed under s. 744.331(2), F.S.
[57] This provision is derived from and similar to s. 733.6175(4), F.S., which reads: "The court may determine reasonable compensation for the personal representative or any person employed by the personal representative without receiving expert testimony. Any party may offer expert testimony after notice to interested persons. If expert testimony is offered, a reasonable expert witness fee shall be awarded by the court and paid from the assets of the estate. The court shall direct from what part of the estate the fee shall be paid."
[58] The effect of this provision may not be clear because no provision exists in ch. 744, F.S., which provides for the confidentiality of a settlement of a minor. Senate Bill 590 appears to be related to SB 610, which would create a public records exemption for certain court records relating to the settlement of a ward's or minor's claim.

the petitioners must reimburse the state courts system for any amounts paid by court for the committee through the expert witness fees.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The costs to guardianship estates may be reduced to the extent that fees may be determined by a court without the admission of expert witness testimony for the guardian, the guardian's attorneys, persons employed by the guardian, or an appointed attorney.

C. Government Sector Impact:

The Office of the State Courts Administrator completed a judicial impact statement for the bill. The office estimates that the bill will have a fiscal impact for the payment by the state courts system of examining committee fees for non-indigent wards upon the dismissal of a proceeding to determine incapacity. Due to the lack of data on the number of such dismissals the actual fiscal impact is not known.[59] The Office of the State Courts Administrator, however, does not expect the fiscal impact from the legislation to be significant.

The Office of the State Courts Administrator reports that any new requirement to pay expenses from the due process funds of the state courts system, absent an increase in due process appropriations, could place additional pressure on the availability of such funds.

[59] Office of the State Courts Administrator, *2013 Judicial Impact Statement, SB 590* (Mar. 12, 2013) *supra* at note 52.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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.

By Senator Joyner

19-00227A-13 2013590__

A bill to be entitled

An act relating to fees and costs incurred in guardianship proceedings; amending s. 744.108, F.S.; providing that fees and costs incurred by an attorney who has rendered services to a ward in compensation proceedings are payable from guardianship assets; providing that expert testimony is unnecessary in proceedings to determine compensation for an attorney or guardian; amending s. 744.3025, F.S.; providing that a court may appoint a guardian ad litem to a minor if necessary to protect the minor's interests in a settlement; providing that a settlement of a minor's claim is subject to certain confidentiality provisions; amending s. 744.331, F.S.; directing that the examining committee be paid from state funds as court-appointed expert witnesses if a petition for incapacity is dismissed; requiring that a petitioner reimburse the state for expert witness fees if the court finds the petition to have been filed in bad faith; providing an effective date.

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

Section 1. Subsection (8) of section 744.108, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

744.108 Guardian's and attorney's fees and expenses.—

(8) When court proceedings are instituted to review or determine a guardian's or an attorney's fees under subsection

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19-00227A-13 2013590__

(2), such proceedings are part of the guardianship administration process and the costs, including costs and attorney fees for the guardian's attorney, an attorney appointed under subsection (2) of s. 744.331, or an attorney who rendered services to the ward, shall be determined by the court and paid from the assets of the guardianship estate unless the court finds the requested compensation under subsection (2) to be substantially unreasonable.

(9) The court may determine reasonable compensation for the guardian, the guardian's attorney, a person employed by the guardian, an attorney appointed under subsection (2) of s. 744.331, or an attorney who has rendered services to the ward without receiving expert testimony. Any person or party may offer expert testimony after giving notice to interested persons. If expert testimony is offered, a reasonable expert witness fee shall be awarded by the court and paid from the assets of the guardianship estate.

Section 2. Section 744.3025, Florida Statutes, is amended to read:

744.3025 Claims of minors.—

(1)(a) The court may appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's portion of the claim in any case in which a minor has a claim for personal injury, property damage, wrongful death, or other cause of action in which the gross settlement of the claim exceeds $15,000 if the court believes a guardian ad litem is necessary to protect the interests of the minor.

(b) Except as provided in paragraph (e), the court shall appoint a guardian ad litem to represent the minor's interest

before approving a settlement of the minor's claim in any case in which the gross settlement involving a minor equals or exceeds $50,000.

(c) The appointment of the guardian ad litem must be without the necessity of bond or notice.

(d) The duty of the guardian ad litem is to protect the minor's interests as described in the Florida Probate Rules.

(e) A court need not appoint a guardian ad litem for the minor if a guardian of the minor has previously been appointed and that guardian has no potential adverse interest to the minor. ~~A court may appoint a guardian ad litem if the court believes a guardian ad litem is necessary to protect the interests of the minor.~~

(2) Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.

(3) Any settlement of a claim pursuant to this section is subject to the confidentiality provisions of this chapter.

Section 3. Paragraph (c) of subsection (7) of section 744.331, Florida Statutes, is amended to read:

744.331 Procedures to determine incapacity.—

(7) FEES.—

(c) If the petition is dismissed:~~,~~

1. The fees of the examining committee shall be paid upon court order as expert witness fees under s. 29.004(6).

2. Costs and attorney ~~attorney's~~ fees of the proceeding may be assessed against the petitioner if the court finds the petition to have been filed in bad faith. If the court finds bad faith under this subparagraph, the petitioner shall reimburse

the state courts system for any amounts paid under subparagraph 1.

Section 4. This act shall take effect upon becoming law and shall apply to all proceedings pending on that date.

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 986
INTRODUCER:	Senator Soto
SUBJECT:	Requirements for Driver Licenses
DATE:	March 29, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Eichin	TR	**Favorable**
2.	Brown	Cibula	JU	**Pre-meeting**
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 986 amends s. 322.08(2)(c), F.S., to include a notice of an approved application for Deferred Action for Childhood Arrivals as one of the documents acceptable for proving identity when applying for a driver license.

This bill substantially amends s. 322.08, Florida Statutes.

The bill reenacts the following sections of the Florida Statutes: 322.17(3), 322.18(2)(d), 322.18(4)(c), and 322.19(4).

II. Present Situation:

Proof of Identity Requirements for Driver License Application

Section 322.08, F.S., provides requirements for the issuance of a driver license, one of which is proof of an applicant's identity. Paragraph (c) of subsection (2) of s. 322.08, F.S., lists the documents that an applicant may use to prove his or her identity. An applicant may prove identity by producing one of the following:

1. A driver license issued by another jurisdiction that requires substantially similar proof of identity;
2. A certified copy of a United States (U.S.) birth certificate;
3. A valid U.S. passport;
4. A naturalization certificate issued by the U.S. Department of Homeland Security (DHS);
5. A valid alien registration receipt card (commonly known as a "green card");

6. A Consular Report of Birth Abroad from the U.S. Department of State;
7. An unexpired employment authorization card issued by the U.S. Department of Homeland Security (DHS); or
8. Proof of nonimmigrant classification provided by the U.S. DHS in the form of at least one of the following:
    a. A notice of hearing from an immigration court scheduling a hearing on any proceeding;
    b. A notice from the Board of Immigration Appeals acknowledging pendency of an appeal;
    c. A notice of approval of an application for adjustment of status issued by the U.S. Bureau of Citizenship and Immigration Status (USCIS);
    d. An official document issued by the USCIS confirming a petition for asylum or refugee status;
    e. A notice of action issued by the USCIS transferring any pending matter to this state;
    f. An order of an immigration judge or officer authorizing the person to live and work in the U.S., such as for asylum;
    g. Evidence that an application is pending for adjustment of status to that of an alien lawfully admitted for permanent residence or conditional permanent resident status in the U.S., if a visa number is available having a current priority date for processing by the USCIS; and
    h. An unexpired foreign passport with an unexpired U.S. Visa attached, accompanied by an approved I-94, documenting the most recent U.S. entry.

Deferred Action for Childhood Arrivals (DACA)

On June 15, 2012, the DHS announced that it would extend temporary safety from deportation along with work authorization to certain individuals who had come to the U.S. as children.[1] The Deferred Action for Childhood Arrivals policy offers "deferred action," to this population on the basis that the DHS considers them a low priority for immigration enforcement. The DHS reserves the right to revoke deferred action at any time. Deferred action does not provide lawful immigration status or a path to a green card or citizenship.[2]

An individual may request consideration of deferred action for childhood arrivals if he or she:

- Was younger than 31 years old as of June 15, 2012;
- Came to the United States before turning 16 years old;
- Has continuously resided in the U.S. since June 15, 2007, up to the date of the application for deferred action;

[1] Koh, Jennifer Lee, *Waiving Due Process (Goodbye); Stipulated Orders of Removal and the Crisis in Immigration Adjudication*, 91 N. C. L. Rev. 475, FN 348 (Jan. 2013).
[2] USCIS, *Consideration of Deferred Action for Childhood Arrivals Process, available at* http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f2ef2f19470f7310VgnVCM100000082ca60aRCRD&vgnextchannel=f2ef2f19470f7310VgnVCM100000082ca60aRCRD (last visited March 28, 2013).

- Was physically present in the U.S. on June 15, 2012, and at the time of making their request for consideration of deferred action with USCIS;
- Entered without inspection before June 15, 2012, or lawful immigration status expired as of June 15, 2012;
- Is currently in school, graduated or obtained a certificate of completion from high school, obtained a general education development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
- Has not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and does not otherwise pose a public safety or security threat.[3]

Requests for deferred action are authorized only for immigrants who are 15 years old or older, unless they are currently in removal proceedings or have a final order of removal or voluntary departure, in which case they may apply if they are under age 15.

Deferred action is granted for a 2-year period, and recipients may request renewal. According to DHS, individuals are eligible for future renewals of deferred action as long as they were under the age of 31 on June 15, 2012.

According to the DHSMV, persons who have been approved for DACA are currently not considered eligible for a driver license based on the approved application alone. Rather, once a person is approved for deferred action, they become eligible for an employment eligibility card. Once the person receives the employment authorization card, DHSMV will issue a driver license or state identification card.

III. Effect of Proposed Changes:

The bill amends s. 322.08(2)(c), F.S., to include a notice of an approved application for Deferred Action for Childhood Arrivals as an acceptable form of identification when applying for a driver license. According to the DHSMV, the majority of those approved for deferred action status also receive an employment authorization card from DHS, which is itself acceptable proof of identification for driver license applicants. Therefore, the impact of this bill is negligible since this population of people already has a legal path to a driver license.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[3] *Id*.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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.

By Senator Soto

14-01440-13 2013986__

A bill to be entitled

An act relating to requirements for driver licenses; amending s. 322.08, F.S.; including notice of the approval of an application for Deferred Action for Childhood Arrivals status issued by the United States Citizenship and Immigration Services as valid proof of identity for purposes of applying for a driver license; reenacting ss. 322.17(3), 322.18(2)(d) and (4)(c), and 322.19(4), F.S., relating to conditions and limitations with respect to obtaining a duplicate or replacement instruction permit or driver license, expiration of and renewal of a driver license, and change of name or address on a driver license for licensees who establish their identity in a specified manner, to incorporate the amendments made by the act to s. 322.08, F.S., in references thereto; providing an effective date.

WHEREAS, over the past 3 years, the Obama administration has undertaken an unprecedented effort to transform the immigration enforcement system into one that focuses on public safety, border security, and the integrity of the immigration system, and

WHEREAS, as the United States Department of Homeland Security continues to focus its enforcement resources on the removal of individuals who pose a danger to national security or a risk to public safety, including individuals convicted of crimes with particular emphasis on violent criminals, felons, and repeat offenders, the United States Department of Homeland

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Security intends to exercise prosecutorial discretion as appropriate to ensure that enforcement resources are not expended on low priority cases, such as individuals who came to the United States as children and meet other key guidelines, and

WHEREAS, individuals who demonstrate that they meet specified guidelines established by the department may request consideration under the Deferred Action for Childhood Arrivals program for a period of 2 years, subject to renewal, and may be eligible for employment authorization, and

WHEREAS, an individual may request consideration under the Deferred Action for Childhood Arrivals program if he or she was under the age of 31 as of June 15, 2012; came to the United States before reaching his or her 16th birthday; has continuously resided in the United States since June 15, 2007; was physically present in the United States on June 15, 2012, and at the time of making his or her request for consideration of deferred action with the United States Citizenship and Immigration Services; entered the United States without inspection before June 15, 2012, or experienced expiration of his or her lawful immigration status as of June 15, 2012; is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and has not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety, NOW, THEREFORE,

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

Section 1. Paragraph (c) of subsection (2) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license; requirements for license and identification card forms.—

(2) Each such application shall include the following information regarding the applicant:

(c) Proof of identity satisfactory to the department. Such proof must include one of the following documents issued to the applicant:

1. A driver license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required under subparagraph 2., subparagraph 3., subparagraph 4., subparagraph 5., subparagraph 6., subparagraph 7., or subparagraph 8.;

2. A certified copy of a United States birth certificate;

3. A valid, unexpired United States passport;

4. A naturalization certificate issued by the United States Department of Homeland Security;

5. A valid, unexpired alien registration receipt card (green card);

6. A Consular Report of Birth Abroad provided by the United States Department of State;

7. An unexpired employment authorization card issued by the United States Department of Homeland Security; or

8. Proof of nonimmigrant classification provided by the United States Department of Homeland Security, for an original driver license. In order to prove nonimmigrant classification,

an applicant must provide at least one of the following documents. In addition, the department may require applicants to produce United States Department of Homeland Security documents for the sole purpose of establishing the maintenance of, or efforts to maintain, continuous lawful presence:

a. A notice of hearing from an immigration court scheduling a hearing on any proceeding.

b. A notice from the Board of Immigration Appeals acknowledging pendency of an appeal.

c. A notice of the approval of an application for adjustment of status issued by the United States Bureau of Citizenship and Immigration Services.

d. An official documentation confirming the filing of a petition for asylum or refugee status or any other relief issued by the United States Bureau of Citizenship and Immigration Services.

e. A notice of action transferring any pending matter from another jurisdiction to this state issued by the United States Bureau of Citizenship and Immigration Services.

f. An order of an immigration judge or immigration officer granting relief that authorizes the alien to live and work in the United States, including, but not limited to, asylum.

g. Evidence that an application is pending for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States, if a visa number is available having a current priority date for processing by the United States Bureau of Citizenship and Immigration Services.

h. On or after January 1, 2010, an unexpired foreign

passport with an unexpired United States Visa affixed, accompanied by an approved I-94, documenting the most recent admittance into the United States.

i. A notice of the approval of an application for Deferred Action for Childhood Arrivals status issued by the United States Citizenship and Immigration Services.

A driver license or temporary permit issued based on documents required in subparagraph 7. or subparagraph 8. is valid for a period not to exceed the expiration date of the document presented or 1 year.

Section 2. For the purpose of incorporating the amendment made by this act to section 322.08, Florida Statutes, in references thereto, subsection (3) of section 322.17, Florida Statutes, is reenacted to read:

322.17 Replacement licenses and permits.—

(3) Notwithstanding any other provisions of this chapter, if a licensee establishes his or her identity for a driver's license using an identification document authorized under s. 322.08(2)(c)7. or 8., the licensee may not obtain a duplicate or replacement instruction permit or driver's license except in person and upon submission of an identification document authorized under s. 322.08(2)(c)7. or 8.

Section 3. For the purpose of incorporating the amendment made by this act to section 322.08, Florida Statutes, in references thereto, paragraph (d) of subsection (2) and paragraph (c) of subsection (4) of section 322.18, Florida Statutes, are reenacted to read:

322.18 Original applications, licenses, and renewals;

expiration of licenses; delinquent licenses.—

(2) Each applicant who is entitled to the issuance of a driver's license, as provided in this section, shall be issued a driver's license, as follows:

(d) Notwithstanding any other provision of this chapter, if an applicant establishes his or her identity for a driver's license using a document authorized in s. 322.08(2)(c)7. or 8., the driver's license shall expire 1 year after the date of issuance or upon the expiration date cited on the United States Department of Homeland Security documents, whichever date first occurs.

(4)

(c) Notwithstanding any other provision of this chapter, if a licensee establishes his or her identity for a driver's license using an identification document authorized under s. 322.08(2)(c)7. or 8., the licensee may not renew the driver's license except in person and upon submission of an identification document authorized under s. 322.08(2)(c)7. or 8. A driver's license renewed under this paragraph expires 1 year after the date of issuance or upon the expiration date cited on the United States Department of Homeland Security documents, whichever date first occurs.

Section 4. For the purpose of incorporating the amendment made by this act to section 322.08, Florida Statutes, in references thereto, subsection (4) of section 322.19, Florida Statutes, is reenacted to read:

322.19 Change of address or name.—

(4) Notwithstanding any other provision of this chapter, if a licensee established his or her identity for a driver's

license using an identification document authorized under s. 322.08(2)(c)7. or 8., the licensee may not change his or her name or address except in person and upon submission of an identification document authorized under s. 322.08(2)(c)7. or 8.

Section 5. This act shall take effect July 1, 2013.

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 52
INTRODUCER:	Committee on Communications, Energy, and Public Utilities; Committee on Transportation; Senator Detert and others
SUBJECT:	Use of Wireless Communications Devices While Driving
DATE:	April 5, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	**Fav/CS**
2.	Caldwell	Caldwell	CU	**Fav/CS**
3.	Munroe	Cibula	JU	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 52 creates the "Florida Ban on Texting While Driving Law," modeled after a sample law developed by the United States Department of Transportation (USDOT) and a cross-section of safety and industry organizations. The bill prohibits the operation of a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other text in a handheld wireless communication device, or sending or reading data in the device, for the purpose of non-voice interpersonal communication. The bill makes exceptions for emergency workers performing official duties, reporting emergencies or suspicious activities, and for receiving various types of navigation information, emergency traffic data, radio broadcasts, and autonomous vehicles. The bill also makes an exception for interpersonal communications that can be conducted without manually typing the message or without reading the message.

The prohibition is enforceable as a secondary offense. A first violation is punishable as a nonmoving violation, with a fine of $30 plus court costs that vary by county. A second violation committed within 5 years after the first is a moving violation that is punishable by a $60 fine plus court costs.

In addition to the fines, a violation of the unlawful use of a cellphone which results in a crash will result in 6 points added to the offender's driver license record and the unlawful use of a cell phone while committing a moving violation within a school safety zone will result in an 2 points added to the offender's driver license record in addition to the points for the moving violation.

This bill creates s. 316.305, F.S., and substantially amends s. 322.27, F.S.

I. Present Situation:

Laws in other states

Public concern over distracted driving has resulted in a number of jurisdictions making illegal the use of a hand-held cellular telephone for talking or texting while driving. In November 2001, New York became the first state to prohibit drivers from using a hand-held cellular telephone while driving. The District of Columbia passed a ban in 2004. Connecticut's ban took effect in 2005. Thirty-five states and the District of Columbia have passed a ban on texting-while-driving for all drivers. The National Conference of State Legislators has the following chart detailing each state's laws for cellular telephone use.[1]

States	Hand-held ban	All cell phone ban	Texting ban	Enforcement
Alabama	No	Drivers age 16 and 17 who have held an intermediate license for less than 6 months.	All drivers	Primary
Alaska	No	No	All drivers	Primary
Arizona	No	School bus drivers	No	Primary
Arkansas	No	School bus drivers, drivers younger than 18	All drivers	Primary for texting by all drivers and cell phone use by school bus drivers; secondary for cell phone use by young drivers
California	All drivers	School and transit bus drivers and drivers younger than 18	All drivers	Primary
Colorado	No	Drivers younger than 18	All drivers	Primary
Connecticut	All drivers	Learner's permit holders, drivers younger than 18, and school bus drivers	All drivers	Primary
Delaware	All drivers (effective 01/02/11)	Learner's permit and intermediate license holders and school bus drivers	All drivers (effective 01/02/11)	Primary
District of Columbia	All drivers	School bus drivers and learner's permit holders	All drivers	Primary
Florida	No	No	No	Not applicable
Georgia	Drivers younger than 18 (effective 07/01/10)	School bus drivers. Drivers younger than 18.	All drivers (effective 07/01/10)	Primary
Hawaii	No	No	No	Not applicable
Idaho	No	No	All drivers (effective 7/1/2012)	Not applicable

[1] "Cell Phone Use and Texting While Driving Laws," updated November, 2012. Available online at, http://www.ncsl.org/?tabid=17057, Document No. 17057.

Illinois	Drivers in construction and school speed zones	Learner's permit holders younger than 19, drivers younger than 19, and school bus drivers	All drivers	Primary
Indiana	No	Drivers under the age of 18.	All drivers (effective 07/01/11).	Primary
Iowa	No	Learner's permit and intermediate license holders	All drivers	Secondary for texting
Kansas	No	Learner's permit and intermediate license holders	All drivers (effective 07/01/10).	Primary
Kentucky	No	Drivers younger than 18 (effective 07/13/10),school bus drivers	All drivers (effective 07/13/10)	Primary (effective 07/13/10)
Louisiana	No	School bus drivers, learner's permit and intermediate license holders, drivers under age 18	All drivers	Primary
Maine**	No	Learner's permit and intermediate license holders	All drivers (effective 09/13/11)	Primary
Maryland	All drivers (effective 10/01/10), School Bus Drivers.	Learner's permit and intermediate license holders under 18. School bus drivers	All drivers	Primary for texting
Massachusetts	Local option	School bus drivers, passenger bus drivers, drivers younger than 18	All drivers (effective 09/30/10)	Primary
Michigan	Local option	No	All drivers (effective 07/01/10)	Primary (effective 07/01/10)
Minnesota	No	School bus drivers, learner's permit holders, and provisional license holders during the first 12 months after licensing	All drivers	Primary
Mississippi	No	School bus drivers.	Learner's permit holders and intermediate license holders	Primary
Missouri	No	No	Drivers 21 years of age or younger	Primary
Montana	No	No	No	Not applicable
Nebraska	No	Learner's permit and intermediate license holders younger than 18	Learner's permit and intermediate license holders younger than 18 All drivers	Secondary
Nevada	All drivers (effective 01/01/12)	No	All drivers (effective 01/01/12)	Not applicable
New Hampshire	No	No	All drivers	Primary
New Jersey	All drivers	School bus drivers, and learner's permit and intermediate license holders	All drivers	Primary
New Mexico	Local option	Learners permit and intermediate license holders	No	Not applicable
New York	All drivers	No	All drivers	Primary

North Carolina	No	Drivers younger than 18 and school bus drivers	All drivers	Primary
North Dakota	Drivers younger than 18 (effective 01/01/12)	Drivers younger than 18 (effective 01/01/12)	All drivers (effective 08/01/11)	Primary (effective 08/01/11)
Ohio	Local option	Drivers younger than 18.	All drivers	Secondary
Oklahoma	Learner's permit and intermediate license holders, school bus drivers and public transit drivers (effective 11/01/10)	School Bus Drivers and Public Transit Drivers (effective 11/01/10)	Learner's permit and intermediate license holders, school bus drivers and public transit drivers (effective 11/01/10)	Primary
Oregon	All drivers	Drivers younger than 18	All drivers	Primary
Pennsylvania	Local option	No	All drivers	Primary
Rhode Island	No	School bus drivers and drivers younger than 18	All drivers	Primary
South Carolina	No	No	No	Not applicable
South Dakota	No	No	No	Not applicable
Tennessee	No	School bus drivers, and learner's permit and intermediate license holders	All drivers	Primary
Texas	Drivers in school crossing zones	Bus drivers. Drivers younger than 18. (09/01/11)	Bus drivers when a passenger 17 and younger is present; intermediate license holders for first 12 months, drivers in school crossing zones	Primary
Utah	See footnote*	No	All drivers	Primary for texting; secondary for talking on hand-held phone
Vermont	No	Drivers younger than 18 shall not use any portable electronic device while driving	All drivers	Primary
Virginia	No	Drivers younger than 18 and school bus drivers	All drivers	Secondary; primary for school bus drivers
Washington	All drivers	Learners permit and intermediate license holders	All drivers	Primary
West Virginia	All drivers (effective 7/1/2012)	Drivers younger than 18 who hold either a learner's permit or an intermediate license	All drivers (Effective 7/1/2012)	Primary
Wisconsin	No	Learner or Intermediate License holder (Eff. 11/1/12)	All drivers (effective 12/01/10)	Primary (effective 12/01/10)
Wyoming	No	No	All drivers	Primary

* Utah considers speaking on a cell phone, without a hands-free device, to be an offense only if a driver is also committing some other moving violation (other than speeding).
** Maine has a law that makes driving while distracted a traffic infraction. 29-A M.R.S.A. Sec. 2117.
*** Listed as a part of contributing factors

Federal Sample Law

In February 2010, the USDOT unveiled a "Sample Law" for states to use as a starting point for creating new laws to prohibit texting while driving.[2] Recognizing states have had some difficulty drafting language that prohibits dangerous behaviors, but allows certain minimal uses of the technology, the USDOT requested the participation of several national groups to draft language that was satisfactory to all. The sample law, prepared by the National Highway Traffic Safety Administration, and a cross-section of safety and industry organizations,[3] authorized law enforcement officers to stop a vehicle and issue a citation to drivers who are texting while driving.[4] The sample law is patterned on the Executive Order issued by President Obama on October 1, 2009, directing federal employees not to engage in text messaging while driving government-owned vehicles or other government-owned equipment. Federal employees were required to comply with the ban beginning on December 30, 2009.

Florida Law

The state has expressly preempted all regulation of the use of electronic communications devices in a motor vehicle.[5] There are currently no prohibitions related to texting or talking on a communications device while driving. However, existing laws may apply more generally to distracted operators of motor vehicles. Operators of motor vehicles are in violation of existing statutes when driving carelessly or recklessly.

The term "careless driving" is defined as the failure to drive the same as other operators of motor vehicles, in a careful and prudent manner, having regard to all attendant circumstances, so as not to endanger the life, limb, or property of any person.[6] A person who drives carelessly shall be cited for a moving violation.[7]

The term "reckless driving" is defined as the willful or wanton disregard for the safety of persons or property. Upon a first conviction, reckless driving is punishable by imprisonment,[8] a fine of at least $25,[9] or both. A second or subsequent conviction requires a fine of at least $50,[10] but may also result in imprisonment for not more than 6 months or both. Additionally, reckless driving

[2] "New Sample Bill Will Aid States in Banning Texting While Driving," United States Department of Transportation, DOT 31-10. USDOT Secretary Ray LaHood, February 22, 2010 available at: http://www.nhtsa.gov/PR/DOT-31-10 (last visited on Apr. 4, 2013).
[3] Contributors to the sample law include: Advocates for Highway and Auto Safety, Alliance of Automobile Manufacturers, American Association of Motor Vehicle Administrators, American Association of State Highway and Transportation Officials, AAA, Centers for Disease Control and Prevention, CTIA – The Wireless Association, Governors Highway Safety Association, ITS America, International Association of Chiefs of Police, National Conference of State Legislatures, National Safety Council, The National Traffic Law Center of the National District Attorneys Association, and Safe Kids USA. http://www.nhtsa.gov/staticfiles/rulemaking/pdf/Texting_Law_021910.pdf (last visited on Apr. 4, 2013).
[4] *Id.*
[5] Section 316.0075, F.S.
[6] Section 316.1925(1), F.S.
[7] Punishable as provided in ch. 318, F.S.
[8] For a period of not more than 90 days. Section 316.192(2)(a), F.S.
[9] Not less than $25 nor more than $500. Section 316.192(2)(a), F.S.
[10] And no more than $1,000. Section 316.192(2)(b), F.S.

that causes damage to the property or person of another is a misdemeanor of the first degree.[11] Reckless driving that causes serious bodily injury[12] to another is a felony of the third degree.[13]

While a prohibition exists against vehicle operators wearing headsets, headphones, or other listening devices, there are exceptions.[14] A driver is permitted to use a headset in conjunction with a cellular telephone that provides sound through only one ear and allows surrounding sounds to be heard with the other ear.[15] The Department of Highway Safety and Motor Vehicles (DHSMV) has rulemaking authority to detail the standards and specifications of radio equipment permitted by statute.[16] The DHSMV inspects and reviews all such devices submitted to it and publishes a list by name and type of approved equipment.

Section 322.27(3), F.S., provides a point system used to evaluate the qualifications of a person to operate a motor vehicle after accumulating multiple violations of motor vehicle laws. Moving violations typically result in assessment of 3 points, unless the infraction or offense is among those considered more serious. For example, pursuant to s. 322.27(3)(d), F.S., reckless driving, passing a stopped school bus, and speeding in excess of 15 mph over the posted limit require an assessment of 4 points. Leaving the scene of a crash and speeding resulting in a crash require an assessment of 6 points.

The DHSMV may suspend a driver for 30 days if the driver accumulates 12 or more points within a 12-month period,[17] up to 3 months if the driver accumulates 18 points in 18 months,[18] and up to 1 year if the driver accumulates 24 points within 36 months.[19]

II. Effect of Proposed Changes:

Legislative Intent

The bill expresses legislative intent to:

- Improve roadway safety for motor vehicle operators, passengers, bicyclists, pedestrians, and all other road users;
- Prevent crashes related to the act of text messaging;
- Reduce injuries, deaths, property damage, health care costs, health insurance, and automobile insurance rates related to motor vehicle crashes; and
- Authorize law enforcement officers to issue citations for text messaging while driving as a secondary offense.

[11] A first degree misdemeanor is punishable by jail time of up to 1 year and the imposition of fine of up to $1,000.
[12] The term "serious bodily injury" means an injury to another person, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ. Section 316.192(3)(c)(2), F.S.
[13] A third degree felony is punishable by imprisonment of up to 5 years and the imposition o f a fine of up to $5,000.
[14] Section 316.304, F.S.
[15] Section 316.304(2)(d), F.S.
[16] Section 316.304(3), F.S.
[17] Section 322.27(3)(a), F.S.
[18] Section 322.27(3)(b), F.S.
[19] Section 322.27(3)(c), F.S.

Prohibition on Texting While Driving

The bill prohibits a person who is operating a motor vehicle "while manually typing or entering multiple letters, numbers, symbols, or other characters in a wireless communication device, or sending or reading data in the device, for the purpose of non-voice interpersonal communication." The bill defines the term "wireless communication device" as any handheld device that is used in a handheld manner designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any other communications service[20] and which allows text communications.

The bill also specifies that for purposes of the prohibition on texting, a person is not considered to be operating a vehicle when the vehicle is stationary.[21] Violations are enforceable as secondary violations, meaning that a violator must be first cited for some other traffic offense before he or she can be cited for the texting while driving offense.

Exceptions

The bill makes exceptions to its prohibition against 'texting while driving' for:

- Law enforcement, fire service, or emergency medical services personnel, or any operator of an authorized emergency vehicle as defined in s. 322.01, F.S.,[22] performing official duties;
- Reporting an emergency or criminal or suspicious activity to law enforcement authorities;
- Receiving messages related to:
  - The operation or navigation of a motor vehicle;
  - Safety-related information including emergency, traffic, or weather alerts;
  - Data used primarily by the motor vehicle; or
  - Radio broadcasts;
- Using a device or system for navigation purposes;
- Conducting wireless interpersonal communication that does *not* require manual entry of multiple letters, numbers, or symbols, or reading text messages (except to activate or deactivate or initiate a feature or function); or
- Vehicles that are being operated autonomously.

[20] "Communications service" itself is defined by reference to s. 812.15, F.S. "Communications service" means: any service lawfully provided for a charge or compensation by any cable system or by any radio, fiber optic, photo optical, electromagnetic, photo electronics, satellite, microwave, data transmission, Internet-based, or wireless distribution network, system, or facility, including, but not limited to, any electronic, data, video, audio, Internet access, microwave, and radio communications, transmissions, signals, and services, and any such communications, transmissions, signals, and services lawfully provided for a charge or compensation, directly or indirectly by or through any of those networks, systems, or facilities. Section 812.15, F.S.

[21] Sections 316.194 and 316.1945, F.S., prohibit stopping, standing or parking in certain areas. Therefore, the driver of a vehicle stopped, standing, or parked in one of the prohibited locations may be subject to penalty.

[22] Section 322.01(4), F.S., defines an "authorized emergency vehicle" as: a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized by s. 316.2397[, F.S.,] to display red or blue lights, and that is on call to respond to emergencies. The term includes, but is not limited to, ambulances, law enforcement vehicles, fire trucks, and other rescue vehicles. The term does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

A user's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages may be admissible as evidence in any proceeding to determine whether a violation of the prohibition has been committed.

Penalties

A penalty for a first violation of the prohibition is a non-moving violation, punishable as provided in ch. 318, F.S. Non-moving violations result in a $30 fine, plus court costs that vary by jurisdiction.

If a person commits a second violation of the prohibition within 5 years after the first violation, the penalty is increased to a moving violation resulting in 3 points being assigned to the person's driver license. Chapter 318, F.S., provides for a $60 fine plus court costs.

The bill provides that the DHSMV will assign 6 points to the driver license of any driver whose use of a wireless communications device results in a crash, whether the offense is a first or subsequent offense. This point assessment is identical to the number of points that would apply to a driver license if the operator caused a crash as a result of unlawful speed. Finally, if a driver who commits a moving violation covered in s. 322.27(3)(d), F. S., while unlawfully using a wireless communications device in a school safety zone, DHSMV will assign 2 points to his or her license in addition to the points assigned for the moving violation.

The bill has an effective date of October 1, 2013.

Other Potential Implications:

Based upon the definition of "wireless communications device" that limits use to "in a handheld manner," a person may be able to text and drive using a mounted device or by placing the device on his or her lap.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An individual violating the prohibition of using wireless communications devices for texting purposes while operating a motor vehicle would be subject to civil penalties and points being assigned to his or her driver license depending on whether the violation is a first offense or a second or subsequent offense.

C. Government Sector Impact:

The bill may generate an indeterminate amount of revenue for both state and local law enforcement agencies, depending on the number of violations issued by law enforcement officials and the frequency with which violators commit subsequent violations, thereby incurring larger penalties.

According to the DHSMV, programming modifications will be required to carry out the implementation of the bill, however, the necessary hours can be incorporated into the information systems administration's normal workload.[23]

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. 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 Communications, Energy, and Public Utilities Committee on March 6, 2013:
Clarifies that a driver who commits a moving violation while unlawfully using a wireless communications device in a school safety zone will have 2 points assigned to his or her license in addition to the points assigned for the moving violation.

CS by Transportation Committee on February 6, 2013:
Includes in the definition of the term "wireless communications device," a handheld device used in a handheld manner.

[23] Department of Highway Safety and Motor Vehicles, *Agency Bill Analysis: SB 416* (Oct. 19, 2011, on file with the Senate Transportation Committee).

- Provides that texting communications are allowed when a vehicle is stationary.
- Allows persons operating autonomous vehicles to use wireless communications while vehicle is in operation.

B. Amendments:

None.

599896

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Richter) recommended the following:

Senate Amendment

Delete line 44
and insert:
"wireless communications device" means any handheld device used or capable of being used

By the Committees on Communications, Energy, and Public Utilities; and Transportation; and Senators Detert, Montford, Margolis, Richter, Latvala, Abruzzo, and Benacquisto

579-01972-13 201352c2

A bill to be entitled

An act relating to the use of wireless communications devices while driving; creating s. 316.305, F.S.; creating the "Florida Ban on Texting While Driving Law"; providing legislative intent; prohibiting the operation of a motor vehicle while using a wireless communications device for certain purposes; defining the term "wireless communications device"; providing exceptions; specifying information that is admissible as evidence of a violation; providing penalties; providing for enforcement as a secondary action; amending s. 322.27, F.S.; providing for points to be assessed against a driver license for the unlawful use of a wireless communications device within a school safety zone or resulting in a crash; providing an effective date.

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

Section 1. Section 316.305, Florida Statutes, is created to read:

316.305 Wireless communications devices; prohibition.—

(1) This section may be cited as the "Florida Ban on Texting While Driving Law."

(2) It is the intent of the Legislature to:

(a) Improve roadway safety for all vehicle operators, vehicle passengers, bicyclists, pedestrians, and other road users.

(b) Prevent crashes related to the act of text messaging

579-01972-13 201352c2

while driving a motor vehicle.

(c) Reduce injuries, deaths, property damage, health care costs, health insurance rates, and automobile insurance rates related to motor vehicle crashes.

(d) Authorize law enforcement officers to stop motor vehicles and issue citations as a secondary offense to persons who are texting while driving.

(3)(a) A person may not operate a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data in such a device for the purpose of nonvoice interpersonal communication, including, but not limited to, communication methods known as texting, e-mailing, and instant messaging. As used in this section, the term "wireless communications device" means any handheld device used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15 and that allows text communications. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

(b) Paragraph (a) does not apply to a motor vehicle operator who is:

1. Performing official duties as an operator of an authorized emergency vehicle as defined in s. 322.01, a law enforcement or fire service professional, or an emergency medical services professional.

2. Reporting an emergency or criminal or suspicious

activity to law enforcement authorities.

3. Receiving messages that are:

a. Related to the operation or navigation of the motor vehicle;

b. Safety-related information, including emergency, traffic, or weather alerts;

c. Data used primarily by the motor vehicle; or

d. Radio broadcasts.

4. Using a device or system for navigation purposes.

5. Conducting wireless interpersonal communication that does not require manual entry of multiple letters, numbers, or symbols, except to activate, deactivate, or initiate a feature or function.

6. Conducting wireless interpersonal communication that does not require reading text messages, except to activate, deactivate, or initiate a feature or function.

7. Operating an autonomous vehicle, as defined in s. 316.003, in autonomous mode.

(c) A user's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages may be admissible as evidence in any proceeding to determine whether a violation of paragraph (a) has been committed.

(4)(a) Any person who violates paragraph (3)(a) commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b) Any person who commits a second or subsequent violation of paragraph (3)(a) within 5 years after the date of a prior conviction for a violation of paragraph (3)(a) commits a

noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

(5) Enforcement of this section by state or local law enforcement agencies must be accomplished only as a secondary action when an operator of a motor vehicle has been detained for a suspected violation of another provision of this chapter, chapter 320, or chapter 322.

Section 2. Paragraph (d) of subsection (3) of section 322.27, Florida Statutes, is amended to read:

322.27 Authority of department to suspend or revoke driver license or identification card.—

(3) There is established a point system for evaluation of convictions of violations of motor vehicle laws or ordinances, and violations of applicable provisions of s. 403.413(6)(b) when such violations involve the use of motor vehicles, for the determination of the continuing qualification of any person to operate a motor vehicle. The department is authorized to suspend the license of any person upon showing of its records or other good and sufficient evidence that the licensee has been convicted of violation of motor vehicle laws or ordinances, or applicable provisions of s. 403.413(6)(b), amounting to 12 or more points as determined by the point system. The suspension shall be for a period of not more than 1 year.

(d) The point system shall have as its basic element a graduated scale of points assigning relative values to convictions of the following violations:

1. Reckless driving, willful and wanton—4 points.

2. Leaving the scene of a crash resulting in property damage of more than $50—6 points.

3. Unlawful speed, or unlawful use of a wireless communications device, resulting in a crash—6 points.

4. Passing a stopped school bus—4 points.

5. Unlawful speed:

a. Not in excess of 15 miles per hour of lawful or posted speed—3 points.

b. In excess of 15 miles per hour of lawful or posted speed—4 points.

6. A violation of a traffic control signal device as provided in s. 316.074(1) or s. 316.075(1)(c)1.—4 points. However, no points shall be imposed for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer. In addition, a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer may not be used for purposes of setting motor vehicle insurance rates.

7. All other moving violations (including parking on a highway outside the limits of a municipality)—3 points. However, no points shall be imposed for a violation of s. 316.0741 or s. 316.2065(11); and points shall be imposed for a violation of s. 316.1001 only when imposed by the court after a hearing pursuant to s. 318.14(5).

8. Any moving violation covered in this paragraph ~~above~~, excluding unlawful speed and unlawful use of a wireless communications device, resulting in a crash—4 points.

9. Any conviction under s. 403.413(6)(b)—3 points.

10. Any conviction under s. 316.0775(2)—4 points.

11. A moving violation covered in this paragraph which is committed in conjunction with the unlawful use of a wireless communications device within a school safety zone—2 points, in addition to the points assigned for the moving violation.

Section 3. This act shall take effect October 1, 2013.

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 398
INTRODUCER:	Banking and Insurance Committee; Health Policy Committee; and Senator Bean
SUBJECT:	Physician Assistants
DATE:	April 5, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	**Fav/CS**
2.	Matiyow	Burgess	BI	**Fav/CS**
3.	Munroe	Cibula	JU	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 398 clarifies that a supervising physician may delegate to a physician assistant authority to order medications, including controlled substances, for patients in hospitals, ambulatory surgical centers and mobile surgical facilities.

This bill substantially amends the following sections of the Florida Statutes: 458.347 and 459.022.

II. Present Situation:

Background

A physician assistant (PA) is a medical professional who works as part of a team with a doctor. A PA may perform physical examinations, diagnose and treat illnesses, order and interpret lab tests, perform procedures, assist in surgery, provide patient education and counseling and make rounds in hospitals and nursing homes. A PA is a graduate of an accredited PA educational program who is nationally certified and state-licensed to practice medicine with the supervision

of a physician.[1] In Florida, PAs are licensed and regulated under the Medical Practice Act at s. 458.347, F.S., and the Osteopathic Medical Practice Act at s. 459.022, F.S.

A supervising physician may delegate only tasks and procedures to the physician assistant which are within the supervising physician's scope of practice.[2] The physician assistant may work in any setting that is within the scope of practice of the supervising physician's practice. The Board of Medicine and the Board of Osteopathic Medicine (the boards) are required to adopt rules pertaining to the general principles that supervising physicians must use in developing the scope of practice of a physician assistant under direct supervision and under indirect supervision.[3] The supervising physician's scope of practice includes "those tasks and procedures which the supervising physician is qualified by training or experience to perform."[4]

Under current law, a supervisory physician may delegate to a fully licensed PA the authority to prescribe or dispense any medication used in the supervisory physician's practice unless such medication is listed on the formulary of drugs that a physician assistant may not prescribe (generally referred to as the negative formulary).[5] The Legislature specified that the negative formulary must include controlled substances, general anesthetics, and radiographic contrast materials. [6] This same section of law that dictates at least part of the contents of the negative formulary, also provides:

> This paragraph does not prohibit a supervisory physician from delegating to a physician assistant the authority to order medication for a hospitalized patient of the supervisory physician.[7]

The boards adopted the following negative formulary: [8]

> (1) PHYSICIAN ASSISTANTS APPROVED TO PRESCRIBE MEDICINAL DRUGS UNDER THE PROVISIONS OF SECTION 458.347(4)(e) OR 459.022 (4)(e), F.S., ARE NOT AUTHORIZED TO PRESCRIBE THE FOLLOWING MEDICINAL DRUGS, IN PURE FORM OR COMBINATION:
> (a) Controlled substances, as defined in Chapter 893, F.S.;
> (b) General, spinal or epidural anesthetics;
> (c) Radiographic contrast materials.
> (2) A supervising physician may delegate to a prescribing physician assistant only such authorized medicinal drugs as are used in the supervising physician's practice, not listed in subsection (1).
> (3) Subject to the requirements of this subsection, Sections 458.347 and 459.022, F.S., and the rules enacted thereunder, drugs not appearing on this formulary may

[1] *See* American Academy of Physician Assistants available at: http://www.aapa.org/the_pa_profession/what_is_a_pa.aspx (last visited on Apr. 3, 2013).
[2] Sections 458.347(4)(a) and 459.022(4)(e), F.S.
[3] Sections 458.347(4) and 459.022(4), F.S.
[4] Rules 64B8-30.012 and 64B15-6.010, F.A.C.
[5] Sections 458.347(4)(e) and 459.022(4)(e), F.S.
[6] Section 58.347(4)(f), F.S.
[7] Sections 458.347(4)(e)7. and 459.022(4)(e)7., F.S.
[8] Rules 64B8-30.008 and 64B15-6.0038, F.A.C.

> be delegated by a supervising physician to a prescribing physician assistant to prescribe.
> *(4) Nothing herein prohibits a supervising physician from delegating to a physician assistant the authority to order medicinal drugs for a hospitalized patient of the supervising physician, nor does anything herein prohibit a supervising physician from delegating to a physician assistant the administration of a medicinal drug under the direction and supervision of the physician* (emphasis added).

The Florida Academy of Physician Assistants indicates that certain hospitals have questioned the authority of PAs to order medications, specifically controlled substances, in the hospital setting given the uncertainty in the differing terminology between "prescribing" authority and "ordering" authority contained in the law and rules.

The terms "prescribe" and "order" are not defined in the Medical Practice Act or the Osteopathic Medical Practice Act.

An "order" is a term of art generally used in a hospital or institutional setting where an authorized practitioner orders a medication for an inpatient rather than prescribes a medication.[9] The order is recorded in the medical record and the medication is administered to the patient by licensed nurses or other appropriately licensed health care personnel.

Under the Florida Pharmacy Act, a "prescription" includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist.[10] The Florida Comprehensive Drug Abuse Prevention and Control Act, ch. 893, F.S., provides a similar definition for that term.[11]

DEA Registration

An individual practitioner who is an agent or employee of another practitioner (other than a mid-level practitioner[12]) registered to dispense controlled substances, may, when acting in the normal course of business or employment, administer or dispense (other than by issuance of a prescription) controlled substances if and to the extent authorized by state law, under the registration of the employer or principal practitioner in lieu of being registered himself or herself.[13]

Practitioners (e.g., interns, residents, staff physicians, mid-level practitioners) who are agents or employees of a hospital or other institution, may, when acting in the usual course of business or

[9] *See for example:* 42 C.F.R. 482.23(c) relating to Conditions of Participation for Hospitals under Medicare, Standard: Preparation and administration of drugs and Rule 64B16-28.602, F.A.C., relating to rules of the Board of Pharmacy for Institutional Class II Dispensing.
[10] Section 465.003(14), F.S.
[11] Section 893.02(22), F.S.
[12] Examples of mid-level practitioners include, but are not limited to: nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, physician assistants.
[13] 21 C.F.R. 1301.22

employment, administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution in which he or she is employed, in lieu of individual registration, provided that:

- The dispensing, administering, or prescribing is in the usual course of professional practice; The practitioner is authorized to do so by the state in which he or she practices;
- The hospital or other institution has verified that the practitioner is permitted to administer, dispense, or prescribe controlled substances within the state;
- The practitioner acts only within the scope of employment in the hospital or other institution;
- The hospital or other institution authorizes the practitioner to administer, dispense, or prescribe under its registration and assigns a specific internal code number for each practitioner; and
- The hospital or other institution maintains a current list of internal codes and the corresponding practitioner.[14]

III. Effect of Proposed Changes:

Sections 1 and 2 amend s. 458.347, F.S., relating to PAs under the medical practice act and s. 459.022, F.S., relating to PAs under the osteopathic medical practice act, respectively, to authorize a supervisory physician to delegate to his or her PA the authority to order medications for the supervisory physician's patient in any hospital, ambulatory surgical center, or mobile surgical facility notwithstanding any provision under the Pharmacy Practice Act or the Florida Comprehensive Drug Abuse Prevention and Control Act. Likewise, the PA is authorized to order any medication under these conditions. Accordingly, a PA could order a controlled substance for his or her supervising physician's patient in a hospital, ambulatory surgical center, or mobile surgical facility if the supervising physician delegated that authority to the PA. Because no specific authorization for prescribing controlled substances is included within ch. 893, F.S., the PA would need to operate under the supervising physician's DEA registration.

The effective date of the bill is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[14] *Id.*; *also see* Drug Enforcement Manual, Practitioner's Manual (2006 ed.) available at: http://www.deadiversion.usdoj.gov/pubs/manuals/pract/pract_manual012508.pdf (last visited Apr. 3, 2013).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 Banking and Insurance on March 14, 2013:
The CS clarifies the patient must be under the care of the supervising physician in order for the physician assistant to be able to order medication for that patient.

CS by Health Policy on February 21, 2013:
The CS provides that an order is not a prescription and authorizes the PA to order medications under the direction of the supervisory physician. The CS does not include new authority that may have expanded the scope of practice of a PA.

B. Amendments:

None.

By the Committees on Banking and Insurance; and Health Policy; and Senator Bean

597-02426-13 2013398c2

A bill to be entitled

An act relating to physician assistants; amending ss. 458.347 and 459.022, F.S.; authorizing a supervisory physician to delegate to a licensed physician assistant the authority to order medications for the supervisory physician's patient in a facility licensed under ch. 395, F.S.; deleting provisions to conform to changes made by the act; providing that an order is not a prescription; authorizing a licensed physician assistant to order medication under the direction of the supervisory physician; providing an effective date.

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

Section 1. Paragraph (e) of subsection (4) of section 458.347, Florida Statutes, is amended, and paragraph (g) is added to that subsection, to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(e) A supervisory physician may delegate to a fully licensed physician assistant the authority to prescribe or dispense any medication used in the supervisory physician's practice unless such medication is listed on the formulary created pursuant to paragraph (f). A fully licensed physician assistant may only prescribe or dispense such medication under the following circumstances:

1. A physician assistant must clearly identify to the patient that he or she is a physician assistant. Furthermore,

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the physician assistant must inform the patient that the patient has the right to see the physician prior to any prescription being prescribed or dispensed by the physician assistant.

2. The supervisory physician must notify the department of his or her intent to delegate, on a department-approved form, before delegating such authority and notify the department of any change in prescriptive privileges of the physician assistant. Authority to dispense may be delegated only by a supervising physician who is registered as a dispensing practitioner in compliance with s. 465.0276.

3. The physician assistant must file with the department a signed affidavit that he or she has completed a minimum of 10 continuing medical education hours in the specialty practice in which the physician assistant has prescriptive privileges with each licensure renewal application.

4. The department may issue a prescriber number to the physician assistant granting authority for the prescribing of medicinal drugs authorized within this paragraph upon completion of the foregoing requirements. The physician assistant shall not be required to independently register pursuant to s. 465.0276.

5. The prescription must be written in a form that complies with chapter 499 and must contain, in addition to the supervisory physician's name, address, and telephone number, the physician assistant's prescriber number. Unless it is a drug or drug sample dispensed by the physician assistant, the prescription must be filled in a pharmacy permitted under chapter 465 and must be dispensed in that pharmacy by a pharmacist licensed under chapter 465. The appearance of the prescriber number creates a presumption that the physician

assistant is authorized to prescribe the medicinal drug and the prescription is valid.

6. The physician assistant must note the prescription or dispensing of medication in the appropriate medical record.

~~7. This paragraph does not prohibit a supervisory physician from delegating to a physician assistant the authority to order medication for a hospitalized patient of the supervisory physician.~~

~~This paragraph does not apply to facilities licensed pursuant to chapter 395.~~

(g) A supervisory physician may delegate to a licensed physician assistant the authority to order medications for the supervisory physician's patient during his or her care in a facility licensed under chapter 395, notwithstanding any provisions in chapter 465 or chapter 893 which may prohibit this delegation. For the purpose of this paragraph, an order is not considered a prescription. A licensed physician assistant working in a facility that is licensed under chapter 395 may order any medication under the direction of the supervisory physician.

Section 2. Section 2. Paragraph (e) of subsection (4) of section 459.022, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

459.022 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(e) A supervisory physician may delegate to a fully licensed physician assistant the authority to prescribe or dispense any medication used in the supervisory physician's

practice unless such medication is listed on the formulary created pursuant to s. 458.347. A fully licensed physician assistant may only prescribe or dispense such medication under the following circumstances:

1. A physician assistant must clearly identify to the patient that she or he is a physician assistant. Furthermore, the physician assistant must inform the patient that the patient has the right to see the physician prior to any prescription being prescribed or dispensed by the physician assistant.

2. The supervisory physician must notify the department of her or his intent to delegate, on a department-approved form, before delegating such authority and notify the department of any change in prescriptive privileges of the physician assistant. Authority to dispense may be delegated only by a supervisory physician who is registered as a dispensing practitioner in compliance with s. 465.0276.

3. The physician assistant must file with the department a signed affidavit that she or he has completed a minimum of 10 continuing medical education hours in the specialty practice in which the physician assistant has prescriptive privileges with each licensure renewal application.

4. The department may issue a prescriber number to the physician assistant granting authority for the prescribing of medicinal drugs authorized within this paragraph upon completion of the foregoing requirements. The physician assistant shall not be required to independently register pursuant to s. 465.0276.

5. The prescription must be written in a form that complies with chapter 499 and must contain, in addition to the supervisory physician's name, address, and telephone number, the

physician assistant's prescriber number. Unless it is a drug or drug sample dispensed by the physician assistant, the prescription must be filled in a pharmacy permitted under chapter 465, and must be dispensed in that pharmacy by a pharmacist licensed under chapter 465. The appearance of the prescriber number creates a presumption that the physician assistant is authorized to prescribe the medicinal drug and the prescription is valid.

6. The physician assistant must note the prescription or dispensing of medication in the appropriate medical record.

~~7. This paragraph does not prohibit a supervisory physician from delegating to a physician assistant the authority to order medication for a hospitalized patient of the supervisory physician.~~

~~This paragraph does not apply to facilities licensed pursuant to chapter 395.~~

(f) A supervisory physician may delegate to a licensed physician assistant the authority to order medications for the supervisory physician's patient during his or her care in a facility licensed under chapter 395, notwithstanding any provisions in chapter 465 or chapter 893 which may prohibit this delegation. For the purpose of this paragraph, an order is not considered a prescription. A licensed physician assistant working in a facility that is licensed under chapter 395 may order any medication under the direction of the supervisory physician.

Section 3. This act shall take effect July 1, 2013.

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 672
INTRODUCER:	Criminal Justice Committee and Senator Evers
SUBJECT:	Juvenile Justice/Youth Custody Officers & Correctional Facility Tours
DATE:	April 5, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Fav/CS**
2.	Shankle	Cibula	JU	**Pre-meeting**
3.			ACJ	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 672 repeals s. 985.105, F.S., which created the youth custody officer position within the Department of Juvenile Justice (DJJ). The DJJ no longer employs youth custody officers. Similarly, the bill deletes language in s. 121.0515, F.S., classifying these positions as special risk positions for purposes of the Florida Retirement System.

The bill also repeals s. 945.75, F.S., authorizing tours by juveniles of state and county correctional facilities so that the DJJ can continue receiving federal funds by remaining in compliance with the federal Juvenile Justice and Delinquency Prevention Act.

The bill repeals sections 985.105 and 945.75, Florida Statutes.

The bill substantially amends section 121.0515, Florida Statutes.

II. Present Situation:

Youth Custody Officers

Section 0 985.105, F.S., created the youth custody officer position within the Department of Juvenile Justice (DJJ). Youth custody officers were responsible for taking a youth into custody if the officer had probable cause to believe that the youth:

- Violated the conditions of probation, home detention, conditional release, or postcommitment probation; or
- Failed to appear in court after being properly noticed.

These youth custody officers were also responsible for informing local law enforcement agencies when they took anyone into custody under this section.

Youth custody officers were required to meet the minimum qualifications for employment or appointment, become certified under ch. 943, F.S., and comply with the mandates for continued employment as provided by s. 943.135, F.S.[1] Additionally, s. 121.0515, F.S., designated youth custody officers as a "special risk class" for purposes of the Florida Retirement System.[2]

According to the DJJ, it eliminated these youth custody officer positions on July 1, 2010, as a way to cut its budget.[3] The duties of the youth custody officers were either distributed among existing employees or are no longer performed by the DJJ.[4]

Jail and Prison Tours

Section 945.75, F.S., requires the Department of Corrections (DOC) to develop programs under which a judge may order that a juvenile who has committed a delinquent act be allowed to tour state correctional facilities under the terms and conditions established by DOC. The statute requires counties to develop similar programs involving county jails. These tour programs are commonly referred to as "scared straight programs."[5] Scared straight programs generally involve adult inmates describing the conditions associated with jail or prison incarceration to delinquent at-risk youth in a secure setting.[6] The goal of these programs is to modify the behavior of the

[1] Section 985.105(2), F.S.
[2] Section 121.0515, F.S., creates a "special risk class" of state employees for purposes of the Florida Retirement System that earn more retirement credit per year of service. This increased credit is in recognition that they may be unable to "enjoy the full career and retirement benefits enjoyed by other membership classes" as a result of the physically demanding and high risk functions required by their jobs.
[3] See Department of Juvenile Justice, *2013 Agency Proposal, Juvenile Justice Reform, Youth Custody Officer Analysis* (2013) (on file with the Senate Committee on Judiciary).
[4] *Id*.
[5] Virginia Department of Criminal Services, *Scared Straight Programs*, http://www.dcjs.virginia.gov/juvenile/compliance/scaredStraight.pdf (last visited on April 3, 2013); *See also* Department of Juvenile Justice, *Scared Straight Programs: Jail and Detention Tours*, www.djj.state.fl.us/docs/research2/scared_straight_booklet_version (last visited on April 3, 2013).
[6] *Id*.

juveniles by shocking, scaring, and thus deterring them from engaging in further delinquent activity.[7]

The DJJ reports that because it complies with the Federal Juvenile Justice and Delinquency Prevention Act of 2002 (the act),[8] it receives between $2 million and $8 million in federal funding.[9] The act provides funds for states which comply with the protections it proscribes for juvenile offenders.[10] The scared straight programs may violate several provisions of the act including the prohibition on contact between juvenile and adult offenders.[11] The DJJ states that it will lose two-thirds of its federal funding because of these violations of the act.[12]

III. Effect of Proposed Changes:

This bill repeals s. 985.105, F.S., which created youth custody officer positions within the DJJ. This section of law is no longer needed because these positions have not been filled since 2010. Likewise, the bill deletes language in s. 121.0515, F.S., classifying these positions as special risk positions for purposes of state retirement.

The bill also repeals s. 945.75, F.S., authorizing prison and jail tours, so that the DJJ can continue receiving federal funds by remaining in compliance with the federal Juvenile Justice and Delinquency Prevention Act.

The bill takes effect July 1, 2013.

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.

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[7] *Id*.
[8] 42 U.S.C. Chapters 72.
[9] See Department of Juvenile Justice, *2013 Agency Proposal, Juvenile Justice Reform, Jail Tour Analysis* (2013) (on file with the Senate Committee on Judiciary).
[10] 42 U.S.C. § 5633(a).
[11] 42 U.S.C. § 5633(a)(12).
[12] Department of Juvenile Justice, *2013 Agency Proposal, Juvenile Justice Reform, Jail Tour Analysis, supra* note 9.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DJJ, there is no fiscal impact as a result of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on March 11, 2013:
Adds a provision repealing the statute that authorizes jail and prison tours by juveniles so that the DJJ can remain in compliance with federal law and continue receiving federal prevention funds.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 161 and 162
insert:

Section 4. Section 985.702, Florida Statutes, is created to read:

985.702 Malicious infliction of cruel or inhuman treatment prohibited; reporting required; penalties.-

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

(a) "Employee" means a paid staff member, volunteer, or intern who works in a department program or a program operated by a provider under a contract with the department.

(b) "Juvenile offender" means any person of any age who is


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detained, or committed to the custody of, the department.

(c) "Neglect of a juvenile offender" means:

1. An employee's failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health, including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or

2. An employee's failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

(2)(a) Any employee who, with malicious intent, inflicts cruel or inhuman treatment by neglect or otherwise, without causing great bodily harm, permanent disability, or permanent disfigurement to a juvenile offender, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any employee who, with malicious intent, inflicts cruel or inhuman treatment by neglect or otherwise, and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to a juvenile offender, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Notwithstanding prosecution, any violation of paragraph (a) or paragraph (b), as determined by the Public Employees Relations Commission, constitutes sufficient cause under s. 110.227 for dismissal from employment with the department, and such person may not again be employed in any capacity in connection with the juvenile justice system.

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(3) An employee who witnesses the infliction of cruel or inhuman treatment committed against a juvenile offender shall immediately report the incident to the department's incident hotline and prepare, date, and sign an independent report that specifically describes the nature of the incident, the location and time of the incident, and the persons involved. The employee shall deliver the report to the employee's supervisor or program director, who must provide copies to the department's inspector general and the circuit juvenile justice manager. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that a violation of subsection (2) has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.

(4)(a) Any person who is required to prepare a report under this section who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a report required under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of the infliction of cruel or inhuman treatment commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Paragraph (a) of subsection (1) of section 985.701, Florida Statutes, is amended to read:

985.701 Sexual misconduct prohibited; reporting required; penalties.—

(1)(a)1. As used in this subsection, the term:

a. "Sexual misconduct" means fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of the department or an employee of a provider under contract with the department.

b. "Employee" includes paid staff members, volunteers, and interns who work in a department program or a program operated by a provider under a contract.

c. "Juvenile offender" means a person of any age who is detained or supervised by, or committed to the custody of, the department.

2. An employee who engages in sexual misconduct with a juvenile offender detained or supervised by, or committed to the custody of, the department commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. An employee may be found guilty of violating this subsection without having committed the crime of sexual battery.

3. The consent of the juvenile offender to any act of sexual misconduct is not a defense to prosecution under this subsection.

4. This subsection does not apply to an employee of the


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department, or an employee of a provider under contract with the department, who:

a. Is legally married to a juvenile offender who is detained or supervised by, or committed to the custody of, the department.

b. Has no reason to believe that the person with whom the employee engaged in sexual misconduct is a juvenile offender detained or supervised by, or committed to the custody of, the department.

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

And the title is amended as follows:

Delete line 12

and insert:

creating s. 985.702, F.S.; providing definitions; providing for the imposition of criminal penalties against specified employees who inflict cruel or inhuman treatment upon juvenile offenders; providing enhanced penalties for such treatment that results in great bodily harm, permanent disability, or permanent disfigurement to a juvenile offender; specifying that such conduct constitutes sufficient cause for an employee's dismissal from employment; prohibiting such employee from future employment with the juvenile justice system; providing incident reporting requirements; prohibiting an employee who witnesses such an incident from knowingly or willfully failing to report; prohibiting false reporting, preventing another from reporting, or coercing another to alter

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testimony or reports; providing penalties; amending s. 985.701, F.S.; defining the term "juvenile offender" for purposes of prohibiting sexual misconduct with juvenile offenders; providing an effective date.

913538

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Latvala) recommended the following:

Senate Substitute for Amendment (661546) (with title amendment)

Between lines 161 and 162
insert:

Section 4. Section 985.702, Florida Statutes, is created to read:

985.702 Malicious infliction of cruel or inhuman treatment prohibited; reporting required; penalties.-

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

(a) "Employee" means a paid staff member, volunteer, or intern who works in a department program or a program operated by a provider under a contract with the department.

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(b) "Juvenile offender" means any person of any age who is detained, or committed to the custody of, the department.

(c) "Neglect of a juvenile offender" means:

1. An employee's failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health, including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or

2. An employee's failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

(2)(a) Any employee who, with malicious intent, inflicts cruel or inhuman treatment by neglect or otherwise, without causing great bodily harm, permanent disability, or permanent disfigurement to a juvenile offender, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any employee who, with malicious intent, inflicts cruel or inhuman treatment by neglect or otherwise, and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to a juvenile offender, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Notwithstanding prosecution, any violation of paragraph (a) or paragraph (b), as determined by the Public Employees Relations Commission, constitutes sufficient cause under s. 110.227 for dismissal from employment with the department, and such person may not again be employed in any capacity in

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connection with the juvenile justice system.

(3) An employee who witnesses the infliction of cruel or inhuman treatment committed against a juvenile offender shall immediately report the incident to the department's incident hotline and prepare, date, and sign an independent report that specifically describes the nature of the incident, the location and time of the incident, and the persons involved. The employee shall deliver the report to the employee's supervisor or program director, who must provide copies to the department's inspector general and the circuit juvenile justice manager. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that a violation of subsection (2) has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.

(4)(a) Any person who is required to prepare a report under this section who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a report required under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of the infliction of cruel or inhuman treatment commits a felony of the third degree,

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punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Paragraph (a) of subsection (1) of section 985.701, Florida Statutes, is amended to read:

985.701 Sexual misconduct prohibited; reporting required; penalties.—

(1)(a)1. As used in this subsection, the term:

a. "Sexual misconduct" means fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of the department or an employee of a provider under contract with the department.

b. "Employee" includes paid staff members, volunteers, and interns who work in a department program or a program operated by a provider under a contract.

c. "Juvenile offender" means a person of any age who is detained or supervised by, or committed to the custody of, the department.

2. An employee who engages in sexual misconduct with a juvenile offender detained or supervised by, or committed to the custody of, the department commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. An employee may be found guilty of violating this subsection without having committed the crime of sexual battery.

3. The consent of the juvenile offender to any act of sexual misconduct is not a defense to prosecution under this subsection.

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4. This subsection does not apply to an employee of the department, or an employee of a provider under contract with the department, who:

a. Is legally married to a juvenile offender who is detained or supervised by, or committed to the custody of, the department.

b. Has no reason to believe that the person with whom the employee engaged in sexual misconduct is a juvenile offender detained or supervised by, or committed to the custody of, the department.

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

And the title is amended as follows:

Delete line 12

and insert:

creating s. 985.702, F.S.; providing definitions; providing for the imposition of criminal penalties against specified employees who inflict cruel or inhuman treatment upon juvenile offenders; providing enhanced penalties for such treatment that results in great bodily harm, permanent disability, or permanent disfigurement to a juvenile offender; specifying that such conduct constitutes sufficient cause for an employee's dismissal from employment; prohibiting such employee from future employment with the juvenile justice system; providing incident reporting requirements; prohibiting an employee who witnesses such an incident from knowingly or willfully failing to report; prohibiting false reporting, preventing

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another from reporting, or coercing another to alter testimony or reports; providing penalties; amending s. 985.701, F.S.; defining the term "juvenile offender" for purposes of prohibiting sexual misconduct with juvenile offenders; providing an effective date.

By the Committee on Criminal Justice; and Senator Evers

591-02197-13 2013672c1

A bill to be entitled

An act relating to juvenile justice; repealing s. 945.75, F.S.; deleting a requirement that the Department of Corrections and counties develop programs under which a judge may order juveniles who have committed delinquent acts to tour correctional facilities; repealing s. 985.105, F.S., relating to the creation, duties, and qualifications of the youth custody officer position within the Department of Juvenile Justice; amending s. 121.0515, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 945.75, Florida Statutes, is repealed.

Section 2. Section 985.105, Florida Statutes, is repealed.

Section 3. Paragraphs (h) through (k) of subsection (3) of section 121.0515, Florida Statutes, are redesignated as paragraphs (g) through (j) of that subsection, respectively, and paragraphs (e) through (i) of subsection (2), present paragraphs (g) and (k) of subsection (3), paragraph (b) of subsection (5), paragraph (d) of subsection (8), and paragraph (c) of subsection (10) of that section are amended to read:

121.0515 Special Risk Class.—

(2) MEMBERSHIP.—

~~(c) Effective July 1, 2001, "special risk member" includes any member who is employed as a youth custody officer by the Department of Juvenile Justice and meets the special criteria~~

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~~set forth in paragraph (3)(g).~~

(e)~~(f)~~ Effective October 1, 2005, through June 30, 2008, the member must be employed by a law enforcement agency or medical examiner's office in a forensic discipline and meet the special criteria set forth in paragraph (3)(g) ~~(3)(h)~~.

(f)~~(g)~~ Effective July 1, 2008, the member must be employed by the Department of Law Enforcement in the crime laboratory or by the Division of State Fire Marshal in the forensic laboratory and meet the special criteria set forth in paragraph (3)(h) ~~(3)(i)~~.

(g)~~(h)~~ Effective July 1, 2008, the member must be employed by a local government law enforcement agency or medical examiner's office and meet the special criteria set forth in paragraph (3)(i) ~~(3)(j)~~.

(h)~~(i)~~ Effective August 1, 2008, "special risk member" includes any member who meets the special criteria for continued membership set forth in paragraph (3)(j) ~~(3)(k)~~.

(3) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

~~(g) Effective July 1, 2001, the member must be employed as a youth custody officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the supervised custody, surveillance, control, investigation, apprehension, arrest, and counseling of assigned juveniles within the community;~~

(j)~~(k)~~ The member must have already qualified for and be actively participating in special risk membership under paragraph (a), paragraph (b), or paragraph (c), must have

suffered a qualifying injury as defined in this paragraph, must not be receiving disability retirement benefits as provided in s. 121.091(4), and must satisfy the requirements of this paragraph.

1. The ability to qualify for the class of membership defined in paragraph (2)(h) ~~(2)(i)~~ occurs when two licensed medical physicians, one of whom is a primary treating physician of the member, certify the existence of the physical injury and medical condition that constitute a qualifying injury as defined in this paragraph and that the member has reached maximum medical improvement after August 1, 2008. The certifications from the licensed medical physicians must include, at a minimum, that the injury to the special risk member has resulted in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg; and:

a. That this physical loss or loss of use is total and permanent, except in the event that the loss of use is due to a physical injury to the member's brain, in which event the loss of use is permanent with at least 75 percent loss of motor function with respect to each arm or leg affected.

b. That this physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her special risk position.

c. That, notwithstanding this physical loss or loss of use, the individual is able to perform the essential job functions required by the member's new position, as provided in subparagraph 3.

d. That use of artificial limbs is either not possible or does not alter the member's ability to perform the essential job

functions of the member's position.

e. That the physical loss or loss of use is a direct result of a physical injury and not a result of any mental, psychological, or emotional injury.

2. For the purposes of this paragraph, "qualifying injury" means an injury sustained in the line of duty, as certified by the member's employing agency, by a special risk member that does not result in total and permanent disability as defined in s. 121.091(4)(b). An injury is a qualifying injury if the injury is a physical injury to the member's physical body resulting in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg. Notwithstanding any other provision of this section, an injury that would otherwise qualify as a qualifying injury is not considered a qualifying injury if and when the member ceases employment with the employer for whom he or she was providing special risk services on the date the injury occurred.

3. The new position, as described in sub-subparagraph 1.c., that is required for qualification as a special risk member under this paragraph is not required to be a position with essential job functions that entitle an individual to special risk membership. Whether a new position as described in sub-subparagraph 1.c. exists and is available to the special risk member is a decision to be made solely by the employer in accordance with its hiring practices and applicable law.

4. This paragraph does not grant or create additional rights for any individual to continued employment or to be hired or rehired by his or her employer that are not already provided within the Florida Statutes, the State Constitution, the

Americans with Disabilities Act, if applicable, or any other applicable state or federal law.

(5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

(b) Any member who is a special risk member on July 1, 2008, and who became eligible to participate under paragraph (3)(g) ~~(3)(h)~~ but fails to meet the criteria for Special Risk Class membership established by paragraph (3)(h) ~~(3)(i)~~ or paragraph (3)(i) ~~(3)(j)~~ shall have his or her special risk designation removed and thereafter shall be a Regular Class member and earn only Regular Class membership credit. The department may review the special risk designation of members to determine whether or not those members continue to meet the criteria for Special Risk Class membership.

(8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

(d) Notwithstanding any other provision of this subsection, this subsection does not apply to any special risk member who qualifies for continued membership pursuant to paragraph (3)(j) ~~(3)(k)~~.

(10) CREDIT FOR UPGRADED SERVICE.—

(c) Any member of the Special Risk Class who has earned creditable service through June 30, 2008, in another membership class of the Florida Retirement System in a position with the Department of Law Enforcement or the Division of State Fire Marshal and became covered by the Special Risk Class as described in paragraph (3)(h) ~~(3)(i)~~, or with a local government law enforcement agency or medical examiner's office and became covered by the Special Risk Class as described in paragraph (3)(i) ~~(3)(j)~~, which service is within the purview of the Special Risk Class, and is employed in such position on or after

July 1, 2008, may purchase additional retirement credit to upgrade such service to Special Risk Class service, to the extent of the percentages of the member's average final compensation provided in s. 121.091(1)(a)2. The cost for such credit must be an amount representing the actuarial accrued liability for the difference in accrual value during the affected period of service. The cost shall be calculated using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System Pension Plan liabilities in the most recent actuarial valuation. The division shall ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. The cost must be paid immediately upon notification by the division. The local government employer may purchase the upgraded service credit on behalf of the member if the member has been employed by that employer for at least 3 years.

Section 4. This act shall take effect July 1, 2013.

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 726
INTRODUCER:	Community Affairs Committee; Health Policy Committee; and Senator Simmons
SUBJECT:	Regulation of Family or Medical Leave Benefits for Employees
DATE:	April 5, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Fav/CS**
2.	Davlantes	Stovall	HP	**Fav/CS**
3.	Shankle	Cibula	JU	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 726 preempts the regulation of family and medical leave benefits to the state. Exceptions are provided for leave related to and arising directly from domestic violence and for federal laws or regulations governing family or medical leave benefits. The bill also creates an Employer-Sponsored Benefits Task Force to analyze employer-sponsored family and medical leave benefits and the impact of the state preemption.

The bill does not limit the authority of a political subdivision to establish family or medical leave benefits for its own employees. Federally authorized and recognized tribal governments are not prohibited from requiring family or medical leave benefits for a person employed within tribe jurisdiction.

This bill creates an undesignated section of Florida Statutes.

II. Present Situation:

The Family Medical Leave Act

The Family and Medical Leave Act (FMLA) of 1993, as amended, entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons.[1]

Covered Employers[2]

The FMLA only applies to employers that meet certain criteria. A covered employer is a:

- Private-sector employer, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer;
- Public agency, including a local, state, or federal government agency, regardless of the number of employees it employs; or
- Public or private elementary or secondary school, regardless of the number of employees it employs.

Eligible Employees[3]

Only eligible employees are entitled to take FMLA leave. An eligible employee is one who:

- Works for a covered employer;
- Has worked for the employer for at least 12 months;
- Has at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave; and
- Works at a location where the employer has at least 50 employees within 75 miles.

Leave Entitlement[4]

Eligible employees may take up to 12 workweeks of leave in a 12-month period for one or more of the following reasons:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care;
- To care for a spouse, son, daughter, or parent who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.[5]

[1] 29 U.S.C. chapter 28.
[2] *29* U.S.C. s. 2611.
[3] *Id.*
[4] 29 U.S.C. ss. 2611-2612.

Notice[6]

Employees must comply with their employer's usual and customary requirements for requesting leave and provide enough information for their employer to reasonably determine whether the FMLA may apply to the leave request. Employees generally must request leave 30 days in advance when the need for leave is foreseeable. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances.

Enforcement[7]

The Wage and Hour Division of the United States Department of Labor administers and enforces the FMLA for all private, state and local government employees, and some federal employees. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. An employee may also be able to bring a private civil action against an employer for violations. In general, any allegation must be raised within 2 years after the date of violation.

Expansion of FMLA in other States and Local Governments

The FMLA allows states and local governments to set standards that are more expansive than the federal law, and many states and local entities have chosen to do so.[8] Currently, only two states, California and New Jersey, offer paid, or partially paid, family and medical leave.[9] In California, paid leave is funded by a payroll tax on employees and allows employees to participate in the temporary disability program. New Jersey extended its existing temporary disability insurance system to administer paid leave, and also funds the program through an employee payroll tax.

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[5] An eligible employee may also take up to 26 workweeks of leave during a "single 12-month period" to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

[6] 29 U.S.C. 2612(e).

[7] Information under this subheading obtained from: United States Department of Labor, Wage and Hour Division, *Fact Sheet # 77B: Protection for Individuals under the FMLA*, http://www.dol.gov/whd/regs/compliance/whdfs77b.htm (last visited April 4, 2013).

[8] 29 C.F.R. s. 825.701. Connecticut and Minnesota allow leave for an organ or bone marrow donor. Oregon's definition of "family member" includes the employee's grandparent, grandchild, or parent-in-law. North Carolina allows leave to participate in children's educational activities. See National Conference of State Legislatures, *State Family and Medical Leave Laws that Differ from the Federal FMLA* (Sept. 2008), *available at* http://www.ncsl.org/Portals/1/Documents/employ/StateFamilyandMedicalLeaveLaws.pdf. San Francisco, Philadelphia, and Seattle have also passed expanded leave ordinances. Miami-Dade County ordinances on family leave and domestic violence include unpaid leave for the care of a grandparent and for circumstances related to a medical or dental problem resulting from domestic or repeat violence. See Miami-Dade County Regulations, *Chapter 11A Discrimination: Article V. - Family Leave, Article VIII - Domestic Leave*, http://miamidade.fl.eregulations.us/code/reglist/ord_ptiii_ch11a?selectdate=3/1/2013 (last visited April 4, 2013).

[9] National Conference of State Legislatures, *State Family Medical Leave Laws*, http://www.ncsl.org/issues-research/labor/state-family-and-medical-leave-laws.aspx (last visited April 4, 2013).

Washington passed a paid family leave law in 2007 that was to take effect in October 2009. However, due to state budget concerns, subsequent bills have delayed the implementation of the paid leave law until 2015.[10]

Wisconsin recently provided for the preemption of local sick leave ordinances in the state.[11] The 2011 Wisconsin Act 16 prohibits a city, village, town, or county from enacting or administering an ordinance that requires employers to provide paid or unpaid leave for four reasons:

- For the employee's own health condition or preventive medical care;
- For a family member of the employee's health condition or preventive medical care;
- For the employee's medical care or assistance relating to domestic violence; and
- For the employee's other family, medical, or health issues, for himself or herself or a family member.[12]

Leave Provisions in Florida Law

Some leave of absence and medical leave provisions exist in Florida Statutes. Section 741.313, F.S., provides that an employer permit an employee to take up to 3 working days of leave from work in any 12-month period if the employee or a family or household member of an employee is the victim of domestic violence or sexual violence. This leave may be paid or unpaid, at the discretion of the employer. These provisions only apply to an employer who employs 50 or more employees and to an employee who has been employed for three months or longer.[13]

Section 110.221, F.S., prevents the termination of state career service employees for reasons related to pregnancy or adoption. The section also allows up to 6 months of unpaid leave for these employees.[14] In addition, s. 121.121, F.S., governs authorized leaves of absences for members of the Florida Retirement System.

"At-Will" Employment[15]

Florida is an "at-will" employment state. In essence, this means that, absent an employment contract, either party, employer or employee, may terminate the employment relationship at any time, for any reason, so long as the reason is not prohibited by law.[16]

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[10] *Id.*

[11] *See* Wisconsin Legislative Council, *Act Memo for 2011 Wisconsin Act 16: Preemption of Local Sick Leave Ordinances* (May 10, 2011), *available at* http://docs.legis.wisconsin.gov/2011/related/lcactmemo/sb23.pdf.

[12] *Id.* The Act does not affect local ordinances that require leave for employees of a local governmental unit. If the terms of a collective bargaining agreement are inconsistent with the provisions of the Act, the provisions apply when the collective bargaining agreement expires, or is extended, modified, or renewed, whichever occurs first.

[13] Section 741.313, F.S.

[14] Section 110.221, F.S. Additional provisions relate to annual leave credits and accrued sick leave.

[15] Information contained in this portion of this bill analysis is from the analysis for CS/SB 1130 by the Senate Judiciary Committee (Mar. 26, 2008) *available at* http://archive.flsenate.gov/data/session/2008/Senate/bills/analysis/pdf/2008s1130.ju.pdf.

[16] See *Smith v. Piezo Technology and Prof'l Adm'rs*, 427 So. 2d 182, 184 (Fla. 1983) ("[t]he established rule in Florida relating to employment termination is that '[W]here the term of employment is discretionary with either party or indefinite, then either party for any reason may terminate it at any time and no action may be maintained for breach of the employment contract.'") (quoting *DeMarco v. Publix Super Markets, Inc.*, 384 So. 2d 1253, 1254 (Fla. 1980)); *Leonardi v. City of Hollywood*, 715 So. 2d 1007, 1008 fn. 1 (Fla. 4th DCA 1998) ("[t]he general rule of at-will employment is that an employee

Actions for wrongful termination of employment, under the constitutional theory of a violation of "basic rights" as set forth in Article I, s. 2, State Constitution, must be based upon a state action, and not the action of one citizen (employer) against another (employee).[17] The application of the right to equal protection in Article I, s. 2, State Constitution, is activated only when the government intrudes into a citizen's most basic, personal freedom from such intrusion. Consequently, a person has no constitutional right to employment in Florida in the private sector.

The Legislature has enacted statutes addressing discrimination based upon race, color, religion, sex, national origin, age, handicap, or marital status.[18] These statutes provide causes of action for employment discrimination, and the methods by which they are to be pursued, against employers who employ 15 or more employees for each working day in each of 20 or more calendar weeks.[19]

The statutory protections set forth protect employees from discrimination based upon who they are, not matters that are necessarily matters of choice or preference. These statutory protections could be viewed as an expansion, or at least a clarification from a public policy standpoint, of the constitutional basic rights enumerated in Article I, s. 2, State Constitution.

Reasons not inherently "identity-related," for employing or not employing, retaining, or terminating an employee are matters within the discretion of the employer and are neither constitutionally nor statutorily governed.

Orange County Earned Sick Time Ordinance Petition

In 2012, registered voters petitioned to place an Orange County ordinance entitled *Earned Sick Time for Employees of Businesses in Orange County* on the November ballot.[20] The ordinance would require employers with 15 or more employees to give employees within Orange County paid sick time when they are sick or caring for a sick family member. Employees would accrue 1 hour of sick time for every 37 hours worked, capped at 56 hours in a calendar year. Employers with fewer than 15 employees would not have to offer paid sick time, but could not retaliate against workers who take unpaid time off when they are sick.

Local Government Powers and Legislative Preemption

The State Constitution grants counties or municipalities broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[21] Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the

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can be discharged at any time, as long as he is not terminated for a reason prohibited by law, such as retaliation or unlawful discrimination").

[17] *Schreiner v. McKenzie Tank Lines*, 432 So. 2d 567, 569-70 (Fla. 1983).

[18] Sections 760.1-760.11 and 509.092, F.S.

[19] Section 760.02(7), F.S.

[20] *Petition to Place Orange County Ordinance for Earned Sick Time for Employees of Businesses in Orange County on Ballot*, http://blogs.orlandosentinel.com/news_politics/files/2012/08/Earned_Sick_Time_Petition_Form.pdf (last visited April 4, 2013). The ordinance was not on the November 2012 ballot but is now scheduled for the August 2014 ballot.

[21] FLA. CONST. art. VIII, s. 1(f).

electors.[22] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[23] Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.

Under its broad home rule powers, a municipality or a charter county may legislate concurrently with the Legislature on any subject that is not been expressly preempted to the state.[24] Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication or by inference.[25] A county or municipality cannot forbid what the Legislature has expressly licensed, authorized or required, nor may it authorize what the Legislature has expressly forbidden.[26] The Legislature can preempt a county's broad authority to enact ordinances and may do so either expressly or by implication.[27]

III. Effect of Proposed Changes:

The bill creates an undesignated section of Florida Statutes on ordinances relating to family or medical leave benefits for employees. Definitions provided for "employee" and "employer" are those as established in the federal Fair Labor Standards Act of 1938.[28] "Family or medical leave" is defined to mean a paid or unpaid absence from employment to deal with a health condition or seek medical attention for oneself or to assist another person engaged in the same two activities. This type of leave is also defined to include the birth or adoption of a child. "Family or medical leave" does *not* include leave related to and arising directly from domestic violence. "Political subdivision" is also defined and includes a county, municipality, department, commission, special district board or other public body.

The bill forbids a political subdivision from requiring an employer to provide family or medical leave benefits to an employee or otherwise regulating such leave. With the exception of family or medical leave benefits regulated under federal law or regulations, the regulation of family and medical leave benefits is expressly preempted to the state.

The bill also creates the Employer-Sponsored Benefits Study Task Force to analyze employer-sponsored family and medical leave benefits and the impact of state preemption of the regulation of such benefits. The task force must submit a report of its findings and recommendations to the

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[22] FLA. CONST. art. VIII, s. 1(g).
[23] FLA. CONST. art. VIII, s. 2(b); s*ee also* s. 166.021, F.S.
[24] *See, e.g., City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[25] *City of Hollywood* at 1243.
[26] *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc* at 1020.
[27] *Phantom of Clearwater, Inc* .at 1018.
[28] See U.S. Department of Labor Wage and Hour Division, *The Fair Labor Standards Act of 1938, As Amended*, *available at* http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf (last visited April 4, 2013). Section 203 of the Act defines "employer" to include "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization." The term "employee" means "any individual employed by an employer" subject to certain federal government employee definitions and excluding certain employees deemed as volunteers.

Governor, the President of the Senate, and the Speaker of the House of Representatives. The task force is composed of 11 members and includes the Director of the Workforce Florida, Inc., who will serve as chair of the group. Workforce Florida, Inc., will provide administrative and staff support services for the task force.

The President and Speaker must each make four appointments to the task force and each must include a member of the Legislature, owners of various sized businesses, and a representative of an organization representing non-management employees of businesses. The Speaker must also appoint one member who is an economist with a background in business economics, and the President shall appoint one member who is a licensed physician with at least five years of experience in the active practice of medicine. Members of the task force will serve without compensation but may receive reimbursement for per diem and travel expenses.

The task force will organize by September 1, 2013, and complete its work by January 15, 2014. The task force is dissolved effective June 30, 2014, with the repeal of the subsection creating the task force.

This section does not limit the authority of a political subdivision to establish family or medical leave benefits for its employees. In addition, the section does not prohibit a federally authorized and recognized tribal government from requiring family or medical leave benefits for a person employed within a territory over which the tribe has jurisdiction.

The bill takes effect upon becoming law.

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:

Municipalities and charter counties have broad powers of home rule in Florida.[29] However, they are limited by general law. Preemption precludes a local government from exercising authority in a particular area and involves inconsistency with the state constitution or state statute. Preemption can occur expressly, or impliedly.[30] Where the

[29] For municipalities, s*ee* FLA CONST., art VII, s. 2; and s. 166.021(1), F.S. For counties, *see,* FLA CONST., art VII, s. 1, and ch. 125, F.S.

[30] *See*, *Florida Power Corp. v. Seminole County*, 579 So. 2d 105 (Fla. 1991) (expressly preempted); *Santa Rosa County v. Gulf Power Co*. 635 So.2d 96 (1994), (recognizing express and implied pre-emption).

Legislature has expressly "acted," a local government may not pass ordinances to the contrary.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A private business will be able to craft its leave benefits to fit its own needs.

C. Government Sector Impact:

It is unknown how many local governments may have established family or medical leave benefits that apply to non-government employees which are more expansive than federal law.[31] Under the bill, any such benefits would be preempted to the state.

The state agency responsible for the regulation of family and medical leave benefits may experience increased workload and costs related to such regulation.

There will be indeterminate costs associated with the meetings and the work-product of the Employer-Sponsored Benefits Study Task Force. There will be a fiscal impact on Workforce Florida, Inc., related to providing administrative support for the task force and reimbursing travel and per diem expenses for members.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Line 36 states that "family or medical leave" includes a period of absence used by an employee to, among other things, adopt a child. Assumedly, this means that both men and women may use leave for purposes of adopting a child; the bill is unclear as to whether both men and women may also use the leave when his or her child is born.

Additionally, if any local governments have established its own family or medical leave benefits or any employees have begun to accrue leave hours under such a local ordinances, the bill provides no details as to what will happen to employees' accrued leave hours if this bill becomes law.

[31] Miami-Dade County ordinances on family leave and domestic violence include unpaid leave for the care of a grandparent and for circumstances related to a medical or dental problem resulting from domestic or repeat violence. See Miami-Dade County Regulations, *Chapter 11A Discrimination: Article V. - Family Leave, Article VIII - Domestic Leave, supra* note 8.

VIII. 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 Health Policy on March 20, 2013:
The CS/CS clarifies that Workforce Florida, Inc., will provide administrative and staff support services for the task force. The CS/CS adds two new members to the task force: an economist with a background in business economics appointed by the Speaker, and a licensed physician with at least five years of experience in the active practice of medicine appointed by the President. The CS/CS also states that members of the task force are not entitled to compensation but may receive reimbursement for travel and per diem expenses.

C**S by Community Affairs on March 14, 2013:**
Establishes an exception to the preemption provision for leave related to and arising directly from domestic violence.

- Removes the bill's provision of an employee's right to absence from work for illness or a medical emergency and the process for work schedule adjustments for doctor or dental appointments.
- Creates the Employer-Sponsored Benefits Study Task Force.

B. Amendments:

None.

317424

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 43 - 49

and insert:

(2) A political subdivision may not adopt or enact an ordinance requiring an employer to provide family or medical leave benefits to an employee or otherwise regulate such benefits before July 1, 2014. This subsection expires June 30, 2014.

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

And the title is amended as follows:

Delete lines 4 - 7

317424

and insert:

prohibiting a political subdivision from adopting or enacting an ordinance requiring an employer to provide family or medical leave benefits to an employee or otherwise regulating such benefits before a specified date; providing for future repeal of the prohibition; creating the

By the Committees on Health Policy; and Community Affairs; and Senator Simmons

588-02795-13 2013726c2

A bill to be entitled

An act relating to the regulation of family or medical leave benefits for employees; providing definitions; prohibiting a political subdivision from requiring or otherwise regulating family or medical leave benefits for employees; preempting regulation of family or medical leave benefits to the state; creating the Employer-Sponsored Benefits Study Task Force; directing Workforce Florida, Inc., to provide administrative and staff support services for the task force; establishing the purpose and composition of the task force; providing for reimbursement for per diem and travel expenses; requiring the task force to submit a report to the Governor and the Legislature by a specified date; providing report requirements; providing for future repeal of the task force; providing that the act does not prohibit a political subdivision from establishing family or medical leave benefits for its employees; providing that the act does not prohibit a federally authorized or recognized tribal government from requiring family or medical leave benefits under certain conditions; providing an effective date.

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

Section 1. Family or medical leave benefits for employees.—

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

(a) "Employee" and the term "employer" have the same

588-02795-13 2013726c2

meanings as established in the federal Fair Labor Standards Act of 1938, 29 U.S.C. s. 203.

(b) "Family or medical leave" means a period of absence from employment, paid or unpaid, used by an employee to deal with a health condition or seek medical attention, to assist another person dealing with a health condition or seeking medical attention, or to give birth to or adopt a child. The term does not include leave related to and arising directly from domestic violence.

(c) "Political subdivision" means a county, municipality, department, commission, special district, board, or other public body, whether corporate or otherwise, created by or under state law.

(2) A political subdivision may not require an employer to provide family or medical leave benefits to an employee and may not otherwise regulate such leave. For purposes of uniform application of this section throughout the state, with the exception of family or medical leave benefits regulated under federal law or regulations, the regulation of family and medical leave benefits is expressly preempted to the state.

(3)(a) There is created the Employer-Sponsored Benefits Study Task Force. Workforce Florida, Inc., shall provide administrative and staff support services relating to the functions of the task force. The task force shall organize by September 1, 2013. The task force shall be composed of 11 members. The Director of Workforce Florida, Inc., shall serve as a member and chair of the task force. The Speaker of the House of Representatives shall appoint one member who is an economist with a background in business economics. The President of the

Senate shall appoint one member who is a physician licensed under chapter 458 or chapter 459 with at least 5 years of experience in the active practice of medicine. In addition, the President of the Senate and the Speaker of the House of Representatives shall each appoint four additional members to the task force. The four appointments from the President of the Senate and the four appointments from the Speaker of the House of Representatives must each include:

1. A member of the Legislature.

2. An owner of a business in this state which employs fewer than 50 people.

3. An owner or representative of a business in this state which employs more than 50 people.

4. A representative of an organization who represents the nonmanagement employees of a business.

(b) Members of the task force shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061.

(c) The purpose of the task force is to analyze employer-sponsored family or medical leave benefits and the impact of state preemption of the regulation of such benefits. The task force shall develop a report that includes its findings and recommendations for legislative action regarding the regulation of family or medical leave benefits. The task force shall submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15, 2014.

(d) This subsection is repealed June 30, 2014.

(4) This section does not limit the authority of a political subdivision to establish family or medical leave

benefits for the employees of the political subdivision.

(5) This section does not prohibit a federally authorized and recognized tribal government from requiring family or medical leave benefits for a person employed within a territory over which the tribe has jurisdiction.

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

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 964
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Abruzzo
SUBJECT:	Termination of Parental Rights
DATE:	April 5, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS**
2.	Clodfelter	Cannon	CJ	**Favorable**
3.	Brown	Cibula	JU	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

CS/SB 964 provides that a father's parental rights may be terminated if the court determines by clear and convincing evidence that the child was conceived during an act of sexual battery committed in violation of s. 794.001, F.S., or a similar law of another jurisdiction. The bill provides a presumption that termination is in the child's best interests.

The bill also authorizes filing of a petition for termination of parental rights under these circumstances at any time.

This bill conforms a cross-reference to add the new s. 39.806(1)(m), F.S., to s. 39.811(6)(e), F.S., related to those grounds in which termination of the rights of one parent may be severed without severing the rights of the other parent.

This bill takes effect July 1, 2013, and applies prospectively and retroactively to all unlawful acts of sexual battery.

This bill substantially amends sections 39.806 and 39.811, Florida Statutes.

II. Present Situation:

Parental Rights

In the United States, the right to have and raise a family is a fundamental right grounded in the 14th Amendment.[1] Because parental rights are fundamental, parents are not easily deprived of these rights. Courts presume that parents have parental rights to their biological children and to overcome this presumption and deprive a parent of parental rights, there must be "grave and weighty reasons" for such deprivation.[2] Parental rights allow for significant involvement in a child's life. These rights include the right to custody of the child, visitation with the child, and notice or consent for adoption.[3]

In most states two types of custody are referred to: physical and legal. Physical custody is when a parent has the right and obligation to provide a physical home for the child and to make day-to-day decisions concerning the child. Legal custody is when a parent has the right to make important decisions about a child's welfare, including but not limited to decisions related to education and healthcare.[4]

Custody can also be sole or joint, with joint custody becoming more common. Such custody necessarily entails significant contact and communication between parents. For example, parents may have to communicate with each other about the child's health, the child's progress in school, and what activities the child is permitted to engage in. Joint custody can even restrict either parent from relocating if the relocation puts the child too far away from one of the parents.[5]

In cases in which the parents of a child have never been married, are separated, or are divorced, Florida courts are required to order that parental responsibility for the child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. Evidence that a parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28, F.S., and ch. 775, F.S., or meets the criteria of s. 39.806(1)(d), F.S., for termination of parental rights, creates a rebuttable presumption that shared parental responsibility would be detrimental to the child. If the convicted parent does not rebut the presumption, shared parental responsibility (including time-sharing with the child and decisions made regarding the child) may not be granted. However, preclusion from shared parental responsibility does not relieve the convicted parent of an obligation to provide financial support.[6]

A parent who does not have physical custody will normally have visitation rights. The right to visitation is strong and, absent exceptional circumstances, courts will not deny parents these rights. In Florida, if the court determines that shared parental responsibility would be detrimental

[1] *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).
[2] Kara N. Bitar. *The Parental Rights of Rapists.* 19 Duke J. of Gender Law & Policy 275, 276 (2012).
[3] *Id*.
[4] Florida has moved away from using the terms custody and visitation and instead the statutes refer to shared parental responsibility, sole parental responsibility, and time sharing. Chapter 2008-61, L.O.F.
[5] Section 61.13001, F.S.
[6] Section 61.13(2)(c)2., F.S.

to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan to best protect the child or abused spouse from further harm. Even if there is not a conviction for domestic violence or child abuse or an injunction for protection against domestic violence, the court must consider evidence of domestic violence or child abuse as evidence of detriment to the child.[7]

In addition to rights to custody and visitation, fathers normally must be provided notice if the mother wants to place the child for adoption and, under certain circumstances, must consent to the adoption. Notice and consent requirements vary by state. In Florida, the Legislature has found:

> that the interests of the state, the mother, the child, and the adoptive parents outweigh the interest of an unmarried biological father who does not take action in a timely manner to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter. An unmarried biological father has the primary responsibility to protect his rights and is presumed to know that his child may be adopted without his consent unless he strictly complies with this chapter and demonstrates a prompt and full commitment to his parental responsibilities.[8, 9]

A biological father's rights to notice and consent for adoption can affect women who want to place their newborn child for adoption as well as women who have decided to raise their child and want their spouse or significant other to adopt the child.[10]

Parental rights can also play a role when one parent is seeking public assistance. For instance, under the current welfare system, a single mother will not receive assistance unless she agrees to cooperate with the state in locating the father and obtaining child support from him.[11] In Florida, cooperation includes:

- Assisting in identifying and locating a parent who does not live in the same home as the child and providing complete and accurate information on that parent;
- Assisting in establishing paternity; and
- Assisting in establishing, modifying, or enforcing a support order with respect to a child of a family member.[12]

[7] *Id*.
[8] Section 63.053, F.S.
[9] In order to preserve the right to notice and consent to an adoption under Florida law, an unmarried biological father must file a notarized claim of paternity form with the Florida Putative Father Registry maintained by the Office of Vital Statistics of the Department of Health. The form includes confirmation of the father's willingness and intent to support the child for whom paternity is claimed in accordance with state law. Section 63.054, F.S.
[10] See generally Chapter 63, L.O.F.
[11] Section 414.095(6), F.S.
[12] *Id*. These requirements do not apply if the Department of Revenue determines that the parent or caretaker relative has good cause for failing to cooperate.

In sum, parental rights give parents the right to a substantial role in their children's lives. These rights are fundamental and courts will not readily terminate them. As such, a rapist who fathers a child, absent legislation to the contrary, may theoretically have rights to the child.

Termination of Parental Rights in General

Florida courts have long recognized the "fundamental liberty interest of parents in determining the care and upbringing of their children free from the heavy hand of government paternalism."[13] This fundamental parental right is not absolute, but is limited only by the principle that the welfare or best interest of the child is paramount.[14]

Because the state has a compelling interest in protecting its children, it may permanently and involuntarily terminate parental rights only after showing by clear and convincing evidence that the parent "poses a substantial risk of significant harm to the child."[15] Florida courts have also held that, because termination of parental rights implicates a fundamental liberty interest, termination must be the least restrictive means of protecting the child.[16]

Relying on these constitutional principles, the framework for terminating parental rights in Florida requires the state to establish with clear and convincing evidence:[17]

- The existence of statutory grounds;
- That termination is in the child's best interests; and
- That termination is the least restrictive means of protecting the child.[18]

The "least restrictive means" analysis is not defined by statute. However, Florida courts have found that the least restrictive means test "requires the court to utilize measures short of termination if such measures can permit a safe re-establishment of the parent-child bond."[19]

Grounds for Termination of Parental Rights in Florida

A proceeding to terminate parental rights may be initiated by the department, the guardian ad litem, or any other interested person.[20] The petition for termination must include allegations that one of the grounds for termination has been met, that the parents were informed of their right to counsel, that termination is in the best interest of the child, and that the parents will be informed of availability of private placement of the child with an adoption entity.[21]

Unless certain exceptions apply, the department must file a petition to terminate parental rights if:

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[13] *Padgett v. Department of Health and Rehabilitative Services*, 577 So. 2d 565, 570 (Fla. 1991).
[14] *Id*.
[15] *Id*. at 571.
[16] *Id*.
[17] Section 39.809(1), F.S.
[18] *T.C. v. Department of Children and Families*, 961 So. 2d 1060, 1061 (Fla. 4th DCA 2007).
[19] *L.D. v. Department of Children and Family Services*, 957 So. 2d 1203, 1206 (Fla. 3d DCA 2007) (quoting *E.R. v. Department of Children and Family Services*, 937 So. 2d 1196, 1199 (Fla. 3d DCA 2006).
[20] Section 39.802(1), F.S.
[21] Section 39.802(4), F.S.

- At the time of the 12-month judicial review hearing, a child is not returned to the physical custody of the parents;
- A child has been in out-of-home care under the responsibility of the state for 12 of the most recent 22 months;
- A parent has been convicted of murder or manslaughter of the other parent, aiding, abetting, conspiracy, or solicitation to murder the other parent, or of a felony battery that resulted in serious bodily injury to the child or to any other child of the parent; or
- A court determines that reasonable efforts to reunify the child and parent are not required.[22]

In Florida, grounds for the termination of parental rights may be established under the following circumstances:[23]

(a) Voluntary surrender of the child by the parent or parents;
(b) Abandonment;
(c) Conduct that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the physical and emotional well-being of the child, irrespective of the provision of services;
(d) Incarceration under certain circumstances;[24]
(e) Failure to comply with the case plan;
(f) Egregious conduct that threatens the physical and emotional well-being of the child or the child's sibling;
(g) Aggravated child abuse, sexual battery or sexual abuse, or chronic abuse;
(h) Murder, voluntary manslaughter, or felony assault of the child or another child;
(i) Parental rights to a sibling have been terminated involuntarily;
(j) Parents have a history of extensive, abusive and chronic use of alcohol or controlled substances;
(k) A test administered at birth indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances under certain circumstances; and
(l) On three or more occasions the child or another child of the parent or parents has been placed in out-of-home care and the conditions that led to the child's out-of-home placement were caused by the parent or parents.

[22] Section 39.8055, F.S.
[23] Section 39.806(1), F.S.
[24] The circumstances include: (1) The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years; (2) The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, F.S., a habitual violent felony offender as defined in s. 775.084, F.S., or a sexual predator as defined in s. 775.21, F.S., has been convicted of first degree or second degree murder in violation of s. 782.04, F.S., or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011, F.S., or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or (3) The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

Reasonable efforts to preserve and reunify families are not required if a court determines that any of the events described in (b)-(d) or (f)-(l) above, has occurred.[25]

In determining the best interests of the child, the court must consider and evaluate all relevant factors, including:

- Availability of a permanent custody arrangement with a relative of the child;
- Ability of the parent to provide for the child;
- Capacity of the parent to care for the child;
- Mental and physical health needs of the child;
- Love, affection, and other emotional ties existing between the child and the parent;
- Likelihood of an older child remaining in long-term foster care upon termination;
- Child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination;
- Length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- Depth of the relationship existing between the child and the present custodian;
- Reasonable preferences and wishes of the child; and
- Recommendations for the child provided by the child's guardian ad litem or legal representative.[26]

Section 39.811(6), F.S., provides that the parental rights of one parent may be severed without severing the parental rights of the other parent only under certain, specified circumstances, one of which is if the parent whose rights are being terminated meets any of the grounds specified in s. 39.806(1)(d) and (f)-(l), F.S.

Grounds for Termination of Parental Rights in Other States

At least 19 states, including Alaska, Connecticut, Idaho, Louisiana, Maine, Missouri, Montana, Oklahoma, Pennsylvania, Texas, Washington, and Wisconsin, allow for the termination of parental rights in cases where the parent is the father of a child conceived as a result of rape, sexual assault, or incest.[27]

In other states, consent to adoption is not required from a biological father if the child who is the subject of the adoption proceeding was conceived as the result of criminal sexual assault or abuse.[28] In Nevada and New Jersey, a person convicted of sexual assault has no right to custody or visitation with a child who is born because of the assault.[29]

[25] Section 39.806(2), F.S. See also s. 39.521(1)(f), F.S.
[26] Section 39.810, F.S.
[27] See, for example, AK. s. 25.23.180(c)(3); CT. GEN. STAT. ss. 17a-112(j)(3)(G) and 45a-717(g)(2)(G); ID. CODE ANN. s. 16-2005(2)(a); LA. Child. CODE ANN. art. 1015; ME. REV. STAT. ANN. Tit. 19-A, s. 1658; MO. REV. STAT. ANN. s. 211.447; MT. CODE ANN. s. 41-3-609(1)(c); OK. STAT. ANN. Tit. 10A 1-4-904(B)11; PA. CONS. STAT. ANN. s. 2511(a)(7); TX. Fam. CODE ANN. s. 161.007; WA. REV. CODE ANN. s. 13.34.132; WI. STAT. ANN. s. 48.415(9)(a).
[28] See 750 Ill. Comp. Stat. 50/8(a)(5); IN. CODE 31-19-9-8(a)(4); NY. Domestic Relations Laws. 111-a(1); S.C. CODE ANN. s. 20-7-1734.
[29] See NV. REV. STAT. s. 125C.210; NJ. STAT. ANN. 9:2-4.1.

At least one court has considered the constitutional implications of terminating parental rights to a child born as the result of illegal sexual intercourse. In *Pena v. Mattox*, the United States Court of Appeals for the Seventh Circuit considered the argument made by a biological father who conceived a child during statutory rape that he had a constitutionally protected right to parent the child.[30] The court noted that the United States Constitution forbids a state from depriving parents of their children without good reason, but went on to say:

> It is not the brute biological fact of parentage, but the existence of an actual or potential relationship that society recognizes as worthy of respect and protection, that activates the constitutional claim. …
>
> [N]o court has gone so far as to hold that the mere fact of fatherhood, consequent upon a criminal act … creates an interest that the Constitution protects in the name of liberty. … The criminal does not acquire constitutional rights by his crime other than the procedural rights that the Constitution confers on criminal defendants. Pregnancy is an aggravating circumstance of a sexual offense, not a mitigating circumstance. The criminal should not be rewarded for having committed the aggravated form of the offense by receiving parental rights which he may be able to swap for the agreement of the victim's family not to press criminal charges. …
>
> The Constitution does not forbid the states to penalize the father's illicit and harmful conduct by refusing to grant him parental rights that he can use to block an adoption or simply enjoy as the fruit of his crime. …
>
> [A] state has discretion to decide whether it is better to encourage the kind of conduct in which the plaintiff engaged by giving him parental rights or discourage it by refusing to bestow legal protection on the relationship between father and child. The interest asserted by the plaintiff is not so compelling as to warrant our overriding the state's choice in the name of the Constitution.[31]

Paternity Establishment in Florida

Unmarried fathers in Florida must legally establish paternity in order to claim their paternal rights.[32] Any woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child may bring proceedings to determine the paternity of the child when paternity has not been established by law or otherwise.[33]

Except as provided in ch. 39 and 63, F.S., primary jurisdiction and procedures for the determination of paternity for children born out of wedlock is provided in ch. 742, F.S.

[30] *Pena v. Mattox*, 84 F.3d 894 (7th Cir. 1996).
[31] *Id.* at 899-902.
[32] A man who is or may be the biological father of a child whose paternity has not been established and whose mother was unmarried when the child was conceived and born is known as a "putative father." Section 409.256 (1)(g), F.S.
[33] Section 742.011. F.S.

Paternity is established if:

- The establishment of paternity has been raised and determined within an adjudicatory hearing brought under the statutes governing inheritance, or dependency under workers' compensation or similar compensation programs;
- An affidavit acknowledging paternity or a stipulation of paternity is executed by both parties and filed with the clerk of the court;
- An affidavit, a notarized voluntary acknowledgment of paternity, or a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury as provided for in s. 382.013, F.S., or s. 382.016, F.S., is executed by both parties; or
- Paternity is adjudicated by the Department of Revenue.[34]

Sexual Battery

Section 794.011(1)(h), F.S., defines sexual battery as "oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object." Section 794.011, F.S., provides various levels of penalties for the commission of sexual battery, depending on the age of the victim and the circumstances of the offense, with the most serious offenses punishable by life in prison.

In 2011, victims reported 9,880 forcible sex offenses in Florida, including 5,273 forcible rapes.[35] One author reports that:

> Pregnancy from rape occurs with "significant frequency." Of the estimated 12 percent of adult women in the United States that have experienced at least one rape in their lifetime, 4.7 percent of these rapes result in pregnancy. Therefore, based on a 1990 study estimating that 683,000 women over the age of eighteen were raped in that year, conceivably 32,000 rape-related pregnancies occur annually. A separate study conducted in 2000 estimated that, given the decline in the incidence of rape, 25,000 pregnancies following the rape of adult women occur annually. It is difficult to determine with certainty the outcome of the approximately 25,000 to 32,000 rape-related pregnancies that occur in the United States each year. One study found that 50 percent of women who became pregnant by rape underwent abortions, 5.9 percent placed their infants for adoptions, and 32.3 percent of raped women kept their infants. Another study, conducted in a separate year, found markedly different results, concluding that 26 percent of women pregnant through rape underwent abortions. Of the 73 percent of women who carried their pregnancies to term, 36 percent placed their infants for adoption, and 64 percent raised the children they conceived through rape.[36]

[34] Section 742.10, F.S.
[35] Florida Department of Law Enforcement, *Crime in Florida. 2011. available at* http://www.fdle.state.fl.us/Content/getdoc/594fa00a-35bb-4e79-ad95-ba8bb0fc67f5/CIF_Annual11.aspx.
[36] Shauna R. Prewitt. *Giving Birth to a "Rapist's Child:" A Discussion and Analysis of the Limited Legal Protections Afforded to Women Who Become Mothers Through Rape*. 98 Geo. L. J. 827, 828-829 (March 2010).

Section 804.04(4), F.S., prohibits lewd and lascivious battery, a similar offense that prohibits sexual activity with a child who is older than 12 years old but younger than 16 years old regardless of whether the child victim consented to the activity.[37] Lewd and lascivious battery is a second degree felony, punishable by up to 15 years in prison.

Restitution in Florida

Unless a court finds clear and compelling reasons not to order restitution, it must order the defendant to make restitution to a victim in a criminal proceeding for:

- Damage or loss caused directly or indirectly by the defendant's offense; and
- Damage or loss related to the defendant's criminal episode.[38]

The term "victim" as used in the provisions of law relating to restitution means "each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense…."[39]

The court may require the defendant to pay restitution within a specified period or in installments, but the end of the specified period or the last installment cannot be later than:

- The end of the period of probation if probation is ordered;
- Five years after the end of the term of imprisonment if the court does not order probation; or
- Five years after the date of sentencing in any other case.[40]

If a defendant is placed on probation or paroled, complete satisfaction of any restitution ordered must be a condition of the probation or parole. The court may revoke probation, and the Parole Commission may revoke parole, if the defendant fails to comply with the restitution order.[41]

Pursuant to s. 775.089(11), F.S., the court may order the clerk of the court or the Department of Corrections (DOC) to collect and disburse restitution payments. In addition, an order of restitution may be enforced by the state or by a victim in the same manner as a judgment in a civil action.[42]

[37] The definitions of "sexual activity" in s. 800.04(1)(a), F.S., and of "sexual battery" in s. 794.011(1)(h), F.S., are identical. Consensual or non-consensual sexual activity with a child under 12 years of age is sexual battery in violation of s. 794.011(2), F.S. Sexual battery of a child under 12 is punishable by a mandatory life sentence if the offender an adult, and a minimum 30 years in prison if the offender is a juvenile tried as an adult.
[38] Section 775.089(1)(a), F.S.
[39] Section 775.089(1)(c), F.S.
[40] Section 775.089(3), F.S.
[41] Section 775.089(4), F.S.
[42] Section 775.089(11), F.S.

Child Support in Florida

The Department of Revenue (DOR) Child Support Enforcement Program (CSE) obtains court or administrative orders for child support, using guidelines provided in s. 61.30, F.S., to establish the amount of the obligation. The child support guidelines are based on the number of children and the combined income of the parents. The child support obligation is divided between the parents in direct proportion to their income or earning capacity. In most cases, a child support obligation continues until a child reaches 18 years of age.[43]

As required by federal law,[44] the child support enforcement program is prohibited from disclosing information on the whereabouts of one party or the child to the other party against whom a protective order with respect to the former party or the child has been entered. Additionally, the program may not disclose information on the whereabouts of one party or the child to another person if the program has reason to believe that the release of information to that person may result in physical or emotional harm to the party or the child.[45]

III. Effect of Proposed Changes:

The bill substantially changes Florida's termination of parental rights standard to include harm not done to the child as stated in s. 39.806(1) F.S., but towards the mother of a child, as a result of a sexual battery that resulted in the birth of a child.

Section 1 of the bill provides that a father's parental rights may be terminated if the court determines by clear and convincing evidence that the child was conceived during an act of sexual battery pursuant to s. 794.001, F.S., or a similar law of another jurisdiction. This means that the father does not have to be convicted of sexual battery under the criminal standard of proof of beyond a reasonable doubt in order to have his parental rights terminated. If the father was convicted of sexual battery, in many cases the court could order a termination of parental rights based on the conviction and lengthy incarceration pursuant to s. 39.806(1)(d), F.S.

The bill creates a presumption that termination of parental rights because the child was conceived as the result of sexual battery is in the child's best interests. It also provides that a petition for termination of parental rights under these circumstances may be filed at any time.

Section 2 of the bill conforms a cross-reference to add the new s. 39.806(1)(m), F.S., to s. 39.811(6)(e), F.S., related to those grounds in which termination of the rights of one parent may be severed without severing the rights of the other parent.

Section 3 of the bill provides an effective date of July 1, 2013, and provides for retroactive application.

[43] Section 61.30(1)(a), F.S.
[44] 42 U.S.C. s. 654 (26).
[45] Section 409.2579, F.S.

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:

The bill potentially implicates Article 1, Section 23, of the State Constitution relating to privacy rights.[46] Parents have a right to raise their children free from governmental intrusion, unless the state can show harm to the child.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be costs to mothers who are petitioning the court to terminate parental rights under the newly created grounds for termination.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) reported that the addition of two new grounds for termination of parental rights could increase judicial workload because there would be more grounds for petitions to be filed. However, it is not known in how many instances the new grounds would be applied. Also, if the additional grounds apply to cases in which other grounds already exist, there could be little effect on workload (at least in those cases) because the petition would already be filed alleging other grounds.[47]

The fiscal impact on expenditures of the state courts system cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload.[48]

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[46] FLA. CONST. art. 1, s. 23 provides, in part, that "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life."
[47] Florida Office of the State Courts Administrator, *2013 Judicial Impact Statement, SB 964* (Mar. 8, 2013) (on file with the Senate Committee on Judiciary).
[48] *Id*.

The Department of Children and Families indicates that a fiscal impact is not expected from the provisions of this bill.[49]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill contains no provisions related to lewd or lascivious battery under s. 800.04, F.S., similar to the sexual battery offense already covered by the provisions of the bill. That offense may result in a pregnancy as well.

The addition of two new grounds for termination of parental rights under s. 39.806(1) F.S., does not guarantee that the court will terminate the parental rights of an individual who has committed sexual battery and the crime resulted in the conception of a child. The section states that "grounds for termination of parental rights may be established under any of the following circumstances."

If the court does not terminate parental rights under the new grounds created by this bill, there is no safety net for the mother of the child related to contact with the father of the child except what is currently provided for in s. 61.13, F.S. Current law provides a specific reference to victims of domestic violence in relation to shared parental responsibility and time-sharing that provides that the court shall consider evidence of domestic violence as evidence of detriment to the child. The same consideration may need to be given to victims of sexual assault who decide to raise their children.

Creating alternate protection under ch. 61, F.S., may be particularly important because the termination of parental rights implicates a fundamental liberty interest, which must be the least restrictive means of protecting the child.[50]

Also, if the court does not terminate parental rights under the new grounds, and orders sole parental responsibility for the mother with no time sharing for the father, the court may still order the father of the child to pay child support. Without some statutory provision, the father of the child may have access to the mother's location information. Again, current law shields that information in cases involving victims of domestic violence.

If parental rights are terminated under the provisions of this bill, no child support would be ordered, and some mothers who have chosen to raise their children may be left without the financial means to do so. Some type of financial support in the form of restitution specific to these types of cases may need to be considered.

[49] Department of Children and Families, *Staff Analysis and Economic Impact (HB 887)* (February 22, 2013) (on file with the Senate Committee on Judiciary).

If parental rights are terminated under the provisions of this bill and the mother of the child must apply for public assistance, absent additional statutory provisions, the mother would be required to cooperate with the child support enforcement program. This would include helping identify and locate the father of the child.

VIII. Additional Information:

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

- **CS by Children, Families, and Elder Affairs on March 12, 2013:**
  Provides that a father's parental rights may be terminated if the court determines, by clear and convincing evidence that the child was conceived during an act of sexual battery pursuant to s. 794.001, F.S., or a similar law of another jurisdiction;
- Provides that a petition for termination of parental rights under these circumstances may be filed at any time;
- Conforms a cross reference to add the new s. 39.806(1)(m), F.S., to s. 39.811(6)(e), F.S., related to those grounds in which termination of the rights of one parent may be severed without severing the rights of the other parent; and
- Provides for retroactive application.

B. Amendments:

None.

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

586-02278-13 2013964c1

A bill to be entitled

An act relating to termination of parental rights; amending s. 39.806, F.S.; providing that a parent's rights may be terminated if the court determines, by clear and convincing evidence, that the child was conceived during an act of unlawful sexual battery; creating a presumption that termination of parental rights is in the best interest of the child if the child was conceived as a result of an unlawful sexual battery; providing that a petition to terminate parental rights may be filed at any time; amending s. 39.811, F.S.; providing for termination of parental rights of only one parent if conception was the result of an unlawful sexual battery; providing for retroactive application; providing an effective date.

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

Section 1. Paragraph (m) is added to subsection (1) of section 39.806, Florida Statutes, and subsection (2) of that section is amended, to read:

39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(m) The court determines by clear and convincing evidence that the child was conceived as a result of an act of sexual battery made unlawful pursuant to s. 794.011, or pursuant to a similar law of another state, territory, possession, or Native American tribe where the offense occurred. It is presumed that

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termination of parental rights is in the best interest of the child if the child was conceived as a result of the unlawful sexual battery. A petition for termination of parental rights under this paragraph may be filed at any time.

(2) Reasonable efforts to preserve and reunify families are not required if a court of competent jurisdiction has determined that any of the events described in paragraphs (1)(b)-(d) or paragraphs (1)(f)-(m) ~~(f)-(l)~~ have occurred.

Section 2. Subsection (6) of section 39.811, Florida Statutes, is amended to read:

39.811 Powers of disposition; order of disposition.—

(6) The parental rights of one parent may be severed without severing the parental rights of the other parent only under the following circumstances:

(a) If the child has only one surviving parent;

(b) If the identity of a prospective parent has been established as unknown after sworn testimony;

(c) If the parent whose rights are being terminated became a parent through a single-parent adoption;

(d) If the protection of the child demands termination of the rights of a single parent; or

(e) If the parent whose rights are being terminated meets any of the criteria specified in s. 39.806(1)(d) and (f)-(m) ~~(f)-(l)~~.

Section 3. This act shall take effect July 1, 2013, and applies to all unlawful acts of sexual battery occurring before, on, or after that date.

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 1404
INTRODUCER:	Criminal Justice Committee and Senator Stargel
SUBJECT:	Florida Communications Fraud Act
DATE:	April 5, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Fav/CS**
2.	Brown	Cibula	JU	**Pre-meeting**
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1404 amends s. 817.034, F.S., the Communications Fraud Act (CFA). The CFA makes it a crime for a person to engage in a scheme to defraud and obtain property; or engage in a scheme to defraud and, in furtherance of that scheme, communicate with any person with intent to obtain property from that person.

The CFA does not contain a provision specifying a statute of limitation for violations; therefore, the general statutes of limitation contained in s. 775.15, F.S., apply. This requires that violations be prosecuted as follows:

- Prosecution for a felony of the first degree must be commenced within 4 years after it is committed;
- Prosecution for any other felony must be commenced within 3 years after it is committed;
- Prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed; and
- Prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

The bill extends the statute of limitation for violations of the Communications Fraud Act to 5 years after the cause of action accrues. The bill tolls the statute of limitation for up to an additional year if the defendant is outside the jurisdiction of the court.

The Criminal Punishment Code is amended to elevate violations of the CFA from Level 6 to Level 7. This amendment has the effect of increasing the total sentencing points, and therefore could result in more defendants being sentenced to prison for violations of the Act.

This bill substantially amends sections 817.034 and 921.0022, Florida Statutes.

II. Present Situation:

Statutes of Limitation

Statutes of limitation are a statutory creation. In *State v. Hickman*, the court found that:

> Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity.[1]

In *State v. Garofalo*, the court found that "The sole purpose of a statute of limitations in a criminal context is to prevent the State from hampering defense preparation by delaying prosecution until a point in time when its evidence is stale and defense witnesses have died, disappeared or otherwise become unavailable."[2]

Section 775.15, F.S., establishes the following general statutes of limitation for commencing criminal prosecutions:

- Prosecution for a felony of the first degree must be commenced within 4 years after it is committed;
- Prosecution for any other felony must be commenced within 3 years after it is committed;
- Prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed; and
- Prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

The statute provides that time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element

[1] *State v. Hickman*, 189 So. 2d 254, 262 (Fla. 2d DCA 1966).
[2] 453 So. 2d 905, 906 (Fla. 4th DCA 1984) (citing *State v. Hickman*, 189 So. 2d 254 (Fla. 2nd DCA 1966)).

of the offense has occurred, or, if the legislative purpose is to clearly prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity terminates.[3]

The statutes of limitation in s. 775.15, F.S., generally apply to all crimes. However, some criminal statutes provide a specific statute of limitation only applicable to that crime. For example, s. 812.035(10), F.S., allows for any criminal or civil action under ss. 812.012-812.037 or 812.081, F.S. (all relating to theft), to be commenced at any time within 5 years after the cause of action accrues. The statute further specifies that in criminal proceedings, the period of limitation does not run during any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state.[4] However, this provision can only extend the limitation period by 1 year.[5]

Communications Fraud Act

When creating the Communications Fraud Act (CFA), the Legislature recognized that schemes to defraud were on the rise and that those operating the schemes were using communications technology to further their schemes to defraud.[6]

The following criminal offenses are codified in s. 817.034(4), F.S. (the CFA):

> (a) Any person who engages in a scheme to defraud and obtains property thereby is guilty of organized fraud, punishable as follows:
> 1. If the amount of property obtained has an aggregate value of $50,000 or more, the violator is guilty of a felony of the first degree,[7] ranked in Level 6 of the Criminal Punishment Code offense severity ranking chart;[8]
> 2. If the amount of property obtained has an aggregate value of $20,000 or more, but less than $50,000, the violator is guilty of a felony of the second degree;[9] or
> 3. If the amount of property obtained has an aggregate value of less than $20,000, the violator is guilty of a felony of the third degree.[10]
>
> (b) Any person who engages in a scheme to defraud and, in furtherance of that scheme, communicates with any person with intent to obtain property from that person is guilty, for each such act of communication, of communications fraud, punishable as follows:

[3] Section 775.15(3), F.S.
[4] Section 812.035(10), F.S.
[5] *Id*.
[6] Section 817.034(1), F.S.
[7] A first degree felony is punishable by up to 30 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[8] The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense.
[9] A second degree felony is punishable by up to 15 years and a $10,000 fine.
[10] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.

1. If the value of property obtained or endeavored to be obtained by the communication is valued at $300 or more, the violator is guilty of a third degree felony; or
2. If the value of the property obtained or endeavored to be obtained by the communication is valued at less than $300, the violator is guilty of a misdemeanor of the first degree.[11]

The CFA does not currently contain a specific statute of limitation for the above-described crimes. As such, the general statutes of limitation contained in s. 775.15, F.S., apply. Prosecutions for these organized fraud cases must be commenced within 4 years after the commission of a first degree felony, within 3 years after the commission of any other felony, and within 2 years of the commission of a first degree misdemeanor.

III. Effect of Proposed Changes:

The bill amends s. 817.034, F.S., to add a specific statute of limitation for scheme to defraud cases. The bill provides that any criminal or civil action under the CFA may commence any time within 5 years after the cause of action accrues. The bill specifies that in criminal cases, the period of limitation does not run at any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state. However, this provision can only extend the limitation period by 1 year.

The bill amends s. 921.0022, F.S., to move s. 817.034(4)(a)1., F.S. (the first degree felony offense of communications fraud with a value of $50,000 or more), from Level 6 in the offense severity ranking chart (36 points) to Level 7 (56 points). This has the effect of increasing the lowest permissible sentence for such offense. A defendant will be much more likely to score a prison sentence at Level 7.

The bill takes effect October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[11] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine. Sections 775.082 and 775.083, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On March 11, 2013, the Department of Corrections provided the following information on community supervision and prison admissions for the crimes addressed in this bill:

Felony Class	PRIMARY OFFENSE DESCRIPTION	SUPERVISION ADMISSION YEARS		
		FY0910	FY1011	FY1112
1st	ORG.FRAUD-$50,000 AND OVER	0	0	0
2nd	ORG.FRAUD-$20K BUT < $50K	58	52	62
3rd	ORG.FRAUD - UNDER $20,000	452	363	379

Felony Class	PRIMARY OFFENSE DESCRIPTION	PRISON ADMISSION YEARS		
		FY0910	FY1011	FY1112
1st	ORG.FRAUD-$50,000 AND OVER	0	0	1
2nd	ORG.FRAUD-$20K BUT < $50K	31	29	24
3rd	ORG.FRAUD - UNDER $20,000	103	83	74

The Criminal Justice Impact Conference (CJIC) met on March 21, 2013, and considered the potential prison bed impact of the bill. The CJIC expects an insignificant impact if the bill passes and becomes law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on April 1, 2013:
Removes the provision requiring the statute of limitation to be suspended following the end of criminal or civil cases related to the CFS.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Stargel

591-03354-13 20131404c1

A bill to be entitled

An act relating to the Florida Communications Fraud Act; amending s. 817.034, F.S.; establishing a statute of limitations for criminal and civil causes of actions under the act; specifying circumstances that toll the statute of limitations; amending s. 921.0022, F.S.; increasing the severity of a violation of the act for purposes of the criminal punishment code; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (4) of section 817.034, Florida Statutes, to read:

817.034 Florida Communications Fraud Act.—

(4) OFFENSES.—

(d) Notwithstanding any other provision of law, a criminal action, civil action, or proceeding under this act may be commenced at any time within 5 years after the cause of action accrues; however, in a criminal action under this act, the period of limitation does not run during any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state, but in no case shall this extend the period of limitation otherwise applicable by more than 1 year.

Section 2. Paragraphs (f) and (g) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

591-03354-13 20131404c1

(3) OFFENSE SEVERITY RANKING CHART

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051(3)	2nd	Knowing forgery of pedigree papers.
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.

784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or

		damage property.
790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims;

		2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $300 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; property stolen $3,000 or more; coordination of others.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
~~817.034(4)(a)1.~~	~~1st~~	~~Communications fraud, value greater than $50,000.~~
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled

		adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $20,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the

			production of materials harmful to minors.
79			
	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
80			
	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
81			
	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
82			
	944.40	2nd	Escapes.
83			
	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
84			
	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
85			
	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
86			
87	(g) LEVEL 7		

	Florida Statute	Felony Degree	Description
88			
	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
89			
	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
90			
	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
91			
	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
92			
	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
93			
	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
94			
	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.

456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene

		without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.

560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent

		predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver

		hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender

		less than 18 years.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd

		degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle

		collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement

		officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or

		state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.

893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300

but less than $20,000.

943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

Section 3. This act shall take effect October 1, 2013.

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 1478
INTRODUCER:	Senator Thompson
SUBJECT:	Haitian Family Reunification Parole Program
DATE:	April 5, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

SB 1478 is a memorial urging the Secretary of the Department of Homeland Security to create the Haitian Family Reunification Parole Program to support Haitian applicants for immigration to join their families in the United States due to the current circumstances in Haiti. On January 12, 2010, the largest earthquake ever recorded in Haiti devastated parts of the country, including the capital. It is estimated that approximately one-third of the overall population, was affected by the earthquake.

The memorial proposes that the program be established similar to the current Cuban Family Reunification Parole Program. The purpose of the program is to hasten the reunification of families and discourage Haitian citizens from resorting to illegal and dangerous means of migration into the United States.

II. Present Situation:

2010 Catastrophic Earthquake in Haiti

On January 12, 2010, the largest earthquake ever recorded in Haiti devastated parts of the country, including the capital.[1] The quake, centered about 15 miles southwest of Port-au-Prince, had a magnitude of 7.0 with a series of strong aftershocks.[2] The damage was catastrophic. The Haitian government estimated that the earthquake was responsible for more than 230,000 deaths

[1] Congressional Research Service Report R41023, *Haiti Earthquake: Crisis and Response*, by Rhoda Margesson and Maureen Taft-Morales (February 19, 2010), *available at* http://fpc.state.gov/documents/organization/139280.pdf.
[2] *Id.*

and up to $14 billion in damage.[3] The Haitian government also estimated that the earthquake affected approximately one-third of the overall population, including more than 1 million who were displaced.[4]

Today, more than 350,000 are still living in tents, and the lack of a stable political, health, and economic infrastructure has allowed the country to be especially vulnerable to disease and crime.[5] In addition, most of the donor-supported cash-for-work programs set up after the quake have ended.[6]

The Immigration and Nationality Act

Immigration into the United States is largely governed by the Immigration and Nationality Act (INA).[7] An alien is a person present in the United States who is not a citizen of the United States.[8] The INA provides for the conditions whereby an alien may be admitted to and remain in the United States[9] and provides a registration system to monitor the entry and movement of aliens in the United States.[10] An alien may be subject to removal for certain actions, including entering the United States without inspection, presenting fraudulent documents at a port of entry, health reasons, violating the conditions of admission, or engaging in certain other proscribed conduct.[11]

Various categories of legal immigration status exist that include students, workers, tourists, research professors, diplomats, and others.[12] These categories are based on the type and duration of permission granted to be present in the United States and expire based on those conditions. All lawfully present aliens must have appropriate documentation based on status.[13]

Temporary Protected Status for Haitians[14]

Provisions exist in the INA to offer temporary protected status (TPS) to aliens for relief from removal under specified circumstances. A foreign national who is granted TPS receives a registration document and an employment authorization for the duration of TPS. The United States currently provides TPS or deferred enforced departure to more than 300,000 foreign nationals from a total of seven countries: El Salvador, Haiti, Honduras, Liberia, Nicaragua, Somalia, and Sudan.

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[3] *Id.*
[4] *Id.*
[5] *Haiti, Still Waiting for Recovery*, THE ECONOMIST, January 5, 2013 *available at* http://www.economist.com/news/americas/21569026-three-years-after-devastating-earthquake-republic-ngos-has-become-country.
[6] *Id.*
[7] 8 U.S.C. chapter 12.
[8] 8 U.S.C. s. 1101(a)(3).
[9] 8 U.S.C. ss. 1181-1182, 1184.
[10] 8 U.S.C. ss. 1201(b), 1301-130.
[11] 8 U.S.C. ss. 1225, 1227, 1228, 1229, 1229c, and 1231.
[12] 8 U.S.C. ss. 201- 210.
[13] 8 U.S.C. s. 221.
[14] Information under this subheading obtained from: Congressional Research Service Report RS20884, *Temporary Protected Status: Current Immigration Policy and Issues*, by Ruth Ellen Wasem and Karma Ester (December 13, 2011), *available at* http://www.fas.org/sgp/crs/homesec/RS20844.pdf.

In response to the humanitarian crisis in Haiti caused by the earthquake, the DHS announced on January 13, 2010, that it would temporarily halt deportation of Haitians from the United States. This is known as granting Temporary Protected Status (TPS). Temporary Protected Status is a tool available to the DHS when various countries are impacted by civil unrest, violence, or natural disaster. A foreign national who is granted TPS receives a registration document and an employment authorization for the duration of the TPS.

On May 17, 2011, Secretary of Homeland Security, Janet Napolitano, extended the TPS for Haitians to January 22, 2013. The extension allows TPS for Haitians who arrived in the United States within 1 year after the earthquake.

The INA's Humanitarian Parole Authority[15]

The INA additionally provides a humanitarian parole authority to the DHS. Humanitarian parole, in the context of immigration, refers to official permission for an otherwise inadmissible alien to legally enter the United States temporarily. This includes aliens required to have a visa to visit or immigrate to the United States who are unable to obtain one, either due to ineligibility or urgent circumstances that make it impractical to apply for one. Specifically, the INA grants the Secretary of DHS discretionary authority to parole an alien into the United States temporarily on a case-by-case basis for urgent humanitarian reasons, such as to obtain medical treatment not available in his or her home country, visit a dying relative, or reunify young children with relatives. Parole does not constitute formal admission to the United States, and parolees are required to leave when the terms of their parole expire, or if otherwise eligible, to be admitted in a lawful status.

Cuban Family Reunification Parole Program[16]

On November 21, 2007, the Department of Homeland Security announced the establishment of the Cuban Family Reunification Program (CFRP), which offers Cuban nationals who are beneficiaries of approved family-based immigrant visa petitions, for which no visa is currently available, an opportunity to come to the United States rather than remain in Cuba to apply for lawful permanent resident status. The purpose of the CFRP is to expedite family reunification through safe, legal, and orderly channels of migration to the United States and to discourage dangerous and irregular maritime migration. Whether to parole a particular Cuban national is a case-by-case, discretionary determination.

III. Effect of Proposed Changes:

The memorial urges the Secretary of the Department of Homeland Security to create the Haitian Family Reunification Parole Program to support Haitian applicants for immigration to join their

[15] Information under this subheading obtained from: Congressional Research Service Report RS21349, *U.S. Immigration Policy on Haitian Migrants*, by Ruth Ellen Wasem (January 21, 2011), *available at* http://www.uscg.mil/history/docs/CRS_RS21349.pdf.

[16] Information under this subheading obtained from: Press Release, U.S. Citizenship and Immigration Service. *Fact Sheet: Cuban Family Reunification Parole Program.* (November 21, 2007), *available at* http://www.uscis.gov/files/pressrelease/CFRP_FS_21Nov07.pdf.

families in the United States due to the current circumstances in Haiti. The memorial proposes that the program be established similar to the current Cuban Family Reunification Program to hasten the reunification of families and discourage Haitian citizens from resorting to illegal and dangerous means of migration into the United States.

Copies of the memorial are to be distributed to the President of the United States, the Speaker of the United States House of Representatives, each member of the Florida delegation to the United States Congress, and to the Secretary of Homeland Security, Janet Napolitano.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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.

By Senator Thompson

12-01175D-13 20131478__

Senate Memorial

A memorial to the United States Secretary of Homeland Security, urging the United States Department of Homeland Security to create the Haitian Family Reunification Parole Program.

WHEREAS, on January 12, 2010, Haiti experienced a 7.0 magnitude earthquake, which killed 250,000 people and left more than 1 million homeless, injured, and with limited access to potable water and food, and

WHEREAS, Haitians residing in the United States, particularly in Florida, were devastated by the news and were concerned for the well-being of family members still residing in Haiti, and

WHEREAS, the President of the United States issued an executive order to grant temporary protected status to eligible citizens of Haiti, and, on May 17, 2011, the United States Secretary of Homeland Security announced the extension of the temporary protected status for eligible Haitians for another 18 months, and

WHEREAS, human rights advocates have called upon the United States Department of Homeland Security to use the Immigration and Nationality Act's humanitarian parole authority to allow Haitians who have approved visas to immigrate to the United States without waiting for extended periods of time, and

WHEREAS, the policy of the United States Citizenship and Immigration Services has been that family-based immigration petitioners residing in Haiti must remain in Haiti rather than in the United States while awaiting their visa priority dates to

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become current, and

WHEREAS, there are currently other family reunification parole programs that authorize applicants for immigration to join their families in this country, and the purpose of this memorial is to call for the establishment of a similar program in support of Haitian immigration applicants to join their families in this country due to the circumstances in Haiti, and

WHEREAS, the purpose of the Haitian Family Reunification Parole Program would be to hasten the reunification of families and discourage Haitian citizens from resorting to illegal and dangerous means of migration into the United States, and

WHEREAS, the Haitian Family Reunification Parole Program is supported by the City of Philadelphia, Pennsylvania, the United States Conference of Mayors, the Committee on Foreign Affairs of the United States House of Representatives, and six United States Senators, NOW, THEREFORE,

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

That the United States Secretary of Homeland Security and the United States Department of Homeland Security are urged to create the Haitian Family Reunification Parole Program for the reasons and purposes provided in this memorial.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to each member of the Florida delegation to the United States Congress, and to the United States Secretary of Homeland Security.

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

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 1644
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Flores
SUBJECT:	Victims of Human Trafficking
DATE:	April 5, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS**
2.	Brown	Cibula	JU	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1644 creates section 943.0583, F.S., relating to the expunction of criminal records for victims of human trafficking. Specifically, the bill:

- Defines "human trafficking," "official documentation," and "victim of human trafficking."
- Provides a process for victims of human trafficking to petition the court for expunction of the criminal history record of certain crimes committed while a petitioner was the victim of human trafficking;
- Specifies that the standard of proof on an expunction petition is a preponderance of the evidence;
- Treats an expunged conviction as a vacation due to a substantive defect in the underlying criminal proceedings;
- Requires a petitioner to file the petition with due diligence after the victim is no longer a victim of human trafficking or has sought services for victims of human trafficking subject to specified reasonable concerns;
- Creates a presumption that a person participated in an offense as the result of human trafficking if official documentation of the person's status as a victim of human trafficking

exists. Otherwise, a person must show clear and convincing evidence that he or she was a victim of human trafficking.
- Provides a list of criteria for an expunction petition; and
- Provides requirements for judicial proceedings related to expunction of records.

This bill substantially amends the following sections of the Florida Statutes: 943.0582, 943.0585, 943.059, and 961.06.

This bill creates section 943.0583, Florida Statutes.

II. Present Situation:

Human Trafficking

In 2000, the United States enacted the Trafficking Victims Protection Act (TVPA), and the United Nations adopted the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, also known as the Palermo Protocol.[1]

The Palermo Protocol focused the attention of the global community on combating human trafficking. For the first time, an international instrument called for the criminalization of all acts of trafficking, including forced labor, slavery, and slavery-like practices. The Palermo Protocol also proposed a victim-centered approach to governmental response through prevention, criminal prosecution, and victim protection.[2] These protection efforts seek to provide appropriate services to the survivors, maximizing their opportunity for a comprehensive recovery.[3]

Survivors of human trafficking often face both criminalization and stigmatization long after they escape from their trafficking situations. Despite being victims, individuals who are trafficked are often arrested and convicted of prostitution and related offenses. Trafficked persons are not often recognized or treated as victims by law enforcement agencies and prosecutors, and are therefore pressured into pleading guilty or do not understand the consequences of the charges. Multiple arrests, incarceration, police violence, deportation, and employment and housing discrimination may result.[4]

In 2010, New York became the first state to enact legislation that allows survivors of trafficking to vacate their convictions for prostitution offenses.[5, 6] While every state has a slightly different

[1] U.S. Department of State, *Trafficking in Persons Report 2010*, *available at* http://www.state.gov/documents/organization/142980.pdf.
[2] *Id*.
[3] U.S. Department of State, *Trafficking in Persons Report 2012*, available at http://www.state.gov/documents/organization/192587.pdf.
[4] Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project (April 3, 2012) available at http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf.
[5] N.Y. CRIM. PROC. LAW § 440.10(1)(i)
[6] As of June 2012, Hawaii became the sixth state to implement a law to allow criminal records related to human trafficking to be vacated. The Washington Times. *Hawaii: New law allows trafficking victims to vacate prostitution convictions* (June 11, 2012) *available at* http://communities.washingtontimes.com/neighborhood/rights-so-divine/2012/jul/11/hawaii-new-law-allows-trafficking-victims-expunge-/.

criminal procedure into which this type of remedy must fit, the central purpose of the law is to give survivors the ability to live their lives unhindered by a criminal record: "Even after they escape from sex trafficking, the criminal record victimizes them for life. This bill would give victims of human trafficking a desperately needed second chance they deserve."[7]

The Urban Justice Center in New York, instrumental in drafting the law, recommends that a strong state law on vacating convictions should:

- Not be limited to vacating only certain prostitution offenses;
- Not require the survivor to present official documentation certifying them as a victim of trafficking;
- Not require the survivor to prove that he or she has left the sex industry or been "rehabilitated;"
- Offer confidentiality provisions to protect the client's identity;
- Be the most complete remedy possible under the law;
- State that the court must vacate the convictions and dismiss the accusatory instrument if an individual meets the elements;
- Allow the court to take additional appropriate action beyond the mandate of the statute;
- Be retroactive and inclusive of victims with older convictions; and
- Ensure availability of the remedy by funding legal services attorneys.

Penalties for Human Trafficking in Florida Law

The Florida Legislature established penalties for crimes involving human trafficking in 2004.[8] Along with establishing human trafficking as a crime, the Legislature introduced the concept of coercion as a critical element to the crime of human trafficking. Today, s. 787.06(2)(a), F.S., defines coercion as:

- Using or threatening to use physical force against any person;
- Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
- Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services is not applied toward the liquidation of the debt, or the length and nature of labor or services is not proportional to the debt;
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
- Causing or threatening to cause financial harm to any person;
- Enticing or luring any person by fraud or deceit; or
- Providing a controlled substance listed in the schedule of controlled substances to any person to exploit them.

[7] Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project (April 2012) available at http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf.
[8] Chapter 2004-391, L.O.F.

Expungement

Section 943.0585, F.S., provides the courts considerable discretion in the expunction of criminal history records, provided that certain requirements are met.

Requirements for Eligibility of Expunction

- The person seeking expunction must apply for and receive a certificate of eligibility.
- Criminal history records of certain violations are ineligible for expunction, which are charges of:
  - Sexual misconduct by staff with a client at a facility serving developmentally disabled persons (s. 393.135, F.S.)
  - Sexual misconduct by a public health employee with a patient (s. 394.4593, F.S.)
  - Luring or enticing a child (s. 787.05, F.S.)
  - Sexual battery (ch. 794, F.S.)
  - Procuring a person under the age of 18 for prostitution (s. 796.03, F.S.)
  - Lewd or lascivious offenses upon or in the presence of persons under 16 (s. 800.04, F.S.); Lewd or lascivious against or in the presence of the elderly or a disabled person (s. 825.1025, F.S.)
  - Voyeurism (s. 810.04, F.S.)
  - Violations of the Florida Communications Fraud Act (s. 817.034, F.S.)
  - Use or viewing of a child in a sexual performance (s. 827.071, F.S.)
  - Offenses by county or municipal officers or employees (ch. 839, F.S.)
  - Showing obscene material to a minor (s. 847.0133, F.S.)
  - Violations of the Computer Pornography and Child Exploitation Prevention Act (s. 847.0135, F.S.)
  - Selling or buying of minors (s. 847.0145, F.S.)
  - Drug trafficking (s. 893.135, F.S.)
  - Sexual misconduct with a client at a civil or forensic facility (s. 916.1075, F.S.)
  - One of the enumerated, dangerous crimes justifying pretrial detention (s. 907.041, F.S.)
  - Sexual offender crimes (s. 775.21, F.S.)[9]

The court is limited to expunging one criminal record of an arrest or incident, unless additional arrests relate directly to the original arrest.[10]

Petitions for Expunction

Petitions for expunction must include:

- A valid certificate of eligibility for expunction issued by the Florida Department of Law Enforcement (Department).
- A sworn statement from the petitioner attesting that the petitioner has never been adjudicated guilty or delinquent of an offense that would require fingerprinting as a juvenile; has not been adjudicated guilty or delinquent of any of the acts stemming from the arrest or criminal activity to which the petition pertains; has never secured a prior sealing or expunction, unless

[9] Section 943.0585, F.S.
[10] *Id*.

it is for a record previously sealed for 10 years; and believes him or herself to be eligible for an expunction.[11]

Certificate of Eligibility

The Department must issue a certificate of eligibility if:

- The petitioner submits a written, certified copy of the disposition of the charge at issue and a statement from the prosecutor which provides that no charging document was filed or issued in the case; if a prosecutor filed a charging document, the case was dismissed or the state entered a nolle prosequi, and that none of the charges at issue resulted in a trial;
- The criminal history record does not contain one of the prohibited offenses;
- The petitioner pays the $75 processing fee;
- The petitioner meets the requirements for expunction such as prior sealing and expunction;
- The petitioner is not under court supervision; and
- The petitioner has previously received a 10 year court order sealing the record at issue.[12]

Effect of Criminal History Record Expunction

When the court orders expunction of a record, any criminal justice agency with custody of the record other than the department must destroy the record. The Department is required to retain the record; however, the record remains confidential and exempt from disclosure as a public record.[13]

Upon expunction, the person identified as a perpetrator in an expunged record may lawfully deny or fail to acknowledge the arrests, except when the person:

- Is a candidate for employment with a criminal justice agency;
- Is a criminal defendant;
- Is petitioning for a sealing or expunction of records;
- Is a candidate for admission to The Florida Bar;
- Is seeking employment, licensure, or a contract with the Department of Children and Family Services, the Division of Vocational Rehabilitation, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elder Affairs, the Department of Juvenile Justice, the Department of Education, or a local education entity or government entity that licenses child care facilities.
- Is seeking authorization for employment from a seaport.[14]

Vacation or Motions for Vacatur

The principle behind vacatur is that of a legal action being undone. Vacatur is defined as "the act of annulling or setting aside."[15]

[11] Section 943.0585(1)(b), F.S.
[12] Section 943.0585(2), F.S.
[13] Section 943.0585(4), F.S.
[14] Section 943.0585(4)(a), F.S.
[15] BLACK'S LAW DICTIONARY (9th ed. 2009).

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 943.0583, F.S., to address expunction of criminal records for offenses committed while a person is a victim of human trafficking:

- Defines "human trafficking," "official documentation," and "victim of human trafficking."
- Authorizes, but does not require, the courts to order a criminal justice agency to expunge the criminal history record of a victim of human trafficking who complies with the requirements for expunction.
  - Authorizes a person to petition for the expunction of any conviction for an offense committed while he or she was a victim of human trafficking, unless the offense is for an enumerated crime listed in s. 775.084(1)(b)1., F.S.[16]
  - Provides a standard of proof for the petition as a preponderance of the evidence.
  - Treats a conviction expunged under this section as vacated due to a substantive defect in the underlying criminal proceedings.
- Requires a petitioner to file a petition with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking, subject to reasonable concerns for the safety of the victim, family members of the victim, or other victims of human trafficking through bringing the petition.
- Creates a presumption that official documentation of status as a victim of human trafficking shows that participation in the offense was a result of having been a victim of human trafficking.
- Provides that a determination made without official documentation requires clear and convincing evidence.
- Requires petitions for expunction to contain:
  - The petitioner's sworn statement attesting that the petitioner is eligible for expunction to and does not have any other petition to expunge or seal pending before any court.
  - Official documentation of the petitioner's status as a victim of human trafficking, if any exists.

Any person who knowingly provides false information on a sworn statement to the court commits a third degree felony.

- In judicial proceedings relating to expunction:
  - The clerk must serve a copy of the completed petition to expunge to the appropriate state attorney or the statewide prosecutor and the arresting agency. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court;
  - The petitioner or the petitioner's attorney may appear at any hearing under this section telephonically, via video conference, or by other electronic means;
  - If the court grants the expunction, the clerk of the court is required to certify copies of the order to the appropriate prosecutor's office and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency listed in the court

[16] Section 775.084(1)(b)1., F.S., lists the crimes of arson, sexual battery, robbery, kidnapping; aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking.

order to which the arresting agency disseminated the criminal history record information. The Florida Department of Law Enforcement (Department) must forward the order to expunge to the Federal Bureau of Investigation (FBI). The clerk of the court must certify a copy of the order to any other agency that the records of the court reflect has received the criminal history record from the court.

- When any criminal history record of a minor or an adult is ordered expunged by the court:
  - The record must be physically destroyed by any criminal justice agency with custody of the record, except that the Department must retain the criminal history record;
  - The petitioner of a criminal history record that is expunged may lawfully deny or fail to acknowledge the arrests covered by the expunged record; and
  - A person who has been granted an expunction may not be charged with perjury or the making of a false statement for failure to acknowledge an expunged record.

Key differences provided in this bill for victims of human trafficking, compared to the traditional expunction process currently in law are that this bill:

- Creates a new basis for expunction, which is that the petitioner was a victim of human trafficking at the time of the offense.
- Extends the opportunity to expunge to convictions, rather than just arrests or dismissals.
- Treats an expunction as a vacation due to a substantive defect in the underlying criminal proceedings.
- Provides a different set of offenses for which the petitioner may not seek expunction, although some offenses overlap.
- Does not appear to require the Florida Department of Law Enforcement to issue a certificate of eligibility, and instead only requires the petitioner to file a sworn statement with the court.
- Does not require a person who is granted an expunction to disclose the underlying offense or offenses to anyone, irrespective of future employment involving contact with vulnerable persons.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement (Department) indicates an expected fiscal impact for programming, relating to dissemination of information, pursuant to this bill. The Department estimates that this bill will involve 3,977 hours of programming, at an estimated cost of $298,275. The Department also indicates a need for additional time to implement the provisions of this bill, and requests an effective date of October 1, 2014.[17]

The Office of State Courts Administrator (OSCA) indicates that an impact is expected. The extent of filings for expunction on the basis of status as a victim of human trafficking is speculative, however. The OSCA acknowledges that while some increase in judicial workload is likely, the OSCA can absorb the workload with existing resources.[18]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Children, Families, and Elder Affairs on March 18, 2013:
The committee substitute amends the term "victim of human trafficking" to remove the provision that minors who are victims of human trafficking are victims based on coercion.

B. Amendments:

None.

[17] Florida Dept. of Law Enforcement, *Senate Fiscal Note for CS/SB 1644* (March 22, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs and the Committee on Judiciary).
[18] Office of the State Courts Administrator, *2013 Judicial Impact Statement for CS/SB 1644* (March 26, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs and the Committee on Judiciary).

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LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete line 47
and insert:
Section 1. Paragraph (a) of subsection (23) of section 90.803, Florida Statutes, is amended to read:
90.803 Hearsay exceptions; availability of declarant immaterial.—The provision of s. 90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:
(23) HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.—
(a) Unless the source of information or the method or circumstances by which the statement is reported indicates a

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lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 ~~11~~ or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

1. The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate; and

2. The child either:

a. Testifies; or

b. Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1).

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

And the title is amended as follows:

576574

Delete line 3

and insert:

amending s. 90.803, F.S.; revising the mental, emotional, or developmental age of a child victim whose out-of-court statement describing specified criminal acts is admissible in evidence in certain instances; creating s. 943.0583, F.S.; providing definitions;

277652

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Gardiner) recommended the following:

Senate Amendment

Delete line 60
and insert:
subjected to human trafficking, or an individual subjected to

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

586-02626-13 20131644c1

A bill to be entitled

An act relating to victims of human trafficking; creating s. 943.0583, F.S.; providing definitions; providing for the expungement of the criminal history record of a victim of human trafficking; designating what offenses may be expunged; providing exceptions; providing that an expunged conviction is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings; providing for a period in which such expungement must be sought; providing that official documentation of the victim's status as a human trafficking victim creates a presumption; providing a standard of proof absent official documentation; providing requirements for petitions; providing criminal penalties for false statements on such petitions; providing for parties to and service of such petitions; providing for electronic appearances of petitioners and attorneys at hearings; providing for orders of relief; providing for physical destruction of certain records; authorizing a person whose records are expunged to lawfully deny or fail to acknowledge the arrests covered by the expunged record; providing that such lawful denial does not constitute perjury or subject the person to liability; providing that cross-references are considered general reference for the purpose of incorporation by reference; amending ss. 943.0582, 943.0585, 943.059, and 961.06, F.S.; conforming provisions to changes made by the act;

586-02626-13 20131644c1

providing an effective date.

WHEREAS, victims of trafficking may be forced to engage in a variety of illegal acts beyond prostitution, and

WHEREAS, trafficked persons are not always recognized as victims by the police and prosecutors and are thus pressured into pleading guilty or do not understand the consequences of criminal charges, and

WHEREAS, all persons with criminal records reflecting their involvement in the sex industry may face barriers to employment and other life opportunities long after they escape from their trafficking situations, and

WHEREAS, there is a genuine need for a workable solution to alleviate the impact of the collateral consequences of conviction for victims of human trafficking, NOW, THEREFORE,

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

Section 1. Section 943.0583, Florida Statutes, is created to read:

943.0583 Human trafficking victim expunction.—

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

(a) "Human trafficking" has the same meaning as provided in s. 787.06.

(b) "Official documentation" means any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.

(c) "Victim of human trafficking" means a person subjected to coercion, as defined in s. 787.06, for the purpose of being

used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subject to human trafficking as defined by federal law.

(2) Notwithstanding any other provision of law, the court of original jurisdiction over the crime sought to be expunged may order a criminal justice agency to expunge the criminal history record of a victim of human trafficking who complies with the requirements of this section. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(3) A person who is a victim of human trafficking may petition for the expunction of any conviction for an offense committed while he or she was a victim of human trafficking, which offense was committed as a part of the human trafficking scheme of which he or she was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chapters 796 and 847. However, this section does not apply to any offense listed in s. 775.084(1)(b)1. Determination of the petition under this section should be by a preponderance of the evidence. A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.

(4) A petition under this section must be initiated by the petitioner with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking, subject to reasonable concerns for the safety of the victim, family members of the victim, or other victims of human trafficking that may be jeopardized by the

bringing of such petition or for other reasons consistent with the purpose of this section.

(5) Official documentation of the victim's status creates a presumption that his or her participation in the offense was a result of having been a victim of human trafficking but is not required for granting a petition under this section. A determination made without such official documentation must be made by a showing of clear and convincing evidence.

(6) Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(a) The petitioner's sworn statement attesting that the petitioner is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

(b) Official documentation of the petitioner's status as a victim of human trafficking, if any exists.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7)(a) In judicial proceedings under this section, a copy of the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

(b) The petitioner or the petitioner's attorney may appear at any hearing under this section telephonically, via video conference, or by other electronic means.

(c) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency listed in the court order to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency that the records of the court reflect has received the criminal history record from the court.

(8)(a) Any criminal history record of a minor or an adult that is ordered expunged by the court of original jurisdiction over the crime sought to be expunged pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the department must be retained in all cases.

(b) The person who is the subject of a criminal history record that is expunged under this section may lawfully deny or fail to acknowledge the arrests covered by the expunged record.

(c) A person who has been granted an expunction under this section may not be held under any law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

(9) Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

Section 2. Subsection (6) of section 943.0582, Florida Statutes, is amended to read:

943.0582 Prearrest, postarrest, or teen court diversion program expunction.—

(6) Expunction or sealing granted under this section does not prevent the minor who receives such relief from petitioning for the expunction or sealing of a later criminal history record as provided for in ss. 943.0583, 943.0585, and 943.059, if the minor is otherwise eligible under those sections.

Section 3. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a

violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice

agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or

7. Is seeking authorization from a seaport listed in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12.

Section 4. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a

criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if

the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former

s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or

8. Is seeking authorization from a Florida seaport identified in s. 311.09 for employment within or access to one

or more of such seaports pursuant to s. 311.12.

Section 5. Paragraph (e) of subsection (1) of section 961.06, Florida Statutes, is amended to read:

961.06 Compensation for wrongful incarceration.—

(1) Except as otherwise provided in this act and subject to the limitations and procedures prescribed in this section, a person who is found to be entitled to compensation under the provisions of this act is entitled to:

(e) Notwithstanding any provision to the contrary in s. 943.0583 or s. 943.0585, immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. The Department of Legal Affairs and the Department of Law Enforcement shall, upon a determination that a claimant is entitled to compensation, immediately take all action necessary to administratively expunge the claimant's criminal record arising from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. All fees for this process shall be waived.

The total compensation awarded under paragraphs (a), (c), and (d) may not exceed $2 million. No further award for attorney's fees, lobbying fees, costs, or other similar expenses shall be made by the state.

Section 6. This act shall take effect July 1, 2013.

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 292
INTRODUCER:	Commerce and Tourism Committee; Senator Richter and others
SUBJECT:	Deceptive and Unfair Trade Practices
DATE:	April 5, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	**Fav/CS**
2.	Brown	Cibula	JU	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 292 revises the claims procedure for actions against motor vehicle dealers under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). Specifically, it requires claimants to provide a written demand letter to motor vehicle dealers at least 30 days prior to filing suit or initiating arbitration.

The bill:

- Prescribes the content of the demand letter.
- Specifies the method of delivery of the letter.
- Precludes a claimant from filing a lawsuit if the dealer complies with the request in the demand letter for the damages stated. The dealer must also pay a surcharge of $500 if the claimant is represented by an attorney.
- Specifies that compliance with a demand letter does not constitute an admission of liability or fault, is not admissible into evidence, and releases the dealer from future claims relating to the incident referenced in the letter.
- Provides a written form of notice for dealers to provide to consumers of the demand letter requirement.

This bill substantially amends section 501.975, Florida Statutes.

This bill creates section 501.98, Florida Statutes.

II. Present Situation:

History of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

The original FDUTPA statute was based on the 1973 Uniform Consumer Sales Practices Act (UCSPA) and the Model Little FTC Act.[1] In fact, FDUTPA is commonly known as the "Little FTC Act."[2] In carving out a state law, the Florida Legislature expressed its intent to afford "due consideration and great weight" to interpretations by federal courts and the Federal Trade Commission regarding the definitions of unfair and deceptive practices.[3]

Though not defined in FDUTPA, a motor vehicle dealer is defined in the state's motor vehicle license law as: "any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement."[4]

A major distinction between the federal act and state law is that federal law does not authorize a private cause of action, whereas FDUTPA does, limited to recovery of actual damages to the consumer plaintiff.[5] In applying to private causes of action, the Florida Supreme Court also upheld FDUTPA's application to a single unfair or deceptive act, "even if it involves only a single party, a single transaction, or a single contract."[6]

Provisions in the Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

The FDUTPA, in part II of ch. 501, F.S., prohibits unfair methods of competition, as well as deceptive acts or practices, in the conduct of trade or commerce.[7] The expressed purpose of the act is to:

- Simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices;
- Protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce; and
- Make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.[8]

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[1] David J. Federbush, *Damages Under FDUTPA*, 78 FLA. B.J. 20, 26 (May 2004).
[2] Douglas B. Brown, *Florida Legislature Broadens the Scope of the "Little FTC Act,"* 67 FLA. B.J. 50 (Oct. 1993).
[3] Section 501.204(2), F.S.
[4] Section 320.27(1)(c), F.S.
[5] Brown, *supra* note 2, at 52; *see* s. 501.211(2), F.S.
[6] *P.N.R., Inc. v. Beacon Property Management, Inc.*, 842 So. 2d 773, 777 (Fla. 2003).
[7] Section 501.204, F.S.

The statute authorizes enforcing agencies to bring actions under FDUTPA. An enforcing authority is either the Office of the State Attorney if the violation occurs in the office's jurisdiction, or the Department of Legal Affairs (department) if the violation occurs in or affects more than one judicial circuit or if a state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.[9] The enforcing authority may bring:

- An action to obtain declaratory judgment that an act or practice violates the FDUTPA;
- An action to enjoin any person who has violated, is violating, or is otherwise likely to violate the FDUTPA; and
- An action on behalf of one or more consumers or governmental entities for actual damages caused by an act or practice in violation of the FDUTPA.[10]

Under the FDUTPA, aggrieved individuals may bring an individual action to obtain a declaratory judgment that a practice or act violates the FDUTPA and to enjoin a person who has violated, is violating, or is likely to violate the act.

FDUTPA authorizes recovery of reasonable attorney fees and court costs from the nonprevailing party.[11] An individual may recover if he or she has suffered a loss. The enforcing authority may recover attorney fees and costs if the losing party commits bad faith or raises issues of law or fact that are not justiciable. However, damages, fees, and costs are not recoverable from a retailer, who in good faith disseminated the claims of a manufacturer or wholesaler without having actual knowledge that it violated the law.[12]

In 2001, the Legislature enacted legislation to address unfair or deceptive acts or practices perpetrated by motor vehicle dealers.[13] The following constitutes unfair or deceptive acts or practices by a motor vehicle dealer:

- Representing the previous usage or status of a vehicle is something that it was not, or making usage or status representations unless the dealer has correct supporting information regarding the history of the vehicle.
- Representing the quality of care, regularity of servicing or general condition of a vehicle unless known by the dealer to be true and supportable by material fact.
- Representing orally or in writing that a particular vehicle has not sustained structural or substantial external damage unless the statement is made in good faith and the vehicle has been inspected by the dealer or his or her agent to determine whether the vehicle has incurred such damage.
- Altering or changing the odometer mileage of a vehicle.

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[8] Section 501.202, F.S.
[9] Section 501.203(2), F.S.
[10] Sections 501.207, F.S. Damages are not recoverable under this section against a retailer who, in good faith, disseminates the claims of a manufacturer or wholesaler without actual knowledge that it violated FTUDPA.
[11] Section 501.2105, F.S.
[12] Section 501.211, F.S.
[13] Chapter 2001-196, L.O.F., codified as part VI, ch. 501, F.S.

- Failing to honor a provided express or implied warranty unless properly disclaimed.
- Misrepresenting warranty coverage, application period, or any warranty transfer cost or conditions to a customer.[14]

Other States

At the prompting of the Federal Trade Commission, all states have adopted laws prohibiting unfair and deceptive trade practices.[15] Florida is in the minority of jurisdictions in limiting damages to actual damages. In contrast to Florida, many other states authorize treble damages, or three times the actual damages awarded in a case. A handful of states authorize punitive damages, and some other states allow for exemplary, or special damages.[16]

Several states mandate some form of pre-suit notice under their respective Unfair and Deceptive Acts. For example, Mississippi requires a pre-suit dispute resolution process.[17]

III. Effect of Proposed Changes:

This bill introduces a presuit process for claims alleging unfair and deceptive trade practices against a motor vehicle dealer.

Demand Letter

Prior to initiating any civil litigation or arbitration against a motor vehicle dealer[18] a claimant must provide the dealer with written notice of the claimant's intent to initiate litigation at least 30 days prior to filing a lawsuit. The demand letter, which must be completed in good faith, must:

- State the name, address, and telephone number of the claimant.
- State the name and address of the dealer.
- Describe the underlying facts of the claim, including a statement describing each item for which actual damages are claimed.
- State the amount of damages claimed.
- To the extent available, be accompanied by all transactions or other documents upon which the claim is based.

A demand letter is satisfactory if it contains sufficient information to reasonably put the dealer on notice as to the nature of the claim and the relief sought.

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[14] For a complete list of practices or acts by a dealer that constitute unfair or deceptive acts or practices and are actionable under the FDUTPA, see s. 501.976, F.S.

[15] Michelle L. Evans, *Who Is A "Consumer" Entitled To Protection Of State Deceptive Trade Practice And Consumer Protection Acts*, 63 A.L.R. 5th 1 (2004).

[16] Richard A. Leiter, NATIONAL SURVEY OF STATE LAWS, 27, 28-38 (4th ed. 2003)

[17] Carolyn L. Carter, *Consumer Protection in the States: A 50 State Report on UDAP Statutes*; National Consumer Law Center (February 2009). *available at* http://www.nclc.org/images/pdf/udap/report_50_states.pdf . Those states requiring some form of pre-suit notice are Alabama, California, Georgia, Indiana, Maine, Massachusetts, Texas, West Virginia, and Wyoming

[18] In this section, the term "dealer" refers to a dealer, its employees, agents, principals, sureties, or insurers.

The demand letter must be delivered to the dealer by the United States Postal Service or other nationally recognized carrier, return receipt requested, at the address where the subject vehicle was purchased or leased, where the transaction occurred, or any address at which the dealer regularly conducts business.

The demand letter expires 30 days after receipt of the letter by the dealer, unless renewed by the claimant, and does not limit the damages the claimant may claim in subsequent civil litigation, including arbitration.

Civil Litigation and Arbitration

The claimant is precluded from initiating civil litigation or arbitration if, within 30 days after receipt of the demand letter, the dealer pays the claimant:

- The amount of actual damages claimed in the demand letter; and
- A surcharge of $500, if the claimant is represented by an attorney.

A dealer is not required to pay attorney fees in a civil action or arbitration brought under the FDUTPA if:

- Within 30 days after receipt of the demand letter, the dealer notifies the claimant, in writing, and a court or arbitrator agrees, that the amount sought in the demand letter is not reasonable in light of the facts or if the demand letter includes items and amounts not properly recoverable under the law; or
- The claimant fails to sufficiently comply with the notice requirements; however, a demand letter is satisfactory if it contains sufficient information to reasonably put the dealer on notice as to the nature of the claim and the relief sought so that the dealer may respond appropriately.

The bill provides that a dealer's payment of damages claimed in the demand letter, as well as any required surcharge, is not an admission of wrongdoing or liability by the dealer, is inadmissible as evidence,[19] and releases the dealer from liability. However, payment does not serve as a release from liability for items not included in the demand letter and not recoverable under FDUTPA.

If a claimant initiates litigation or arbitration prior to complying with the demand letter provisions, upon timely motion, the court or arbitrator must stay the action until the claimant complies. Attorney fees and costs incurred prior to such compliance are not recoverable.

[19] Section 90.408, F.S., provides that "[e]vidence or an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value."

Statute of Limitation

Any time limit[20] on initiating civil litigation under ch. 501, F.S., is tolled for 30 days after the date of delivery of the demand letter or for such other period agreed to, in writing, by the parties after the demand letter is received by the dealer.

Notice to Consumer

Under the provisions of the bill, the dealer must provide the consumer written notice of the requirements of the demand letter. If the dealer fails to provide notice to the consumer, any civil litigation or arbitration arising out of that transaction is not subject to the demand letter provisions provided in the bill. The notice must be in a font size no smaller than that of the predominant text on the page in which the claim is disclosed, or if it is disclosed by itself, in a font size of at least 12 points. The bill does not specify when the notice must be provided to the consumer.

Exemptions

The provisions of this bill do not apply to any action brought as a class action and ultimately certified as a class action. The bill also does not apply to any action brought by the enforcing authority.[21]

The bill takes effect July 1, 2013.

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 1, Section 21 of the Florida Constitution, provides that "the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay." Pre-suit notice requirements have been prescribed, by statute, for

[20] The specific time limitation associated with a specific cause of action can be found in s. 95.11, F.S.

[21] Section 501.203(2), F.S., defines enforcing authority as the office of the state attorney if the violation occurs in or affects the judicial circuit under the office's jurisdiction or the Department of Legal Affairs if the violation occurs in or affects more than one judicial circuit or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.

numerous causes of action.[22] Courts have upheld such pre-suit notice requirements[23] and have generally required that provisions be interpreted by the courts in a manner that favors access.[24]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Office of the State Court Administrator's 2013 Judicial Impact Statement, CS/SB 292 will facilitate pre-suit disposition of matters that are otherwise actionable in court. The bill will assist in diverting those court resources that would otherwise be engaged to other cases pending in the system.[25]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Committee Substitute provides that the requirements, as created by this bill, for filing a civil lawsuit against a dealer under parts II or VI, of ch. 501, F.S., will not apply to a claim for actual damages brought and certified as a maintainable class action. However, because the language limits this exclusion to only a certified class action, concern exists that this will continue to encourage the "picking off" of the named class representative[26] during the pre-certification phase of a class-action suit."[27,28] The consequence for removing the class representative by a tender or

[22] See ss. 400.0233, 429.293, 558.004, 627.736(10), 766.106, F.S.
[23] *Lindberg v. Hospital Corp. of America*, 545 So. 2d 1384 (Fla. 4th DCA 1989), *approved by* 571 So. 2d 446 (Fla. 1990).
[24] *Weinstock v. Groth*, 629 So. 2d 835, 838 (Fla. 1993).
[25] Office of State Courts Administrator, *2013 Judicial Impact Statement* (Jan. 18, 2013) (on file with the Senate Commerce and Tourism Committee and the Senate Judiciary Committee).
[26] The named class representative refers to the plaintiff filing on behalf of members of the class that are similarly situated.
[27] The four prerequisites for maintaining a class action are as follows: (1) the members of the class must be so numerous that is impractical to join each member; (2) the claim or defense must raise questions of law or fact that are common to the individual members; (3) the claim or defense of the representative parties must be typical of those that would be asserted by individual members; and (4) the representative party must be able to fairly and adequately protect and represent the interest of each member of the class. Fla. R. Civ. P. 1.220(a).
[28] "The purpose of the class action is to provide litigants who share common questions of law and fact with an economically viable means of addressing their needs in court." *Johnson v. Plantation Gen. Hosp. Ltd. P'ship*, 641 So. 2d 58, 60 (Fla. 1994).

offer of payment for his or her damages results in the class representative's claim becoming moot, which will result in a dismissal of the entire class action.[29]

Federal case law has developed with respect to this issue and some courts have implemented legal tests for averting the dismissal of a class action during the pre-certification stage.[30] In Florida, the state of the current law remains unclear; however, the Third District Court of Appeal stated "a [defendant] cannot simply try to 'pick off' a named class representative."[31]

The bill does not specify when a dealer must provide the notice explaining that the demand letter is a prerequisite to filing a lawsuit.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

CS by Commerce and Tourism on February 19, 2013:
The committee substitute does the following:

- Adds arbitration as an action that may not be undertaken without first adhering to the notice provisions provided.
- Provides that the amount of damages claimed must be stated in the demand letter.
- Changes the address to which the demand letter must be sent to the "address where the subject vehicle was purchased or leased or where the subject transaction occurred, or any address at which the dealer regularly conducts business."
- Amends the condition under which the surcharge may be paid. It may only be paid if an attorney represents the claimant and the surcharge is now $500 rather than the lesser of 10 percent of the claim or $500.
- Provides that the demand letter expires 30 days after receipt by the dealer. The claimant may renew the demand letter without limiting the damages the claimant may later demand in any subsequent litigation.
- Removes the offer of payment of the claim as a basis to release the dealer from liability in connection to the claim.
- Provides that payment of a claim does not release a dealer from liability for damages not included in the demand letter and not recoverable under law.
- Allows for the tolling of time to file a lawsuit to be changed from the 30 days provided in the bill, if agreed upon by the parties, in writing, and signed after the dealer receives the demand letter.
- Provides that upon a timely motion by the dealer that a claimant has not complied with the demand letter requirements, the court or arbitrator will stay an action until

[29] *Taran v. Blue Cross Blue Shield of Fla., Inc.*, 685 So. 2d 1004, 1006 (Fla. 3d. DCA 1997) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974)) ("If none of the named plaintiffs purporting to represent a class establishes a requisite case or controversy with the defendant, none may seek relief on behalf of himself or any other member of the class.") (holding trial court could rule on standing before considering whether to certify class).
[30] *Weiss v. Regal Collections*, 385 F. 3d 337, 348 (3d. Cir. 2004) (holding that where a defendant makes an offer for an individual claim that has the effect of mooting class relief asserted in the complaint, absent undue delay in filing a motion for class certification, the appropriate course is to relate the certification motion back to the filing of the class complaint).
[31] *Allstate Indemnity Co. v. De la Rosa*, 800 So. 2d 245, 246 (Fla. 3d DCA 2001), *review denied*, 823 So. 2d 122 (Fla. 2002).

the claimant complies. Attorney fees and costs incurred prior to compliance with this section are not recoverable.

- Provides the font size for the written notice to the consumer.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 501.975, Florida Statutes, is amended to read:

501.975 Definitions.—As used in this part ~~s. 501.976~~, the term ~~following terms shall have the following meanings~~:

(1) "Customer" includes a customer's designated agent.

(2) "Dealer" means a motor vehicle dealer as defined in s. 320.27, but does not include a motor vehicle auction as defined in s. 320.27(1)(c)4.

(3) "Replacement item" means a tire, bumper, bumper fascia,

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glass, in-dashboard equipment, seat or upholstery cover or trim, exterior illumination unit, grill, sunroof, external mirror and external body cladding. The replacement of up to three of these items does not constitute repair of damage if each item is replaced because of a product defect or damaged due to vandalism while the new motor vehicle is under the control of the dealer and the items are replaced with original manufacturer equipment, unless an item is replaced due to a crash, collision, or accident.

(4) "Threshold amount" means 3 percent of the manufacturer's suggested retail price of a motor vehicle or $650, whichever is less.

(5) "Vehicle" means any automobile, truck, bus, recreational vehicle, or motorcycle required to be licensed under chapter 320 for operation over the roads of Florida, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power.

Section 2. Section 501.98, Florida Statutes, is created to read:

501.98 Demand letter.—

(1) As a condition precedent to initiating any civil litigation, including arbitration, arising under this chapter against a motor vehicle dealer, which may also include its employees, agents, principals, sureties, and insurers, a claimant must give the dealer a written demand letter at least 30 days before initiating the litigation.

(2) The demand letter, which must be completed in good faith, must:

(a) State the name, address, and telephone number of the

claimant.

(b) State the name and address of the dealer.

(c) Describe the underlying facts of the claim, including a statement describing each item for which actual damages are claimed.

(d) State the amount of damages, or, if not available, the claimant's best estimate of the amount of damages.

(e) To the extent available to the claimant, be accompanied by all transaction or other documents upon which the claim is based.

In any challenge to the claimant's compliance with this subsection, the demand letter shall be deemed satisfactory if it contains sufficient information to reasonably put the dealer on notice of the nature of the claim and the relief sought.

(3) The demand letter must be delivered by the United States Postal Service or by a nationally recognized carrier, return receipt requested, to the address at which the subject vehicle was purchased or leased or at which the subject transaction occurred, or an address at which the dealer regularly conducts business.

(4) Notwithstanding any provision of this chapter:

(a) A claimant may not initiate civil litigation, including arbitration, against a dealer or its employees, agents, principals, sureties, or insurers for a claim arising under this chapter related to, or in connection with, the transaction or event described in the demand letter if, within 30 days after receipt of the demand letter, the dealer pays the claimant the amount sought in the demand letter, plus a surcharge of the

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lesser of $500 or 10 percent of the damages claimed.

(b) A dealer and its employees, agents, principals, sureties, and insurers may not be required to pay the attorney fees of the claimant in any action brought under this chapter if:

1. The dealer, within 30 days after receipt of the demand letter, notifies the claimant in writing, and a court or arbitrator subsequently agrees that the amount sought in the demand letter is not reasonable in light of the facts of the transaction or event described in the demand letter or if the demand letter includes items and amounts not properly recoverable under this chapter; or

2. The claimant fails to sufficiently comply with this section; however, to the extent that there is a challenge to the sufficiency of the demand letter, the demand letter shall be deemed satisfactory if it contains sufficient information to reasonably put the dealer on notice of the nature of the claim and the amount and relief sought such that the dealer could appropriately respond.

(5) The demand letter required by this section expires 30 days after receipt by the dealer, unless renewed by the claimant, and does not place a limitation on the damages that the claimant may claim in any subsequently maintained civil litigation, including arbitration. Payment of the damages claimed in the demand letter and the required surcharge as set forth in this section within 30 days after receipt of the demand letter:

(a) Does not constitute an admission of any wrongdoing or liability by the dealer.

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(b) Is protected under s. 90.408 from introduction as evidence during any civil litigation, including arbitration.

(c) Releases the dealer and its employees, agents, principals, sureties, and insurers from any claim, suit, or other action that could be brought arising out of, or in connection with, the specific transaction, event, or occurrence described in the demand letter; but does not serve as a release as to items of damages that are not recoverable under this chapter.

(6) The applicable time limitations for initiating an action under this chapter are tolled for 30 days after the date of delivery of the demand letter to the dealer pursuant to subsection (3), or such other period agreed to in writing and signed by the parties after the demand letter is received by the dealer.

(7) This section does not apply to any action brought as a class action that is ultimately certified as a class action or to any action brought by the enforcing authority.

(8) If a claimant initiates civil litigation, including arbitration, without first complying with this section, the court or arbitrator shall stay the action upon timely motion until the claimant complies with this section. Attorney fees and court or arbitration costs incurred by the claimant before compliance with this section are not recoverable under this chapter.

(9) This section applies only to civil litigation, including arbitration, arising out of a transaction for which the dealer has provided the following written notice to the consumer, which must be acknowledged by the consumer, and which

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must be in a font size no smaller than that of the predominant text on the page in which the notice is disclosed, or if it is disclosed by itself, in a font size of at least 12 point:

Section 501.98, Florida Statutes, requires that, at least 30 days before bringing any claim against a motor vehicle dealer for an unfair or deceptive trade practice, a consumer must provide the dealer with a written demand letter stating the name, address, and telephone number of the consumer; the name and address of the dealer; a description of the facts that serve as the basis for the claim; the amount of damages; and copies of any documents in the possession of the consumer which relate to the claim. Such notice must be delivered by the United States Postal Service or by a nationally recognized carrier, return receipt requested, to the address where the subject vehicle was purchased or leased or where the subject transaction occurred, or an address at which the dealer regularly conducts business.

Section 3. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to deceptive and unfair trade practices; amending s. 501.975, F.S.; conforming

provisions; creating s. 501.98, F.S.; requiring a claimant to provide a demand letter to the motor vehicle dealer as a condition precedent to initiating civil litigation, including arbitration, against such dealer under the Florida Deceptive and Unfair Trade Practices Act; providing for expiration of the demand letter after a specified period; providing for the tolling of applicable time limitations for initiating actions; requiring a stay of civil litigation, including arbitration, brought without compliance with the demand letter requirements; providing an additional opportunity for claimants to comply with specified provisions; providing a condition that constitutes waiver of notice; providing for applicability; requiring that a specified notice be provided to consumers and acknowledged before provisions may apply; providing an effective date.

By the Committee on Commerce and Tourism; and Senators Richter, Flores, Bean, and Brandes

577-01690-13 2013292c1

A bill to be entitled

An act relating to deceptive and unfair trade practices; amending s. 501.975, F.S.; making technical changes; creating s. 501.98, F.S.; requiring a claimant to provide a demand letter to the motor vehicle dealer as a condition precedent to initiating civil litigation against such dealer under the Florida Deceptive and Unfair Trade Practices Act; providing for requirements and expiration of the demand letter; providing exceptions for liability for payment of attorney fees; providing for the tolling of applicable time limitations for initiating actions; providing an additional opportunity for claimants to comply with specified provisions; providing that attorney fees and other costs incurred by a claimant before compliance with certain provisions are not recoverable; providing for applicability; requiring that a specified notice be provided to consumers before provisions may apply; providing an effective date.

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

Section 1. Section 501.975, Florida Statutes, is amended to read:

501.975 Definitions.—As used in this part ~~s. 501.976~~, the term ~~following terms shall have the following meanings~~:

(1) "Customer" includes a customer's designated agent.

(2) "Dealer" means a motor vehicle dealer as defined in s. 320.27, but does not include a motor vehicle auction as defined

577-01690-13 2013292c1

in s. 320.27(1)(c)4.

(3) "Replacement item" means a tire, bumper, bumper fascia, glass, in-dashboard equipment, seat or upholstery cover or trim, exterior illumination unit, grill, sunroof, external mirror and external body cladding. The replacement of up to three of these items does not constitute repair of damage if each item is replaced because of a product defect or damaged due to vandalism while the new motor vehicle is under the control of the dealer and the items are replaced with original manufacturer equipment, unless an item is replaced due to a crash, collision, or accident.

(4) "Threshold amount" means 3 percent of the manufacturer's suggested retail price of a motor vehicle or $650, whichever is less.

(5) "Vehicle" means any automobile, truck, bus, recreational vehicle, or motorcycle required to be licensed under chapter 320 for operation over the roads of Florida, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power.

Section 2. Section 501.98, Florida Statutes, is created to read:

501.98 Demand letter.—

(1) As a condition precedent to initiating any civil litigation, including arbitration, arising under this chapter against a motor vehicle dealer, which may also include its employees, agents, principals, sureties, and insurers, a claimant must give the dealer a written demand letter at least 30 days before initiating the litigation.

(2) The demand letter, which must be completed in good

faith, must:

(a) State the name, address, and telephone number of the claimant.

(b) State the name and address of the dealer.

(c) Describe the underlying facts of the claim, including a statement describing each item for which actual damages are claimed.

(d) State the amount of damages claimed.

(e) To the extent available to the claimant, be accompanied by all transaction or other documents upon which the claim is based.

In any challenge to the claimant's compliance with this subsection, the demand letter shall be deemed satisfactory if it contains sufficient information to reasonably put the dealer on notice of the nature of the claim and the relief sought.

(3) The demand letter must be delivered by the United States Postal Service or by a nationally recognized carrier, return receipt requested, to the address where the subject vehicle was purchased or leased or where the subject transaction occurred, or any address at which the dealer regularly conducts business.

(4) Notwithstanding any provision of this chapter:

(a) A claimant may not initiate civil litigation, including arbitration, against a dealer or its employees, agents, principals, sureties, or insurers for a claim arising under this chapter related to, or in connection with, the transaction or event described in the demand letter if, within 30 days after receipt of the demand letter, the dealer pays the claimant the

amount sought in the demand letter, plus a surcharge of $500, if the claimant is represented by an attorney.

(b) A dealer and its employees, agents, principals, sureties, and insurers may not be required to pay the attorney fees of the claimant in any action brought under this chapter if:

1. The dealer, within 30 days after receipt of the demand letter, notifies the claimant in writing, and a court or arbitrator agrees, that the amount sought in the demand letter is not reasonable in light of the facts of the transaction or event described in the demand letter or if the demand letter includes items and amounts not properly recoverable under this chapter; or

2. The claimant fails to sufficiently comply with this section; however, to the extent that there is a challenge to the sufficiency of the demand letter, the demand letter shall be deemed satisfactory if it contains sufficient information to reasonably put the dealer on notice of the nature of the claim and the amount and relief sought such that the dealer could appropriately respond.

(5) The demand letter required by this section expires 30 days after receipt by the dealer, unless renewed by the claimant, and does not place a limitation on the damages that the claimant may claim in subsequently maintained civil litigation, including arbitration. Payment of the damages claimed in the demand letter and the required surcharge as set forth in this section within 30 days of receipt of the demand letter:

(a) Does not constitute an admission of any wrongdoing or

liability by the dealer.

(b) Is protected under s. 90.408 from introduction as evidence during any civil litigation, including arbitration.

(c) Releases the dealer and its employees, agents, principals, sureties, and insurers from any claim, suit, or other action that could be brought arising out of, or in connection with, the specific transaction, event, or occurrence described in the demand letter; but does not serve as a release as to items of damages that are not included in the demand letter and not recoverable under this chapter.

(6) The applicable time limitations for initiating an action under this chapter are tolled for 30 days after the date of delivery of the demand letter to the dealer pursuant to subsection (3), or such other period agreed to in writing and signed by the parties after the demand letter is received by the dealer.

(7) This section does not apply to any action brought as a class action that is ultimately certified as a class action or any action brought by the enforcing authority.

(8) If a claimant initiates civil litigation, including arbitration, without first complying with the provisions of this section, the court or arbitrator shall stay the action upon timely motion until the claimant complies with this section. Attorney fees and court or arbitration costs incurred by the claimant before compliance with this section are not recoverable under this chapter.

(9) This section applies only to civil litigation, including arbitration, arising out of a transaction for which the dealer has provided the following written notice to the

consumer, which must be in a font size no smaller than that of the predominant text on the page in which the claim is disclosed, or if it is disclosed by itself, in a font size of at least 12 points:

"Section 501.98, Florida Statutes, requires that, at least 30 days before bringing any claim against a motor vehicle dealer for an unfair or deceptive trade practice, a consumer must provide the dealer with a written demand letter stating the name, address, and telephone number of the consumer; the name and address of the dealer; a description of the facts that serve as the basis for the claim; the amount of damages claimed; and copies of any documents in the possession of the consumer which relate to the claim. Such notice must be delivered by the United States Postal Service or by a nationally recognized carrier, return receipt requested to the address where the subject vehicle was purchased or leased or where the subject transaction occurred, or any address at which the dealer regularly conducts business."

Section 3. This act shall take effect July 1, 2013.

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 962
INTRODUCER:	Senator Gardiner
SUBJECT:	Warrants
DATE:	April 5, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Pre-meeting**
2.			CJ	
3.				
4.				
5.				
6.				

I. Summary:

SB 962 allows a judge to electronically issue an arrest or search warrant provided that an application:

- Is electronically signed by the affiant;
- Is supported by an oath or affirmation administered by the judge or other authorized person; and
- Is submitted through reliable electronic means.

This bill considers a warrant to be electronically issued and signed by a judge when the judge electronically affixes his or her signature to the warrant.

This bill substantially amends sections 901.02 and 933.07, Florida Statutes.

II. Present Situation:

Issuance of Arrest Warrants

A law enforcement officer may make a warrantless arrest of a person who:

- Commits a felony or misdemeanor or violates a municipal or county ordinance in the officer's presence. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance must be made immediately or in fresh pursuit.
- Commits a felony if the officer has a reasonable belief that the person committed it.

- Violates chapter 316, F.S., the Florida Uniform Traffic Control Law, in the presence of the officer and the arrest is made immediately or in fresh pursuit.
- Commits certain enumerated crimes if the officer has probable cause to make an arrest.
- In all other instances a court must issue an arrest warrant before a person may be arrested. A judge may issue an arrest warrant upon a reasonable belief that the person in the complaint has committed a criminal offense within the jurisdiction of the trial court.1 A warrant is considered issued at the time the judge signs the warrant.[2]

Issuance of Search Warrants

Article I, Section 12 of the State Constitution provides, in part:

> Searches and seizures.—The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures … shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court.

A search warrant is generally required when a person is considered to have a reasonable expectation of privacy in the property sought to be searched.[3] Likewise, courts will uphold warrantless searches, and admit evidence found in the search, if the defendant cannot establish a reasonable expectation of privacy. The court has found that a person has no reasonable expectation of privacy in a jail cell[4] or a police station.[5] In contrast, a person has the highest expectation of privacy in a person's private residence.[6]

A judge may issue a search warrant by signing the warrant upon a satisfactory showing of probable cause from the documents submitted. The search warrant is then issued to a law enforcement officer. The issuance of the search warrant acts as a command to a law enforcement officer to search the property described in the warrant and to bring the property specified and any person arrested in connection with the warrant before the court.[7]

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[1] Section 901.02(1), F.S.
[2] *Id*.
[3] *J.W. v. State*, 95 So. 3d 372, 376 (Fla. 3d DCA 2012).
[4] *Bolin v. State*, 2013 WL 627146, *7 (Fla. 2013).
[5] *Lundberg v. State*, 2012 WL 5870104, *8 (Fla. 4th DCA 2012).
[6] *Rowell v. State* 83 So. 3d 990, 994 (Fla. 4th DCA 2012).
[7] Section 933.07(1), F.S.

Electronic Signatures for the Issuance of Warrants

The Florida Legislature adopted an electronic filing process for the courts in 2009.[8] As justification, the Legislature identified as benefits of e-filing reduced judicial costs, increased timeliness in the processing of cases, and improved judicial case management.[9]

An electronic signature refers to "any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."[10]

Current law is silent as to whether a judge may sign arrest or search warrants with an electronic signature.

III. Effect of Proposed Changes:

This bill allows a judge to electronically issue an arrest or search warrant provided that an application:

- Is electronically signed by the affiant;
- Is supported by an oath or affirmation administered by the judge or other authorized person; and
- Is submitted through reliable electronic means.

This bill deems a warrant to be electronically issued and signed by a judge when the judge electronically affixes his or her electronic signature to the warrant.

Florida law does not currently authorize electronic issuance of warrants.

This bill provides an alternative means to the current process of paper issuance of arrest and search warrants.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[8] Chapter 2009-61, L.O.F.
[9] Section 28.2205, F.S.
[10] Section 933.40(1)(d), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of State Courts Administrator expects a positive fiscal impact, if any, from the provisions of this bill. To the extent that the bill provides an alternative to judicial review and issuance of warrants by paper only, a more streamlined, efficient process may result.[11]

The Florida Sheriffs Association indicates that law enforcement agencies will experience a positive fiscal impact from this bill. For warrants to search property, a law enforcement officer will not need to remain at a potential crime scene while another officer physically travels to obtain a search warrant. For arrest warrants, this bill could reduce the time it currently takes for law enforcement officer to arrest an offender. [12]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Sheriffs Association indicates that in 2012, various entities convened a workgroup on the feasibility of expanding the court's electronic filing process to include electronic signatures on warrants. Participants included the Florida Department of Law Enforcement, the National Center for State Courts, the Police Chief's Association, the Florida Court Technology Commission, circuit judges, sheriff's offices, state attorney's offices, and the clerks of court.[13]

[11] Office of the State Courts Administrator, 2013 Judicial Impact Statement, Senate Bill 962 (March 18, 2013) (on file with the Senate Committee on Judiciary).
[12] Florida Sheriffs Association, *Position Paper on Electronic Filing of Warrants* (on file with the Senate Committee on Judiciary).
[13] *Id.*

VIII. 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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LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 901.02, Florida Statutes, is amended to read:

901.02 Issuance of arrest warrants ~~When warrant of arrest to be issued~~.—

(1) A judge, upon examination of the complaint and proofs submitted, if satisfied that probable cause exists for the issuance of an arrest warrant for any crime committed within the judge's jurisdiction, shall thereupon issue an arrest warrant signed by the judge with the judge's name of office ~~warrant may~~

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~~be issued for the arrest of the person complained against if the trial court judge, from the examination of the complainant and other witnesses, reasonably believes that the person complained against has committed an offense within the trial court judge's jurisdiction. A warrant is issued at the time it is signed by the trial court judge~~.

(2) The court may issue a warrant for the defendant's arrest when all of the following circumstances apply:

(a) A complaint has been filed charging the commission of a misdemeanor only.;

(b) The summons issued to the defendant has been returned unserved.~~; and~~

(c) The conditions of subsection (1) are met.

(3) A judge may electronically sign an arrest warrant if the requirements of subsection (1) or subsection (2) are met and the judge, based on an examination of the complaint and proofs submitted, determines that the complaint:

(a) Bears the affiant's signature, or electronic signature if the complaint was submitted electronically.

(b) Is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths.

(c) If submitted electronically, is submitted by reliable electronic means.

(4) An arrest warrant shall be deemed to be issued by a judge at the time the judge affixes the judge's signature or electronic signature to the warrant. As used in this section, the term "electronic signature" has the same meaning as provided in s. 933.40.

Section 2. Subsection (3) is added to section 933.07,

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Florida Statutes, to read:

933.07 Issuance of search warrants.—

(3) A judge may electronically sign a search warrant if the requirements of subsection (1) or subsection (2) are met and the judge, based on an examination of the application and proofs submitted, determines that the application:

(a) Bears the affiant's signature, or electronic signature if the application was submitted electronically.

(b) Is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths.

(c) If submitted electronically, is submitted by reliable electronic means.

(4) A search warrant shall be deemed to be issued by a judge at the time the judge affixes the judge's signature or electronic signature to the warrant. As used in this section, the term "electronic signature" has the same meaning as provided in s. 933.40.

Section 3. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to warrants; amending s. 901.02, F.S.; specifying when an arrest warrant may be issued; authorizing a judge to electronically sign an arrest warrant if certain conditions are met; providing that an arrest warrant is signed by a judge at the time the

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judge affixes his or her signature or electronic signature to the warrant; defining the term "electronic signature"; amending s. 933.07, F.S.; authorizing a judge to electronically sign a search warrant if certain conditions are met; providing that a search warrant is signed by a judge at the time the judge affixes his or her signature or electronic signature to the warrant; defining the term "electronic signature"; providing an effective date.

By Senator Gardiner

13-00422B-13 2013962__

A bill to be entitled

An act relating to warrants; amending s. 901.02, F.S.; providing that an arrest warrant is deemed electronically issued and signed by a judge at the time the judge affixes his or her electronic signature to the warrant; defining the term "electronic signature"; amending s. 933.07, F.S.; providing that a search warrant is deemed electronically issued and signed by a judge at the time the judge affixes his or her electronic signature to the warrant; defining the term "electronic signature"; providing an effective date.

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

Section 1. Subsection (3) is added to section 901.02, Florida Statutes, to read:

901.02 When warrant of arrest to be issued.—

(3) A judge may electronically issue an arrest warrant based upon examination of an application and proof that it:

(a) Bears the affiant's electronic signature;

(b) Is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths; and

(c) Is submitted by reliable electronic means.

A warrant shall be deemed to be electronically issued and signed by a judge at the time the judge affixes his or her electronic signature to the warrant. As used in this section, "electronic

13-00422B-13 2013962__

signature" has the meaning ascribed in s. 933.40(1)(d).

Section 2. Subsection (3) is added to section 933.07, Florida Statutes, to read:

933.07 Issuance of search warrants.—

(3) A judge may electronically issue a search warrant based upon examination of an application and proof that it:

(a) Bears the affiant's electronic signature;

(b) Is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths; and

(c) Is submitted by reliable electronic means.

A warrant shall be deemed to be electronically issued and signed by a judge at the time the judge affixes his or her electronic signature to the warrant. As used in this section, "electronic signature" has the meaning ascribed in s. 933.40(1)(d).

Section 3. This act shall take effect July 1, 2013.

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 1412
INTRODUCER:	Senator Richter
SUBJECT:	Expert Testimony
DATE:	April 5, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	**Pre-meeting**
2.			RC	
3.				
4.				
5.				
6.				

I. Summary:

SB 1412 conforms the standards for the admission of expert testimony in Florida courts to the Federal Rules of Evidence.

The bill amends s. 90.702, F.S., to prohibit an expert witness from testifying in the form of an opinion or otherwise unless the testimony satisfies the following additional criteria:

- The testimony is based on sufficient facts or data;
- The testimony is the product of reliable principles and methods;
- The witness has applied the principles and methods reliably to the facts of the case.

As a result of the amendments, the effect of s. 90.702, F.S., is conformed to the effect of Federal Rule of Evidence 702.

The bill amends s. 90.704, F.S., to prohibit the disclosure of inadmissible facts or data to a jury by the proponent of an expert opinion or by inference unless the court determines that their probative value in assisting the jury's evaluation of the expert's opinion is substantially outweighed by their prejudicial effect. As a result of the amendments, the effect of s. 90.704, F.S., is conformed to the effect of Federal Rule of Evidence 703.

The bill further requires courts to interpret and apply ss. 90.702 and 90.704, F.S., in accordance with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and several related federal cases.[1]

[1] *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

Currently, Florida courts employ the standard articulated in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), which requires the party who wants to introduce the expert opinion testimony into evidence to show that the methodology or principle has sufficient reliability. Under the bill, *Frye* and subsequent Florida decisions applying or implementing *Frye* will no longer apply to a court's determination of the admissibility of expert witness testimony in the form of opinion and a court's determination of the basis of the expert's opinion.

This bill amends sections 90.702 and 90.704, Florida Statutes.

II. Present Situation:

Admission of Expert Testimony (*Daubert* or *Frye* Standard)

Expert testimony has been used to assist the trier of fact in both civil and criminal trials for a wide range of subjects, including polygraph examination, battered woman syndrome, child abuse cases, and serum blood alcohol. The Florida Rules of Civil Procedure define an "expert witness" as a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which called to testify.[2] Courts use expert witness testimony when scientific, technical, or other specialized knowledge may assist the trier of fact in understanding evidence or determining facts in issue during litigation. The Florida Evidence Code provides that the facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence.[3] The Florida Supreme Court has considered the issue of whether experts can testify on direct examination that they relied on the hearsay opinions of other experts in forming their opinions.[4] The Court held that an expert is not permitted to testify on direct examination that the expert relied on consultations with colleagues or other experts in reaching his or her opinion because it impermissibly permits the testifying experts to bolster their opinions and creates the danger that the testifying experts will serve as conduits for the opinions of others who are not subject to cross-examination.[5] The Court emphasized that its holding did not preclude experts from relying on facts or data that are not independently admissible if the facts or data are a type reasonably relied upon by experts in the subject.[6]

Frye Standard

To admit scientific testimony into evidence, Florida courts currently use the standard governing the admissibility of scientific expert testimony imposed in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).[7] If the subject matter involves new or novel scientific evidence, the *Frye*

[2] Fla. R. Civ. P. 1.390(a).
[3] Section 90.704, F.S.
[4] *Linn v. Fossum*, 946 So. 2d 1032 (Fla. 2006).
[5] *Id.* at 1033.
[6] *Id.*
[7] *Stokes v. State*, 548 So. 2d 188 (Fla. 1989).

standard requires the party who wants to introduce the expert opinion into evidence to show that the methodology or principle has sufficient reliability. In *Frye*, the court held that the "principle or discovery" must be sufficiently established to "have gained general acceptance in the particular field in which it belongs."[8]

The Florida Supreme Court imposes four steps in its articulation of the *Frye* test:

1. The trial judge must determine whether such expert testimony will assist the jury in understanding the evidence or in determining a fact in issue.
2. The trial judge must decide whether the expert's testimony is based on a scientific principle or discovery that is "sufficiently established to have gained general acceptance in the particular field in which it belongs."
3. The trial judge must determine whether a particular witness is qualified as an expert to present opinion testimony on the subject in issue.
4. The judge may then allow the expert to render an opinion on the subject of his or her expertise, and it is then up to the jury to determine the credibility of the expert's opinion, which it may either accept or reject.[9]

The Florida Supreme Court noted that, under *Frye*, the court's inquiry focuses only on the general acceptance of the scientific principles and methodologies upon which an expert relies to give his or her opinion.[10] The *Frye* test is satisfied through the court's finding of proof of general acceptance of the basis of an expert's opinion.[11] Once the basis or foundation is established for an expert's opinion, the finder of fact may then assess and weigh the opinion for its value.[12]

The *Frye* test is not applicable to all expert opinion proffered for admissibility into evidence. If the expert opinion is based solely on the expert's experience and training, and the opinion does not rely on something that constitutes new or novel scientific tests or procedures, then it may be admissible without meeting the *Frye* standard.[13] By example, Florida courts admit medical expert testimony concerning medical causation when based solely on the expert's training and experience.[14] One court in determining the admissibility of medical expert testimony noted that *Frye* was not applicable to medical testimony (pure opinion) because the expert relied on his analysis of medical records and differential diagnosis rather than a study, test, procedure, or methodology that constituted new or novel scientific evidence.[15]

Florida Rules of Evidence

The Florida Evidence Code is codified in ch. 90, F.S. Section 90.102, specifies that the chapter replaces and supersedes existing statutory or common law in conflict with its provisions. As previously noted, the Florida Supreme Court regularly adopts amendments to the Evidence Code

[8] *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923).
[9] *Ramirez v. State*, 651 So. 2d 1164, 1166-67 (Fla. 1995).
[10] *Marsh v. Valyou*, 977 So. 2d 543, 549 (Fla. 2007).
[11] *Id*.
[12] *Id*.
[13] *Id.* at 548. *See also* Charles W. Ehrhardt, *Florida Evidence*, s. 702.3 (2012 ed.).
[14] *See, e.g., Cordoba v. Rodriguez*, 939 So. 2d 319, 322 (Fla. 4th DCA 2006); *Fla. Power & Light Co. v. Tursi*, 729 So. 2d 995, 996 (Fla. 4th DCA 1999).
[15] *Gelsthorpe v. Weinstein*, 897 So. 2d 504, 510-11 (Fla. 2d DCA 2005); See also, *Marsh*, 977 So. 2d at 548-49.

as rules of court when it is determined that the matter is procedural rather than substantive. The Florida Evidence Code requires an expert to demonstrate knowledge, skill, experience, training, or education in the subject matter to qualify as an expert.[16] In a concurring opinion, one justice has argued that the Florida Supreme Court has "never explained how *Frye* has survived the adoption of the rules of evidence."[17] Justice Anstead also noted that the Florida Supreme Court has continued to apply *Frye* in determining the admissibility of scientific expert opinion testimony after the adoption of the Florida Rules of Evidence, but has done so without any mention that the rules do not mention *Frye* or the test set out in *Frye*.[18]

***Daubert* Standard**

The *Frye* standard was used in federal courts until 1993 when the U.S. Supreme Court issued its opinion in the case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*[19] The U.S. Supreme Court held that Federal Rule of Evidence 702 had superseded the *Frye* test, and it announced a new standard for determining the admissibility of novel scientific evidence.[20] Under the *Daubert* test, when there is a proffer of expert testimony, the judge as a gatekeeper must make "a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue."[21] The Court announced other factors that a court may consider as part of its assessment under the *Daubert* test for the admissibility of expert scientific testimony:

- Whether the scientific methodology is susceptible to testing or has been tested;
- Whether the theory or technique has been subjected to peer review and publication;
- Whether in the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error; and
- The existence and maintenance of standards controlling the technique's operation.[22]

Federal Rule of Evidence 702 was amended in 2000 to reflect *Daubert* and other decisions applying *Daubert*.[23] In *General Electric Co. v. Joiner*, the U.S. Supreme Court held that abuse of discretion is the appropriate standard of review for an appellate court to apply when reviewing a trial court's decision to admit or exclude evidence under *Daubert*.[24] In *Kumho Tire Co. v. Carmichael*, the Court held that a trial judge is not bound by the specific factors outlined in *Daubert*, but depending on the circumstances of the particular case at issue, the judge may consider other factors in his or her assessment under *Daubert*.[25] Additionally, the Court in *Kumho Tire Co.* held that the trial judge's obligation to be a gatekeeper is not limited to scientific testimony but extends to all expert testimony.[26]

[16] Section 90.702, F.S.
[17] *Marsh*, 977 So. 2d at 551 (Anstead, J., concurring).
[18] *Id.*
[19] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).
[20] *Id.*
[21] *Id.* at 592-93.
[22] *Id.* at 592-94.
[23] Fed. R. Evid. 702, Advisory Committee Notes for 2000 Amendments.
[24] *General Electric Co. v. Joiner*, 522 U.S. 136, 139 (1997).
[25] *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147-52 (1999).
[26] *Id.*

The *Weisgram v. Marley Co.* case, a part of the *Daubert* progeny, was a wrongful death action against a manufacturer of heaters in which the plaintiff introduced expert testimony that the alleged heater defect caused a house fire.[27] The Court held that a federal appellate court may direct the entry of judgment as a matter of law when the court determines that evidence was erroneously admitted at trial and the remaining evidence that was properly admitted is insufficient to support the jury verdict.[28] The plaintiffs obtained a jury verdict based on the expert testimony that the heater was defective and that the heater's defect caused the fire.[29] The U.S. Supreme Court affirmed the Court of Appeals' reversal of the jury verdict, finding that the expert testimony offered by the plaintiff was speculation under Federal Rule of Evidence 702 as explicated in *Daubert* regarding the defectiveness of the heater.[30] The Court found the plaintiff's fears unconvincing that "allowing [federal] courts of appeals to direct the entry of judgment for defendants will punish plaintiffs who could have shored up their cases by other means had they known their expert testimony would be found inadmissible."[31] The Court stated that *Daubert* put parties on notice regarding the exacting standards of reliability demanded of expert testimony.[32]

III. Effect of Proposed Changes:

The bill conforms the standard for Florida courts to admit expert witness testimony to the Federal Rule of Evidence 702 and the standard articulated in *Daubert*. The requirements for a witness qualified as an expert by knowledge, skill, experience, training, or education to testify in the form of an opinion are revised to impose additional criteria for the admissibility of the testimony. Under the new criteria a court must consider whether:

- The testimony is based on sufficient facts or data;
- The testimony is the product of reliable principles and methods; and
- The witness has applied the principles and methods reliably to the facts of the case.

The bill requires Florida courts to interpret and apply requirements for the admissibility of expert witness testimony and the determination of the basis of an expert's opinion, in accordance with *Daubert* and subsequent U.S. Supreme Court decisions applying *Daubert.*[33] *Frye* and subsequent Florida decisions applying or implementing *Frye* will no longer apply to a court's determination of the admissibility of expert witness testimony in the form of opinion and a court's determination of the basis of the expert's opinion.

The bill amends s. 90.704, F.S., to specify that facts or data that are otherwise inadmissible in evidence may not be disclosed to the jury by the proponent of an opinion or by inference unless the court determines that the probative value of the facts or data in assisting the jury to evaluate the expert's opinion substantially outweighs the prejudicial effect of the facts or data.[34] With the

[27] *Weisgram v. Marley Co.*, 528 U.S. 440 (2000).
[28] *Id.* at 445-46.
[29] *Id.*
[30] *Id.* at 445-47.
[31] *Id.* at 455-56.
[32] *Id.*
[33] *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).
[34] *Linn*, 946 So. 2d at 1036-1037 (Florida Supreme Court acknowledging that s. 90.704, F.S., is modeled after Federal Rule of Evidence 703).

bill's amendment to s. 90.704, F.S., the language of the section tracks Federal Rule of Evidence 703.

Under the bill, all proposed expert testimony, including pure opinion testimony as described in *Marsh v. Valyou*, 977 So. 2d 543 (Fla. 2007) must comply with ss. 90.704 and 90.702, F.S., in accordance with *Daubert* and its progeny as interpreted by federal courts. Moreover, the bill provides that any facts or data that are otherwise inadmissible in evidence may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that the probative value of the facts or data in assisting the jury to evaluate the expert's opinion substantially outweighs the prejudicial effect of the facts or data.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

There is a balance between enactments of the Legislature and the Florida Supreme Court on matters relating to evidence. The Legislature has enacted and continues to revise ch. 90, F.S., and the Florida Supreme Court tends to adopt these changes as rules. The Florida Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. If the Florida Supreme Court views the changes in this bill as an infringement upon the Court's authority over practice and procedure, it may refuse to adopt the changes in the bill as a rule.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Generally, in civil litigation such as negligence actions, the plaintiff has the burden of proof on issues essential to his or her cause of action.[35] The change in the new evidentiary standard may have a fiscal impact on the outcome of lawsuits or the number of such lawsuits.

It is difficult to quantify the fiscal impact of the bill's change in evidentiary standards for the admission of expert opinions. It may or may not result in a need for additional pre-trial hearings depending on the manner in which it is actually implemented by the courts.

C. Government Sector Impact:

The change in the standard to admit expert opinions in Florida courts may have an impact on the number of pre-trial hearings needed, but it is difficult to estimate due to the unavailability of data needed to quantify any increase or decrease in judicial workload.

In criminal proceedings, the state may incur additional costs in litigating the application and interpretation of the new standards supplied in this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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.

[35] *Gooding v. Univ. Hosp. Bldg., Inc.*, 445 So. 2d 1015, 1018 (Fla. 1984). "On the issue of the fact of causation, as on other issues essential to his cause of action for negligence, the plaintiff, in general, has the burden of proof."(quoting *Prosser, Law of Torts* § 41 (4th ed. 1971)). *Id.*

By Senator Richter

23-00955A-13 20131412__

A bill to be entitled

An act relating to expert testimony; amending s. 90.702, F.S.; providing that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion as to the facts at issue in a case under certain circumstances; requiring the courts of this state to interpret and apply the principles of expert testimony in conformity with specified United States Supreme Court decisions; subjecting pure opinion testimony to such requirements; amending s. 90.704, F.S.; providing that facts or data that are otherwise inadmissible in evidence may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that the probative value of the facts or data in assisting the jury to evaluate the expert's opinion substantially outweighs the prejudicial effect of the facts or data; providing an effective date.

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

Section 1. Section 90.702, Florida Statutes, is amended to read:

90.702 Testimony by experts.—

(1) If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or

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otherwise, if:

(a) The testimony is based upon sufficient facts or data;

(b) The testimony is the product of reliable principles and methods; and

(c) The witness has applied the principles and methods reliably to the facts of the case~~; however, the opinion is admissible only if it can be applied to evidence at trial~~.

(2) The courts of this state shall interpret and apply the requirements of subsection (1) and s. 90.704 in accordance with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *General Electric Co. v. Joiner*, 522 U.S. 136 (1997); and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) and subsequent Florida decisions applying or implementing *Frye* no longer apply to subsection (1) or s. 90.704. All proposed expert testimony, including pure opinion testimony as discussed in *Marsh v. Valyou*, 977 So. 2d 543 (Fla. 2007), is subject to subsection (1) and s. 90.704.

Section 2. Section 90.704, Florida Statutes, is amended to read:

90.704 Basis of opinion testimony by experts.—The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the

jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

Section 3. This act shall take effect July 1, 2013.

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 1666
INTRODUCER:	Banking and Insurance Committee and Senator Latvala
SUBJECT:	Mortgage Foreclosures
DATE:	April 5, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson/Johnson	Burgess	BI	**Fav/CS**
2.	Munroe	Cibula	JU	**Pre-meeting**
3.			AP	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1666 is designed to revise Florida's mortgage foreclosure statute and related statutory provisions to expedite mortgage foreclosure actions and associated proceedings before the courts while providing additional rights for homeowners. The bill provides the following changes:

Expedites foreclosure proceedings by:

- Requiring the plaintiff to establish possession of a valid promissory note or authority to enforce the note in the foreclosure complaint
- Requiring financial institutions to post a bond or other financial means of providing adequate protection when alleging to be the holder of a note or entitled to enforce a lost, stolen, or destroyed note.
- Allowing any lienholder, instead of just the mortgagee, to use the expedited foreclosure process.
- Allowing the defendant to file other documents in defense of the foreclosure.
- Creating a higher standard for the defendant to show cause why a final judgment of foreclosure should not be entered.

- Exempts foreclosures of owner-occupied residences from provisions authorizing the plaintiff to request the court to enter an order to show cause why it should not enter an order to make payments during the pendency of the foreclosure proceedings or an order to vacate the premises.

The bill also:

- Prevents a good faith purchaser of property from being dispossessed in a later challenge after the foreclosure is final.
- Limits the amount of deficiency decrees.
- Reduces the statute of limitations from 5 years to 1 year for deficiency judgments related to mortgages on residential property that is a one-family to four-family dwelling unit.
- Authorizes publication of a notice of sale on a publically accessible website.
- Creates a program to use retired justices and senior judges to assist with foreclosure proceedings.

The bill is effective upon becoming a law.

This bill amends the following sections of the Florida Statutes: 45.031, 50.011, 95.11, 121.021, 121.091, 121.591, 702.035, 702.06, and 702.10. The bill creates the following sections of the Florida Statutes: 50.015, 702.015, 702.036, and 702.11.

II. Present Situation:

Background

Approximately 16.75 percent of all mortgage loans in Florida were 90 days or more delinquent or in the process of foreclosure, as of third quarter 2012.[1] In contrast, the national average delinquency rate was 7.03 percent. In addition, the foreclosure start rate in Florida was 1.50 percent, which was significantly higher than the national average of 1.08 percent.[2]

The Office of the State Court Administrator provided the following information concerning the number of mortgage foreclosure filings, dispositions, and estimated pending cases for calendar years 2011 and 2012.[3]

[1] Mortgage Bankers Association, *State Mortgage Market Profile of Florida, Third Quarter 2012.*
[2] *Id*.
[3] Office of the State Court Administrator, *Real Property/Mortgage Foreclosures* (on file with the Senate Committee on Judiciary).

Real Property/Mortgage Foreclosures All Circuits			
	Number of Filings	Number of Dispositions	Estimated Pending Cases, As of December
Calendar Year 2011	139,015	200,107	363,660
Calendar Year 2012	202,768	195,309	371,119

In 2012, the attorneys general of 49 states and the District of Columbia, the federal government, and five banks and mortgage servicers (Ally/GMAC, Bank of America, Citi, JPMorgan Chase and Wells Fargo) reached an agreement on a mortgage settlement that will create new servicing standards, provide loan modification relief to distressed homeowners and provide funding for state and federal governments.[4] The settlement was made formal and binding on April 5, 2012, when the U.S. District Court in Washington, D.C. entered the consent judgments containing the settlement terms.[5] The settlement provides as much as $25 billion in relief to distressed borrowers and direct payments to states and the federal government. The agreement settles state and federal investigations regarding the mortgage loan and foreclosure abuses. The settlement requires new servicing standards that will prevent "robosigning,"[6] improper documentation, and lost paperwork. The new standards also provide for stricter oversight of foreclosure processing, including third-party vendors.

Foreclosure Procedure

Statutory process and the Florida Rules of Civil Procedure govern the foreclosure procedure. It is initiated by the lender or servicer, known as a mortgagee, when the borrower, or mortgagor, fails to perform the terms of his or her mortgage, usually by defaulting on payments. Most mortgages contain an 'acceleration clause,' which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default. If the borrower is not able to pay the entire mortgage obligation upon proper notice, the holder of the note or its servicing agent may begin the foreclosure process in a court of proper jurisdiction. The following is a brief outline of the judicial foreclosure process, with the caveat that litigation is driven by the parties, so the process may be slightly different from case to case:

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint,[7] which must allege that the plaintiff is the present owner and holder of the note

[4] Information concerning the national settlement can be found at http://www.nationalmortgagesettlement.com/ (last visited on Apr. 5, 2013). The court documents are available at http://www.justice.gov/opa/opa_mortgage-service.htm (last visited March 15, 2013.)
[5] Office of Mortgage Settlement Oversight, *First Take: Progress Report from the Monitor of the National Mortgage Settlement* (Aug. 29, 2012), *available at* https://www.mortgageoversight.com/wp-content/uploads/2012/08/ProgressReport08292012.pdf.
[6] This is a practice of an authorizing an employee to sign thousands of documents and affidavits without verifying the information in the document or affidavit that he or she is signing.
[7] Rule 1.944, Fla. R. Civ. P.

and mortgage,[8] contain a copy of the note and mortgage,[9] and allege a statement of default,[10] along with a filing fee,[11] and a *lis pendens*, which serves to cut off the rights of any person whose interest arises after filing.[12]A foreclosure is like any other civil action and generally has the following elements:

- Service of process must be made on defendants within 120 days after the filing of the initial pleadings.[13]
- If a defendant has not filed an answer or another paper indicating intent to respond to the suit, then the plaintiff is entitled to an entry of default against the defendant.[14]
- If an answer is filed (thus negating the possibility of a default judgment), the plaintiff may then file for a motion of summary judgment or proceed to trial, however the vast majority of plaintiffs file a motion for summary judgment.[15]
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, the judge holds a summary judgment hearing and if he or she finds in the favor of the plaintiff, the court renders a final judgment.[16]
- If summary judgment is denied, the foreclosure proceeds to a trial without a jury.[17]
- The court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment if the plaintiff prevails at summary judgment or trial.[18]
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, and the second publication must be at least 5 days prior to the sale.[19]
- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale.[20]
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure.[21]
- After 10 days, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed in accordance with the statutory procedure,[22] and the court may, in its discretion, enter a deficiency decree for market value of the security received and the amount of the debt.[23]

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[8] *Edason v. Cent. Farmers Trust Co.*, 129 So. 698, 700 (Fla. 1930).
[9] Rule 1.130(a), Fla. R. Civ. P.
[10] *Siahpoosh v. Nor Props.*, 666 So.2d 988, 989 (Fla. 4th DCA 1996).
[11] The filing fee for foreclosure actions depends on the value of the claim. When the claim is for $50,000 or less, the fee is $395; when the claim is over $50,000 but less than $250,000, the fee is $900; and when the claim is $250,000 or more, the fee is $1900. Section 28.241(a)(1)(d), F.S.
[12] Section 48.23, F.S.
[13] Rule 1.070(j), Fla. R. Civ. P. *See also* chs. 48 and 49, F.S.
[14] Rule 1.040(a)(1), Fla. R. Civ. P.
[15] Rule 1.510(a), Fla. R. Civ. P.
[16] Section 45.031, F.S.
[17] Section 702.01, F.S. The summary judgment motion is optional. A plaintiff can elect to go to trial without the filing of a summary judgment motion.
[18] Section 45.031(1)(a), F.S.
[19] Section 45.031, F.S.
[20] Section 45.031(8), F.S.
[21] Section 45.031(7)(c), F.S.
[22] Section 45.031, F.S.
[23] Section 702.06, F.S.

Alternative Foreclosure Procedure

Section 702.10, F.S., provides an alternative procedure that is designed to speed up the foreclosure process in uncontested cases or cases where there is no legitimate defense. The judge must verify that the complaint filed pursuant to s. 702.10(1), F.S., states a cause of action. If the judge finds the complaint is verified, the judge must issue an order to the defendant to show cause why a final judgment should not be entered. If the defendant waives the right to be heard, the judge must promptly enter a final judgment of foreclosure.[24] Attorney fees may be adjudged no greater than 3 percent of the principal amount owed in a foreclosure in which the defendant waives the right to be heard.[25] If the defendant files any defenses by a motion, or by a verified or sworn answer at or before the hearing, it constitutes cause and precludes the entry of a final judgment and is sufficient to deny summary relief.[26]

Section 702.10(1), F.S., does not specify a standard for the court to use when considering a defendant's defensive motions or answers to the show cause order. If the defendant files any defenses by a motion, or by a verified or sworn answer, it constitutes cause and precludes the entry of a final judgment and is sufficient to deny summary relief.[27] Some legal commentators believe that the "show cause proceeding" under both s. 702.10(1) and (2), F.S., is modeled on ss. 78.065 and 78.067, F.S., which outline a procedure for an order to show cause why a prejudgment writ of replevin should not be issued.[28] Under the replevin statute, "the court shall at the hearing on the order to show cause consider the affidavits and other showings made by the parties appearing and make a determination of which party, with reasonable probability, is entitled to the possession of the claimed property pending final adjudication of the claims of the parties. This determination shall be based on a finding as to the probable validity of the underlying claim against the defendant."[29]

Additionally, if the property is not residential real estate, the plaintiff may request a court order directing the defendant to show cause why an order to make payments during the pendency of the proceedings or an order to vacate the premises should not be entered.[30]

- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication.[31]
- The defendant can file defenses by a motion or by sworn or verified answer or appear at the hearing, which prevents entry of a final judgment.[32]
- The court may enter an order requiring payment or an order to vacate if the defendant has waived the right to be heard.[33]

[24] Section 702.10(1)(d), F.S.
[25] Section 702.10(1)(c), F.S.
[26] Henry P. Trawick Jr., *Trawick's Florida Practice and Procedure*, s. 31:7 (2007 edition).
[27] *Id.*
[28] Gary Walk and Mark J. Wolfson, *An Analysis of the 1993 Mortgage Foreclosure Act*, 67 FLA. B.J. 68, 70 (Oct. 1993) (discussing the show cause mortgage foreclosure procedure under s. 702.10, F.S.).
[29] Section 78.067(2), F.S.
[30] Section 702.10(2), F.S.
[31] Section 702.10(2)(a), F.S.
[32] Section 702.10(2)(b), F.S.
[33] Section 702.10(2)(c), F.S.

- If the court finds that the defendant has not waived the right to be heard, after reviewing affidavits and evidence, the court can determine if the plaintiff is likely to prevail in the foreclosure action, and enter an order requiring the defendant to make the payments or provide another remedy.[34]

The court order must be stayed pending final adjudication of the claims if the defendant posts bond with the court in the amount equal to the unpaid balance of the mortgage.[35]

III. Effect of Proposed Changes:

The Foreclosure Complaint: Requiring the Plaintiff to Establish Possession of a Valid Promissory Note or Authority to Enforce the Note

Section 9 creates s. 702.015, F.S., to require the plaintiff (i.e., the lender) to certify physical possession of the original promissory note or to provide sworn evidence to support a lost note. This new burden on the lender is intended to expedite the foreclosure process and avoid a repeat of some of the "robosigning," fraud and other problems of the past. A court may sanction the plaintiff for failure to comply with the requirements of this section. The section does not apply to foreclosure proceedings involving timeshare interests under part III of ch. 721, F.S.

The requirements must be met under this section to bring a complaint to foreclose a mortgage or other lien on residential real property designed principally for occupation by 1 to 4 families (including condominiums and cooperatives) which secure a promissory note.

Facts Regarding Plaintiff Holding Note or Entitlement to Enforce Note [s. 702.015(2) and (3), F.S.]

The complaint must establish that the plaintiff holds the original note or is entitled to enforce a promissory note by:

- Containing affirmative allegations made by the plaintiff at the time the proceeding is commenced that the plaintiff holds the original note secured by the notice; or
- Alleging with specificity the factual basis by which the plaintiff is a "person entitled to enforce" the promissory note under s. 673.3011, F.S.
  - Under s. 673.3011, a "person entitled to enforce" an instrument is the holder of the instrument, a nonholder in possession of the instrument with the rights of a holder, or a person not in possession of the instrument who may enforce it under s. 673.3091, F.S., (enforcement of a lost, destroyed or stolen instrument) or s. 673.4181(4), F.S., (mistaken payment or acceptance).

An "original note" or original promissory note" is defined as the signed or executed promissory note. It includes any renewal, replacement, consolidation, or amended and restated note or instrument that renews, replaces, or substitutes for a previous promissory note. The term also includes a transferrable record as provided in s. 668.50(16), F.S.

[34] Section 702.10(2)(d), F.S.
[35] *Id.*

Facts Regarding Delegation of Authority to Plaintiff to Institute a Foreclosure Action [s. 702.015(3), F.S.

If a plaintiff has been delegated the authority to institute a mortgage foreclosure action on behalf of the person entitled to enforce the note, the complaint must describe with specificity:

- The authority of the plaintiff, and
- The document that grants such authority to the plaintiff.

These requirements are not intended to modify laws regarding standing or real parties in interest.

Plaintiff's Possession of Original Promissory Note [s. 702.015(4), F.S.]

A plaintiff in possession of the original promissory note must file with the court, under penalty of perjury, a certification that the plaintiff possesses the original promissory note. The filing must be made contemporaneously with the foreclosure complaint. The certification must set forth:

- The location of the note;
- The name and title of the individual giving the certification;
- The name of the person who personally verified such possession; and
- The time and date on which possession was certified.

The certification must also have attached to it correct copies of the note and all allonges. The original note and allonges must be filed with the court before the entry of any judgment of foreclosure or judgment on the note.

Affidavit Required to Enforce a Lost, Destroyed, or Stolen Instrument [s. 702.015(5)]

A plaintiff seeking to enforce a lost, destroyed or stolen instrument must attach to the complaint an affidavit executed under penalty of perjury. The affidavit must:

- Detail a clear chain of all endorsements, transfers, or assignments of the promissory note;
- Set forth facts showing that the plaintiff is entitled to enforce a lost, destroyed, or stolen instrument. Adequate protection as required under s. 673.3091(2), F.S., must be provided before final judgment. Adequate protection refers to adequately protecting the party required to pay the instrument against loss that might occur caused by a claim by another person to enforce the instrument.
- Include as exhibits to the affidavit, copies of the note and the allonges to the note, or other evidence of the acquisition, ownership, and possession of the note as may be available to the plaintiff.

Section 14 creates s. 702.11, F.S., to allow a court to find that the following constitute reasonable means for providing adequate protection under s. 673.3091, F.S.:

- A written indemnification agreement by a person reasonably believed sufficiently solvent to honor the obligation;
- A surety bond;

- A letter of credit issued by a financial institution;
- A deposit of cash collateral with the clerk of the court; or
- Other security the court deems appropriate under the circumstances.

The security must be on terms and in amounts set by the court. The security must run through the statute of limitations for the underlying note and indemnify and hold harmless the maker of the note against any loss or damage that might occur by reason of a claim by another person to enforce the note.

A person who wrongly claims to hold a note or to be entitled to enforce a lost, stolen, or destroyed note who causes the mortgage to be foreclosed is liable to the actual holder, without limitation to any adequate protections given, for actual damages plus attorney fees and costs. The actual holder may also pursue recovery directly against any adequate protections given. This section does not limit the ability of the actual holder of the note to pursue other claims or remedies it may have against the maker of the note, the person who wrongly claimed to be the holder, or any person who facilitated or participated in the claim to the note or enforcement.

The "Show Cause" Foreclosure Procedure: Creating an Expedited Process

Order to Show Cause under s. 702.10(1), F.S.

Section 13 amends s. 702.10, F.S, to establish a "show cause" process that streamlines and expedites foreclosures. The "show cause" process preserves all appropriate due process rights protecting borrowers; it eliminates unnecessary court hearings; and it gives community associations standing to participate when delinquent assessments are due.

The streamlined show cause process is as follows. After filing a complaint, the plaintiff may request an order to show cause for the entry of final judgment. The court must immediately review the request and the court file in chambers without a hearing. The court must promptly issue an order to show cause why a final judgment of foreclosure should not be entered to the other parties named in the action if the complaint is verified, complies with the requirements in s. 702.015, F.S. (created by Section 10 of the bill), and alleges a cause of action to foreclose on real property.

The court must set a hearing, the date and time of which must not occur sooner than the later of 20 days after service of the order to show cause or 45 days after service of the initial complaint. If service is by publication, the hearing date cannot be set sooner than 30 days after the first publication. The hearing is no longer required to be held within 60 days of the date of service.

The bill makes responses easier for homeowners once the foreclosure is filed by permitting the homeowner to file other documents in defense of the foreclosure. The bill specifies that the filing of defenses by motion, responsive pleading, affidavits, or other papers before the hearing may constitute cause for the court not to enter final judgment. Under current law, filing of defenses by motion or by a verified or sworn answer prior to the show cause hearing are needed to show cause for the court not to enter final judgment. Current law, however, states that such filings establish cause, while under the bill the expanded types of filings only "may" show cause.

If the defendant files defenses by motion, an answer, affidavits, other papers, and other evidence and argument or if the defendant or defendant's attorney appears at the hearing, the hearing time will be used to consider whether a genuine issue of material fact exists that precludes the entry of summary judgment or that constitutes a legal defense to foreclosure. The order to show cause must notify the defendant that the court may enter an order of final judgment of foreclosure at the hearing and order the clerk of the court to conduct a foreclosure sale.

The bill creates a higher standard for the defendant to show cause. Under the bill, the defendant shows cause (why the court should not grant final judgment of foreclosure) if the defendant raises a genuine issue of material fact which precludes entry of summary judgment or is a legal defense to foreclosure in a motion, a verified answer, affidavits, or other papers or in evidence presented at or before the hearing. Current law states that the defendant shows cause merely by filing defenses by a motion or by a verified or sworn answer at or before the hearing.

The court may enter a final judgment of foreclosure if the court finds that all defendants have waived the right to be heard. The court shall promptly enter a final judgment of foreclosure without the need for further hearing if the plaintiff shows entitlement to final judgment and files the original note, establishes a lost note, or shows the court the obligation to be foreclosed is not evidenced by a promissory note or other negotiable instrument. If the court finds that any defendant has not waived the right to be heard on the order to show cause, the court must determine whether there is cause to enter a final judgment of foreclosure. If the hearing time is insufficient, the court may announce a continued hearing on the order to show cause. The court may enter a final judgment of foreclosure if the defendant does not show cause why a final judgment should not be entered.

The Legislature intends that alternative procedures may run simultaneously with other court procedures.

Order to Show Cause under s. 702.10(2), F.S.

The bill also exempts foreclosures of owner-occupied residences from provisions authorizing the plaintiff to request the court to enter an order to show cause why it should not enter:

- An order to make payments during the pendency of the foreclosure proceedings, or
- An order to vacate the premises.

Finality of Mortgage Foreclosure Judgment

Section 11 creates s. 702.036, F.S., to prevent a good faith purchaser of property from being dispossessed in a later challenge after the foreclosure is final. The section provides that the former owner may continue to pursue money damages against the lender even after the trial and appeals have concluded, but the claims cannot impact the marketability of the property in the new owner.

An action to set aside, invalidate, or challenge the validity of a final judgment of mortgage foreclosure, or to establish or re-establish a lien or encumbrance of property in abrogation of a mortgage foreclosure final judgment is limited to monetary damages if the following apply:

- The party seeking relief from the final judgment of mortgage foreclosure was properly served in the foreclosure lawsuit.
- The final judgment of mortgage foreclosure was entered as to the property.
- All applicable appeals periods have run as to the final judgment with no appeals having been taken or any appeals having been finally resolved.
- The property has been acquired for value by a person not affiliated with the foreclosing lender or the foreclosed owner, at a time in which no lis pendens regarding the suit to set aside, invalidate, or challenge the foreclosure appears in the official records of the county where the property was located.
    - Affiliates of the foreclosing lender include the foreclosing lender, any loan servicer for the loan being foreclosed, and any past or present owner or holder of the loan being foreclosed. It also includes:
        (a) A parent entity, subsidiary, or other person who directly or indirectly controls, is controlled by, or is under common control of such entities
        (b) A maintenance company, holding company, foreclosure services company or law firm under contract with such entities.

Once foreclosure of a mortgage occurs based upon enforcement of a lost, destroyed, or stolen note, a person who was not a party to the foreclosure action but claims entitlement to enforce the promissory note secured by the mortgage has no claim against the foreclosed property once it is conveyed to a person not affiliated with the foreclosing lender or the foreclosed owner. That person may still pursue recovery from any adequate protection given pursuant to s. 673.3091, F.S., or from the party who wrongfully claimed entitlement to enforce the promissory note, from the maker of the note, or any other person against whom a claim may be made.

Deficiency Judgments: Limiting the Amount of a Deficiency Decree

Section 12 amends s. 702.06, F.S., to limit the amount of a deficiency judgment on owner-occupied residential property to the difference between the judgment amount and the "fair market value" on the date of the foreclosure sale. Similarly, the deficiency for a short sale may not exceed the difference between the outstanding debt and the fair market value of the property on the date of the sale.

Actions to Enforce Deficiency Judgments: Reducing the Statute of Limitations on Certain Actions

Section 4 amends s. 95.11, F.S., to reduce the statute of limitations period for a lender to enforce a deficiency judgment following the foreclosure of an owner-occupied, one-family to four-family dwelling unit years from 5 years to 1 year.

Section 5 creates an undesignated section of law that applies the amendments to s. 95.11, F.S. The amendments to s. 95.11, F.S., reduce the statute of limitations to bring an action to enforce a deficiency judgment related to the foreclosure of an owner-occupied, one-family to four-family dwelling unit from 5 years to 1 year. This section applies the 1-year statute of limitations to any such deficiency action that commences on or after July 1, 2013, regardless of when the cause of action accrued. An exception is created for causes of action that accrue before the effective date of

the bill and have not expired under the current 5-year statute of limitations. Such actions must be commenced within the 5-year statute of limitations or by July 1, 2014, whichever comes first. Pursuant to Section 19 of the bill, this section will not take effect unless the Legislature appropriates $1.6 million from the General Revenue Fund on a recurring basis to the judicial branch in order to fund the increased employer contributions associated with the costs of the retirement benefits authorized in this bill and if the Governor does not veto the appropriation.

Publication of Notice of Sale on a Publicly Accessible Website

Section 1 amends s. 45.031, F.S., to provide an option for publishing the "notice of sale" on a publicly accessible website maintained by the clerk of the court. Currently, the notice of sale is required to be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held.

Section 2 amends s. 50.011, F.S., to provide a conforming change to permit publication of a notice of sale on a website maintained by the clerk of the court.

Section 3 creates s. 50.015, F.S, to provide a conforming change to permit publication on a website maintained by the clerk of the court. This section establishes standards for establishing an accessible Internet website for the publication of a notice of foreclosure.

Section 10 amends s. 702.035, F.S., to provide a conforming change to permit publication on a website maintained by the clerk of the court.

Use of Retired Justices or Senior Judges to Assist with Foreclosure Proceedings

Sections 6-8 amend ss. 121.021, 121.091, and 121.591, F.S., to allow courts to employ retired justices and judges to assist with the foreclosure backlog. These sections provide that, effective July 1, 2013, through June 30, 2016, the act of termination for a justice or judge who has reached the later of his or her normal retirement age or the age when vested and subsequently returns to temporary employment as a judge in any court, occurs when the justice or judge has terminated all employment under the Florida Retirement System (FRS) for at least 1 calendar month prior to reemployment as a senior judge. Retired justices and judges who return to such temporary employment are exempt from the limitations on reemployment for purposes of the FRS in s. 121.091(2), F.S., and may continue receiving distributions from his or her FRS account under s. 121.591(1)(a)4., F.S.

Section 16 adjusts specified employer contributions rates for retired justices and senior judges who are reemployed to assist with foreclosure proceedings as authorized by the bill. The employer contribution changes are needed to fund the benefit changes required to allow retired justices and senior judges to participate in the program.

Section 17 provides a legislative finding that the act fulfills an important state interest and that a proper and legitimate state purpose is served if employees and retirees of the state and its political subdivisions, and their dependents, survivors and beneficiaries are extended basic protections afforded by governmental retirement systems. The Legislature further finds that the assignment of former justices and judges to temporary employment would assist the State Courts

System in managing caseloads and providing individuals and businesses with access to courts. In particular, these assignments are critically important in assisting with the disposition of the current backlog in foreclosure cases. The section also provides a legislative finding that this act fulfills an important state interest by facilitating the ability of justices and judges who retire under the Florida Retirement System to return to temporary employment as a judge in a timely manner.

Application and Implementation of Bill

Section 15 creates an undesignated section that provides that changes to the foreclosure process contained in the bill are remedial and not substantive in nature. The act applies to all mortgages encumbering real property and all promissory notes secured by a mortgage, regardless of when the instruments are executed. The following sections are exempt from this general rule of application:

- Section 702.015, F.S., only applies to cases filed on or after July 1, 2013.
- The amendments to s. 702.10, F.S., and the entirety of s. 702.11, F.S., apply to causes of action pending on the act's effective date.

Section 18 requests the Supreme Court to amend the Rules of Civil Procedure to implement the expedited foreclosure process.

Section 19 provides that sections 6, 7, 8, 16, and 17 of this act would take effect only if the Legislature appropriates funding during the 2013 Session the sum of $1.6 million from the General Revenue Fund on a recurring basis to the judicial branch in order to fund the increased employer contributions associated with the costs of the retirement benefits authorized in this bill and if the Governor does not veto the appropriation.

Section 20 provides the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a local government to expend funds to comply with its terms, the provisions of section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (included in section 18 of the bill), and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;

- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

Section 19 of the bill provides that provisions relating to the reemployment of retired justices and the increased employer contributions associated with the costs of the retirement benefits authorized in the bill would not be implemented unless the Legislature appropriates funds and the Governor does not veto the appropriation.

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:

To the extent that the bill streamlines the foreclosure litigation process, it may reduce costs and delays associated with bringing a foreclosure suit.

The expedited foreclosure of abandoned real property would allow such properties to be rehabilitated and sold on the marketplace in a timelier manner, thereby generating additional capital and employment in the local communities and increasing the appreciation of the fair market value of properties in a community.

C. Government Sector Impact:

Impact on State Courts[36]

State Courts Revenue: The fiscal impact of this legislation on revenues to the State Courts' trust funds from civil filing fees cannot be accurately determined due to the unavailability of data needed to establish the increase resulting from a spike in filings due to a shortened statute of limitations for bringing actions established in the bill.

Expenditures: The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantify the increase in judicial workload.

[36] Office of the State Courts Administrator 2013 Judicial Impact Statement, SB 1666 (Jan. 8, 2013) (on file with the Senate Committee on Judiciary).

Judicial or Court Workload: The courts expect to experience a short-term increase in court workload in consequence of provisions permitting additional lienholders to seek show cause orders under modified procedures expediting the foreclosure process. A related longer-term increase in judicial time may be expected under show cause provisions requiring judges immediately review court files to ensure compliance with numerous additional criteria. A near-term increase in court workload may also be anticipated in light of a shortened statute of limitations for bringing actions to enforce claims of deficiency.

Court Rules/Jury Instructions: Newly created s. 702.10(3), F.S., requests the Supreme Court amend the Florida Rules of Civil Procedure to provide for expedited foreclosure proceedings and development of related forms. The bill's effective date, upon becoming law, will afford the Court little time to act upon the requested rule making.

***Judiciary*:** Provisions potentially expediting the foreclosure process and reducing related court workload over a period of years will require a corresponding near-term expenditure of court resources. Additional revenue may be anticipated, however, in consequence of an increase in near-term filings by lienholders initiating expedited foreclosure proceedings.

Impact on the Florida Retirement System (FRS)

The Department of Management Services provided an analysis[37] of the provision relating to the FRS Pension Plan, a defined benefit plan and the FRS Investment Plan, which is a defined contribution plan. The department administers the FRS Pension Plan and the State Board of Administration administers the FRS Investment Plan.

The costs in the bill are based on a 2012 actuarial special study conducted by Milliman, Inc.,[38] that did not assume a termination period. The termination period included in this bill is not expected to have a material impact on the choices of senior judges to accept temporary duties or the costs determined in the 2012 special study.

The bill would increase the required employer contribution rates established in s. 121.71(4), F.S., as follows:

- The Elected Officers' Class – Justices, Judges, is increased by 0.45 percentage points.
- The Deferred Retirement Option Program is increased by 0.01 percentage points.

The bill would also increase the required employer contribution rate for the unfunded actuarial liability established in s. 121.71(5), Florida Statutes, for the Elected Officers' Class – Justices, Judges, by 0.91 percentage points.

[37] Department of Management Services Bill Analysis 2013 SB 1666 (Mar. 14, 2013) (on file with the Senate Committee on Judiciary).
[38] Milliman, *Study Reflecting the Impact to the Blended Rates of the Florida Retirement System of Exempting Retired Judges from Termination and Reemployment Limitations*, (Feb. 9, 2012) (on file with Senate Committee on Banking and Insurance).

The provisions of this act relating to senior justices or judges would take effect only if the Legislature appropriates the sum of at least $1.6 million from the General Revenue Fund on a recurring basis to the judicial branch in order to fund the increased employer contributions associated with the costs of the retirement benefits granted in this act and the appropriations are not vetoed by the Governor. The changes in this bill relating to retired justices and judges shall stand repealed effective July 1, 2016.

Fiscal Impact on State Agencies
The costs in the bill are based on a 2012 actuarial special study performed by Milliman, Inc., that did not assume a termination period. The termination period included in this bill is not expected to have a material impact on the choices of senior judges to accept temporary duties or the costs determined in the 2012 special study.

A. Revenues: Not applicable.
B. Expenditures, Recurring:

7/2013-6/2014	7/2014-6/2015	7/2015-6/2016
$1,598,000	$1,662,000	$1,729,000

Fiscal Impact on Local Governments
The costs in the bill are based on a 2012 actuarial special study performed by Milliman, Inc., that did not assume a termination period. The termination period included in this bill is not expected to have a material impact on the choices of senior judges to accept temporary duties or the costs determined in the 2012 special study. The Division of Retirement of the Department of Management Services provided the following information concerning the impact on local governments, as depicted in the table. There are no associated revenues.

Recurring Expenditures for Local Governments		
7/2013 - 6/2014	7/2014 - 6/2015	7/2015 - 6/2016
$196,000	$204,000	$212,000

VI. Technical Deficiencies:

On lines 759-783, it is unclear whether recovery in an action or proceeding to set aside, invalidate, or challenge the validity of a mortgage foreclosure final judgment is limited to monetary damages when all the factual scenarios contained in lines 799-812 are applicable or when any one of those factual scenarios is applicable.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance on March 20, 2013:
CS/SB 1666 provides technical, conforming changes relating to the temporary reemployment of retired justices and judges. The bill also provides a legislative finding that the act fulfills an important state interest by facilitating the ability of justices and judges who retire under the Florida Retirement System to return to temporary employment as judges to assist with the disposition of the current backlog in foreclosure cases.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Soto) recommended the following:

Senate Amendment

Delete lines 671 - 717
and insert:

(a) Contain affirmative allegations expressly made by the plaintiff at the time the proceeding is commenced that the plaintiff is the owner and holder of the original note secured by the mortgage; or

(b) Allege with specificity the factual basis by which the plaintiff is a person entitled to enforce the note and mortgage under s. 673.3011.

(3) If a plaintiff has been delegated the authority to

institute a mortgage foreclosure action on behalf of the person entitled to enforce the note and mortgage, the complaint shall describe the authority of the plaintiff and identify, with specificity, the document that grants the plaintiff the authority to act on behalf of the person entitled to enforce the note and mortgage. This subsection is intended to require initial disclosure of status and pertinent facts and not to modify law regarding standing or real parties in interest. The term "original note" or "original promissory note" means the signed or executed promissory note rather than a copy thereof. The term includes any renewal, replacement, consolidation, or amended and restated note or instrument given in renewal, replacement, or substitution for a previous promissory note. The term also includes a transferrable record, as defined by the Uniform Electronic Transaction Act in s. 668.50(16).

(4) If the plaintiff is in possession of the original promissory note, the plaintiff must file under penalty of perjury a certification with the court, contemporaneously with the filing of the complaint for foreclosure, that the plaintiff is in possession of the original promissory note. The certification must set forth the location of the note, the name and title of the individual giving the certification, the name of the person who personally verified such possession, and the time and date on which the possession was verified. Correct copies of the note and all allonges to the note must be attached to the certification. The original note and the allonges must be filed with the court before the entry of any judgment of foreclosure or judgment on the note.

(5) If the plaintiff seeks to enforce a lost, destroyed, or

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stolen instrument, an affidavit executed under penalty of perjury must be attached to the complaint. The affidavit must:

(a) Detail a clear chain of all endorsements, transfers, or assignments of the promissory note that is the subject of the action.

(b) Set forth facts showing that the plaintiff is entitled to enforce a lost, destroyed, or stolen instrument pursuant to s. 673.3091 or s. 71.011, whichever is applicable. Adequate protection as required under s. 673.3091(2), shall be provided before the entry of final judgment.

841006

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Soto) recommended the following:

Senate Amendment

Delete line 766
and insert:

of the final judgment of foreclosure of a mortgage, except in the case of fraud, misrepresentation, or other misconduct by the party who obtained the judgment, the court

690342

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment

Delete lines 882 - 886

and insert:

3. State that the filing of defenses by a motion, a responsive pleading, an affidavit, or other papers ~~or by a verified or sworn answer at or~~ before the hearing to show cause that raise a genuine issue of material fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to foreclosure shall constitute ~~constitutes~~ cause for the court not to enter ~~the attached~~ final judgment.

322340

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Soto) recommended the following:

Senate Amendment

Delete line 885
and insert:

constitutes cause for the court not to enter ~~the~~

392010

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Soto) recommended the following:

Senate Amendment

Delete line 894
and insert:

the hearing, the hearing time may be used to hear and

335022

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Soto) recommended the following:

Senate Amendment

Delete line 976
and insert:

evidenced by a promissory note or other negotiable or nonnegotiable instrument.

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Soto) recommended the following:

Senate Amendment

Delete lines 984 - 986
and insert:

time for the continued hearing.

768302

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 987 - 1090

and insert:

(2) As part of any ~~In an~~ action for foreclosure, other than residential real estate, and in addition to any other relief that the court may award, the plaintiff ~~the mortgagee~~ may request that the court enter an order directing the mortgagor defendant to show cause why an order to make payments during the pendency of the foreclosure proceedings or an order to vacate the premises should not be entered.

(a) The order shall:

1. Set the date and time for hearing on the order to show

768302

cause. However, the date for the hearing may ~~shall~~ not be set sooner than 20 days after the service of the order. If ~~Where~~ service is obtained by publication, the date for the hearing may ~~shall~~ not be set sooner than 30 days after the first publication.

2. Direct the time within which service of the order to show cause and the complaint shall be made upon each ~~the~~ defendant.

3. State that a ~~the~~ defendant has the right to file affidavits or other papers at the time of the hearing and may appear personally or by way of an attorney at the hearing.

4. State that, if a ~~the~~ defendant fails to appear at the hearing to show cause and fails to file defenses by a motion or by a verified or sworn answer, the defendant is ~~may be~~ deemed to have waived the right to a hearing and in such case the court may enter an order to make payment or vacate the premises.

5. Require the movant ~~mortgagee~~ to serve a copy of the order to show cause on the defendant ~~mortgagor~~ in the following manner:

a. If a defendant ~~the mortgagor~~ has been served with the complaint and original process, service of the order may be made in the manner provided in the Florida Rules of Civil Procedure.

b. If a defendant ~~the mortgagor~~ has not been served with the complaint and original process, the order to show cause, together with the summons and a copy of the complaint, shall be served on the defendant ~~mortgagor~~ in the same manner as provided by law for original process.

(b) The right of a defendant to be heard at the hearing to show cause is waived if the defendant, after being served as

provided by law with an order to show cause, engages in conduct that clearly shows that the defendant has relinquished the right to be heard on that order. A ~~The~~ defendant's failure to file defenses by a motion or by a sworn or verified answer or to appear at the hearing duly scheduled on the order to show cause presumptively constitutes conduct that clearly shows that the defendant has relinquished the right to be heard.

(c) If the court finds that a ~~the~~ defendant has waived the right to be heard as provided in paragraph (b), the court may promptly enter an order requiring payment in the amount provided in paragraph (f) or an order to vacate.

(d) If the court finds that the mortgagor has not waived the right to be heard on the order to show cause, the court shall, at the hearing on the order to show cause, consider the affidavits and other showings made by the parties appearing and make a determination of the probable validity of the underlying claim alleged against the mortgagor and the mortgagor's defenses. If the court determines that the plaintiff ~~mortgagee~~ is likely to prevail in the foreclosure action, the court shall enter an order requiring the mortgagor to make the payment described in paragraph (e) to the plaintiff ~~mortgagee~~ and provide for a remedy as described in paragraph (f). However, the order shall be stayed pending final adjudication of the claims of the parties if the mortgagor files with the court a written undertaking executed by a surety approved by the court in an amount equal to the unpaid balance of the lien being foreclosed ~~the mortgage on the property~~, including all principal, interest, unpaid taxes, and insurance premiums paid by the plaintiff ~~the mortgagee~~.

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(e) If ~~In the event~~ the court enters an order requiring the mortgagor to make payments to the plaintiff ~~mortgagee~~, payments shall be payable at such intervals and in such amounts provided for in the mortgage instrument before acceleration or maturity. The obligation to make payments pursuant to any order entered under this subsection shall commence from the date of the motion filed under this section ~~hereunder~~. The order shall be served upon the mortgagor no later than 20 days before the date specified for the first payment. The order may allow ~~permit~~, but may ~~shall~~ not require, the plaintiff ~~mortgagee~~ to take all appropriate steps to secure the premises during the pendency of the foreclosure action.

(f) If ~~In the event~~ the court enters an order requiring payments, the order shall also provide that the plaintiff is ~~mortgagee shall be~~ entitled to possession of the premises upon the failure of the mortgagor to make the payment required in the order unless at the hearing on the order to show cause the court finds good cause to order some other method of enforcement of its order.

(g) All amounts paid pursuant to this section shall be credited against the mortgage obligation in accordance with the terms of the loan documents;~~, provided,~~ however, ~~that any~~ payments made under this section do ~~shall~~ not constitute a cure of any default or a waiver or any other defense to the mortgage foreclosure action.

(h) Upon the filing of an affidavit with the clerk that the premises have not been vacated pursuant to the court order, the clerk shall issue to the sheriff a writ for possession which shall be governed by ~~the provisions of~~ s. 83.62.


768302

101
102 ================ T I T L E A M E N D M E N T ================
103 And the title is amended as follows:
104 Delete lines 79 - 85
105 and insert:
106 circumstances;

227122

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment

Delete lines 987 - 989

and insert:

(2) Except as provided in paragraph (i), in any ~~an~~ action for foreclosure~~,~~ other than owner-occupied residential real estate, in addition to any other relief that the court may award, the

494432

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment

Delete line 234
and insert:

period shall commence on the day after the certificate of title is issued

888240

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 728 - 758.

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

And the title is amended as follows:

Delete lines 51 - 57

and insert:

proceedings involving timeshare interests; creating s.

102626

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 114 - 216.

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

And the title is amended as follows:

Delete lines 2 - 24

and insert:

An act relating to mortgage foreclosures; amending s.

By the Committee on Banking and Insurance; and Senator Latvala

597-02824-13 20131666c1

A bill to be entitled

An act relating to mortgage foreclosures; amending s. 45.031, F.S.; providing that the second publication of the notice of sale may be published on a publicly accessible website of the clerk of the court in lieu of publication in any other form of media; revising the contents of the notice of sale; amending s. 50.011, F.S.; providing that certain legal notice requirements do not apply to an electronic publication of a notice of sale on a publicly accessible Internet website; creating s. 50.015, F.S.; requiring that a publicly accessible Internet website must be approved for legal publication, advertisement, and notice by the Florida Clerks of Court Operations Corporation; describing conditions and requirements for a publicly accessible Internet website; requiring 24-hour customer support; requiring that legal publication, advertisement, or notice of foreclosure action be posted within 3 business days, excluding court holidays, after the date for the foreclosure sale is set; authorizing a clerk of court to contract with a publicly accessible Internet website provider for legal publication of notice of foreclosure action; providing for maximum publication fees; amending s. 95.11, F.S.; revising the limitations period for commencing an action to enforce a claim of a deficiency judgment after a foreclosure action; providing for applicability to existing causes of action; providing that the amendments made by this act

597-02824-13 20131666c1

to s. 95.11, F.S., apply to any action commenced on or after July 1, 2013; amending s. 121.021, F.S.; defining terms; providing for the applicability of the term "termination"; amending s. 121.091, F.S.; providing that between two specified dates, a retired justice or retired judge is not subject to certain limitations otherwise applicable to retired employees; amending s. 121.591, F.S.; providing that, between two specified dates, a retired justice or retired judge who returns to temporary employment as a senior judge in any court may continue to receive a distribution of his or her retirement account after providing proof of termination from his or her regularly established position; creating s. 702.015, F.S.; providing legislative intent; specifying required contents of a complaint seeking to foreclose on certain types of residential properties with respect to the authority of the plaintiff to foreclose on the note and the location of the note; authorizing sanctions against plaintiffs who fail to comply with complaint requirements; providing for non-applicability to proceedings involving timeshare interests; amending s. 702.035, F.S.; providing for the applicability of electronic publication if such publication effects advertisement, publication, or legal notice regarding a foreclosure proceeding; providing that only the costs charged by the host of the Internet website may be charged as costs in the action; creating s. 702.036, F.S.; requiring a court to treat a collateral

attack on a final judgment of foreclosure on a mortgage as a claim for monetary damages under certain circumstances; prohibiting such court from granting certain relief affecting title to the foreclosed property; providing for construction relating to the rights of certain persons to seek specified types of relief or pursue claims against the foreclosed property under certain circumstances; amending s. 702.06, F.S.; limiting the amount of a deficiency judgment; amending s. 702.10, F.S.; revising the class of persons authorized to move for expedited foreclosure to include lienholders; defining the term "lienholder"; providing requirements and procedures with respect to an order directed to defendants to show cause why a final judgment of foreclosure should not be entered; providing that certain failures by a defendant to make certain filings or to make certain appearances may have specified legal consequences; requiring the court to enter a final judgment of foreclosure and order a foreclosure sale under certain circumstances; revising a restriction on a mortgagee to request a court to order a mortgagor defendant to make payments or to vacate the premises during an action to foreclose on residential real estate to provide that the restriction applies to all but owner-occupied residential property; providing a presumption regarding owner-occupied residential property; creating s. 702.11, F.S.; providing requirements for reasonable means of providing adequate protection

under s. 673.3091, F.S., in mortgage foreclosures of certain residential properties; providing for liability of persons who wrongly claim to be holders of or entitled to enforce a lost, stolen, or destroyed note and cause the mortgage secured thereby to be foreclosed in certain circumstances; providing for construction and applicability; declaring that the act is remedial in nature and applies to all mortgages encumbering real property and all promissory notes secured by a mortgage, whether executed before, on, or after the effective date of this act; requiring that employer contribution rates be adjusted; providing a directive to the Division of Law Revision and Information; providing legislature findings; requesting the Florida Supreme Court to adopt rules and forms to expedite foreclosure proceedings; providing that certain specified provisions of the act take effect only if the Legislature appropriates a certain amount on a recurring basis to the judicial system and if the Governor does not veto the appropriation; providing that certain sections of the act stand repealed on a stated date; providing an effective date.

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

Section 1. Subsection (2) of section 45.031, Florida Statutes, is amended to read:

45.031 Judicial sales procedure.—In any sale of real or

personal property under an order or judgment, the procedures provided in this section and ss. 45.0315-45.035 may be followed as an alternative to any other sale procedure if so ordered by the court.

(2) PUBLICATION OF SALE.—Notice of sale shall be published once a week for 2 consecutive weeks in a newspaper of general circulation, as defined in chapter 50, published in the county where the sale is to be held. The second publication shall be at least 5 days before the sale or, in the alternative, may be published on a publicly accessible website of the clerk of the court authorized by s. 50.015 in lieu of publication in another form of media. The notice of sale must ~~shall~~ contain:

(a) A description of the property to be sold.

(b) The time and place of sale.

(c) A statement that the sale will be made pursuant to the order or final judgment.

(d) The caption of the action.

(e) The name of the clerk making the sale.

(f) A statement that any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens must file a claim within 60 days after the sale.

(g) A statement of the name of the newspaper or the website home page address in, or on which, the notice will be published.

The court, in its discretion, may enlarge the time of the sale. Notice of the changed time of sale shall be published as provided herein.

Section 2. Section 50.011, Florida Statutes, is amended to

read:

50.011 Where and in what language legal notices to be published.—

(1) Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been, a publication in a newspaper printed and published periodically once a week or oftener, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.

(2) As allowed by s. 45.031(2), the requirements of subsection (1) do not apply to any electronic publication of a notice of sale on a publicly accessible Internet website meeting the standards of s. 50.015.

Section 3. Section 50.015, Florida Statutes, is created to

read:

50.015 Publicly accessible Internet website.—

(1) A publicly accessible Internet website must be approved for legal publication, advertisement, and notice by the Florida Clerks of Court Operations Corporation and must:

(a) Maintain a notice of foreclosure action for 90 days following the first day of posting or for as long as provided in subsection (3), and maintain publications of sales searchable and accessible to users for 10 years following the first day of posting.

(b) Receive at least 100,000 total impressions a month, which must be certified by a recognized Internet search engine. As used in this paragraph, the term "impression" means the time at which a notice is viewed once by a visitor on an Internet web page.

(c) Maintain 24-hour customer support, along with live electronic communication and telephone support for a minimum of 12 hours a day during peak-time usage, and post online tutorials for users.

(d) Be maintained on a data center that is compliant with the Statement of Auditing Standards No. 70, and the website provider shall provide the clerk of court with a certificate of compliance with the Standards.

(e) Provide 24-hour access at no charge to the chief judge of each judicial circuit and his or her designee, as well as to each clerk of court and each deputy clerk. The website provider must develop and maintain on file and provide to each clerk of court and each chief judge a disaster recovery plan for the website.

(2) The website provider shall publish its affidavits electronically in substantial conformity with ss. 50.041 and 50.051 and may use an electronic notary seal.

(3) Legal publication, advertisement, or notice of foreclosure action shall be posted within 3 business days, excluding court holidays, after the date for the foreclosure sale is set and shall continue for 10 days after the foreclosure sale, or for 90 consecutive days, whichever period is longer.

(4) Each clerk of court may contract with a publicly accessible Internet website provider for legal publication of notice of foreclosure action as required by s. 702.035.

(5) A publicly accessible Internet website may charge a fee of up to $50 per notice.

Section 4. Paragraph (b) of subsection (2) of section 95.11, Florida Statutes, is amended, and paragraph (h) is added to subsection (5) of that section, to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(2) WITHIN FIVE YEARS.—

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument, except for an action to enforce a claim against a payment bond, which shall be governed by the applicable provisions of paragraph (5)(e), s. 255.05(10), s. 337.18(1), or s. 713.23(1)(e), and except for an action for a deficiency judgment governed by paragraph (5)(h).

(5) WITHIN ONE YEAR.—

(h) An action to enforce a claim of a deficiency related to a note secured by a mortgage against a residential property that

is a one-family to four-family dwelling unit. The limitations period shall commence on the day after the certificate is issued by the clerk of court or the day after the mortgagee accepts a deed in lieu of foreclosure.

Section 5. The amendments made by this act to s. 95.11, Florida Statutes, apply to any action commenced on or after July 1, 2013, regardless of when the cause of action accrued. However, any action that would not have been barred under s. 95.11(2)(b), Florida Statutes, before the effective date of this act must be commenced within 5 years after the action accrued or by July 1, 2014, whichever occurs first.

Section 6. Subsection (39) of section 121.021, Florida Statutes, is amended to read:

121.021 Definitions.—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(39)(a) "Termination" occurs, except as provided in paragraph (b), when a member ceases all employment relationships with participating employers, however:

1. For retirements effective before July 1, 2010, if a member is employed by any such employer within the next calendar month, termination shall be deemed not to have occurred. A leave of absence constitutes a continuation of the employment relationship, except that a leave of absence without pay due to disability may constitute termination if such member makes application for and is approved for disability retirement in accordance with s. 121.091(4). The department or state board may require other evidence of termination as it deems necessary.

2. For retirements effective on or after July 1, 2010, if a

member is employed by any such employer within the next 6 calendar months, termination shall be deemed not to have occurred. A leave of absence constitutes a continuation of the employment relationship, except that a leave of absence without pay due to disability may constitute termination if such member makes application for and is approved for disability retirement in accordance with s. 121.091(4). The department or state board may require other evidence of termination as it deems necessary.

(b) "Termination" for a member electing to participate in the Deferred Retirement Option Program occurs when the program participant ceases all employment relationships with participating employers in accordance with s. 121.091(13), however:

1. For termination dates occurring before July 1, 2010, if the member is employed by any such employer within the next calendar month, termination will be deemed not to have occurred, except as provided in s. 121.091(13)(b)4.c. A leave of absence shall constitute a continuation of the employment relationship.

2. For termination dates occurring on or after July 1, 2010, if the member becomes employed by any such employer within the next 6 calendar months, termination will be deemed not to have occurred, except as provided in s. 121.091(13)(b)4.c. A leave of absence constitutes a continuation of the employment relationship.

(c) Effective July 1, 2011, "termination" for a member receiving a refund of employee contributions occurs when a member ceases all employment relationships with participating employers for 3 calendar months. A leave of absence constitutes a continuation of the employment relationship.

(d) Effective July 1, 2013, through June 30, 2016, "termination" for a retired justice or judge who reached the later of his or her normal retirement age or age when vested at retirement and subsequently returns to temporary employment as a judge in any court, as assigned by the Chief Justice of the Supreme Court in accordance with s. 2, Art. V of the State Constitution, occurs when the justice or judge has terminated all employment relationships with employers under the Florida Retirement System for at least 1 calendar month prior to reemployment as a senior judge.

Section 7. Subsection (9) of section 121.091, Florida Statutes, is amended to read:

121.091 Benefits payable under the system.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

(a) Any person who is retired under this chapter, except under the disability retirement provisions of subsection (4), may be employed by an employer that does not participate in a

state-administered retirement system and receive compensation from that employment without limiting or restricting in any way the retirement benefits payable to that person.

(b) Any person whose retirement is effective before July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates before July 1, 2010, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that participates in a state-administered retirement system and receive retirement benefits and compensation from that employer, except that the person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement benefits for 12 calendar months immediately subsequent to the date of retirement. However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

1. A retiree who violates such reemployment limitation before completion of the 12-month limitation period must give timely notice of this fact in writing to the employer and to the Division of Retirement or the state board and shall have his or her retirement benefits suspended for the months employed or the balance of the 12-month limitation period as required in sub-subparagraphs b. and c. A retiree employed in violation of this paragraph and an employer who employs or appoints such person are jointly and severally liable for reimbursement to the retirement trust fund, including the Florida Retirement System

Trust Fund and the Public Employee Optional Retirement Program Trust Fund, from which the benefits were paid. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Retirement benefits shall remain suspended until repayment has been made. Benefits suspended beyond the reemployment limitation shall apply toward repayment of benefits received in violation of the reemployment limitation.

a. A district school board may reemploy a retiree as a substitute or hourly teacher, education paraprofessional, transportation assistant, bus driver, or food service worker on a noncontractual basis after he or she has been retired for 1 calendar month. A district school board may reemploy a retiree as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis after he or she has been retired for 1 calendar month. Any member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. District school boards reemploying such teachers, education paraprofessionals, transportation assistants, bus drivers, or food service workers are subject to the retirement contribution required by subparagraph 2.

b. A community college board of trustees may reemploy a retiree as an adjunct instructor or as a participant in a phased retirement program within the Florida Community College System, after he or she has been retired for 1 calendar month. A member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. Boards of trustees reemploying such instructors are subject to the retirement contribution required in subparagraph 2. A retiree

may be reemployed as an adjunct instructor for no more than 780 hours during the first 12 months of retirement. A retiree reemployed for more than 780 hours during the first 12 months of retirement must give timely notice in writing to the employer and to the Division of Retirement or the state board of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the 12 months of retirement. Any retiree employed in violation of this sub-subparagraph and any employer who employs or appoints such person without notifying the division to suspend retirement benefits are jointly and severally liable for any benefits paid during the reemployment limitation period. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by the retiree while reemployed in excess of 780 hours during the first 12 months of retirement must be repaid to the Florida Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

c. The State University System may reemploy a retiree as an adjunct faculty member or as a participant in a phased retirement program within the State University System after the retiree has been retired for 1 calendar month. A member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The State University System is subject to the retired contribution required in subparagraph 2., as appropriate. A retiree may be

reemployed as an adjunct faculty member or a participant in a phased retirement program for no more than 780 hours during the first 12 months of his or her retirement. A retiree reemployed for more than 780 hours during the first 12 months of retirement must give timely notice in writing to the employer and to the Division of Retirement or the state board of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the 12 months. Any retiree employed in violation of this sub-subparagraph and any employer who employs or appoints such person without notifying the division to suspend retirement benefits are jointly and severally liable for any benefits paid during the reemployment limitation period. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by the retiree while reemployed in excess of 780 hours during the first 12 months of retirement must be repaid to the Florida Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

d. The Board of Trustees of the Florida School for the Deaf and the Blind may reemploy a retiree as a substitute teacher, substitute residential instructor, or substitute nurse on a noncontractual basis after he or she has been retired for 1 calendar month. Any member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The Board of Trustees of the Florida School

for the Deaf and the Blind reemploying such teachers, residential instructors, or nurses is subject to the retirement contribution required by subparagraph 2.

e. A developmental research school may reemploy a retiree as a substitute or hourly teacher or an education paraprofessional as defined in s. 1012.01(2) on a noncontractual basis after he or she has been retired for 1 calendar month. A developmental research school may reemploy a retiree as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis after he or she has been retired for 1 calendar month after retirement. Any member who is reemployed within 1 calendar month voids his or her application for retirement benefits. A developmental research school that reemploys retired teachers and education paraprofessionals is subject to the retirement contribution required by subparagraph 2.

f. A charter school may reemploy a retiree as a substitute or hourly teacher on a noncontractual basis after he or she has been retired for 1 calendar month. A charter school may reemploy a retired member as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis after he or she has been retired for 1 calendar month after retirement. Any member who is reemployed within 1 calendar month voids his or her application for retirement benefits. A charter school that reemploys such teachers is subject to the retirement contribution required by subparagraph 2.

2. The employment of a retiree or DROP participant of a state-administered retirement system does not affect the average final compensation or years of creditable service of the retiree

or DROP participant. Before July 1, 1991, upon employment of any person, other than an elected officer as provided in s. 121.053, who is retired under a state-administered retirement program, the employer shall pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution which would be required for regular members of the Florida Retirement System. Effective July 1, 1991, contributions shall be made as provided in s. 121.122 for retirees who have renewed membership or, as provided in subsection (13), for DROP participants.

3. Any person who is holding an elective public office which is covered by the Florida Retirement System and who is concurrently employed in nonelected covered employment may elect to retire while continuing employment in the elective public office if he or she terminates his or her nonelected covered employment. Such person shall receive his or her retirement benefits in addition to the compensation of the elective office without regard to the time limitations otherwise provided in this subsection. A person who seeks to exercise the provisions of this subparagraph as they existed before May 3, 1984, may not be deemed to be retired under those provisions, unless such person is eligible to retire under this subparagraph, as amended by chapter 84-11, Laws of Florida.

(c) Any person whose retirement is effective on or after July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates on or after July 1, 2010, who is retired under this chapter, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that participates in a

state-administered retirement system and receive retirement benefits and compensation from that employer. However, a person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement benefits for 6 calendar months after meeting the definition of termination, except as provided in paragraph (f). However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

1. The reemployed retiree may not renew membership in the Florida Retirement System.

2. The employer shall pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution that would be required for active members of the Florida Retirement System in addition to the contributions required by s. 121.76.

3. A retiree initially reemployed in violation of this paragraph and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any retirement benefits paid to the retirement trust fund from which the benefits were paid, including the Florida Retirement System Trust Fund and the Public Employee Optional Retirement Program Trust Fund, as appropriate. The employer must have a written statement from the employee that he or she is not retired from a state-administered retirement system. Retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree’s 6-month reemployment limitation

period shall apply toward the repayment of benefits received in violation of this paragraph.

(d) Except as provided in paragraph (f), this subsection applies to retirees, as defined in s. 121.4501(2), of the Florida Retirement System Investment Plan, subject to the following conditions:

1. A retiree may not be reemployed with an employer participating in the Florida Retirement System until such person has been retired for 6 calendar months.

2. A retiree employed in violation of this subsection and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any benefits paid to the retirement trust fund from which the benefits were paid. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system.

(e) The limitations of this subsection apply to reemployment in any capacity irrespective of the category of funds from which the person is compensated except as provided in paragraph (f).

(f) Effective July 1, 2013, through June 30, 2016, a retired justice or retired judge who has reached the later of his or her normal retirement age or the age when vested, who has terminated all employment with employers participating under the Florida Retirement System for at least 1 calendar month, and who subsequently returns to temporary employment as a senior judge in any court, as assigned by the Chief Justice of the Supreme Court in accordance with s. 2, Art. V of the State Constitution, is not subject to paragraph (c), paragraph (d), or paragraph (e)

while reemployed as a senior judge.

Section 8. Paragraph (a) of subsection (1) of section 121.591, Florida Statutes, is amended to read:

121.591 Payment of benefits.—Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed as prescribed by the state board or the department. Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code. The state board or department, as appropriate, may cancel an application for retirement benefits if the member or beneficiary fails to timely provide the information and documents required by this chapter and the rules of the state board and department. In accordance with their respective responsibilities, the state board and the department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application if the required information or documents are not received. The state board and the department, as appropriate, are authorized to cash out a de minimis account of a member who has been terminated from Florida Retirement System covered employment for a minimum of 6 calendar months. A de minimis account is an account

containing employer and employee contributions and accumulated earnings of not more than $5,000 made under the provisions of this chapter. Such cash-out must be a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the member. Any nonvested accumulations and associated service credit, including amounts transferred to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6), shall be forfeited upon payment of any vested benefit to a member or beneficiary, except for de minimis distributions or minimum required distributions as provided under this section. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the state board shall cancel the instrument and credit the amount of the instrument to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6). Any amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings attributable to employer contributions shall be forfeited. Any forfeited amounts are assets of the trust fund and are not subject to chapter 717.

(1) NORMAL BENEFITS.—Under the investment plan:

(a) Benefits in the form of vested accumulations as described in s. 121.4501(6) are payable under this subsection in accordance with the following terms and conditions:

1. Benefits are payable only to a member, an alternate payee of a qualified domestic relations order, or a beneficiary.

2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable board rule or policy.

3. The member must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39).

4. Benefit payments may not be made until the member has been terminated for 3 calendar months, except that the state board may authorize by rule for the distribution of up to 10 percent of the member's account after being terminated for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021. Effective July 1, 2013, through June 30, 2016, a retired justice or retired judge who returns to temporary employment as a senior judge in any court pursuant to s. 2, Art. V of the State Constitution and meets the definition of termination in s. 121.021(39)(d) may continue to receive a distribution of his or her account as provided under this paragraph after providing proof of assignment as a senior judge.

5. If a member or former member of the Florida Retirement System receives an invalid distribution, such person must either repay the full amount within 90 days after receipt of final notification by the state board or the third-party administrator that the distribution was invalid, or, in lieu of repayment, the

member must terminate employment from all participating employers. If such person fails to repay the full invalid distribution within 90 days after receipt of final notification, the person may be deemed retired from the investment plan by the state board and is subject to s. 121.122. If such person is deemed retired, any joint and several liability set out in s. 121.091(9)(d)2. is void, and the state board, the department, or the employing agency is not liable for gains on payroll contributions that have not been deposited to the person's account in the investment plan, pending resolution of the invalid distribution. The member or former member who has been deemed retired or who has been determined by the state board to have taken an invalid distribution may appeal the agency decision through the complaint process as provided under s. 121.4501(9)(g)3. As used in this subparagraph, the term "invalid distribution" means any distribution from an account in the investment plan which is taken in violation of this section, s. 121.091(9), or s. 121.4501.

Section 9. Section 702.015, Florida Statutes, is created to read:

702.015 Elements of complaint; lost, destroyed, or stolen note affidavit.—

(1) The Legislature intends that this section expedite the foreclosure process by ensuring initial disclosure of a plaintiff's status and the facts supporting that status, thereby ensuring the availability of documents necessary to the prosecution of the case.

(2) A complaint that seeks to foreclose a mortgage or other lien on residential real property, including individual units of

condominiums and cooperatives, designed principally for occupation by from one to four families which secures a promissory note must:

(a) Contain affirmative allegations expressly made by the plaintiff at the time the proceeding is commenced that the plaintiff is the holder of the original note secured by the mortgage; or

(b) Allege with specificity the factual basis by which the plaintiff is a person entitled to enforce the note under s. 673.3011.

(3) If a plaintiff has been delegated the authority to institute a mortgage foreclosure action on behalf of the person entitled to enforce the note, the complaint shall describe the authority of the plaintiff and identify, with specificity, the document that grants the plaintiff the authority to act on behalf of the person entitled to enforce the note. This subsection is intended to require initial disclosure of status and pertinent facts and not to modify law regarding standing or real parties in interest. The term "original note" or "original promissory note" means the signed or executed promissory note rather than a copy thereof. The term includes any renewal, replacement, consolidation, or amended and restated note or instrument given in renewal, replacement, or substitution for a previous promissory note. The term also includes a transferrable record, as defined by the Uniform Electronic Transaction Act in s. 668.50(16).

(4) If the plaintiff is in possession of the original promissory note, the plaintiff must file under penalty of perjury a certification with the court, contemporaneously with

the filing of the complaint for foreclosure, that the plaintiff is in possession of the original promissory note. The certification must set forth the location of the note, the name and title of the individual giving the certification, the name of the person who personally verified such possession, and the time and date on which the possession was verified. Correct copies of the note and all allonges to the note must be attached to the certification. The original note and the allonges must be filed with the court before the entry of any judgment of foreclosure or judgment on the note.

(5) If the plaintiff seeks to enforce a lost, destroyed, or stolen instrument, an affidavit executed under penalty of perjury must be attached to the complaint. The affidavit must:

(a) Detail a clear chain of all endorsements, transfers, or assignments of the promissory note that is the subject of the action.

(b) Set forth facts showing that the plaintiff is entitled to enforce a lost, destroyed, or stolen instrument pursuant to s. 673.3091. Adequate protection as required under s. 673.3091(2) shall be provided before the entry of final judgment.

(c) Include as exhibits to the affidavit such copies of the note and the allonges to the note, audit reports showing receipt of the original note, or other evidence of the acquisition, ownership, and possession of the note as may be available to the plaintiff.

(6) The court may sanction the plaintiff for failure to comply with this section.

(7) This section does not apply to any foreclosure

proceeding involving timeshare interests under part III of chapter 721.

Section 10. Section 702.035, Florida Statutes, is amended to read:

702.035 Legal notice concerning foreclosure proceedings.—Whenever a legal advertisement, publication, or notice relating to a foreclosure proceeding is required to be placed in a newspaper or posted on an online website, it is the responsibility of the petitioner or petitioner's attorney to place such advertisement, publication, or notice. For counties with more than 1 million total population as reflected in the 2000 Official Decennial Census of the United States Census Bureau as shown on the official website of the United States Census Bureau, any notice of publication required by this section shall be deemed to have been published in accordance with the law if the notice is published in a newspaper that has been entered as a periodical matter at a post office in the county in which the newspaper is published, is published a minimum of 5 days a week, exclusive of legal holidays, and has been in existence and published a minimum of 5 days a week, exclusive of legal holidays, for 1 year or is a direct successor to a newspaper that has been in existence for 1 year that has been published a minimum of 5 days a week, exclusive of legal holidays. If the advertisement, publication, or notice is effected by an electronic publication, it shall be deemed to have been published in accordance with the law if the requirements of s. 50.011(2) have been met. The advertisement, publication, or notice shall be placed directly by the attorney for the petitioner, by the petitioner if acting pro se, or by

the clerk of the court. Only the actual costs charged by the newspaper or by the host of the Internet website for the advertisement, publication, or notice may be charged as costs in the action.

Section 11. Section 702.036, Florida Statutes, is created to read:

702.036 Finality of mortgage foreclosure judgment.—

(1)(a) In any action or proceeding in which a party seeks to set aside, invalidate, or challenge the validity of a final judgment of foreclosure of a mortgage or to establish or reestablish a lien or encumbrance on the property in abrogation of the final judgment of foreclosure of a mortgage, the court shall treat such request solely as a claim for monetary damages and may not grant relief that adversely affects the quality or character of the title to the property, if:

1. The party seeking relief from the final judgment of foreclosure of the mortgage was properly served in the foreclosure lawsuit as provided in chapter 48 or chapter 49.

2. The final judgment of foreclosure of the mortgage was entered as to the property.

3. All applicable appeals periods have run as to the final judgment of foreclosure of the mortgage with no appeals having been taken or any appeals having been finally resolved.

4. The property has been acquired for value, by a person not affiliated with the foreclosing lender or the foreclosed owner, at a time in which no lis pendens regarding the suit to set aside, invalidate, or challenge the foreclosure appears in the official records of the county where the property was located.

(b) This subsection does not limit the right to pursue any other relief to which a person may be entitled, including, but not limited to, compensatory damages, punitive damages, statutory damages, consequential damages, injunctive relief, or fees and costs, which does not adversely affect the ownership of the title to the property as vested in the unaffiliated purchaser for value.

(2) For purposes of this section, the following, without limitation, shall be considered persons affiliated with the foreclosing lender:

(a) The foreclosing lender or any loan servicer for the loan being foreclosed;

(b) Any past or present owner or holder of the loan being foreclosed;

(c) Any maintenance company, holding company, foreclosure services company, or law firm under contract to any entity listed in paragraph (a), paragraph (b), or this paragraph, with regard to the loan being foreclosed; or

(d) Any parent entity, subsidiary, or other person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, any entity listed in paragraph (a), paragraph (b), or paragraph (c).

(3) After foreclosure of a mortgage based upon the enforcement of a lost, destroyed, or stolen note, a person who is not a party to the underlying foreclosure action but who claims to be the person entitled to enforce the promissory note secured by the foreclosed mortgage has no claim against the foreclosed property after it is conveyed for valuable

consideration to a person not affiliated with the foreclosing lender or the foreclosed owner. This section does not preclude the person entitled to enforce the promissory note from pursuing recovery from any adequate protection given pursuant to s. 673.3091 or from the party who wrongfully claimed to be the person entitled to enforce the promissory note under s. 702.11(2) or otherwise, from the maker of the note, or from any other person against whom it may have a claim relating to the note.

Section 12. Section 702.06, Florida Statutes, is amended to read:

702.06 Deficiency decree; common-law suit to recover deficiency.—In all suits for the foreclosure of mortgages heretofore or hereafter executed the entry of a deficiency decree for any portion of a deficiency, should one exist, shall be within the sound discretion of the court; however, in the case of an owner-occupied residential property, the amount of the deficiency may not exceed the difference between the judgment amount, or in the case of a short sale, the outstanding debt, and the fair market value of the property on the date of sale. For purposes of this section, there is a rebuttable presumption that a residential property for which a homestead exemption for taxation was granted according to the certified rolls of the latest assessment by the county property appraiser, before the filing of the foreclosure action, is an owner-occupied residential property. ~~shall be within the sound judicial discretion of the court, but~~ The complainant shall also have the right to sue at common law to recover such deficiency, unless the court in the foreclosure action has granted or denied

a claim for a deficiency judgment ~~provided no suit at law to recover such deficiency shall be maintained against the original mortgagor in cases where the mortgage is for the purchase price of the property involved and where the original mortgagee becomes the purchaser thereof at foreclosure sale and also is granted a deficiency decree against the original mortgagor~~.

Section 13. Section 702.10, Florida Statutes, is amended to read:

702.10 Order to show cause; entry of final judgment of foreclosure; payment during foreclosure.—

(1) A lienholder ~~After a complaint in a foreclosure proceeding has been filed, the mortgagee~~ may request an order to show cause for the entry of final judgment in a foreclosure action. For purposes of this section, the term "lienholder" includes the plaintiff and a defendant to the action who holds a lien encumbering the property or a defendant who, by virtue of its status as a condominium association, cooperative association, or homeowners' association, may file a lien against the real property subject to foreclosure. Upon filing, ~~and~~ the court shall immediately review the request and the court file in chambers and without a hearing ~~complaint~~. If, upon examination of the court file ~~complaint~~, the court finds that the complaint is verified, complies with s. 702.015, and alleges a cause of action to foreclose on real property, the court shall promptly issue an order directed to the other parties named in the action ~~defendant~~ to show cause why a final judgment of foreclosure should not be entered.

(a) The order shall:

1. Set the date and time for a hearing ~~on the order~~ to show

cause. ~~However,~~ The date for the hearing may not occur ~~be set~~ sooner than the later of 20 days after ~~the~~ service of the order to show cause or 45 days after service of the initial complaint. When service is obtained by publication, the date for the hearing may not be set sooner than 30 days after the first publication. ~~The hearing must be held within 60 days after the date of service. Failure to hold the hearing within such time does not affect the validity of the order to show cause or the jurisdiction of the court to issue subsequent orders.~~

2. Direct the time within which service of the order to show cause and the complaint must be made upon the defendant.

3. State that the filing of defenses by a motion, responsive pleading, affidavits, or other papers ~~or by a verified or sworn answer at or~~ before the hearing to show cause may constitute ~~constitutes~~ cause for the court not to enter ~~the attached~~ final judgment.

4. State that a ~~the~~ defendant has the right to file affidavits or other papers before ~~at~~ the time of the hearing to show cause and may appear personally or by way of an attorney at the hearing.

5. State that, if a ~~the~~ defendant files defenses by a motion, a verified or sworn answer, affidavits, or other papers or appears personally or by way of an attorney at the time of the hearing, the hearing time will ~~may~~ be used to hear and consider whether the defendant's motion, answer, affidavits, other papers, and other evidence and argument as may be presented by the defendant or the defendant's attorney raise a genuine issue of material fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to

foreclosure. The order shall also state that the court may enter an order of final judgment of foreclosure at the hearing and order the clerk of the court to conduct a foreclosure sale.

6. State that, if a ~~the~~ defendant fails to appear at the hearing to show cause or fails to file defenses by a motion or by a verified or sworn answer or files an answer not contesting the foreclosure, such ~~the~~ defendant may be considered to have waived the right to a hearing, and in such case, the court may enter a default against such defendant and, if appropriate, a final judgment of foreclosure ordering the clerk of the court to conduct a foreclosure sale.

7. State that if the mortgage provides for reasonable attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~ fees do not exceed 3 percent of the principal amount owed at the time of filing the complaint, it is unnecessary for the court to hold a hearing or adjudge the requested attorney ~~attorney's~~ fees to be reasonable.

8. Attach the form of the proposed final judgment of foreclosure which the movant requests the court to ~~will~~ enter~~,~~ ~~if the defendant waives the right to be heard~~ at the hearing on the order to show cause.

9. Require the party seeking final judgment ~~mortgagee~~ to serve a copy of the order to show cause on the other parties ~~the mortgagor~~ in the following manner:

a. If a party ~~the mortgagor~~ has been served pursuant to chapter 48 with the complaint and original process, or the other party is the plaintiff in the action, service of the order to show cause on that party ~~order~~ may be made in the manner provided in the Florida Rules of Civil Procedure.

b. If a defendant ~~the mortgagor~~ has not been served pursuant to chapter 48 with the complaint and original process, the order to show cause, together with the summons and a copy of the complaint, shall be served on the party ~~mortgagor~~ in the same manner as provided by law for original process.

Any final judgment of foreclosure entered under this subsection is for in rem relief only. ~~Nothing in~~ This subsection does not ~~shall~~ preclude the entry of a deficiency judgment where otherwise allowed by law. The Legislature intends that this alternative procedure may run simultaneously with other court procedures.

(b) The right to be heard at the hearing to show cause is waived if a ~~the~~ defendant, after being served as provided by law with an order to show cause, engages in conduct that clearly shows that the defendant has relinquished the right to be heard on that order. The defendant's failure to file defenses by a motion or by a sworn or verified answer, affidavits, or other papers or to appear personally or by way of an attorney at the hearing duly scheduled on the order to show cause presumptively constitutes conduct that clearly shows that the defendant has relinquished the right to be heard. If a defendant files defenses by a motion, ~~or by~~ a verified ~~or sworn~~ answer, affidavits, or other papers or presents evidence at or before the hearing which raise a genuine issue of material fact which would preclude entry of summary judgment or otherwise constitute a legal defense to foreclosure, such action constitutes cause and precludes the entry of a final judgment at the hearing to show cause.

(c) In a mortgage foreclosure proceeding, when a final ~~default~~ judgment of foreclosure has been entered against the mortgagor and the note or mortgage provides for the award of reasonable attorney ~~attorney's~~ fees, it is unnecessary for the court to hold a hearing or adjudge the requested attorney ~~attorney's~~ fees to be reasonable if the fees do not exceed 3 percent of the principal amount owed on the note or mortgage at the time of filing, even if the note or mortgage does not specify the percentage of the original amount that would be paid as liquidated damages.

(d) If the court finds that all defendants have ~~the defendant has~~ waived the right to be heard as provided in paragraph (b), the court shall promptly enter a final judgment of foreclosure without the need for further hearing if the plaintiff has shown entitlement to a final judgment and upon the filing with the court of the original note, satisfaction of the conditions for establishment of a lost note, or upon a showing to the court that the obligation to be foreclosed is not evidenced by a promissory note or other negotiable instrument. If the court finds that a ~~the~~ defendant has not waived the right to be heard on the order to show cause, the court shall ~~then~~ determine whether there is cause not to enter a final judgment of foreclosure. If the court finds that the defendant has not shown cause, the court shall promptly enter a judgment of foreclosure. If the time allotted for the hearing is insufficient, the court may announce at the hearing a date and time for the continued hearing. Only the parties who appear, individually or through an attorney, at the initial hearing must be notified of the date and time of the continued hearing.

(2) Except as provided in paragraph (i), as part of any ~~In an~~ action for foreclosure, and in addition to any other relief that the court may award ~~other than residential real estate~~, the plaintiff ~~the mortgagee~~ may request that the court enter an order directing the mortgagor defendant to show cause why an order to make payments during the pendency of the foreclosure proceedings or an order to vacate the premises should not be entered.

(a) The order shall:

1. Set the date and time for hearing on the order to show cause. However, the date for the hearing may ~~shall~~ not be set sooner than 20 days after the service of the order. If ~~Where~~ service is obtained by publication, the date for the hearing may ~~shall~~ not be set sooner than 30 days after the first publication.

2. Direct the time within which service of the order to show cause and the complaint shall be made upon each ~~the~~ defendant.

3. State that a ~~the~~ defendant has the right to file affidavits or other papers at the time of the hearing and may appear personally or by way of an attorney at the hearing.

4. State that, if a ~~the~~ defendant fails to appear at the hearing to show cause and fails to file defenses by a motion or by a verified or sworn answer, the defendant is ~~may be~~ deemed to have waived the right to a hearing and in such case the court may enter an order to make payment or vacate the premises.

5. Require the movant ~~mortgagee~~ to serve a copy of the order to show cause on the defendant ~~mortgagor~~ in the following manner:

a. If a defendant ~~the mortgagor~~ has been served with the complaint and original process, service of the order may be made in the manner provided in the Florida Rules of Civil Procedure.

b. If a defendant ~~the mortgagor~~ has not been served with the complaint and original process, the order to show cause, together with the summons and a copy of the complaint, shall be served on the defendant ~~mortgagor~~ in the same manner as provided by law for original process.

(b) The right of a defendant to be heard at the hearing to show cause is waived if the defendant, after being served as provided by law with an order to show cause, engages in conduct that clearly shows that the defendant has relinquished the right to be heard on that order. A ~~The~~ defendant's failure to file defenses by a motion or by a sworn or verified answer or to appear at the hearing duly scheduled on the order to show cause presumptively constitutes conduct that clearly shows that the defendant has relinquished the right to be heard.

(c) If the court finds that a ~~the~~ defendant has waived the right to be heard as provided in paragraph (b), the court may promptly enter an order requiring payment in the amount provided in paragraph (f) or an order to vacate.

(d) If the court finds that the mortgagor has not waived the right to be heard on the order to show cause, the court shall, at the hearing on the order to show cause, consider the affidavits and other showings made by the parties appearing and make a determination of the probable validity of the underlying claim alleged against the mortgagor and the mortgagor's defenses. If the court determines that the plaintiff ~~mortgagee~~ is likely to prevail in the foreclosure action, the court shall

enter an order requiring the mortgagor to make the payment described in paragraph (e) to the plaintiff ~~mortgagee~~ and provide for a remedy as described in paragraph (f). However, the order shall be stayed pending final adjudication of the claims of the parties if the mortgagor files with the court a written undertaking executed by a surety approved by the court in an amount equal to the unpaid balance of the lien being foreclosed ~~the mortgage on the property~~, including all principal, interest, unpaid taxes, and insurance premiums paid by the plaintiff ~~the mortgagee~~.

(e) If ~~In the event~~ the court enters an order requiring the mortgagor to make payments to the plaintiff ~~mortgagee~~, payments shall be payable at such intervals and in such amounts provided for in the mortgage instrument before acceleration or maturity. The obligation to make payments pursuant to any order entered under this subsection shall commence from the date of the motion filed under this section ~~hereunder~~. The order shall be served upon the mortgagor no later than 20 days before the date specified for the first payment. The order may permit, but may ~~shall~~ not require, the plaintiff ~~mortgagee~~ to take all appropriate steps to secure the premises during the pendency of the foreclosure action.

(f) If ~~In the event~~ the court enters an order requiring payments, the order shall also provide that the plaintiff is ~~mortgagee shall be~~ entitled to possession of the premises upon the failure of the mortgagor to make the payment required in the order unless at the hearing on the order to show cause the court finds good cause to order some other method of enforcement of its order.

(g) All amounts paid pursuant to this section shall be credited against the mortgage obligation in accordance with the terms of the loan documents;~~, provided,~~ however, ~~that any~~ payments made under this section do ~~shall~~ not constitute a cure of any default or a waiver or any other defense to the mortgage foreclosure action.

(h) Upon the filing of an affidavit with the clerk that the premises have not been vacated pursuant to the court order, the clerk shall issue to the sheriff a writ for possession which shall be governed by ~~the provisions of~~ s. 83.62.

(i) This subsection does not apply to foreclosure of an owner-occupied residence. For purposes of this paragraph, there is a rebuttable presumption that a residential property for which a homestead exemption for taxation was granted according to the certified rolls of the latest assessment by the county property appraiser, before the filing of the foreclosure action, is an owner-occupied residential property.

Section 14. Section 702.11, Florida Statutes, is created to read:

702.11 Adequate protections for lost, destroyed, or stolen notes in mortgage foreclosure.—

(1) In connection with a mortgage foreclosure, the following constitute reasonable means of providing adequate protection under s. 673.3091, if so found by the court:

(a) A written indemnification agreement by a person reasonably believed sufficiently solvent to honor such an obligation;

(b) A surety bond;

(c) A letter of credit issued by a financial institution;

(d) A deposit of cash collateral with the clerk of the court; or

(e) Such other security as the court may deem appropriate under the circumstances.

Any security given shall be on terms and in amounts set by the court, for a time period through the running of the statute of limitations for enforcement of the underlying note, and conditioned to indemnify and hold harmless the maker of the note against any loss or damage, including principal, interest, and attorney fees and costs, that might occur by reason of a claim by another person to enforce the note.

(2) Any person who wrongly claims to be the holder of or pursuant to s. 673.3011 to be entitled to enforce a lost, stolen, or destroyed note and causes the mortgage secured thereby to be foreclosed is liable to the actual holder of the note, without limitation to any adequate protections given, for actual damages suffered together with attorney fees and costs of the actual holder of the note in enforcing rights under this subsection. In addition, the actual holder of the note may pursue recovery directly against any adequate protections given.

(a) The actual holder of the note is not required to pursue recovery against the maker of the note or any guarantor thereof as a condition precedent to pursuing remedies under this section.

(b) This section does not limit or restrict the ability of the actual holder of the note to pursue any other claims or remedies it may have against the maker, the person who wrongly claimed to be the holder, or any person who facilitated or

participated in the claim to the note or enforcement thereof.

Section 15. The Legislature finds that this act is remedial in nature and applies to all mortgages encumbering real property and all promissory notes secured by a mortgage, whether executed before, on, or after the effective date of this act. In addition, the Legislature finds that s. 702.015, Florida Statutes, as created by this act, applies to cases filed on or after July 1, 2013; however, the amendments to s. 702.10, Florida Statutes, and the creation of s. 702.11, Florida Statutes, by this act, apply to causes of action pending on the effective date of this act.

Section 16. (1) Effective July 1, 2013, in order to fund the benefit changes provided in this act, the required employer contribution rates for members of the Florida Retirement System established in s. 121.71(4), Florida Statutes, must be adjusted as follows:

(a) Elected Officers' Class for Justices and Judges shall be increased by 0.45 percentage points; and

(b) Deferred Retirement Option Program shall be increased by 0.01 percentage points.

(2) Effective July 1, 2013, in order to fund the benefit changes provided in this act, the required employer contribution rates for the unfunded actuarial liability of the Florida Retirement System established in s. 121.71(5), Florida Statutes, for the Elected Officers' Class for Justices and Judges shall be increased by 0.91 percentage points.

(3) The adjustments provided in subsections (1) and (2) shall be in addition to all other changes to such contribution rates which may be enacted into law to take effect on July 1,

2013, and July 1, 2014. The Division of Law Revision and Information is requested to adjust accordingly the contribution rates provided in s. 121.71, Florida Statutes.

Section 17. (1) The Legislature finds that a proper and legitimate state purpose is served if employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems which provide fair and adequate benefits and which are managed, administered, and funded in an actuarially sound manner as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

(2) The Legislature further finds that the assignment of former justices and judges to temporary employment as a judge in any court, by the Chief Justice of the Supreme Court in accordance with s. 2, Art. V of the State Constitution, assists the State Courts System in managing caseloads and providing individuals and businesses with access to courts. In particular, these assignments are critically important in assisting with the disposition of the current backlog in foreclosure cases in this state. Therefore, the Legislature further determines and declares that this act fulfills an important state interest by facilitating the ability of justices and judges who retire under the Florida Retirement System to return to temporary employment as a judge in a timely manner.

Section 18. The Supreme Court is requested to amend the Florida Rules of Civil Procedures to provide expedited

foreclosure proceedings in conformity with this act and is requested to develop and publish forms for use in such expedited proceedings.

Section 19. Sections 6 through 8, 16, and 17 of this act shall take effect only if the Legislature appropriates during the 2013 Legislative Session the sum of at least $1.6 million from the General Revenue Fund on a recurring basis to the judicial branch in order to fund the increased employer contributions associated with the costs of the retirement benefits granted in this act and the Governor does not veto the appropriation.

Section 20. This act shall take effect upon becoming a law.

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 1634
INTRODUCER:	Ethics and Elections Committee and Senator Lee
SUBJECT:	Legislative Lobbying Expenditures
DATE:	April 5, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	**Fav/CS**
2.	Shankle	Cibula	JU	**Pre-meeting**
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1634 amends the legislative expenditure ban in s. 11.045, F.S., by providing that a legislator or legislative employee may, under certain circumstances, accept individual servings of nonalcoholic beverages.

The bill also allows a member or employee of the Legislature who is attending a scheduled meeting of an established membership organization to accept a meal, beverages, or event or meeting registration fee under certain circumstances. The bill requires each house of the Legislature to adopt procedures by rule for reporting the acceptance of a meal, beverage, or event or meeting registration fee. The rules must require legislators to file reports within 15 days after attending the scheduled meeting. Such reports must contain:

- The date of the event;
- The name of the organization hosting the event;
- The topic or topics about which the member or employee spoke;
- The value of the meal accepted.

The reports must be made publicly available on the website of the respective house of the Legislature. Finally, this bill clarifies that the use of a public facility or public property provided from a governmental entity to a legislator for a public purpose is not an expenditure for purposes of the legislative expenditure ban in s. 11.045, F.S.

This bill substantially amends section 11.045 of the Florida Statutes.

II. Present Situation:

Section 11.045, F.S., requires legislative lobbyists to register, requires legislative lobbyists to file compensation reports, and contains the legislative expenditure ban. The legislative expenditure ban prohibits a lobbyist or principal from, directly or indirectly, making expenditures, with limited exceptions, to a member or employee of the Legislature. Similarly, members and employees of the Legislature may not, directly or indirectly, accept such expenditures from a lobbyist or principal.[1]

For purposes of this statute, the term "expenditure" means:

> A payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).[2]

The following penalties can be imposed for violation of the legislative expenditure ban:

- A fine of not more than $5,000;
- Reprimand;
- Censure;
- Probation; or
- Prohibition on lobbying for a period not to exceed 24 months.[3]

III. Effect of Proposed Changes:

The bill allows a member or employee of the Legislature to accept individual servings of nonalcoholic beverages provided by a lobbyist or a principal as a courtesy to attendees of a meeting.

The bill also allows a member or employee of the Legislature who is attending a scheduled meeting of an established membership organization to accept a meal, beverages, or event or meeting registration fee under certain circumstances. The member or employee of the

[1] Section 11.045(4)(a), F.S., currently only exempts "floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of session."
[2] Section 11.045(1)(c), F.S.
[3] Section 11.045(7), F.S.

Legislature must be a featured speaker, moderator, or participant of a panel discussion at the event. He or she must not have solicited for the meal, beverages, or event or meeting registration fee. Additionally, for purposes of this exemption, the established membership organization cannot have a membership that is primarily composed of lobbyists.

If a member or employee accepts a meal, beverages, or event or meeting registration fee at such an event, he or she must file a report with the Secretary of the Senate or the Clerk of the House of Representatives within 15 days after attending the meeting. The report must contain, at a minimum, the date of the event, the name of the organization hosting the event, the topic or topics about which the member or employee spoke, and the value of the meal accepted. The bill clarifies that this report also satisfies the reporting requirement of s. 112.3149(6), F.S., concerning expenses related to the honorarium event. Each house of the Legislature must establish rules for such reporting and provide for publication of the reports on its website.

The bill creates a new exemption from the definition of "expenditure" for a "government-to-government use." A "government-to-government use" is the "use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, regardless of whether the governmental entity is required to register any person as a lobbyist."

Finally, the bill provides that the changes made to s. 11.045(4), F.S., will expire on June 30, 2015, and the law will revert to the statutory language in effect on April 7, 2012.

The bill takes effect on July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The "old" gifts law in s. 112.3148, F.S., which predates the legislative expenditure ban, prohibits certain gifts in excess of $100 to reporting individuals (anyone required to file financial disclosure, including legislators) and procurement employees. Section 112.3148, F.S., exempts gifts given by a state, county, or municipal government (and certain other governmental organizations) valued at more than $100 if a public purpose can be shown. Current law requires annual disclosure of such gifts on a CE Form 10. Because both s. 11.045, F.S., and s. 112.3148, F.S., apply to members of the Legislature, it is important to note that, if a member or employee were to accept use of a public facility or public property from a governmental entity as authorized by the bill, the member or employee would be required to disclose the gift on a CE Form 10.

VIII. Additional Information:

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

CS by Ethics and Elections on April 1, 2013:
The CS differs from the original bill in that it removes the provisions relating to "widely attended events;" the process for approval of "widely attended events;" and the reporting requirements associated with "widely attended events." It also clarifies that the membership of an established membership organization cannot be composed primarily of lobbyists. The CS also requires specific items to be reported when a member or employee attends a scheduled meeting of an established membership organization. Finally, it also permits a governmental entity to provide use of a public facility or public property to a legislator for a public purpose, regardless of whether the governmental entity is required to register any person as a lobbyist.

B. Amendments:

None.

By the Committee on Ethics and Elections; and Senators Lee and Joyner

582-03314A-13 20131634c1

A bill to be entitled

An act relating to legislative lobbying expenditures; amending s. 11.045, F.S., and reenacting subsections (4)-(8), relating to lobbying before the Legislature; revising the term "expenditure" to exclude the use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, to exempt such use from legislative lobbying requirements; providing exceptions when a member or an employee of the Legislature may accept certain expenditures made by a lobbyist or a principal; providing for the future expiration and the reversion as of a specified date of statutory text; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 11.045, Florida Statutes, is amended, subsection (4) of that section is reenacted and amended, and subsections (5) through (8) of that section are reenacted, to read:

11.045 Lobbying before the Legislature; registration and reporting; exemptions; penalties.—

(1) As used in this section, unless the context otherwise requires:

(c) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term does not include:

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1. Contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

2. A government-to-government use, which is the use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, regardless of whether the governmental entity is required to register any person as a lobbyist pursuant to this section.

(4)(a) Notwithstanding s. 112.3148, s. 112.3149, or any other ~~provision of~~ law to the contrary, no lobbyist or principal may ~~shall~~ make, directly or indirectly, and no member or employee of the Legislature may ~~shall~~ knowingly accept, directly or indirectly, any expenditure, except:

1. Floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session.

2. Individual servings of nonalcoholic beverages provided by a lobbyist or a principal as a courtesy to the attendees of a meeting.

3. A member or employee of the Legislature, who attends a scheduled meeting of an established membership organization whose membership is not primarily composed of lobbyists, which is also a principal, as a featured speaker, moderator, or participant and provides a speech, address, oration, or other

oral presentation, may accept a meal, beverage, or event or meeting registration fee. Such meal, beverage, and event or meeting registration fee are expenses related to an honorarium event under s. 112.3149.

(b) A ~~No~~ person may not ~~shall~~ provide compensation for lobbying to any individual or business entity that is not a lobbying firm.

(c) A member or employee of the Legislature who attends a meeting and accepts a meal, beverage, or event or meeting registration fee as permitted in subparagraph (a)3., is required to file a report with the Secretary of the Senate or the Clerk of the House of Representatives no later than 15 days after attending the meeting. The report must contain, at a minimum, the date of the event, the name of the organization hosting the event, the topic or topics about which the member or employee spoke, and the value of the meal accepted. Each house of the Legislature shall establish by rule procedures for such reporting and for the publication of such reports on its website. Reports required to be filed by this subsection satisfy the disclosure requirements in s. 112.3149(6).

(5) Each house of the Legislature shall provide by rule a procedure by which a person, when in doubt about the applicability and interpretation of this section in a particular context, may submit in writing the facts for an advisory opinion to the committee of either house and may appear in person before the committee. The rule shall provide a procedure by which:

(a) The committee shall render advisory opinions to any person who seeks advice as to whether the facts in a particular case would constitute a violation of this section.

(b) The committee shall make sufficient deletions to prevent disclosing the identity of persons in the decisions or opinions.

(c) All advisory opinions of the committee shall be numbered, dated, and open to public inspection.

(6) Each house of the Legislature shall provide by rule for keeping all advisory opinions of the committees relating to lobbying firms, lobbyists, and lobbying activities. The rule shall also provide that each house keep a current list of registered lobbyists along with reports required of lobbying firms under this section, all of which shall be open for public inspection.

(7) Each house of the Legislature shall provide by rule that a committee of either house investigate any person upon receipt of a sworn complaint alleging a violation of this section, s. 112.3148, or s. 112.3149 by such person; also, the rule shall provide that a committee of either house investigate any lobbying firm upon receipt of audit information indicating a possible violation other than a late-filed report. Such proceedings shall be conducted pursuant to the rules of the respective houses. If the committee finds that there has been a violation of this section, s. 112.3148, or s. 112.3149, it shall report its findings to the President of the Senate or the Speaker of the House of Representatives, as appropriate, together with a recommended penalty, to include a fine of not more than $5,000, reprimand, censure, probation, or prohibition from lobbying for a period of time not to exceed 24 months. Upon the receipt of such report, the President of the Senate or the Speaker of the House of Representatives shall cause the

committee report and recommendations to be brought before the respective house and a final determination shall be made by a majority of said house.

(8) Any person required to be registered or to provide information pursuant to this section or pursuant to rules established in conformity with this section who knowingly fails to disclose any material fact required by this section or by rules established in conformity with this section, or who knowingly provides false information on any report required by this section or by rules established in conformity with this section, commits a noncriminal infraction, punishable by a fine not to exceed $5,000. Such penalty shall be in addition to any other penalty assessed by a house of the Legislature pursuant to subsection (7).

Section 2. The amendment to s. 11.045(4), Florida Statutes, shall expire June 30, 2015, and the text of that subsection shall revert to that in existence on April 7, 2012, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon portions of text which expire pursuant to this section.

Section 3. This act shall take effect July 1, 2013.