

Tab 1	CS/SB 148 by CM, Ring; Consumer Protection					
712120	PCS	S	RCS	FP, AGG		01/14 04:00 PM
Tab 2	SB 222 by Detert; (Identical to H 0235) Parking for Disabled Veterans					
Tab 3	CS/CS/SB 232 by JU, CF, Detert (CO-INTRODUCERS) Joyner, Margolis; (Similar to CS/H 0403) Guardianship					
581286	A	S	RS	FP, Bradley	btw L.1323 - 1324:	01/14 04:00 PM
251878	SA	S	RCS	FP, Bradley	btw L.1323 - 1324:	01/14 04:00 PM
Tab 4	CS/SB 304 by CA, Stargel; (Similar to CS/CS/H 0059) Agritourism					
961272	A	S	RCS	FP, Stargel	Delete L.34 - 36:	01/14 04:00 PM
Tab 5	SB 386 by Detert (CO-INTRODUCERS) Soto; (Compare to H 0013) Expunction of Records of Minors					
780622	PCS	S	RCS	FP, ACJ		01/14 04:00 PM
569884	PCS:A	S	RCS	FP, Bradley	Delete L.81 - 83:	01/14 04:00 PM
Tab 6	CS/SB 494 by JU, Hukill; (Identical to H 0747) Digital Assets					
Tab 7	SB 520 by Lee (CO-INTRODUCERS) Gaetz; (Identical to H 0793) Florida Bright Futures Scholarship Program					
426584	PCS	S	RCS	FP, AED		01/14 04:00 PM
518168	PCS:A	S	RCS	FP, Bradley	Delete L.141 - 386:	01/14 04:00 PM
Tab 8	SB 576 by Flores; (Identical to H 0341) Public Educational Facilities					
Tab 9	CS/SB 626 by BI, Gaetz (CO-INTRODUCERS) Altman; (Similar to CS/H 0717) Consumer Credit					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

FISCAL POLICY
Senator Flores, Chair
Senator Bradley, Vice Chair

MEETING DATE: Thursday, January 14, 2016
TIME: 10:45 a.m.—12:00 noon
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Flores, Chair; Senator Bradley, Vice Chair; Senators Abruzzo, Bean, Clemens, Hays, Hukill, Legg, Margolis, Sachs, and Stargel

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

A proposed committee substitute for the following bill (CS/SB 148) is available:

1	CS/SB 148 Commerce and Tourism / Ring	Consumer Protection; Citing this act as "Terry's Law"; requiring retail sales establishments that sell goods to the public to grant a refund within a specified time for goods costing more than a specified amount if returned by a consumer who has been adjudicated incapacitated, is subject to a certain type of guardianship, or has a certain medical condition, if specified requirements are satisfied; providing penalties for a violation of the requirements, etc. CM 10/05/2015 Fav/CS AGG 10/20/2015 Fav/CS FP 01/14/2016 Fav/CS	Fav/CS Yeas 11 Nays 0
---	---	---	--------------------------

With subcommittee recommendation – General Government

2	SB 222 Detert (Identical H 235)	Parking for Disabled Veterans; Requiring the governing body of each publicly owned or publicly operated airport to grant free parking to any vehicle displaying specified license plates for disabled veterans; clarifying that such license plates, rather than "DV" license plates, are exempt from certain parking fees charged by a county, municipality, or an agency thereof, etc. TR 11/04/2015 Favorable CA 12/01/2015 Favorable FP 01/14/2016 Favorable	Favorable Yeas 11 Nays 0
---	--	---	-----------------------------

3	CS/CS/SB 232 Judiciary / Children, Families, and Elder Affairs / Detert (Similar CS/H 403)	Guardianship; Renaming the Statewide Public Guardianship Office to the Office of Public and Professional Guardians; revising the duties and responsibilities of the executive director for the Office of Public and Professional Guardians; providing that a guardian has standing to seek judicial review pursuant to specified provisions if his or her registration is denied, etc. CF 10/08/2015 Fav/CS JU 12/01/2015 Fav/CS FP 01/14/2016 Fav/CS	Fav/CS Yeas 11 Nays 0
---	---	--	--------------------------

COMMITTEE MEETING EXPANDED AGENDA

Fiscal Policy

Thursday, January 14, 2016, 10:45 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 304 Community Affairs / Stargel (Similar CS/H 59)	Agritourism; Prohibiting a local government from enforcing a local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on lands classified as agricultural in an unincorporated area; specifying that the conduct of agritourism activity on a bona fide farm or on agricultural lands may not limit, restrict, or divest the land of that classification, provided that such lands remain used primarily for bona fide agricultural purposes, etc. AG 11/02/2015 Favorable CA 11/17/2015 Fav/CS FP 01/14/2016 Fav/CS	Fav/CS Yeas 9 Nays 1

A proposed committee substitute for the following bill (SB 386) is available:

5	SB 386 Detert (Compare H 13, CS/CS/H 147, S 70)	Expunction of Records of Minors; Decreasing the period of time that a minor's criminal history record must be retained before expunction; deleting a limitation on the period of time within which a minor must submit an application for prearrest or postarrest diversion expunction to the Department of Law Enforcement after successful completion of the diversion program, etc. CJ 11/02/2015 Favorable ACJ 12/03/2015 Fav/CS FP 01/14/2016 Fav/CS	Fav/CS Yeas 11 Nays 0
---	--	--	--------------------------

With subcommittee recommendation – Criminal and Civil Justice

6	CS/SB 494 Judiciary / Hukill (Identical H 747)	Digital Assets; Citing this act as the "Florida Fiduciary Access to Digital Assets Act"; authorizing a user to use an online tool to allow a custodian to disclose or to prohibit a custodian from disclosing digital assets under certain circumstances; providing procedures for the disclosure of digital assets; authorizing the court to grant a guardian the right to access a ward's digital assets under certain circumstances; imposing fiduciary duties, etc. JU 11/17/2015 Fav/CS FP 01/14/2016 Favorable RC	Favorable Yeas 10 Nays 0
---	---	--	-----------------------------

A proposed committee substitute for the following bill (SB 520) is available:

COMMITTEE MEETING EXPANDED AGENDA

Fiscal Policy

Thursday, January 14, 2016, 10:45 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 520 Lee (Identical H 793, Compare S 990)	Florida Bright Futures Scholarship Program; Providing that the initial award period and the renewal period for students who are unable to accept an initial award immediately after completion of high school due to a full-time religious or service obligation begin upon the completion of the religious or service obligation; requiring a student, as a prerequisite for the Florida Academic Scholars award, the Florida Medallion Scholars award, or the Florida Gold Seal Vocational Scholars award, to identify a social or civic issue or a professional area of interest and develop a plan for his or her personal involvement in addressing the issue or learning about the area, etc. HE 11/17/2015 Favorable AED 12/03/2015 Fav/CS FP 01/14/2016 Fav/CS	Fav/CS Yeas 10 Nays 0
With subcommittee recommendation – Education			
8	SB 576 Flores (Identical H 341)	Public Educational Facilities; Authorizing certain Florida College System institutions to construct dormitories for up to 400 students, etc. HE 11/17/2015 Favorable AED 12/03/2015 Favorable FP 01/14/2016 Favorable	Favorable Yeas 10 Nays 0
With subcommittee recommendation – Education			
9	CS/SB 626 Banking and Insurance / Gaetz (Similar H 717)	Consumer Credit; Authorizing the Office of Financial Regulation to deny a license or take disciplinary action against a person who violates the Military Lending Act or the regulations adopted under that act in connection with a consumer finance loan under the Florida Consumer Finance Act, etc. BI 11/17/2015 Fav/CS MS 12/01/2015 Favorable FP 01/14/2016 Favorable	Favorable Yeas 11 Nays 0
Other Related Meeting Documents			
An electronic copy of the Appearance Request form is available to download from any Senate Committee page on the Senate's website, www.flsenate.gov .			



594-00917A-16

Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to consumer protection; providing a short title; amending s. 501.142, F.S.; requiring retail sales establishments that sell goods to the public to grant a refund within a specified time for goods costing more than a specified amount if returned by a consumer who has been adjudicated incapacitated, is subject to a certain type of guardianship, or has a certain medical condition, if specified requirements are satisfied; providing penalties for a violation of the requirements; providing an exemption; making technical changes; amending s. 501.95, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. This act may be cited as "Terry's Law."

Section 2. Section 501.142, Florida Statutes, is amended to read:

501.142 Retail sales establishments; preemption; ~~notice of~~ refund policy requirements; exceptions; penalty.-

(1) The regulation of refunds is preempted to the Department of Agriculture and Consumer Services notwithstanding any other law or local ordinance to the contrary, provided that a local government may enforce this section as specified in subsection (8).



594-00917A-16

(2) Notwithstanding the Uniform Commercial Code, each every retail sales establishment offering goods for sale to the general public shall grant a cash refund or credit refund to a consumer for goods returned within 3 business days after the date of purchase if all of the following conditions are met:

(a) The purchase exceeds \$1,000, excluding tax.

(b) The goods are unused and in the original carton, if a carton was furnished.

(c) The consumer, or a representative of the consumer, provides the retailer with proof of purchase and documentation establishing that:

1. The consumer has been adjudicated incapacitated pursuant to chapter 744 or under similar law in another state;

2. The consumer is subject to a guardianship pursuant to chapter 744 or similar law in another state, and the guardian has the authority to determine the consumer's right to manage property; or

3. A power of attorney or a durable power of attorney pursuant to chapter 709 or similar law in another state is currently exercisable by the consumer's agent, and the consumer has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property, which is evidenced by a written statement signed by a physician licensed pursuant to chapter 458 or chapter 459 or licensed to practice medicine under the laws of another state.

(3) (a) Except as provided in subsection (2), a retail sales establishment offering goods for sale to the general public may refuse to offer a ~~that offers no~~ cash refund, credit refund, or



594-00917A-16

57 exchange for the purchase if the retailer posts of merchandise
58 ~~must post~~ a sign at the point of sale ~~so~~ stating that refunds or
59 exchanges are not allowed at the point of sale. Failure of a
60 retail sales establishment to exhibit a "no refund or exchange"
61 sign at the point of sale under such circumstances means at the
62 ~~point of sale shall mean~~ that a refund or exchange policy
63 exists, and the policy must ~~shall~~ be presented in writing to the
64 consumer upon request.

65 (b) A Any retail sales establishment that violates this
66 subsection failing to comply with the provisions of this section
67 shall grant to the consumer, upon request and proof of purchase,
68 a refund for the purchase on the merchandise, within 7 business
69 days after of the date of purchase if, provided the goods are
70 ~~merchandise is~~ unused and in the original carton, if one was
71 furnished. This section does not ~~Nothing herein shall~~ prohibit a
72 retail sales establishment from having a refund policy that
73 which exceeds 7 business the number of days and specified
74 ~~herein. However, this subsection does not prohibit a local~~
75 ~~government from enforcing the provisions established by this~~
76 ~~section.~~

77 ~~(4)(2) The provisions of~~ This section does ~~shall~~ not apply
78 to the sale of food, perishable goods, goods that which are
79 custom made, goods that which are custom altered at the request
80 of the customer, or goods that which cannot be resold by the
81 merchant because of any law, rule, or regulation adopted by a
82 governmental body.

83 ~~(5)(3) If~~ the department finds that a person has violated
84 or is operating in violation of:

85 (a) Subsection (2), the department shall enter an order



594-00917A-16

86 that imposes an administrative fine in the amount of twice the
87 value of the goods, excluding tax, which the person refused to
88 refund.

89 (b) Subsection (3) or an order issued under this section,
90 the department may enter an order that imposes ~~doing~~ one or more
91 of the following if the department finds that a person has
92 violated or is operating in violation of any of the provisions
93 of this section or the orders issued under this section:

94 ~~1.(a) Impose~~ An administrative fine not to exceed \$100 for
95 each violation.

96 ~~2.(b) A directive to Direct~~ the person to cease and desist
97 specified activities.

98 ~~(6)(4) An The~~ administrative proceeding ~~proceedings~~ that
99 may ~~could~~ result in the entry of an order imposing any of the
100 penalties specified in subsection (5) is ~~(3)~~ are governed by
101 chapter 120.

102 ~~(7)(5) Any~~ Moneys recovered by the department ~~of~~
103 ~~Agriculture and Consumer Services~~ as a penalty under this
104 section shall be deposited in the General Inspection Trust Fund.

105 ~~(8)(6)~~ Upon the first violation of this section, a local
106 government may issue a written warning. Upon a second or and any
107 subsequent violation, a local government may impose a fine of up
108 to \$50 per violation. Any Moneys recovered by the local
109 government as a penalty under this section shall be deposited in
110 the appropriate local account.

111 (9) Retail sales regulated under part VI of this chapter
112 are exempt from the provisions of this section.

113 Section 3. Paragraph (c) of subsection (2) of section
114 501.95, Florida Statutes, is amended to read:



712120

594-00917A-16

115 501.95 Gift certificates and credit memos.—

116 (2)

117 (c) Enforcement of this section shall be as provided in s.

118 501.142(5)(b), (6), and (7) s. 501.142(3), (4), and (5) for

119 violations of this section.

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

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 Fiscal Policy

BILL: PCS/CS/SB 148 (712120)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government); Commerce and Tourism Committee; and Senator Ring

SUBJECT: Consumer Protection

DATE: January 13, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 148 requires retail stores to allow certain consumers to return purchases of \$1,000 or more for a full refund within three business days of their purchase if the consumer:

Has been adjudicated incapacitated;

Is subject to a guardianship and the guardian has the authority to determine the consumer's right to manage property; or

Has a doctor's note that indicates that he or she has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property, and has a power of attorney in effect.

The bill also authorizes the Department of Agriculture and Consumer Services to administer a fine of up to two times the value of the goods purchased.

The bill exempts motor vehicle retail establishments currently regulated under part VI of ch. 501, F.S., from the provisions in the bill.

The bill has an insignificant, indeterminate fiscal impact on state funds.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Consumer Protections

Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (DACS) is charged with protecting consumers from deceptive business practices. The Division of Consumer Services (division) serves as a clearinghouse for consumer complaints. Specifically, s. 501.142, F.S., tasks the division with the oversight and regulation of a range of business practices related to refunds, returns, and exchanges at retail stores. The enforcement of s. 501.142, F.S., results from complaints made directly to the DACS by consumers. The DACS has issued only one administrative fine for a violation of s. 501.142, F.S. Retail stores generally comply with the law upon request by the DACS.¹

Currently retail stores are required to clearly post a “no refunds” sign at the point of sale in order to enforce such a policy. If the retail store does not have a posted “no refunds” policy, then it must present a written version of its refund policy upon a consumer’s request or adhere to the default refund policy described in s. 501.142(1), F.S. This provision requires a full refund to any customer who presents to the retail store within seven days of the original purchase his or her proof of purchase and the unused and originally-packaged item. A retail store’s refund policy may allow for a longer return period.²

The division may impose a \$100 administrative fine per violation of s. 501.142(1), F.S., or issue a cease and desist order for the violation. Additionally, a local government may apply penalties as outlined in s. 501.142(6), F.S.

These refund policy requirements do not apply to perishable or custom goods, items that are custom altered at the customer’s request, or goods that may not legally be resold by the retail store.³

Seniors vs Crime

Seniors vs Crime (SVC) is a special project of the Florida Office of the Attorney General with a mission to reduce the victimization of senior citizens.⁴ SVC utilizes volunteers across the state to monitor and report on scams against the elderly, such as fraud, high pressure sales techniques, false advertising, and unfair and deceptive trade practices.⁵ Some cases discovered by SVC are referred to state agencies for an investigation of an administrative violation, or to law enforcement for further investigation of a criminal violation.⁶ Some civil issues, however, are

¹ Department of Agriculture and Consumer Services, *SB 148 Agency Analysis* (September 1, 2015) (on file with the Senate Committee on Commerce and Tourism).

² Section 501.142(1), F.S.

³ Section 501.142(2), F.S.

⁴ Seniors vs Crime, *The History of the Seniors vs Crime Project*, available at <http://www.seniorsvscrime.com/history> (last visited January 4, 2016).

⁵ *Id.*

⁶ Seniors vs Crime, *Law Enforcement Partnership with the Seniors vs Crime Project*, available at <http://www.seniorsvscrime.com/lawenforcementandsvc> (last visited January 4, 2016).

retained by SVC for mediation conducted by its members or by the consumer with assistance from SVC.⁷ In 2013, SVC assisted 5,145 Florida seniors.⁸

Exploitation of the Elderly

Elderly persons and disabled adults receive enhanced protection from financial exploitation under s. 825.103, F.S., which generally criminalizes the theft or unauthorized appropriation of their funds, assets, or property.

Section 825.101, F.S., defines:

- An “elderly person” as a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability to provide adequately for his or her own care is impaired; and
- A “disabled adult” as a person 18 years or older who suffers from physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or has at least one physical or mental limitation that restricts his or her ability to perform normal activities of daily living.

Criminal prosecutions under s. 825.103, F.S., must prove that a victim of alleged financial exploitation not only meets the age requirement provided for in s. 825.101, F.S., but also that the victim suffers from infirmities of aging, which results in an impaired ability to care for or protect himself or herself.⁹

Incapacity

The 2010 Census recorded the greatest number and proportion of people aged 65 and over in the history of the U.S.: 40,300,000, or 13 percent of the total population.¹⁰ In 2010, Florida had the highest proportion of people over the age of 65, representing over 17 percent of the total state population.¹¹

Older Americans are at a greater risk of victimization of financial crimes than the general population due to cognitive impairment or incapacity. It is estimated that older Americans lost at least \$2.9 billion to financial exploitation by a broad spectrum of perpetrators in 2010.¹²

Protections exist for individuals with cognitive impairment or incapacity and range from issue or

⁷ See, e.g., *2014 Cases Resolved by Seniors vs Crime*, available at <http://www.seniorsvscrime.com/test-cases> (last visited January 4, 2016).

⁸ Attorney General Pam Bondi New Release, *Attorney General Pam Bondi Recognizes the Silver Anniversary of Florida’s Seniors vs. Crime Program* (April 9, 2014), available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/248AB317E66FDCFF85257CB5006B12E6> (last visited January 4, 2016).

⁹ *Watson v. State*, 95 So.3d 977, 981-982 (Fla. 2d DCA 2012).

¹⁰ Department of Health and Human Services, National Center for Elder Abuse, Administration on Aging, *America’s Growing Elderly Population*, available at <http://www.ncea.aoa.gov/Library/Data/index.aspx> (last visited January 4, 2016).

¹¹ U.S. Department of Commerce, U.S. Census Bureau, *The Older Population: 2010* Publication C2010BR-09 p. 2 (November 2011), available at <https://www.census.gov/prod/cen2010/briefs/c2010br-09.pdf> (last visited January 4, 2016).

¹² Consumer Financial Protection Bureau, *Protecting Residents from Financial Exploitation, A Manual for Assisted Living and Nursing Facilities*, p. 7-8 (May 2014), available at http://files.consumerfinance.gov/f/201406_cfpb_guide_protecting-residents-from-financial-exploitation.pdf (last visited January 4, 2016).

authority-specific grants of power (powers of attorney), to a determination of partial- or total-incapacity by a court.¹³

A power of attorney or a durable power of attorney¹⁴ is a legally binding document that delegates specific authority to an agent to act on a person's behalf. Powers of attorney are often used by elderly persons to designate someone to handle their financial matters in anticipation of becoming incapacitated. The authority granted by a power or attorney or durable power of attorney can be limited to specific acts, such as caring for a particular property or may be broadly drawn to cover all legal acts that the principal could otherwise do.¹⁵ While a power of attorney terminates when a person becomes incapacitated, a durable power of attorney does not.¹⁶ A power of attorney or a durable power of attorney is an efficient and low-cost alternative to guardianship.

Alternatively, a court may appoint a guardian who "has the legal authority and duty to care for another's person or property, especially because of the other's infancy, incapacity, or disability."¹⁷ Any adult may petition a court to initiate a petition to determine another's incapacity.¹⁸ 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.¹⁹ In cases where incapacity has been determined by a court, the court may appoint a guardian, but must pursue lesser restrictive means if possible.²⁰ Guardians are governed exclusively by the Florida Statutes,²¹ and may exercise for their ward only the enumerated rights that the court removed from the incapacitated person.²² A guardianship is more actively supervised by the court than a power of attorney, which results in more costs to the individual adjudicated incapacitated.

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as "Terry's Law."

Section 2 amends s. 501.142, F.S., to require all retail stores to grant a full refund to a consumer who purchased goods valued at \$1,000 or more and complies, either personally or through his or her representative, with the provisions below:

- Within three business days of the purchase, presents to the store both proof of purchase and the purchased goods in their unused and original condition including the original carton, if any; and

¹³ Section 744.331(6)(a), F.S. The court shall make a finding of "the exact nature and scope of the person's incapacities... and the specific rights that the person is incapable of exercising."

¹⁴ See ch. 709, F.S.

¹⁵ The Florida Bar, *Florida Power of Attorney Pamphlet*, available at <http://www.floridabar.org/tfb/TFBConsum.nsf/840090c16eedaf0085256b61000928dc/ab36277c4562e98885256b2f006c5ad6> (last visited January 4, 2016).

¹⁶ Sections 709.2102(4), 709.2104, and 709.2109(1)(b) F.S.

¹⁷ BLACK'S LAW DICTIONARY (10th ed. 2014).

¹⁸ Section 744.3201(1), F.S.

¹⁹ Section 744.102(12), F.S.

²⁰ Section 744.331(6)(b), F.S.

²¹ *Poling v. City Bank & Trust Co. of St. Petersburg*, 189 So.2d 176, 182 (Fla. 2d DCA 1966).

²² Section 744.361, F.S., provides the standard powers and duties of a guardian.

- Provides documentation establishing that:
 - The consumer has been adjudicated incapacitated pursuant to ch. 744, F.S., or similar law;
 - The consumer is subject to a guardianship pursuant to ch. 744, F.S., or similar law, and the guardian has authority to determine the consumer's right to manage property; or
 - The consumer has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property, and has a power of attorney or durable power of attorney, pursuant to ch. 709, F.S., or similar law in effect.

The bill also provides the DACS additional authority to impose an administrative fine of twice the value of the goods purchased.

The bill exempts motor vehicle retail establishments currently regulated under part VI of ch. 501, F.S., from the provisions in the bill.

Section 3 corrects cross-references in s. 501.95, F.S.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private businesses will be subject to fines as penalties for violations of the bill and be required to possibly provide refunds to affected consumers.

C. **Government Sector Impact:**

The DACS estimates there will be an insignificant, indeterminate fiscal impact because enforcement is based on receipt of consumer complaints. Historically, the DACS has only issued one administrative fine for noncompliance with current consumer returns laws.²³

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

An individual may be adjudicated incapacitated, but retain his or her right to manage his or her property because this right must be specifically delegated to a guardian by a court.²⁴ Therefore, proposed s. 501.142(2)(c)1., may be broader than necessary.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 501.142 and 501.95.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

Recommended PCS Barcode 712120 by Appropriations Subcommittee on General Government on October 20, 2015:

The committee substitute provides an exemption for motor vehicle retail establishments currently regulated under part VI of ch. 501, F.S., from the provisions in the bill.

CS by Commerce and Tourism on October 5, 2015:

The committee substitute removes the preamble from the title.

B. **Amendments:**

None.

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

²³ Department of Agriculture and Consumer Services, *SB 148 Agency Analysis* (September 1, 2015) (on file with the Senate Committee on Commerce and Tourism).

²⁴ Section 744.3215, F.S.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Education
Children, Families, and Elder Affairs
Commerce and Tourism

SENATOR JEREMY RING
29th District

January 13, 2016

Senator Anitere Flores, Chair
Committee on Fiscal Policy
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Flores:

I appreciate you including SB 148, relating to Fiscal Protection, on the Fiscal Policy agenda. Unfortunately, I will be presenting a bill in another committee at that time. Therefore, I respectfully request that my Legislative Assistant Joel Ramos be allowed to present the bill on my behalf.

Please do not hesitate to contact me if you or your staff have any questions.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Jaime DeLoach, Staff Director
Lisa Waddell, Committee Administrative Assistant

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/14/16

Meeting Date

148

Bill Number (if applicable)

Topic CONSUMER PROTECTION

Amendment Barcode (if applicable)

Name DAVID RAMBA

Job Title

Address 120 S. MONROE ST

Phone 850.443.4444

Street

TALLAHASSEE

FL

32301

Email

City

State

Zip

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

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

Representing FLORIDA AUTOMOBILE DEALERS ASSOCIATION

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/14/2016
Meeting Date

Topic _____

Bill Number 148
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/14/16

Meeting Date

148

Bill Number (if applicable)

Topic Consumer Protection

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

Address 200 W. College Ave.
Street

Phone 850 228-4243

Tally
City

FL
State

32301
Zip

Email zsmith@aarpa.org

Speaking: For Against Information

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

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By the Committee on Commerce and Tourism; and Senator Ring

577-00705-16

2016148c1

A bill to be entitled

An act relating to consumer protection; providing a short title; amending s. 501.142, F.S.; requiring retail sales establishments that sell goods to the public to grant a refund within a specified time for goods costing more than a specified amount if returned by a consumer who has been adjudicated incapacitated, is subject to a certain type of guardianship, or has a certain medical condition, if specified requirements are satisfied; providing penalties for a violation of the requirements; making technical changes; amending s. 501.95, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. This act may be cited as "Terry's Law."

Section 2. Section 501.142, Florida Statutes, is amended to read:

501.142 Retail sales establishments; preemption; ~~notice of~~ refund policy requirements; exceptions; penalty.-

(1) The regulation of refunds is preempted to the Department of Agriculture and Consumer Services notwithstanding any other law or local ordinance to the contrary, provided that a local government may enforce this section as specified in subsection (8).

(2) Notwithstanding the Uniform Commercial Code, each every retail sales establishment offering goods for sale to the general public shall grant a cash refund or credit refund to a

Page 1 of 5

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

577-00705-16

2016148c1

consumer for goods returned within 3 business days after the date of purchase if all of the following conditions are met:

(a) The purchase exceeds \$1,000, excluding tax.

(b) The goods are unused and in the original carton, if a carton was furnished.

(c) The consumer, or a representative of the consumer, provides the retailer with proof of purchase and documentation establishing that:

1. The consumer has been adjudicated incapacitated pursuant to chapter 744 or under similar law in another state;

2. The consumer is subject to a guardianship pursuant to chapter 744 or similar law in another state, and the guardian has the authority to determine the consumer's right to manage property; or

3. A power of attorney or a durable power of attorney pursuant to chapter 709 or similar law in another state is currently exercisable by the consumer's agent, and the consumer has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property, which is evidenced by a written statement signed by a physician licensed pursuant to chapter 458 or chapter 459 or licensed to practice medicine under the laws of another state.

(3) (a) Except as provided in subsection (2), a retail sales establishment offering goods for sale to the general public may ~~refuse to offer a that offers no~~ cash refund, credit refund, or exchange ~~for the purchase if the retailer posts of merchandise must post~~ a sign at the point of sale ~~so~~ stating that refunds or exchanges are not allowed at the point of sale. Failure of a

Page 2 of 5

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

577-00705-16

2016148c1

59 retail sales establishment to exhibit a "no refund or exchange"
 60 sign at the point of sale under such circumstances means ~~at the~~
 61 ~~point of sale shall mean~~ that a refund or exchange policy
 62 exists, and the policy must ~~shall~~ be presented in writing to the
 63 consumer upon request.

64 (b) A ~~Any~~ retail sales establishment that violates this
 65 subsection failing to comply with the provisions of this section
 66 shall grant to the consumer, upon request and proof of purchase,
 67 a refund for the purchase on the merchandise, within 7 business
 68 days after ~~of~~ the date of purchase if, ~~provided~~ the goods are
 69 ~~merchandise is~~ unused and in the original carton, if one was
 70 furnished. This section does not ~~Nothing herein shall~~ prohibit a
 71 retail sales establishment from having a refund policy that
 72 which exceeds 7 business the number of days and specified
 73 ~~herein. However, this subsection does not~~ prohibit a local
 74 government from enforcing ~~the provisions established by this~~
 75 section.

76 (4)(2) ~~The provisions of~~ This section does ~~shall~~ not apply
 77 to the sale of food, perishable goods, goods that ~~which~~ are
 78 custom made, goods that ~~which~~ are custom altered at the request
 79 of the customer, or goods that ~~which~~ cannot be resold by the
 80 merchant because of any law, rule, or regulation adopted by a
 81 governmental body.

82 (5)(3) ~~If~~ the department finds that a person has violated
 83 or is operating in violation of:

84 (a) Subsection (2), the department shall enter an order
 85 that imposes an administrative fine in the amount of twice the
 86 value of the goods, excluding tax, which the person refused to
 87 refund.

577-00705-16

2016148c1

88 (b) Subsection (3) or an order issued under this section,
 89 the department may enter an order that imposes ~~doing~~ one or more
 90 of the following ~~if the department finds that a person has~~
 91 ~~violated or is operating in violation of any of the provisions~~
 92 ~~of this section or the orders issued under this section:~~

93 1.(a) ~~Impose~~ An administrative fine not to exceed \$100 for
 94 each violation.

95 2.(b) ~~A directive to Direct~~ the person to cease and desist
 96 specified activities.

97 (6)(4) ~~An~~ The administrative proceeding ~~proceedings~~ that
 98 ~~may~~ could result in the entry of an order imposing any of the
 99 penalties specified in subsection (5) ~~is~~ ~~(3)~~ ~~are~~ governed by
 100 chapter 120.

101 (7)(5) ~~Any~~ Moneys recovered by the department ~~of~~
 102 ~~Agriculture and Consumer Services~~ as a penalty under this
 103 section shall be deposited in the General Inspection Trust Fund.

104 (8)(6) Upon the first violation of this section, a local
 105 government may issue a written warning. Upon a second or ~~and~~ any
 106 subsequent violation, a local government may impose a fine of up
 107 to \$50 per violation. ~~Any~~ Moneys recovered by the local
 108 government as a penalty under this section shall be deposited in
 109 the appropriate local account.

110 Section 3. Paragraph (c) of subsection (2) of section
 111 501.95, Florida Statutes, is amended to read:

112 501.95 Gift certificates and credit memos.—

113 (2)

114 (c) Enforcement of this section shall be as provided in s.
 115 501.142(5)(b), (6), and (7) ~~s. 501.142(3), (4), and (5)~~ for
 116 violations of this section.

577-00705-16

2016148c1

117

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

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 Fiscal Policy

BILL: CS/CS/SB 148

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government); Commerce and Tourism Committee; and Senator Ring

SUBJECT: Consumer Protection

DATE: January 14, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 148 requires retail stores to allow certain consumers to return purchases of \$1,000 or more for a full refund within three business days of their purchase if the consumer:

- Has been adjudicated incapacitated;
- Is subject to a guardianship and the guardian has the authority to determine the consumer's right to manage property; or
- Has a doctor's note that indicates that he or she has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property, and has a power of attorney in effect.

The bill also authorizes the Department of Agriculture and Consumer Services to administer a fine of up to two times the value of the goods purchased.

The bill exempts motor vehicle retail establishments currently regulated under part VI of ch. 501, F.S., from the provisions in the bill.

The bill has an insignificant, indeterminate fiscal impact on state funds.

The bill is effective July 1, 2016.

II. Present Situation:

Consumer Protections

Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (DACS) is charged with protecting consumers from deceptive business practices. The Division of Consumer Services (division) serves as a clearinghouse for consumer complaints. Specifically, s. 501.142, F.S., tasks the division with the oversight and regulation of a range of business practices related to refunds, returns, and exchanges at retail stores. The enforcement of s. 501.142, F.S., results from complaints made directly to the DACS by consumers. The DACS has issued only one administrative fine for a violation of s. 501.142, F.S. Retail stores generally comply with the law upon request by the DACS.¹

Currently retail stores are required to clearly post a “no refunds” sign at the point of sale in order to enforce such a policy. If the retail store does not have a posted “no refunds” policy, then it must present a written version of its refund policy upon a consumer’s request or adhere to the default refund policy described in s. 501.142(1), F.S. This provision requires a full refund to any customer who presents to the retail store within seven days of the original purchase his or her proof of purchase and the unused and originally-packaged item. A retail store’s refund policy may allow for a longer return period.²

The division may impose a \$100 administrative fine per violation of s. 501.142(1), F.S., or issue a cease and desist order for the violation. Additionally, a local government may apply penalties as outlined in s. 501.142(6), F.S.

These refund policy requirements do not apply to perishable or custom goods, items that are custom altered at the customer’s request, or goods that may not legally be resold by the retail store.³

Seniors vs Crime

Seniors vs Crime (SVC) is a special project of the Florida Office of the Attorney General with a mission to reduce the victimization of senior citizens.⁴ SVC utilizes volunteers across the state to monitor and report on scams against the elderly, such as fraud, high pressure sales techniques, false advertising, and unfair and deceptive trade practices.⁵ Some cases discovered by SVC are referred to state agencies for an investigation of an administrative violation, or to law enforcement for further investigation of a criminal violation.⁶ Some civil issues, however, are

¹ Department of Agriculture and Consumer Services, *SB 148 Agency Analysis* (September 1, 2015) (on file with the Senate Committee on Commerce and Tourism).

² Section 501.142(1), F.S.

³ Section 501.142(2), F.S.

⁴ Seniors vs Crime, *The History of the Seniors vs Crime Project*, available at <http://www.seniorsvscrime.com/history> (last visited January 4, 2016).

⁵ *Id.*

⁶ Seniors vs Crime, *Law Enforcement Partnership with the Seniors vs Crime Project*, available at <http://www.seniorsvscrime.com/lawenforcementandsvc> (last visited January 4, 2016).

retained by SVC for mediation conducted by its members or by the consumer with assistance from SVC.⁷ In 2013, SVC assisted 5,145 Florida seniors.⁸

Exploitation of the Elderly

Elderly persons and disabled adults receive enhanced protection from financial exploitation under s. 825.103, F.S., which generally criminalizes the theft or unauthorized appropriation of their funds, assets, or property.

Section 825.101, F.S., defines:

- An “elderly person” as a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability to provide adequately for his or her own care is impaired; and
- A “disabled adult” as a person 18 years or older who suffers from physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or has at least one physical or mental limitation that restricts his or her ability to perform normal activities of daily living.

Criminal prosecutions under s. 825.103, F.S., must prove that a victim of alleged financial exploitation not only meets the age requirement provided for in s. 825.101, F.S., but also that the victim suffers from infirmities of aging, which results in an impaired ability to care for or protect himself or herself.⁹

Incapacity

The 2010 Census recorded the greatest number and proportion of people aged 65 and over in the history of the U.S.: 40,300,000, or 13 percent of the total population.¹⁰ In 2010, Florida had the highest proportion of people over the age of 65, representing over 17 percent of the total state population.¹¹

Older Americans are at a greater risk of victimization of financial crimes than the general population due to cognitive impairment or incapacity. It is estimated that older Americans lost at least \$2.9 billion to financial exploitation by a broad spectrum of perpetrators in 2010.¹²

Protections exist for individuals with cognitive impairment or incapacity and range from issue or

⁷ See, e.g., *2014 Cases Resolved by Seniors vs Crime*, available at <http://www.seniorsvscrime.com/test-cases> (last visited January 4, 2016).

⁸ Attorney General Pam Bondi New Release, *Attorney General Pam Bondi Recognizes the Silver Anniversary of Florida’s Seniors vs. Crime Program* (April 9, 2014), available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/248AB317E66FDCFF85257CB5006B12E6> (last visited January 4, 2016).

⁹ *Watson v. State*, 95 So.3d 977, 981-982 (Fla. 2d DCA 2012).

¹⁰ Department of Health and Human Services, National Center for Elder Abuse, Administration on Aging, *America’s Growing Elderly Population*, available at <http://www.ncea.aoa.gov/Library/Data/index.aspx> (last visited January 4, 2016).

¹¹ U.S. Department of Commerce, U.S. Census Bureau, *The Older Population: 2010* Publication C2010BR-09 p. 2 (November 2011), available at <https://www.census.gov/prod/cen2010/briefs/c2010br-09.pdf> (last visited January 4, 2016).

¹² Consumer Financial Protection Bureau, *Protecting Residents from Financial Exploitation, A Manual for Assisted Living and Nursing Facilities*, p. 7-8 (May 2014), available at http://files.consumerfinance.gov/f/201406_cfpb_guide_protecting-residents-from-financial-exploitation.pdf (last visited January 4, 2016).

authority-specific grants of power (powers of attorney), to a determination of partial- or total-incapacity by a court.¹³

A power of attorney or a durable power of attorney¹⁴ is a legally binding document that delegates specific authority to an agent to act on a person's behalf. Powers of attorney are often used by elderly persons to designate someone to handle their financial matters in anticipation of becoming incapacitated. The authority granted by a power or attorney or durable power of attorney can be limited to specific acts, such as caring for a particular property or may be broadly drawn to cover all legal acts that the principal could otherwise do.¹⁵ While a power of attorney terminates when a person becomes incapacitated, a durable power of attorney does not.¹⁶ A power of attorney or a durable power of attorney is an efficient and low-cost alternative to guardianship.

Alternatively, a court may appoint a guardian who “has the legal authority and duty to care for another's person or property, especially because of the other's infancy, incapacity, or disability.”¹⁷ Any adult may petition a court to initiate a petition to determine another's incapacity.¹⁸ 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.¹⁹ In cases where incapacity has been determined by a court, the court may appoint a guardian, but must pursue lesser restrictive means if possible.²⁰ Guardians are governed exclusively by the Florida Statutes,²¹ and may exercise for their ward only the enumerated rights that the court removed from the incapacitated person.²² A guardianship is more actively supervised by the court than a power of attorney, which results in more costs to the individual adjudicated incapacitated.

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as “Terry's Law.”

Section 2 amends s. 501.142, F.S., to require all retail stores to grant a full refund to a consumer who purchased goods valued at \$1,000 or more and complies, either personally or through his or her representative, with the provisions below:

- Within three business days of the purchase, presents to the store both proof of purchase and the purchased goods in their unused and original condition including the original carton, if any; and

¹³ Section 744.331(6)(a), F.S. The court shall make a finding of “the exact nature and scope of the person's incapacities... and the specific rights that the person is incapable of exercising.”

¹⁴ See ch. 709, F.S.

¹⁵ The Florida Bar, *Florida Power of Attorney Pamphlet*, available at <http://www.floridabar.org/tfb/TFBConsum.nsf/840090c16eedaf0085256b61000928dc/ab36277c4562e98885256b2f006c5ad6> (last visited January 4, 2016).

¹⁶ Sections 709.2102(4), 709.2104, and 709.2109(1)(b) F.S.

¹⁷ BLACK'S LAW DICTIONARY (10th ed. 2014).

¹⁸ Section 744.3201(1), F.S.

¹⁹ Section 744.102(12), F.S.

²⁰ Section 744.331(6)(b), F.S.

²¹ *Poling v. City Bank & Trust Co. of St. Petersburg*, 189 So.2d 176, 182 (Fla. 2d DCA 1966).

²² Section 744.361, F.S., provides the standard powers and duties of a guardian.

- Provides documentation establishing that:
 - The consumer has been adjudicated incapacitated pursuant to ch. 744, F.S., or similar law;
 - The consumer is subject to a guardianship pursuant to ch. 744, F.S., or similar law, and the guardian has authority to determine the consumer's right to manage property; or
 - The consumer has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property, and has a power of attorney or durable power of attorney, pursuant to ch. 709, F.S., or similar law in effect.

The bill also provides the DACS additional authority to impose an administrative fine of twice the value of the goods purchased.

The bill exempts motor vehicle retail establishments currently regulated under part VI of ch. 501, F.S., from the provisions in the bill.

Section 3 corrects cross-references in s. 501.95, F.S.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private businesses will be subject to fines as penalties for violations of the bill and be required to possibly provide refunds to affected consumers.

C. **Government Sector Impact:**

The DACS estimates there will be an insignificant, indeterminate fiscal impact because enforcement is based on receipt of consumer complaints. Historically, the DACS has only issued one administrative fine for noncompliance with current consumer returns laws.²³

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

An individual may be adjudicated incapacitated, but retain his or her right to manage his or her property because this right must be specifically delegated to a guardian by a court.²⁴ Therefore, proposed s. 501.142(2)(c)1., may be broader than necessary.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 501.142 and 501.95.

IX. **Additional Information:**

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

CS/CS by Fiscal Policy on January 14, 2016:

As recommended by the Appropriation Subcommittee on General Government, the committee substitute provides an exemption for motor vehicle retail establishments currently regulated under part VI of ch. 501, F.S., from the provisions in the bill.

CS by Commerce and Tourism on October 5, 2015:

The committee substitute removes the preamble from the title.

- B. **Amendments:**

None.

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

²³ Department of Agriculture and Consumer Services, *SB 148 Agency Analysis* (September 1, 2015) (on file with the Senate Committee on Commerce and Tourism).

²⁴ Section 744.3215, F.S.



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: December 1, 2015

I respectfully request that **Senate Bill #222**, relating to Parking for Disabled Veterans, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy Detert".

Senator Nancy C. Detert
Florida Senate, District 28

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/14/2016

Meeting Date

Topic _____

Bill Number 222
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

By Senator Detert

28-00280-16

2016222__

1 A bill to be entitled
 2 An act relating to parking for disabled veterans;
 3 amending s. 316.1964, F.S.; requiring the governing
 4 body of each publicly owned or publicly operated
 5 airport to grant free parking to any vehicle
 6 displaying specified license plates for disabled
 7 veterans; clarifying that such license plates, rather
 8 than "DV" license plates, are exempt from certain
 9 parking fees charged by a county, municipality, or an
 10 agency thereof; making technical changes; providing an
 11 effective date.

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

14
 15 Section 1. Subsections (1), (7), and (8) of section
 16 316.1964, Florida Statutes, are amended to read:

17 316.1964 Exemption of vehicles transporting certain persons
 18 who have disabilities from payment of parking fees and
 19 penalties.-

20 (1) A state agency, county, municipality, or any agency
 21 thereof, may not exact any fee for parking on the public streets
 22 or highways or in any metered parking space from the driver of a
 23 vehicle that displays:

24 (a) A disabled parking permit or a license plate issued
 25 under s. 316.1958 or s. 320.0848; or

26 (b) A license plate issued under s. 320.084, s. 320.0842,
 27 s. 320.0843, or s. 320.0845.

28
 29 Such exemptions apply only if the vehicle is transporting the

Page 1 of 3

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

28-00280-16

2016222__

30 person who has a disability and to whom the disabled parking
 31 permit or license plate was issued.

32 (7) An airport that owns, operates, or leases parking
 33 facilities, or any other parking facilities that are used for
 34 the purpose of air travel, may charge for parking vehicles that
 35 display a disabled parking permit or license tag issued under s.
 36 316.1958, ~~s. 320.084, s. 320.0842,~~ s. 320.0843, ~~s. 320.0845,~~ or
 37 s. 320.0848. However, the governing body of each publicly owned
 38 or publicly operated airport must grant free parking to a ~~any~~
 39 vehicle:

40 (a) Displaying a license plate for disabled veterans issued
 41 under s. 320.084, s. 320.0842, or s. 320.0845;

42 (b) With specialized equipment, such as ramps, lifts, or
 43 foot or hand controls, ~~or~~ for use ~~utilization~~ by a person who
 44 has a disability; or

45 (c) ~~whose vehicle is~~ Displaying the Florida Toll Exemption
 46 permit.

47 (8) Notwithstanding subsection (1), a county, municipality,
 48 or any agency thereof may charge for parking in a facility or
 49 lot that provides timed parking spaces any vehicle that displays
 50 a disabled parking permit, except for a vehicle: ~~that~~

51 (a) ~~any vehicle~~ With specialized equipment, such as ramps,
 52 lifts, or foot or hand controls, for use by a person who has a
 53 disability;

54 (b) ~~or any vehicle that is~~ Displaying a the "DV" license
 55 plate for disabled veterans issued under s. 320.084, s.
 56 320.0842, or s. 320.0845; or

57 (c) Displaying the Florida Toll Exemption permit, ~~is exempt~~
 58 from any parking fees.

Page 2 of 3

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

28-00280-16

2016222__

59

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

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 Fiscal Policy

BILL: SB 222

INTRODUCER: Senator Detert

SUBJECT: Parking for Disabled Veterans

DATE: January 13, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Eichin</u>	<u>TR</u>	Favorable
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

I. Summary:

SB 222 prohibits the governing body of each publicly owned or publicly operated airport from charging parking fees to vehicles displaying certain disabled veteran license plates.

The bill prohibits a local government from charging parking fees in a facility or lot that provides timed parking spaces to vehicles displaying the disabled veteran plate stamped with the international accessibility symbol and the Paralyzed Veterans of America license plate.

The Revenue Estimating Conference estimated that the bill will have a negative \$600,000 recurring fiscal impact on local governments and publicly owned or publicly operated airports.

The bill has no impact on state funds.

II. Present Situation:

A state agency, county, municipality, or any agency thereof, is prohibited from charging a fee for parking on the public streets or highways or in any *metered* parking spaces if the vehicle displays a:¹

- Disabled parking permit;²
- Out of state or out of country disabled license plate or disabled parking permit;³
- Disabled veteran license plate;⁴
- Disabled veteran license plate stamped with the international accessibility symbol;⁵

¹ Section 316.1964, F.S.

² Issued under s. 320.0848, F.S.

³ Recognized under s. 316.1958, F.S.

⁴ Issued under s. 320.084, F.S.

⁵ Issued under s. 320.0842, F.S.

- License plate stamped with the international accessibility symbol;⁶ or
- Paralyzed Veterans of America license plate.⁷

A local government is prohibited from charging parking fees to vehicles with specialized equipment, such as ramps, lifts, or foot or hand controls for utilization by a person who has a disability, or any vehicle displaying the disabled veteran license plate,⁸ or the Florida Toll Exemption permit.⁹

However, a local government may charge a parking fee to vehicles displaying disabled parking permits in a facility or lot that provides *timed* parking spaces for parking.

The governing body of a publicly owned and operated airport is prohibited from charging parking fees to vehicles with specialized equipment, such as ramps, lifts, or foot or hand controls for utilization by a person who has a disability or whose vehicle is displaying the Florida Toll Exemption permit.¹⁰

However, an airport that owns, operates, or leases parking facilities, or any other parking facilities that are used for the purpose of air travel, *may* charge parking fees for vehicles that display a:

- Disabled parking permit;¹¹
- Out of state or out of country disabled license plate or disabled parking permit;¹²
- Disabled veteran license plate;¹³
- Disabled veteran license plate stamped with the international accessibility symbol;¹⁴
- License plate stamped with the international accessibility symbol;¹⁵ or
- Paralyzed Veterans of America license plate.¹⁶

Disabled Veteran “DV” License Plate

A disabled veteran is eligible for one free disabled veteran license plate if he or she has been a resident of this state for the preceding five years or has established a domicile in this state, has been honorably discharged from the United States Armed Forces, and provides proof that he or she:

- Has a vehicle initially acquired through financial assistance by the United States Department of Veterans Affairs (VA) or its predecessor specifically for the purchase of an automobile;
- Has been determined by the VA or its predecessor to have a service-connected 100 percent disability rating for compensation; or

⁶ Issued under s. 320.0843, F.S.

⁷ Issued under s. 320.0845, F.S.

⁸ Issued under s. 320.084, F.S.

⁹ Section 316.1964(8), F.S.

¹⁰ Section 316.1964(7), F.S.

¹¹ Issued under s. 320.0848, F.S.

¹² Recognized under s. 316.1958, F.S.

¹³ Issued under s. 320.084, F.S.

¹⁴ Issued under s. 320.0842, F.S.

¹⁵ Issued under s. 320.0843, F.S.

¹⁶ Issued under s. 320.0845, F.S.

- Has been determined to have a service-connected disability rating of 100 percent and receives disability retirement pay from any branch of the United States Armed Forces.¹⁷

The Department of Highway Safety and Motor Vehicles provided that as of October 9, 2015, there were 41,435 active disabled veteran license plates.¹⁸

Disabled Veteran License Plate with the International Accessibility Symbol

A disabled veteran is eligible for a free disabled veteran license plate stamped with the international symbol of accessibility if he or she is eligible for both the disabled veteran license plate and proves that due to a service-connected disability he or she permanently uses a wheelchair or otherwise qualifies for a disabled parking permit.¹⁹

The Department of Highway Safety and Motor Vehicles provided that as of October 9, 2015, there were 11,509 active disabled veteran license plates with the International Accessibility symbol.²⁰

Paralyzed Veterans of America License Plate

A Florida resident who is a member of the Paralyzed Veterans of America,²¹ upon proof of membership, application, and payment of appropriate license taxes and fees, is eligible for a “Paralyzed Vets of America” license plate.²²

The Department of Highway Safety and Motor Vehicles provided that as of October 9, 2015, there were 59 active Paralyzed Veterans of America license plates.²³

III. Effect of Proposed Changes:

The bill removes provisions allowing an airport that owns, operates, or leases parking facilities, or any other parking facilities that are used for the purposes of air travel, from charging parking fees to a vehicle displaying:

- A disabled veteran license plate;
- A disabled veteran license plate stamped with the international accessibility symbol; or
- A Paralyzed Veterans of America license plate.

¹⁷ Section 320.084(1), F.S.

¹⁸ See email from the Florida Department of Highway Safety and Motor Vehicles, October 9, 2015 (on file with the Senate Fiscal Policy Committee).

¹⁹ Section 320.0842, F.S.

²⁰ *Supra* note 18.

²¹ Paralyzed Veterans of America is a national organization that offers membership to veterans with spinal cord injuries or diseases affecting the spinal cord. See Paralyzed Veterans of America, PVA Membership Information, available at http://www.pva.org/site/c.ajIRK9NJLcJ2E/b.6305539/k.4AC/PVA_Membership_Information_PVA_Applications_Contact.htm (last visited December 15, 2015).

²² Section 320.0845, F.S.

²³ *Supra* note 18.

The bill prohibits the governing body of each publicly owned or operated airport from charging parking fees to a vehicle displaying:

- A disabled veteran license plate;
- A disabled veteran license plate stamped with the international accessibility symbol; or
- A Paralyzed Veterans of America license plate.

The bill adds, in addition to vehicles displaying the disabled veteran license plate, vehicles displaying the disabled veteran plate stamped with the international accessibility symbol and the Paralyzed Veterans of America license plate to the list of vehicles that may not be charged by a local government for parking in a facility or lot that provides timed parking spaces.

The bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill may reduce the authority of counties and municipalities to raise revenues because it would eliminate their ability to charge the operator of a vehicle displaying a disabled veteran plate for parking in a facility that provides timed parking spaces, or at a publicly owned or publicly operated airport. Article VII, s. 18(b) of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature in order to enact a general law that reduces the authority of municipalities and counties to raise revenues in the aggregate. Article VII, s. 18(d) of the Florida Constitution provides an exemption if the law is determined to have an insignificant fiscal impact.

The Revenue Estimating Conference met on December 11, 2015 and adopted a negative \$600,000 recurring fiscal impact on local governments and publicly owned or publicly operated airports.²⁴

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁴ The Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, Impact Conference, Revenue Impact Results, HB 235/SB 222 (December 11, 2015).

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

The Revenue Estimating Conference met on December 11, 2015 and adopted a negative \$600,000 recurring fiscal impact on local governments and publicly owned or publicly operated airports.²⁵

B. Private Sector Impact:

Individuals who qualify for the exemption from parking fees may experience a positive fiscal impact.

C. Government Sector Impact:

See above, Tax/Fee Issues. The bill has no impact on state funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.1964 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

²⁵ *Id.*



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: December 1, 2015

I respectfully request that **Senate Bill #232**, relating to Guardianship, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy Detert".

Senator Nancy C. Detert
Florida Senate, District 28

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/14/16 Meeting Date

232 Bill Number (if applicable)

Topic GUARDIANSHIP

Amendment Barcode (if applicable)

Name JACK McRAY

Job Title

Address 200 W. COLLEGE AVE, # 304 Street

Phone 280-577-5107

City TLA State FL Zip 32301

Email jmcraay@aarp.org

Speaking: For Against Information

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

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-14-16

Meeting Date

SB 232

Bill Number (if applicable)

Topic SB 232 Guardianship Reform

Amendment Barcode (if applicable)

Name DOUG FRANKS

Job Title Elder Advocate & Ernestines Franks Youngest Son

Address 1034 Justice Ln

Phone 678 570 3010

Acworth GA 30102

Email info@mactechworks.com

City State Zip

Speaking: For Against Information

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

Representing Ernestine K Franks & AAA PG.net

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1 114 /2016

Meeting Date

Topic _____

Bill Number 232
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senator Detert

590-01776-16

2016232c2

1 A bill to be entitled
 2 An act relating to guardianship; providing directives
 3 to the Division of Law Revision and Information;
 4 amending s. 744.1012, F.S.; revising legislative
 5 intent; renumbering s. 744.201, F.S., relating to
 6 domicile of ward; renumbering and amending s. 744.202,
 7 F.S.; conforming a cross-reference; renumbering s.
 8 744.2025, F.S., relating to change of ward's
 9 residence; renumbering and amending s. 744.7021, F.S.;
 10 renaming the Statewide Public Guardianship Office to
 11 the Office of Public and Professional Guardians;
 12 revising the duties and responsibilities of the
 13 executive director for the Office of Public and
 14 Professional Guardians; conforming provisions to
 15 changes made by the act; renumbering and amending s.
 16 744.1083, F.S.; providing that a guardian has standing
 17 to seek judicial review pursuant to ch. 120, F.S., if
 18 his or her registration is denied; removing a
 19 provision authorizing the executive director to
 20 suspend or revoke the registration of a guardian who
 21 commits certain violations; removing the requirement
 22 of written notification to the chief judge of the
 23 judicial circuit upon the executive director's denial,
 24 suspension, or revocation of a registration;
 25 conforming provisions to changes made by the act;
 26 conforming a cross-reference; renumbering and amending
 27 s. 744.1085, F.S.; conforming provisions to changes
 28 made by the act; removing an obsolete provision;
 29 conforming a cross-reference; creating s. 744.2004,

Page 1 of 46

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

590-01776-16

2016232c2

30 F.S.; requiring the Office of Public and Professional
 31 Guardians to establish certain procedures by a
 32 specified date; requiring the office to establish
 33 disciplinary proceedings, conduct hearings, and take
 34 administrative action pursuant to ch. 120, F.S.;
 35 requiring the Department of Elderly Affairs to provide
 36 certain written information in disciplinary
 37 proceedings; requiring that certain findings and
 38 recommendations be made within a certain time;
 39 requiring the office, under certain circumstances, to
 40 make a specified recommendation to a court of
 41 competent jurisdiction; requiring the office to report
 42 determination or suspicion of abuse to the Department
 43 of Children and Families' central abuse hotline under
 44 specified circumstances; requiring the Department of
 45 Elderly Affairs to adopt rules; creating s. 744.20041,
 46 F.S.; specifying the acts by a professional guardian
 47 that constitute grounds for the Office of Public and
 48 Professional Guardians to take specified disciplinary
 49 actions; specifying penalties that the Office of
 50 Public and Professional Guardians may impose;
 51 requiring the Office of Public and Professional
 52 Guardians to consider sanctions necessary to safeguard
 53 wards and to protect the public; requiring the Office
 54 of Public and Professional Guardians to adopt by rule
 55 and periodically review disciplinary guidelines;
 56 providing legislative intent for the disciplinary
 57 guidelines; requiring the Office of Public and
 58 Professional Guardians to designate by rule possible

Page 2 of 46

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

590-01776-16

2016232c2

59 mitigating and aggravating circumstances and the
60 variation and range of penalties; requiring an
61 administrative law judge to follow the Office of
62 Public and Professional Guardians' disciplinary
63 guidelines when recommending penalties; requiring the
64 administrative law judge to provide written mitigating
65 or aggravating circumstances under certain
66 circumstances; authorizing the Office of Public and
67 Professional Guardians to impose a penalty other than
68 those in the disciplinary guidelines under certain
69 circumstances; authorizing the Office of Public and
70 Professional Guardians to seek an injunction or a writ
71 of mandamus for specified violations; providing for
72 permanent revocation of a professional guardian's
73 registration by the Office of Public and Professional
74 Guardians under certain circumstances; requiring the
75 Office of Public and Professional Guardians to notify
76 a court of the determination to suspend or revoke the
77 professional guardian's registration under certain
78 circumstances; providing that cross-references are
79 considered a general reference for the purpose of
80 incorporation by reference; requiring the Office of
81 Public and Professional Guardians to adopt rules;
82 renumbering and amending s. 744.344, F.S.; making
83 technical changes; renumbering and amending s.
84 744.703, F.S.; conforming provisions to changes made
85 by the act; renumbering ss. 744.704 and 744.705, F.S.,
86 relating to the powers and duties of public guardians
87 and the costs of public guardians, respectively;

Page 3 of 46

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

590-01776-16

2016232c2

88 renumbering and amending ss. 744.706 and 744.707,
89 F.S.; conforming provisions to changes made by the
90 act; renumbering s. 744.709, F.S., relating to surety
91 bonds; renumbering and amending s. 744.708, F.S.;
92 conforming provisions to changes made by the act;
93 renumbering and amending s. 744.7081, F.S.; requiring
94 that the Office of Public and Professional Guardians
95 be provided financial audits upon its request as part
96 of an investigation; conforming provisions to changes
97 made by the act; renumbering and amending s. 744.7082,
98 F.S.; conforming provisions to changes made by the
99 act; renumbering and amending s. 744.712, F.S.;
100 providing legislative intent; conforming provisions;
101 renumbering and amending ss. 744.713, 744.714, and
102 744.715, F.S.; conforming provisions to changes made
103 by the act; amending s. 744.3135, F.S.; requiring the
104 office to adopt rules by a certain date; conforming
105 provisions to changes made by the act; repealing s.
106 744.701, F.S., relating to a short title; repealing s.
107 744.702, F.S., relating to legislative intent;
108 repealing s. 744.7101, F.S., relating to a short
109 title; repealing s. 744.711, F.S., relating to
110 legislative findings and intent; amending ss. 400.148
111 and 744.331, F.S.; conforming provisions to changes
112 made by the act; amending ss. 20.415, 415.1102,
113 744.309, and 744.524, F.S.; conforming cross-
114 references; making technical changes; providing an
115 effective date.
116

Page 4 of 46

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

590-01776-16

2016232c2

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

118
119 Section 1. The Division of Law Revision and Information is
120 directed to add ss. 744.1096-744.1098, Florida Statutes, created
121 by this act, to part I of chapter 744, Florida Statutes.

122 Section 2. The Division of Law Revision and Information is
123 directed to rename part II of chapter 744, Florida Statutes,
124 entitled "VENUE," as "PUBLIC AND PROFESSIONAL GUARDIANS,"
125 consisting of ss. 744.2001-744.2109, Florida Statutes.

126 Section 3. The Division of Law Revision and Information is
127 directed to remove part IX of chapter 744, Florida Statutes.

128 Section 4. Section 744.1012, Florida Statutes, is amended
129 to read:

130 744.1012 Legislative intent.—The Legislature finds that:

131 (1) ~~That~~ Adjudicating a person totally incapacitated and in
132 need of a guardian deprives such person of all her or his civil
133 and legal rights and that such deprivation may be unnecessary.

134 (2) ~~The Legislature further finds that~~ It is desirable to
135 make available the least restrictive form of guardianship to
136 assist persons who are only partially incapable of caring for
137 their needs and that alternatives to guardianship and less
138 restrictive means of assistance, including, but not limited to,
139 guardian advocates, should always be explored before an
140 individual's rights are removed through an adjudication of
141 incapacity.

142 (3) By recognizing that every individual has unique needs
143 and differing abilities, the Legislature declares that it is the
144 purpose of this act to promote the public welfare by
145 establishing a system that permits incapacitated persons to

Page 5 of 46

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

590-01776-16

2016232c2

146 participate as fully as possible in all decisions affecting
147 them; that assists such persons in meeting the essential
148 requirements for their physical health and safety, in protecting
149 their rights, in managing their financial resources, and in
150 developing or regaining their abilities to the maximum extent
151 possible; and that accomplishes these objectives through
152 providing, in each case, the form of assistance that least
153 interferes with the legal capacity of a person to act in her or
154 his own behalf. This act shall be liberally construed to
155 accomplish this purpose.

156 (4) Private guardianship may be inadequate when there is no
157 willing and responsible family member or friend, other person,
158 bank, or corporation available to serve as guardian for an
159 incapacitated person, and such person does not have adequate
160 income or wealth for the compensation of a private guardian.

161 (5) Through the establishment of the Office of Public and
162 Professional Guardians, the Legislature intends to permit the
163 establishment of offices of public guardians for the purpose of
164 providing guardianship services for incapacitated persons when
165 no private guardian is available.

166 (6) A public guardian will be provided only to those
167 persons whose needs cannot be met through less restrictive means
168 of intervention. A public guardian may also serve in the
169 capacity of a limited guardian or guardian advocate under s.
170 393.12 when the public guardian is the guardian of last resort
171 as described in subsection (4).

172 Section 5. Section 744.201, Florida Statutes, is renumbered
173 as section 744.1096, Florida Statutes.

174 Section 6. Section 744.202, Florida Statutes, is renumbered

Page 6 of 46

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

590-01776-16 2016232c2

175 as section 744.1097, Florida Statutes, and subsection (3) of
176 that section is amended, to read:

177 744.1097 ~~744.202~~ Venue.—

178 (3) When the residence of an incapacitated person is
179 changed to another county, the guardian shall petition to have
180 the venue of the guardianship changed to the county of the
181 acquired residence, except as provided in s. 744.1098 ~~s-~~
182 ~~744.2025~~.

183 Section 7. Section 744.2025, Florida Statutes, is
184 renumbered as section 744.1098, Florida Statutes.

185 Section 8. Section 744.7021, Florida Statutes, is
186 renumbered as section 744.2001, Florida Statutes, and amended to
187 read:

188 744.2001 ~~744.7021~~ Statewide Public Guardianship Office of
189 Public and Professional Guardians.—There is hereby created the
190 Statewide Public Guardianship Office of Public and Professional
191 Guardians within the Department of Elderly Affairs.

192 (1) The Secretary of Elderly Affairs shall appoint the
193 executive director, who shall be the head of the Statewide
194 Public Guardianship Office of Public and Professional Guardians.
195 The executive director must be a member of The Florida Bar,
196 knowledgeable of guardianship law and of the social services
197 available to meet the needs of incapacitated persons, shall
198 serve on a full-time basis, and shall personally, or through a
199 representative ~~representatives~~ of the office, carry out the
200 purposes and functions of the Statewide Public Guardianship
201 Office of Public and Professional Guardians in accordance with
202 state and federal law. The executive director shall serve at the
203 pleasure of and report to the secretary.

590-01776-16 2016232c2

204 (2) The executive director shall, within available
205 resources;~~r~~

206 (a) Have oversight responsibilities for all public and
207 professional guardians.

208 (b) Establish standards of practice for public and
209 professional guardians by rule, in consultation with
210 professional guardianship associations and other interested
211 stakeholders, no later than October 1, 2016. The executive
212 director shall provide a draft of the standards to the Governor,
213 the Legislature, and the secretary for review by August 1, 2016.

214 (c) Review and approve the standards and criteria for the
215 education, registration, and certification of public and
216 professional guardians in Florida.

217 (3) The executive director's oversight responsibilities of
218 professional guardians must be finalized by October 1, 2016, and
219 shall include, but are not limited to:

220 (a) Developing and implementing a monitoring tool to ensure
221 compliance of professional guardians with the standards of
222 practice established by the Office of Public and Professional
223 Guardians. This monitoring tool may not include a financial
224 audit as required by the clerk of the circuit court under s.
225 744.368.

226 (b) Developing procedures, in consultation with
227 professional guardianship associations and other interested
228 stakeholders, for the review of an allegation that a
229 professional guardian has violated the standards of practice
230 established by the Office of Public and Professional Guardians
231 governing the conduct of professional guardians.

232 (c) Establishing disciplinary proceedings, conducting

590-01776-16

2016232c2

233 hearings, and taking administrative action pursuant to chapter
 234 120.

235 (4) The executive director's oversight responsibilities of
 236 public guardians shall include, but are not limited to:

237 (a) Reviewing ~~The executive director shall review~~ the
 238 current public guardian programs in Florida and other states.

239 (b) Developing ~~The executive director,~~ in consultation with
 240 local guardianship offices and other interested stakeholders,
 241 ~~shall develop~~ statewide performance measures ~~and standards.~~

242 (c) Reviewing ~~The executive director shall review the~~
 243 various methods of funding public guardianship programs, the
 244 kinds of services being provided by such programs, and the
 245 demographics of the wards. In addition, the executive director
 246 shall review and make recommendations regarding the feasibility
 247 of recovering a portion or all of the costs of providing public
 248 guardianship services from the assets or income of the wards.

249 (d) By January 1 of each year, providing the executive
 250 ~~director shall provide~~ a status report and ~~provide further~~
 251 recommendations to the secretary which that address the need for
 252 public guardianship services and related issues.

253 (e) Developing a guardianship training program curriculum
 254 that may be offered to all guardians, whether public or private.

255 ~~(5)(e)~~ The executive director may provide assistance to
 256 local governments or entities in pursuing grant opportunities.
 257 The executive director shall review and make recommendations in
 258 the annual report on the availability and efficacy of seeking
 259 Medicaid matching funds. The executive director shall diligently
 260 seek ways to use existing programs and services to meet the
 261 needs of public wards.

590-01776-16

2016232c2

262 ~~(f) The executive director, in consultation with the~~
 263 ~~Florida Guardianship Foundation, shall develop a guardianship~~
 264 ~~training program curriculum that may be offered to all guardians~~
 265 ~~whether public or private.~~

266 ~~(6)(3)~~ The executive director may conduct or contract for
 267 demonstration projects authorized by the Department of Elderly
 268 Affairs, within funds appropriated or through gifts, grants, or
 269 contributions for such purposes, to determine the feasibility or
 270 desirability of new concepts of organization, administration,
 271 financing, or service delivery designed to preserve the civil
 272 and constitutional rights of persons of marginal or diminished
 273 capacity. Any gifts, grants, or contributions for such purposes
 274 shall be deposited in the Department of Elderly Affairs
 275 Administrative Trust Fund.

276 Section 9. Section 744.1083, Florida Statutes, is
 277 renumbered as section 744.2002, Florida Statutes, subsections
 278 (1) through (5) of that section are amended, and subsections (7)
 279 and (10) of that section are republished, to read:

280 744.2002 744.1083 Professional guardian registration.—

281 (1) A professional guardian must register with the
 282 Statewide Public Guardianship Office of Public and Professional
 283 Guardians established in part II ~~IX~~ of this chapter.

284 (2) Annual registration shall be made on forms furnished by
 285 the Statewide Public Guardianship Office of Public and
 286 Professional Guardians and accompanied by the applicable
 287 registration fee as determined by rule. The fee may not exceed
 288 \$100.

289 (3) Registration must include the following:

290 (a) Sufficient information to identify the professional

590-01776-16

2016232c2

291 guardian, as follows:

292 1. If the professional guardian is a natural person, the
293 name, address, date of birth, and employer identification or
294 social security number of the person.

295 2. If the professional guardian is a partnership or
296 association, the name, address, and employer identification
297 number of the entity.

298 (b) Documentation that the bonding and educational
299 requirements of s. 744.2003 ~~s. 744.1085~~ have been met.

300 (c) Sufficient information to distinguish a guardian
301 providing guardianship services as a public guardian,
302 individually, through partnership, corporation, or any other
303 business organization.

304 (4) Prior to registering a professional guardian, the
305 ~~Statewide Public Guardianship Office of Public and Professional~~
306 Guardians must receive and review copies of the credit and
307 criminal investigations conducted under s. 744.3135. The credit
308 and criminal investigations must have been completed within the
309 previous 2 years.

310 (5) The executive director of the office may deny
311 registration to a professional guardian if the executive
312 director determines that the guardian's proposed registration,
313 including the guardian's credit or criminal investigations,
314 indicates that registering the professional guardian would
315 violate any provision of this chapter. If a guardian's proposed
316 registration is denied, the guardian has standing to seek
317 judicial review of the denial pursuant to chapter 120 ~~If a~~
318 ~~guardian who is currently registered with the office violates a~~
319 ~~provision of this chapter, the executive director of the office~~

Page 11 of 46

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

590-01776-16

2016232c2

320 ~~may suspend or revoke the guardian's registration. If the~~
321 ~~executive director denies registration to a professional~~
322 ~~guardian or suspends or revokes a professional guardian's~~
323 ~~registration, the Statewide Public Guardianship Office must send~~
324 ~~written notification of the denial, suspension, or revocation to~~
325 ~~the chief judge of each judicial circuit in which the guardian~~
326 ~~was serving on the day of the office's decision to deny,~~
327 ~~suspend, or revoke the registration.~~

328 (7) A trust company, a state banking corporation or state
329 savings association authorized and qualified to exercise
330 fiduciary powers in this state, or a national banking
331 association or federal savings and loan association authorized
332 and qualified to exercise fiduciary powers in this state, may,
333 but is not required to, register as a professional guardian
334 under this section. If a trust company, state banking
335 corporation, state savings association, national banking
336 association, or federal savings and loan association described
337 in this subsection elects to register as a professional guardian
338 under this subsection, the requirements of subsections (3) and
339 (4) do not apply and the registration must include only the
340 name, address, and employer identification number of the
341 registrant, the name and address of its registered agent, if
342 any, and the documentation described in paragraph (3)(b).

343 (10) A state college or university or an independent
344 college or university that is located and chartered in Florida,
345 that is accredited by the Commission on Colleges of the Southern
346 Association of Colleges and Schools or the Accrediting Council
347 for Independent Colleges and Schools, and that confers degrees
348 as defined in s. 1005.02(7) may, but is not required to,

Page 12 of 46

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

590-01776-16 2016232c2

349 register as a professional guardian under this section. If a
 350 state college or university or independent college or university
 351 elects to register as a professional guardian under this
 352 subsection, the requirements of subsections (3) and (4) do not
 353 apply and the registration must include only the name, address,
 354 and employer identification number of the registrant.

355 Section 10. Section 744.1085, Florida Statutes, is
 356 renumbered as section 744.2003, Florida Statutes, subsections
 357 (3), (6), and (9) of that section are amended, and subsection
 358 (8) of that section is republished, to read:

359 744.2003 ~~744.1085~~ Regulation of professional guardians;
 360 application; bond required; educational requirements.-

361 (3) Each professional guardian defined in s. 744.102(17)
 362 and public guardian must receive a minimum of 40 hours of
 363 instruction and training. Each professional guardian must
 364 receive a minimum of 16 hours of continuing education every 2
 365 calendar years after the year in which the initial 40-hour
 366 educational requirement is met. The instruction and education
 367 must be completed through a course approved or offered by the
 368 ~~Statewide Public Guardianship Office~~ Office of Public and Professional
 369 Guardians. The expenses incurred to satisfy the educational
 370 requirements prescribed in this section may not be paid with the
 371 assets of any ward. This subsection does not apply to any
 372 attorney who is licensed to practice law in this state or an
 373 institution acting as guardian under s. 744.2002(7).

374 (6) ~~After July 1, 2005,~~ Each professional guardian is shall
 375 ~~be~~ required to demonstrate competency to act as a professional
 376 guardian by taking an examination approved by the Department of
 377 Elderly Affairs.

590-01776-16 2016232c2

378 (a) The Department of Elderly Affairs shall determine the
 379 minimum examination score necessary for passage of guardianship
 380 examinations.

381 (b) The Department of Elderly Affairs shall determine the
 382 procedure for administration of the examination.

383 (c) The Department of Elderly Affairs or its contractor
 384 shall charge an examination fee for the actual costs of the
 385 development and the administration of the examination. The
 386 examination fee for a guardian may, not ~~to~~ exceed \$500.

387 (d) The Department of Elderly Affairs may recognize passage
 388 of a national guardianship examination in lieu of all or part of
 389 the examination approved by the Department of Elderly Affairs,
 390 except that all professional guardians must take and pass an
 391 approved examination section related to Florida law and
 392 procedure.

393 (8) The Department of Elderly Affairs shall waive the
 394 examination requirement in subsection (6) if a professional
 395 guardian can provide:

396 (a) Proof that the guardian has actively acted as a
 397 professional guardian for 5 years or more; and

398 (b) A letter from a circuit judge before whom the
 399 professional guardian practiced at least 1 year which states
 400 that the professional guardian had demonstrated to the court
 401 competency as a professional guardian.

402 (9) ~~After July 1, 2004,~~ The court may shall not appoint any
 403 professional guardian who is has not registered by the Office of
 404 Public and Professional Guardians ~~met the requirements of this~~
 405 ~~section and s. 744.1083.~~

406 Section 11. Section 744.2004, Florida Statutes, is created

590-01776-16

2016232c2

407 to read:

408 744.2004 Complaints; disciplinary proceedings; penalties;
 409 enforcement.

410 (1) By October 1, 2016, the Office of Public and
 411 Professional Guardians shall establish procedures to:

412 (a) Review and, if determined legally sufficient,
 413 investigate any complaint that a professional guardian has
 414 violated the standards of practice established by the Office of
 415 Public and Professional Guardians governing the conduct of
 416 professional guardians. A complaint is legally sufficient if it
 417 contains ultimate facts that show a violation of a standard of
 418 practice by a professional guardian has occurred.

419 (b) Initiate an investigation no later than 10 business
 420 days after the Office of Public and Professional Guardians
 421 receives a complaint.

422 (c) Complete and provide initial investigative findings and
 423 recommendations, if any, to the professional guardian and the
 424 person who filed the complaint within 60 days of receipt.

425 (d) Obtain supporting information or documentation to
 426 determine the legal sufficiency of a complaint.

427 (e) Interview a ward, family member, or interested party to
 428 determine the legal sufficiency of a complaint.

429 (f) Dismiss any complaint if, at any time after legal
 430 sufficiency is determined, it is found there is insufficient
 431 evidence to support the allegations contained in the complaint.

432 (g) Coordinate, to the greatest extent possible, with the
 433 clerks of court to avoid duplication of duties with regard to
 434 the financial audits prepared by the clerks pursuant to s.

435 744.368.

Page 15 of 46

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

590-01776-16

2016232c2

436 (2) The Office of Public and Professional Guardians shall
 437 establish disciplinary proceedings, conduct hearings, and take
 438 administrative action pursuant to chapter 120. Disciplinary
 439 actions may include, but are not limited to, requiring a
 440 professional guardian to participate in additional educational
 441 courses provided or approved by the Office of Public and
 442 Professional Guardians, imposing additional monitoring by the
 443 office of the guardianships to which the professional guardian
 444 is appointed, and suspension or revocation of a professional
 445 guardian's registration.

446 (3) In any disciplinary proceeding that may result in the
 447 suspension or revocation of a professional guardian's
 448 registration, the Department of Elderly Affairs shall provide
 449 the professional guardian and the person who filed the
 450 complaint:

451 (a) A written explanation of how an administrative
 452 complaint is resolved by the disciplinary process.

453 (b) A written explanation of how and when the person may
 454 participate in the disciplinary process.

455 (c) A written notice of any hearing before the Division of
 456 Administrative Hearings at which final agency action may be
 457 taken.

458 (4) If the office makes a final determination to suspend or
 459 revoke the professional guardian's registration, it must provide
 460 such determination to the court of competent jurisdiction for
 461 any guardianship case to which the professional guardian is
 462 currently appointed.

463 (5) If the office determines or has reasonable cause to
 464 suspect that a vulnerable adult has been or is being abused,

Page 16 of 46

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

590-01776-16

2016232c2

465 neglected, or exploited as a result of a filed complaint or
 466 during the course of an investigation of a complaint, it shall
 467 immediately report such determination or suspicion to the
 468 central abuse hotline established and maintained by the
 469 Department of Children and Families pursuant to s. 415.103.

470 (6) By October 1, 2016, the Department of Elderly Affairs
 471 shall adopt rules to implement the provisions of this section.

472 Section 12. Section 744.20041, Florida Statutes, is created
 473 to read:

474 744.20041 Grounds for discipline; penalties; enforcement.—

475 (1) The following acts by a professional guardian shall
 476 constitute grounds for which the disciplinary actions specified
 477 in subsection (2) may be taken:

478 (a) Making misleading, deceptive, or fraudulent
 479 representations in or related to the practice of guardianship.

480 (b) Violating any rule governing guardians or guardianships
 481 adopted by the Office of Public and Professional Guardians.

482 (c) Being convicted or found guilty of, or entering a plea
 483 of guilty or nolo contendere to, regardless of adjudication, a
 484 crime in any jurisdiction which relates to the practice of or
 485 the ability to practice as a professional guardian.

486 (d) Failing to comply with the educational course
 487 requirements contained in s. 744.2003.

488 (e) Having a registration, a license, or the authority to
 489 practice a regulated profession revoked, suspended, or otherwise
 490 acted against, including the denial of registration or
 491 licensure, by the registering or licensing authority of any
 492 jurisdiction, including its agencies or subdivisions, for a
 493 violation under Florida law. The registering or licensing

590-01776-16

2016232c2

494 authority's acceptance of a relinquishment of registration or
 495 licensure, stipulation, consent order, or other settlement
 496 offered in response to or in anticipation of the filing of
 497 charges against the registration or license shall be construed
 498 as an action against the registration or license.

499 (f) Knowingly filing a false report or complaint with the
 500 Office of Public and Professional Guardians against another
 501 guardian.

502 (g) Attempting to obtain, obtaining, or renewing a
 503 registration or license to practice a profession by bribery, by
 504 fraudulent misrepresentation, or as a result of an error by the
 505 Office of Public and Professional Guardians which is known and
 506 not disclosed to the Office of Public and Professional
 507 Guardians.

508 (h) Failing to report to the Office of Public and
 509 Professional Guardians any person who the professional guardian
 510 knows is in violation of this chapter or the rules of the Office
 511 of Public and Professional Guardians.

512 (i) Failing to perform any statutory or legal obligation
 513 placed upon a professional guardian.

514 (j) Making or filing a report or record that the
 515 professional guardian knows to be false, intentionally or
 516 negligently failing to file a report or record required by state
 517 or federal law, or willfully impeding or obstructing another
 518 person's attempt to do so. Such reports or records shall include
 519 only those that are signed in the guardian's capacity as a
 520 professional guardian.

521 (k) Using the position of guardian for the purpose of
 522 financial gain by a professional guardian or a third party,

590-01776-16

2016232c2

523 other than the funds awarded to the professional guardian by the
 524 court pursuant to s. 744.108.

525 (l) Violating a lawful order of the Office of Public and
 526 Professional Guardians or failing to comply with a lawfully
 527 issued subpoena of the Office of Public and Professional
 528 Guardians.

529 (m) Improperly interfering with an investigation or
 530 inspection authorized by statute or rule or with any
 531 disciplinary proceeding.

532 (n) Using the guardian relationship to engage or attempt to
 533 engage the ward, or an immediate family member or a
 534 representative of the ward, in verbal, written, electronic, or
 535 physical sexual activity.

536 (o) Failing to report to the Office of Public and
 537 Professional Guardians in writing within 30 days after being
 538 convicted or found guilty of, or entered a plea of nolo
 539 contendere to, regardless of adjudication, a crime in any
 540 jurisdiction.

541 (p) Being unable to perform the functions of a professional
 542 guardian with reasonable skill by reason of illness or use of
 543 alcohol, drugs, narcotics, chemicals, or any other type of
 544 substance or as a result of any mental or physical condition.

545 (q) Failing to post and maintain a blanket fiduciary bond
 546 pursuant to s. 744.1085.

547 (r) Failing to maintain all records pertaining to a
 548 guardianship for a reasonable time after the court has closed
 549 the guardianship matter.

550 (s) Violating any provision of this chapter or any rule
 551 adopted pursuant thereto.

590-01776-16

2016232c2

552 (2) When the Office of Public and Professional Guardians
 553 finds a professional guardian guilty of violating subsection
 554 (1), it may enter an order imposing one or more of the following
 555 penalties:

556 (a) Refusal to register an applicant as a professional
 557 guardian.

558 (b) Suspension or permanent revocation of a professional
 559 guardian's registration.

560 (c) Issuance of a reprimand or letter of concern.

561 (d) Requirement that the professional guardian undergo
 562 treatment, attend continuing education courses, submit to
 563 reexamination, or satisfy any terms that are reasonably tailored
 564 to the violations found.

565 (e) Requirement that the professional guardian pay
 566 restitution of any funds obtained, disbursed, or obtained
 567 through a violation of any statute, rule, or other legal
 568 authority to a ward or the ward's estate, if applicable.

569 (f) Requirement that the professional guardian undergo
 570 remedial education.

571 (3) In determining what action is appropriate, the Office
 572 of Public and Professional Guardians must first consider what
 573 sanctions are necessary to safeguard wards and to protect the
 574 public. Only after those sanctions have been imposed may the
 575 Office of Public and Professional Guardians consider and include
 576 in the order requirements designed to mitigate the circumstances
 577 and rehabilitate the professional guardian.

578 (4) The Office of Public and Professional Guardians shall
 579 adopt by rule and periodically review the disciplinary
 580 guidelines applicable to each ground for disciplinary action

590-01776-16

2016232c2

581 that may be imposed by the Office of Public and Professional
 582 Guardians pursuant to this chapter.

583 (5) It is the intent of the Legislature that the
 584 disciplinary guidelines specify a meaningful range of designated
 585 penalties based upon the severity and repetition of specific
 586 offenses and that minor violations be distinguished from those
 587 which endanger the health, safety, or welfare of a ward or the
 588 public; that such guidelines provide reasonable and meaningful
 589 notice to the public of likely penalties that may be imposed for
 590 proscribed conduct; and that such penalties be consistently
 591 applied by the Office of Public and Professional Guardians.

592 (6) The Office of Public and Professional Guardians shall
 593 by rule designate possible mitigating and aggravating
 594 circumstances and the variation and range of penalties permitted
 595 for such circumstances.

596 (a) An administrative law judge, in recommending penalties
 597 in any recommended order, must follow the disciplinary
 598 guidelines established by the Office of Public and Professional
 599 Guardians and must state in writing any mitigating or
 600 aggravating circumstance upon which a recommended penalty is
 601 based if such circumstance causes the administrative law judge
 602 to recommend a penalty other than that provided in the
 603 disciplinary guidelines.

604 (b) The Office of Public and Professional Guardians may
 605 impose a penalty other than those provided for in the
 606 disciplinary guidelines upon a specific finding in the final
 607 order of mitigating or aggravating circumstances.

608 (7) In addition to, or in lieu of, any other remedy or
 609 criminal prosecution, the Office of Public and Professional

590-01776-16

2016232c2

610 Guardians may file a proceeding in the name of the state seeking
 611 issuance of an injunction or a writ of mandamus against any
 612 person who violates any provision of this chapter or any
 613 provision of law with respect to professional guardians or the
 614 rules adopted pursuant thereto.

615 (8) Notwithstanding chapter 120, if the Office of Public
 616 and Professional Guardians determines that revocation of a
 617 professional guardian's registration is the appropriate penalty,
 618 the revocation is permanent.

619 (9) If the Office of Public and Professional Guardians
 620 makes a final determination to suspend or revoke the
 621 professional guardian's registration, the office must provide
 622 the determination to the court of competent jurisdiction for any
 623 guardianship case to which the professional guardian is
 624 currently appointed.

625 (10) The purpose of this section is to facilitate uniform
 626 discipline for those actions made punishable under this section
 627 and, to this end, a reference to this section constitutes a
 628 general reference under the doctrine of incorporation by
 629 reference.

630 (11) The Office of Public and Professional Guardians shall
 631 adopt rules to administer this section.

632 Section 13. Section 744.344, Florida Statutes, is
 633 renumbered as section 744.2005, Florida Statutes, and amended to
 634 read:

635 744.2005 744.344 Order of appointment.—

636 (1) The court may hear testimony on the question of who is
 637 entitled to preference in the appointment of a guardian. Any
 638 interested person may intervene in the proceedings.

590-01776-16

2016232c2

639 (2) The order appointing a guardian must state the nature
 640 of the guardianship as either plenary or limited. If limited,
 641 the order must state that the guardian may exercise only those
 642 delegable rights which have been removed from the incapacitated
 643 person and specifically delegated to the guardian. The order
 644 shall state the specific powers and duties of the guardian.

645 (3)(2) The order appointing a guardian must be consistent
 646 with the incapacitated person's welfare and safety, must be the
 647 least restrictive appropriate alternative, and must reserve to
 648 the incapacitated person the right to make decisions in all
 649 matters commensurate with the person's ability to do so.

650 (4)(3) If a petition for appointment of a guardian has been
 651 filed, an order appointing a guardian must be issued
 652 contemporaneously with the order adjudicating the person
 653 incapacitated. The order must specify the amount of the bond to
 654 be given by the guardian and must state specifically whether the
 655 guardian must place all, or part, of the property of the ward in
 656 a restricted account in a financial institution designated
 657 pursuant to s. 69.031.

658 (5)(4) If a petition for the appointment of a guardian has
 659 not been filed or ruled upon at the time of the hearing on the
 660 petition to determine capacity, the court may appoint an
 661 emergency temporary guardian in the manner and for the purposes
 662 specified in s. 744.3031.

663 (6)(5) A plenary guardian shall exercise all delegable
 664 rights and powers of the incapacitated person.

665 (7)(6) A person for whom a limited guardian has been
 666 appointed retains all legal rights except those that ~~which~~ have
 667 been specifically granted to the guardian in the court's written

Page 23 of 46

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

590-01776-16

2016232c2

668 order.

669 Section 14. Section 744.703, Florida Statutes, is
 670 renumbered as section 744.2006, Florida Statutes, and
 671 subsections (1) and (6) of that section are amended, to read:

672 744.2006 ~~744.703~~ Office of Public and Professional
 673 Guardians ~~guardian~~; appointment, notification.—

674 (1) The executive director of the ~~Statewide Public~~
 675 ~~Guardianship~~ Office of Public and Professional Guardians, after
 676 consultation with the chief judge and other circuit judges
 677 within the judicial circuit and with appropriate advocacy groups
 678 and individuals and organizations who are knowledgeable about
 679 the needs of incapacitated persons, may establish, within a
 680 county in the judicial circuit or within the judicial circuit,
 681 one or more offices of public guardian and if so established,
 682 shall create a list of persons best qualified to serve as the
 683 public guardian, who have been investigated pursuant to s.
 684 744.3135. The public guardian must have knowledge of the legal
 685 process and knowledge of social services available to meet the
 686 needs of incapacitated persons. The public guardian shall
 687 maintain a staff or contract with professionally qualified
 688 individuals to carry out the guardianship functions, including
 689 an attorney who has experience in probate areas and another
 690 person who has a master's degree in social work, or a
 691 gerontologist, psychologist, registered nurse, or nurse
 692 practitioner. A public guardian that is a nonprofit corporate
 693 guardian under s. 744.309(5) must receive tax-exempt status from
 694 the United States Internal Revenue Service.

695 (6) Public guardians who have been previously appointed by
 696 a chief judge prior to the effective date of this act pursuant

Page 24 of 46

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

590-01776-16

2016232c2

697 to this section may continue in their positions until the
 698 expiration of their term pursuant to their agreement. However,
 699 oversight of all public guardians shall transfer to the
 700 ~~Statewide Public Guardianship Office of Public and Professional~~
 701 ~~Guardians~~ upon the effective date of this act. The executive
 702 director of the ~~Statewide Public Guardianship Office of Public~~
 703 ~~and Professional Guardians~~ shall be responsible for all future
 704 appointments of public guardians pursuant to this act.

705 Section 15. Section 744.704, Florida Statutes, is
 706 renumbered as section 744.2007, Florida Statutes.

707 Section 16. Section 744.705, Florida Statutes, is
 708 renumbered as section 744.2008, Florida Statutes.

709 Section 17. Section 744.706, Florida Statutes, is
 710 renumbered as section 744.2009, Florida Statutes, and amended to
 711 read:

712 744.2009 ~~744.706~~ Preparation of budget.—Each public
 713 guardian, whether funded in whole or in part by money raised
 714 through local efforts, grants, or any other source or whether
 715 funded in whole or in part by the state, shall prepare a budget
 716 for the operation of the office of public guardian to be
 717 submitted to the ~~Statewide Public Guardianship Office of Public~~
 718 ~~and Professional Guardians~~. As appropriate, the ~~Statewide Public~~
 719 ~~Guardianship Office of Public and Professional Guardians~~ will
 720 include such budgetary information in the Department of Elderly
 721 Affairs' legislative budget request. The office of public
 722 guardian shall be operated within the limitations of the General
 723 Appropriations Act and any other funds appropriated by the
 724 Legislature to that particular judicial circuit, subject to the
 725 provisions of chapter 216. The Department of Elderly Affairs

590-01776-16

2016232c2

726 shall make a separate and distinct request for an appropriation
 727 for the ~~Statewide Public Guardianship Office of Public and~~
 728 ~~Professional Guardians~~. However, this section may ~~shall~~ not be
 729 construed to preclude the financing of any operations of the
 730 office of ~~the~~ public guardian by moneys raised through local
 731 effort or through the efforts of the ~~Statewide Public~~
 732 ~~Guardianship Office of Public and Professional Guardians~~.

733 Section 18. Section 744.707, Florida Statutes, is
 734 renumbered as section 744.2101, Florida Statutes, and amended to
 735 read:

736 744.2101 ~~744.707~~ Procedures and rules.—The public guardian,
 737 subject to the oversight of the ~~Statewide Public Guardianship~~
 738 ~~Office of Public and Professional Guardians~~, is authorized to:

739 (1) Formulate and adopt necessary procedures to assure the
 740 efficient conduct of the affairs of the ward and general
 741 administration of the office and staff.

742 (2) Contract for services necessary to discharge the duties
 743 of the office.

744 (3) Accept the services of volunteer persons or
 745 organizations and provide reimbursement for proper and necessary
 746 expenses.

747 Section 19. Section 744.709, Florida Statutes, is
 748 renumbered as section 744.2102, Florida Statutes.

749 Section 20. Section 744.708, Florida Statutes, is
 750 renumbered as section 744.2103, Florida Statutes, and
 751 subsections (3), (4), (5), and (7) of that section are amended,
 752 to read:

753 744.2103 ~~744.708~~ Reports and standards.—

754 (3) A public guardian shall file an annual report on the

590-01776-16

2016232c2

755 operations of the office of public guardian, in writing, by
 756 September 1 for the preceding fiscal year with the ~~Statewide~~
 757 ~~Public Guardianship Office of Public and Professional Guardians,~~
 758 which shall have responsibility for supervision of the
 759 operations of the office of public guardian.

760 (4) Within 6 months of his or her appointment as guardian
 761 of a ward, the public guardian shall submit to the clerk of the
 762 court for placement in the ward's guardianship file and to the
 763 executive director of the ~~Statewide Public Guardianship Office~~
 764 of Public and Professional Guardians a report on his or her
 765 efforts to locate a family member or friend, other person, bank,
 766 or corporation to act as guardian of the ward and a report on
 767 the ward's potential to be restored to capacity.

768 (5) (a) Each office of public guardian shall undergo an
 769 independent audit by a qualified certified public accountant at
 770 least once every 2 years. A copy of the audit report shall be
 771 submitted to the ~~Statewide Public Guardianship Office of Public~~
 772 and Professional Guardians.

773 (b) In addition to regular monitoring activities, the
 774 ~~Statewide Public Guardianship Office of Public and Professional~~
 775 Guardians shall conduct an investigation into the practices of
 776 each office of public guardian related to the managing of each
 777 ward's personal affairs and property. If feasible, the
 778 investigation shall be conducted in conjunction with the
 779 financial audit of each office of public guardian under
 780 paragraph (a).

781 (7) The ratio for professional staff to wards shall be 1
 782 professional to 40 wards. The ~~Statewide Public Guardianship~~
 783 Office of Public and Professional Guardians may increase or

590-01776-16

2016232c2

784 decrease the ratio after consultation with the local public
 785 guardian and the chief judge of the circuit court. The basis for
 786 the decision to increase or decrease the prescribed ratio must
 787 be included in the annual report to the secretary.

788 Section 21. Section 744.7081, Florida Statutes, is
 789 renumbered as section 744.2104, Florida Statutes, and amended to
 790 read:

791 744.2104 ~~744.7081~~ Access to records by the Statewide Public
 792 Guardianship Office of Public and Professional Guardians;
 793 confidentiality.-

794 (1) Notwithstanding any other provision of law to the
 795 contrary, any medical, financial, or mental health records held
 796 by an agency, or the court and its agencies, or financial audits
 797 prepared by the clerk of the court pursuant to s. 744.368 and
 798 held by the court, which are necessary as part of an
 799 investigation of a guardian as a result of a complaint filed
 800 with the Office of Public and Professional Guardians to evaluate
 801 the public guardianship system, to assess the need for
 802 additional public guardianship, or to develop required reports,
 803 shall be provided to the ~~Statewide Public Guardianship Office of~~
 804 Public and Professional Guardians upon that office's request.
 805 Any confidential or exempt information provided to the ~~Statewide~~
 806 ~~Public Guardianship Office of Public and Professional Guardians~~
 807 shall continue to be held confidential or exempt as otherwise
 808 provided by law.

809 (2) All records held by the ~~Statewide Public Guardianship~~
 810 Office of Public and Professional Guardians relating to the
 811 medical, financial, or mental health of vulnerable adults as
 812 defined in chapter 415, persons with a developmental disability

590-01776-16

2016232c2

813 as defined in chapter 393, or persons with a mental illness as
814 defined in chapter 394, shall be confidential and exempt from s.
815 119.07(1) and s. 24(a), Art. I of the State Constitution.

816 Section 22. Section 744.7082, Florida Statutes, is
817 renumbered as section 744.2105, Florida Statutes, and
818 subsections (1) through (5) and (8) of that section are amended,
819 to read:

820 744.2105 ~~744.7082~~ Direct-support organization; definition;
821 use of property; board of directors; audit; dissolution.-

822 (1) DEFINITION.—As used in this section, the term "direct-
823 support organization" means an organization whose sole purpose
824 is to support the ~~Statewide Public Guardianship Office of Public~~
825 and Professional Guardians and is:

826 (a) A not-for-profit corporation incorporated under chapter
827 617 and approved by the Department of State;

828 (b) Organized and operated to conduct programs and
829 activities; to raise funds; to request and receive grants,
830 gifts, and bequests of moneys; to acquire, receive, hold,
831 invest, and administer, in its own name, securities, funds,
832 objects of value, or other property, real or personal; and to
833 make expenditures to or for the direct or indirect benefit of
834 the ~~Statewide Public Guardianship Office of Public and~~
835 Professional Guardians; and

836 (c) Determined by the ~~Statewide Public Guardianship Office~~
837 of Public and Professional Guardians to be consistent with the
838 goals of the office, in the best interests of the state, and in
839 accordance with the adopted goals and mission of the Department
840 of Elderly Affairs and the ~~Statewide Public Guardianship Office~~
841 of Public and Professional Guardians.

590-01776-16

2016232c2

842 (2) CONTRACT.—The direct-support organization shall operate
843 under a written contract with the ~~Statewide Public Guardianship~~
844 Office of Public and Professional Guardians. The written
845 contract must provide for:

846 (a) Certification by the ~~Statewide Public Guardianship~~
847 Office of Public and Professional Guardians that the direct-
848 support organization is complying with the terms of the contract
849 and is doing so consistent with the goals and purposes of the
850 office and in the best interests of the state. This
851 certification must be made annually and reported in the official
852 minutes of a meeting of the direct-support organization.

853 (b) The reversion of moneys and property held in trust by
854 the direct-support organization:

855 1. To the ~~Statewide Public Guardianship Office of Public~~
856 and Professional Guardians if the direct-support organization is
857 no longer approved to operate for the office;

858 2. To the ~~Statewide Public Guardianship Office of Public~~
859 and Professional Guardians if the direct-support organization
860 ceases to exist;

861 3. To the Department of Elderly Affairs if the ~~Statewide~~
862 Public Guardianship Office of Public and Professional Guardians
863 ceases to exist; or

864 4. To the state if the Department of Elderly Affairs ceases
865 to exist.

866
867 The fiscal year of the direct-support organization shall begin
868 on July 1 of each year and end on June 30 of the following year.

869 (c) The disclosure of the material provisions of the
870 contract, and the distinction between the ~~Statewide Public~~

590-01776-16 2016232c2

871 ~~Guardianship~~ Office of Public and Professional Guardians and the
 872 direct-support organization, to donors of gifts, contributions,
 873 or bequests, including such disclosure on all promotional and
 874 fundraising publications.

875 (3) BOARD OF DIRECTORS.—The Secretary of Elderly Affairs
 876 shall appoint a board of directors for the direct-support
 877 organization from a list of nominees submitted by the executive
 878 director of the ~~Statewide Public Guardianship~~ Office of Public
 879 and Professional Guardians.

880 (4) USE OF PROPERTY.—The Department of Elderly Affairs may
 881 permit, without charge, appropriate use of fixed property and
 882 facilities of the department or the ~~Statewide Public~~
 883 ~~Guardianship~~ Office of Public and Professional Guardians by the
 884 direct-support organization. The department may prescribe any
 885 condition with which the direct-support organization must comply
 886 in order to use fixed property or facilities of the department
 887 or the ~~Statewide Public Guardianship~~ Office of Public and
 888 Professional Guardians.

889 (5) MONEYS.—Any moneys may be held in a separate depository
 890 account in the name of the direct-support organization and
 891 subject to the provisions of the written contract with the
 892 ~~Statewide Public Guardianship~~ Office of Public and Professional
 893 Guardians. Expenditures of the direct-support organization shall
 894 be expressly used to support the ~~Statewide Public Guardianship~~
 895 Office of Public and Professional Guardians. The expenditures of
 896 the direct-support organization may not be used for the purpose
 897 of lobbying as defined in s. 11.045.

898 (8) DISSOLUTION.—~~A~~ After July 1, 2004, any not-for-profit
 899 corporation incorporated under chapter 617 that is determined by

590-01776-16 2016232c2

900 a circuit court to be representing itself as a direct-support
 901 organization created under this section, but that does not have
 902 a written contract with the ~~Statewide Public Guardianship~~ Office
 903 of Public and Professional Guardians in compliance with this
 904 section, is considered to meet the grounds for a judicial
 905 dissolution described in s. 617.1430(1)(a). The ~~Statewide Public~~
 906 ~~Guardianship~~ Office of Public and Professional Guardians shall
 907 be the recipient for all assets held by the dissolved
 908 corporation which accrued during the period that the dissolved
 909 corporation represented itself as a direct-support organization
 910 created under this section.

911 Section 23. Section 744.712, Florida Statutes, is
 912 renumbered as section 744.2106, Florida Statutes, and amended to
 913 read:

914 744.2106 ~~744.712~~ Joining Forces for Public Guardianship
 915 grant program; purpose.—The Legislature establishes the Joining
 916 Forces for Public Guardianship matching grant program for the
 917 purpose of assisting counties to establish and fund community-
 918 supported public guardianship programs. The Joining Forces for
 919 Public Guardianship matching grant program shall be established
 920 and administered by the ~~Statewide Public Guardianship~~ Office of
 921 Public and Professional Guardians within the Department of
 922 Elderly Affairs. The purpose of the program is to provide
 923 startup funding to encourage communities to develop and
 924 administer locally funded and supported public guardianship
 925 programs to address the needs of indigent and incapacitated
 926 residents.

927 (1) The ~~Statewide Public Guardianship~~ Office of Public and
 928 Professional Guardians may distribute the grant funds as

590-01776-16

2016232c2

929 follows:

930 (a) As initial startup funding to encourage counties that
 931 have no office of public guardian to establish an office, or as
 932 initial startup funding to open an additional office of public
 933 guardian within a county whose public guardianship needs require
 934 more than one office of public guardian.

935 (b) As support funding to operational offices of public
 936 guardian that demonstrate a necessity for funds to meet the
 937 public guardianship needs of a particular geographic area in the
 938 state which the office serves.

939 (c) To assist counties that have an operating public
 940 guardianship program but that propose to expand the geographic
 941 area or population of persons they serve, or to develop and
 942 administer innovative programs to increase access to public
 943 guardianship in this state.

944
 945 Notwithstanding this subsection, the executive director of the
 946 office may award emergency grants if he or she determines that
 947 the award is in the best interests of public guardianship in
 948 this state. Before making an emergency grant, the executive
 949 director must obtain the written approval of the Secretary of
 950 Elderly Affairs. Subsections (2), (3), and (4) do not apply to
 951 the distribution of emergency grant funds.

952 (2) One or more grants may be awarded within a county.
 953 However, a county may not receive an award that equals, or
 954 multiple awards that cumulatively equal, more than 20 percent of
 955 the total amount of grant funds appropriated during any fiscal
 956 year.

957 (3) If an applicant is eligible and meets the requirements

590-01776-16

2016232c2

958 to receive grant funds more than once, the ~~Statewide Public~~
 959 ~~Guardianship Office~~ of Public and Professional Guardians shall
 960 award funds to prior awardees in the following manner:

961 (a) In the second year that grant funds are awarded, the
 962 cumulative sum of the award provided to one or more applicants
 963 within the same county may not exceed 75 percent of the total
 964 amount of grant funds awarded within that county in year one.

965 (b) In the third year that grant funds are awarded, the
 966 cumulative sum of the award provided to one or more applicants
 967 within the same county may not exceed 60 percent of the total
 968 amount of grant funds awarded within that county in year one.

969 (c) In the fourth year that grant funds are awarded, the
 970 cumulative sum of the award provided to one or more applicants
 971 within the same county may not exceed 45 percent of the total
 972 amount of grant funds awarded within that county in year one.

973 (d) In the fifth year that grant funds are awarded, the
 974 cumulative sum of the award provided to one or more applicants
 975 within the same county may not exceed 30 percent of the total
 976 amount of grant funds awarded within that county in year one.

977 (e) In the sixth year that grant funds are awarded, the
 978 cumulative sum of the award provided to one or more applicants
 979 within the same county may not exceed 15 percent of the total
 980 amount of grant funds awarded within that county in year one.

981
 982 The ~~Statewide Public Guardianship~~ Office of Public and
 983 Professional Guardians may not award grant funds to any
 984 applicant within a county that has received grant funds for more
 985 than 6 years.

986 (4) Grant funds shall be used only to provide direct

590-01776-16 2016232c2

987 services to indigent wards, except that up to 10 percent of the
988 grant funds may be retained by the awardee for administrative
989 expenses.

990 (5) Implementation of the program is subject to a specific
991 appropriation by the Legislature in the General Appropriations
992 Act.

993 Section 24. Section 744.713, Florida Statutes, is
994 renumbered as section 744.2107, Florida Statutes, and amended to
995 read:

996 744.2107 ~~744.713~~ Program administration; duties of the
997 ~~Statewide Public Guardianship Office of Public and Professional~~
998 ~~Guardians.~~ The Statewide Public Guardianship Office of Public
999 and Professional Guardians shall administer the grant program.
1000 The office shall:

1001 (1) Publicize the availability of grant funds to entities
1002 that may be eligible for the funds.

1003 (2) Establish an application process for submitting a grant
1004 proposal.

1005 (3) Request, receive, and review proposals from applicants
1006 seeking grant funds.

1007 (4) Determine the amount of grant funds each awardee may
1008 receive and award grant funds to applicants.

1009 (5) Develop a monitoring process to evaluate grant
1010 awardees, which may include an annual monitoring visit to each
1011 awardee's local office.

1012 (6) Ensure that persons or organizations awarded grant
1013 funds meet and adhere to the requirements of this act.

1014 Section 25. Section 744.714, Florida Statutes, is
1015 renumbered as section 744.2108, Florida Statutes, and paragraph

590-01776-16 2016232c2

1016 (b) of subsection (1) and paragraph (b) of subsection (2) of
1017 that section are amended, to read:

1018 744.2108 ~~744.714~~ Eligibility.—

1019 (1) Any person or organization that has not been awarded a
1020 grant must meet all of the following conditions to be eligible
1021 to receive a grant:

1022 (b) The applicant must have already been appointed by, or
1023 is pending appointment by, the ~~Statewide Public Guardianship~~
1024 Office of Public and Professional Guardians to become an office
1025 of public guardian in this state.

1026 (2) Any person or organization that has been awarded a
1027 grant must meet all of the following conditions to be eligible
1028 to receive another grant:

1029 (b) The applicant must have been appointed by, or is
1030 pending reappointment by, the ~~Statewide Public Guardianship~~
1031 Office of Public and Professional Guardians to be an office of
1032 public guardian in this state.

1033 Section 26. Section 744.715, Florida Statutes, is
1034 renumbered as section 744.2109, Florida Statutes, and amended to
1035 read:

1036 744.2109 ~~744.715~~ Grant application requirements; review
1037 criteria; awards process.—Grant applications must be submitted
1038 to the ~~Statewide Public Guardianship~~ Office of Public and
1039 Professional Guardians for review and approval.

1040 (1) A grant application must contain:

1041 (a) The specific amount of funds being requested.

1042 (b) The proposed annual budget for the office of public
1043 guardian for which the applicant is applying on behalf of,
1044 including all sources of funding, and a detailed report of

590-01776-16 2016232c2

1045 proposed expenditures, including administrative costs.

1046 (c) The total number of wards the applicant intends to

1047 serve during the grant period.

1048 (d) Evidence that the applicant has:

1049 1. Attempted to procure funds and has exhausted all

1050 possible other sources of funding; or

1051 2. Procured funds from local sources, but the total amount

1052 of the funds collected or pledged is not sufficient to meet the

1053 need for public guardianship in the geographic area that the

1054 applicant intends to serve.

1055 (e) An agreement or confirmation from a local funding

1056 source, such as a county, municipality, or any other public or

1057 private organization, that the local funding source will

1058 contribute matching funds to the public guardianship program

1059 totaling not less than \$1 for every \$1 of grant funds awarded.

1060 For purposes of this section, an applicant may provide evidence

1061 of agreements or confirmations from multiple local funding

1062 sources showing that the local funding sources will pool their

1063 contributed matching funds to the public guardianship program

1064 for a combined total of not less than \$1 for every \$1 of grant

1065 funds awarded. In-kind contributions, such as materials,

1066 commodities, office space, or other types of facilities,

1067 personnel services, or other items as determined by rule shall

1068 be considered by the office and may be counted as part or all of

1069 the local matching funds.

1070 (f) A detailed plan describing how the office of public

1071 guardian for which the applicant is applying on behalf of will

1072 be funded in future years.

1073 (g) Any other information determined by rule as necessary

Page 37 of 46

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

590-01776-16 2016232c2

1074 to assist in evaluating grant applicants.

1075 (2) If the ~~Statewide Public Guardianship~~ Office of Public

1076 and Professional Guardians determines that an applicant meets

1077 the requirements for an award of grant funds, the office may

1078 award the applicant any amount of grant funds the executive

1079 director deems appropriate, if the amount awarded meets the

1080 requirements of this act. The office may adopt a rule allocating

1081 the maximum allowable amount of grant funds which may be

1082 expended on any ward.

1083 (3) A grant awardee must submit a new grant application for

1084 each year of additional funding.

1085 (4) (a) In the first year of the Joining Forces for Public

1086 Guardianship program's existence, the ~~Statewide Public~~

1087 Guardianship Office of Public and Professional Guardians shall

1088 give priority in awarding grant funds to those entities that:

1089 1. Are operating as appointed offices of public guardians

1090 in this state;

1091 2. Meet all of the requirements for being awarded a grant

1092 under this act; and

1093 3. Demonstrate a need for grant funds during the current

1094 fiscal year due to a loss of local funding formerly raised

1095 through court filing fees.

1096 (b) In each fiscal year after the first year that grant

1097 funds are distributed, the ~~Statewide Public Guardianship~~ Office

1098 of Public and Professional Guardians may give priority to

1099 awarding grant funds to those entities that:

1100 1. Meet all of the requirements of this section and ss.

1101 744.2106, 744.2107, and 744.2108 ~~this act~~ for being awarded

1102 grant funds; and

Page 38 of 46

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

590-01776-16

2016232c2

1103 2. Submit with their application an agreement or
 1104 confirmation from a local funding source, such as a county,
 1105 municipality, or any other public or private organization, that
 1106 the local funding source will contribute matching funds totaling
 1107 an amount equal to or exceeding \$2 for every \$1 of grant funds
 1108 awarded by the office. An entity may submit with its application
 1109 agreements or confirmations from multiple local funding sources
 1110 showing that the local funding sources will pool their
 1111 contributed matching funds to the public guardianship program
 1112 for a combined total of not less than \$2 for every \$1 of grant
 1113 funds awarded. In-kind contributions allowable under this
 1114 section shall be evaluated by the ~~Statewide Public Guardianship~~
 1115 Office of Public and Professional Guardians and may be counted
 1116 as part or all of the local matching funds.

1117 Section 27. Subsection (3), paragraph (c) of subsection
 1118 (4), and subsections (5) and (6) of section 744.3135, Florida
 1119 Statutes, are amended to read:

1120 744.3135 Credit and criminal investigation.—

1121 (3) For professional guardians, the court and the ~~Statewide~~
 1122 ~~Public Guardianship~~ Office of Public and Professional Guardians
 1123 shall accept the satisfactory completion of a criminal history
 1124 record check by any method described in this subsection. A
 1125 professional guardian satisfies the requirements of this section
 1126 by undergoing an electronic fingerprint criminal history record
 1127 check. A professional guardian may use any electronic
 1128 fingerprinting equipment used for criminal history record
 1129 checks. By October 1, 2016, the ~~Statewide Public Guardianship~~
 1130 Office of Public and Professional Guardians shall adopt a rule
 1131 detailing the acceptable methods for completing an electronic

590-01776-16

2016232c2

1132 fingerprint criminal history record check under this section.
 1133 The professional guardian shall pay the actual costs incurred by
 1134 the Federal Bureau of Investigation and the Department of Law
 1135 Enforcement for the criminal history record check. The entity
 1136 completing the record check must immediately send the results of
 1137 the criminal history record check to the clerk of the court and
 1138 the ~~Statewide Public Guardianship~~ Office of Public and
 1139 Professional Guardians. The clerk of the court shall maintain
 1140 the results in the professional guardian's file and shall make
 1141 the results available to the court.

1142 (4)

1143 (c) The Department of Law Enforcement shall search all
 1144 arrest fingerprints received under s. 943.051 against the
 1145 fingerprints retained in the statewide automated biometric
 1146 identification system under paragraph (b). Any arrest record
 1147 that is identified with the fingerprints of a person described
 1148 in this paragraph must be reported to the clerk of court. The
 1149 clerk of court must forward any arrest record received for a
 1150 professional guardian to the ~~Statewide Public Guardianship~~
 1151 Office of Public and Professional Guardians within 5 days. Each
 1152 professional guardian who elects to submit fingerprint
 1153 information electronically shall participate in this search
 1154 process by paying an annual fee to the ~~Statewide Public~~
 1155 ~~Guardianship~~ Office of Public and Professional Guardians of the
 1156 Department of Elderly Affairs and by informing the clerk of
 1157 court and the ~~Statewide Public Guardianship~~ Office of Public and
 1158 Professional Guardians of any change in the status of his or her
 1159 guardianship appointment. The amount of the annual fee to be
 1160 imposed for performing these searches and the procedures for the

590-01776-16

2016232c2

1161 retention of professional guardian fingerprints and the
 1162 dissemination of search results shall be established by rule of
 1163 the Department of Law Enforcement. At least once every 5 years,
 1164 the ~~Statewide Public Guardianship Office of Public and~~
 1165 Professional Guardians must request that the Department of Law
 1166 Enforcement forward the fingerprints maintained under this
 1167 section to the Federal Bureau of Investigation.

1168 (5) (a) A professional guardian, and each employee of a
 1169 professional guardian who has a fiduciary responsibility to a
 1170 ward, must complete, at his or her own expense, an investigation
 1171 of his or her credit history before and at least once every 2
 1172 years after the date of the guardian's registration with the
 1173 ~~Statewide Public Guardianship Office of Public and Professional~~
 1174 Guardians.

1175 (b) By October 1, 2016, the Statewide Public Guardianship
 1176 Office of Public and Professional Guardians shall adopt a rule
 1177 detailing the acceptable methods for completing a credit
 1178 investigation under this section. If appropriate, the ~~Statewide~~
 1179 ~~Public Guardianship Office of Public and Professional Guardians~~
 1180 may administer credit investigations. If the office chooses to
 1181 administer the credit investigation, the office may adopt a rule
 1182 setting a fee, not to exceed \$25, to reimburse the costs
 1183 associated with the administration of a credit investigation.

1184 (6) The ~~Statewide Public Guardianship Office of Public and~~
 1185 Professional Guardians may inspect at any time the results of
 1186 any credit or criminal history record check of a public or
 1187 professional guardian conducted under this section. The office
 1188 shall maintain copies of the credit or criminal history record
 1189 check results in the guardian's registration file. If the

Page 41 of 46

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

590-01776-16

2016232c2

1190 results of a credit or criminal investigation of a public or
 1191 professional guardian have not been forwarded to the ~~Statewide~~
 1192 ~~Public Guardianship Office of Public and Professional Guardians~~
 1193 by the investigating agency, the clerk of the court shall
 1194 forward copies of the results of the investigations to the
 1195 office upon receiving them.

1196 Section 28. Section 744.701, Florida Statutes, is repealed.

1197 Section 29. Section 744.702, Florida Statutes, is repealed.

1198 Section 30. Section 744.7101, Florida Statutes, is
 1199 repealed.

1200 Section 31. Section 744.711, Florida Statutes, is repealed.

1201 Section 32. Subsection (5) of section 400.148, Florida
 1202 Statutes, is amended to read:

1203 400.148 Medicaid "Up-or-Out" Quality of Care Contract
 1204 Management Program.—

1205 (5) The agency shall, jointly with the ~~Statewide Public~~
 1206 ~~Guardianship Office of Public and Professional Guardians~~,
 1207 develop a system in the pilot project areas to identify Medicaid
 1208 recipients who are residents of a participating nursing home or
 1209 assisted living facility who have diminished ability to make
 1210 their own decisions and who do not have relatives or family
 1211 available to act as guardians in nursing homes listed on the
 1212 Nursing Home Guide Watch List. The agency and the ~~Statewide~~
 1213 ~~Public Guardianship Office of Public and Professional Guardians~~
 1214 shall give such residents priority for publicly funded
 1215 guardianship services.

1216 Section 33. Paragraph (d) of subsection (3) of section
 1217 744.331, Florida Statutes, is amended to read:

1218 744.331 Procedures to determine incapacity.—

Page 42 of 46

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

590-01776-16

2016232c2

1219 (3) EXAMINING COMMITTEE.—

1220 (d) A member of an examining committee must complete a

1221 minimum of 4 hours of initial training. The person must complete

1222 2 hours of continuing education during each 2-year period after

1223 the initial training. The initial training and continuing

1224 education program must be developed under the supervision of the

1225 ~~Statewide Public Guardianship Office~~ of Public and Professional

1226 Guardians, in consultation with the Florida Conference of

1227 Circuit Court Judges; the Elder Law and the Real Property,

1228 Probate and Trust Law sections of The Florida Bar; and the

1229 Florida State Guardianship Association; ~~and the Florida~~

1230 ~~Guardianship Foundation~~. The court may waive the initial

1231 training requirement for a person who has served for not less

1232 than 5 years on examining committees. If a person wishes to

1233 obtain his or her continuing education on the Internet or by

1234 watching a video course, the person must first obtain the

1235 approval of the chief judge before taking an Internet or video

1236 course.

1237 Section 34. Paragraph (a) of subsection (1) of section

1238 20.415, Florida Statutes, is amended to read:

1239 20.415 Department of Elderly Affairs; trust funds.—The

1240 following trust funds shall be administered by the Department of

1241 Elderly Affairs:

1242 (1) Administrative Trust Fund.

1243 (a) Funds to be credited to and uses of the trust fund

1244 shall be administered in accordance with ss. 215.32, 744.534,

1245 and 744.2002 ~~744.7021~~.

1246 Section 35. Paragraph (e) of subsection (2) of section

1247 415.1102, Florida Statutes, is amended to read:

Page 43 of 46

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

590-01776-16

2016232c2

1248 415.1102 Adult protection teams.—

1249 (2) Such teams may be composed of, but need not be limited

1250 to:

1251 (e) Public and professional guardians as described in part

1252 II ~~IX~~ of chapter 744.

1253 Section 36. Paragraph (a) of subsection (7) of section

1254 744.309, Florida Statutes, is amended to read:

1255 744.309 Who may be appointed guardian of a resident ward.—

1256 (7) FOR-PROFIT CORPORATE GUARDIAN.—A for-profit corporate

1257 guardian existing under the laws of this state is qualified to

1258 act as guardian of a ward if the entity is qualified to do

1259 business in the state, is wholly owned by the person who is the

1260 circuit's public guardian in the circuit where the corporate

1261 guardian is appointed, has met the registration requirements of

1262 s. 744.2002 ~~s. 744.1003~~, and posts and maintains a bond or

1263 insurance policy under paragraph (a).

1264 (a) The for-profit corporate guardian must meet one of the

1265 following requirements:

1266 1. Post and maintain a blanket fiduciary bond of at least

1267 \$250,000 with the clerk of the circuit court in the county in

1268 which the corporate guardian has its principal place of

1269 business. The corporate guardian shall provide proof of the

1270 fiduciary bond to the clerks of each additional circuit court in

1271 which he or she is serving as a guardian. The bond must cover

1272 all wards for whom the corporation has been appointed as a

1273 guardian at any given time. The liability of the provider of the

1274 bond is limited to the face value of the bond, regardless of the

1275 number of wards for whom the corporation is acting as a

1276 guardian. The terms of the bond must cover the acts or omissions

Page 44 of 46

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

590-01776-16

2016232c2

1277 of each agent or employee of the corporation who has direct
 1278 contact with the ward or access to the assets of the
 1279 guardianship. The bond must be payable to the Governor and his
 1280 or her successors in office and be conditioned on the faithful
 1281 performance of all duties of a guardian under this chapter. The
 1282 bond is in lieu of and not in addition to the bond required
 1283 under s. 744.2003 ~~s. 744.1085~~ but is in addition to any bonds
 1284 required under s. 744.351. The expenses incurred to satisfy the
 1285 bonding requirements of this section may not be paid with the
 1286 assets of any ward; or

1287 2. Maintain a liability insurance policy that covers any
 1288 losses sustained by the guardianship caused by errors,
 1289 omissions, or any intentional misconduct committed by the
 1290 corporation's officers or agents. The policy must cover all
 1291 wards for whom the corporation is acting as a guardian for
 1292 losses up to \$250,000. The terms of the policy must cover acts
 1293 or omissions of each agent or employee of the corporation who
 1294 has direct contact with the ward or access to the assets of the
 1295 guardianship. The corporate guardian shall provide proof of the
 1296 policy to the clerk of each circuit court in which he or she is
 1297 serving as a guardian.

1298 Section 37. Section 744.524, Florida Statutes, is amended
 1299 to read:

1300 744.524 Termination of guardianship on change of domicile
 1301 of resident ward.—When the domicile of a resident ward has
 1302 changed as provided in s. 744.1098 ~~s. 744.2025~~, and the foreign
 1303 court having jurisdiction over the ward at the ward's new
 1304 domicile has appointed a guardian and that guardian has
 1305 qualified and posted a bond in an amount required by the foreign

Page 45 of 46

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

590-01776-16

2016232c2

1306 court, the guardian in this state may file her or his final
 1307 report and close the guardianship in this state. The guardian of
 1308 the property in this state shall cause a notice to be published
 1309 once a week for 2 consecutive weeks, in a newspaper of general
 1310 circulation published in the county, that she or he has filed
 1311 her or his accounting and will apply for discharge on a day
 1312 certain and that jurisdiction of the ward will be transferred to
 1313 the state of foreign jurisdiction. If an objection is filed to
 1314 the termination of the guardianship in this state, the court
 1315 shall hear the objection and enter an order either sustaining or
 1316 overruling the objection. Upon the disposition of all objections
 1317 filed, or if no objection is filed, final settlement shall be
 1318 made by the Florida guardian. On proof that the remaining
 1319 property in the guardianship has been received by the foreign
 1320 guardian, the guardian of the property in this state shall be
 1321 discharged. The entry of the order terminating the guardianship
 1322 in this state shall not exonerate the guardian or the guardian's
 1323 surety from any liability previously incurred.

1324 Section 38. This act shall take effect upon becoming a law.

Page 46 of 46

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



LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/14/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bradley) recommended the following:

Senate Amendment (with title amendment)

Between lines 1323 and 1324

insert:

Section 38. For the 2016-2017 fiscal year, 6 full-time equivalent positions, with associated salary rate of 191,119, are authorized and the sum of \$821,670 in recurring funds from the General Revenue Fund is appropriated to the Department of Elderly Affairs for the purpose of carrying out all oversight and monitoring responsibilities of the Office of Public and



11 Professional Guardians.

12

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

14 And the title is amended as follows:

15 Delete line 114

16 and insert:

17 references; making technical changes; providing an
18 appropriation; providing an



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bradley) recommended the following:

1 **Senate Substitute for Amendment (581286) (with title**
2 **amendment)**

3
4 Between lines 1323 and 1324
5 insert:

6 Section 38. For the 2016-2017 fiscal year, 6 full-time
7 equivalent positions, with associated salary rate of 191,119,
8 are authorized and the sum of \$698,153 in recurring funds and
9 \$123,517 in nonrecurring funds from the General Revenue Fund is
10 appropriated to the Department of Elderly Affairs for the



11 purpose of carrying out all oversight and monitoring
12 responsibilities of the Office of Public and Professional
13 Guardians.

14
15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 Delete line 114

18 and insert:

19 references; making technical changes; providing an
20 appropriation; providing an

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 Fiscal Policy

BILL: CS/CS/CS/SB 232

INTRODUCER: Fiscal Policy Committee; Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Detert and others

SUBJECT: Guardianship

DATE: January 14, 2016

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 232 expands and renames the Statewide Public Guardianship Office within the Department of Elder Affairs (DOEA) as the Office of Public and Professional Guardians. The office is given the additional responsibility of administering the regulation of professional guardians, who have not previously been closely regulated by the state. The newly titled office remains housed within the DOEA and the executive director of remains an appointee of the Secretary of the DOEA.

The bill establishes the additional duties and responsibilities of the executive director and the office, including disciplinary and enforcement powers. The bill requires the annual registration of professional guardians, including \$100 registration and \$25 credit investigation fees.

The Office of Public and Professional Guardians is directed to adopt rules to establish standards of practice for public and professional guardians, receive and investigate complaints, establish procedures for disciplinary oversight, conduct hearings, specify penalties, and take administrative action pursuant to ch. 120, F.S.

The bill provides for Fiscal Year 2016-2017, 6 full-time positions and an appropriation of \$698,153 in recurring funds and \$123,517 in nonrecurring funds from the General Revenue Fund to the DOEA for the purpose of carrying out the oversight and monitoring responsibilities of the office. The bill is effective upon becoming law.

II. Present Situation:

Guardianship

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

There are two main forms of guardianship: guardianship over the person or guardianship over the property, which may be limited or plenary.¹ For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, when an individual’s mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court appointed examination committee.²

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

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

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

¹ See generally, s. 744.102(9), F.S.

² See generally, s. 744.102(12), F.S.

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

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

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

⁶ Section 744.362, F.S.

⁷ Section 744.367, F.S.

⁸ Section 744.3678, F.S.

⁹ Section 744.368, F.S.

¹⁰ Section 744.446(4), F.S.

Professional Guardians

In Florida, a “professional guardian” means any guardian who has, at any time, rendered services to three or more wards as their guardian.¹¹ A professional guardian must register annually with the Statewide Public Guardianship Office.¹² Currently, there are 465 professional guardians who are registered with the Statewide Public Guardianship Office.¹³ Professional guardians must receive a minimum of 40 hours of instruction and training and a minimum of 16 hours of continuing education every 2 years after the initial educational requirement is met. The instruction and education must be completed through a course approved or offered by the Statewide Public Guardianship Office.¹⁴

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

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

Public Guardianship Act

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

¹¹ Section 744.102(17), F.S.

¹² Section 744.1083(1) and (2), F.S.

¹³ Children and Families, and Elder Affairs Committee staff telephone conversation with the Department of Elder Affairs on March 9, 2015.

¹⁴ Section 744.1085(3), F.S.

¹⁵ Section 744.1085(5), F.S.

¹⁶ Section 744.1085(4), F.S.

¹⁷ Section 744.1085(6), F.S.

¹⁸ Section 744.1085(10), F.S.

¹⁹ Chapter 99-277 L.O.F.

²⁰ Section 744.703(1), F.S.

²¹ Section 744.704(1), F.S.

²² Section 744.102(17), F.S.

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

Determining Incapacity

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

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

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

Court Proceedings

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

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

²⁴ Section 744.331(1), F.S.

²⁵ Section 744.331(5)(c), F.S.

²⁶ Section 744.331(6), F.S.

²⁷ Section 744.331(6)(b), F.S.

²⁸ Section 744.344(3), F.S.

²⁹ Section 744.344(4), F.S.

³⁰ Section 744.372, F.S.

³¹ Section 744.3715, F.S.

³² Section 744.108(1), F.S.

³³ Section 744.108(8), F.S.

A ward has the right to be restored to capacity at the earliest possible time.³⁴ The ward, or any interested person filing a suggestion of capacity, has the burden of proving the ward is capable of exercising some or all of the rights which were removed. Immediately upon the filing of the suggestion of capacity, the court must appoint a physician to examine the ward. The physician must examine the ward and file a report with the court within 20 days.³⁵ All objections to the suggestion of capacity must be filed within 20 days after formal notice is served on the ward, guardian, attorney for the ward, if any, and any other interested persons designated by the court.³⁶ If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court must set the matter for hearing.³⁷ The level of proof required to show capacity is not presently specified in the statute.

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

Media Reports

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

³⁴ Section 744.3215(1)(c), F.S.

³⁵ Section 744.464(2)(b), F.S.

³⁶ Section 744.464(2)(d), F.S.

³⁷ Section 744.464(2)(e), F.S.

³⁸ Florida Developmental Disabilities Council, *Restoration of Capacity Study and Work Group Report*, (February 28, 2014), available at

http://www.guardianship.org/IRL/Resources/Handouts/Charting%20a%20New%20Course_Restoration%20Report.pdf (last visited January 7, 2016).

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

⁴⁰ *Id.*

⁴¹ *Id.*

2015 Legislation (Ch. 2015-83, HB 5)

In 2015, the Legislature passed and the Governor signed HB 5. The new law:

- Allows for appointment of the office of criminal conflict and civil regional counsel as emergency court monitors;
- Allows compensation for guardians and other certain individuals to be awarded by the court without expert testimony;
- Requires notice requirements for filing a petition for appointment of an emergency temporary guardian;
- Allows a for-profit corporate guardians existing under Florida law to act as a guardian if certain requirements are met; and
- Requires a court that does not use a rotation system for appointment of a professional guardian, to instead make specific findings of fact stating why the guardian was selected in the particular guardianship case.⁴²

III. Effect of Proposed Changes:

The bill renames the Statewide Public Guardianship Office and significantly expands its duties. The office is renamed the Office of Public and Professional Guardians (office) and, as its name implies, now has oversight for both public and professional guardians. While public guardians, who provide services for indigent people, have been regulated by the state, professional guardians have not been as closely regulated.

This bill establishes the regulation and supervision of professional guardians by giving the Department of Elder Affairs⁴³ (DOEA) the authority to discipline professional guardians for misconduct.

Legislative Intent (Section 4)

The bill amends the legislative intent language in s. 744.1012, F.S., to express the Legislature's intent that alternatives to guardianship and less restrictive means of assistance always be explored before an individual's rights are removed through an adjudication of incapacity.

The legislative intent is amended to include that private guardianship may be inadequate where there is no willing and responsible family member or friend, other person, bank, or corporation available to serve as guardian for an incapacitated person and the person does not have adequate income or wealth for the compensation of the private guardian. By establishing the office, the intent is to permit the establishment of offices of public guardians to provide services for incapacitated persons when no private guardian is available. A public guardian must be provided only to those persons whose needs cannot be met through less restrictive means of intervention.

⁴² Florida Senate, 2015 Bill Summary, *CS/CS/CS HB 5 – Guardianship Proceedings*, available at <http://www.flsenate.gov/Committees/billsummaries/2015/html/969> (last visited January 10, 2016).

⁴³ Section 20.41, F.S., creates the Department of Elderly Affairs.

Office of Public and Professional Guardians (Section 8)

The bill creates the Office of Public and Professional Guardians within the DOEA. The executive director of the office has oversight responsibilities over all public and professional guardians. The executive director must review the standards and criteria for the education, registration, and certification of public and professional guardians in Florida.

The bill requires the executive director to:

- Establish standards; and
- Review and approve standards and criteria for the education, registration, and certification of public and professional guardians in Florida.

The bill specifies the executive director's oversight responsibilities for professional guardians, include, but are not limited to:

- Developing and implementing a monitoring tool to use for periodic monitoring activities of professional guardians; however, this monitoring tool may not include a financial audit as required to be performed by the clerk of the circuit court under s. 744.368, F.S.;
- Developing procedures for the review of an allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians; and
- Establishing disciplinary proceedings, conducting hearings, and taking administrative action under ch. 120, F.S.

The bill requires the executive director to establish the rules by October 1, 2016, and to submit a draft to the Governor, the Legislature, and the Secretary of the DOEA by August 1, 2016. The bill also specifies the executive director's oversight responsibilities for public and private guardians to include developing a guardianship training program curriculum that may be offered to all public and private guardians.

Registration of Professional Guardians (Section 9)

The bill provides that a professional guardian has standing to seek judicial review pursuant to ch. 120, F.S., if his or her proposed registration is denied. The bill also requires an annual registration fee of \$100.

Regulation of Professional Guardians (Section 10)

The bill requires each professional guardian to demonstrate competency to act as a professional guardian by taking an examination approved by DOEA.⁴⁴

Discipline of Professional Guardians (Section 11)

The bill creates s. 744.2004, F.S., and directs the office to establish standards and procedures in rule by October 1, 2016, to:

⁴⁴ This does not apply to a bank, trust company, state savings association, national banking association, or federal savings and loan association acting as a professional guardian.

- Review, and if appropriate, investigate allegations that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians;
- Initiate an investigation no later than 10 business days after the office receives a complaint;
- Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and person filing the complaint within 60 days;
- Obtain supporting information or documentation to determine the legal sufficiency of a complaint;
- Interview a ward, family member, or interested party to determine the legal sufficiency of a complaint;
- Dismiss any complaint if, at any time after legal sufficiency is determined, it is found there is insufficient evidence to support the allegations in the complaint;
- Coordinate with the clerks of the court to avoid duplication of duties with regard to financial audits;
- Establish disciplinary proceedings, conduct hearings, and take administrative action pursuant to ch. 120, F.S. Disciplinary actions may include, but are not limited to:
 - Requiring professional guardians to participate in additional educational courses;
 - Imposing additional monitoring of the guardianships being served by the professional guardian; and
 - Suspending or revoking the guardian's registration.⁴⁵

The DOEA must provide the guardian and the person who filed the complaint with a written:

- Explanation of how the a complaint is resolved by the disciplinary process and how and when the person may participate in the disciplinary process; and
- Notice of any hearing at which final action may be taken.

If the office determines or has reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected or exploited as the result of a complaint and its investigation, it must report such determination or suspicion to the central abuse hotline of the Department of Children and Families.

Grounds for Discipline, Penalties, and Enforcement (Section 12)

The following acts are grounds for disciplinary action of a professional guardian:

- Making misleading, deceptive, or fraudulent representations relating to guardianship work;
- Violating rules governing guardians and guardianships;
- Being convicted or found guilty, or entering a plea, to a crime related to the practice or ability to practice as a professional guardian;
- Failing to comply with the educational course requirements;
- Having a registration, license, or authority to practice in a regulated profession revoked, suspended, or acted against;
- Knowingly filing a false report or complaint with the office against another guardian;

⁴⁵ If the final determination is to suspend or revoke the guardian's registration the court of competent jurisdiction must be notified.

- Attempting to secure or renew a registration or license by bribery, fraudulent misrepresentation, or through an undisclosed error made by the office;
- Failing to report someone who the professional guardian knows is violating ch. 744, F.S., relating to guardianship or rules of the office;
- Failing to perform professional guardian obligations;
- Making or filing a report or record known to be false or not filing a required report or record or impeding someone's effort to do so;
- Using the position of guardian for inappropriate financial gain;
- Violating a lawful order or failing to comply with a subpoena lawfully issued by the office;
- Improperly interfering with an investigation, inspection, or disciplinary proceeding;
- Using the guardian relationship to engage certain people in sexual activity;
- Failing to report to the office in writing within 30 days after being convicted or found guilty or entering a plea to a crime;
- Being unable to function as a professional guardian due to certain impediments;
- Failing to post and maintain the necessary blanket fiduciary bond;
- Failing to maintain records for a reasonable time after the court closes a guardianship; and
- Violating provisions of ch. 744, F.S., relating to guardianship, or any rules adopted pursuant to the chapter.

The bill also provides penalties that the office may impose for a violation of the above and that the office may establish disciplinary guidelines, including mitigating or aggravating factors, by rule.

When recommending penalties for violations, an administrative law judge must follow the disciplinary guidelines and state in writing any mitigating or aggravating circumstance upon which a recommended penalty is based if he or she recommends a penalty not provided in the guidelines. The office may impose a penalty other than ones stated in the disciplinary guidelines if a specific finding is made in the final order of mitigating or aggravating circumstances.

The office is also authorized to seek an injunction or writ of mandamus against someone who violates the chapter or pertinent rules. If the office revokes a professional guardian's registration, the revocation is permanent. If the office suspends or revokes a professional guardian's registration, the office must provide its determination to the appropriate court for any guardianship case in which the guardian is appointed.

Access to Records by the Office of Public and Professional Guardians (Section 21)

Under current law, any confidential or exempt information provided to the Statewide Public Guardianship Office (renamed by the bill to the Office of Public and Professional Guardians) continues to be held confidential or exempt as otherwise provided by law. Current law also provides that all records relating to the medical, financial, or mental health of vulnerable adults as defined in ch. 415, F.S., persons with a developmental disability as defined in ch. 393, F.S., or persons with a mental illness as defined in ch. 394, F.S., are confidential and exempt from s. 119.07(1), F.S., and Art. I, s. 24(a) of the Florida Constitution.

The bill provides the office access to records held by an agency or the court and its agencies which are necessary as part of an investigation of a guardian as a result of a complaint filed with the office.

Joining Forces for Public Guardianship (Section 23)

The bill specifies that the purpose of the already existing Joining Forces for Public Guardianship matching grant program is to assist counties in establishing and funding community-supported public guardianship programs.

Credit and criminal investigation (Section 27)

The office shall adopt rules by October 1, 2016, that detail the acceptable methods for completing an electronic fingerprint criminal history record check and for completing a credit investigation for professional guardians and each employee of a professional guardian who has a fiduciary responsibility to the ward. The bill allows for a \$25 credit investigation fee.

Appropriation (Section 38)

The bill provides for Fiscal Year 2016-2017, 6 full-time positions and an appropriation of \$698,153 in recurring funds and \$123,517 in nonrecurring funds from the General Revenue Fund to the DOEA for the purpose of carrying out the oversight and monitoring responsibilities of the office.

Organizational Changes (Remaining Sections)

The remaining sections of the bill make technical changes and relocate what is currently part II of the chapter, Venue, to part I, General Provisions, retitles part II as Public and Professional Guardians and makes other conforming changes to carry out the intent of the act. The bill also renumbers numerous sections of statute.

Effective Date (Section 39)

The bill is effective 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.

D. Other Constitutional Issues:

Section 8 of the bill requires the executive director of the office to establish standards of practice by rule. The bill does not give the office any further guidance on the issues that should be addressed by those standards of practice or how any such issue should be addressed. Accordingly, the Legislature may wish to revise the bill to add additional direction to guide the rulemaking process and ensure that the bill does not unlawfully delegate legislative authority in violation of Art. II, s. 3 of the Florida Constitution.^{46, 47}

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

None.

B. Private Sector Impact:

Professional guardians may bear increased costs due to regulation by the DOEA.

C. Government Sector Impact:

The DOEA will see increased costs associated with regulating private guardians. There are approximately 482 additional guardians that would be regulated under this bill. The number of wards represented by these guardians is unknown at this time and would need to be considered when estimating the cost of regulation.

The department requires 6 FTEs to perform the duties required by the bill. There would also be increased costs to the department's general counsel office as the professional guardians will be able to challenge decisions by the department under ch. 120, F.S. The department estimates the total fiscal impact to be \$821,670⁴⁸ and the bill provides an appropriation of \$698,153 in recurring funds and \$123,517 in nonrecurring funds from the General Revenue Fund to the DOEA.

The bill requires the annual registration of professional guardians, including \$100 registration and \$25 credit investigation fees.

The Office of the State Courts Administrator estimates that this bill will have little, if any, impact on the courts. Clerks of courts will be required to provide audits to the office

⁴⁶ Article II, s. 3 of the Florida Constitution states, "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

⁴⁷ See also *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1978). In *Cross Key Waterways*, the Florida Supreme Court explained that under the non-delegation doctrine established in Art. II, s. 3 of the Florida Constitution, fundamental and primary policy decisions must be made by the Legislature and the administration of legislative programs must be pursuant to minimal standards and guidelines.

⁴⁸ Department of Elder Affairs, *2016 Agency Legislative Bill Analysis for SB 232*, (on file with the Senate Committee on Fiscal Policy).

for purposes of investigation, which might result in a minimal increase in work to produce the court records.⁴⁹

The Office of the State Courts Administrator also noted that the revenues to the State Courts' trust funds generated from civil filing fees cannot be determined at this time because the number of additional appellate cases produced by this bill is unknown. Similarly, the expenditures caused by appellate review cases cannot be accurately determined at this time.⁵⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

The office is directed to adopt rules concerning professional guardians to establish standards of practice, credit and criminal investigation procedures, including fingerprinting, and disciplinary oversight, including conducting hearings and taking administrative action pursuant to ch. 120, F.S. The bill requires that the rules be established by October 1, 2016, and a draft be submitted to the Governor, the Legislature, and the Secretary of DOEA by August 1, 2016.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.415, 400.148, 415.1102, 744.1012, 744.1083, 744.1085, 744.201, 744.202, 744.2025, 744.7021, 744.344, 744.703, 744.704, 744.705, 744.706, 744.707, 744.708, 744.709, 744.7081, 744.7082, 744.712, 744.713, 744.714, 744.715, 744.309, 744.3135, 744.331, and 744.524.

This bill creates the following sections of the Florida Statutes: 744.2004 and 744.20041.

This bill repeals the following sections of the Florida Statutes: 744.701, 744.702, 744.7101, and 744.711.

IX. Additional Information:

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

CS/CS/CS by Fiscal Policy on January 14, 2016:

The committee substitute provides for Fiscal Year 2016-2017, 6 full-time positions and an appropriation of \$698,153 in recurring funds and \$123,517 in nonrecurring funds from the General Revenue Fund to the DOEA for the purpose of carrying out the oversight and monitoring responsibilities of the office.

⁴⁹ Office of the State Courts Administrator, *2016 Judicial Impact Statement for CS/SB 232* (Dec. 1, 2016) (on file with the Senate Committee on Judiciary).

⁵⁰ *Id.*

CS/CS by Judiciary on December 1, 2015:

The committee substitute provides that a public guardian may also serve as a limited guardian or guardian advocate when the public guardian is the guardian of last resort.

A new section 12 enumerates grounds for disciplinary action against a professional guardian, penalties that may be imposed, the creation of disciplinary guidelines that must be followed by an administrative law judge and aggravating and mitigating circumstances to be considered. The office is authorized to file proceedings for violations of the chapter and if the office determines that a revocation of a professional guardian's registration is appropriate, the revocation is permanent. The office is authorized to adopt rules to administer the section.

CS by Children, Families, and Elder Affairs on October 8, 2015:

The committee substitute corrects a cross-reference.

B. Amendments:

None.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

November 19, 2015

The Honorable Anitere Flores
Senate Fiscal Policy Committee, Chair
413 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Flores:

I respectfully request that SB 304, related to *Agritourism*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Jennifer Hrdlicka/ Staff Director
Tamra Lyon/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/16

Meeting Date

304

Bill Number (if applicable)

961272

Amendment Barcode (if applicable)

Topic AGRITOURISM

Name STEPHEN JAMES

Job Title

Address 100 S. MONROE

Street

Phone (850) 922-4300

TALLAHASSEE FL 32301

City

State

Zip

Email

Speaking: For Against Information

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

Representing FVA ASSOC. OF COUNTIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/14/16

Meeting Date

304

Bill Number (if applicable)

961272

Amendment Barcode (if applicable)

Topic Agritourism

Name David Cruz

Job Title Assistant General Counsel

Address P.O. Box 1757

Phone 701-3676

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

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

Representing FL League of cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/14/2016
Meeting Date

304
Bill Number (if applicable)

Topic Agri tourism

Amendment Barcode (if applicable)

Name Adam Basford

Job Title Director, Legislative Affairs

Address 315 S Cathoun St # 850

Phone 222-2557

Tallahassee FL 32301

City State Zip

Email Adam.Basford@FFBF.org

Speaking: For Against Information

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

Representing Florida Farm Bureau

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/14/16
Meeting Date

304
Bill Number (if applicable)

Topic Agri-Tourism

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title

Address PO Box 10011 FL 32302
Street

Phone 850-278-1296

City

State

Zip

Email Jim.e.magnoli@ustratech.com

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/14/16
Meeting Date

304
Bill Number (if applicable)

Topic AGRI TOURISM

Amendment Barcode (if applicable)

Name LENA JUAREZ

Job Title _____

Address P.O. Box 10390

Phone 850 212 8330

TALLAHASSEE FL 32302

Email lena@jejane.com

City State Zip

Speaking: For Against Information

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

Representing FLORIDA AGRICULTURE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By the Committee on Community Affairs; and Senator Stargel

578-01298-16

2016304c1

1 A bill to be entitled
 2 An act relating to agritourism; amending s. 570.85,
 3 F.S.; providing additional legislative intent;
 4 prohibiting a local government from enforcing a local
 5 ordinance, regulation, rule, or policy that prohibits,
 6 restricts, regulates, or otherwise limits an
 7 agritourism activity on lands classified as
 8 agricultural in an unincorporated area; amending s.
 9 570.86, F.S.; revising the definition of the term
 10 "agritourism activity" to include civic and ceremonial
 11 activities; amending s. 570.87, F.S.; specifying that
 12 the conduct of agritourism activity on a bona fide
 13 farm or on agricultural lands may not limit, restrict,
 14 or divest the land of that classification, provided
 15 that such lands remain used primarily for bona fide
 16 agricultural purposes; providing an effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Subsection (1) of section 570.85, Florida
 21 Statutes, is amended to read:
 22 570.85 Agritourism.—
 23 (1) It is the intent of the Legislature to promote
 24 agritourism as a way to support bona fide agricultural
 25 production by providing a secondary stream of revenue for and by
 26 educating the general public about the agricultural industry. It
 27 is also the intent of the Legislature to eliminate duplication
 28 of regulatory authority over agritourism as expressed in this
 29 section. Except as otherwise provided for in this section, and

Page 1 of 3

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

578-01298-16

2016304c1

30 notwithstanding any other provision of law, a local government
 31 may not adopt or enforce a local ~~an~~ ordinance, regulation, rule,
 32 or policy that prohibits, restricts, regulates, or otherwise
 33 limits an agritourism activity on land classified as
 34 agricultural land under s. 193.461 in an unincorporated area.
 35 This subsection does not limit the powers and duties of a local
 36 government to address an emergency as provided in chapter 252.
 37 Section 2. Subsection (1) of section 570.86, Florida
 38 Statutes, is amended to read:
 39 570.86 Definitions.—As used in ss. 570.85-570.89, the term:
 40 (1) "Agritourism activity" means any agricultural related
 41 activity consistent with a bona fide farm or ranch or in a
 42 working forest which allows members of the general public, for
 43 recreational, entertainment, or educational purposes, to view or
 44 enjoy activities, including farming, ranching, historical,
 45 cultural, civic, ceremonial, or harvest-your-own activities and
 46 attractions. An agritourism activity does not include the
 47 construction of new or additional structures or facilities
 48 intended primarily to house, shelter, transport, or otherwise
 49 accommodate members of the general public. An activity is an
 50 agritourism activity regardless of whether the participant paid
 51 to participate in the activity.
 52 Section 3. Subsection (1) of section 570.87, Florida
 53 Statutes, is amended to read:
 54 570.87 Agritourism participation impact on land
 55 classification.—
 56 (1) In order to promote and perpetuate agriculture
 57 throughout the state, farm operations are encouraged to engage
 58 in agritourism. The conduct of agritourism activity on a bona

Page 2 of 3

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

578-01298-16

2016304c1

59 fide farm or on agricultural lands classified as such pursuant
60 to s. 193.461 ~~may shall~~ not limit, restrict, or divest the land
61 of that classification as long as such lands classified as
62 agricultural remain used primarily for bona fide agricultural
63 purposes.

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



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Stargel) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 34 - 36
4 and insert:
5 agricultural land under s. 193.461. This subsection does not
6 limit the powers and duties of a local government to address
7 substantial off-site impacts of agritourism activities or an
8 emergency as provided in chapter 252.
9
10 ===== T I T L E A M E N D M E N T =====



11 And the title is amended as follows:
12 Delete line 8
13 and insert:
14 agricultural; specifying that certain local authority
15 may not be limited under certain circumstances;
16 amending s.

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 Fiscal Policy

BILL: CS/CS/SB 304

INTRODUCER: Fiscal Policy Committee; Community Affairs Committee; and Senator Stargel

SUBJECT: Agritourism

DATE: January 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Becker</u>	<u>Becker</u>	<u>AG</u>	Favorable
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3.	<u>Aldana</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 304 amends the legislative intent in s. 570.85, F.S., to express the Legislature's intent to promote agritourism. The bill prohibits a local government from enforcing any local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under s. 193.461, F.S. However, the bill specifies that a local government is not limited by the prohibitions when adopting or enforcing local regulations that address substantial off-site impacts of agritourism activities.

The bill adds "civic" and "ceremonial" activities to the enumerated list of agritourism activities defined in s. 570.86, F.S.

The bill amends s. 570.87, F.S., to provide that lands classified as agricultural under s. 193.461, F.S., cannot be divested of that classification as long as the land remains used primarily for bona fide agricultural purposes.

II. Present Situation:

Agricultural Property Classification

Section 193.461, F.S., provides that each county's property appraiser shall, for assessment purposes on an annual basis, classify all lands within a county as agricultural or nonagricultural. For property to be classified as agricultural land, it must be used "primarily for bona fide

agricultural purposes.”¹ Agricultural purposes include, but are not limited to: horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used primarily for the production of tropical fish; aquaculture; sod farming; and all forms of farm products and farm production.²

Property appraisers are required to reclassify land as nonagricultural when:

- The land is diverted from an agricultural to a nonagricultural use; or
- The land is no longer being utilized for agricultural purposes.³

Agritourism

When farmers open their lands to the general public for the purposes of agricultural related education and entertainment, they put their lands to a new beneficial use that may increase their farms’ economic viability.⁴ An “agritourism activity” is:

any agricultural related activity consistent with a bona fide farm or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions.⁵

Farm operations are encouraged to engage in agritourism “in order to promote and perpetuate agriculture throughout the state.”⁶

Protection from Liability

So long as an agritourism operator⁷ complies with the posting and notification requirements of s. 570.89, F.S., the owner of the land, the agritourism operator, and employer or employees are provided limited liability protection against injury or death of, or damage to, participants.⁸

Liability is not limited or prevented if the owner, operator, employer, or an employee:

- Commits an act that constitutes gross negligence or willful or wanton disregard for the safety of the participant; or
- Intentionally injures the participant.⁹

Protection from Local Government Regulation

In 2013, the Legislature enacted legislation to “eliminate duplication of regulatory authority over agritourism.”¹⁰ A local government may not adopt an ordinance, regulation, rule, or policy that

¹ Section 193.461(3)(b), F.S.

² Section 193.461(5), F.S.

³ Section 193.461(4), F.S.

⁴ Florida Farm Bureau, *Agritourism*, available at <http://www.floridafarmbureau.org/wp-content/uploads/2015/09/AgritourismBooklet07.pdf> (last visited January 10, 2016).

⁵ Section 570.86(1), F.S.

⁶ Section 570.87(1), F.S.

⁷ Section 570.86(2), F.S.

⁸ Section 570.88(1), F.S.

⁹ Section 570.88(2), F.S.

¹⁰ Section 570.85, F.S. See ch. 2013-179, Laws of Fla.; SB 1106 (2013).

prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under s. 193.461, F.S. This prohibition on local government regulation primarily pertains to ordinances that restrict hours of operation, number of participants, or parking for agritourism activities.¹¹ However, this does not preclude local governments from enforcing such regulations that were adopted prior to July 1, 2013.¹²

The prohibition does not extend to enactment of new local government regulations related to construction of new or additional structures intended primarily to accommodate members of the general public, which would still be subject to all building and zoning laws.¹³ Furthermore, the prohibition does not limit the powers and duties of a local government to address an emergency as provided in ch. 252, F.S.¹⁴

Land Classification

Bona fide farm or agricultural lands classified as such will not be divested of the classification as a result of agritourism activity on the land.¹⁵ Florida, like most states, has adopted use-value assessment for the purpose of ad valorem taxation of agricultural lands. Use-value assessment results in a lower value of agricultural property relative to an assessment at fair market value. Lands classified as agricultural are taxed at the *current* income-earning potential of the land in agricultural production, rather than at the highest and best use of the land. The agricultural classification can provide significant tax savings for the property owner due to the lower value assessment.¹⁶

III. Effect of Proposed Changes:

Section 1 amends the legislative intent in s. 570.85, F.S., to express the Legislature's intent to promote agritourism. Additionally, the bill prohibits a local government from *enforcing* any local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land.

The bill specifies that a local government's ability to address substantial off-site impacts of agritourism activities is not limited by the prohibition on adopting or enforcing local government regulations related to agritourism activity on agricultural land.

Section 2 adds "civic" and "ceremonial" activities to the enumerated list of agritourism activities defined in s. 570.86, F.S.

¹¹ *Supra* note 4.

¹² The 2013 legislation as effective July 1, 2013. *See* ch. 2013-179, Laws of Fla.

¹³ The definition of an "agritourism activity" excludes such activity. Section 570.86(1), F.S.

¹⁴ Section 570.85(1), F.S.

¹⁵ Section 570.87(1), F.S.

¹⁶ *See generally* University of Florida IFAS Extension, Florida Forest Stewardship, *Property Taxes and Greenbelt*, available at

http://www.sfrc.ufl.edu/Extension/florida_forestry_information/planning_and_assistance/greenbelt_property_taxes.html?v=bG6GXmtVGm0 (last visited January 11, 2016).

Section 3 amends to s. 570.87, F.S., to provide that lands classified as agricultural may not be divested of that classification as long as they remain used primarily for bona fide agricultural purposes.

Section 4 provides that the bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the bill prevents local governments from enforcing regulations that limit agritourism activity, farms may be able to earn additional revenue from agritourism.

C. Government Sector Impact:

This bill has no impact on state funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 570.85, 570.86, and 570.87.

IX. Additional Information:

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

CS/CS by Fiscal Policy on January 14, 2016:

The committee substitute removes the limitation for agricultural lands *in unincorporated areas* to be excluded from the adoption or enforcement of local government regulations. The CS specifies that a local government is not limited when adopting or enforcing local regulations that address substantial off-site impacts of agritourism activities.

CS by Community Affairs on November 17, 2015:

Adds agritourism intent language to s. 570.85, F.S.; adds civic and ceremonial activities to the enumerated types of agritourism activities under s. 570.86, F.S.; specifies that lands classified as agricultural under s. 193.461, F.S., cannot be divested of that classification as long as the land remains used primarily for bona fide agricultural purposes; and specifies that the bill exempts agritourism activities from local regulations in unincorporated areas.

- B. **Amendments:**

None.



594-01812-16

Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to expunction of records of minors; amending s. 790.23, F.S.; creating an exception for specified minors who, prior to attaining 21 years of age, had a criminal history record expunged; amending s. 943.0515, F.S.; decreasing the period of time that a minor's criminal history record must be retained before expunction; authorizing specified minors to apply for expunction of a criminal history record under certain circumstances; establishing an application process and requiring that specified documentation be submitted to the Department of Law Enforcement; requiring that specified fees be deposited into the Department of Law Enforcement Operating Trust Fund; requiring a sworn written statement from the applicant; providing a criminal penalty for perjury on such sworn written statement; amending s. 943.0582, F.S.; deleting a limitation on the period of time within which a minor must submit an application for prearrest or postarrest diversion expunction to the Department of Law Enforcement after successful completion of the diversion program; reenacting s. 985.125(3), F.S., relating to prearrest and postarrest diversion programs, to incorporate the amendment made to s. 943.0582, F.S., in a reference thereto; providing an effective date.



594-01812-16

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

Section 1. Subsection (2) of section 790.23, Florida Statutes, is amended to read:

790.23 Felons and delinquents; possession of firearms, ammunition, or electric weapons or devices unlawful.—

(2) This section shall not apply to a person:

(a) Convicted of a felony whose civil rights and firearm authority have been restored.

(b) Whose criminal history record has been expunged pursuant to s. 943.0515(1)(b).

Section 2. Paragraph (b) of subsection (1) of section 943.0515, Florida Statutes, is amended to read:

943.0515 Retention of criminal history records of minors.—

(1)

1. If the minor is not classified as a serious or habitual juvenile offender or committed to a juvenile correctional facility or juvenile prison under chapter 985, the program shall retain the minor's criminal history record for 2 ½ years after the date the minor reaches 19 years of age, at which time the record shall be expunged unless it meets the criteria of paragraph (2) (a) or paragraph (2) (b).

2. A minor described in subparagraph 1. may apply to the department to have his or her criminal history record expunged before the minor reaches 21 years of age. To be eligible for expunction under this subparagraph, the minor must be 18 years of age or older and less than 21 years of age and have not been charged by the state attorney with or found to have committed any criminal offense within the 5-year period before the



594-01812-16

57 application date. The only offenses eligible to be expunged
58 under this subparagraph are those that the minor committed
59 before the minor reached 18 years of age. A criminal history
60 record expunged under this subparagraph requires the approval of
61 the state attorney for each circuit in which an offense
62 specified in the criminal history record occurred. A minor
63 seeking to expunge a criminal history record under this
64 subparagraph shall apply to the department for expunction in the
65 manner prescribed by rule. An application for expunction under
66 this subparagraph shall include:

67 a. A processing fee of \$75 to the department for placement
68 in the Department of Law Enforcement Operating Trust Fund,
69 unless such fee is waived by the executive director.

70 b. A full set of fingerprints of the applicant taken by a
71 law enforcement agency for purposes of identity verification.

72 c. A sworn, written statement from the minor seeking relief
73 that he or she is no longer under court supervision applicable
74 to the disposition of the arrest or alleged criminal activity to
75 which the application to expunge pertains and that he or she has
76 not been charged with or found to have committed a criminal
77 offense, in any jurisdiction of the state or within the United
78 States, within the 5-year period before the application date.

79
80 A person who knowingly provides false information on the sworn
81 statement required by this sub-subparagraph commits a felony of
82 the third degree, punishable as provided in s. 775.082, s.
83 775.083, or s. 775.084.

84 3. A minor who applies, but who is not approved for early
85 expunction in accordance with subparagraph 2., shall have his or



594-01812-16

86 her criminal history record expunged at age 21 if eligible under
87 subparagraph 1.

88 Section 3. Subsection (3) of section 943.0582, Florida
89 Statutes, is amended to read:

90 943.0582 Prearrest, postarrest, or teen court diversion
91 program expunction.—

92 (3) The department shall expunge the nonjudicial arrest
93 record of a minor who has successfully completed a prearrest or
94 postarrest diversion program if that minor:

95 (a) Submits an application for prearrest or postarrest
96 diversion expunction, on a form prescribed by the department,
97 signed by the minor's parent or legal guardian, or by the minor
98 if he or she has reached the age of majority at the time of
99 applying.

100 ~~(b) Submits the application for prearrest or postarrest~~
101 ~~diversion expunction no later than 12 months after completion of~~
102 ~~the diversion program.~~

103 ~~(b)(c)~~ Submits to the department, with the application, an
104 official written statement from the state attorney for the
105 county in which the arrest occurred certifying that he or she
106 has successfully completed that county's prearrest or postarrest
107 diversion program, that his or her participation in the program
108 was based on an arrest for a nonviolent misdemeanor, and that he
109 or she has not otherwise been charged by the state attorney
110 with, or found to have committed, any criminal offense or
111 comparable ordinance violation.

112 ~~(c)(d)~~ Participated in a prearrest or postarrest diversion
113 program that expressly authorizes or permits such expunction—
114 ~~to occur.~~



780622

594-01812-16

115 ~~(d)~~~~(e)~~ Participated in a prearrest or postarrest diversion
116 program based on an arrest for a nonviolent misdemeanor that
117 would not qualify as an act of domestic violence as that term is
118 defined in s. 741.28.

119 ~~(e)~~~~(f)~~ Has never been, prior to filing the application for
120 expunction, ~~been~~ charged by the state attorney with, or ~~been~~
121 found to have committed, any criminal offense or comparable
122 ordinance violation.

123 Section 4. For the purpose of incorporating the amendment
124 made by this act to section 943.0582, Florida Statutes, in a
125 reference thereto, subsection (3) of section 985.125, Florida
126 Statutes, is reenacted to read:

127 985.125 Prearrest or postarrest diversion programs.—

128 (3) The prearrest or postarrest diversion program may, upon
129 agreement of the agencies that establish the program, provide
130 for the expunction of the nonjudicial arrest record of a minor
131 who successfully completes such a program pursuant to s.
132 943.0582.

133 Section 5. This act shall take effect July 1, 2016.



569884

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bradley) recommended the following:

Senate Amendment

Delete lines 81 - 83
and insert:
statement required by this sub-subparagraph commits a
misdemeanor of the first degree, punishable as provided in s.
775.082 or s. 775.083.

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 Fiscal Policy

BILL: PCS/SB 386 (780622)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senators Detert and Soto

SUBJECT: Expunction of Records of Minors

DATE: January 13, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 386 amends s. 943.0515(1)(b), F.S., to require the Florida Department of Law Enforcement (FDLE) to retain the criminal history record for only two years after they turn 19 (until age 21), instead of five years (until age 24), for minors who are not classified as serious or habitual juvenile offenders or who have not been committed to a juvenile correctional facility or juvenile prison. The criminal history record is then automatically expunged.

The bill eliminates the requirement that an application for prearrest or postarrest diversion expunction must be submitted within 12 months after the minor completes the diversion program.

The bill also provides that a minor who is eligible for automatic expunction of criminal history records at age 21 may apply for an expunction any time after reaching 18 but before reaching 21. The only offenses eligible to be expunged are those that the minor committed before reaching the age of 18. In order to qualify for expunction prior to age 21, the minor must apply to the FDLE and meet certain criteria.

Section 790.23(2), F.S., provides an exception for a person who has been convicted of a felony and has had their civil rights and firearm authority restored to possess firearms. There is not an exception for persons who have had their criminal records expunged pursuant to s. 943.0515, F.S.

The bill will require the FDLE to update its database at an estimated cost of \$20,000; existing staff resources will be used to implement the change.

This bill is effective July 1, 2016.

II. Present Situation:

Automatic Expunction of Criminal History Records of Minors

Section 943.0515, F.S., requires the FDLE to retain the criminal history record of a minor for the five years after they reach 19 (until age 24), and then the record is automatically expunged.¹ For minors who are classified as serious or habitual juvenile offenders, or who have been committed to a juvenile correctional facility or juvenile prison, the FDLE must retain a minor's criminal history record for five years after they reach 21 (until age 26), and then the record is automatically expunged.²

A minor's record cannot be automatically expunged and must be merged with and retained as part of their adult record if:

- A person 18 years of age or older is charged with or convicted of a forcible felony³ and the person's criminal history record as a minor has not yet been destroyed;
- At any time, a minor is adjudicated as an adult for a forcible felony; or
- The record relates to a minor who was adjudicated delinquent for a violation committed on or after July 1, 2007, as provided in s. 943.0435(1)(a)1.d., F.S., related to sexual offenders.^{4,5}

Juvenile Diversion Expunction

A minor who successfully completes a prearrest or postarrest diversion program can have their nonjudicial record of an arrest for a nonviolent misdemeanor⁶ expunged by the FDLE.⁷ The FDLE is authorized to charge a \$75 processing fee for each prearrest or postarrest diversion program expunction request.⁸

The FDLE must expunge the nonjudicial arrest record of a minor if:

¹ Section 943.0515(1)(b), F.S.

² Section 943.0515(1)(a), F.S.

³ Section 776.08, F.S. defines a "forcible felony" to mean treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson, kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

⁴ Sections 943.0515(2) and (3), F.S.

⁵ Section 943.0435(1)(a)1.d., F.S., defines a "sexual offender," in part, as a juvenile who was 14 years of age or older and has been adjudicated delinquent for committing, or attempting, or soliciting, or conspiring to commit, the offence of sexual battery, lewd or lascivious battery, lewd or lascivious molestation.

⁶ A nonviolent misdemeanor includes a simple assault or battery. Section 943.0582(2)(b), F.S.

⁷ Section 943.0582, F.S.

⁸ Section 943.0582(4), F.S.

- An application for prearrest or postarrest diversion expunction is filed within 12 months after completion of the diversion program and is signed by the minor's parent, legal guardian or by the minor if he or she has reached the age of majority;
- The application includes an official written statement from the state attorney where the arrest occurred certifying that the minor:
 - Successfully completed that county's prearrest or postarrest diversion program;
 - Participated in the program because of an arrest for a nonviolent misdemeanor; and
 - Has not been charged with or found to have committed any criminal offense or comparable ordinance violation.
- The prearrest or postarrest program that he or she participated in expressly authorizes expunction and was for an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence.⁹
- Prior to filing the application for expunction, he or she has never been charged with or been found to have committed any criminal offense or comparable ordinance violation.¹⁰

Receiving a juvenile diversion expunction does not prohibit a youth from requesting a regular sealing or expunction under s. 943.0585 or s. 943.059, F.S., if he or she is otherwise eligible.¹¹

However, the expunged arrest record is available to criminal justice agencies¹² under certain circumstances. For example, to determine eligibility for a diversion program, when a minor is seeking criminal justice employment, or for a criminal investigation.¹³

Possession of Firearms

Section 790.23, F.S., makes it unlawful for a person who has been found to have committed a delinquent act in Florida or another state that would be a felony if committed by an adult and is under the age of 24 to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device.

Section 790.23(2), F.S., provides an exception for a person who has been convicted of a felony and has had their civil rights and firearm authority restored to possess firearms. There is not an exception for persons who have had their criminal records expunged pursuant to s. 943.0515, F.S.

⁹ Section 741.28, F.S., defines "domestic violence" to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

¹⁰ Section 943.0582(3), F.S.

¹¹ *Id.* at (5).

¹² Section 943.045(11), F.S., defines a "criminal justice agency" as a court; the FDLE; the Department of Juvenile Justice; the protective investigations component of the Department of Children and Families; or any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

¹³ Section 943.0582(2)(a)1., F.S.

III. Effect of Proposed Changes:

Automatic Expunction of Criminal History Records of Minors

The bill amends s. 943.0515(1)(b), F.S., to require the FDLE to retain the criminal history record for only two years after they turn 19 (until age 21), instead of five years (until age 24), for minors who are not classified as serious or habitual juvenile offenders or who have not been committed to a juvenile correctional facility or juvenile prison. The criminal history record is then automatically expunged.¹⁴

Application for Expunction of Criminal History Records Prior to Age 21

The bill provides that a minor who is eligible for automatic expunction of criminal history records at age 21 may apply for an expunction any time after reaching 18 but before reaching 21. The only offenses eligible to be expunged are those that the minor committed before reaching the age of 18. In order to qualify for expunction prior to age 21, the minor must apply to the FDLE and must:

- Submit a \$75 processing fee;
- Submit a full set of fingerprints for identity verification;
- Have the approval of the state attorney for each circuit in which an offense specified in the criminal history record occurred; and
- Submit a sworn, written statement attesting that he or she:
 - Is no longer under court supervision applicable to the disposition of the arrest of alleged criminal activity to which the application to expunge pertains; and
 - Has not been charged with or found to have committed a criminal offense in any jurisdiction of the state or within the United States within five years prior to the application date.

An unsuccessful request for early expunction of criminal history records will not affect the applicant's eligibility for automatic expunction of the records upon reaching age 21.

The bill provides that knowingly submitting false information in the sworn statement is a third degree felony.

Juvenile Diversion Expunction

The bill amends s. 943.0582, F.S., to eliminate the requirement that an application for prearrest or postarrest diversion expunction must be submitted within 12 months after the minor completes the diversion program.

The bill reenacts s. 985.125(3), F.S., to incorporate the changes made in the bill.

¹⁴ Unless one of the exceptions in ss. 943.0515(2) and (3), F.S., apply, as discussed in the Present Situation.

Possession of Firearms

The bill amends s. 790.23, F.S., to allow an individual whose criminal record has been expunged, pursuant to the bill, to possess firearms.

The bill is effective July 1, 2016.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Eligible minors will have their arrest records automatically expunged earlier under the bill, resulting in a potentially positive economic benefit as they look for employment.

C. Government Sector Impact:

The bill reduces the time period that the FDLE must retain the criminal history record for a minor to two years after they turn 19 (until age 21), instead of five years (until age 24), for minors who are not classified as serious or habitual juvenile offenders or who have not been committed to a juvenile correctional facility or juvenile prison. The implication of the bill requires the FDLE to make a change in its database which will take one and a half months, at an estimated cost of \$20,000. Existing staff resources will be used to implement the change.¹⁵

The bill also allows a minor eligible for automatic expunction of criminal history records at age 21 to apply for an expunction any time after reaching 18 but before reaching 21. The only offenses eligible to be expunged are those that the minor committed before reaching the age of 18. The bill provides that knowingly submitting false information in

¹⁵ Florida Department of Law Enforcement, *2016 Bill Analysis for SB 386* (October 7, 2015) (on file with the Senate Criminal Justice Committee).

the sworn statement is a third degree felony. The Criminal Justice Impact Conference has not yet considered this provision but it is anticipated to have an insignificant impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.23, 943.0515, and 946.0582.

This bill reenacts section 985.125 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

Recommended PCS Barcode 780622 by Appropriations Subcommittee on Criminal and Civil Justice on December 3, 2015:

Added a provision allowing a minor to apply for expunction of his or her criminal record prior to reaching 21 years of age under certain circumstances.

B. Amendments:

None.



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: December 10, 2015

I respectfully request that **Senate Bill #386**, relating to Expunction of Records of Minors, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy Detert".

Senator Nancy C. Detert
Florida Senate, District 28

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/14/2016

Meeting Date

SB 0386

Bill Number (if applicable)

Topic Expunction of Records of Minors

Amendment Barcode (if applicable)

Name Jim Morgan

Job Title Lieutenant Volusia County Sheriff's Office

Address 123 W. Indiana Ave.

Phone 386-736-5961

Street

Deland

City

Fl.

State

32120

Zip

Email jmorgan@vuso.us

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing Florida Sheriff's Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Jun 14, 2016
Meeting Date

SB 386
Bill Number (if applicable)

Topic Expunction of Records of Minors

Amendment Barcode (if applicable)

Name DON LAMONICA

Job Title _____

Address 1205 Mimosa Drive

Phone 850-545-9691

Tallahassee, FL 32312
Street City State Zip

Email d.lamonica@COMCAST.NET

Speaking: For Against Information

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

Representing FLORIDA Public Defenders Assn

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

01-14-16
Meeting Date

386
Bill Number (if applicable)

Topic Expunction

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title Constituency Services

Address 111 S. Magnolia DR

Phone 850 425-2600

City Tallahassee State Zip

Email cmackin@iamforkids.org

Speaking: For Against Information

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

Representing The Children's Campaign

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/14/2016

Meeting Date

386

Bill Number (if applicable)

Topic Expunction

Amendment Barcode (if applicable)

Name Cathy Craig-MYERS

Job Title Executive Director

Address 3333 W Pensacola St

Phone 671 3442

Street

Valparaiso

Email Cathy@fja.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Juvenile Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-14-16
Meeting Date

386
Bill Number (if applicable)

Topic MINOR'S RECORDS

Amendment Barcode (if applicable)

Name DAWN STEWARD

Job Title Legis Liaison

Address 2001 Mercy Drive

Phone 407-645-0223

Street

ORLANDO

City

State

Zip

Email dsteward@bridgesofamerica.org

Speaking: For Against Information

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

Representing CHRISTIAN PRISON MINISTRY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By Senator Detert

28-00488-16

2016386__

A bill to be entitled

An act relating to expunction of records of minors; amending s. 943.0515, F.S.; decreasing the period of time that a minor's criminal history record must be retained before expunction; amending s. 943.0582, F.S.; deleting a limitation on the period of time within which a minor must submit an application for prearrest or postarrest diversion expunction to the Department of Law Enforcement after successful completion of the diversion program; reenacting s. 985.125(3), F.S., relating to prearrest and postarrest diversion programs, to incorporate the amendment made to s. 943.0582, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 943.0515, Florida Statutes, is amended to read:

943.0515 Retention of criminal history records of minors.—

(1)

(b) If the minor is not classified as a serious or habitual juvenile offender or committed to a juvenile correctional facility or juvenile prison under chapter 985, the program shall retain the minor's criminal history record for 2 ~~5~~ years after the date the minor reaches 19 years of age, at which time the record ~~must~~ shall be expunged unless it meets the criteria of paragraph (2) (a) or paragraph (2) (b).

Section 2. Subsection (3) of section 943.0582, Florida

Page 1 of 3

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

28-00488-16

2016386__

Statutes, is amended to read:

943.0582 Prearrest, postarrest, or teen court diversion program expunction.—

(3) The department shall expunge the nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program if that minor:

(a) Submits an application for prearrest or postarrest diversion expunction, on a form prescribed by the department, signed by the minor's parent or legal guardian, or by the minor if he or she has reached the age of majority at the time of applying.

~~(b) Submits the application for prearrest or postarrest diversion expunction no later than 12 months after completion of the diversion program.~~

(b)(e) Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's prearrest or postarrest diversion program, that his or her participation in the program was based on an arrest for a nonviolent misdemeanor, and that he or she has not otherwise been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.

~~(c)(d)~~ Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction ~~to occur~~.

(d)(e) Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as that term is

Page 2 of 3

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

28-00488-16

2016386__

59 defined in s. 741.28.

60 (e)~~(f)~~ Has never been, prior to filing the application for
61 expunction, ~~been~~ charged by the state attorney with, or ~~been~~
62 found to have committed, any criminal offense or comparable
63 ordinance violation.

64 Section 3. For the purpose of incorporating the amendment
65 made by this act to section 943.0582, Florida Statutes, in a
66 reference thereto, subsection (3) of section 985.125, Florida
67 Statutes, is reenacted to read:

68 985.125 Prearrest or postarrest diversion programs.—

69 (3) The prearrest or postarrest diversion program may, upon
70 agreement of the agencies that establish the program, provide
71 for the expunction of the nonjudicial arrest record of a minor
72 who successfully completes such a program pursuant to s.
73 943.0582.

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

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 Fiscal Policy

BILL: CS/SB 386

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senators Detert and Soto

SUBJECT: Expunction of Records of Minors

DATE: January 15, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 386 amends s. 943.0515(1)(b), F.S., to require the Florida Department of Law Enforcement (FDLE) to retain the criminal history record for only two years after they turn 19 (until age 21), instead of five years (until age 24), for minors who are not classified as serious or habitual juvenile offenders or who have not been committed to a juvenile correctional facility or juvenile prison. The criminal history record is then automatically expunged.

The bill eliminates the requirement that an application for prearrest or postarrest diversion expunction must be submitted within 12 months after the minor completes the diversion program.

The bill also provides that a minor who is eligible for automatic expunction of criminal history records at age 21 may apply for an expunction any time after reaching 18 but before reaching 21. The only offenses eligible to be expunged are those that the minor committed before reaching the age of 18. In order to qualify for expunction prior to age 21, the minor must apply to the FDLE and meet certain criteria.

Section 790.23(2), F.S., provides an exception for a person who has been convicted of a felony and has had their civil rights and firearm authority restored to possess firearms. There is not an exception for persons who have had their criminal records expunged pursuant to s. 943.0515, F.S.

The bill will require the FDLE to update its database at an estimated cost of \$20,000; existing staff resources will be used to implement the change.

This bill is effective July 1, 2016.

II. Present Situation:

Automatic Expunction of Criminal History Records of Minors

Section 943.0515, F.S., requires the FDLE to retain the criminal history record of a minor for the five years after they reach 19 (until age 24), and then the record is automatically expunged.¹ For minors who are classified as serious or habitual juvenile offenders, or who have been committed to a juvenile correctional facility or juvenile prison, the FDLE must retain a minor's criminal history record for five years after they reach 21 (until age 26), and then the record is automatically expunged.²

A minor's record cannot be automatically expunged and must be merged with and retained as part of their adult record if:

- A person 18 years of age or older is charged with or convicted of a forcible felony³ and the person's criminal history record as a minor has not yet been destroyed;
- At any time, a minor is adjudicated as an adult for a forcible felony; or
- The record relates to a minor who was adjudicated delinquent for a violation committed on or after July 1, 2007, as provided in s. 943.0435(1)(a)1.d., F.S., related to sexual offenders.^{4, 5}

Juvenile Diversion Expunction

A minor who successfully completes a prearrest or postarrest diversion program can have their nonjudicial record of an arrest for a nonviolent misdemeanor⁶ expunged by the FDLE.⁷ The FDLE is authorized to charge a \$75 processing fee for each prearrest or postarrest diversion program expunction request.⁸

The FDLE must expunge the nonjudicial arrest record of a minor if:

- An application for prearrest or postarrest diversion expunction is filed within 12 months after completion of the division program and is signed by the minor's parent, legal guardian or by the minor if he or she has reached the age of majority;

¹ Section 943.0515(1)(b), F.S.

² Section 943.0515(1)(a), F.S.

³ Section 776.08, F.S. defines a "forcible felony" to mean treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson, kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive devise or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

⁴ Sections 943.0515(2) and (3), F.S.

⁵ Section 943.0435(1)(a)1.d., F.S., defines a "sexual offender," in part, as a juvenile who was 14 years of age older and has been adjudicated delinquent for committing, or attempting, or soliciting, or conspiring to commit, the offence of sexual battery, lewd or lascivious battery, lewd or lascivious molestation.

⁶ A nonviolent misdemeanor includes a simple assault or battery. Section 943.0582(2)(b), F.S.

⁷ Section 943.0582, F.S.

⁸ Section 943.0582(4), F.S.

- The application includes an official written statement from the state attorney where the arrest occurred certifying that the minor:
 - Successfully completed that county’s prearrest or postarrest diversion program;
 - Participated in the program because of an arrest for a nonviolent misdemeanor; and
 - Has not been charged with or found to have committed any criminal offense or comparable ordinance violation.
- The prearrest or postarrest program that he or she participated in expressly authorizes expunction and was for an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence.⁹
- Prior to filing the application for expunction, he or she has never been charged with or been found to have committed any criminal offense or comparable ordinance violation.¹⁰

Receiving a juvenile diversion expunction does not prohibit a youth from requesting a regular sealing or expunction under s. 943.0585 or s. 943.059, F.S., if he or she is otherwise eligible.¹¹

However, the expunged arrest record is available to criminal justice agencies¹² under certain circumstances. For example, to determine eligibility for a diversion program, when a minor is seeking criminal justice employment, or for a criminal investigation.¹³

Possession of Firearms

Section 790.23, F.S., makes it unlawful for a person who has been found to have committed a delinquent act in Florida or another state that would be a felony if committed by an adult and is under the age of 24 to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device.

Section 790.23(2), F.S., provides an exception for a person who has been convicted of a felony and has had their civil rights and firearm authority restored to possess firearms. There is not an exception for persons who have had their criminal records expunged pursuant to s. 943.0515, F.S.

III. Effect of Proposed Changes:

Automatic Expunction of Criminal History Records of Minors

The bill amends s. 943.0515(1)(b), F.S., to require the FDLE to retain the criminal history record for only two years after they turn 19 (until age 21), instead of five years (until age 24), for

⁹ Section 741.28, F.S., defines “domestic violence” to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

¹⁰ Section 943.0582(3), F.S.

¹¹ *Id.* at (5).

¹² Section 943.045(11), F.S., defines a “criminal justice agency” as a court; the FDLE; the Department of Juvenile Justice; the protective investigations component of the Department of Children and Families; or any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

¹³ Section 943.0582(2)(a)1., F.S.

minors who are not classified as serious or habitual juvenile offenders or who have not been committed to a juvenile correctional facility or juvenile prison. The criminal history record is then automatically expunged.¹⁴

Application for Expunction of Criminal History Records Prior to Age 21

The bill provides that a minor who is eligible for automatic expunction of criminal history records at age 21 may apply for an expunction any time after reaching 18 but before reaching 21. The only offenses eligible to be expunged are those that the minor committed before reaching the age of 18. In order to qualify for expunction prior to age 21, the minor must apply to the FDLE and must:

- Submit a \$75 processing fee;
- Submit a full set of fingerprints for identity verification;
- Have the approval of the state attorney for each circuit in which an offense specified in the criminal history record occurred; and
- Submit a sworn, written statement attesting that he or she:
 - Is no longer under court supervision applicable to the disposition of the arrest of alleged criminal activity to which the application to expunge pertains; and
 - Has not been charged with or found to have committed a criminal offense in any jurisdiction of the state or within the United States within five years prior to the application date.

An unsuccessful request for early expunction of criminal history records will not affect the applicant's eligibility for automatic expunction of the records upon reaching age 21.

The bill provides that knowingly submitting false information on the sworn statement is a first degree misdemeanor.

Juvenile Diversion Expunction

The bill amends s. 943.0582, F.S., to eliminate the requirement that an application for prearrest or postarrest diversion expunction must be submitted within 12 months after the minor completes the diversion program.

The bill reenacts s. 985.125(3), F.S., to incorporate the changes made in the bill.

Possession of Firearms

The bill amends s. 790.23, F.S., to allow an individual whose criminal record has been expunged, pursuant to the bill, to possess firearms.

The bill is effective July 1, 2016.

¹⁴ Unless one of the exceptions in ss. 943.0515(2) and (3), F.S., apply, as discussed in the Present Situation.

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:

Eligible minors will have their arrest records automatically expunged earlier under the bill, resulting in a potentially positive economic benefit as they look for employment.

C. Government Sector Impact:

The bill reduces the time period that the FDLE must retain the criminal history record for a minor to two years after they turn 19 (until age 21), instead of five years (until age 24), for minors who are not classified as serious or habitual juvenile offenders or who have not been committed to a juvenile correctional facility or juvenile prison. The implication of the bill requires the FDLE to make a change in its database which will take one and a half months, at an estimated cost of \$20,000. Existing staff resources will be used to implement the change.¹⁵

The bill also allows a minor eligible for automatic expunction of criminal history records at age 21 to apply for an expunction any time after reaching 18 but before reaching 21. The only offenses eligible to be expunged are those that the minor committed before reaching the age of 18. The bill provides that knowingly submitting false information on the sworn statement is a first degree misdemeanor but it is anticipated to have an insignificant fiscal impact.

VI. Technical Deficiencies:

None.

¹⁵ Florida Department of Law Enforcement, *2016 Bill Analysis for SB 386* (October 7, 2015) (on file with the Senate Criminal Justice Committee).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.23, 943.0515, and 946.0582.

This bill reenacts section 985.125 of the Florida Statutes.

IX. Additional Information:

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

CS by Fiscal Policy on January 14, 2016:

As recommended by the Appropriations Subcommittee on Criminal and Civil Justice, the committee substitute adds a provision allowing a minor to apply for expunction of his or her criminal record prior to reaching 21 years of age under certain circumstances. The committee substitute also creates a first degree misdemeanor for knowingly submitting false information on the sworn statement.

- B. **Amendments:**

None.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

November 18, 2015

The Honorable Anitere Flores
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 494 – Digital Assets

Dear Chairwoman Flores:

Senate Bill 494, relating Digital Assets has been referred to the Fiscal Policy Committee. I am requesting your consideration on placing SB 494 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Dorothy L. Hukill".

Dorothy L. Hukill, District 8

cc: Jennifer Hrdlicka, Staff Director of the Fiscal Policy Committee
Tamra Lyon, Administrative Assistant of the Fiscal Policy Committee

REPLY TO:

209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
 Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/19/2016

Meeting Date

Topic _____

Bill Number 494
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/14/16
Meeting Date

494
Bill Number (if applicable)

Topic DIGITAL ASSETS

Amendment Barcode (if applicable)

Name JACK M^CRAY

Job Title _____

Address 200 W. COLLEGE AVE., #504
Street

Phone 850-577-5187

TLH FL 32301
City State Zip

Email jmcraay@aarp.org

Speaking: For Against Information

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

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

494

Meeting Date

Bill Number (if applicable)

Topic Digital Assets

Amendment Barcode (if applicable)

Name Casey Reed

Job Title State Director - Leg. Affairs

Address 150 College Ave #400

Phone 850 591 6002

Street

Tallahassee

FL

32301

Email CR 8243@AH.com

City

State

Zip

Speaking: For Against Information

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

Representing ATT

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/14/15

Meeting Date

494

Bill Number (if applicable)

Topic Digital assets

Amendment Barcode (if applicable)

Name Sarah BATHERS

Job Title attorney

Address 315 S. Calhoun St.

Phone

Street

Tallahassee, FL

32301

City

State

Zip

Email

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

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

Representing Real Property Probate + Trust Law of FL Bar

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

January 14, 2016

Meeting Date

494

Bill Number (if applicable)

Topic Digital Assets

Amendment Barcode (if applicable)

Name Sarrah Carroll

Job Title Lobbyist

Address 123 S. Adams Street

Phone 850-671-4401

Street

Tallahassee

FL

32311

Email carroll@sostrategy.com

City

State

Zip

Speaking: For Against Information

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

Representing Apple

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/17/16
Meeting Date

494
Bill Number (if applicable)

Topic Digital Assets

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd, Ste 201
Street
Tallahassee FL 32303
City State Zip

Phone 850-509-8020

Email kpratt@floridabankers.com

Speaking: For Against Information

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/14

Meeting Date

494

Bill Number (if applicable)

Topic Digital Assets

Amendment Barcode (if applicable)

Name Dan Sachs

Job Title Manager, State Policy

Address 1299 Pennsylvania Ave NW #800

Phone 202 716 2172

Washington DC 20004

Email dan@sfb.com

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

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

Representing Facebook

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

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

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

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

By the Committee on Judiciary; and Senator Hukill

590-01329-16

2016494c1

1 A bill to be entitled
 2 An act relating to digital assets; providing a
 3 directive to the Division of Law Revision and
 4 Information; creating s. 740.001, F.S.; providing a
 5 short title; creating s. 740.002, F.S.; defining
 6 terms; creating s. 740.003, F.S.; authorizing a user
 7 to use an online tool to allow a custodian to disclose
 8 or to prohibit a custodian from disclosing digital
 9 assets under certain circumstances; providing that
 10 specified user's direction overrides a contrary
 11 provision in a terms-of-service agreement under
 12 certain circumstances; creating s. 740.004, F.S.;
 13 providing construction; authorizing the modification
 14 of a fiduciary's assets under certain circumstances;
 15 creating s. 740.005, F.S.; providing procedures for
 16 the disclosure of digital assets; creating s. 740.006,
 17 F.S.; requiring a custodian to disclose the content of
 18 electronic communications of a deceased user under
 19 certain circumstances; creating s. 740.007, F.S.;
 20 requiring a custodian to disclose other digital assets
 21 of a deceased user under certain circumstances;
 22 creating s. 740.008, F.S.; requiring a custodian to
 23 disclose the content of electronic communications of a
 24 principal under certain circumstances; creating s.
 25 740.009, F.S.; requiring a custodian to disclose other
 26 digital assets of a principal under certain
 27 circumstances; creating s. 740.01, F.S.; requiring a
 28 custodian to disclose to a trustee who is the original
 29 user the digital assets held in trust under certain

Page 1 of 20

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

590-01329-16

2016494c1

30 circumstances; creating s. 740.02, F.S.; requiring a
 31 custodian to disclose to a trustee who is not the
 32 original user the content of electronic communications
 33 held in trust under certain circumstances; creating s.
 34 740.03, F.S.; requiring a custodian to disclose to a
 35 trustee who is not the original user other digital
 36 assets under certain circumstances; creating s.
 37 740.04, F.S.; authorizing the court to grant a
 38 guardian the right to access a ward's digital assets
 39 under certain circumstances; requiring a custodian to
 40 disclose to a guardian a specified catalog of
 41 electronic communications and specified digital assets
 42 of a ward under certain circumstances; creating s.
 43 740.05, F.S.; imposing fiduciary duties; providing for
 44 the rights and responsibilities of certain
 45 fiduciaries; creating s. 740.06, F.S.; requiring
 46 compliance of a custodian; providing construction;
 47 providing for immunity from liability for a custodian
 48 and its officers, employees, and agents acting in good
 49 faith in complying with their duties; creating s.
 50 740.07, F.S.; providing construction; creating s.
 51 740.08, F.S.; providing applicability; creating s.
 52 740.09, F.S.; providing severability; providing an
 53 effective date.

54
 55 Be It Enacted by the Legislature of the State of Florida:

56
 57 Section 1. The Division of Law Revision and Information is
 58 directed to create chapter 740, Florida Statutes, consisting of

Page 2 of 20

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

590-01329-16

2016494c1

59 ss. 740.001-740.09, Florida Statutes, to be entitled "Fiduciary
60 Access to Digital Assets."

61 Section 2. Section 740.001, Florida Statutes, is created to
62 read:

63 740.001 Short title.—This chapter may be cited as the
64 "Florida Fiduciary Access to Digital Assets Act."

65 Section 3. Section 740.002, Florida Statutes, is created to
66 read:

67 740.002 Definitions.—As used in this chapter, the term:

68 (1) "Account" means an arrangement under a terms-of-service
69 agreement in which the custodian carries, maintains, processes,
70 receives, or stores a digital asset of the user or provides
71 goods or services to the user.

72 (2) "Agent" means a person that is granted authority to act
73 for a principal under a durable or nondurable power of attorney,
74 whether denominated an agent, an attorney in fact, or otherwise.
75 The term includes an original agent, a co-agent, and a successor
76 agent.

77 (3) "Carries" means to engage in the transmission of
78 electronic communications.

79 (4) "Catalog of electronic communications" means
80 information that identifies each person with which a user has
81 had an electronic communication, the time and date of the
82 communication, and the electronic address of the person.

83 (5) "Content of an electronic communication" means
84 information concerning the substance or meaning of the
85 communication which:

86 (a) Has been sent or received by a user;

87 (b) Is in electronic storage by a custodian providing an

590-01329-16

2016494c1

88 electronic communication service to the public or is carried or
89 maintained by a custodian providing a remote computing service
90 to the public; and

91 (c) Is not readily accessible to the public.

92 (6) "Court" means a circuit court of this state.

93 (7) "Custodian" means a person that carries, maintains,
94 processes, receives, or stores a digital asset of a user.

95 (8) "Designated recipient" means a person chosen by a user
96 through an online tool to administer digital assets of the user.

97 (9) "Digital asset" means an electronic record in which an
98 individual has a right or interest. The term does not include an
99 underlying asset or liability unless the asset or liability is
100 itself an electronic record.

101 (10) "Electronic" means relating to technology having
102 electrical, digital, magnetic, wireless, optical,
103 electromagnetic, or similar capabilities.

104 (11) "Electronic communication" has the same meaning as
105 provided in 18 U.S.C. s. 2510(12).

106 (12) "Electronic communication service" means a custodian
107 that provides to a user the ability to send or receive an
108 electronic communication.

109 (13) "Fiduciary" means an original, additional, or
110 successor personal representative, guardian, agent, or trustee.

111 (14) "Guardian" means a person who is appointed by the
112 court as guardian of the property of a minor or an incapacitated
113 individual. The term includes an original guardian, a co-
114 guardian, and a successor guardian, as well as a person
115 appointed by the court as an emergency temporary guardian of the
116 property.

590-01329-16

2016494c1

117 (15) "Information" means data, text, images, videos,
 118 sounds, codes, computer programs, software, databases, or the
 119 like.

120 (16) "Online tool" means an electronic service provided by
 121 a custodian which allows the user, in an agreement distinct from
 122 the terms-of-service agreement between the custodian and user,
 123 to provide directions for disclosure or nondisclosure of digital
 124 assets to a third person.

125 (17) "Person" means an individual, estate, trust, business
 126 or nonprofit entity, public corporation, government or
 127 governmental subdivision, agency, or instrumentality, or other
 128 legal entity.

129 (18) "Personal representative" means the fiduciary
 130 appointed by the court to administer the estate of a deceased
 131 individual pursuant to letters of administration or an order
 132 appointing a curator or administrator ad litem for the estate.
 133 The term includes an original personal representative, a
 134 copersonal representative, and a successor personal
 135 representative, as well as a person who is entitled to receive
 136 and collect a deceased individual's property pursuant to an
 137 order of summary administration issued pursuant to chapter 735.

138 (19) "Power of attorney" means a record that grants an
 139 agent authority to act in the place of a principal pursuant to
 140 chapter 709.

141 (20) "Principal" means an individual who grants authority
 142 to an agent in a power of attorney.

143 (21) "Record" means information that is inscribed on a
 144 tangible medium or that is stored in an electronic or other
 145 medium and is retrievable in perceivable form.

590-01329-16

2016494c1

146 (22) "Remote computing service" means a custodian that
 147 provides to a user computer processing services or the storage
 148 of digital assets by means of an electronic communications
 149 system as defined in 18 U.S.C. s. 2510(14).

150 (23) "Terms-of-service agreement" means an agreement that
 151 controls the relationship between a user and a custodian.

152 (24) "Trustee" means a fiduciary that holds legal title to
 153 property under an agreement, declaration, or trust instrument
 154 that creates a beneficial interest in the settlor or other
 155 persons. The term includes an original trustee, a cotrustee, and
 156 a successor trustee.

157 (25) "User" means a person that has an account with a
 158 custodian.

159 (26) "Ward" means an individual for whom a guardian has
 160 been appointed.

161 (27) "Will" means an instrument admitted to probate,
 162 including a codicil, executed by an individual in the manner
 163 prescribed by the Florida Probate Code, which disposes of the
 164 individual's property on or after his or her death. The term
 165 includes an instrument that merely appoints a personal
 166 representative or revokes or revises another will.

167 Section 4. Section 740.003, Florida Statutes, is created to
 168 read:

169 740.003 User direction for disclosure of digital assets.—

170 (1) A user may use an online tool to direct the custodian
 171 to disclose or not to disclose some or all of the user's digital
 172 assets, including the content of electronic communications. If
 173 the online tool allows the user to modify or delete a direction
 174 at all times, a direction regarding disclosure using an online

590-01329-16

2016494c1

175 tool overrides a contrary direction by the user in a will,
 176 trust, power of attorney, or other record.

177 (2) If a user has not used an online tool to give direction
 178 under subsection (1) or if the custodian has not provided an
 179 online tool, the user may allow or prohibit disclosure to a
 180 fiduciary of some or all of the user's digital assets, including
 181 the content of electronic communications sent or received by the
 182 user, in a will, trust, power of attorney, or other record.

183 (3) A user's direction under subsection (1) or subsection
 184 (2) overrides a contrary provision in a terms-of-service
 185 agreement that does not require the user to act affirmatively
 186 and distinctly from the user's assent to the terms of service.

187 Section 5. Section 740.004, Florida Statutes, is created to
 188 read:

189 740.004 Terms-of-service agreement preserved.-

190 (1) This chapter does not change or impair a right of a
 191 custodian or a user under a terms-of-service agreement to access
 192 and use the digital assets of the user.

193 (2) This chapter does not give a fiduciary any new or
 194 expanded rights other than those held by the user for whom, or
 195 for whose estate or trust, the fiduciary acts or represents.

196 (3) A fiduciary's access to digital assets may be modified
 197 or eliminated by a user, by federal law, or by a terms-of-
 198 service agreement if the user has not provided direction under
 199 s. 740.003.

200 Section 6. Section 740.005, Florida Statutes, is created to
 201 read:

202 740.005 Procedure for disclosing digital assets.-

203 (1) When disclosing the digital assets of a user under this

590-01329-16

2016494c1

204 chapter, the custodian may, at its sole discretion:

205 (a) Grant a fiduciary or designated recipient full access
 206 to the user's account;

207 (b) Grant a fiduciary or designated recipient partial
 208 access to the user's account sufficient to perform the tasks
 209 with which the fiduciary or designated recipient is charged; or

210 (c) Provide a fiduciary or designated recipient a copy in a
 211 record of any digital asset that, on the date the custodian
 212 received the request for disclosure, the user could have
 213 accessed if the user were alive and had full capacity and access
 214 to the account.

215 (2) A custodian may assess a reasonable administrative
 216 charge for the cost of disclosing digital assets under this
 217 chapter.

218 (3) A custodian is not required to disclose under this
 219 chapter a digital asset deleted by a user.

220 (4) If a user directs or a fiduciary requests a custodian
 221 to disclose under this chapter some, but not all, of the user's
 222 digital assets to the fiduciary or a designated recipient, the
 223 custodian is not required to disclose the assets if segregation
 224 of the assets would impose an undue burden on the custodian. If
 225 the custodian believes the direction or request imposes an undue
 226 burden, the custodian or the fiduciary may seek an order from
 227 the court to disclose:

228 (a) A subset limited by date of the user's digital assets;

229 (b) All of the user's digital assets to the fiduciary or
 230 designated recipient, or to the court for review in chambers; or

231 (c) None of the user's digital assets.

232 Section 7. Section 740.006, Florida Statutes, is created to

590-01329-16

2016494c1

233 read:

234 740.006 Disclosure of content of electronic communications

235 of deceased user.-If a deceased user consented to or a court

236 directs the disclosure of the content of electronic

237 communications of the user, the custodian shall disclose to the

238 personal representative of the estate of the user the content of

239 an electronic communication sent or received by the user if the

240 personal representative gives to the custodian:

241 (1) A written request for disclosure which is in physical

242 or electronic form;

243 (2) A certified copy of the death certificate of the user;

244 (3) A certified copy of the letters of administration, the

245 order authorizing a curator or administrator ad litem, the order

246 of summary administration issued pursuant to chapter 735, or

247 other court order;

248 (4) Unless the user provided direction using an online

249 tool, a copy of the user's will, trust, power of attorney, or

250 other record evidencing the user's consent to disclosure of the

251 content of electronic communications; and

252 (5) If requested by the custodian:

253 (a) A number, username, address, or other unique subscriber

254 or account identifier assigned by the custodian to identify the

255 user's account;

256 (b) Evidence linking the account to the user; or

257 (c) A finding by the court that:

258 1. The user had a specific account with the custodian,

259 identifiable by information specified in paragraph (a);

260 2. Disclosure of the content of electronic communications

261 of the user would not violate 18 U.S.C. s. 2701 et seq., 47

Page 9 of 20

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

590-01329-16

2016494c1

262 U.S.C. s. 222, or other applicable law;

263 3. Unless the user provided direction using an online tool,

264 the user consented to disclosure of the content of electronic

265 communications; or

266 4. Disclosure of the content of electronic communications

267 of the user is reasonably necessary for the administration of

268 the estate.

269 Section 8. Section 740.007, Florida Statutes, is created to

270 read:

271 740.007 Disclosure of other digital assets of deceased

272 user.-Unless a user prohibited disclosure of digital assets or

273 the court directs otherwise, a custodian shall disclose to the

274 personal representative of the estate of a deceased user a

275 catalog of electronic communications sent or received by the

276 user and digital assets of the user, except the content of

277 electronic communications, if the personal representative gives

278 to the custodian:

279 (1) A written request for disclosure which is in physical

280 or electronic form;

281 (2) A certified copy of the death certificate of the user;

282 (3) A certified copy of the letters of administration, the

283 order authorizing a curator or administrator ad litem, the order

284 of summary administration issued pursuant to chapter 735, or

285 other court order; and

286 (4) If requested by the custodian:

287 (a) A number, username, address, or other unique subscriber

288 or account identifier assigned by the custodian to identify the

289 user's account;

290 (b) Evidence linking the account to the user;

Page 10 of 20

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

590-01329-16

2016494c1

291 (c) An affidavit stating that disclosure of the user's
 292 digital assets is reasonably necessary for the administration of
 293 the estate; or

294 (d) An order of the court finding that:

295 1. The user had a specific account with the custodian,
 296 identifiable by information specified in paragraph (a); or
 297 2. Disclosure of the user's digital assets is reasonably
 298 necessary for the administration of the estate.

299 Section 9. Section 740.008, Florida Statutes, is created to
 300 read:

301 740.008 Disclosure of content of electronic communications
 302 of principal.—To the extent a power of attorney expressly grants
 303 an agent authority over the content of electronic communications
 304 sent or received by the principal and unless directed otherwise
 305 by the principal or the court, a custodian shall disclose to the
 306 agent the content if the agent gives to the custodian:

307 (1) A written request for disclosure which is in physical
 308 or electronic form;

309 (2) An original or copy of the power of attorney expressly
 310 granting the agent authority over the content of electronic
 311 communications of the principal;

312 (3) A certification by the agent, under penalty of perjury,
 313 that the power of attorney is in effect; and

314 (4) If requested by the custodian:

315 (a) A number, username, address, or other unique subscriber
 316 or account identifier assigned by the custodian to identify the
 317 principal's account; or

318 (b) Evidence linking the account to the principal.

319 Section 10. Section 740.009, Florida Statutes, is created

590-01329-16

2016494c1

320 to read:

321 740.009 Disclosure of other digital assets of principal.—
 322 Unless otherwise ordered by the court, directed by the
 323 principal, or provided by a power of attorney, a custodian shall
 324 disclose to an agent with specific authority over the digital
 325 assets or with general authority to act on behalf of the
 326 principal a catalog of electronic communications sent or
 327 received by the principal, and digital assets of the principal,
 328 except the content of electronic communications, if the agent
 329 gives the custodian:

330 (1) A written request for disclosure which is in physical
 331 or electronic form;

332 (2) An original or a copy of the power of attorney which
 333 gives the agent specific authority over digital assets or
 334 general authority to act on behalf of the principal;

335 (3) A certification by the agent, under penalty of perjury,
 336 that the power of attorney is in effect; and

337 (4) If requested by the custodian:

338 (a) A number, username, address, or other unique subscriber
 339 or account identifier assigned by the custodian to identify the
 340 principal's account; or

341 (b) Evidence linking the account to the principal.

342 Section 11. Section 740.01, Florida Statutes, is created to
 343 read:

344 740.01 Disclosure of digital assets held in trust when
 345 trustee is the original user.—Unless otherwise ordered by the
 346 court or provided in a trust, a custodian shall disclose to a
 347 trustee that is an original user of an account any digital asset
 348 of the account held in trust, including a catalog of electronic

590-01329-16

2016494c1

349 communications of the trustee and the content of electronic
 350 communications.

351 Section 12. Section 740.02, Florida Statutes, is created to
 352 read:

353 740.02 Disclosure of content of electronic communications
 354 held in trust when trustee is not the original user.—Unless
 355 otherwise ordered by the court, directed by the user, or
 356 provided in a trust, a custodian shall disclose to a trustee
 357 that is not an original user of an account the content of an
 358 electronic communication sent or received by an original or
 359 successor user and carried, maintained, processed, received, or
 360 stored by the custodian in the account of the trust if the
 361 trustee gives the custodian:

362 (1) A written request for disclosure which is in physical
 363 or electronic form;

364 (2) A certified copy of the trust instrument, or a
 365 certification of trust under s. 736.1017, which includes consent
 366 to disclosure of the content of electronic communications to the
 367 trustee;

368 (3) A certification by the trustee, under penalty of
 369 perjury, that the trust exists and that the trustee is a
 370 currently acting trustee of the trust; and

371 (4) If requested by the custodian:

372 (a) A number, username, address, or other unique subscriber
 373 or account identifier assigned by the custodian to identify the
 374 trust's account; or

375 (b) Evidence linking the account to the trust.

376 Section 13. Section 740.03, Florida Statutes, is created to
 377 read:

590-01329-16

2016494c1

378 740.03 Disclosure of other digital assets held in trust
 379 when trustee is not the original user.—Unless otherwise ordered
 380 by the court, directed by the user, or provided in a trust, a
 381 custodian shall disclose to a trustee that is not an original
 382 user of an account, a catalog of electronic communications sent
 383 or received by an original or successor user and stored,
 384 carried, or maintained by the custodian in an account of the
 385 trust and any digital assets in which the trust has a right or
 386 interest, other than the content of electronic communications,
 387 if the trustee gives the custodian:

388 (1) A written request for disclosure which is in physical
 389 or electronic form;

390 (2) A certified copy of the trust instrument, or a
 391 certification of trust under s. 736.1017;

392 (3) A certification by the trustee, under penalty of
 393 perjury, that the trust exists and that the trustee is a
 394 currently acting trustee of the trust; and

395 (4) If requested by the custodian:

396 (a) A number, username, address, or other unique subscriber
 397 or account identifier assigned by the custodian to identify the
 398 trust's account; or

399 (b) Evidence linking the account to the trust.

400 Section 14. Section 740.04, Florida Statutes, is created to
 401 read:

402 740.04 Disclosure of digital assets to guardian of ward.—

403 (1) After an opportunity for a hearing under chapter 744,
 404 the court may grant a guardian access to the digital assets of a
 405 ward.

406 (2) Unless otherwise ordered by the court or directed by

590-01329-16

2016494c1

407 the user, a custodian shall disclose to a guardian the catalog
 408 of electronic communications sent or received by the ward and
 409 any digital assets in which the ward has a right or interest,
 410 other than the content of electronic communications, if the
 411 guardian gives the custodian:

412 (a) A written request for disclosure which is in physical
 413 or electronic form;

414 (b) A certified copy of letters of plenary guardianship of
 415 the property or the court order that gives the guardian
 416 authority over the digital assets of the ward; and

417 (c) If requested by the custodian:

418 1. A number, username, address, or other unique subscriber
 419 or account identifier assigned by the custodian to identify the
 420 ward's account; or

421 2. Evidence linking the account to the ward.

422 (3) A guardian with general authority to manage the
 423 property of a ward may request a custodian of the digital assets
 424 of the ward to suspend or terminate an account of the ward for
 425 good cause. A request made under this section must be
 426 accompanied by a certified copy of the court order giving the
 427 guardian authority over the ward's property.

428 Section 15. Section 740.05, Florida Statutes, is created to
 429 read:

430 740.05 Fiduciary duty and authority.-

431 (1) The legal duties imposed on a fiduciary charged with
 432 managing tangible property apply to the management of digital
 433 assets, including:

434 (a) The duty of care;
 435 (b) The duty of loyalty; and

Page 15 of 20

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

590-01329-16

2016494c1

436 (c) The duty of confidentiality.

437 (2) A fiduciary's authority with respect to a digital asset
 438 of a user:

439 (a) Except as otherwise provided in s. 740.003, is subject
 440 to the applicable terms-of-service agreement;

441 (b) Is subject to other applicable law, including copyright
 442 law;

443 (c) Is limited by the scope of the fiduciary's duties; and
 444 (d) May not be used to impersonate the user.

445 (3) A fiduciary with authority over the tangible personal
 446 property of a decedent, ward, principal, or settlor has the
 447 right to access any digital asset in which the decedent, ward,
 448 principal, or settlor had or has a right or interest and that is
 449 not held by a custodian or subject to a terms-of-service
 450 agreement.

451 (4) A fiduciary acting within the scope of the fiduciary's
 452 duties is an authorized user of the property of the decedent,
 453 ward, principal, or settlor for the purpose of applicable
 454 computer fraud and unauthorized computer access laws, including
 455 under chapter 815.

456 (5) A fiduciary with authority over the tangible personal
 457 property of a decedent, ward, principal, or settlor:

458 (a) Has the right to access the property and any digital
 459 asset stored in it; and

460 (b) Is an authorized user for the purpose of computer fraud
 461 and unauthorized computer access laws, including under chapter
 462 815.

463 (6) A custodian may disclose information in an account to a
 464 fiduciary of the user when the information is required to

Page 16 of 20

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

590-01329-16

2016494c1

465 terminate an account used to access digital assets licensed to
 466 the user.

467 (7) A fiduciary of a user may request a custodian to
 468 terminate the user's account. A request for termination must be
 469 in writing, in paper or electronic form, and accompanied by:

470 (a) If the user is deceased, a certified copy of the death
 471 certificate of the user;

472 (b) A certified copy of the letters of administration; the
 473 order authorizing a curator or administrator ad litem; the order
 474 of summary administration issued pursuant to chapter 735; or the
 475 court order, power of attorney, or trust giving the fiduciary
 476 authority over the account; and

477 (c) If requested by the custodian:

478 1. A number, username, address, or other unique subscriber
 479 or account identifier assigned by the custodian to identify the
 480 user's account;

481 2. Evidence linking the account to the user; or

482 3. A finding by the court that the user had a specific
 483 account with the custodian, identifiable by the information
 484 specified in subparagraph 1.

485 Section 16. Section 740.06, Florida Statutes, is created to
 486 read:

487 740.06 Custodian compliance and immunity.—

488 (1) Not later than 60 days after receipt of the information
 489 required under ss. 740.006-740.04, a custodian shall comply with
 490 a request under this chapter from a fiduciary or designated
 491 recipient to disclose digital assets or terminate an account. If
 492 the custodian fails to comply, the fiduciary or designated
 493 representative may apply to the court for an order directing

Page 17 of 20

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

590-01329-16

2016494c1

494 compliance.

495 (2) An order under subsection (1) directing compliance must
 496 contain a finding that compliance is not in violation of 18
 497 U.S.C. s. 2702.

498 (3) A custodian may notify a user that a request for
 499 disclosure or to terminate an account was made under this
 500 chapter.

501 (4) A custodian may deny a request under this chapter from
 502 a fiduciary or designated representative for disclosure of
 503 digital assets or to terminate an account if the custodian is
 504 aware of any lawful access to the account following the receipt
 505 of the fiduciary's request.

506 (5) This chapter does not limit a custodian's ability to
 507 obtain or require a fiduciary or designated recipient requesting
 508 disclosure or termination under this chapter to obtain a court
 509 order that:

510 (a) Specifies that an account belongs to the ward or
 511 principal;

512 (b) Specifies that there is sufficient consent from the
 513 ward or principal to support the requested disclosure; and

514 (c) Contains a finding required by a law other than this
 515 chapter.

516 (6) A custodian and its officers, employees, and agents are
 517 immune from liability for an act or omission done in good faith
 518 in compliance with this chapter.

519 Section 17. Section 740.07, Florida Statutes, is created to
 520 read:

521 740.07 Relation to Electronic Signatures in Global and
 522 National Commerce Act.—This chapter modifies, limits, and

Page 18 of 20

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

590-01329-16

2016494c1

523 supersedes the Electronic Signatures in Global and National
 524 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
 525 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
 526 or authorize electronic delivery of any of the notices described
 527 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

528 Section 18. Section 740.08, Florida Statutes, is created to
 529 read:

530 740.08 Applicability.-

531 (1) Subject to subsection (3), this chapter applies to:

532 (a) A fiduciary acting under a will, trust, or power of
 533 attorney executed before, on, or after July 1, 2016;

534 (b) A personal representative acting for a decedent who
 535 died before, on, or after July 1, 2016;

536 (c) A guardian appointed through a guardianship proceeding,
 537 whether pending in a court or commenced before, on, or after
 538 July 1, 2016; and

539 (d) A trustee acting under a trust created before, on, or
 540 after July 1, 2016.

541 (2) This chapter applies to a custodian if the user resides
 542 in this state or resided in this state at the time of the user's
 543 death.

544 (3) This chapter does not apply to a digital asset of an
 545 employer used by an employee in the ordinary course of the
 546 employer's business.

547 Section 19. Section 740.09, Florida Statutes, is created to
 548 read:

549 740.09 Severability.-If any provision of this chapter or
 550 its application to any person or circumstance is held invalid,
 551 the invalidity does not affect other provisions or applications

590-01329-16

2016494c1

552 of this chapter which can be given effect without the invalid
 553 provision or application, and to this end the provisions of this
 554 chapter are severable.

555 Section 20. This act shall take effect July 1, 2016.

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 Fiscal Policy

BILL: CS/SB 494

INTRODUCER: Judiciary Committee and Senator Hukill

SUBJECT: Digital Assets

DATE: January 13, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 494 is a state adaptation of the Revised Uniform Fiduciary Access to Digital Assets Act was approved by the Uniform Law Commission in July 2015. It addresses conflicting interests between fiduciaries, who are trying to access the digital assets of someone who has died or become incapacitated, and custodians, who possess the assets.

Digital assets are electronic records in which someone has a personal interest or right. They include electronic communications and records such as emails, text messages, online photographs, documents stored in the cloud, electronic bank statements, and other electronic communications or records.

The purpose of the revised uniform act codified in the bill is twofold. The bill provides fiduciaries of decedents, incapacitated persons, settlors, principals, and wards the legal authority to manage the digital assets and electronic communications in a similar manner to how they manage tangible assets and accounts. The bill specifies when a fiduciary may access the content of digital assets and electronic communications, and when only a catalog of such property is permitted to be accessed. The bill provides custodians of digital assets and electronic communications the legal authority they need to interact with the fiduciaries of their users while honoring the user's privacy expectations for his or her personal communications.¹ A custodian is

¹ National Conference of Commissioners on Uniform State Laws, *Revised Uniform Fiduciary Access to Digital Assets Act (2015) Prefatory Note* (on file with the Senate Committee on Judiciary).

granted immunity from liability from state law for acts or omissions done in good faith compliance with the provisions of this bill.

This bill gives Internet users more certainty when planning for the management and disposition of their digital assets if they should die or become unable to manage their assets. This is accomplished by vesting fiduciaries with the authority to access, control, or copy digital assets and accounts.²

The fiscal impact on state courts is indeterminate.

II. Present Situation:

Background

Digital age technology has dramatically transformed how people acquire and store information, communicate, and transact business. Before the Internet was developed, most information was circulated in tangible forms, often reduced to ink on paper. However, as people have embraced electronic devices, many paper documents have been replaced by digital files, inboxes often substitute for mailboxes, glossy photographs have given way to digital images, and the metal filing cabinet with a key lock has been displaced by a networked file server with user access security.

These new technologies have created challenges to a person who is tasked with corralling the digital assets³ of someone who has either lost capacity or died. When someone is declared incapacitated or dies in Florida, a fiduciary⁴ is required and given legal authority to inventory the person's assets, pay the person's debts, taxes, and expenses, and preserve the person's property during the period of incapacity or transfer the person's property to the correct beneficiaries after death.⁵

Previously, someone's personal information was tangible and could be located by sifting through paper records or waiting for the incoming mail to divulge banking records and bills to be paid. Locating these records and managing property and social media accounts in the digital age is more complicated. Substantial amounts of valuable electronic data and digital assets are stored in cell phones, laptops, personal computers, online accounts, and other devices.

The challenges that the fiduciary must deal with include how to locate the person's digital assets; who has ownership over the assets once located; how to access the account without a password; and whether the original terms-of-service agreement for the digital account controls a successor's

² Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: Proposed Enactment of Chapter 740, Florida Statutes* (2015) (on file with the Senate Committee on Judiciary).

³ Some examples of digital assets are e-mail, photos, projects, online bank accounts, personal records, digital music, entertainment, presentations, domain names, intellectual property, and client lists. The assets are generally important because of their sentimental or financial value.

⁴ A fiduciary is defined as someone who owes to another person a duty to act in good faith and trust. BLACK'S LAW DICTIONARY (9th ed. 2009).

⁵ Digital Assets and Information Study Committee of the Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper: Digital Assets Questions and Answers* (2015) (on file with the Senate Committee on Judiciary).

ability to access to the account. Generally, a terms-of-service agreement, rather than state property law, controls the access to someone's digital assets, upon death or incapacity.

Efforts to resolve these legal issues have pitted the fiduciary's duty to identify and access the digital assets against the Internet service provider's duty to protect the original account holder's privacy interest. The Internet service provider is also concerned about divulging information that could be a violation of state and federal computer security laws. An additional barrier to the fiduciary's access is the conditions of the terms-of-service agreement that the original account holder agreed to when contracting with the service provider.

Privacy Laws for Electronic Communications

Federal Law

Both federal and state laws prohibit the unauthorized access of computer systems and certain types of protected data. The most relevant federal laws, passed in 1986, are the Computer Fraud and Abuse Act⁶ and the Stored Communications Act.⁷

The Computer Fraud and Abuse Act⁸ is a computer security law that imposes penalties for the unauthorized access of stored data, devices, and computer hardware.⁹ The law is designed to protect computers in which there is a federal interest and shields them from certain threats and forms of espionage and from being corruptly used as vehicles to commit fraud.¹⁰ In essence, the law makes it a crime to access a computer, online service, or online account without authorization. When this law is read in the context of accessing digital assets, the issue becomes whether a fiduciary has been given authority to access a computer by virtue of a law or whether access must be given explicitly by the owner of the computer, online service, or account.¹¹

The Stored Communications Act, which is part of the Electronic Communications Privacy Act,¹² establishes privacy rights and prohibits certain electronic communication services or remote computing services from knowingly divulging the contents of certain electronic communications and files.¹³ Under the terms of the act, providers of communications services to the public may not be compelled to disclose data and information stored online. The providers are prohibited from voluntarily divulging the contents of stored communications unless an exception applies

⁶ 18 U.S.C. s. 1030 *et seq.*

⁷ 18 U.S.C. s. 2701 *et seq.*

⁸ According to the U.S. Department of Justice, the act is broad enough in scope to permit the Federal Government to prosecute someone if the person exceeds his or her authorized access by violating the access terms of a website's terms-of-service agreement or usage policies. James D. Lamm, Digital Passing: *Your Client is Six Feet Under, But His Data is in the Cloud*, Nov. 2014, available at <http://www.digitalpassing.com/wordpress/wp-content/uploads/2013/02/James-Lamm-Digital-Death-1-17-2013.pdf> (last visited Jan. 12, 2016).

⁹ William Bissett and David Kauffman, *Surf the Evolving Web of Laws Affecting Digital Assets*, 41 Estate Planning No. 4 (Apr. 2014), available at <http://www.inknowvision.com/newsletters/July2014.pdf> (last visited Jan. 12, 2016).

¹⁰ Charles Doyle, Congressional Research Service, *Cybercrime: A Sketch of 18 U.S.C. 1030 and Related Federal Criminal Laws*, RS20830 (Oct. 15, 2014).

¹¹ *Supra* note 5 at 3.

¹² 18 U.S.C. s. 2510 *et seq.*

¹³ James D. Lamm, Digital Passing: *Your Client is Six Feet Under, But His Data is in the Cloud*, Nov. 2014, available at <http://www.digitalpassing.com/wordpress/wp-content/uploads/2013/02/James-Lamm-Digital-Death-1-17-2013.pdf> (last visited Jan. 12, 2016).

under s. 2702(b) of the Stored Communication Act. Wrongful disclosures result in legal penalties. However, there is a “lawful consent” exception which permits a service provider to voluntarily disclose electronic communications if lawful consent is given.¹⁴

These privacy protections are viewed by some as being substantial barriers for family members and fiduciaries who seek to access the contents of a deceased or incapacitated user’s online accounts. The service providers see them as restrictions on their ability to disclose electronic communications to anyone, unless certain exceptions are met. The service providers’ reasoning is that, if the Stored Communications Act applies, the online account service provider is prohibited by law from disclosing the contents of the communications and files.

State Law

Two chapters in the *Florida Statutes* address computer related crimes and the security of communications and are modeled after the Stored Communications Act. Chapter 815, F.S., is the “Florida Computer Crimes Act” and ch. 934, F.S., is entitled “Security of Communications; Surveillance.” Neither chapter addresses the ability of a fiduciary to legally access, duplicate, or control digital assets.¹⁵ Additionally, no other provision of Florida law specifically addresses digital access by fiduciaries.

Terms-of-Service Agreements

Terms-of-service agreements, the conditions controlling the relationship between the account holder and the service provider, are not uniform among Internet service providers. While some Internet service providers publish explicit policies detailing what will occur to digital assets when an individual dies, other providers do not. Some providers’ policies state that upon the death of the account holder, the account will terminate, thereby prohibiting access to the account by anyone. Providers often publish their policies in the terms-of-service agreements, but the terms are frequently ignored as readers quickly move past the language to progress to the end of the document.

The Uniform Law Commission

Mindful that few laws exist to resolve these growing conflicts, the Uniform Law Commission¹⁶ drafted a model law, the Uniform Fiduciary Access to Digital Assets, which it approved in 2014. Versions of the model act were introduced in 27 state legislatures in 2015. Not one bill passed. Internet-based businesses and privacy advocates were vocal opponents. The Uniform Law Commission reconvened in 2015 to address the issue of accessing digital assets. The commission produced a revised version of the earlier act for consideration by state legislatures in 2016,¹⁷ the

¹⁴ *Supra* note 5.

¹⁵ *Supra* note 2 at 2.

¹⁶ According to its website, the Uniform Law Commission was established in 1892 and is made up of lawyers who are appointed by state governments. Its purpose is to research, draft, and promote the enactment of non-partisan uniform state legislation. See Uniform Law Commission, *About the ULC*, available at [http://www.uniformlawcommission.com/Narrative.aspx?title=About the ULC](http://www.uniformlawcommission.com/Narrative.aspx?title=About%20the%20ULC) (last visited Jan. 12, 2016). The commission began meeting in 2012 to develop the Uniform Fiduciary Access to Digital Assets Act.

¹⁷ Benjamin Orzeske, *Managing a Digital Estate*, ABA Trust Letter, American Bankers Association, October 2015 (on file with the Senate Committee on Judiciary).

Revised Uniform Fiduciary Access to Digital Access Act, often referred to as the Revised UFADAA.

III. Effect of Proposed Changes:

General Overview

The Florida Statutes do not authorize fiduciary access to digital assets. This bill provides fiduciaries with specific authority to access, control, or copy digital assets and accounts. The four types of fiduciaries this bill applies to are personal representatives of decedents' estates, guardians of the property of minors or incapacitated persons, agents who are acting under a power of attorney, and trustees.¹⁸

According to the Real Property, Probate and Trust Law Section of The Florida Bar, or RPPTL, this bill provides the legal authority that a fiduciary needs to manage digital assets in compliance with a person's estate plan, while also ensuring that a person's private electronic communications remain private unless the person gave consent for disclosure. The bill allows a user to specify whether his or her digital assets will be preserved, distributed to heirs, or destroyed. In keeping with federal privacy laws, the bill prevents companies that store electronic communications from releasing them to fiduciaries unless the user has consented to the disclosure. Fiduciaries are required under the bill to provide proof of their authority under Florida law to the custodians of the digital assets. Custodians that comply with a fiduciary's apparent authorization request are given immunity from liability under the statutes that prohibit unauthorized access.¹⁹

This bill is a state adaptation of the Revised Uniform Fiduciary Access to Digital Assets Act. The Uniform Law Commission has stated that this revised uniform act, which the bill mirrors, gives Internet users the ability to plan for the management and disposition of their assets in similar ways that they make plans for tangible property. The bill has a three-tiered system of priorities in the event of conflicting instructions. Additionally, the bill is designed as an overlay statute that works in conjunction with the state's existing laws involving probate, guardianship, trusts, and powers of attorney.²⁰

Limited Application

According to RPPTL, the bill is limited in its scope and applies only to fiduciaries who are already bound to act in compliance with their fiduciary duties and powers. The bill does not extend to family members or other people who seek access to digital assets unless they are also a fiduciary. Moreover, the ability of a fiduciary to access a digital asset does not entitle the fiduciary to own the asset or make transactions with the asset.

¹⁸ *Supra* note 2 at 1.

¹⁹ *Id.*

²⁰ Uniform Law Commission, *The Revised Uniform Fiduciary Access to Digital Assets Act – A Summary*, 2015 available at <http://www.uniformlaws.org/shared/docs/Fiduciary%20Access%20to%20Digital%20Assets/Revised%202015/Revised%20UFADAA%20-%20Summary%20-%20September%202015.pdf> (last visited Jan. 12, 2016).

The scope of the bill is further limited by the definition of “digital assets.” The bill’s only application is to an electronic record, which includes electronic communications, and does not apply to the underlying asset or liability unless the asset or liability is itself an electronic record.²¹

Purpose (Sections 1 & 2)

Section 740.001, F.S., creates the “Florida Fiduciary Access to Digital Assets Act.” According to RPPTL the goal of the revised uniform act, which this bill mirrors, is to:

- Remove barriers to a fiduciary who is seeking access to electronic records;
- Respect the user’s privacy and intentions; and
- Ensure that an Internet service provider’s compliance with the bill’s disclosure requirements do not subject it to liability for violations of federal privacy laws.²²

Definitions (Section 3)

Section 740.002, F.S., defines 27 terms used in the bill. The majority of those terms mirror definitions currently in the Florida Probate Code and the Florida Powers of Attorney Act, while others are adapted from federal statutes or the Revised Uniform Fiduciary Access to Digital Assets Act.²³ Some of the most frequently used terms in this bill are listed below.

An “account” means an arrangement under a terms-of-service agreement in which the custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

“Catalog of electronic communications” means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person. In lay terms, this is considered to be what is on the “outside of an envelope” as opposed to the contents inside the envelope.

“Content of an electronic communication” means information concerning the substance or meaning of the communication which:

- Has been sent or received by a user;
- Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and
- Is not readily accessible to the public.

In lay terms, this is generally understood to be the “inside of an envelope” or the subject line of an e-mail, the body of an e-mail or attachment, or the body of other types of electronic communications that are protected by the Stored Communications Act.²⁴

²¹ *Supra* note 2 at 4.

²² *Id.*

²³ *Id.* at 5. chs. 731-735, F.S. Powers of Attorney Part II, ch. 709, F.S.

²⁴ According to James Lamm, an expert in this area of law, the Stored Communications Act does not protect the content of all electronic communications, and does not protect all records held in electronic storage by storage providers. The Stored Communications Act protects the content of an electronic communication only if the content is held in electronic storage by a service provider, the service provider holding the content provides an electronic communication service or remote computing

A “custodian” means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

A “designated recipient” means a person chosen by a user through an online tool to administer digital assets of the user.

A “digital asset” means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

“Electronic communication” has the same meaning as provided in 18 U.S.C. s. 2510(12) of the Electronic Communication Privacy Act. It means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce. It does not include any wire or oral communication; any communication made through a tone-only paging device; any communication from a tracking device;²⁵ or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

“User” means a person that has an account with a custodian.

User’s Direction for Disclosure of Digital Assets (Section 4)

The concept of an “online tool” for directing fiduciary assets is an electronic service provided by a custodian which allows the user, in an agreement separate and distinct from the terms-of-service agreement, to provide directions for disclosure or nondisclosure of digital assets to a third person.

Section 740.003, F.S., establishes the user’s ability to direct disclosure of the digital assets and the order of preference for his or her direction. It is a three-tiered priority system.

The first priority is a user’s online direction for a specific account. If a company provides an online tool for a user to designate a person to receive access to his or her account upon death or incapacity, and the user takes advantage of the online tool, then the user’s designation prevails, even if it is in conflict with a contrary provision in the user’s will or trust. However, for the user’s designation to prevail the online tool must allow the user to modify or delete a direction at all times. The user may direct the custodian to disclose or not disclose some or all of his or her digital assets, even the content of electronic communications.

The second priority is the user’s direction contained in a valid will, trust, power of attorney, or other record, if the user has not used an online tool to give direction or the custodian has not provided an online tool. If the user makes plans for disposing of his or her digital assets, then the

service to the public, and access to the content is restricted in a manner so that it is not completely public. See Lamm, *supra* note 15.

²⁵ A tracking device is an electronic or mechanical device that permits the tracking of a person or object. 18 U.S.C. s. 3117(b).

law gives effect to that plan and the custodian of the digital assets is required to comply with the plan.

The third priority is the terms-of-service agreement that governs the account. If the user does not provide for the disposition of his or her digital assets, whether online or in an estate plan, the terms-of-service agreement governing the account controls.

Terms-of-Service Agreement Preserved (Section 5)

Section 740.004, F.S., clarifies that a terms-of-service agreement is preserved and the fiduciary has no greater rights than the user, unless there is a conflict with a user's direction. The fiduciary is not given any new or expanded rights. The fiduciary's access to digital assets may be modified or eliminated by a user, federal law, or by a terms-of-service agreement if the user has not provided direction under the previous section.

Procedure for Disclosing Digital Assets (Section 6)

Section 740.005, F.S., establishes the custodian's procedure, or three options, for disclosing digital assets. When a custodian discloses a user's digital assets, the custodian has full discretion to:

- Grant the fiduciary or designated recipient full access to the user's account;
- Grant the fiduciary or designated recipient partial access to the account that is sufficient to perform the necessary tasks; or
- Provide the fiduciary or designated recipient a copy in a record of the digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if he or she were alive and had full capacity and access to the account.

A custodian may charge a reasonable administrative fee for the cost of disclosing digital assets and is not required, under this bill, to disclose a digital asset deleted by the user.

If a user directs, or a fiduciary requests, a custodian to disclose some, but not all of the user's digital assets under this act, the custodian is not required to disclose the assets if segregating the assets would be unduly burdensome. If the custodian believes that an undue burden exists, the custodian or the fiduciary may seek a court order to disclose:

- A subset of the user's digital assets, limited by date;
- All of the digital assets to the fiduciary or designated recipient, or to the court for a review in chambers; or
- None of the user's digital assets.

Sections 7 – 14

Sections 7 – 14 establish the rights of personal representatives, guardians, agents acting pursuant to a power of attorney, and trustees. Each of the fiduciaries is subject to different rules for the content of communications that are protected by federal privacy laws and for other forms of digital assets. In general, fiduciaries will have access to a catalog of the user's communications (the outside of the envelope) but not the content (the inside of the envelope) unless the user consented to the disclosure of the content of the communication.

Disclosure of Content of Electronic Communications of Deceased User (Section 7)

Section 740.006, F.S., establishes the rights of a personal representative of a decedent to the contents of an electronic communication of the user. Section 8, below, addresses disclosure of non-content and other digital assets of a deceased user. A personal representative may not access the contents of a decedent's electronic communications unless the user consented or a court so directs.

In order for a custodian to disclose to the personal representative the content of an electronic communication that the user sent or received, the personal representative must supply to the custodian:

- A written request for disclosure in physical or electronic form;
- A certified copy of the death certificate of the user;
- A certified copy of the letters of administration or similar specified authority; and
- A copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications unless the user provided direction in an online tool.

If the custodian requests, the personal representative must also provide:

- A number, username, address, or other unique subscriber or count identifier assigned by the custodian to identify the user's account;
- Evidence linking the account to the user; or
- A finding by a court that:
 - The user had an specific account with the custodian, identifiable by information specified above;
 - Disclosure of the content of electronic communications of the user would not violate the Stored Communication Act at 18 U.S.C. s. 2701 et seq., privacy of customer information at 47 U.S.C. s. 222, or other applicable law;
 - The user consented to disclosure of the content of electronic communications (unless the user provided direction using an online tool); or
 - Disclosure of the content of electronic communications of the user is reasonably necessary for the administration of the estate.

Disclosure of Other Digital Assets of Deceased User (Section 8)

Section 740.007, F.S., establishes the rights of a personal representative to the *other* digital assets of a deceased user. This section gives a personal representative default access to the "catalog" (outside of the envelope) of electronic communications and other digital assets that are not protected by federal privacy laws.

A personal representative is permitted to have access to all of a decedent's other digital assets, excluding the contents of electronic communications as discussed above in Section 7, unless the deceased user prohibited disclosure or a court directs differently. The custodian must disclose to the personal representative a catalog of electronic communications sent or received by the user and the digital assets of the user, if the personal representative supplies the custodian with:

- A written request for disclosure in physical or electronic form;
- A certified copy of the death certificate of the user; and

- A certified copy of the letters of administration or similar specified authority.

If the custodian requests, the personal representative must also provide specified information that will identify the user's account; evidence linking the account to the principal; an affidavit stating that disclosure is reasonably necessary for the administration of the decedent's estate; or an order of the court which finds that the user had a specific account with the custodian, as specified earlier, or that disclosure of the user's digital assets is reasonably necessary for the administration of the estate.

Disclosure of Content of Electronic Communications of Principal (Section 9)

Section 740.008, F.S., establishes the right of an agent, who acts pursuant to a power of attorney, to the contents of electronic communications of the principal. When acting pursuant to the power of attorney, an agent is permitted access to the contents of a principal's electronic communications if that authority is expressly granted by the principal and is not in some other way restricted by the principal or a court.

The custodian is required to disclose the content if the agent supplies the custodian:

- A written request in physical or electronic form;
- An original or copy of the power of attorney expressly granting the agent authority over the content; and
- A certification by the agent, under penalty of perjury, that the power of attorney is in effect.

If requested by the custodian, the agent must also provide specified information assigned by the custodian to identify the principal's account or evidence linking the account to the principal.

Disclosure of Other Digital Assets of Principal (Section 10)

Section 740.009, F.S., establishes the right of an agent, who acts pursuant to a power of attorney, access to the other digital assets of the principal. It establishes that the agent has default authority over the principal's digital assets, except for the content of the principal's electronic communications.

Unless otherwise ordered by a court, directed by a principal, or provided by a power of attorney, a custodian must disclose to an agent who has been granted specific authority over the digital assets or general authority to act on behalf of the principal, a catalog of electronic communications that were sent or received by the principal and any other digital assets of the principal, but not the content of electronic communications.

The agent must supply the custodian with:

- A written request in physical or electronic form;
- An original or a copy of the power of attorney which grants the agent specific authority over digital assets or general authority to act on behalf of the principal; and
- A certification by the agent, under penalty of perjury, that the power of attorney is in effect.

If requested by the custodian, an agent must also provide certain enumerated identifying information assigned by the custodian to identify the principal's account or evidence linking the account to the principal.

Disclosure of Digital Assets held in Trust when Trustee is the Original User (Section 11)

Section 740.01, F.S., establishes that a trustee who is an original account holder can access all digital assets that are held in the trust. A trustee who is an original user may access any digital asset, which includes the catalog and the content of electronic communications, unless it is otherwise ordered by a court or provided in the trust.

Disclosure of Content of Electronic Communications Held in Trust When Trustee is not the Original User (Section 12)

Section 740.02, F.S., establishes the rights of a trustee to the contents of electronic communications held in trust when the trustee is *not* the original user. Unless otherwise ordered by a court, directed by the user, or provided in a trust, the custodian must disclose to a trustee who is not an original user the content of an electronic communication that was sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust. The trustee must provide the custodian:

- A written request in physical or electronic form;
- A certified copy of the trust instrument or a certification of trust, which includes consent to disclosure of the content to the trustee; and
- A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.²⁶

If requested by the custodian, the trustee must also provide certain identifying information assigned by the custodian to identify the trust's account or evidence linking the account to the trust.

Disclosure of Other Digital Assets Held in Trust When Trustee is not the Original User (Section 13)

Section 740.03, F.S., establishes the rights of a trustee to other digital assets held in trust when the trustee is not the original user. Unless otherwise ordered by a court, the user, or the trust instrument, a trustee who is not the original user may access the catalog of electronic communications and any digital assets, except the content of electronic communication, in an account of the trust. The trustee must supply the custodian:

- A written request for disclosure in physical or electronic form;
- A certified copy of the trust instrument or a certification of trust; and
- A certification by the trustee, under penalty of perjury, that the trust exists and that the trustee is a currently acting trustee.

If requested by the custodian, the trustee must also provide specified information assigned by the custodian to identify the trust's account or evidence linking the account to the trust.

Disclosure of Digital Assets to a Guardian of Ward (Section 14)

Unless a ward grants consent, a guardian is not authorized to access the content of a ward's electronic communications. Section 740.04, F.S., establishes the rights of a guardian to other

²⁶ According to RPPTL, sections 12 and 13 of the bill address situations involving either an inter vivos transfer of a digital asset into a trust or the transfer via a pour-over will of a digital asset into a trust. *Supra* note 2 at 11.

digital assets of a ward. Unless otherwise ordered by a court or the user, a guardian can access the catalog of electronic communications and any other digital assets, except the content of electronic communication. The guardian must provide the custodian:

- A written request for disclosure in physical or electronic form; and
- A certified copy of letters of plenary guardianship of the property or the court order giving the guardian authority over the digital assets of the ward.

If requested by the custodian, the guardian must provide specified information assigned by the custodian to identify the ward's account or evidence linking the account to the ward.

A custodian of the ward's digital assets may suspend or terminate an account of the ward for good cause if requested to do so by a guardian with general authority to manage the ward's property. The request to suspend or terminate must be accompanied by a certified copy of the court order giving the guardian the authority over the ward's property.²⁷

Fiduciary Duty and Authority (Section 15)

Section 740.05, F.S., establishes the legal duties of a fiduciary charged with managing digital assets. This includes the duties of care, loyalty, and confidentiality.

Section 740.05(2), F.S., establishes the fiduciary's authority to exercise control over the digital assets in conjunction with other statutes. The fiduciary's authority:

- Is subject to the terms-of-service agreement, except as directed in the online tool;
- Is subject to other laws, including copyright law;
- Is limited by the scope of the fiduciary's duties; and
- May not be used to impersonate the user.

A fiduciary who has authority over the tangible personal property of a decedent, ward, principal, or settlor has the right to access any digital asset in which those persons had or has a right or interest if the digital asset is not held by a custodian or subject to a terms-of-service agreement. For purposes of any applicable computer fraud or unauthorized computer access laws, a fiduciary who acts within the scope of the fiduciary's duties is an authorized user of the property. A fiduciary who has authority over the tangible personal property of a decedent, ward, principal, or settlor has the right to access the property and any digital assets that are stored in it and is an authorized user for the purpose of computer fraud and unauthorized computer access laws.

A custodian is authorized to disclose information in an account to a fiduciary of the user if that information is required to terminate an account used to access digital assets licensed to the user.

A fiduciary who requests a custodian to terminate a user's account must submit the request in writing, either in paper or electronic form, and also supply:

- A certified copy of the death certificate of the user, if the user is deceased; and
- A certified copy of the letters of administration or other specified court orders.

²⁷ According to the RPPTL, this section requires that the guardian must be specifically authorized, not implicitly authorized, to access the ward's digital assets and electronic communications *Supra* note 2 at 12.

If requested by the custodian, the fiduciary must also provide specified information assigned by the custodian to identify the user's account or evidence linking the account to the user, or a court finding that the user had a specific account with the custodian, identifiable by certain enumerated information.

Custodian Compliance and Immunity (Section 16)

Section 740.06, F.S., provides that a custodian has 60 days to comply with a request from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian does not comply, the fiduciary or designated representative may apply to the court for an order directing compliance. The order directing compliance must contain a finding that compliance would not be in violation of the Stored Communications Act at 18 U.S.C. s. 2702.

A custodian may deny a request for disclosure or terminate an account if the custodian is aware of any lawful access to the account after the custodian receives the fiduciary's request. The bill does not limit a custodian's ability to require a fiduciary or designated recipient to obtain a court order that specifies that an account belongs to the ward or principal, specifies that there is sufficient consent from the ward or principal, and contains a finding required by a law other than one found in this bill.

This section also establishes that a custodian and its officers, employees, and agents are immune from liability for acts or omissions done in good faith and in compliance with this chapter.

Electronic Signatures in Global and National Commerce Act (Section 17)

Section 740.07, F.S., establishes the relationship between this act and the Electronic Signatures in Global and National Commerce Act, noting where this act does and does not modify the federal law.²⁸

Applicability (Section 18)

Section 740.08, F.S., provides that the power granted by the act to fiduciaries, personal representatives, guardians, and trustees, applies to these people regardless of whether their authority arose, before, on, or after July 1, 2016, the effective date of the bill. Additionally, the bill does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

Severability (Section 19)

A standard severability provision is supplied which notes that if any provision is held invalid, the other provisions of the chapter will remain in effect.

Effective Date (Section 20)

The bill is effective July 1, 2016.

²⁸ The bill modifies the Electronic Signatures in Global and National Commerce Act as allowed by 15 U.S.C. s. 7002.

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

The mandate restrictions do not apply because the bill does not affect counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The federal preemption doctrine is a principle of law which holds that federal laws take precedence over state laws, and as such, states may not enact laws that are inconsistent with the federal law. Under the Electronic Communications Privacy Act, or ECPA, a service provider, with few exceptions, may not divulge the contents of a communication without the “lawful consent” of the originator, addressee, intended recipient, or the subscriber. Under the provisions of this bill, an online tool is created and controlled by the Internet service providers that is separate from the terms of service agreement. This online tool allows the account holder or user to specifically “opt in” and grant permission to the fiduciary to access his or her digital assets. This affirmative act could be deemed to trigger the “lawful consent” exception to ECPA. It could be argued that the online tool, which the account holder or user must affirmatively use to authorize consent, avoids any conflict with the ECPA and violations of the federal law.²⁹

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

None.

B. Private Sector Impact:

This bill may help fiduciaries identify assets and bank accounts belonging to those who have died or become incapacitated. The custodians of digital assets, such as email service providers, however, might initially incur costs in reviewing requests for access to digital assets and then making those assets available. Custodians, however, are authorized to assess a reasonable administrative charge for the costs they incur in disclosing digital assets such that this bill should have no impact on them.

²⁹ See *supra* note 5 at 3.

C. **Government Sector Impact:**

According to the Office of the State Courts Administrator, it cannot accurately determine the fiscal impact of the bill on the judicial branch. This is due to the unavailability of data needed to establish the increase in judicial time resulting from orders directing compliance, requests for disclosures, and determination requiring an in camera review of documents.

VI. **Technical Deficiencies:**

The term “designated representative” is only used on Lines 493 and 502 of the bill and not defined. However, the bill defines “designated recipient” and uses it in Section 3, 6, 16.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 740.001, 740.002, 740.003, 740.004, 740.005, 740.006, 740.007, 740.008, 740.009, 740.01, 740.02, 740.03, 740.04, 740.05, 740.06, 740.07, 740.08, and 740.09.

IX. **Additional Information:**

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

CS by Judiciary on November 17, 2015:

The definition of “ward” is amended and limited to clarify that a ward is someone for whom a guardian has already been appointed. The revised definition excludes a person for whom an application for the appointment of a guardian is pending before a court.

B. **Amendments:**

None.



594-01814-16

Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to the Florida Bright Futures
Scholarship Program; amending s. 1009.531, F.S.;
providing that the initial award period and the
renewal period for students who are unable to accept
an initial award immediately after completion of high
school due to a full-time religious or service
obligation begin upon the completion of the religious
or service obligation; specifying requirements for an
entity that is sponsoring the obligation; requiring
verification from the entity for which the student
completed such obligation; revising eligibility
requirements for the Florida Bright Futures
Scholarship Program; deleting obsolete provisions;
amending s. 1009.532, F.S.; providing that certain
students may receive an award for a specified number
of credits towards specified bachelor of science
degree programs or bachelor of applied science degree
programs; amending ss. 1009.534 and 1009.535, F.S.;
requiring a student, as a prerequisite for the Florida
Academic Scholars award or the Florida Medallion
Scholars award, to identify a civic issue or a
professional area of interest and develop a plan for
his or her personal involvement in addressing the
issue or learning about the area; prohibiting the
student from receiving remuneration or academic credit
for the volunteer service work performed except in



594-01814-16

certain circumstances; requiring the hours of
volunteer service work to be documented in writing and
signed by the student, the student's parent or
guardian, and a representative of the organization for
which the student performed the volunteer service
work; amending s. 1009.536, F.S.; requiring a student,
as a prerequisite for the Florida Gold Seal Vocational
Scholars award, to identify a civic issue or a
professional area of interest and develop a plan for
his or her personal involvement in addressing the
issue or learning about the area; prohibiting the
student from receiving remuneration or academic credit
for the volunteer service work performed except in
certain circumstances; requiring the hours of
volunteer service work to be documented in writing and
signed by the student, the student's parent or
guardian, and a representative of the organization for
which the student performed the volunteer service
work; requiring a high school student graduating in
the 2016-2017 academic year to meet certain
requirements to be eligible for a Florida Gold Seal
Vocational Scholars award; providing that certain
students may receive an award for a specified number
of credits toward specified bachelor of science degree
programs or bachelor of applied science degree
programs; providing an effective date.

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



594-01814-16

57 Section 1. Paragraph (c) of subsection (2) and paragraphs
58 (a) and (b) of subsection (6) of section 1009.531, Florida
59 Statutes, are amended to read:

60 1009.531 Florida Bright Futures Scholarship Program;
61 student eligibility requirements for initial awards.—

62 (2)

63 (c) A student graduating from high school in the 2012-2013
64 academic year and thereafter is eligible to accept an initial
65 award for 2 years following high school graduation and to accept
66 a renewal award for 5 years following high school graduation. A
67 student who applies for an award by high school graduation and
68 who meets all other eligibility requirements, but who does not
69 accept his or her award, may reapply during subsequent
70 application periods up to 2 years after high school graduation.
71 For a student who enlists in the United States Armed Forces
72 immediately after completion of high school, the 2-year
73 eligibility period for his or her initial award and the 5-year
74 renewal period shall begin upon the date of separation from
75 active duty. For a student who is receiving a Florida Bright
76 Futures Scholarship award and discontinues his or her education
77 to enlist in the United States Armed Forces, the remainder of
78 his or her 5-year renewal period shall commence upon the date of
79 separation from active duty. For a student who is unable to
80 accept an initial award immediately after completion of high
81 school due to a full-time religious or service obligation
82 lasting at least 18 months, the 2-year eligibility period for
83 his or her initial award and the 5-year renewal period begin
84 upon the completion of his or her religious or service
85 obligation. The organization sponsoring the full-time religious



594-01814-16

86 or service obligation must meet the requirements for nonprofit
87 status under s. 501(c)(3) of the Internal Revenue Code or be a
88 federal government service organization, including, but not
89 limited to, the Peace Corps and AmeriCorps programs. The
90 obligation must be documented in writing and verified by the
91 entity for which the student completed the obligation on a
92 standardized form prescribed by the department. If a course of
93 study is not completed after 5 academic years, an exception of 1
94 year to the renewal timeframe may be granted due to a verifiable
95 illness or other documented emergency pursuant to s.

96 1009.40(1)(b)4.

97 (6) (a) The State Board of Education shall publicize the
98 examination score required for a student to be eligible for a
99 Florida Academic Scholars award, pursuant to s. 1009.534(1)(a)
100 or (b), ~~as follows:~~

101 ~~1. For high school students graduating in the 2010-2011 and~~
102 ~~2011-2012 academic years, the student must earn an SAT score of~~
103 ~~1270 or a concordant ACT score of 28.~~

104 ~~2. For high school students graduating in the 2012-2013~~
105 ~~academic year, the student must earn an SAT score of 1280 which~~
106 ~~corresponds to the 88th SAT percentile rank or a concordant ACT~~
107 ~~score of 28.~~

108 ~~3. For High school students graduating in the 2013-2014~~
109 ~~academic year and thereafter, the student must earn an SAT score~~
110 ~~of 1290 which corresponds to the 89th SAT percentile rank or a~~
111 ~~concordant ACT score of 29.~~

112 (b) The State Board of Education shall publicize the
113 examination score required for a student to be eligible for a
114 Florida Medallion Scholars award, pursuant to s. 1009.535(1)(a)



594-01814-16

115 or (b), ~~as follows:~~

116 ~~1. For high school students graduating in the 2010-2011~~
117 ~~academic year, the student must earn an SAT score of 970 or a~~
118 ~~concordant ACT score of 20 or the student in a home education~~
119 ~~program whose parent cannot document a college preparatory~~
120 ~~curriculum must earn an SAT score of 1070 or a concordant ACT~~
121 ~~score of 23.~~

122 ~~2. For high school students graduating in the 2011-2012~~
123 ~~academic year, the student must earn an SAT score of 980 which~~
124 ~~corresponds to the 44th SAT percentile rank or a concordant ACT~~
125 ~~score of 21 or the student in a home education program whose~~
126 ~~parent cannot document a college preparatory curriculum must~~
127 ~~earn an SAT score of 1070 or a concordant ACT score of 23.~~

128 ~~3. For high school students graduating in the 2012-2013~~
129 ~~academic year, the student must earn an SAT score of 1020 which~~
130 ~~corresponds to the 51st SAT percentile rank or a concordant ACT~~
131 ~~score of 22 or the student in a home education program whose~~
132 ~~parent cannot document a college preparatory curriculum must~~
133 ~~earn an SAT score of 1070 or a concordant ACT score of 23.~~

134 ~~4. For High school students graduating in the 2013-2014~~
135 ~~academic year and thereafter, the student must earn an SAT score~~
136 ~~of 1170 which corresponds to the 75th SAT percentile rank or a~~
137 ~~concordant ACT score of 26 or the student in a home education~~
138 ~~program whose parent cannot document a college preparatory~~
139 ~~curriculum must earn an SAT score of 1220 or a concordant ACT~~
140 ~~score of 27.~~

141 Section 2. Paragraph (d) is added to subsection (3) of
142 section 1009.532, Florida Statutes, to read:

143 1009.532 Florida Bright Futures Scholarship Program;



594-01814-16

144 student eligibility requirements for renewal awards.-

145 (3)

146 (d) A student who is initially eligible in the 2017-2018
147 academic year and thereafter for a Florida Gold Seal Vocational
148 Scholars award under s. 1009.536(2) and who completes a
149 technical degree education program as defined in s. 1004.02(13)
150 may also receive an award for:

151 1. A maximum of 60 credit hours for a bachelor of science
152 degree program for which there is a statewide associate in
153 science degree program to bachelor of science degree program
154 articulation agreement; or

155 2. A maximum of 60 credit hours for a bachelor of applied
156 science degree program at a Florida College System institution.

157 Section 3. Subsection (1) of section 1009.534, Florida
158 Statutes, is amended to read:

159 1009.534 Florida Academic Scholars award.-

160 (1) A student is eligible for a Florida Academic Scholars
161 award if he or she ~~the student~~ meets the general eligibility
162 requirements for the Florida Bright Futures Scholarship Program
163 and ~~the student~~:

164 (a) Has achieved a 3.5 weighted grade point average as
165 calculated pursuant to s. 1009.531, or its equivalent, in high
166 school courses that are designated by the State Board of
167 Education as college-preparatory academic courses; and has
168 attained at least the score required under ~~pursuant to~~ s.
169 1009.531(6) (a) on the combined verbal and quantitative parts of
170 the Scholastic Aptitude Test, the Scholastic Assessment Test, or
171 the recentered Scholastic Assessment Test of the College
172 Entrance Examination, or an equivalent score on the ACT



426584

594-01814-16

173 Assessment Program;

174 (b) Has attended a home education program according to s.
175 1002.41 during grades 11 and 12, ~~or~~ has completed the
176 International Baccalaureate curriculum but failed to earn the
177 International Baccalaureate Diploma, or has completed the
178 Advanced International Certificate of Education curriculum but
179 failed to earn the Advanced International Certificate of
180 Education Diploma, and has attained at least the score required
181 under pursuant to s. 1009.531(6)(a) on the combined verbal and
182 quantitative parts of the Scholastic Aptitude Test, the
183 Scholastic Assessment Test, or the recentered Scholastic
184 Assessment Test of the College Entrance Examination, or an
185 equivalent score on the ACT Assessment Program;

186 (c) Has been awarded an International Baccalaureate Diploma
187 from the International Baccalaureate Office or an Advanced
188 International Certificate of Education Diploma from the
189 University of Cambridge International Examinations Office;

190 (d) Has been recognized by the merit or achievement
191 programs of the National Merit Scholarship Corporation as a
192 scholar or finalist; or

193 (e) Has been recognized by the National Hispanic
194 Recognition Program as a scholar recipient.

195
196 The A student must complete a program of volunteer community
197 service work, as approved by the district school board, the
198 administrators of a nonpublic school, or the Department of
199 Education for home education program students, which must shall
200 include a minimum of 75 hours of service work for high school
201 students graduating in the 2010-2011 academic year and 100 hours



426584

594-01814-16

202 of service work for high school students graduating in the 2011-
203 2012 academic year and thereafter. The student, and must
204 identify a social or civic issue or a professional area problem
205 that interests him or her, develop a plan for his or her
206 personal involvement in addressing the issue or learning about
207 the area problem, and, through papers or other presentations,
208 evaluate and reflect upon his or her experience. Except for
209 credit earned through service-learning courses adopted pursuant
210 to s. 1003.497, the student may not receive remuneration or
211 academic credit for the volunteer service work performed. Such
212 work may include, but is not limited to, a business or
213 government internship, work for a nonprofit community service
214 organization, or activity on behalf of a candidate for public
215 office. The hours of volunteer service must be documented in
216 writing, and the document must be signed by the student, the
217 student's parent or guardian, and a representative of the
218 organization for which the student performed the volunteer
219 service work.

220 Section 4. Subsection (1) of section 1009.535, Florida
221 Statutes, is amended to read:

222 1009.535 Florida Medallion Scholars award.—

223 (1) A student is eligible for a Florida Medallion Scholars
224 award if he or she the student meets the general eligibility
225 requirements for the Florida Bright Futures Scholarship Program
226 and ~~the student~~:

227 (a) Has achieved a weighted grade point average of 3.0 as
228 calculated pursuant to s. 1009.531, or the equivalent, in high
229 school courses that are designated by the State Board of
230 Education as college-preparatory academic courses~~r~~ and has



594-01814-16

231 attained at least the score required under ~~pursuant to~~ s.
232 1009.531(6) (b) on the combined verbal and quantitative parts of
233 the Scholastic Aptitude Test, the Scholastic Assessment Test, or
234 the recentered Scholastic Assessment Test of the College
235 Entrance Examination, or an equivalent score on the ACT
236 Assessment Program;

237 (b) Has completed the International Baccalaureate
238 curriculum but failed to earn the International Baccalaureate
239 Diploma or has completed the Advanced International Certificate
240 of Education curriculum but failed to earn the Advanced
241 International Certificate of Education Diploma, and has attained
242 at least the score required under ~~pursuant to~~ s. 1009.531(6) (b)
243 on the combined verbal and quantitative parts of the Scholastic
244 Aptitude Test, the Scholastic Assessment Test, or the recentered
245 Scholastic Assessment Test of the College Entrance Examination,
246 or an equivalent score on the ACT Assessment Program;

247 (c) Has attended a home education program according to s.
248 1002.41 during grades 11 and 12 and has attained at least the
249 score required under ~~pursuant to~~ s. 1009.531(6) (b) on the
250 combined verbal and quantitative parts of the Scholastic
251 Aptitude Test, the Scholastic Assessment Test, or the recentered
252 Scholastic Assessment Test of the College Entrance Examination,
253 or an equivalent score on the ACT Assessment Program, if the
254 student's parent cannot document a college-preparatory
255 curriculum as described in paragraph (a);

256 (d) Has been recognized by the merit or achievement program
257 of the National Merit Scholarship Corporation as a scholar or
258 finalist but has not completed the a program of volunteer
259 community service work required under ~~as provided in~~ s.



594-01814-16

260 1009.534; or

261 (e) Has been recognized by the National Hispanic
262 Recognition Program as a scholar, but has not completed the a
263 program of volunteer community service work required under ~~as~~
264 ~~provided in~~ s. 1009.534.

265
266 A high school student graduating in the 2011-2012 academic year
267 and thereafter must complete at least 75 hours ~~a program~~ of
268 volunteer community service work approved by the district school
269 board, the administrators of a nonpublic school, or the
270 Department of Education for home education program students. The
271 student, which shall include a minimum of 75 hours of service
272 work, and must identify a social or civic issue or a
273 professional area problem that interests him or her, develop a
274 plan for his or her personal involvement in addressing the issue
275 or learning about the area problem, and, through papers or other
276 presentations, evaluate and reflect upon his or her experience.
277 Except for credit earned through service-learning courses
278 adopted pursuant to s. 1003.497, the student may not receive
279 remuneration or academic credit for volunteer service work
280 performed. Such work may include, but is not limited to, a
281 business or government internship, work for a nonprofit
282 community service organization, or activity on behalf of a
283 candidate for public office. The hours of volunteer service must
284 be documented in writing, and the document must be signed by the
285 student, the student's parent or guardian, and a representative
286 of the organization for which the student performed the
287 volunteer service work.

288 Section 5. Subsection (1) of section 1009.536, Florida



594-01814-16

289 Statutes, is amended, present subsections (2), (3), and (4) of
290 that section are redesignated as subsections (3), (4), and (5),
291 respectively, a new subsection (2) is added to that section, and
292 paragraph (d) is added to present subsection (4) of that
293 section, to read:

294 1009.536 Florida Gold Seal Vocational Scholars award.—The
295 Florida Gold Seal Vocational Scholars award is created within
296 the Florida Bright Futures Scholarship Program to recognize and
297 reward academic achievement and career preparation by high
298 school students who wish to continue their education.

299 (1) A student who entered grade 9 before or in the 2015-
300 2016 academic year is eligible for a Florida Gold Seal
301 Vocational Scholars award if he or she ~~the student~~ meets the
302 general eligibility requirements for the Florida Bright Futures
303 Scholarship Program and ~~the student~~:

304 (a) Completes the secondary school portion of a sequential
305 program of studies that requires at least three secondary school
306 career credits. On-the-job training may not be substituted for
307 any of the three required career credits.

308 (b) Demonstrates readiness for postsecondary education by
309 earning a passing score on the Florida College Entry Level
310 Placement Test or its equivalent as identified by the Department
311 of Education.

312 (c) Earns a minimum cumulative weighted grade point average
313 of 3.0, as calculated pursuant to s. 1009.531, on all subjects
314 required for a standard high school diploma, excluding elective
315 courses.

316 (d) Earns a minimum unweighted grade point average of 3.5
317 on a 4.0 scale for secondary career courses that comprise



594-01814-16

318 ~~comprising~~ the career program.

319 (e) Beginning with high school students graduating in the
320 2011-2012 academic year and thereafter, completes at least 30
321 hours a program of volunteer community service work approved by
322 the district school board, the administrators of a nonpublic
323 school, or the Department of Education for home education
324 program students. The student must identify, which shall include
325 a minimum of 30 hours of service work, and identifies a social
326 or civic issue or a professional area ~~problem~~ that interests him
327 or her, ~~develop~~ ~~develops~~ a plan for his or her personal
328 involvement in addressing the issue or learning about the area
329 ~~problem~~, and, through papers or other presentations, evaluate
330 ~~evaluates~~ and reflect ~~reflects~~ upon his or her experience.
331 Except for credit earned through service-learning courses
332 adopted pursuant to s. 1003.497, the student may not receive
333 remuneration or academic credit for the volunteer service work
334 performed. Such work may include, but is not limited to, a
335 business or government internship, work for a nonprofit
336 community service organization, or activity on behalf of a
337 candidate for public office. The hours of volunteer service must
338 be documented in writing, and the document must be signed by the
339 student, the student's parent or guardian, and a representative
340 of the organization for which the student performed the
341 volunteer service work.

342 (2) A high school student graduating in the 2016-2017
343 academic year and thereafter is eligible for a Florida Gold Seal
344 Vocational Scholars award if the student meets the requirements
345 under subsection (1) or meets the general eligibility
346 requirements for the Florida Bright Futures Scholarship Program,



426584

594-01814-16

347 and the student:

348 (a) Earns a minimum of 5 postsecondary credit hours through
349 CAPE industry certifications approved pursuant to s. 1008.44
350 which articulate for college credit; and

351 (b) Completes at least 30 hours of volunteer service work
352 approved by the district school board, the administrators of a
353 nonpublic school, or the Department of Education for home
354 education program students. The student must identify a social
355 or civic issue or a professional area that interests him or her,
356 develop a plan for his or her personal involvement in addressing
357 the issue or learning about the area, and, through papers or
358 other presentations, evaluate and reflect upon his or her
359 experience. Except for credit earned through service-learning
360 courses adopted pursuant to s. 1003.497, the student may not
361 receive remuneration or academic credit for the volunteer
362 service work performed. Such work may include, but is not
363 limited to, a business or government internship, work for a
364 nonprofit community service organization, or activity on behalf
365 of a candidate for public office. The hours of volunteer service
366 work must be documented in writing, and the document must be
367 signed by the student, the student's parent or guardian, and a
368 representative of the organization for which the student
369 performed the volunteer service work.

370
371 A high school student graduating in the 2019-2020 academic year
372 and thereafter is eligible for a Florida Gold Seal Vocational
373 Scholars award only if the student meets the requirements under
374 this subsection.

375 (5)-(4)-



426584

594-01814-16

376 (d) A student who is initially eligible in the 2017-2018
377 academic year and thereafter for a Florida Gold Seal Vocational
378 Scholars award under subsection (2) and who completes a
379 technical degree education program as defined in s. 1004.02(13)
380 may also receive an award for:

381 1. A maximum of 60 credit hours for a bachelor of science
382 degree program for which there is a statewide associate in
383 science degree program to bachelor of science degree program
384 articulation agreement; or

385 2. A maximum of 60 credit hours for a bachelor of applied
386 science degree program at a Florida College System institution.

387 Section 6. This act shall take effect July 1, 2016.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 141 - 386

and insert:

Section 2. Paragraph (d) is added to subsection (3) of section 1009.532, Florida Statutes, to read:

1009.532 Florida Bright Futures Scholarship Program; student eligibility requirements for renewal awards.-

(3)

(d)1. A student who is initially eligible in the 2017-2018



11 academic year and thereafter for a Florida Gold Seal CAPE-
12 Vocational Scholars award under s. 1009.536(2) may receive an
13 award for a maximum of 100 percent of the number of credit hours
14 or equivalent clock hours required to complete one of the
15 following at a Florida public or nonpublic education institution
16 that offers these specific programs: for an applied technology
17 diploma program as defined in s. 1004.02(7), up to 60 credit
18 hours or equivalent clock hours; for a technical degree
19 education program as defined in s. 1004.02(13), up to the number
20 of hours required for a specific degree, not to exceed 72 credit
21 hours or equivalent clock hours; or for a career certificate
22 program as defined in s. 1004.02(20), up to the number of hours
23 required for a specific certificate, not to exceed 72 credit
24 hours or equivalent clock hours. A student who transfers from
25 one of these program levels to another program level is eligible
26 for the higher of the two credit hour limits.

27 2. A Florida Gold Seal CAPE-Vocational Scholar who
28 completes a technical degree education program as defined in s.
29 1004.02(13) may also receive an award for:

30 a. A maximum of 60 credit hours for a bachelor of science
31 degree program for which there is a statewide associate in
32 science degree program to bachelor of science degree program
33 articulation agreement; or

34 b. A maximum of 60 credit hours for a bachelor of applied
35 science degree program at a Florida College System institution.

36 Section 3. Subsection (1) of section 1009.534, Florida
37 Statutes, is amended to read:

1009.534 Florida Academic Scholars award.-

(1) A student is eligible for a Florida Academic Scholars



518168

40 award if ~~he or she the student~~ meets the general eligibility
41 requirements for the Florida Bright Futures Scholarship Program
42 and ~~the student~~:

43 (a) Has achieved a 3.5 weighted grade point average as
44 calculated pursuant to s. 1009.531, or its equivalent, in high
45 school courses that are designated by the State Board of
46 Education as college-preparatory academic courses, and has
47 attained at least the score required under ~~pursuant to~~ s.
48 1009.531(6) (a) on the combined verbal and quantitative parts of
49 the Scholastic Aptitude Test, the Scholastic Assessment Test, or
50 the recentered Scholastic Assessment Test of the College
51 Entrance Examination, or an equivalent score on the ACT
52 Assessment Program;

53 (b) Has attended a home education program according to s.
54 1002.41 during grades 11 and 12, ~~or~~ has completed the
55 International Baccalaureate curriculum but failed to earn the
56 International Baccalaureate Diploma, or has completed the
57 Advanced International Certificate of Education curriculum but
58 failed to earn the Advanced International Certificate of
59 Education Diploma, and has attained at least the score required
60 under ~~pursuant to~~ s. 1009.531(6) (a) on the combined verbal and
61 quantitative parts of the Scholastic Aptitude Test, the
62 Scholastic Assessment Test, or the recentered Scholastic
63 Assessment Test of the College Entrance Examination, or an
64 equivalent score on the ACT Assessment Program;

65 (c) Has been awarded an International Baccalaureate Diploma
66 from the International Baccalaureate Office or an Advanced
67 International Certificate of Education Diploma from the
68 University of Cambridge International Examinations Office;



518168

69 (d) Has been recognized by the merit or achievement
70 programs of the National Merit Scholarship Corporation as a
71 scholar or finalist; or

72 (e) Has been recognized by the National Hispanic
73 Recognition Program as a scholar recipient.

74
75 The A student must complete a program of volunteer ~~community~~
76 service work, as approved by the district school board, the
77 administrators of a nonpublic school, or the Department of
78 Education for home education program students, which ~~must~~ shall
79 include a minimum of 75 hours of service work for high school
80 students graduating in the 2010-2011 academic year and 100 hours
81 of service work for high school students graduating in the 2011-
82 2012 academic year and thereafter. ~~The student, and~~ must
83 identify a social or civic issue or a professional area ~~problem~~
84 that interests him or her, develop a plan for his or her
85 personal involvement in addressing the issue or learning about
86 ~~the area problem~~, and, through papers or other presentations,
87 evaluate and reflect upon his or her experience. Except for
88 credit earned through service-learning courses adopted pursuant
89 to s. 1003.497, the student may not receive remuneration or
90 academic credit for the volunteer service work performed. Such
91 work may include, but is not limited to, a business or
92 governmental internship, work for a nonprofit community service
93 organization, or activities on behalf of a candidate for public
94 office. The hours of volunteer service must be documented in
95 writing, and the document must be signed by the student, the
96 student's parent or guardian, and a representative of the
97 organization for which the student performed the volunteer



98 service work.
99 Section 4. Subsection (1) of section 1009.535, Florida
100 Statutes, is amended to read:
101 1009.535 Florida Medallion Scholars award.—
102 (1) A student is eligible for a Florida Medallion Scholars
103 award if he or she ~~the student~~ meets the general eligibility
104 requirements for the Florida Bright Futures Scholarship Program
105 and ~~the student~~:
106 (a) Has achieved a weighted grade point average of 3.0 as
107 calculated pursuant to s. 1009.531, or the equivalent, in high
108 school courses that are designated by the State Board of
109 Education as college-preparatory academic courses, and has
110 attained at least the score required under ~~pursuant to~~ s.
111 1009.531(6)(b) on the combined verbal and quantitative parts of
112 the Scholastic Aptitude Test, the Scholastic Assessment Test, or
113 the recentered Scholastic Assessment Test of the College
114 Entrance Examination, or an equivalent score on the ACT
115 Assessment Program;
116 (b) Has completed the International Baccalaureate
117 curriculum but failed to earn the International Baccalaureate
118 Diploma or has completed the Advanced International Certificate
119 of Education curriculum but failed to earn the Advanced
120 International Certificate of Education Diploma, and has attained
121 at least the score required under ~~pursuant to~~ s. 1009.531(6)(b)
122 on the combined verbal and quantitative parts of the Scholastic
123 Aptitude Test, the Scholastic Assessment Test, or the recentered
124 Scholastic Assessment Test of the College Entrance Examination,
125 or an equivalent score on the ACT Assessment Program;
126 (c) Has attended a home education program according to s.



127 1002.41 during grades 11 and 12 and has attained at least the
128 score required under ~~pursuant to~~ s. 1009.531(6)(b) on the
129 combined verbal and quantitative parts of the Scholastic
130 Aptitude Test, the Scholastic Assessment Test, or the recentered
131 Scholastic Assessment Test of the College Entrance Examination,
132 or an equivalent score on the ACT Assessment Program, if the
133 student's parent cannot document a college-preparatory
134 curriculum as described in paragraph (a);
135 (d) Has been recognized by the merit or achievement program
136 of the National Merit Scholarship Corporation as a scholar or
137 finalist but has not completed the ~~a~~ program of volunteer
138 community service work required under ~~as provided in~~ s.
139 1009.534; or
140 (e) Has been recognized by the National Hispanic
141 Recognition Program as a scholar, but has not completed the ~~a~~
142 program of volunteer community service work required under ~~as~~
143 ~~provided in~~ s. 1009.534.
144
145 A high school student graduating in the 2011-2012 academic year
146 and thereafter must complete at least 75 hours ~~a program~~ of
147 volunteer community service work approved by the district school
148 board, the administrators of a nonpublic school, or the
149 Department of Education for home education program students. The
150 student, which shall include a minimum of 75 hours of service
151 work, and must identify a social or civic issue or a
152 professional area ~~problem~~ that interests him or her, develop a
153 plan for his or her personal involvement in addressing the issue
154 or learning about the area ~~problem~~, and, through papers or other
155 presentations, evaluate and reflect upon his or her experience.



156 Except for credit earned through service-learning courses
157 adopted pursuant to s. 1003.497, the student may not receive
158 remuneration or academic credit for volunteer service work
159 performed. Such work may include, but is not limited to, a
160 business or governmental internship, work for a nonprofit
161 community service organization, or activities on behalf of a
162 candidate for public office. The hours of volunteer service must
163 be documented in writing, and the document must be signed by the
164 student, the student's parent or guardian, and a representative
165 of the organization for which the student performed the
166 volunteer service work.

167 Section 5. Section 1009.536, Florida Statutes, is amended
168 to read:

169 1009.536 Florida Gold Seal Vocational Scholars and Florida
170 Gold Seal CAPE-Vocational Scholars awards ~~award.~~—The Florida
171 Gold Seal Vocational Scholars award and the Florida Gold Seal
172 CAPE-Vocational Scholars award are ~~is~~ created within the Florida
173 Bright Futures Scholarship Program to recognize and reward
174 academic achievement and career preparation by high school
175 students who wish to continue their education.

176 (1) A student is eligible for a Florida Gold Seal
177 Vocational Scholars award if he or she ~~the student~~ meets the
178 general eligibility requirements for the Florida Bright Futures
179 Scholarship Program and ~~the student~~:

180 (a) Completes the secondary school portion of a sequential
181 program of studies that requires at least three secondary school
182 career credits. On-the-job training may not be substituted for
183 any of the three required career credits.

184 (b) Demonstrates readiness for postsecondary education by



185 earning a passing score on the Florida College Entry Level
186 Placement Test or its equivalent as identified by the Department
187 of Education.

188 (c) Earns a minimum cumulative weighted grade point average
189 of 3.0, as calculated pursuant to s. 1009.531, on all subjects
190 required for a standard high school diploma, excluding elective
191 courses.

192 (d) Earns a minimum unweighted grade point average of 3.5
193 on a 4.0 scale for secondary career courses that comprise
194 comprising the career program.

195 (e) Beginning with high school students graduating in the
196 2011-2012 academic year and thereafter, completes at least 30
197 hours a program of volunteer ~~community~~ service work approved by
198 the district school board, the administrators of a nonpublic
199 school, or the Department of Education for home education
200 program students. The student must identify, which shall include
201 a minimum of 30 hours of service work, and identifies a social
202 or civic issue or a professional area ~~problem~~ that interests him
203 or her, ~~develop~~ ~~develops~~ a plan for his or her personal
204 involvement in addressing the issue or learning about the area
205 ~~problem~~, and, through papers or other presentations, evaluate
206 ~~evaluates~~ and reflect ~~reflects~~ upon his or her experience.

207 Except for credit earned through service-learning courses
208 adopted pursuant to s. 1003.497, the student may not receive
209 remuneration or academic credit for the volunteer service work
210 performed. Such work may include, but is not limited to, a
211 business or governmental internship, work for a nonprofit
212 community service organization, or activities on behalf of a
213 candidate for public office. The hours of volunteer service must



214 be documented in writing, and the document must be signed by the
215 student, the student's parent or guardian, and a representative
216 of the organization for which the student performed the
217 volunteer service work.

218 (2) A high school student graduating in the 2016-2017
219 academic year and thereafter is eligible for a Florida Gold Seal
220 CAPE-Vocational Scholars award if he or she meets the general
221 eligibility requirements for the Florida Bright Futures
222 Scholarship Program, and the student:

223 (a) Earns a minimum of 5 postsecondary credit hours through
224 CAPE industry certifications approved pursuant to s. 1008.44
225 which articulate for college credit; and

226 (b) Completes at least 30 hours of volunteer service work
227 approved by the district school board, the administrators of a
228 nonpublic school, or the Department of Education for home
229 education program students. The student must identify a social
230 or civic issue or a professional area that interests him or her,
231 develop a plan for his or her personal involvement in addressing
232 the issue or learning about the area, and, through papers or
233 other presentations, evaluate and reflect upon his or her
234 experience. Except for credit earned through service-learning
235 courses adopted pursuant to s. 1003.497, the student may not
236 receive remuneration or academic credit for the volunteer
237 service work performed. Such work may include, but is not
238 limited to, a business or governmental internship, work for a
239 nonprofit community service organization, or activities on
240 behalf of a candidate for public office. The hours of volunteer
241 service work must be documented in writing, and the document
242 must be signed by the student, the student's parent or guardian,



243 and a representative of the organization for which the student
244 performed the volunteer service work.

245 (3)+(2) A Florida Gold Seal Vocational Scholar who is
246 enrolled in a public or nonpublic postsecondary education
247 institution is eligible for an award equal to the amount
248 specified in the General Appropriations Act to assist with the
249 payment of educational expenses.

250 (4)+(3) To be eligible for a renewal award as a Florida Gold
251 Seal Vocational Scholar, a student must maintain the equivalent
252 of a cumulative grade point average of 2.75 on a 4.0 scale with
253 an opportunity for restoration one time as provided in this
254 chapter.

255 (5)+(4)(a) A student who is initially eligible prior to the
256 2010-2011 academic year may earn a Florida Gold Seal Vocational
257 Scholarship for 110 percent of the number of credit hours
258 required to complete the program, up to 90 credit hours or the
259 equivalent.

260 (b) Students who are initially eligible in the 2010-2011
261 and 2011-2012 academic years may earn a Florida Gold Seal
262 Vocational Scholarship for 100 percent of the number of credit
263 hours required to complete the program, up to 90 credit hours or
264 the equivalent.

265 (c) A student who is initially eligible in the 2012-2013
266 academic year and thereafter may earn a Florida Gold Seal
267 Vocational Scholarship for a maximum of 100 percent of the
268 number of credit hours or equivalent clock hours required to
269 complete one of the following at a Florida public or nonpublic
270 education institution that offers these specific programs: for
271 an applied technology diploma program as defined in s.



272 1004.02(7), up to 60 credit hours or equivalent clock hours; for
273 a technical degree education program as defined in s.
274 1004.02(13), up to the number of hours required for a specific
275 degree not to exceed 72 credit hours or equivalent clock hours;
276 or for a career certificate program as defined in s.
277 1004.02(20), up to the number of hours required for a specific
278 certificate not to exceed 72 credit hours or equivalent clock
279 hours.

280 (d)1. A student who is initially eligible in the 2017-2018
281 academic year and thereafter for a Florida Gold Seal CAPE-
282 Vocational Scholars award under subsection (2) may receive an
283 award for a maximum of 100 percent of the number of credit hours
284 or equivalent clock hours required to complete one of the
285 following at a Florida public or nonpublic education institution
286 that offers these specific programs: for an applied technology
287 diploma program as defined in s. 1004.02(7), up to 60 credit
288 hours or equivalent clock hours; for a technical degree
289 education program as defined in s. 1004.02(13), up to the number
290 of hours required for a specific degree, not to exceed 72 credit
291 hours or equivalent clock hours; or for a career certificate
292 program as defined in s. 1004.02(20), up to the number of hours
293 required for a specific certificate, not to exceed 72 credit
294 hours or equivalent clock hours. A student who transfers from
295 one of these program levels to another program level is eligible
296 for the higher of the two credit hour limits.

297 2. A Florida Gold Seal CAPE-Vocational Scholar who
298 completes a technical degree education program as defined in s.
299 1004.02(13) may also receive an award for:

300 a. A maximum of 60 credit hours for a bachelor of science



301 degree program for which there is a statewide associate in
302 science degree program to bachelor of science degree program
303 articulation agreement; or
304 b. A maximum of 60 credit hours for a bachelor of applied
305 science degree program at a Florida College System institution.

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

308 And the title is amended as follows:

309 Delete lines 17 - 52

310 and insert:

311 of credits towards specified programs and degree
312 programs; amending ss. 1009.534 and 1009.535, F.S.;
313 requiring a student, as a prerequisite for the Florida
314 Academic Scholars award or the Florida Medallion
315 Scholars award, to identify a civic issue or a
316 professional area of interest and develop a plan for
317 his or her personal involvement in addressing the
318 issue or learning about the area; prohibiting the
319 student from receiving remuneration or academic credit
320 for the volunteer service work performed except in
321 certain circumstances; requiring the hours of
322 volunteer service work to be documented in writing and
323 signed by the student, the student's parent or
324 guardian, and a representative of the organization for
325 which the student performed the volunteer service
326 work; amending s. 1009.536, F.S.; creating the Florida
327 Gold Seal CAPE-Vocational Scholars award within the
328 Florida Bright Futures Scholarship Program; requiring
329 a student, as a prerequisite for the Florida Gold Seal



518168

330 Vocational Scholars award, to identify a civic issue
331 or a professional area of interest and develop a plan
332 for his or her personal involvement in addressing the
333 issue or learning about the area; prohibiting the
334 student from receiving remuneration or academic credit
335 for the volunteer service work performed except in
336 certain circumstances; requiring the hours of
337 volunteer service work to be documented in writing and
338 signed by the student, the student's parent or
339 guardian, and a representative of the organization for
340 which the student performed the volunteer service
341 work; requiring a high school student graduating in
342 the 2016-2017 academic year to meet certain
343 requirements to be eligible for a Florida Gold Seal
344 CAPE-Vocational Scholars award; providing that certain
345 students may receive an award for a specified number
346 of credits toward specified programs and degree

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 Fiscal Policy

BILL: PCS/SB 520 (426584)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Education); and Senators Lee and Gaetz

SUBJECT: Florida Bright Futures Scholarship Program

DATE: January 13, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Graf</u>	<u>Klebacha</u>	<u>HE</u>	Favorable
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Fav/CS
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 520 modifies the permissible activities in which a student can participate to meet the service work requirements for Florida Bright Futures Scholarship Program awards, allows an eligible student to defer the award while participating in a full-time religious or service obligation, repeals the higher SAT or ACT score requirement for home education students, and establishes new initial eligibility requirements and allowable uses of the FGSV award.

The fiscal impact of the number of students who could potentially benefit from the award deferment authorized in the bill is not known, but is expected to be nominal. The fiscal impact of repealing the higher test score requirement for a home education program student to earn a Florida Medallion Scholars award is estimated to be between \$100,000 and \$300,000 in recurring expenditures to the Educational Enhancement Trust Fund (EETF) due to more home education students qualifying for the award. The fiscal impact of the Florida Gold Seal Vocational Scholars eligibility and award changes are expected to be minimal beginning in the 2019-2020 fiscal year.

II. Present Situation:

Florida Bright Futures Scholarship Program

The Florida Bright Futures Scholarship Program (program) is a lottery-funded scholarship program to reward a Florida high school graduate who merits recognition for high academic achievement and who enrolls in a degree program, certificate program, or applied technology program at an eligible public or private postsecondary institution in Florida after graduating from high school.¹ The Department of Education (DOE) administers the program in accordance with rules and procedures adopted by the State Board of Education.²

The program consists of three types of awards:³

- Florida Academic Scholars (FAS);⁴
- Florida Medallion Scholars (FMS);⁵ and
- Florida Gold Seal Vocational Scholars (FGSV).⁶

Service Work Requirements

To be eligible for a scholarship award, a student must complete service hours during high school and by high school graduation.⁷ The number of community service work hours required differ among the three programs. For FAS, students must perform a minimum of 100 hours of community service work,⁸ FMS students must perform a minimum of 75 hours of community service work,⁹ and FGSV students must perform a minimum of 30 hours of community service work.¹⁰ To fulfill the community service work requirements, students graduating in the 2011-2012 academic year, and thereafter, must complete community service work, identify a social problem of interest, develop a plan for personal involvement in addressing the problem, and reflect on such experience through papers or presentations. The community service work must be approved by the district school board, the administrators of a nonpublic school, or the DOE for home education program students.¹¹

¹ Sections 1009.53(1) and 1009.531(2)(a)-(c), F.S., specify that a student graduating from high school prior to the 2010-2011 academic year is eligible to accept an initial award for 3 years following high school graduation and to accept a renewal award for 7 years following high school graduation. Each student graduating in the 2010-2011 and 2011-2012 academic school years is eligible to accept an initial award for 3 years following high school graduation and to accept a renewal award for 5 years following high school graduation. In the 2012-2013 academic school year, and thereafter, a student graduating from high school is able to accept an initial award for 2 years following high school and to accept a renewal award for 5 years following high school graduation.

² Section 1009.53(3), F.S.

³ Section 1009.53(2), F.S.

⁴ Section 1009.534, F.S.

⁵ Section 1009.535, F.S.

⁶ Section 1009.536, F.S.

⁷ Florida Department of Education, Office of Student Financial Assistance, *2015-2016 Bright Futures Student Handbook, Chapter 1: Initial Eligibility Requirements*, p. 4, (December 12, 2015) available at <http://www.floridastudentfinancialaid.org/SSFAD/PDF/BFHandbookChapter1.pdf> (last visited January 7, 2016).

⁸ Section 1009.534(1), F.S.

⁹ Section 1009.535(1), F.S.

¹⁰ Section 1009.536(1)(e), F.S.

¹¹ See ss. 1009.534(1), 1009.535(1), and 1009.536(1)(e), F.S.

The 2015-2016 General Appropriations Act (GAA) implementing bill expanded the opportunities for a student to fulfill the community service work requirement by allowing a student to complete a program of volunteer service work. Specifically, the program of volunteer service work (italics provided to show differences between the GAA implementing bill and current statutory requirements):

- Requires approval by the district school board, the administrators of a nonpublic school, or the DOE for home education program students;
- Requires the student to identify a social *or civic issue or a professional area* of interest;
- Requires the student to develop a plan for personal involvement in addressing the issue *or learning* about the professional area, as well as evaluating and reflecting on such experience through papers or presentations;
- *Prohibits a student from receiving compensation or academic credit for the volunteer service work, except for credit earned through service-learning courses;*¹²
- *Requires the volunteer service hours to be documented in writing and signed by the student, the student's parent or guardian, and a representative of the organization where the student volunteered; and*
- *Authorizes volunteer service work to include, but not be limited to:*
 - *Internship with a business or government entity;*
 - *Work for a nonprofit community service organization; or*
 - *Activity on behalf of a candidate for public office.*¹³

The program of volunteer service work applies to the FAS, FMS, and FGSV awards and expires on July 1, 2016.

Student Eligibility Requirements

Currently, a student who graduates from high school having met the requirements of a Florida Bright Futures Scholarship award is eligible to accept:

- An initial award for a period of 2 years; and
- A renewal award for 5 years after graduating from high school.¹⁴

A student who enlists in the United States Armed Forces immediately after high school graduation can defer the 2-year eligibility period for initial award and 5-year renewal period of the award until the student separates from active duty.¹⁵ Also, for a student who receives the scholarship award but discontinues his or her education to enlist in the United States Armed Forces, the remainder of his or her 5-year renewal period commences upon the date of separation from active duty.¹⁶

¹² Section 11, ch. 2015-222, L.O.F. Service-learning courses are adopted by school districts pursuant to s. 1003.497, F.S.

¹³ Section 11, ch. 2015-222, L.O.F.

¹⁴ Section 1009.531(2)(c), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

FAS & FMS Academic Requirements

To be eligible to receive a scholarship award, students must also meet specific academic requirements.¹⁷ The FAS and FMS require certain SAT or ACT scores, depending on the academic year. For the 2013-2014 academic year and on, a student must earn a SAT score of 1290 or ACT score of 29 for the FAS, and a SAT score of 1170 or ACT score of 26 for the FMS. However, for the FMS, a student in a home education program whose parent cannot document a college-preparatory curriculum must earn a SAT score of 1220 or ACT score of 27 to be eligible.¹⁸ The FGSV does not require minimum SAT or ACT scores.

Florida Gold Seal Vocational Scholars

The Florida Gold Seal Vocational Scholars award can only be used to fund a career education or certificate program. Florida high school students who wish to qualify for the FGSV award must meet the following initial eligibility requirements:

- Graduate from high school with a standard high school diploma;
- Earn a minimum weighted cumulative 3.0 grade point average (GPA) on all subjects required for a standard high school diploma (excluding elective courses);
- Complete at least 3 sequential courses in a career and technical education program and earn minimum 3.5 unweighted GPA in the courses;
- Demonstrate postsecondary education readiness by earning a passing score on the Florida Postsecondary Education Readiness Test; and
- Complete 30 service hours.¹⁹

III. Effect of Proposed Changes:

The bill modifies the permissible activities in which a student can participate in to meet the service work requirements for Florida Bright Futures Scholarship Program awards, allows an eligible student to defer the award while participating in a full-time religious or service obligation, repeals the requirement of higher SAT or ACT scores for home education students, and establishes new initial eligibility requirements and allowable uses of the FGSV award.

Service Work Requirements

The bill protects the volunteer service work provisions of the 2015-2016 GAA implementing bill²⁰ from repeal by enacting modified provisions and providing an effective date of July 1, 2016. Specifically, the bill codifies the program of volunteer service work, as described above in the Present Situation that affects student eligibility for the FAS, FMS, and FGSV awards.

The bill clarifies that “community” service work means “volunteer” service work.

¹⁷ Sections 1009.534(1), 1009.535(1), and 1009.536(1)(e), F.S.

¹⁸ Section 1009.531(6), F.S.

¹⁹ *Supra* note 7 at p. 6.

²⁰ Section 11, ch. 2015-222, L.O.F. This section of the chapter law expires July 1, 2016.

Student Eligibility Requirements

The bill modifies the student eligibility requirements for initial award of the Florida Bright Futures Scholarship. The bill allows a student who is eligible for a Florida Bright Futures Scholarship award, but unable to accept the award immediately following high school graduation due to a full-time religious or service obligation lasting at least 18 months, to defer the 2-year initial award period and the 5-year renewal period until the student completes the religious or service obligation.

For the student to be eligible for the deferment, the religious or service obligation sponsoring organization must meet the requirements for nonprofit status under s. 501(c)(3) of the Internal Revenue Code or be a federal government service organization, such as the Peace Corps and AmeriCorps programs. The sponsoring organization must document, in writing, and verify the student's religious obligation or service work on a standardized form prescribed by the DOE.

In effect, students that would otherwise forfeit a scholarship due to participation in a religious or service obligation may retain eligibility, similar to the flexibility currently granted to students who enlist in the United States Armed Forces.

FMS Academic Requirements

Additionally, the bill repeals the higher SAT or ACT score required for a student in a home education program whose parent cannot document college-preparatory curriculum to be eligible for the FMS award. Under the proposed legislation, a home education program student would be required to meet the same test score requirements as other high school students.

The bill repeals obsolete requirements for certain SAT and ACT scores for the FAS and FMS awards for past academic years.

Florida Gold Seal Vocational Scholarship Eligibility Requirements and Award

The bill creates new initial eligibility requirements for students to qualify for the FGSV award. Beginning with 2016-2017 high school graduates, a student may earn a FGSV award through the current requirements, or by meeting the general eligibility requirements for the Florida Bright Futures Scholarship program and earning a minimum of 5 postsecondary credits through CAPE industry certifications which articulate for college credit. High school students graduating in the 2019-2020 academic year and thereafter will only be able to qualify for a FGSV award through the new initial eligibility requirements specified in the bill. Students must also meet the new service requirements described in the Present Situation.

The bill allows a student who earns a FGSV award by meeting the new requirements and who completes a technical degree education program as defined in s. 1004.02(13), F.S., to receive an award for:

- A maximum of 60 credit hours for a bachelor of science degree program in which there is a statewide associate in science to bachelor of science degree program articulation agreement; or
- A maximum of 60 credit hours for a bachelor of applied science degree program at a Florida College System institution.

The bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, more students may remain eligible for the Florida Bright Futures Scholarship Program award due to the religious or service obligation deferment option. The bill may encourage more students to participate in religious or service activities immediately after high school graduation because they can remain eligible for a Bright Futures Scholarship Program award.²¹

In addition, more students participating in a home education program may be eligible for the FMS award due to the repeal of the higher SAT or ACT score requirements.²²

In the 2014-2015 fiscal year, the average FMS award was \$1,740.²³

The bill allows students who earn a FGSV award by meeting the new requirements and who complete a technical degree education program to receive additional funding for specific bachelor degree programs. In the 2014-2015 Fiscal Year, the average FGSV award was \$949.²⁴

²¹ Florida Department of Education, *2016 Agency Legislative Bill Analysis for SB 520* (on file with the Committee on Higher Education).

²² *Id.*

²³ Florida Department of Education, Office of Student Financial Assistance, *2014-15 Florida Bright Futures – Florida Medallion Scholarship End-of-Year Report* (Sept. 2015), available at https://www.floridastudentfinancialaidsg.org/pdf/EOY_Reports/2014-15/BFFMS_2014_2015.pdf (last visited January 11, 2016).

²⁴ Florida Department of Education, Office of Student Financial Assistance, *2014-15 Florida Bright Futures – Florida Gold Seal Vocational Scholarship End-of-Year Report* (Sept. 2015), available at

C. Government Sector Impact:

Approximately 68 percent of students initially eligible for a Florida Bright Futures Scholarship award enroll in a Florida postsecondary institution and receive funding.²⁵ The number of students who don't accept an award immediately after high school graduation, who could potentially benefit from the award deferment authorized in the bill is not known, but is expected to be nominal.

The fiscal impact of repealing the higher test score requirement for a home education program student to earn an FMS award is estimated to be between \$100,000 and \$300,000 in recurring expenditures to the Educational Enhancement Trust Fund due to more home education students qualifying for the FMS award.²⁶

For the 2013-2014 high school graduating class, there were 6,342 students who earned an initial FGSV award, of which only 882 (13.9 percent) actually received funding.²⁷ For that same 2013-2014 high school graduating class, 3,146 students, approximately half of the initially eligible FGSV students, met the new requirement specified in the bill of earning a minimum of five postsecondary credits through CAPE industry certifications which articulate for college credit.²⁸ However, it is unknown how many of these students would have received funding for a FGSV award or how many would meet the requirements and utilize the new funding eligibility for an additional 60 credit hours for specific bachelor degree programs. The fiscal impact of the FGSV eligibility and award changes is expected to be minimal beginning in the 2019-2020 fiscal year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1009.531, 1009.532, 1009.534, 1009.535, and 1009.536.

https://www.floridastudentfinancialaid.org/pdf/EOY_Reports/2014-15/BFGSV_2014_2015.pdf (last visited January 7, 2016).

²⁵ Senate Appropriations Subcommittee on Education staff analysis of Florida Department of Education, *Florida High School Graduates Eligible for and Receiving Bright Futures* (Sept. 2014), available at <http://www.floridastudentfinancialaid.org/SSFAD/PDF/BFstats/BFReportsB.pdf> (last visited January 7, 2015).

²⁶ *Supra* note 21.

²⁷ Email from the Florida Department of Education, Office of Student Financial Assistance, *Florida Gold Seal Vocational Scholarship Initial Eligible and Disbursed Student Counts: 2011-12 – 2015-16*, November 30, 2015 (on file with the Senate Appropriations Subcommittee on Education).

²⁸ Email from the Florida Department of Education, Division of Career and Adult Education, *Articulated Credits (Report 3) Updated*, November 19, 2015 (on file with the Senate Appropriations Subcommittee on Education).

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Education on December 3, 2015:

The committee substitute establishes new initial eligibility requirements and allowable uses for the Florida Gold Seal Vocational Scholars (FGSV) award.

- B. **Amendments:**

None.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Appropriations Subcommittee on General
Government
Banking and Insurance
Reapportionment
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR TOM LEE
24th District

December 7, 2015

The Honorable Anitere Flores
Senate Committee on Fiscal Policy, Chair
413 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Flores,

I respectfully request that CS/SB 520 related to *Florida Bright Futures Scholarship Program*, be placed on the Senate Committee on Fiscal Policy agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Tom Lee".

Tom Lee
Senator, District 24

Cc: Jennifer Hrdlicka, Staff Director

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

APPEARANCE RECORD

January 14, 2016

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

520

Meeting Date

Bill Number (if applicable)

Topic Florida Bright Futures Scholarship Program

Amendment Barcode (if applicable)

Name Darrick D. McGhee

Job Title Vice President - Johnson & Blanton, LLC.

Address 537 East Park Avenue

Phone (850) 321-6489

Street

Tallahassee

Florida

32301

Email darrick@teamjb.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/14/16
Meeting Date

520
Bill Number (if applicable)

Topic Bright Futures Scholarship Program

Amendment Barcode (if applicable)

Name Cameron Yarbrough

Job Title _____

Address 214 S. Monroe St. Ste. 601
Street

Phone _____

Tallahassee FL 32301
City State Zip

Email CYarbrough@gunster.com

Speaking: For Against Information

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

Representing Independent Colleges & Universities of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By Senator Lee

24-00478-16

2016520__

1 A bill to be entitled
 2 An act relating to the Florida Bright Futures
 3 Scholarship Program; amending s. 1009.531, F.S.;
 4 providing that the initial award period and the
 5 renewal period for students who are unable to accept
 6 an initial award immediately after completion of high
 7 school due to a full-time religious or service
 8 obligation begin upon the completion of the religious
 9 or service obligation; specifying requirements for an
 10 entity that is sponsoring the obligation; requiring
 11 verification from the entity for which the student
 12 completed such obligation; revising eligibility
 13 requirements for the Florida Bright Futures
 14 Scholarship Program; deleting obsolete provisions;
 15 amending ss. 1009.534, 1009.535, and 1009.536, F.S.;
 16 requiring a student, as a prerequisite for the Florida
 17 Academic Scholars award, the Florida Medallion
 18 Scholars award, or the Florida Gold Seal Vocational
 19 Scholars award, to identify a social or civic issue or
 20 a professional area of interest and develop a plan for
 21 his or her personal involvement in addressing the
 22 issue or learning about the area; prohibiting the
 23 student from receiving remuneration or academic credit
 24 for the volunteer service work performed except in
 25 certain circumstances; requiring the hours of
 26 volunteer service work to be documented in writing and
 27 signed by the student, the student's parent or
 28 guardian, and a representative of the organization for
 29 which the student performed the volunteer service

Page 1 of 11

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

24-00478-16

2016520__

30 work; providing an effective date.
 31
 32 Be It Enacted by the Legislature of the State of Florida:
 33
 34 Section 1. Paragraph (c) of subsection (2) and paragraphs
 35 (a) and (b) of subsection (6) of section 1009.531, Florida
 36 Statutes, are amended to read:
 37 1009.531 Florida Bright Futures Scholarship Program;
 38 student eligibility requirements for initial awards.-
 39 (2)
 40 (c) A student graduating from high school in the 2012-2013
 41 academic year and thereafter is eligible to accept an initial
 42 award for 2 years following high school graduation and to accept
 43 a renewal award for 5 years following high school graduation. A
 44 student who applies for an award by high school graduation and
 45 who meets all other eligibility requirements, but who does not
 46 accept his or her award, may reapply during subsequent
 47 application periods up to 2 years after high school graduation.
 48 For a student who enlists in the United States Armed Forces
 49 immediately after completion of high school, the 2-year
 50 eligibility period for his or her initial award and the 5-year
 51 renewal period shall begin upon the date of separation from
 52 active duty. For a student who is receiving a Florida Bright
 53 Futures Scholarship award and discontinues his or her education
 54 to enlist in the United States Armed Forces, the remainder of
 55 his or her 5-year renewal period shall commence upon the date of
 56 separation from active duty. For a student who is unable to
 57 accept an initial award immediately after completion of high
 58 school due to a full-time religious or service obligation

Page 2 of 11

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

24-00478-16

2016520__

59 lasting at least 18 months, the 2-year eligibility period for
 60 his or her initial award and the 5-year renewal period begin
 61 upon the completion of his or her religious or service
 62 obligation. The organization sponsoring the full-time religious
 63 or service obligation must meet the requirements for nonprofit
 64 status under s. 501(c)(3) of the Internal Revenue Code or be a
 65 federal government service organization, including, but not
 66 limited to, the Peace Corps and AmeriCorps programs. The
 67 obligation must be documented in writing and verified by the
 68 entity for which the student completed the obligation on a
 69 standardized form prescribed by the department. If a course of
 70 study is not completed after 5 academic years, an exception of 1
 71 year to the renewal timeframe may be granted due to a verifiable
 72 illness or other documented emergency pursuant to s.
 73 1009.40(1)(b)4.

74 (6) (a) The State Board of Education shall publicize the
 75 examination score required for a student to be eligible for a
 76 Florida Academic Scholars award, pursuant to s. 1009.534(1)(a)
 77 or (b), ~~as follows:~~

78 ~~1. For high school students graduating in the 2010-2011 and~~
 79 ~~2011-2012 academic years, the student must earn an SAT score of~~
 80 ~~1270 or a concordant ACT score of 28.~~

81 ~~2. For high school students graduating in the 2012-2013~~
 82 ~~academic year, the student must earn an SAT score of 1280 which~~
 83 ~~corresponds to the 88th SAT percentile rank or a concordant ACT~~
 84 ~~score of 28.~~

85 ~~3. For High school students graduating in the 2013-2014~~
 86 ~~academic year and thereafter, the student must earn an SAT score~~
 87 ~~of 1290 which corresponds to the 89th SAT percentile rank or a~~

24-00478-16

2016520__

88 concordant ACT score of 29.

89 (b) The State Board of Education shall publicize the
 90 examination score required for a student to be eligible for a
 91 Florida Medallion Scholars award, pursuant to s. 1009.535(1)(a)
 92 or (b), ~~as follows:~~

93 ~~1. For high school students graduating in the 2010-2011~~
 94 ~~academic year, the student must earn an SAT score of 970 or a~~
 95 ~~concordant ACT score of 20 or the student in a home education~~
 96 ~~program whose parent cannot document a college preparatory~~
 97 ~~curriculum must earn an SAT score of 1070 or a concordant ACT~~
 98 ~~score of 23.~~

99 ~~2. For high school students graduating in the 2011-2012~~
 100 ~~academic year, the student must earn an SAT score of 980 which~~
 101 ~~corresponds to the 44th SAT percentile rank or a concordant ACT~~
 102 ~~score of 21 or the student in a home education program whose~~
 103 ~~parent cannot document a college preparatory curriculum must~~
 104 ~~earn an SAT score of 1070 or a concordant ACT score of 23.~~

105 ~~3. For high school students graduating in the 2012-2013~~
 106 ~~academic year, the student must earn an SAT score of 1020 which~~
 107 ~~corresponds to the 51st SAT percentile rank or a concordant ACT~~
 108 ~~score of 22 or the student in a home education program whose~~
 109 ~~parent cannot document a college preparatory curriculum must~~
 110 ~~earn an SAT score of 1070 or a concordant ACT score of 23.~~

111 ~~4. For High school students graduating in the 2013-2014~~
 112 ~~academic year and thereafter, the student must earn an SAT score~~
 113 ~~of 1170 which corresponds to the 75th SAT percentile rank or a~~
 114 ~~concordant ACT score of 26 or the student in a home education~~
 115 ~~program whose parent cannot document a college preparatory~~
 116 ~~curriculum must earn an SAT score of 1220 or a concordant ACT~~

24-00478-16

2016520__

117 ~~score of 27.~~

118 Section 2. Subsection (1) of section 1009.534, Florida
119 Statutes, is amended to read:

120 1009.534 Florida Academic Scholars award.—

121 (1) A student is eligible for a Florida Academic Scholars
122 award if ~~he or she the student~~ meets the general eligibility
123 requirements for the Florida Bright Futures Scholarship Program
124 and ~~the student~~:

125 (a) Has achieved a 3.5 weighted grade point average as
126 calculated pursuant to s. 1009.531, or its equivalent, in high
127 school courses that are designated by the State Board of
128 Education as college-preparatory academic courses, and has
129 attained at least the score required under ~~pursuant to~~ s.
130 1009.531(6) (a) on the combined verbal and quantitative parts of
131 the Scholastic Aptitude Test, the Scholastic Assessment Test, or
132 the recentered Scholastic Assessment Test of the College
133 Entrance Examination, or an equivalent score on the ACT
134 Assessment Program;

135 (b) Has attended a home education program according to s.
136 1002.41 during grades 11 and 12, ~~or~~ has completed the
137 International Baccalaureate curriculum but failed to earn the
138 International Baccalaureate Diploma, or has completed the
139 Advanced International Certificate of Education curriculum but
140 failed to earn the Advanced International Certificate of
141 Education Diploma, and has attained at least the score required
142 under ~~pursuant to~~ s. 1009.531(6) (a) on the combined verbal and
143 quantitative parts of the Scholastic Aptitude Test, the
144 Scholastic Assessment Test, or the recentered Scholastic
145 Assessment Test of the College Entrance Examination, or an

Page 5 of 11

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

24-00478-16

2016520__

146 equivalent score on the ACT Assessment Program;

147 (c) Has been awarded an International Baccalaureate Diploma
148 from the International Baccalaureate Office or an Advanced
149 International Certificate of Education Diploma from the
150 University of Cambridge International Examinations Office;

151 (d) Has been recognized by the merit or achievement
152 programs of the National Merit Scholarship Corporation as a
153 scholar or finalist; or

154 (e) Has been recognized by the National Hispanic
155 Recognition Program as a scholar recipient.

156

157 The A student must complete a program of volunteer community
158 service work, as approved by the district school board, the
159 administrators of a nonpublic school, or the Department of
160 Education for home education program students, which must shall
161 include a minimum of 75 hours of service work for high school
162 students graduating in the 2010-2011 academic year and 100 hours
163 of service work for high school students graduating in the 2011-
164 2012 academic year and thereafter. The student, and must
165 identify a social or civic issue or a professional area problem
166 that interests him or her, develop a plan for his or her
167 personal involvement in addressing the issue or learning about
168 the area problem, and, through papers or other presentations,
169 evaluate and reflect upon his or her experience. Except for
170 credit earned through service-learning courses adopted pursuant
171 to s. 1003.497, the student may not receive remuneration or
172 academic credit for the volunteer service work performed. Such
173 work may include, but is not limited to, a business or
174 government internship, work for a nonprofit community service

Page 6 of 11

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

24-00478-16

2016520__

175 organization, or activity on behalf of a candidate for public
 176 office. The hours of volunteer service must be documented in
 177 writing, and the document must be signed by the student, the
 178 student's parent or guardian, and a representative of the
 179 organization for which the student performed the volunteer
 180 service work.

181 Section 3. Subsection (1) of section 1009.535, Florida
 182 Statutes, is amended to read:

183 1009.535 Florida Medallion Scholars award.—

184 (1) A student is eligible for a Florida Medallion Scholars
 185 award if he or she ~~the student~~ meets the general eligibility
 186 requirements for the Florida Bright Futures Scholarship Program
 187 and ~~the student~~:

188 (a) Has achieved a weighted grade point average of 3.0 as
 189 calculated pursuant to s. 1009.531, or the equivalent, in high
 190 school courses that are designated by the State Board of
 191 Education as college-preparatory academic courses, and has
 192 attained at least the score required under ~~pursuant to~~ s.
 193 1009.531(6)(b) on the combined verbal and quantitative parts of
 194 the Scholastic Aptitude Test, the Scholastic Assessment Test, or
 195 the recentered Scholastic Assessment Test of the College
 196 Entrance Examination, or an equivalent score on the ACT
 197 Assessment Program;

198 (b) Has completed the International Baccalaureate
 199 curriculum but failed to earn the International Baccalaureate
 200 Diploma or has completed the Advanced International Certificate
 201 of Education curriculum but failed to earn the Advanced
 202 International Certificate of Education Diploma, and has attained
 203 at least the score required under ~~pursuant to~~ s. 1009.531(6)(b)

24-00478-16

2016520__

204 on the combined verbal and quantitative parts of the Scholastic
 205 Aptitude Test, the Scholastic Assessment Test, or the recentered
 206 Scholastic Assessment Test of the College Entrance Examination,
 207 or an equivalent score on the ACT Assessment Program;

208 (c) Has attended a home education program according to s.
 209 1002.41 during grades 11 and 12 and has attained at least the
 210 score required under ~~pursuant to~~ s. 1009.531(6)(b) on the
 211 combined verbal and quantitative parts of the Scholastic
 212 Aptitude Test, the Scholastic Assessment Test, or the recentered
 213 Scholastic Assessment Test of the College Entrance Examination,
 214 or an equivalent score on the ACT Assessment Program, if the
 215 student's parent cannot document a college-preparatory
 216 curriculum as described in paragraph (a);

217 (d) Has been recognized by the merit or achievement program
 218 of the National Merit Scholarship Corporation as a scholar or
 219 finalist but has not completed the a program of volunteer
 220 ~~community~~ service work required under ~~as provided in~~ s.
 221 1009.534; or

222 (e) Has been recognized by the National Hispanic
 223 Recognition Program as a scholar, but has not completed the a
 224 ~~program of volunteer community~~ service work required under ~~as~~
 225 ~~provided in~~ s. 1009.534.

226
 227 A high school student graduating in the 2011-2012 academic year
 228 and thereafter must complete at least 75 hours ~~a program~~ of
 229 volunteer community service work approved by the district school
 230 board, the administrators of a nonpublic school, or the
 231 Department of Education for home education program students. The
 232 ~~student, which shall include a minimum of 75 hours of service~~

24-00478-16

2016520__

233 ~~work, and~~ must identify a social or civic issue or a
 234 professional area ~~problem~~ that interests him or her, develop a
 235 plan for his or her personal involvement in addressing the issue
 236 or learning about the area ~~problem~~, and, through papers or other
 237 presentations, evaluate and reflect upon his or her experience.
 238 Except for credit earned through service-learning courses
 239 adopted pursuant to s. 1003.497, the student may not receive
 240 remuneration or academic credit for volunteer service work
 241 performed. Such work may include, but is not limited to, a
 242 business or government internship, work for a nonprofit
 243 community service organization, or activity on behalf of a
 244 candidate for public office. The hours of volunteer service must
 245 be documented in writing, and the document must be signed by the
 246 student, the student's parent or guardian, and a representative
 247 of the organization for which the student performed the
 248 volunteer service work.

249 Section 4. Subsection (1) of section 1009.536, Florida
 250 Statutes, is amended to read:

251 1009.536 Florida Gold Seal Vocational Scholars award.—The
 252 Florida Gold Seal Vocational Scholars award is created within
 253 the Florida Bright Futures Scholarship Program to recognize and
 254 reward academic achievement and career preparation by high
 255 school students who wish to continue their education.

256 (1) A student is eligible for a Florida Gold Seal
 257 Vocational Scholars award if he or she ~~the student~~ meets the
 258 general eligibility requirements for the Florida Bright Futures
 259 Scholarship Program and ~~the student~~:

260 (a) Completes the secondary school portion of a sequential
 261 program of studies that requires at least three secondary school

24-00478-16

2016520__

262 career credits. On-the-job training may not be substituted for
 263 any of the three required career credits.

264 (b) Demonstrates readiness for postsecondary education by
 265 earning a passing score on the Florida College Entry Level
 266 Placement Test or its equivalent as identified by the Department
 267 of Education.

268 (c) Earns a minimum cumulative weighted grade point average
 269 of 3.0, as calculated pursuant to s. 1009.531, on all subjects
 270 required for a standard high school diploma, excluding elective
 271 courses.

272 (d) Earns a minimum unweighted grade point average of 3.5
 273 on a 4.0 scale for secondary career courses that comprise
 274 comprising the career program.

275 (e) Beginning with high school students graduating in the
 276 2011-2012 academic year and thereafter, completes at least 30
 277 hours a program of volunteer ~~community~~ service work approved by
 278 the district school board, the administrators of a nonpublic
 279 school, or the Department of Education for home education
 280 program students. The student must identify, which shall include
 281 a minimum of 30 hours of service work, and identifies a social
 282 or civic issue or a professional area ~~problem~~ that interests him
 283 or her, develop ~~develops~~ a plan for his or her personal
 284 involvement in addressing the issue or learning about the area
 285 ~~problem~~, and, through papers or other presentations, evaluate
 286 ~~evaluates~~ and reflect ~~reflects~~ upon his or her experience.
 287 Except for credit earned through service-learning courses
 288 adopted pursuant to s. 1003.497, the student may not receive
 289 remuneration or academic credit for the volunteer service work
 290 performed. Such work may include, but is not limited to, a

24-00478-16

2016520__

291 business or government internship, work for a nonprofit
292 community service organization, or activity on behalf of a
293 candidate for public office. The hours of volunteer service must
294 be documented in writing, and the document must be signed by the
295 student, the student's parent or guardian, and a representative
296 of the organization for which the student performed the
297 volunteer service work.

298 Section 5. This act shall take effect July 1, 2016.

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 Fiscal Policy

BILL: CS/SB 520

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Education); and Senators Lee and Gaetz

SUBJECT: Florida Bright Futures Scholarship Program

DATE: January 14, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Graf</u>	<u>Klebacha</u>	<u>HE</u>	<u>Favorable</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 520 modifies the permissible activities in which a student can participate to meet the service work requirements for Florida Bright Futures Scholarship Program awards, allows an eligible student to defer the award while participating in a full-time religious or service obligation, repeals the higher SAT or ACT score requirement for home education students, and creates the Florida Gold Seal CAPE-Vocational Scholars award as an alternative to the current Florida Gold Seal Vocational award.

The fiscal impact of the number of students who could potentially benefit from the award deferment authorized in the bill is not known, but is expected to be nominal. The fiscal impact of repealing the higher test score requirement for a home education program student to earn a Florida Medallion Scholars award is estimated to be between \$100,000 and \$300,000 in recurring expenditures to the Educational Enhancement Trust Fund (EETF) due to more home education students qualifying for the award. The fiscal impact of the Florida Gold Seal Vocational Scholars eligibility and award changes are expected to be minimal beginning in the 2019-2020 fiscal year.

II. Present Situation:

Florida Bright Futures Scholarship Program

The Florida Bright Futures Scholarship Program (program) is a lottery-funded scholarship program to reward a Florida high school graduate who merits recognition for high academic achievement and who enrolls in a degree program, certificate program, or applied technology program at an eligible public or private postsecondary institution in Florida after graduating from high school.¹ The Department of Education (DOE) administers the program in accordance with rules and procedures adopted by the State Board of Education.²

The program consists of three types of awards:³

- Florida Academic Scholars (FAS);⁴
- Florida Medallion Scholars (FMS);⁵ and
- Florida Gold Seal Vocational Scholars (FGSV).⁶

Service Work Requirements

To be eligible for a scholarship award, a student must complete service hours during high school and by high school graduation.⁷ The number of community service work hours required differ among the three programs. For FAS, students must perform a minimum of 100 hours of community service work,⁸ FMS students must perform a minimum of 75 hours of community service work,⁹ and FGSV students must perform a minimum of 30 hours of community service work.¹⁰ To fulfill the community service work requirements, students graduating in the 2011-2012 academic year, and thereafter, must complete community service work, identify a social problem of interest, develop a plan for personal involvement in addressing the problem, and reflect on such experience through papers or presentations. The community service work must be approved by the district school board, the administrators of a nonpublic school, or the DOE for home education program students.¹¹

¹ Sections 1009.53(1) and 1009.531(2)(a)-(c), F.S., specify that a student graduating from high school prior to the 2010-2011 academic year is eligible to accept an initial award for 3 years following high school graduation and to accept a renewal award for 7 years following high school graduation. Each student graduating in the 2010-2011 and 2011-2012 academic school years is eligible to accept an initial award for 3 years following high school graduation and to accept a renewal award for 5 years following high school graduation. In the 2012-2013 academic school year, and thereafter, a student graduating from high school is able to accept an initial award for 2 years following high school and to accept a renewal award for 5 years following high school graduation.

² Section 1009.53(3), F.S.

³ Section 1009.53(2), F.S.

⁴ Section 1009.534, F.S.

⁵ Section 1009.535, F.S.

⁶ Section 1009.536, F.S.

⁷ Florida Department of Education, Office of Student Financial Assistance, *2015-2016 Bright Futures Student Handbook, Chapter 1: Initial Eligibility Requirements*, p. 4, (December 12, 2015) available at <http://www.floridastudentfinancialaid.org/SSFAD/PDF/BFHandbookChapter1.pdf> (last visited January 7, 2016).

⁸ Section 1009.534(1), F.S.

⁹ Section 1009.535(1), F.S.

¹⁰ Section 1009.536(1)(e), F.S.

¹¹ See ss. 1009.534(1), 1009.535(1), and 1009.536(1)(e), F.S.

The 2015-2016 General Appropriations Act (GAA) implementing bill expanded the opportunities for a student to fulfill the community service work requirement by allowing a student to complete a program of volunteer service work. Specifically, the program of volunteer service work (*italics provided to show differences between the GAA implementing bill and current statutory requirements*):

- Requires approval by the district school board, the administrators of a nonpublic school, or the DOE for home education program students;
- Requires the student to identify a social *or civic issue or a professional area* of interest;
- Requires the student to develop a plan for personal involvement in addressing the issue *or learning* about the professional area, as well as evaluating and reflecting on such experience through papers or presentations;
- *Prohibits a student from receiving compensation or academic credit for the volunteer service work, except for credit earned through service-learning courses;*¹²
- *Requires the volunteer service hours to be documented in writing and signed by the student, the student's parent or guardian, and a representative of the organization where the student volunteered; and*
- *Authorizes volunteer service work to include, but not be limited to:*
 - *Internship with a business or government entity;*
 - *Work for a nonprofit community service organization; or*
 - *Activity on behalf of a candidate for public office.*¹³

The program of volunteer service work applies to the FAS, FMS, and FGSV awards and expires on July 1, 2016.

Student Eligibility Requirements

Currently, a student who graduates from high school having met the requirements of a Florida Bright Futures Scholarship award is eligible to accept:

- An initial award for a period of 2 years; and
- A renewal award for 5 years after graduating from high school.¹⁴

A student who enlists in the United States Armed Forces immediately after high school graduation can defer the 2-year eligibility period for initial award and 5-year renewal period of the award until the student separates from active duty.¹⁵ Also, for a student who receives the scholarship award but discontinues his or her education to enlist in the United States Armed Forces, the remainder of his or her 5-year renewal period commences upon the date of separation from active duty.¹⁶

¹² Section 11, ch. 2015-222, L.O.F. Service-learning courses are adopted by school districts pursuant to s. 1003.497, F.S.

¹³ Section 11, ch. 2015-222, L.O.F.

¹⁴ Section 1009.531(2)(c), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

FAS & FMS Academic Requirements

To be eligible to receive a scholarship award, students must also meet specific academic requirements.¹⁷ The FAS and FMS require certain SAT or ACT scores, depending on the academic year. For the 2013-2014 academic year and on, a student must earn a SAT score of 1290 or ACT score of 29 for the FAS, and a SAT score of 1170 or ACT score of 26 for the FMS. However, for the FMS, a student in a home education program whose parent cannot document a college-preparatory curriculum must earn a SAT score of 1220 or ACT score of 27 to be eligible.¹⁸ The FGSV does not require minimum SAT or ACT scores.

Florida Gold Seal Vocational Scholars

The Florida Gold Seal Vocational Scholars award can only be used to fund a career education or certificate program. Florida high school students who wish to qualify for the FGSV award must meet the following initial eligibility requirements:

- Graduate from high school with a standard high school diploma;
- Earn a minimum weighted cumulative 3.0 grade point average (GPA) on all subjects required for a standard high school diploma (excluding elective courses);
- Complete at least 3 sequential courses in a career and technical education program and earn minimum 3.5 unweighted GPA in the courses;
- Demonstrate postsecondary education readiness by earning a passing score on the Florida Postsecondary Education Readiness Test; and
- Complete 30 service hours.¹⁹

III. Effect of Proposed Changes:

The bill modifies the permissible activities in which a student can participate in to meet the service work requirements for Florida Bright Futures Scholarship Program awards, allows an eligible student to defer the award while participating in a full-time religious or service obligation, repeals the requirement of higher SAT or ACT scores for home education students, and establishes new initial eligibility requirements and allowable uses of the FGSV award.

Service Work Requirements

The bill protects the volunteer service work provisions of the 2015-2016 GAA implementing bill²⁰ from repeal by enacting modified provisions and providing an effective date of July 1, 2016. Specifically, the bill codifies the program of volunteer service work, as described above in the Present Situation that affects student eligibility for the FAS, FMS, and FGSV awards.

The bill clarifies that “community” service work means “volunteer” service work.

¹⁷ Sections 1009.534(1), 1009.535(1), and 1009.536(1)(e), F.S.

¹⁸ Section 1009.531(6), F.S.

¹⁹ *Supra* note 7 at p. 6.

²⁰ Section 11, ch. 2015-222, L.O.F. This section of the chapter law expires July 1, 2016.

Student Eligibility Requirements

The bill modifies the student eligibility requirements for initial award of the Florida Bright Futures Scholarship. The bill allows a student who is eligible for a Florida Bright Futures Scholarship award, but unable to accept the award immediately following high school graduation due to a full-time religious or service obligation lasting at least 18 months, to defer the 2-year initial award period and the 5-year renewal period until the student completes the religious or service obligation.

For the student to be eligible for the deferment, the religious or service obligation sponsoring organization must meet the requirements for nonprofit status under s. 501(c)(3) of the Internal Revenue Code or be a federal government service organization, such as the Peace Corps and AmeriCorps programs. The sponsoring organization must document, in writing, and verify the student's religious obligation or service work on a standardized form prescribed by the DOE.

In effect, students that would otherwise forfeit a scholarship due to participation in a religious or service obligation may retain eligibility, similar to the flexibility currently granted to students who enlist in the United States Armed Forces.

FMS Academic Requirements

Additionally, the bill repeals the higher SAT or ACT score required for a student in a home education program whose parent cannot document college-preparatory curriculum to be eligible for the FMS award. Under the proposed legislation, a home education program student would be required to meet the same test score requirements as other high school students.

The bill repeals obsolete requirements for certain SAT and ACT scores for the FAS and FMS awards for past academic years.

Florida Gold Seal Vocational Scholars Eligibility Requirements and Award

The bill creates an additional path for a student to receive a vocational scholarship under the Florida Bright Futures Scholarship program. The bill creates the Florida Gold Seal CAPE-Vocational Scholars award as an alternative to the FGSV described in the Present Situation. Beginning with 2016-2017 high school graduates, a student may choose to earn a Florida Gold Seal CAPE-Vocational Scholars award by meeting the general eligibility requirements for the Florida Bright Futures Scholarship program and earning a minimum of 5 postsecondary credits through CAPE industry certifications which articulate for college credit. Students must also meet the new service requirements described in the Present Situation.

The bill allows a student who earns a Florida Gold Seal CAPE-Vocational Scholars award to receive an award for a maximum of 100 percent of the number of credit hours or equivalent clock hours required to complete one of the following at a Florida public or nonpublic education institution:

- An applied technology diploma program (up to 60 credit hours or equivalent clock hours);
- A technical degree education program (up to the number of hours required for a specific degree, not to exceed 72 credit hours or equivalent clock hours); or
- A career certificate program (up to the number of hours or equivalent clock hours).

A student who transfers from one program level to another is eligible for the higher of the two credit hour limits.

The bill allows a student who earns a Florida Gold Seal CAPE-Vocational Scholars award and who also completes a technical degree education program as defined in s. 1004.02(13), F.S., to receive an award for:

- A maximum of 60 credit hours for a bachelor of science degree program in which there is a statewide associate in science to bachelor of science degree program articulation agreement; or
- A maximum of 60 credit hours for a bachelor of applied science degree program at a Florida College System institution.

The bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, more students may remain eligible for the Florida Bright Futures Scholarship Program award due to the religious or service obligation deferment option. The bill may encourage more students to participate in religious or service activities immediately after high school graduation because they can remain eligible for a Bright Futures Scholarship Program award.²¹

In addition, more students participating in a home education program may be eligible for the FMS award due to the repeal of the higher SAT or ACT score requirements.²²

²¹ Florida Department of Education, *2016 Agency Legislative Bill Analysis for SB 520* (on file with the Committee on Higher Education).

²² *Id.*

In the 2014-2015 fiscal year, the average FMS award was \$1,740.²³

Beginning with 2016-2017 high school graduates, the bill allows a student to earn a Florida Gold Seal CAPE-Vocational Scholars award. A student that participates in this new award program and who completes a technical degree education program is entitled to receive additional funding for specific bachelor degree programs.

C. Government Sector Impact:

Approximately 68 percent of students initially eligible for a Florida Bright Futures Scholarship award enroll in a Florida postsecondary institution and receive funding.²⁴ The number of students who don't accept an award immediately after high school graduation, who could potentially benefit from the award deferment authorized in the bill is not known, but is expected to be nominal.

The fiscal impact of repealing the higher test score requirement for a home education program student to earn an FMS award is estimated to be between \$100,000 and \$300,000 in recurring expenditures to the Educational Enhancement Trust Fund due to more home education students qualifying for the FMS award.²⁵

For the 2013-2014 high school graduating class, there were 6,342 students who earned an initial FGSV award, of which only 882 (13.9 percent) actually received funding.²⁶ For that same 2013-2014 high school graduating class, 3,146 students, approximately half of the initially eligible FGSV students, met the new requirement specified in the bill for the new award program of earning a minimum of five postsecondary credits through CAPE industry certifications which articulate for college credit.²⁷ However, it is unknown how many of these students would have received funding for the new award program or how many would meet the requirements and utilize the new funding eligibility for an additional 60 credit hours for specific bachelor degree programs. The fiscal impact of the new award program is expected to be minimal beginning in the 2019-2020 fiscal year.

VI. Technical Deficiencies:

None.

²³ Florida Department of Education, Office of Student Financial Assistance, *2014-15 Florida Bright Futures – Florida Medallion Scholarship End-of-Year Report* (Sept. 2015), available at https://www.floridastudentfinancialaidsg.org/pdf/EOY_Reports/2014-15/BFFMS_2014_2015.pdf (last visited January 11, 2016).

²⁴ Senate Appropriations Subcommittee on Education staff analysis of Florida Department of Education, *Florida High School Graduates Eligible for and Receiving Bright Futures* (Sept. 2014), available at <http://www.floridastudentfinancialaid.org/SSFAD/PDF/BFstats/BFReportsB.pdf> (last visited January 7, 2015).

²⁵ *Supra* note 21.

²⁶ Email from the Florida Department of Education, Office of Student Financial Assistance, *Florida Gold Seal Vocational Scholarship Initial Eligible and Disbursed Student Counts: 2011-12 – 2015-16*, November 30, 2015 (on file with the Senate Appropriations Subcommittee on Education).

²⁷ Email from the Florida Department of Education, Division of Career and Adult Education, *Articulated Credits (Report 3) Updated*, November 19, 2015 (on file with the Senate Appropriations Subcommittee on Education).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1009.531, 1009.532, 1009.534, 1009.535, and 1009.536.

IX. Additional Information:

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

CS by Fiscal Policy on January 14, 2015.

The committee substitute:

- Creates Florida Gold Seal CAPE-Vocational Scholars award as an alternative to the FGSV; and
- Establishes eligibility requirements and allowable uses for new award program.

- B. **Amendments:**

None.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/14/2016

Meeting Date

Topic _____

Bill Number 576

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/14/16

Meeting Date

576

Bill Number (if applicable)

Topic Public Education Facilities

Amendment Barcode (if applicable)

Name Ron LaFace

Job Title

Address 101 E College Ave

Phone 850-222-9075

Street

Tallahassee FL 32301

City

State

Zip

Email

Speaking: [] For [] Against [] Information

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

Representing FL Keys Community College

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

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

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

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

By Senator Flores

37-00762-16

2016576__

1 A bill to be entitled

2 An act relating to public educational facilities;
3 amending s. 1013.40, F.S.; authorizing certain Florida
4 College System institutions to construct dormitories
5 for up to 400 students; providing an effective date.
6

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

9 Section 1. Subsection (4) of section 1013.40, Florida
10 Statutes, is amended to read:

11 1013.40 Planning and construction of Florida College System
12 institution facilities; property acquisition.-

13 (4) The campus of a Florida College System institution
14 within a municipality designated as an area of critical state
15 concern, as defined in s. 380.05, and having a comprehensive
16 plan and land development regulations containing a building
17 permit allocation system that limits annual growth, may
18 construct dormitories for up to 400 ~~100~~ beds for Florida College
19 System institution students. Such dormitories are ~~shall be~~
20 exempt from the building permit allocation system and may be
21 constructed up to 45 feet in height if the dormitories provided
22 ~~that they~~ are otherwise consistent with the comprehensive plan,
23 the Florida College System institution has a hurricane
24 evacuation plan that requires all dormitory occupants to be
25 evacuated 48 hours in advance of tropical force winds, and ~~that~~
26 transportation is provided for dormitory occupants during an
27 evacuation.

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

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 Fiscal Policy

BILL: SB 576

INTRODUCER: Senator Flores

SUBJECT: Public Educational Facilities

DATE: January 13, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Scott</u>	<u>Klebacha</u>	<u>HE</u>	Favorable
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Favorable
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

I. Summary:

SB 576 authorizes the construction of dormitories for up to 400 beds on a Florida College System (FCS) institution campus located within a municipality designated as an area of critical state concern and having a comprehensive plan and land development regulations containing a building permit allocation system that limits annual growth. Current law authorizes the construction of dormitories for up to 100 beds on such FCS institution campuses.

Currently, the only FCS institution located within a municipality designated as an area of critical state concern is Florida Keys Community College in Monroe County.

The bill has no impact on state funds.

II. Present Situation:

Chapter 1013, F.S. provides the state requirements and guidelines for maintaining and establishing public educational facilities of school districts and FCS institutions.¹

The Florida Building Commission is responsible for adopting a uniform statewide building code for the planning and construction of public educational and ancillary plants by district school boards and FCS institution boards of trustees.² The Department of Education's role relating to educational facilities includes, but is not limited to, the following functions:

- Establishing and recommending minimum and maximum square footage standards;

¹ Sections 1013.01-1013.82, F.S. The State Board of Education has the authority to adopt rules to implement the provisions of ch. 1013, F.S. See s. 1013.02, F.S., and Rule 6A-2.0010, F.A.C.

² Section 1013.37, F.S. The State Uniform Code for Public Educational Facilities Construction is adopted within the Florida Building Code pursuant to s. 553.73, F.S.

- Requiring FCS institutions and district school boards to submit educational plant inventories data and statistical data or information relevant to construction, capital improvements, and related costs;
- Developing, reviewing, updating, revising, and recommending a mandatory portion of the Florida Building Code for educational facilities construction and capital improvement by FCS institution boards and district school boards;
- Providing minimum criteria, procedures, and training to boards to conduct educational plant surveys and document the determination of future needs; and
- Reviewing and validating surveys proposed or amended by boards and recommend approval of such surveys to the Commissioner of Education.³

Each FCS institution board of trustees has a duty to administer the institution's facilities program pursuant to ch. 1013, F.S., including, but not limited to:

- The construction of public educational and ancillary plants;
- The acquisition and disposal of property;
- Compliance with building and life safety codes;
- Submission of data and information relating to facilities and construction;
- Use of buildings and grounds;
- Establishment of safety and sanitation programs for the protection of building occupants; and
- Site planning and selection.⁴

A FCS institution has limited authority to plan and construct facilities and acquire additional property.⁵ A FCS institution must demonstrate a need for facilities through its educational plant survey⁶ that must be approved by the State Board of Education.⁷ A FCS institution is prohibited from expending public funds for the acquisition of additional property without specific approval by the Legislature.⁸ Furthermore, a facility may not be acquired or constructed by a FCS institution or its direct-support organization if the facility requires general revenue funds for operation or maintenance, unless the Legislature gives prior approval.⁹

In 2008, the Legislature authorized a FCS institution to construct dormitories for up to 100 beds, if its campus is located within a municipality designated as an area of critical state concern, and has a comprehensive plan and land development regulations containing a building permit allocation system that limits annual growth.¹⁰ The dormitories are exempt from the building permit allocation system and may be constructed up to 45 feet in height, if:¹¹

³ Section 1013.03, F.S.

⁴ Section 1001.64(34), F.S.

⁵ Section 1013.40, F.S.

⁶ An "educational plant survey" is defined as "a systematic study of present educational and ancillary plants and the determination of future needs to provide an appropriate educational program and services for each student based on projected capital outlay FTE's approved by the Department of Education." s. 1013.01(8), F.S.

⁷ Section 1013.40(1), F.S.

⁸ *Id.* at (2).

⁹ *Id.* at (3).

¹⁰ Section 4, ch. 2008-213, L.O.F., codified in s. 1013.40(4), F.S. The intent was to create an exception to Monroe County's planning process for Florida Keys Community College. See Florida Senate[*House Message Summary for CS/CS/SB 1276* (2008), available at <http://archive.flsenate.gov/data/session/2008/Senate/bills/analysis/pdf/2008s1276.hms.pdf> (last visited December 11, 2015).

¹¹ Section 1013.40(4), F.S.

- The dormitories are consistent with the local comprehensive plan;
- The FCS institution has a hurricane evacuation plan requiring all dormitory occupants to be evacuated 48 hours in advance of tropical force winds; and
- Transportation is provided for dormitory occupants during an evacuation.

Currently, the only FCS institution located within a municipality designated as an area of critical state concern is Florida Keys Community College in Monroe County.¹²

III. Effect of Proposed Changes:

The bill authorizes the construction of dormitories for up to 400 beds on an FCS institution campus located within a municipality designated as an area of critical state concern¹³ and having a comprehensive plan and land development regulations containing a building permit allocation system that limits annual growth. Current law authorizes the construction of dormitories for up to 100 beds on such FCS institution campuses.¹⁴

Currently, the only FCS institution located within a municipality designated as an area of critical state concern is Florida Keys Community College in Monroe County.¹⁵ In effect, the bill allows Florida Keys Community College to construct a dormitory for up to 400 beds, rather than the current 100 bed limit.

The bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹² See Florida Senate, *Legislative Bill Analysis for CS/SB 1262* (2015), available at <http://www.flsenate.gov/Session/Bill/2015/1262/Analyses/2015s1262.fp.PDF> (last visited December 11, 2015).

¹³ Section 380.05(2), F.S., provides the criteria for designating an area of critical state concern. The Department of Economic Opportunity as the state's land planning agency may recommend to the Administration Commission specific areas of critical state concern.

¹⁴ Section 1013.40(4), F.S.

¹⁵ *Supra* note 12.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has no impact on state funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1013.40 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Gaetz

597-01293-16

2016626c1

A bill to be entitled

An act relating to consumer credit; amending s. 516.07, F.S.; authorizing the Office of Financial Regulation to deny a license or take disciplinary action against a person who violates the Military Lending Act or the regulations adopted under that act in connection with a consumer finance loan under the Florida Consumer Finance Act; amending s. 537.013, F.S.; prohibiting a title loan lender or its agent or employee from violating the Military Lending Act or the regulations adopted under that act; amending s. 560.114, F.S.; authorizing the office to take disciplinary action or deny a license of a money services business, authorized vendor, or affiliated party in connection with a deferred presentment transaction for violating the Military Lending Act or the regulations adopted under that act; creating s. 655.035, F.S.; authorizing the office to conduct an investigation to determine whether a person is violating the Military Lending Act or the regulations adopted under that act; authorizing the office to seek specified remedies for such violations; providing applicability; providing an effective date.

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

Section 1. Paragraph (q) is added to subsection (1) of section 516.07, Florida Statutes, to read:
516.07 Grounds for denial of license or for disciplinary

Page 1 of 3

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

597-01293-16

2016626c1

action.—

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the disciplinary actions specified in subsection (2):

(g) Violating any provision of the Military Lending Act, 10 U.S.C. s. 987, or the regulations adopted under that act in 32 C.F.R. part 232, in connection with a consumer finance loan made under this chapter.

Section 2. Paragraph (o) is added to subsection (1) of section 537.013, Florida Statutes, to read:

537.013 Prohibited acts.—

(1) A title loan lender, or any agent or employee of a title loan lender, shall not:

(o) Violate any provision of the Military Lending Act, 10 U.S.C. s. 987, or the regulations adopted under that act in 32 C.F.R. part 232, in connection with a title loan made under this chapter.

Section 3. Paragraph (cc) is added to subsection (1) of section 560.114, Florida Statutes, to read:

560.114 Disciplinary actions; penalties.—

(1) The following actions by a money services business, authorized vendor, or affiliated party constitute grounds for the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or taking any other action within the authority of the office pursuant to this chapter:

(cc) Violating any provision of the Military Lending Act, 10 U.S.C. s. 987, or the regulations adopted under that act in

Page 2 of 3

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

597-01293-16

2016626c1

59 32 C.F.R. part 232, in connection with a deferred presentment
60 transaction conducted under part IV of this chapter.

61 Section 4. Section 655.035, Florida Statutes, is created to
62 read:

63 655.035 Military lending.—Pursuant to s. 655.032, the
64 office may conduct an investigation that it deems necessary to
65 determine whether a financial institution, a subsidiary, a
66 service corporation, an affiliate, or other person is engaging
67 in or has engaged in conduct that is a violation of any
68 provision of the Military Lending Act, 10 U.S.C. s. 987, or the
69 regulations adopted under that act in 32 C.F.R. part 232. If the
70 office has reason to believe that a person has violated any such
71 provision or regulation, the office may initiate a proceeding
72 against such person in accordance with s. 655.033, s. 655.034,
73 s. 655.037, or s. 655.041.

74 Section 5. This act applies to a consumer credit
75 transaction or account for consumer credit established on or
76 after October 3, 2016, except it does not apply to a credit card
77 account exempted under 32 C.F.R. s. 232.13(c) until the
78 exemption expires.

79 Section 6. This act shall take effect October 3, 2016.

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 Fiscal Policy

BILL: CS/SB 626

INTRODUCER: Banking and Insurance Committee and Senators Gaetz and Altman

SUBJECT: Consumer Credit

DATE: January 13, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Favorable</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 626 authorizes the Office of Financial Regulation to enforce the provisions of the federal Military Lending Act (MLA) for state financial institutions, deferred presentment providers (payday lenders), consumer finance lenders, title loan lenders. The MLA provides greater consumer protections for service members and their dependents in connection with a broad range of consumer credit transactions, including consumer finance loans, payday loans, title loans, overdraft lines of credit, small dollar loans, and credit card accounts.

II. Present Situation:

Federal Consumer Protection Laws

Federal Truth in Lending Act

The purpose of the Truth in Lending Act (TILA) is to promote the informed use of credit through “a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available.”¹ Regulation Z, which implements the TILA, requires the calculation and disclosure of the Annual Percentage Rate (APR) for consumer loans.² Lines

¹ 15 U.S.C. s. 1601(a). TILA is codified at 15 U.S.C. s. 1601 *et seq.*, as implemented by Regulation Z, 12 C.F.R. pt. 226.

² 15 U.S.C. s. 1604-1606.

of consumer credit covered by the TILA include mortgage loans, home equity lines of credit, reverse mortgages, open-end credit, certain student loans, and installment loans.³

State Regulation of Consumer Lending

The Florida Office of Financial Regulation (OFR) has regulatory oversight of state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, deferred presentment providers or payday loan lenders, consumer finance companies, title loan lenders, debt collectors, and other financial service entities.⁴

Regulation of State Financial Institutions

The Division of Financial Institutions of the OFR charters and regulates entities that engage in financial institution business in Florida in accordance with the Florida Financial Institutions Codes (codes).⁵ The OFR may examine, investigate, and take disciplinary actions against state-chartered financial institutions for violation of the codes.⁶

Consumer Finance Loans

The Florida Consumer Finance Act, codified in ch. 516, F.S., sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer loan is authorized in Florida. The act sets maximum interest rates for a consumer finance loan, which is a loan of money, credit, goods, or a provision of a line of credit, in an amount or to a value of \$25,000 or less at an interest rate greater than 18 percent per year.⁷ The maximum allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan, as provided below:

- 30 percent a year, computed on the first \$3,000 of the principal amount;
- 24 percent a year on that part of principal between \$3,001 and \$4,000; and
- 18 percent a year on that part of principal between \$4,001 and \$25,000.⁸

These principal amounts are the same as the amounts financed by the TILA and Regulation Z.⁹ The APR for all loans under the act may equal, but cannot exceed, the APR for the loan as required to be computed and disclosed by the TILA and Regulation Z.¹⁰ In addition to the applicable interest rates described above, Florida law allows consumer finance lenders to charge borrowers the following charges and fees:

- Up to \$25 for investigating the credit and character of the borrower;

³ Consumer Financial Protection Bureau, *eRegulations: 12 CFR Part 1026 (Regulation Z)*, available at <http://www.consumerfinance.gov/eregulations/1026> (last visited Jan. 5, 2016).

⁴ Florida Office of Financial Regulation, *About OFR*, available at <http://www.flofr.com/StaticPages/AboutOFR.htm> (last visited Jan. 5, 2016).

⁵ Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.

⁶ These entities are also subject to laws and regulation by various federal entities. For example, the Federal Deposit Insurance Corporation (FDIC) supervises state-chartered banks that are not members of the Federal Reserve System and state-chartered savings associations. The FDIC also insures deposits in banks and savings associations in the event of bank failure. The Federal Reserve Board supervises state-chartered banks that are members of the Federal Reserve System.

⁷ Section 516.01(2), F.S.

⁸ Section 516.031(1), F.S.

⁹ *Id.*

¹⁰ Section 516.031(2), F.S.

- A \$25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans and appraisals of real property offered as security;
- Intangible personal property tax, if secured by a loan note on real property;
- Documentary excise tax and lawful fees for public filing, recoding, and the like;
- Insurance premiums;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for recovering the collateral property;
- Delinquency charges of up to \$15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A dishonored check charge of up to \$20.¹¹

Title Loans

The Florida Title Loan Act, codified in ch. 537, F.S., sets forth licensing requirements for title loan lenders and the terms and conditions for a title loan authorized in Florida. A title loan is secured through transfer of a motor vehicle certificate of title, with the loan amount dependent on the vehicle's value. Title lenders charge tiered interest rates based on the principal amount, which is calculated and disclosed pursuant to Regulation Z.¹² The maturity date of a title loan is 30 days after the agreement date, but can be extended for one or more 30-day periods by mutual consent of the lender and the borrower.¹³

Deferred Presentment Transactions or Payday Loans

Part IV of ch. 560, F.S., regulates deferred presentment providers (or payday loan lenders) and deferred presentment transactions. A deferred presentment transaction, or "payday loan", is a loan where a person exchanges a check, like a paycheck, up to \$500 in exchange for currency or a payment instrument (e.g., electronic funds transfer, check, or money order) and the lender agrees to hold the check for a specified period of time before depositing or redeeming the check.¹⁴

Repayment terms range from a minimum of 7 days to a maximum of 31 days. The maximum allowable fees are 10 percent of the currency or payment instrument provided, as well as a verification fee of up to \$5 per transaction.¹⁵ For each transaction, the deferred presentment provider must comply with the disclosure requirements of Regulation Z. Borrowers may have only one active payday loan at a time, but may secure a new loan 24 hours after paying off the original loan.¹⁶

¹¹ Section 516.031(3), F.S.

¹² The interest rate tiers are: 30 percent a year, computed on the first \$2,000 of the principal amount; 24 percent a year on the part of the principal between \$2,001 and \$3,000; and 18 percent a year on the part of the principal exceeding \$3,001. *See* s. 537.011(1), F.S.

¹³ Section 537.011(3), F.S.

¹⁴ *See* Florida Office of Financial Regulation, *Deferred Presentment Provider*, available at <http://www.flofr.com/StaticPages/DeferredPresentmentProvider.htm> (last visited Jan. 5, 2016).

¹⁵ Sections 560.309(8) and 560.404, F.S.

¹⁶ Section 560.404, F.S.

Consumer Debt and the Military

According to the U.S. Department of Defense (DoD), service members, particularly younger members, have limited money management skills and are generally unprepared for their financial responsibilities prior to entering the military. Forty-one percent of service members reported using one or more sources of small dollar lending in the past 12 months. These small dollar loans included payday, vehicle title, bank deposit advance, pawn shop, cash advances on credit cards, overdraft loans, overdraft lines of credit, overdraft protection from other accounts, relief society loans, and loans from friends and family. Further, 47 percent of service members reported difficulty managing their finances within the last 12 months.¹⁷

The DoD expects service members “to maintain personal readiness standards, including paying their debts and maintaining their ability to attend to the financial needs of their families.” Losing qualified service members due to personal issues, such as financial instability, costs the DoD approximately \$58,250 per service member.¹⁸

Federal Military Lending Act

Congress enacted the Military Lending Act (MLA) in 2006 to provide covered service members and their dependents with specific protections for their consumer credit transactions.¹⁹ A covered borrower is defined as a member of the armed forces who is on active duty for more than 30 days, or on active Guard and Reserve Duty.²⁰ Covered dependents include the spouse, child,²¹ or an individual who the member provided more than one-half of the individual’s support for more than 180 days immediately preceding an extension of consumer credit.²²

The MLA applies only to the following “consumer credit” transactions of covered borrowers:

- Closed-end payday loans for no more than \$2,000 and with a term of 91 days or fewer;
- Closed-end vehicle title loans with a term of 181 days or less; and
- Closed-end tax refund anticipation loans.²³

The DoD believed the narrow definition of “consumer credit” allowed creditors to structure their products in order to reduce or avoid altogether the obligations of the MLA.²⁴ As a result, the DoD significantly amended the regulations enforcing the MLA beginning generally in October 2016.²⁵ The definition of consumer credit is expanded to include credit consistently subject to the TILA.

¹⁷ Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 79 Fed Reg. 58602, at 58604 (Sept. 29, 2014), available at <https://www.gpo.gov/fdsys/pkg/FR-2014-09-29/pdf/2014-22900.pdf> (last visited Jan. 6, 2016).

¹⁸ Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 80 FR 43560, at 43564-43565 (July 22, 2015), available at <https://www.gpo.gov/fdsys/pkg/FR-2015-07-22/pdf/2015-17480.pdf> (last visited Jan. 6, 2016).

¹⁹ 10 U.S.C. s. 987 and 32 C.F.R. pt. 232.

²⁰ 10 U.S.C. s. 987(i)(1).

²¹ As defined in 38 U.S.C. s. 101(4).

²² 10 U.S.C. s. 987(i)(2).

²³ 32 C.F.R. 232.3.

²⁴ *Supra* note 17 at 58603.

²⁵ The effective date of the final rule is October 1, 2015. Generally, compliance is required by October 3, 2016, for credit established on or after that date. The rule provides a temporary exemption for credit card accounts under an open-end consumer credit plan until October 3, 2017. *See* 32 C.F.R. 232.12.

The MLA regulations outline terms and conditions relating to the extension of consumer credit to a covered borrower:

- Caps the annual percentage rate of interest, known as the Military Annual Percentage Rate (MAPR), at 36 percent;²⁶
- Mandates certain disclosures (*e.g.*, a statement of the MAPR and disclosures consistent with TILA) before a loan is made;²⁷
- Prohibits prepayment penalty fees;
- Prohibits a creditor from “rolling-over” or refinancing the same loan with exceptions for depository institutions;
- Prohibits a creditor from requiring the covered borrower to submit to arbitration in the event of a dispute;
- Prohibits a creditor from requiring a covered borrower to waive his or her rights under the Servicemembers Civil Relief Act;²⁸
- Prohibits mandatory allotments to repay the loan as a condition for receiving the loan;
- Prohibits a creditor from using the title of a vehicle as security for the obligation involving the consumer credit with exceptions for depository institutions; and
- Prohibits a creditor from using a check to access a financial account of covered borrower except in connection with a consumer credit transaction with an MAPR consistent with federal regulations.²⁹

Penalties and remedies are provided for covered borrowers, included enforcement provisions that permit a covered borrower to recover damages from a creditor who violates a requirement of the MLA.³⁰ Any credit agreement that fails to comply with the MLA regulations or contains one or more prohibited provisions under the regulations is void from the inception of the contract.³¹

A creditor is not required to check to determine if a consumer is a covered borrower under the MLA. However, the MLA provides a safe harbor for creditors who do check the status of the consumer consistent with methods approved by the MLA. Creditors may use either a DoD MLA database or consumer reports from a nationwide consumer reporting agency.³²

III. Effect of Proposed Changes:

Section 1 authorizes the OFR to deny an application for a consumer finance license or take disciplinary action against a consumer finance lender for violating any provision of the MLA or the federal regulations implementing the MLA in connection with a consumer finance loan made under ch. 516, F.S. (**amending s. 516.07, F.S.**). For example, ch. 516, F.S., prescribes the calculation of the APR or interest cap pursuant to Regulation Z. The rate cap for loans made to

²⁶ For covered borrowers, the cost of such consumer credit is capped at the MAPR of 36 percent. The MAPR is calculated based on Regulation Z and also includes other costs, such as credit insurance premiums, and other specified fees. *See* 32 C.F.R. 232.4.

²⁷ 32 C.F.R. 232.6.

²⁸ The act provides for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of service members during their military service. 50 U.S.C. App. 501 *et. seq.*

²⁹ 32 C.F.R. 232.8.

³⁰ 32 C.F.R. 232.9.

³¹ *Id.*

³² 32 C.F.R. 232.5. The database is available at <https://mla.dmdc.osd.mil> (last visited Jan. 9, 2016).

the service members and their dependents is capped at 36 percent MAPR. The MAPR is calculated pursuant to the MLA, which requires the inclusion of additional fees and insurance products that are not included under Regulation Z.

Section 2 provides that a violation of any provision of the MLA or the federal regulations implementing the MLA in connection with a title loan made under ch. 537, F.S., is a prohibited act. This authorizes the OFR to take disciplinary action against a title loan lender or any agent or employee of a title loan lender (**amending s. 537.013, F.S.**).

Section 3 authorizes the OFR to take disciplinary action against a money services business, authorized vendor, or affiliated party that violates any provision of the MLA or the federal regulations implementing the MLA in connection with a deferred presentment transaction (payday loan) conducted under part IV of ch. 560, F.S. (**amending s. 560.114, F.S.**).

Section 4 authorizes the OFR to conduct an investigation to determine whether a financial institution, a subsidiary, a service corporation, an affiliate, or other person is engaging in or has engaged in conduct that is a violation of any provision of the MLA or the federal regulations implementing the MLA (**amending s. 655.035, F.S.**). If the OFR has reason to believe that a person has violated any such provision or regulation, the OFR may initiate a proceeding against such person in accordance with s. 655.033 (cease and desist orders), s. 655.034 (injunctive relief), s. 655.037 (removal of a financial institution affiliated party), or s. 655.041 (administrative fines and enforcement), F.S., of the Financial Institution Codes.

Section 5 provides that the bill applies to a consumer credit transaction or account for consumer credit established on or after October 3, 2016. The bill does not apply to a credit card account exempted under 32 C.F.R. s. 232.13(c) until the exemption expires. The MLA implementing regulations under 32 C.F.R. part 232 became effective October 1, 2015; however, compliance is only required for consumer credit transactions began or established on or after October 3, 2016. A limited exemption is provided for credit card accounts that delays compliance until October 3, 2017, which may be extended by the DoD until October 3, 2018.³³

Section 6 provides an effective date of October 3, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³³ 32 C.F.R. 232.13.

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

None.

B. Private Sector Impact:

By authorizing the OFR to enforce the MLA and federal regulations implementing the MLA, service members and their dependents will be provided greater consumer protections in connection with consumer credit transactions in Florida.

Additionally, while a business must already meet the requirements of the bill, a business could be subject to penalties under state law for violations.

C. Government Sector Impact:

According to the OFR, the Division of Consumer Finance would incur additional duties and responsibilities to enforce the MLA and would need two additional FTEs to absorb the added duties. Salaries and benefits for two positions would total \$126,132.³⁴

Any positive fiscal impact due to the ability of the OFR to enforce penalties, including fines, is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.07, 537.013, and 560.114.

This bill creates section 655.035 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Banking and Insurance on November 17, 2015:**

In addition to issuing a cease and desist order, the CS also authorizes the OFR to seek

³⁴ Office of Financial Regulation, *SB 626 Agency Bill Analysis*, (Oct. 3, 2015) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

injunctive relief, to remove a financial-institution-affiliated party, and to impose administrative fines against any financial institution, a subsidiary, a service corporation, an affiliate, or other person subject to the Financial Institutions Code that violates the MLA or the implementing regulations.

B. Amendments:

None.

CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Fiscal Policy Committee

Judge:

Started: 1/14/2016 10:48:33 AM

Ends: 1/14/2016 11:58:58 AM

Length: 01:10:26

10:48:32 AM Meeting called to order
10:48:36 AM Roll call
10:48:40 AM Quorum present
10:49:03 AM Tab 9 SB 626 presented by Senator Gaetz
10:50:30 AM Senator Margolis with a question
10:51:33 AM Senator Flores with response
10:52:04 AM Senator Margolis with clarification of question
10:52:13 AM Senator Flores with response
10:52:26 AM Senator Gaetz recognized to close on CS/SB 626
10:52:46 AM Senator Gaetz waives close
10:52:54 AM Roll call on CS/SB 626
10:52:59 AM CS/SB 626 reported favorably
10:53:13 AM SB 222 presented by Senator Detert
10:53:55 AM Brian Pitts waives in support
10:54:53 AM Senator Detert waives close
10:55:01 AM Roll call on SB 222
10:55:07 AM SB 222 reported favorably
10:55:25 AM SB 386 presented by Senator Detert
10:56:34 AM Senator Flores with comments
10:57:34 AM Amendment 569884 presented by Senator Detert
10:57:59 AM Amendment 780622 adopted
10:58:46 AM Jim Morgan waives in support
10:58:54 AM Don Lamonica waives in support
10:59:00 AM Colleen Mackin waives in support
10:59:08 AM Cathy Craig-Myers waives in support
10:59:15 AM Dawn Steward waives in support
10:59:20 AM PCS adopted
10:59:29 AM Senator Detert recognized to close
10:59:34 AM Roll call on CS/SB 386
10:59:50 AM CS/SB 386 reported favorably
10:59:57 AM Senator Detert recognized to present CS/CS/SB 232
11:04:18 AM Substitute amendment for Amendment 581286 presented by Senator Detert
11:05:18 AM Substitute amendment adopted
11:06:14 AM Senator Hays with question on the bill as amended
11:06:23 AM Senator Detert with response for Senator Hays
11:06:42 AM Senator Hays with follow-up question
11:07:25 AM Senator Detert with response to Senator Hays
11:08:01 AM Senator Margolis with question
11:08:44 AM Senator Detert with response for Senator Margolis
11:09:52 AM Jack McRay waives in support
11:10:52 AM Doug Franks recognized to speak
11:15:32 AM Senator Hays with a question for Doug Franks
11:17:11 AM Senator Hays with follow-up question
11:18:12 AM Doug Franks with response to Senator Hays
11:18:24 AM Senator Hays with question for Senator Flores
11:19:23 AM Senator Flores with response
11:19:28 AM Brian Pitts recognized to speak
11:21:21 AM Senator Sachs with comments
11:22:21 AM Senator Detert recognized to close on CS/CS/SB 232
11:22:57 AM Roll call on CS/CS/SB 232
11:23:57 AM CS/CS/SB 232 reported favorably
11:24:12 AM CS/SB 148 presented by member of Senator Ring's office

11:24:31 AM PCS taken up without objection
11:25:40 AM David Ramba waives in support
11:26:39 AM Brian Pitts recognized to speak
11:26:49 AM Senator Flores with comments
11:27:46 AM Zayne Smith waives in support
11:27:51 AM Roll call on CS/SB 148
11:28:08 AM CS/SB 148 reported favorably
11:28:21 AM Senator Stargel recognized to present CS/SB 304
11:28:43 AM Senator Margolis with question
11:28:56 AM Senator Stargel with response to Senator Margolis
11:29:11 AM Amendment 961272 presented by Senator Stargel
11:29:26 AM Senator Margolis with follow-up question
11:30:22 AM Senator Stargel with response to Senator Margolis
11:31:21 AM Senator Margolis with follow-up
11:32:01 AM Senator Flores with comments
11:32:47 AM Senator Stargel recognized to clarify the intent of the bill
11:33:08 AM Senator Clemens recognized with question on the amendment
11:33:21 AM Senator Stargel with response to Senator Clemens
11:33:45 AM Senator Stargel with response
11:34:22 AM Senator Bradley with question
11:34:27 AM Senator Stargel with response
11:34:33 AM Senator Bradley with clarification
11:34:57 AM Senator Flores with comments
11:35:11 AM David Cruz recognized to speak
11:35:31 AM Senator Bradley with question for David Cruz
11:36:30 AM Senator Bradley's question for Senator Stargel
11:37:07 AM Senator Stargel with response to Senator Bradley
11:37:25 AM Senator Bradley with follow-up
11:39:22 AM Senator Stargel with response for Senator Bradley
11:40:24 AM Stephen James with FL Association of Counties recognized to speak
11:43:21 AM Senator Bradley with question
11:44:21 AM Senator Abruzzo recognized in debate on the amendment
11:45:13 AM Senator Margolis recognized in debate on the amendment
11:46:05 AM Amendment shown adopted
11:46:19 AM Adam Basford recognized to speak on the bill as amended
11:46:34 AM Jim Spratt waives in support
11:47:06 AM Lena Juarez waives in support
11:47:14 AM Senator Stargel recognized to close on the bill as amended
11:47:24 AM Roll call on CS/SB 304
11:47:34 AM CS/SB 304 reported favorably
11:47:53 AM SB 520 presented by Senator Lee
11:50:21 AM PCS 426584 adopted without objection
11:51:19 AM Amendment 518168 presented by Senator Lee
11:51:37 AM Amendment 518168 adopted
11:52:37 AM Darrick McGhee waives in support
11:52:44 AM Cameron Yarbrough waives in support
11:52:46 AM Senator Lee waives close
11:53:00 AM Roll call on CS/SB 520
11:53:09 AM CS/SB 520 reported favorably
11:53:25 AM Senator Hukill presents CS/SB 494
11:54:07 AM Brian Pitts recognized to speak
11:55:05 AM Jack McRay waives in support
11:55:42 AM Casey Reed waives in support
11:55:46 AM Sarah Butters waives in support
11:55:56 AM Sarrah Carroll waives in support
11:56:02 AM Kenneth Pratt waives in support
11:56:05 AM Dan Sachs waives in support
11:56:08 AM Roll call on CS/SB 494
11:56:21 AM CS/SB 494 reported favorably
11:56:34 AM Chair given to Senator Bradley
11:56:41 AM SB 576 presented by Senator Flores
11:56:56 AM Ron LaFace waives in support

11:57:29 AM Brian Pitts recognized to speak
11:57:37 AM Senator Flores waives close
11:57:57 AM Roll call on SB 576
11:58:01 AM SB 576 reported favorably
11:58:19 AM Various motions to be recorded as favorable votes
11:58:51 AM Meeting adjourned