

Tab 1 SB 548 by Brandes; (Similar to CS/H 00409) Electronic Legal Documents							
255066	D	S	RCS	JU, Brandes	Delete everything after	04/03	09:38 AM
Tab 2 CS/SB 714 by BI, Brandes (CO-INTRODUCERS) Bracy; (Compare to CS/CS/CS/H 00301) Insurance							
791632	D	S	RCS	JU, Brandes	Delete everything after	04/03	03:51 PM
640920	AA	S	RCS	JU, Brandes	Delete L.53 - 55:	04/03	03:51 PM
Tab 3 SPB 7096 by JU; Constitutional Amendments							
504424	D	S	RCS	JU, Simmons	Delete everything after	04/03	04:50 PM
408336	A	S	WD	JU, Hutson	Before L.38:	04/03	04:50 PM
Tab 4 SB 760 by Harrell; (Identical to H 00277) Jury Service							
166620	A	S	RCS	JU, Harrell	Delete L.14 - 15:	04/01	08:23 PM
Tab 5 SB 768 by Perry; (Similar to CS/H 00297) Attorney Fees							
111000	D	S	RS	JU, Stargel	Delete everything after	04/03	04:21 PM
321706	SD	S	RCS	JU, Stargel	Delete everything after	04/03	04:21 PM
Tab 6 SB 1720 by Lee; (Compare to H 01383) Property Rights							
917246	A	S		JU, Simmons	Delete L.20 - 102:	04/01	01:30 PM
305214	A	S		JU, Lee	Delete L.169:	04/01	02:05 PM
Tab 7 SB 1630 by Stargel; Venue for Constitutional Challenges							
Tab 8 SB 1764 by Baxley; (Compare to H 07081) Fees/Foreign Language Court Reporter/Fingerprint Processing							
Tab 9 SB 38 by Thurston; (Similar to CS/H 06523) Relief of Jane Doe by the School Board of Miami-Dade County							
264464	A	S	RCS	JU, Thurston	Delete L.136 - 138:	04/02	09:09 AM
Tab 10 SB 200 by Cruz; (Similar to CS/H 06515) Relief of the Estate of Herminio Padilla, Jr., by the City of West Palm Beach and Others							
904166	A	S	RCS	JU, Cruz	Delete L.60:	04/01	08:23 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Simmons, Chair
Senator Rodriguez, Vice Chair

MEETING DATE: Monday, April 1, 2019
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Simmons, Chair; Senator Rodriguez, Vice Chair; Senators Baxley, Gibson, Hutson, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 548 Brandes (Similar CS/H 409)	Electronic Legal Documents; Revising provisions relating to use of the office of notary public; authorizing online notarizations; specifying registration and qualification requirements for online notaries public; prescribing online notarization procedures; specifying the manner by which an online notary public must verify the identity of a principal or a witness, etc. JU 04/01/2019 Fav/CS GO RC	Fav/CS Yeas 6 Nays 0
2	CS/SB 714 Banking and Insurance / Brandes (Compare CS/CS/H 301)	Insurance; Citing this act as "Omnibus Prime"; revising the reimbursement of loss adjustment expenses by the Florida Hurricane Catastrophe Fund; requiring the Financial Services Commission, by a specified date, to establish a certain uniform loss adjustment expense percentage by rule; providing that certain sworn statements in employer applications for workers' compensation insurance coverage are not required to be notarized; deleting a provision that tolls, under certain circumstances, a period before a civil action against an insurer may be brought, etc. BI 03/11/2019 Fav/CS JU 04/01/2019 Fav/CS RC	Fav/CS Yeas 6 Nays 0
Consideration of proposed bill:			
3	SPB 7096	Constitutional Amendments; Requiring a petition gatherer to register with the Secretary of State and attest that he or she is a Florida resident before obtaining signatures on petition forms; requiring the name of the sponsor of an initiative to appear on the ballot with the percentage of donations received from certain in-state donors; prohibiting compensation for initiative petition gatherers based on the number of petitions gathered, etc.	Submitted and Reported Favorably as Committee Bill Yeas 4 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, April 1, 2019, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 760 Harrell (Identical H 277)	Jury Service; Requiring certain students in specified schools to be excused from jury service upon request, etc. JU ED RC 04/01/2019 Fav/CS	Fav/CS Yeas 6 Nays 0
5	SB 768 Perry (Similar CS/H 297)	Attorney Fees; Prohibiting attorney fee awards in certain injunction proceedings, etc. JU ACJ AP 04/01/2019 Fav/CS	Fav/CS Yeas 6 Nays 0
6	SB 1720 Lee (Compare H 1383)	Property Rights; Providing applicability relating to claims that involve one or more residential properties which are brought as a result of certain regulations or ordinances; authorizing a property owner to waive a jury and request that the court make a determination of compensation; authorizing a property owner to bring an action to declare a prohibited exaction invalid, etc. JU CA RC 04/01/2019 Temporarily Postponed	Temporarily Postponed
7	SB 1630 Stargel	Venue for Constitutional Challenges; Requiring the Clerk of the Supreme Court to use a blind, random selection process to determine venue for certain constitutional challenges under certain circumstances, etc. JU ACJ AP 04/01/2019 Favorable	Favorable Yeas 4 Nays 2
8	SB 1764 Baxley (Compare H 7081, Linked CS/S 656)	Fees/Foreign Language Court Reporter/Fingerprint Processing; Requiring applicants for certification as a foreign language court reporter or a mediator, respectively, to pay fees relating to fingerprint processing; specifying the cost for fingerprint processing, etc. JU ACJ AP 04/01/2019 Favorable	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, April 1, 2019, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 38 Thurston (Similar CS/H 6523)	Relief of Jane Doe by the School Board of Miami-Dade County; Providing for the relief of Jane Doe by the School Board of Miami-Dade County; providing for an appropriation to compensate Jane Doe for injuries and damages sustained as a result of the negligence of the School Board of Miami-Dade County, etc. SM JU 04/01/2019 Fav/CS GO RC	Fav/CS Yeas 6 Nays 0
10	SB 200 Cruz (Similar CS/H 6515)	Relief of the Estate of Herminio Padilla, Jr., by the City of West Palm Beach and Others; Providing for the relief of the Estate of Herminio Padilla, Jr., by the City of West Palm Beach, Palm Beach County, the City of Lake Worth, the City of Riviera Beach, and the Town of Palm Beach; providing for an appropriation to compensate his estate for injuries and damages sustained by Herminio Padilla, Jr., as a result of the negligence of the City of West Palm Beach, Palm Beach County, the City of Lake Worth, the City of Riviera Beach, and the Town of Palm Beach, etc. SM JU 04/01/2019 Fav/CS GO RC	Fav/CS Yeas 6 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 548

INTRODUCER: Judiciary Committee and Senator Brandes

SUBJECT: Electronic Legal Documents

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	Fav/CS
2.			GO	
3.			RC	

I. Summary:

CS/SB 548 authorizes the use of remote online notarizations and recognizes the legal validity of certain electronic legal documents in Florida.

Significantly, the bill:

- Permits notaries, civil-law notaries, and commissioners of deeds to register as online notaries and provide remote online notarizations through two-way, remote audio-visual communication technology.
- Requires substantial record-keeping and security protocols for online notaries, including third-party identify verification (credentials analysis), and provides for the use of Remote Online Notarization (RON) platforms and software to facilitate online notarizations.
- Authorizes online notarization oversight, rulemaking, and training by the Department of State.
- Permits an online notary to notarize electronic signatures on wills, powers of attorney, and documents conveying real property, and requires the notary to issue a colloquy in the case of wills and powers of attorney enumerating certain powers, such as changing a beneficiary, and other documents that are either testamentary or deal with end-of-life decisions.
- Permits an online notary to notarize the electronic signature of a principle signer and witnesses to an electronic will, powers of attorney, and other similar documents through audio-visual communication technology.
- Provides that electronic wills may become self-proving if a qualified custodian is appointed to maintain custody of the will until the testator's death.
- Authorizes witnesses to appear remotely to attest to the principle's signing of a document but requires a remote witness's identity be verified through third party credential analysis.
- Provides that any document signed by a vulnerable adult is voidable when the witness appears remotely.

The effective date of the bill is January 1, 2020, except that the Department of State's rulemaking authority is effective upon becoming law.

II. Present Situation:

Part 1: Notaries Public in Florida

A notary public is a public officer under the Florida Constitution,¹ and “and an impartial agent of the State.”² “[I]n the performance of his or her duties, [a notary public] exercises a delegation of the State's sovereign power as in attesting the genuineness of any deeds or writings in order to render them available as evidence of the facts therein contained and in administering oaths and attesting to the authenticity of signatures.”³

As a public officer, notaries public are constitutionally required to give a bond (as required by law) and swear or affirm to uphold the Constitutions of the United States and Florida.⁴ Notaries public are appointed and commissioned by the Governor to four-year terms,⁵ and are authorized under Florida law to perform six basic duties:⁶

- Administer oaths or affirmations.⁷
- Take acknowledgments.⁸
- Solemnize marriages.⁹
- Attest to photocopies.¹⁰
- Verify vehicle identification numbers (VINs).¹¹
- Certify the contents of a safe-deposit box.¹²

¹ Art. II, s. 5, FLA. CONST.

² 58 AM. JUR. 2D Notaries Public § 1.

³ *Id.* (footnotes omitted). See also BLACK'S LAW DICTIONARY (10th ed. 2014) (“The notary public, or notary, is an official known in nearly all civilized countries. The office is of ancient origin. In Rome, during the republic, it existed, the title being *tabelliones forenses*, or *personae publicae*; and there are records of the appointment of notaries by the Frankish kings and the Popes as early as the ninth century. They were chiefly employed in drawing up legal documents; as scribes or scriveners they took minutes and made short drafts of writings, either of a public or a private nature. In modern times their more characteristic duty is to attest the genuineness of any deeds or writings, in order to render the same available as evidence of the facts therein contained.”) (quoting Benjamin F. Rex, *The Notaries' Manual* § 1, at 1–2 (J.H. McMillan ed., 6th ed. 1913)).

⁴ See n. 1, *supra*. See s. 117.01(3) & (7), F.S. ((3) requiring that, as part of oath, notary must swear he or she understands the English language, has read ch. 117, and understands duties, responsibilities, limitations, and powers; (7) requiring that notary give a bond in the amount of \$7,500 in the event the notary breaches duties, both a physical and electronic copy of which is to be kept on file with the Department of State).

⁵ Section 117.01(1), F.S.

⁶ Executive Office of the Governor, State of Florida, *Governor's Reference Manual for Notaries Public*, p. 13 (Dec. 13, 2016), available at https://www.flgov.com/wp-content/uploads/Notary_Reference_Manual_12.13.16.pdf.

⁷ Section 117.03, F.S.

⁸ Section 117.04, F.S.

⁹ Section 117.045, F.S.

¹⁰ Section 117.05(12)(a), F.S.

¹¹ Section 319.23(3)(a)2., F.S.

¹² Section 655.94(1), F.S.

Importantly, a notary may only exercise the foregoing duties within the physical boundaries of the State of Florida.¹³ Generally, a notary may not charge more than \$10 per notarial act and may not charge a fee for notarizing a vote-by-mail ballot.¹⁴

A notary public may provide an electronic signature so long as it is (1) unique, (2) verifiable, (3) under the notary's sole control, and (4) attached to a document in a way revealing any subsequent alteration.¹⁵ In other words, the electronic signature must not be easily replicated.

When a signature must be accompanied by a notary public seal, the requirement is met when the notary public includes his or her full legal name, the words "Notary Public State of Florida," the expiration date of the notary's commission, and the notary's commission number.¹⁶ The seal may also be applied to a physical paper copy using a rubber stamp containing the foregoing information.¹⁷

As a public officer, a notary public is held to high standards and is subject to discipline, including suspension by the Governor and removal by the Senate, for malfeasance, misfeasance, or neglect in the performance of his or her duties.¹⁸ A notary public is also subject to criminal penalties for certain unlawful uses of the notary commission (such as notarizing his or her own signature),¹⁹ and liable to pay fees for certain civil infractions (such as notarizing a document when the signor is not in the notary's presence).²⁰

Becoming a Notary Public in Florida

In order to be qualified to become a notary public in Florida, a person must:

- Be at least 18 years of age;
- Be a Florida resident or permanent resident alien with a recorded declaration of domicile;
- Maintain Florida residence throughout the appointment; and
- Be able to read, write, and understand the English language.²¹

To apply to become a notary public in Florida, the application form provided by the Department of State must be completed, signed, sworn, and filed along with the appropriate applications fees.²² Because the bond must be attached, the bonding agency usually submits the application in both a paper and electronic format.²³ The oath of office and notary bond must accompany the notary's application when filed with the Department of State.²⁴

¹³ See n. 5, *supra*.

¹⁴ Section 117.05(2), F.S.

¹⁵ Section 117.021(2), F.S.

¹⁶ Section 117.021(3), F.S.

¹⁷ Section 117.05(3), F.S.

¹⁸ Art. IV, s. 7, FLA. CONST.; s. 117.01(4), F.S.

¹⁹ Section 117.05(1), F.S. (providing violation is a third degree felony). See also s. 117.05(3)(d), (7), & (8), F.S.; s. 117.105, F.S.; s. 117.107, F.S.

²⁰ Section 117.107(9), F.S. (providing violation is a civil infraction punishable by a fine of up to \$5,000).

²¹ See n. 5, *supra*.

²² Section 117.01(2), F.S. (requiring \$25 application fee, \$10 commission fee, and \$4 educational surcharge, except that the commission fee is waived for veterans with a 50 percent disability).

²³ See n. 6 at p. 7, *supra*.

²⁴ *Id.*

Applicants must also provide or attach the following as part of the application:

- Personal identification information;
- Affidavit of good character from a reference who has known the applicant for at least one year and is not a relative;
- Ten-year history of any licenses and discipline;
- Statement regarding whether the applicant has ever been convicted of a felony or had his or her civil rights restored; and
- Any other information requested by the Governor’s office to confirm eligibility²⁵

Notary’s Duty to Confirm Identity and Physical Presence for Signing

One of the notaries public primary duties is to verify the identity of the person who is signing a document. If the person is personally known to the notary public or provides “satisfactory evidence” by producing valid identification or witnesses, or both, verifying that the person is who he or she claims to be, then the notary may notarize the document.²⁶

In addition, generally the person signing the document, as well as any witness, must be in the notary’s physical presence at the time of presenting identification and signing.²⁷ It is the physical presence requirement that the proposed bill seeks to redefine.

Remote Online Notarization (RON)

Because of audio/video technologies, such as FaceTime and Skype, two or more people may be able to both see and hear one another in real time using a computer or mobile device, even though they are in different states. This means a notary public can view a person’s face, using audio/video technology while simultaneously reviewing the person’s identification and other credentials.

One article explains how remote online notarization works:

The process is pretty straightforward: You upload a document to an app or website and get connected with a notary by video, on a split screen; you verify your identity by showing a government-issued photo ID, and the notary witnesses you signing your name on screen using your finger or mouse. Then, the notary adds their electronic signature and a digital version of a stamp or seal. The whole transaction is recorded and secured on the cloud in compliance with retention rules; both the signer and the notary can get copies.

Right now, even though notarization apps and sites are accessible by everyone, the participating notaries themselves are certified and based only in Virginia and

²⁵ *Id.*

²⁶ Section 117.05(5), F.S.

²⁷ Section 117.05(4), F.S. *See also* Effect of the Bill, Part I, *infra*, amending multiple provisions in chapter 117, F.S., to clarify that “physical presence” can include an appearance by audio/video technology.

Texas. Nevada will also join those states; it enacted a remote notarization law on June 9.²⁸

Virginia was the first to pass a remote online notarization or RON law in 2012.²⁹ Since the above article was written in June 2017, multiple states have passed RON laws. In 2018, six states—Indiana, Michigan, Minnesota, Ohio, Tennessee, and Vermont—passed RON laws. In 2019, more than 20 states introduced RON legislation,³⁰ including North Dakota, South Dakota, Idaho, and Kentucky, all of which have already passed and been signed into law. Nebraska and Arizona are expected to pass RON laws in 2019 as well.³¹

Commissioner of Deeds

Generally, a commissioner of deeds is similar to a notary public, except a commissioner may complete certain notarial acts outside the state of appointment (either in other states or foreign countries) that will be recognized by the state of appointment.³²

Under Florida law, commissioners of deeds serve a more limited function, notarizing timeshare-related documents executed in foreign countries. A commissioner of deeds appointed in Florida may take acknowledgments, proofs of execution, and oaths in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other writing to be used or recorded *specifically* in connection with a timeshare estate, personal property timeshare interest, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located in Florida. However, the commissioner of deeds can *only* do the foregoing notarial acts related *only* to timeshares when such instruments or writings are executed *outside* the United States.³³

A commissioner of deeds also takes acknowledgments, proofs of execution, and oaths in the same manner as notaries under ch. 117, F.S. A commissioner's certification must be endorsed on or annexed to an instrument or writing and has the same effect as if made by a Florida notary public.³⁴

²⁸ Lauren Silverman, *Notaries are Starting to Put Down The Stamp and Pick Up a Webcam*, National Public Radio, All Tech Considered (June 12, 2017), <https://www.npr.org/sections/alltechconsidered/2017/06/12/532586426/notaries-are-starting-to-put-down-the-stamp-and-pick-up-a-webcam> (last visited Mar. 29, 2019).

²⁹ *Id.* See Office of the Secretary of the Commonwealth of Virginia, Notary Public Division, *A Handbook For Virginia Notary Publics*, <https://governor.virginia.gov/media/2089/NotaryHandbook.pdf> (last visited Jan. 29, 2018). See also <https://www.notarize.com/availability>, a Virginia-based online platform offering online notary services. The video on the homepage also explains how the process works. *Id.* (last visited March 29, 2019).

³⁰ Andrew Macdougall, *North Dakota Enacts Remote Online Notarization*, Notarize.com (March 13, 2019), available at <https://www.notarize.com/blog/north-dakota-enacts-remote-online-notarization> (last visited Mar. 29, 2019).

³¹ Andrew Macdougall, *South Dakota Adopts Remote Online Notarization*, Notarize.com (March 21, 2019), available at <https://www.notarize.com/blog/south-dakota-adopts-remote-online-notarization> (last visited Mar. 29, 2019).

³² BLACK'S LAW DICTIONARY (10th ed. 2014).

³³ Chapter 721, F.S., governs vacation and timeshare plans. See s. 721.96, F.S. (stating that one of the chapter's purposes is to appoint commissioners of deeds); s. 721.97(1), F.S. (Governor may appoint a commissioner of deeds to take acknowledgments, proofs of execution, or oaths in any foreign country, in international waters, or in any possession, territory, or commonwealth of the United States outside the 50 states).

³⁴ Section 721.97(1), F.S.

Like notaries publics, a commissioner of deeds is appointed by the Governor to a term of 4 years. A person seeking to be appointed as a commissioner of deeds must take an oath before a notary public in Florida or any other state, or a person authorized to take oaths in another country, to well and faithfully execute and perform the duties of a commissioner of deeds.³⁵ The oath must be filed with the Department of State prior to the person being commissioned.³⁶

Civil-Law Notaries

A civil-law notary is an attorney who is also a notary public. Civil-law notaries are appointed by the Florida Department of State pursuant to chapter 118, F.S., to attest to and authenticate the validity of documents that may be used in foreign countries that adhere to civil law (such as Latin American countries) as opposed to common law (United States, Great Britain, etc.). As one article explains:

What distinguishes a Chapter 118 civil-law notary is that he or she is authorized to authenticate documents not merely by witnessing a signature or taking an oath, **but also by verifying and confirming the truth of the statements contained within the documents.** When appropriate, the Florida civil-law notary also may verify and confirm the applicable law and include that verification in the authentic act. When serving this function, the civil-law notary acts as an independent third party to the transaction (if there is more than one party to the transaction). This process of verifying and confirming representations of fact and authenticity of a document can arise in an infinite variety of contexts when an individual uses a document from the United States to prove a fact in a foreign civil-law jurisdiction. A few examples reviewed here include verification of facts and law determining heirship in a real-estate context, proper execution of a power of attorney in connection with a sale of real property in a civil-law jurisdiction, and establishment of identity, maternity, paternity, or other relations in connection with litigation.³⁷

To qualify for appointment as a civil-law notary, a person must (1) be a licensed Florida attorney (2) in good standing with The Florida Bar (3) who has been practicing law for at least 5 years. Those qualified may apply through the Florida Department of State.³⁸

³⁵ Section 721.97(2), F.S. *Also see* International Society of Florida Commissioners of Deeds, *Reference Manual for Commissioners of Deeds For the State of Florida* (Aug. 2009)(on file with Senate Judiciary Committee).

³⁶ *Id.*

³⁷ J. Brock McClane & Michael A. Tessitore, *The Florida Civil-Law Notary: A Practical New Tool for Doing Business with Latin America*, 32 STETSON L. REV. 727, 735 (2003) (emphasis added)(footnotes omitted) (discussing history and purpose of law creating civil-law notaries, to encourage international business particularly with civil law nations of South America). *See also* ss. 118.10, 118.12, F.S.

³⁸ Florida Department of State, Notary Public Access System, *Civil Law Notary Names and Locations List*, available at <http://notaries.dos.state.fl.us/civil.html> (last visited Mar. 29, 2019). *See also* Admin. R. 1N-6.001.

Uniform Electronic Transaction Act

Section 668.50, F.S., is known as the Uniform Electronic Transaction Act (act). The act applies to electronic records and signatures relating to a transaction.³⁹ The act does not apply to transactions to the extent they are governed by:⁴⁰

- A provision of law governing the creation and execution of wills, codicils, or testamentary trusts;
- The Uniform Commercial Code (UCC);⁴¹ or
- The Uniform Computer Information Transaction Act.

Part 2: Wills in Florida

A will is a legal document that a person (a “testator”) may use to determine who gets his or her property when he or she dies. As set forth in the Florida Probate Code, as chs. 731-735, F.S., the legal definition of a will is:

an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person’s property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will.⁴²

Wills do not dispose of all of a testator’s property, but only his or her “estate,” i.e., those assets that are subject to probate administration.⁴³ Probate is “a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent’s debts, and distributing the decedent’s assets to his or her beneficiaries.”⁴⁴ Other assets are disposed of outside of probate.⁴⁵

Without a will, a decedent’s estate will be distributed pursuant to the intestacy statutes, which devise a decedent’s estate according to what might be described as default rules. With a will, however, a testator may, as a general matter, devise his or her estate to whomever he or she likes. Also, with a will, a testator may designate a person known as a personal representative to carry out the terms of the will. Otherwise, a court will choose the personal representative.

Execution of a Will

A will must be “in writing” and signed at its end by either the testator or by someone else for the testator. If someone else signs for the testator, the person must do so in the testator’s presence and at the testator’s direction.⁴⁶ At least two persons must witness the testator sign the will or

³⁹ Section 668.50(3)(a), F.S.

⁴⁰ Section 668.50(3)(b), F.S.

⁴¹ Other than s. 671.107, F.S., and chapters 672 and 680, F.S. The UCC consists of chapters 670 - 680, F.S.

⁴² Section 731.201(40), F.S.

⁴³ *See*, s. 731.201(14), F.S.

⁴⁴ The Florida Bar, *Consumer Pamphlet: Probate in Florida*, <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited March 28, 2019).

⁴⁵ For example, the terms of a decedent’s bank account may include a beneficiary clause, giving the account to whomever the decedent names.

⁴⁶ Section 732.502(1)(a), F.S.

must witness the testator's acknowledgement that he or she previously signed the will or that another person subscribed the testator's name to the will.⁴⁷ These witnesses must sign the will in the presence of each other and the testator.⁴⁸ For wills executed in other states, the requirements may be different.⁴⁹ The consequence of failing to strictly comply with these requirements is that the will is not valid.⁵⁰ A codicil (amendment) to a will must be executed in the same manner as a will.⁵¹

Though s. 732.502(1), F.S., specifies that a will must be "in writing" and that certain persons must "sign" or attach their "signature," these terms are not defined in the statutes. Moreover, there is no explicit statement in the Florida Probate Code that an electronic will is invalid, that an electronic signature is invalid, or that a will must be executed on paper.

Some have asserted that an electronically-signed will is not valid in Florida, but s. 668.004, F.S., states that, "[u]nless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature."⁵² An electronic signature, as defined in s. 668.003(4), F.S., is:

any letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.

Storing a Will

The Florida Probate Code does not specify how a will must be stored.

Probate and Proving a Will

To acquire a court order distributing the testator's estate assets in line with the terms of a will, the will must be probated.⁵³ The venue for a probate proceeding is set forth in s. 731.101(1), F.S., which states:

- (1) The venue for probate of wills and granting letters shall be:
 - (a) In the county in this state where the decedent was domiciled.

⁴⁷ Section 732.502(1)(b), F.S.

⁴⁸ Section 732.502(1)(c), F.S.

⁴⁹ See, s. 732.502(2), F.S. A will executed in another state is valid in Florida if the will is executed in accordance with the laws of this state, the laws of the state in which it was executed, or both. This does not apply to nuncupative wills (oral wills) or holographic wills (wills written in the hand of the testator, but not properly executed as set forth in s. 732.502(1), F.S.), which are not valid in Florida regardless of whether they were executed according to the laws of the state in which they were executed.

⁵⁰ *Allen v. Dalk*, 826 So.2d 245, 247 (Fla. 2002).

⁵¹ Section 732.502(5), F.S.

⁵² The Uniform Electronic Transaction Act is set forth in s. 668.50, F.S. It includes a statement that the "section" does not govern, among other things, a transaction that is governed by a law governing the creation and execution of wills.

Section 668.004, F.S., which provides broad permission to electronically sign a document, is of course a different section. But even if it were not, or even if it did not exist, s. 668.50, F.S., would not appear to *prohibit* electronically signing a will.

⁵³ See s. 733.103(1), F.S.

- (b) If the decedent had no domicile in this state, then in any county where the decedent's property is located
- (c) If the decedent had no domicile in this state and possessed no property in this state, then in the county where any debtor of the decedent resides.

For a will to be admitted to probate in Florida, it must be "proved."⁵⁴ No statute describes what it means for a will to be proved or what it is about the will or purported will that is being proved. However, it is apparent that proving a will means proving that the will is what it purports to be, i.e., the last will and testament of the testator and that it was validly executed.

Proving a Will

A will may be proved by having one of the attesting witnesses swear or affirm an oath regarding the will before a circuit judge or any of the other persons set forth in s. 733.201(2), F.S. If it appears to the court that no attesting witness can be found, that no attesting witness still has capacity, or that the testimony of an attesting witness cannot be obtained within a reasonable time, the court must resort to another method of proving a will. The other method is through an oath of the personal representative nominated by the will or a different person who has no interest in the estate under the will. This oath must include a statement that "the person believes the writing exhibited to be the last will and testament of the decedent."⁵⁵

Making a Will Self-Proved

A will may be made self-proved. A self-proved will may be admitted to probate without further proof, such as the testimony mentioned above.⁵⁶ For a will to be self-proved in this state, the testator must acknowledge the will before an officer authorized to administer oaths (e.g., a notary public). The attesting witnesses must make affidavits before the officer. Lastly, the officer must evidence the acknowledgement and affidavits by a certificate attached to or following the will.⁵⁷

Even after a will is proved and admitted to probate, it may be contested.⁵⁸ There are several grounds, such as fraud and undue influence, on which a self-proved will might be contested.

Custodian's Duty to File with Court

The custodian of a will must deposit the will with the court within 10 days after receiving information of the testator's death.⁵⁹ If the custodian fails to do so without just or reasonable cause, he or she is be subject to liability:

Upon petition and notice, the custodian of any will may be compelled to produce and deposit the will. All costs, damages, and a reasonable attorney's fee shall be adjudged to

⁵⁴ Section 733.201(1), F.S.

⁵⁵ Section 733.201(3), F.S.

⁵⁶ Section 733.201(1), F.S.

⁵⁷ The officer's certificate must be substantially in the form set forth at s. 732.503, F.S. The form requires that the witnesses state that they witnessed the testator *sign* the will. However, the statutory requirements for executing a will do not require witnesses to witness the testator sign the will. Section 732.502, F.S., provides that the witnesses may either witness the testator sign, or witness the testator acknowledge his or her prior signature.

⁵⁸ See, *Powell v. Eberhardt (in Re Estate of Hartman)*, 836 So.2d 1038, 1039 (Fla.2d DCA 2002).

⁵⁹ Section 732.901(1), F.S.

the petitioner against the delinquent custodian if the court finds that the custodian had no just or reasonable cause for failing to deposit the will.⁶⁰

Other States' Treatment of Electronic Wills

It appears that Nevada is the only state that, by statute, expressly permits the use of electronic wills.⁶¹ This statute has been in effect since 2001.⁶²

Although the legislative bodies in Arizona, Indiana, New Hampshire, and Virginia each brought forward an electronic wills act bill in 2017,⁶³ none passed. As already noted, however, Virginia allows documents to be notarized through live video and audio technology.⁶⁴

Additionally, in Tennessee, a court held that a testator validly signed his will when he typed his name in cursive font.⁶⁵ In Ohio, a court admitted a will to probate that was written and signed with a stylus on an electronic tablet.⁶⁶

III. Effect of Proposed Changes:

The effect of the bill will be addressed in four parts:

- Part 1 will address bill sections 1-17 relating to Remote Online Notarization (RON).
- Part 2 will address bill section 30-39 relating to electronic wills.
- Part 3 will address bill sections 18-29 making collateral changes to other statutes to fully implement Parts 1 and 2.
- Part 4 will address bill section 40, the effective date.

Part 1 of the Bill: Online Notary Publics (Sections 1– 17)

Section 1 of the bill divides ch. 117, F.S. into two parts: Part I entitled “General Provisions” (ss. 117.01-.108, F.S.) and Part II entitled “Online Notarizations” (ss. 117.201-.305, F.S.).

Sections 2 through 5 of the bill amend current provisions of chapter 117, F.S., which will become part of Part I, “General Provisions.” The “General Provisions” generally govern how a person may become a notary public and set out the duties and responsibilities of a notary. *See Present Situation, supra.*

Safety of Electronic Signatures and Rule Promulgation—Of the substantive changes, section 3 of the bill provides that a notary must use a password- or code-protected electronic signature, and, presumably for security reasons, the notary cannot be required to use technology the notary

⁶⁰ Section 732.901(2), F.S.

⁶¹ *See* Nev. Rev. Stat. s. 133.085.

⁶² *See* Dan DeNicolò, *The Future of Electronic Wills*, American Bar Association, available at https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_38/issue-5--june-2017/the-future-of-electronic-wills/ (last visited Mar. 29, 2019).

⁶³ *Id.* (noting that Florida passed a version of the electronic wills act in 2017 but it was vetoed by Governor Scott).

⁶⁴ Va. Code Ann. S. 47.1.

⁶⁵ *Taylor v. Holt*, 134 S.W.3d 830, 833 (Tenn. Ct. App. 2003). *See also*, n. 62, *supra*.

⁶⁶ *In re Estate of Javier Castro, Deceased*, 2013-ES-00140 (Ct. Comm. Pl. Lorain Cnty., Probate Div., Ohio, June 19, 2013) (James T. Walther, Judge). *See also*, n. 62, *supra*.

has not selected (s. 117.021(2), (4), F.S.). Additionally, the Department of State, in collaboration with the Agency for State Technology, is required to adopt rules establishing standards for “tamper-evident” technologies that will indicate if an electronically notarized document has been altered by January 1, 2020 (s. 117.021(7), F.S.).

Use of Notary Commission, Forms, and Accommodating Disabled Persons—Section 4 of the bill clarifies that online notarizations must be done in compliance with Part II (s. 117.05(5)). The bill also provides an additional form certificate a notary must use when notarizing an attested copy of an electronic document (s. 117.05(12)(c), F.S.).

Additionally, the bill amends the various notarial form certificates in s. 117.05, F.S., to add an option for the notary to select whether an oath or affirmation or a an instrument was acknowledged “by means of [] physical presence or [] online notarization[.]”

Finally, when a notary must be sign at the direction and on behalf of a person who is physically unable to sign or mark a document, the notary must now maintain proof this direction and authorization for at least 10 years (s. 117.05(14)(d), F.S.).

Prohibited Acts—Section 5 of the bill provides that the prohibition in s. 117.107(2), F.S., does not apply to electronic signatures and seals necessary to perform online notarizations. Additionally, s. 117.107(9), F.S., prohibits a notary from notarizing the signature of a person who does not “appear” either in person or, as provided in Part II, by means of audio-video technology.

Other Changes—Section 2 makes technical changes to s. 117.01(1), F.S. Sections 3, 4, and 5 also contain technical changes.

Sections 6 through 19 of the bill create Part II adding new provisions to chapter 117, F.S., to govern the provision of remote online notarization (RON).

Application of “General Provision” in Part I—Sections 6, 7, 9, and 10 of the bill (ss. 117.201, 117.209, 117.225, and 117.235, F.S., respectively) clarify the application of Part I’s “General Provisions” to online notary publics, which includes notary publics under chapter 117, Part 1, civil-law notaries appointed under chapter 118, and commissioners of deeds appointed under chapter 721 (s. 117.201(10), F.S.). Online notaries public:

- Must satisfy all the traditional requirements for becoming a notary public under Part I.
- Are subject to Part I in carrying out their duties.
- May perform any of the traditional notarial acts listed in Part I online, except online marriage rites.

In other words, the requirements of Part II are additional to the requirements of Part I for those wishing to become an online notary public.

Definitions and Key Concepts—Section 6, s. 117.201, F.S., provides definitions used throughout Part II concerning the use of audio-video technology by a notary public to verify a person’s identity remotely. Some of the key definitions include:

- “Appear before,” “before,” or “in the presence of,” mean either that the notary public and the “principal,” or person seeking the performance of a notarial act, are either in the same

physical location (see also “physical presence”), or are not in each other’s physical presence but are using real-time, two-way “audio-video communication technology” that permits the notary and the person to see, hear, and communicate with one another such that an “online notarization” can be performed. (s. 117.201(1), (2), (9), (11), (12), F.S.).

- “Credential analysis,” “identity proofing,” and “knowledge-based authentication” all relate to the third party verification of a “government issued identification,” using public or proprietary data sources, which may include a set of individual questions generated by these sources or biometric verification. (s. 117.201(3), (6), (7), (8), F.S.).
- “Remote presentation” refers to the presentation of a “government issued identification” to a notary public through “audio-video technology” that is sufficiently clear to permit the notary public to engage in “credential analysis” and verify the presenter’s identity. (s. 117.201(15), F.S.).
- “Remote online notarization service provider” or “RON service provider” refers to those providing “audio-video technology” and related services to directly facilitate “online notarizations,” such as software and data storage, in compliance with rules promulgated by the Department of State. (s. 117.201(9), (14), F.S.).
- “Electronic,” “electronic record,” and “electronic signature” has the same meaning as in s. 668.50, F.S.; and a “record” means information that is either in tangible or “electronic” form which is retrievable. (s. 117.201(4), (13), F.S.).

Authorization to Perform Online Notarizations and Validity of Online Notarizations—Sections 7, 8, and 13 generally authorize and give effect to online notarizations. In compliance with Florida law and the rules promulgated by the Department of State, the bill authorizes duly registered online notaries to perform any notarial services (except marital rites) online so long as the notary is physically present in Florida at the time. However, a commissioner of deeds may perform online notaries outside of Florida so long as they are within their territorial jurisdiction. (ss. 117.209, 117.265(1), F.S.). The bill also provides that whenever a provision of law requires a notarial act, an online notarization satisfies the law’s requirement. (s. 117.215, F.S.).

Registration Requirements—Section 9 (s. 117.225, F.S.) sets out the registration requirements for online notaries. Online notaries must:

- Satisfy qualification requirements of Part I;
- Provide proof of professional liability insurance (the bill adds that it must be \$1 million under Part I);
- Submit a signed and sworn registration to the Department of State;
- Identify the RON provider to be used;
- Confirm that audio/video communication technology and credential analysis/identity proofing methods to be used online comply with the standards promulgated by Part II and any rules promulgated by the Department of State; and
- Provide satisfactory evidence of that a bond and errors and omissions insurance have been obtained.

Record-Keeping, Security, and Technology Requirements— Sections 11 and 12 of the bill (ss. 117.245, 117.255, F.S.) require an online notary to keep extensive records of each online notarization in one or more electronic journals, which includes retaining an uninterrupted, unedited copy of the audio/video recording, the contents of which must include the following:

appearances by the principle and any witnesses; whether their identities were confirmed; a description of the record to be signed; and, importantly, a declaration by the principle that he or she is signing these records voluntarily and knowingly. Additionally, at the outset of the recording, the notary must specify the type of notarial act to be completed. Other information, such as whether a fee was charged or whether retention of records was delegate by the notary to a secure repository, must be noted in the journal. These records must be retained for 10 years, except electronic wills must be maintained by a qualified custodian in accordance with chapters 731 and 732, F.S.⁶⁷

While an incomplete entry into a journal does not impair the validity of a notarial act, it may be introduced as evidence in certain actions, such as evidence for fraud, forgery, duress, incapacity, and the like (s. 117.245, F.S.). However, if an electronic will executed through online notarization cannot be produced by either the online notary or the qualified custodian, the electronic will shall be treated as a lost or destroyed will under s. 733.207, F.S.

The bill in section 12 also requires that an online notary take strict security measures to keep the electronic journal as well as a back-up of the journal, the notary's electronic signature, and the notary's electronic seal under his or her exclusive possession or control, except that a RON service provider may have access to facilitate online notarizations on behalf of the notary. Additionally, the notary may provide electronic copies of pertinent portions of the electronic journal, or provide access to the audio-visual recording, when requested by: the parties; the qualified custodian; the title agents or insurers in real estate transactions that retained the online notary; the Department of State; someone asked to accept of power of attorney that was notarized online; and to other persons pursuant to a subpoena, court order, law enforcement investigation, or other lawful inspection demand. (s. 117.255, F.S.).

Procedures to Verify Identity of Principles and Witnesses and Protect Vulnerable Adults— Sections 13 and 15 (ss. 117.265, 117.285, F.S.) provides that an online notary may notarize documents or supervise the witnessing of electronic records for people in other states so long as the notary verifies the identities of the principle signer and witnesses (s. 117.285, F.S.) at the time of signing; and, if out-of-state, confirms that the principle signer consents, either verbally or in writing, to a Florida-based notary public and consents to comply with Florida law (ss. 117.265, 117.285, F.S.).

An online notary may verify the identity of a principle signer as follows:

- The notary's personal knowledge of the person; or
- The remote presentation of a government-issued identification card subjected to a credibility analysis and "identification proofing" using "knowledge-based authentication" (similar to personal questions a credit card company asks to verify identity (mother's maiden name, father's middle name, etc.).

For witnesses:

- If the witness or witnesses are with (in the physical presence of) the principle, the online notary must have the witness state his or her name and address on the record.

⁶⁷ See Part II of the bill, section 35, "qualified custodians."

- If the witness or witnesses are appearing remotely (outside the physical presence of the principle), the online notary must verify the witness or witnesses identity using the same credential analysis used when verifying the identity of a principle.

If the notary is not satisfied that a person's identity has been verified, the notary must decline to do the online notarization.

The bill provides that when one or more attesting witnesses are required under Florida law to witness the signing of a document, the appearance of a witness for an online notarization session, either in the physical presence of the principle or remotely, satisfies the requirements of the law.

Additionally, the bill requires a notary to ensure that the principle is knowingly and voluntarily signing any the following documents requiring witnesses:

- Wills.
- Trusts with testamentary aspects.
- Health care advance directives.
- Durable powers of attorney concurrent with a will.
- Waiver of spousal rights.

To ensure the principle is signing any of the foregoing documents of his or her own free will, a notary must ask the principle the following list of questions during the online notarization (similar to a court colloquy to determine if a decision is voluntary and knowing):

- (1) What is your date of birth?
- (2) Are you under the influence of any drugs or alcohol that impairs your ability to make decisions?
- (3) Do you have any physical or mental condition or long-term disability that impairs your ability to perform the normal activities of daily life?
- (4) Are you unable to provide for your own daily care?
- (5) Did anyone assist you in accessing this video conference? If so, who?
- (6) Where are you currently located?
- (7) Name everyone you know who is with you.

However, the bill provides that when the principle is a vulnerable adult under s. 415.102, F.S., and the witness is appearing remotely, any document signed by the principle may be voidable, i.e., unenforceable. The bill provides that the contestant has the burden of proving the adult was vulnerable at the time of executing the document. Additionally, the RON service provider must provide a disclaimer online stating the foregoing, and stating that the signer could choose to have a physically present witness instead.

For general challenges to the validity of one of the foregoing documents, the recording of the principle's answers to the colloquy may be offered as evidence. However, an incorrect answer to a question will not invalidate and entire document. Florida law governs questions of validity.

Finally, an online notary must provide the last known address of a witness pursuant to a subpoena, court order, or other lawful investigation or inquiry.

Online Notarization Fee—Section 14 of the bill (s. 117.275, F.S.) permits an online notary to charge a fee not exceeding \$25 for online notarizations.

Rulemaking Authority—Section 16 (s. 117.295, F.S.) of the bill provides that the Department of State Technology has rulemaking authority to further specify standards for online notarizations, including technology and education requirements. This provision is effective upon becoming law.

Relation to Federal Electronic Signatures Act—Section 17 (s. 117.305, F.S.), provides that Part II supersedes 15 U.S.C. s. 7002, the federal Electronic Signatures in Global and National Commerce Act. This is expressly permitted by 15 U.S.C. s. 7002 when a state has adopted the Uniform Electronic Transactions Act,⁶⁸ which Florida did in 2000.⁶⁹ Section 117.305, F.S., also provides that the requirements in section 15 U.S.C. s. 7001(c) concerning consumer disclosures, and the requirement of 15 U.S.C. s. 7003(b) concerning the delivery of certain legal documents are not superseded or limited.

Part 2 – Electronic Wills (Sections 30-39)

Sections 30 through 39 of the bill create provisions regulating and expressly permitting the use of “electronic wills.” The bill also revises several aspects of current law relating to the execution of wills.

Key Definitions and Concepts—Sections 30, 31, and 32 amend or create definitions within the probate code. Section 32 of the bill creates s. 732.521, F.S., to provide definitions and cross-references part II of ch. 117, F.S., for the definitions pertaining to online notarization (s. 732.521(1), (4), (5), F.S.).

Most importantly, section 32 (s. 732.521(3)), F.S., defines an “electronic will” as:

an instrument, including a codicil, executed with an electronic signature by a person in the manner prescribed by this code, which disposes of the person’s property on or after his or her death and includes an instrument that merely appoints a personal representative or revokes or revises another will or electronic will.

Section 30 of the bill also amends the current definition of a “will” in s. 731.201(4), F.S., to clarify that term includes an “electronic will.”

Section 31 amends s. 732.506, F.S. to distinguish how an electronic will or codicil may be revoked since it cannot be destroyed in the same manner as a paper will. Nonetheless, revocation of an electronic will or codicil similarly requires an intent by the testator to revoke the electronic will or codicil accompanied an act by or at the testator’s direction obliterating, deleting, cancelling, or rendering unreadable an electronic will or codicil which is sufficient to prove the revocation by clear and convincing evidence.

⁶⁸ See Uniform Law Commission, Acts, *Electronic Transactions Act*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=2c04b76c-2b7d-4399-977e-d5876ba7e034> (last visited Mar. 29, 2019) (“The **Uniform Electronic Transactions Act (UETA)** establishes the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to electronic commerce.”).

⁶⁹ Section 668.50, F.S.

Section 32 also defines a “qualified custodian” as a person meeting the qualifications under newly created s. 732.524(1), F.S.; and an “electronic signature” as “an electronic mark visibly manifested in a record as a signature and executed or adopted by a person with the intent to sign the record” (s. 732.521(2), (6), F.S.).

Executing and Filing an Electronic Will— Section 33 (s. 732.522, F.S.) of the bill creates the procedures for electronically executing, witnessing, and filing any document under the Florida Probate Code, including electronic wills, as follows:

- When a signature is required, an electronic signature satisfies the requirement.
- When witnesses are required, witnessing an electronic signature through the audio-visual communication technology specified for online notarization provisions (ch. 117, F.S., part II) satisfies this requirement if:
 - The signing is supervised by a notary public under s. 117.285, F.S.;
 - The witnesses’ identities are authenticated while signing as part of an online notarization session in accord with s. 117.265, F.S.;
 - These witnesses hear the signer make a statement acknowledging signing; and
 - The signing and witnessing of the document complies with the colloquy and other requirements in s. 117.285, F.S.

The bill also clarifies that the validity and effect of an electronic will is to be determined in the same manner as in the case of a traditional will.

Probate, Self-Proved Wills, and Proof of Wills—Sections 34, 37, and 38 (ss. 732.523, 732.526, 733.201, F.S.) address self-proof of wills, probate, and proof of wills when they are not self-proved, respectively.

Section 34 creates s. 732.523, F.S. permitting an electronic will, like a traditional will, to be self-proved, i.e., admitted to probate without further proof that it is what it purports to be or that it was executed properly.

The bill provides that an attested electronic will is self-proved if each of the following are met:

- The acknowledgement of the electronic will by the testator and the affidavits of the witnesses are made in accordance with s. 732.503, F.S., and are part of or attached to the record containing the electronic will;
- The electronic will designates a qualified custodian (section 35, s. 352.524, F.S.);
- The electronic will is held in the custody of the qualified custodian at all times before being offered to the court for probate; and
- The qualified custodian at the time of the testator’s death certifies under oath that the electronic will (1) was at all times kept in the custody of the custodian and (2) has not been altered since the date of execution.

Section 37 creates s. 732.526, F.S., concerning the probate of an electronic will and addresses when an “original copy” of the will is offered for probate:

- An electronic copy is deemed filed with the court when electronically deposited through the Florida Courts E-filing Portal.

- A paper copy is deemed filed for probate if it is certified as a true and correct copy by a notary.

Section 38 amends s. 733.201, F.S., to create an exception to the admission of self-proved electronic wills into probate without further proof when there is a substantial failure to comply with the online notarization process in s. 117.265, F.S.

Qualified Custodians, Receiverships, and Relation to Wills—Sections 35, 36, and 39 of the bill create ss. 732.524, 732.525, and 740.10.

Section 35 (s. 732.524) sets out the requirements to serve as a qualified custodian. As noted above, one of the requirements of a *self-proved* will is that it be held at all times by a qualified custodian. A qualified custodian is a person who meets all of the following requirements:

- Is domiciled in and a resident of Florida or is incorporated or organized in Florida.
- Consistently employs a system for ensuring the safekeeping of electronic records and stores electronic records containing electronic wills under the system.
- Furnishes for any court hearing involving an electronic will that is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualified custodian's policies and procedures.

The qualified custodian of an electronic must provide access to or information concerning the electronic will, or the electronic will and the electronic record containing the electronic will, only to the testator and such other persons as directed by the written instructions of the testator, or anyone as directed by a court with jurisdiction over the matter.

The bill also provides the process by which a qualified custodian may step down and the timeframe for keeping the electronic will after a testator's death. Additionally, the bill sets out the duties owed by the qualified custodian to the testator, such as maintaining custody of an electronic will and other documents at all times and maintaining the testator's confidentiality.

Most importantly, when a qualified custodian receives information that a testator is dead, the qualified custodian must deposit the electronic will with the court pursuant to s. 732.901, F.S.

Section 36 (s. 732.525) requires a qualified custodian to either (1) post a blanket surety bond of at least \$250,000 to cover any acts or omissions; or (2) maintain a liability insurance policy to cover any losses in the aggregate of \$250,000 resulting from errors or omissions. Section 37 also permits the Attorney General to petition for the appointment of a receiver if:

- A qualified custodian ceases operation;
- A qualified custodian intends to close without adequate arrangements for the delivery of electronic records;
- Conditions exist suggesting a present danger of records being lost or misappropriated; or
- The qualified custodian fails to post a bond or maintain insurance.

Section 39 of the bill creates s. 740.10 under the "Florida Fiduciary Access to Digital Assets Act." This provision provides that no action taken under the Act "is valid" to obligate someone to deposit a will as required in s. 732.901, F.S.

Part 3 – Other Significant Issues and Collateral Changes (Sections 18-29)

Sections 18-29 and 40 of the bill make conforming or necessary collateral changes to several provisions outside of chapters 117 (notaries) and 731-732 (wills and probate), F.S., most of which apply to the recording of real estate conveyances under of chapter 695, F.S. and the power of attorney under chapter 709, F.S.

Powers Of Attorney

Sections 27-29 of the bill amend ss. 709.2119, 709.2120, and 709.2202, F.S. The bill amends ss. 709.2119 and 709.2120, F.S., to add conforming language concerning powers of attorney notarized online. Significantly, when a document purports to give a person “super” powers of attorney, meaning those powers which must be enumerated in s. 709.2202, F.S., (such as removing beneficiaries), an online notary must conduct the colloquy set out in s. 117.285, F.S.

Real Estate Transactions

Sections 21-26 amend ss. 689.01, 694.08, 695.03, 695.04, 695.25, and 695.28, F.S., to make: technical changes; conforming changes with ch. 117’s online notarization provisions; provide additional statutory short forms; clarify the applicability and validity of online notarization in signing or witnessing documents conveying real estate; and clarify that challenges to documents notarized online are not precluded.

Form of Oaths

Section 19 amends s. 92.50, F.S., to make conforming language changes to the oath requirement.

Clerks of Court

Section 18 of the bill amends s. 28.222, F.S., to permit the clerk of a circuit court to record documents “originally created and executed using an electronic signature” citing to Florida’s Uniform Real Property Electronic Recording Act,⁷⁰ that are “certified to be true and correct paper printout[s] by a notary public[.]”

Statute of Limitations

Section 20 amends language in s. 95.231, F.S., concerning powers of attorney and wills conveying real property, clarifying that the 5-year limitation applies the instrument will be effective even if it suffers from a complete failure or absence of acknowledgment as opposed to just defective acknowledgement.

Part 4 – Effective Date (Section 40)

Section 40 of the bill provides that, unless otherwise specified in the bill, the effective date is January 1, 2020.

⁷⁰ Section 695.27, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Notaries who wish to provide online services must pay an additional \$25 registration fee.

B. Private Sector Impact:

The availability of online notarial services may be more convenient for those who need the services.

The bill may facilitate the creation and storage of wills using an Internet-based service. The associated costs are unknown. Further, if an electronic will can be easily created, many people who do not have a will may decide to execute one. However, some may use the services of an Internet-based service instead of, or in addition to, the services of an attorney.

C. Government Sector Impact:

The bill will likely add to the regulatory and record-keeping responsibilities of the Department of State and the Office of the Governor.

The extent to which the bill will result in an increase in probate cases and associated costs to the judicial branch is unknown.

VI. Technical Deficiencies:

Section 15, s. 117.285(4) and (5), F.S., require a “verbal” confirmation or answer, respectively, on the audio-video recording of an online notarization. The word “verbal” could refer to either oral (or spoken) or written confirmations or answers. Because it appears that the intent of the bill is to require an oral (or spoken) confirmation or answer, the term “verbal” should be replaced with “oral.”

Additionally, in section 15 of the bill, s. 117.285(5), F.S., the statutory cross-reference for “advance health care directives” (ch. 765, F.S.) is not listed, although the statutory cross-references for other listed documents are provided. Also, the terminology used in the bill does not conform to ch. 765, F.S., which places the word “advance” after “care” (i.e., “health care advance directives”).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 117.01, 117.021, 117.05, 117.107, 28.222, 92.50, 95.231, 689.01, 694.08, 695.03, 695.04, 695.25, 695.28, 709.2119, 709.2120, 709.2202, 731.201, 732.506, and 733.201.

This bill creates the following sections of the Florida Statutes: 117.201, 117.209, 117.215, 117.225, 117.235, 117.245, 117.255, 117.265, 117.275, 117.285, 117.295, 117.305, 732.521, 732.522, 732.523, 732.524, 732.525, 732.526, and 740.10.

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

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

CS by Judiciary on April 1, 2019:

The Committee Substitute:

- Revises definitions in s. 117.201, F.S., most significantly, replacing references to “physical location” with “physical presence.”
- Revises an online notary’s record-keeping requirement in s. 117.245, F.S., requiring the notary to retain an unedited, uninterrupted recording of an online notarization session and include certain statements on the recording, such as the notarial act to be completed.
- Expands the list of persons to whom a notary may provide access to the electronic journal and audio-visual recording in s. 117.255, F.S.
- Substantially amends s. 117.285, F.S., concerning a notary’s supervision of a witness’s signature, revising subsection (2) and adding subsections (4)-(7), to:
 - Clarify procedures applicable to remote witnesses, i.e., those appearing outside the physical presence of the principle and require that the identity of a remote witness be verified through credential analysis under s. 117.265(4), F.S.

- Require that a notary conduct a colloquy with the principle to ensure the principle is knowingly and voluntarily signing certain documents, such as wills and other document authorizing testamentary or end-of-life decisions.
- Provide rules concerning validity of the foregoing documents and use of the recorded online notarization session as evidence in validity challenges.
- Provide that a document signed by a vulnerable adult and witnessed remotely is voidable, and that the RON service provider must post this as a disclaimer.
- Removes the colloquy requirement in ss. 709.2202, F.S., and 732.522, F.S., instead requiring compliance with the same colloquy and other requirements in s. 117.285, F.S. (above).
- Removes the amendment to s. 90.803, F.S., to provide an additional hearsay exception, section 19, and renumbers the bill sections.
- Makes technical corrections, clarifies definitions, and makes other clarifying or conforming language changes.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. The Division of Law Revision is directed to:

(1) Create part I of chapter 117, Florida Statutes,
consisting of ss. 117.01-117.108, Florida Statutes, to be
entitled "General Provisions."

(2) Create part II of chapter 117, Florida Statutes,
consisting of ss. 117.201-117.305, Florida Statutes, to be
entitled "Online Notarizations."



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12 Section 2. Subsection (1) of section 117.01, Florida
13 Statutes, is amended to read:

14 117.01 Appointment, application, suspension, revocation,
15 application fee, bond, and oath.—

16 (1) The Governor may appoint as many notaries public as he
17 or she deems necessary, each of whom must ~~shall~~ be at least 18
18 years of age and a legal resident of this ~~the~~ state. A permanent
19 resident alien may apply and be appointed and shall file with
20 his or her application a recorded Declaration of Domicile. The
21 residence required for appointment must be maintained throughout
22 the term of appointment. A notary public ~~Notaries public~~ shall
23 be appointed for 4 years and may only ~~shall~~ use and exercise the
24 office of notary public if he or she is within the boundaries of
25 this state. An applicant must be able to read, write, and
26 understand the English language.

27 Section 3. Present subsections (4) and (5) of section
28 117.021, Florida Statutes, are renumbered as subsections (5) and
29 (6), respectively, new subsections (4) and (7) are added to that
30 section, and subsection (2) of that section is amended, to read:

31 117.021 Electronic notarization.—

32 (2) In performing an electronic notarial act, a notary
33 public shall use an electronic signature that is:

- 34 (a) Unique to the notary public;
- 35 (b) Capable of independent verification;
- 36 (c) Retained under the notary public's sole control and
37 includes access protection through the use of passwords or codes
38 under control of the notary public; and

39 (d) Attached to or logically associated with the electronic
40 document in a manner that any subsequent alteration to the



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41 electronic document displays evidence of the alteration.

42 (4) A person may not require a notary public to perform a
43 notarial act with respect to an electronic record with a form of
44 technology that the notary public has not selected to use.

45 (7) The Department of State, in collaboration with the
46 Agency for State Technology, shall adopt rules establishing
47 standards for tamper-evident technologies that will indicate any
48 alteration or change to an electronic record after completion of
49 an electronic notarial act. All electronic notarizations
50 performed on or after January 1, 2020, must comply with the
51 adopted standards.

52 Section 4. Subsection (1), paragraph (a) of subsection (2),
53 subsections (4) and (5), paragraph (a) of subsection (12), and
54 subsections (13) and (14) of section 117.05, Florida Statutes,
55 are amended, and paragraph (c) is added to subsection (12) of
56 that section, to read:

57 117.05 Use of notary commission; unlawful use; notary fee;
58 seal; duties; employer liability; name change; advertising;
59 photocopies; penalties.—

60 (1) A ~~No~~ person may not shall obtain or use a notary public
61 commission in other than his or her legal name, and it is
62 unlawful for a notary public to notarize his or her own
63 signature. Any person applying for a notary public commission
64 must submit proof of identity to the Department of State ~~if so~~
65 ~~requested~~. Any person who violates ~~the provisions of this~~
66 subsection commits is guilty of a felony of the third degree,
67 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

68 (2) (a) The fee of a notary public may not exceed \$10 for
69 any one notarial act, except as provided in s. 117.045 or s.



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70 117.275.

71 (4) When notarizing a signature, a notary public shall
72 complete a jurat or notarial certificate in substantially the
73 same form as those found in subsection (13). The jurat or
74 certificate of acknowledgment shall contain the following
75 elements:

76 (a) The venue stating the location of the notary public at
77 the time of the notarization in the format, "State of Florida,
78 County of"

79 (b) The type of notarial act performed, an oath or an
80 acknowledgment, evidenced by the words "sworn" or
81 "acknowledged."

82 (c) Whether ~~That~~ the signer personally appeared before the
83 notary public at the time of the notarization by physical
84 presence or by means of audio-video communication technology as
85 authorized under part II of this chapter.

86 (d) The exact date of the notarial act.

87 (e) The name of the person whose signature is being
88 notarized. It is presumed, absent such specific notation by the
89 notary public, that notarization is to all signatures.

90 (f) The specific type of identification the notary public
91 is relying upon in identifying the signer, either based on
92 personal knowledge or satisfactory evidence specified in
93 subsection (5).

94 (g) The notary public's ~~notary's~~ official signature.

95 (h) The notary public's ~~notary's~~ name, which must be typed,
96 printed, or stamped below the signature.

97 (i) The notary public's ~~notary's~~ official seal affixed
98 below or to either side of the notary public's ~~notary's~~



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99 signature.

100 (5) A notary public may not notarize a signature on a
101 document unless he or she personally knows, or has satisfactory
102 evidence, that the person whose signature is to be notarized is
103 the individual who is described in and who is executing the
104 instrument. A notary public shall certify in the certificate of
105 acknowledgment or jurat the type of identification, either based
106 on personal knowledge or other form of identification, upon
107 which the notary public is relying. In the case of an online
108 notarization, the online notary public shall comply with the
109 requirements set forth in part II of this chapter.

110 (a) For purposes of this subsection, the term "personally
111 knows" means having an acquaintance, derived from association
112 with the individual, which establishes the individual's identity
113 with at least a reasonable certainty.

114 (b) For the purposes of this subsection, the term
115 "satisfactory evidence" means the absence of any information,
116 evidence, or other circumstances which would lead a reasonable
117 person to believe that the person whose signature is to be
118 notarized is not the person he or she claims to be and any one
119 of the following:

120 1. The sworn written statement of one credible witness
121 personally known to the notary public or the sworn written
122 statement of two credible witnesses whose identities are proven
123 to the notary public upon the presentation of satisfactory
124 evidence that each of the following is true:

125 a. That the person whose signature is to be notarized is
126 the person named in the document;

127 b. That the person whose signature is to be notarized is



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128 personally known to the witnesses;

129 c. That it is the reasonable belief of the witnesses that
130 the circumstances of the person whose signature is to be
131 notarized are such that it would be very difficult or impossible
132 for that person to obtain another acceptable form of
133 identification;

134 d. That it is the reasonable belief of the witnesses that
135 the person whose signature is to be notarized does not possess
136 any of the identification documents specified in subparagraph
137 2.; and

138 e. That the witnesses do not have a financial interest in
139 nor are parties to the underlying transaction; or

140 2. Reasonable reliance on the presentation to the notary
141 public of any one of the following forms of identification, if
142 the document is current or has been issued within the past 5
143 years and bears a serial or other identifying number:

144 a. A Florida identification card or driver license issued
145 by the public agency authorized to issue driver licenses;

146 b. A passport issued by the Department of State of the
147 United States;

148 c. A passport issued by a foreign government if the
149 document is stamped by the United States Bureau of Citizenship
150 and Immigration Services;

151 d. A driver license or an identification card issued by a
152 public agency authorized to issue driver licenses in a state
153 other than Florida or in a territory of the United States, or
154 Canada or Mexico;

155 e. An identification card issued by any branch of the armed
156 forces of the United States;



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157 f. A veteran health identification card issued by the
158 United States Department of Veterans Affairs;

159 g. An inmate identification card issued on or after January
160 1, 1991, by the Florida Department of Corrections for an inmate
161 who is in the custody of the department;

162 h. An inmate identification card issued by the United
163 States Department of Justice, Bureau of Prisons, for an inmate
164 who is in the custody of the department;

165 i. A sworn, written statement from a sworn law enforcement
166 officer that the forms of identification for an inmate in an
167 institution of confinement were confiscated upon confinement and
168 that the person named in the document is the person whose
169 signature is to be notarized; or

170 j. An identification card issued by the United States
171 Bureau of Citizenship and Immigration Services.

172 (12) (a) A notary public may supervise the making of a copy
173 of a tangible or an electronic record or the printing of an
174 electronic record ~~photocopy of an original document~~ and attest
175 to the trueness of the copy or of the printout, provided the
176 document is neither a vital record in this state, another state,
177 a territory of the United States, or another country, nor a
178 public record, if a copy can be made by the custodian of the
179 public record.

180 (c) A notary public must use a certificate in substantially
181 the following form in notarizing a copy of a tangible or an
182 electronic record or a printout of an electronic record:

183
184 STATE OF FLORIDA
185 COUNTY OF



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186
187 On this day of, ...(year)..., I attest that the
188 preceding or attached document is a true, exact, complete, and
189 unaltered ...(copy of a tangible or an electronic record
190 presented to me by the document's custodian)... or a
191 ...(printout made by me from such record).... If a printout, I
192 further attest that, at the time of printing, no security
193 features, if any, present on the electronic record, indicated
194 that the record had been altered since execution.

195
196 ...(Signature of Notary Public - State of Florida)...
197 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

198
199 (13) The following notarial certificates are sufficient for
200 the purposes indicated, if completed with the information
201 required by this chapter. The specification of forms under this
202 subsection does not preclude the use of other forms.

203 (a) For an oath or affirmation:

204
205 STATE OF FLORIDA
206 COUNTY OF

207
208 Sworn to (or affirmed) and subscribed before me by means of
209 [] physical presence or [] online notarization, this day of
210, ...(year)..., by ...(name of person making
211 statement)....

212
213 ...(Signature of Notary Public - State of Florida)...
214 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...



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215 Personally Known OR Produced Identification

216

217 Type of Identification Produced

218

219 (b) For an acknowledgment in an individual capacity:

220

221 STATE OF FLORIDA

222 COUNTY OF

223

224 The foregoing instrument was acknowledged before me by means of

225 [] physical presence or [] online notarization, this day of

226 , ... (year)...., by ... (name of person acknowledging)....

227

228 ... (Signature of Notary Public - State of Florida)...

229 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

230 Personally Known OR Produced Identification

231

232 Type of Identification Produced

233

234 (c) For an acknowledgment in a representative capacity:

235

236 STATE OF FLORIDA

237 COUNTY OF

238

239 The foregoing instrument was acknowledged before me by means of

240 [] physical presence or [] online notarization, this day of

241 , ... (year)...., by ... (name of person).... as ... (type of

242 authority, . . . e.g. officer, trustee, attorney in fact).... for

243 ... (name of party on behalf of whom instrument was executed)....



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244
245 ...(Signature of Notary Public - State of Florida)...
246 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
247 Personally Known OR Produced Identification
248
249 Type of Identification Produced

250
251 (14) A notary public must make reasonable accommodations to
252 provide notarial services to persons with disabilities.

253 (a) A notary public may notarize the signature of a person
254 who is blind after the notary public has read the entire
255 instrument to that person.

256 (b) A notary public may notarize the signature of a person
257 who signs with a mark if:

258 1. The document signing is witnessed by two disinterested
259 persons;

260 2. The notary public prints the person's first name at the
261 beginning of the designated signature line and the person's last
262 name at the end of the designated signature line; and

263 3. The notary public prints the words "his (or her) mark"
264 below the person's signature mark.

265 (c) The following notarial certificates are sufficient for
266 the purpose of notarizing for a person who signs with a mark:

267 1. For an oath or affirmation:

268
269 ...(First Name)... ...(Last Name)...
270 ...His (or Her) Mark...

271
272 STATE OF FLORIDA



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273 COUNTY OF

274

275 Sworn to and subscribed before me by means of [] physical
276 presence or [] online notarization, this day of,
277 ...(year)..., by ...(name of person making statement)..., who
278 signed with a mark in the presence of these witnesses:

279

280 ... (Signature of Notary Public - State of Florida)...

281 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

282 Personally Known OR Produced Identification

283

284 Type of Identification Produced

285

286 2. For an acknowledgment in an individual capacity:

287

288 ... (First Name)... ... (Last Name)...

289 ... His (or Her) Mark...

290

291 STATE OF FLORIDA

292 COUNTY OF

293

294 The foregoing instrument was acknowledged before me by means of
295 [] physical presence or [] online notarization, this day of
296, ...(year)..., by ...(name of person acknowledging)...,
297 who signed with a mark in the presence of these witnesses:

298

299 ... (Signature of Notary Public - State of Florida)...

300 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

301 Personally Known OR Produced Identification



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302
303

Type of Identification Produced

304

305 (d) A notary public may sign the name of a person whose
306 signature is to be notarized when that person is physically
307 unable to sign or make a signature mark on a document if:

308 1. The person with a disability directs the notary public
309 to sign in his or her presence by verbal, written, or other
310 means;

311 2. The document signing is witnessed by two disinterested
312 persons; and

313 3. The notary public writes below the signature the
314 following statement: "Signature affixed by notary, pursuant to
315 s. 117.05(14), Florida Statutes," and states the circumstances
316 and the means by which the notary public was directed to sign of
317 the signing in the notarial certificate.

318

319 The notary public must maintain the proof of direction and
320 authorization to sign on behalf of the person with a disability
321 for 10 years from the date of the notarial act.

322 (e) The following notarial certificates are sufficient for
323 the purpose of notarizing for a person with a disability who
324 directs the notary public to sign his or her name:

325 1. For an oath or affirmation:

326

327 STATE OF FLORIDA

328 COUNTY OF

329

330 Sworn to (or affirmed) before me by means of [] physical



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331 presence or [] online notarization, this day of,
332 ... (year) ..., by ... (name of person making statement) ..., and
333 subscribed by ... (name of notary) ... at the direction of ~~and in~~
334 ~~the presence of~~ ... (name of person making statement) ... by
335 ... (written, verbal, or other means) ..., and in the presence of
336 these witnesses:

337
338 ... (Signature of Notary Public - State of Florida) ...
339 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
340 Personally Known OR Produced Identification
341
342 Type of Identification Produced

343
344 2. For an acknowledgment in an individual capacity:

345
346 STATE OF FLORIDA
347 COUNTY OF

348
349 The foregoing instrument was acknowledged before me by means of
350 [] physical presence or [] online notarization, this day of
351, ... (year) ..., by ... (name of person acknowledging) ...
352 and subscribed by ... (name of notary) ... at the direction of ~~and~~
353 ~~in the presence of~~ ... (name of person acknowledging) ..., and in
354 the presence of these witnesses:

355
356 ... (Signature of Notary Public - State of Florida) ...
357 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
358 Personally Known OR Produced Identification
359



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360 Type of Identification Produced

361

362 Section 5. Subsections (2) and (9) of section 117.107,
363 Florida Statutes, are amended to read:

364 117.107 Prohibited acts.—

365 (2) A notary public may not sign notarial certificates
366 using a facsimile signature stamp unless the notary public has a
367 physical disability that limits or prohibits his or her ability
368 to make a written signature and unless the notary public has
369 first submitted written notice to the Department of State with
370 an exemplar of the facsimile signature stamp. This subsection
371 does not apply to or prohibit the use of an electronic signature
372 and seal by a notary public who is registered as an online
373 notary public to perform an electronic or online notarization in
374 accordance with this chapter.

375 (9) A notary public may not notarize a signature on a
376 document if the person whose signature is being notarized does
377 not appear before the notary public either by means of physical
378 presence or by means of audio-video communication technology as
379 authorized under part II of this chapter ~~is not in the presence~~
380 ~~of the notary public~~ at the time the signature is notarized. Any
381 notary public who violates this subsection is guilty of a civil
382 infraction, punishable by penalty not exceeding \$5,000, and such
383 violation constitutes malfeasance and misfeasance in the conduct
384 of official duties. It is no defense to the civil infraction
385 specified in this subsection that the notary public acted
386 without intent to defraud. A notary public who violates this
387 subsection with the intent to defraud is guilty of violating s.
388 117.105.



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389 Section 6. Section 117.201, Florida Statutes, is created to
390 read:

391 117.201 Definitions.—As used in this part, the term:

392 (1) "Appear before," "before," or "in the presence of"

393 mean:

394 (a) In the physical presence of another person; or

395 (b) Outside of the physical presence of another person, but
396 able to see, hear, and communicate with the person by means of
397 audio-video communication technology.

398 (2) "Audio-video communication technology" means technology
399 in compliance with applicable law which enables real-time, two-
400 way communication using electronic means in which participants
401 are able to see, hear, and communicate with one another.

402 (3) "Credential analysis" means a process or service, in
403 compliance with applicable law, in which a third party aids a
404 public notary in affirming the validity of a government-issued
405 identification credential and data thereon through review of
406 public or proprietary data sources.

407 (4) "Electronic," "electronic record," or "electronic
408 signature" has the same meaning as provided in s. 668.50.

409 (5) "Errors and omissions insurance" means a type of
410 insurance that provides coverage for potential errors or
411 omissions in or relating to the notarial act and is maintained,
412 as applicable, by the online notary public or his or her
413 employer, or a Remote Online Notarization service provider.

414 (6) "Government-issued identification credential" means any
415 approved credential for verifying identity under s.
416 117.05(5)(b)2.

417 (7) "Identity proofing" means a process or service in



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418 compliance with applicable law in which a third party affirms
419 the identity of an individual through use of public or
420 proprietary data sources, which may include by means of
421 knowledge-based authentication or biometric verification.

422 (8) "Knowledge-based authentication" means a form of
423 identity proofing based on a set of questions which pertain to
424 an individual and are formulated from public or proprietary data
425 sources.

426 (9) "Online notarization" means the performance of a
427 notarial act using electronic means in which the principal
428 appears before the notary public by means of audio-video
429 communication technology.

430 (10) "Online notary public" means a notary public
431 commissioned under part I of this chapter, a civil-law notary
432 appointed under chapter 118, or a commissioner of deeds
433 appointed under part IV of chapter 721, who has registered with
434 the Department of State to perform online notarizations under
435 this part.

436 (11) "Physical presence" means being in the same physical
437 location as another person and close enough to see, hear,
438 communicate with, and exchange credentials with that person.

439 (12) "Principal" means an individual whose electronic
440 signature is acknowledged, witnessed, or attested to in an
441 online notarization or who takes an oath or affirmation
442 administered by the online notary public.

443 (13) "Record" means information that is inscribed on a
444 tangible medium or that is stored in an electronic or other
445 medium and is retrievable in perceivable form, including public
446 records as defined in s. 119.011.



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447 (14) "Remote Online Notarization service provider" or "RON
448 service provider" means a person that provides audio-video
449 communication technology and related processes, services,
450 software, data storage, or other services to online notaries
451 public for the purpose of directly facilitating their
452 performance of online notarizations in compliance with this
453 chapter and any rules adopted by the Department of State
454 pursuant to s. 117.295.

455 (15) "Remote presentation" means transmission of an image
456 of a government-issued identification credential that is of
457 sufficient quality to enable the online notary public to
458 identify the individual seeking the notary's services and to
459 perform credential analysis through audio-video communication
460 technology.

461 Section 7. Section 117.209, Florida Statutes, is created to
462 read:

463 117.209 Authority to perform online notarizations.—

464 (1) An online notary public may perform any of the
465 functions authorized under part I of this chapter as an online
466 notarization by complying with the requirements of this part and
467 any rules adopted by the Department of State pursuant to s.
468 117.295, excluding solemnizing the rites of matrimony.

469 (2) If a notarial act requires a principal to appear before
470 or in the presence of the online notary public, the principal
471 may appear before the online notary public by means of audio-
472 video communication technology that meets the requirements of
473 this part and any rules adopted by the Department of State
474 pursuant to s. 117.295.

475 (3) An online notary public physically located in this



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476 state may perform an online notarization as authorized under
477 this part, regardless of whether the principal or any witnesses
478 are physically located in this state at the time of the online
479 notarization. A commissioner of deeds registered as an online
480 notary public may perform an online notarization while
481 physically located within or outside the state in accordance
482 with the territorial limits of its jurisdiction and other
483 limitations and requirements otherwise applicable to notarial
484 acts by commissioners of deeds.

485 (4) The validity of an online notarization performed by an
486 online notary public registered in this state shall be
487 determined by applicable laws of this state regardless of the
488 physical location of the principal or any witnesses at the time
489 of the notarial act.

490 Section 8. Section 117.215, Florida Statutes, is created to
491 read:

492 117.215 Relation to other laws.-

493 (1) If a provision of law requires a notary public or other
494 authorized official of this state to notarize a signature or a
495 statement, to take an acknowledgment of an instrument, or to
496 administer an oath or affirmation so that a document may be
497 sworn, affirmed, made under oath, or subject to penalty of
498 perjury, an online notarization performed in accordance with the
499 provisions of this part and any rules adopted hereunder
500 satisfies such requirement.

501 (2) If a provision of law requires a signature or an act to
502 be witnessed, compliance with the online electronic witnessing
503 standards prescribed in s. 117.285 and any rules adopted
504 thereunder satisfies that requirement.



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505 Section 9. Section 117.225, Florida Statutes, is created to
506 read:

507 117.225 Registration; qualifications.—A notary public, a
508 civil-law notary appointed under chapter 118, or a commissioner
509 of deeds appointed under part IV of chapter 721 may complete
510 registration as an online notary public with the Department of
511 State by:

512 (1) Holding a current commission as a notary public under
513 part I of this chapter, an appointment as a civil-law notary
514 under chapter 118, or an appointment as a commissioner of deeds
515 under part IV of chapter 721, and submitting a copy of such
516 commission or proof of such appointment with his or her
517 registration.

518 (2) Certifying that the notary public, civil-law notary, or
519 commissioner of deeds registering as an online notary public has
520 completed a classroom or online course covering the duties,
521 obligations, and technology requirements for serving as an
522 online notary public.

523 (3) Paying a notary public registration fee as required by
524 s. 113.01.

525 (4) Submitting a registration as an online notary public to
526 the Department of State, signed and sworn to by the registrant.

527 (5) Identifying the RON service provider whose audio-video
528 communication technology and processes for credential analysis
529 and identity proofing technologies the registrant intends to use
530 for online notarizations, and confirming that such technology
531 and processes satisfy the requirements of this chapter and any
532 rules adopted by the Department of State pursuant to s. 117.295.

533 (6) Providing evidence satisfactory to the Department of



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534 State that the registrant has obtained a bond in the amount of
535 \$25,000, payable to any individual harmed as a result of a
536 breach of duty by the registrant acting in his or her official
537 capacity as an online notary public, conditioned for the due
538 discharge of the office, and on such terms as are specified in
539 rule by the Department of State as reasonably necessary to
540 protect the public. The bond shall be approved and filed with
541 the Department of State and executed by a surety company duly
542 authorized to transact business in this state. Compliance by an
543 online notary public with this requirement shall satisfy the
544 requirement of obtaining a bond under s. 117.01(7).

545 (7) Providing evidence satisfactory to the Department of
546 State that the registrant acting in his or her capacity as an
547 online notary public is covered by an errors and omissions
548 insurance policy from an insurer authorized to transact business
549 in this state, in the minimum amount of \$25,000 and on such
550 terms as are specified by rule by the Department of State as
551 reasonably necessary to protect the public.

552 Section 10. Section 117.235, Florida Statutes, is created
553 to read:

554 117.235 Performance of notarial acts.-

555 (1) An online notary public is subject to part I of this
556 chapter to the same extent as a notary public appointed and
557 commissioned only under that part, including the provisions of
558 s. 117.021 relating to electronic notarizations.

559 (2) An online notary public may perform notarial acts as
560 provided by part I of this chapter in addition to performing
561 online notarizations as authorized and pursuant to the
562 provisions of this part.



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563 Section 11. Section 117.245, Florida Statutes, is created
564 to read:

565 117.245 Electronic journal of online notarizations.—

566 (1) An online notary public shall keep one or more secure
567 electronic journals of online notarizations performed by the
568 online notary public. For each online notarization, the
569 electronic journal entry must contain all of the following:

570 (a) The date and time of the notarization.

571 (b) The type of notarial act.

572 (c) The type, the title, or a description of the electronic
573 record or proceeding.

574 (d) The name and address of each principal involved in the
575 transaction or proceeding.

576 (e) Evidence of identity of each principal involved in the
577 transaction or proceeding in any of the following forms:

578 1. A statement that the person is personally known to the
579 online notary public.

580 2. A notation of the type of government-issued
581 identification credential provided to the online notary public.

582 (f) An indication that the principal satisfactorily passed
583 the identity proofing.

584 (g) An indication that the government-issued identification
585 credential satisfied the credential analysis.

586 (h) The fee, if any, charged for the notarization.

587 (2) The online notary public shall retain an uninterrupted
588 and unedited copy of the recording of the audio-video
589 communication in which an online notarization is performed. The
590 recording must include all of the following:

591 (a) Appearance by the principal and any witness before the



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592 online notary public.

593 (b) Confirmation of the identity of the principal and any
594 witness.

595 (c) A general description or identification of the records
596 to be signed.

597 (d) At the commencement of the recording, recitation by the
598 online notary public of information sufficient to identify the
599 notarial act.

600 (e) A declaration by the principal that his or her
601 signature on the record is knowingly and voluntarily made.

602 (f) All of the actions and spoken words of the principal,
603 notary public, and any required witness during the entire online
604 notarization, including the signing of any records before the
605 online notary public.

606 (3) The online notary public shall take reasonable steps
607 to:

608 (a) Ensure the integrity, security, and authenticity of
609 online notarizations.

610 (b) Maintain a backup record of the electronic journal
611 required by subsection (1).

612 (c) Protect the electronic journal, the backup record, and
613 any other records received by the online notary public from
614 unauthorized access or use.

615 (4) The electronic journal required under subsection (1)
616 and the recordings of audio-video communications required under
617 subsection (2) shall be maintained for at least 10 years after
618 the date of the notarial act. However, a full copy of the
619 recording of the audio-video communication required under
620 subsection (2) relating to an online notarization session that



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621 involves the signing of an electronic will must be maintained by
622 a qualified custodian in accordance with chapters 731 and 732.
623 The Department of State maintains jurisdiction over the
624 electronic journal and audio-video communication recordings to
625 investigate notarial misconduct for a period of 10 years after
626 the date of the notarial act. The online notary public, a
627 guardian of an incapacitated online notary public, or the
628 personal representative of a deceased online notary public may,
629 by contract with a secure repository in accordance with any
630 rules established under this chapter, delegate to the repository
631 the online notary public's duty to retain the electronic journal
632 and the required recordings of audio-video communications,
633 provided that the Department of State is notified of such
634 delegation of retention duties to the repository within 30 days
635 thereafter, including the address and contact information for
636 the repository. If an online notary public delegates to a secure
637 repository under this section, the online notary public shall
638 make an entry in his or her electronic journal identifying such
639 repository, and provide notice to the Department of State as
640 required in this subsection.

641 (5) An omitted or incomplete entry in the electronic
642 journal does not impair the validity of the notarial act or of
643 the electronic record which was notarized, but may be introduced
644 as evidence to establish violations of this chapter; as evidence
645 of possible fraud, forgery, impersonation, duress, incapacity,
646 undue influence, minority, illegality, unconscionability; or for
647 other evidentiary purposes. However, if the recording of the
648 audio-video communication required under subsection (2) relating
649 to the online notarization of the execution of an electronic



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650 will cannot be produced by the online notary public or the
651 qualified custodian, the electronic will shall be treated as a
652 lost or destroyed will subject to s. 733.207.

653 Section 12. Section 117.255, Florida Statutes, is created
654 to read:

655 117.255 Use of electronic journal, signature, and seal.—An
656 online notary public shall:

657 (1) Take reasonable steps to ensure that any registered
658 device used to create an electronic seal is current and has not
659 been revoked or terminated by the issuing or registering
660 authority of the device.

661 (2) Keep the electronic journal and electronic seal secure
662 and under his or her sole control, which includes access
663 protection using passwords or codes under control of the online
664 notary public. The online notary public may not allow another
665 person to use the online notary public's electronic journal,
666 electronic signature, or electronic seal, other than a RON
667 service provider or other authorized person providing services
668 to an online notary public to facilitate performance of online
669 notarizations.

670 (3) Attach or logically associate the electronic signature
671 and seal to the electronic notarial certificate of an electronic
672 record in a manner that is capable of independent verification
673 using tamper-evident technology that renders any subsequent
674 change or modification to the electronic record evident.

675 (4) Notify an appropriate law enforcement agency and the
676 Department of State of any unauthorized use of or compromise to
677 the security of the electronic journal, official electronic
678 signature, or electronic seal within 7 days after discovery of



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679 such unauthorized use or compromise to security.
680 (5) Make electronic copies, upon request, of the pertinent
681 entries in the electronic journal and provide access to the
682 related audio-video communication recordings to the following
683 persons:
684 (a) The parties to an electronic record notarized by the
685 online notary public;
686 (b) The qualified custodian of an electronic will notarized
687 by the online notary public;
688 (c) The title agent, settlement agent, or title insurer who
689 insured the electronic record or engaged the online notary
690 public with regard to a real estate transaction;
691 (d) The online notary public's RON service provider whose
692 services were used by the online notary public to notarize the
693 electronic record;
694 (e) Any person who is asked to accept a power of attorney
695 that was notarized by the online notary public;
696 (f) The Department of State pursuant to a notary misconduct
697 investigation; and
698 (g) To other persons pursuant to a subpoena, court order,
699 law enforcement investigation, or other lawful inspection
700 demand.
701 (6) The online notary public may charge a fee not to exceed
702 \$20 per transaction record for making and delivering electronic
703 copies of a given series of related electronic records, except
704 if requested by:
705 (a) A party to the electronic record;
706 (b) In a real estate transaction, the title agent,
707 settlement agent, or title insurer who insured the electronic



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708 record or engaged the online notary public with regard to such
709 transaction; or

710 (c) The Department of State pursuant to an investigation
711 relating to the official misconduct of an online notary public.

712

713 If the online notary public does charge a fee, the online notary
714 public shall disclose the amount of such fee to the requester
715 before making the electronic copies.

716 Section 13. Section 117.265, Florida Statutes, is created
717 to read:

718 117.265 Online notarization procedures.-

719 (1) An online notary public physically located in this
720 state may perform an online notarization that meets the
721 requirements of this part regardless of whether the principal or
722 any witnesses are physically located in this state at the time
723 of the online notarization. A commissioner of deeds registered
724 as an online notary public may perform an online notarization
725 while physically located within or outside of this state in
726 accordance with the territorial limits of its jurisdiction and
727 other limitations and requirements otherwise applicable to
728 notarial acts by commissioners of deeds. An online notarization
729 performed in accordance with this chapter is deemed to have been
730 performed within this state and is governed by the applicable
731 laws of this state.

732 (2) In performing an online notarization, an online notary
733 public shall confirm the identity of a principal and any witness
734 appearing online, at the time that the signature is taken, by
735 using audio-video communication technology and processes that
736 meet the requirements of this part and of any rules adopted



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737 hereunder and record the two-way audio-video conference session
738 between the notary public and the principal and any witnesses. A
739 principal may not act in the capacity of a witness for his or
740 her own signature in an online notarization.

741 (3) In performing an online notarization of a principal not
742 located within this state, an online notary public must confirm,
743 either verbally or through the principal's written consent, that
744 the principal desires for the notarial act to be performed by a
745 Florida notary public and under the general law of this state.

746 (4) An online notary public shall confirm the identity of
747 the principal by:

748 (a) Personal knowledge of each principal; or

749 (b) All of the following, as such criteria may be modified
750 or supplemented in rules adopted by the Department of State
751 pursuant to s. 117.295:

752 1. Remote presentation of a government-issued
753 identification credential by each principal.

754 2. Credential analysis of each government-issued
755 identification credential.

756 3. Identity proofing of each principal in the form of
757 knowledge-based authentication or another method of identity
758 proofing that conforms to the standards of this chapter.

759
760 If the online notary public is unable to satisfy subparagraphs
761 (b)1.-3., or if the databases consulted for identity proofing do
762 not contain sufficient information to permit authentication, the
763 online notary public may not perform the online notarization.

764 (5) An online notary public may change his or her RON
765 service provider or providers from time to time, but shall



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766 notify the Department of State of such change within 30 days
767 thereafter.

768 (6) The online notary public or his or her RON service
769 provider shall take reasonable steps to ensure that the audio-
770 video communication technology used in an online notarization is
771 secure from unauthorized interception.

772 (7) The electronic notarial certificate for an online
773 notarization must include a notation that the notarization is an
774 online notarization which may be satisfied by placing the term
775 "online notary" in or adjacent to the online notary public's
776 seal.

777 (8) Except where otherwise expressly provided in this part,
778 the provisions of part I of this chapter apply to an online
779 notarization and an online notary public.

780 (9) Any failure to comply with the online notarization
781 procedures set forth in this section does not impair the
782 validity of the notarial act or the electronic record that was
783 notarized, but may be introduced as evidence to establish
784 violations of this chapter or as an indication of possible
785 fraud, forgery, impersonation, duress, incapacity, undue
786 influence, minority, illegality, unconscionability, or for other
787 evidentiary purposes. This subsection may not be construed to
788 alter the duty of an online notary public to comply with this
789 chapter and any rules adopted hereunder.

790 Section 14. Section 117.275, Florida Statutes, is created
791 to read:

792 117.275 Fees for online notarization.—An online notary
793 public or the employer of such online notary public may charge a
794 fee, not to exceed \$25, for performing an online notarization



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795 under this part. Fees for services other than notarial acts are
796 not governed by this section.

797 Section 15. Section 117.285, Florida Statutes, is created
798 to read:

799 117.285 Supervising the witnessing of electronic records.-

800 An online notary public may supervise the witnessing of
801 electronic records by the same audio-video communication
802 technology used for online notarization, as follows:

803 (1) The witness may be in the physical presence of the
804 principal or remote from the principal provided the witness and
805 principal are using audio-video communication technology.

806 (2) If the witness is remote from the principal and viewing
807 and communicating with the principal by means of audio-video
808 communication technology, the witness's identity must be
809 verified in accordance with the procedures for identifying a
810 principal as set forth in s. 117.265(4). If the witness is in
811 the physical presence of the principal, the witness must confirm
812 his or her identity by stating his or her name and current
813 address on the audio-video recording as part of the act of
814 witnessing.

815 (3) The act of witnessing an electronic signature means the
816 witness is either in the physical presence of the principal or
817 present through audio-video communication technology at the time
818 the principal affixes the electronic signature and the witness
819 hears the principal make a statement to the effect that the
820 principal has signed the electronic record.

821 (4) A witness remote from the principal and appearing
822 through audio-video communication technology must verbally
823 confirm that he or she is a resident of and physically located



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824 within the United States or a territory of the United States at
825 the time of witnessing.

826 (5) Notwithstanding subsections (2) and (3), if an
827 electronic record to be signed is a will under chapter 732, a
828 trust with testamentary aspects under chapter 736, an advance
829 health care directive, a durable power of attorney defined in s.
830 709.2104 which is being executed concurrently with a will, or a
831 waiver of spousal rights under s. 732.701 or s. 732.702:

832 (a) The act of witnessing an electronic signature through
833 the witness's presence by audio-video communication is valid
834 only if, during the audio-video communication, the principal
835 provides verbal answers to all of the following questions, each
836 of which must be asked by the online notary public in
837 substantially the following form:

838 1. What is your date of birth?

839 2. Are you under the influence of any drug or alcohol that
840 impairs your ability to make decisions?

841 3. Do you have any physical or mental condition or long-
842 term disability that impairs your ability to perform the normal
843 activities of daily living?

844 4. Are you unable to provide for your own daily care?

845 5. Did anyone assist you in accessing this video conference
846 or in drafting the documents you're here to sign? If so, who?

847 6. Where are you currently located?

848 7. Name everyone you know who is with you.

849 (b) An online notary public shall consider the responses to
850 the questions specified in paragraph (a) in the carrying out of
851 the notary public's existing duties as set forth in s.
852 117.107(5).



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853 (c) A principal's responses to the questions in paragraph
854 (a) may be offered as evidence regarding the validity of the
855 instrument, but an incorrect answer may not serve as the sole
856 basis to invalidate an instrument.

857 (d) An instrument governed by this subsection which is
858 witnessed by a witness remote from the principal and present
859 through audio-video communication technology is voidable if
860 signed by a principal who is a vulnerable adult as defined in s.
861 415.102. The contestant of an electronic record has the burden
862 of proving that the principal was a vulnerable adult at the time
863 of executing the electronic record.

864 (e) A RON service provider shall provide written notice to
865 the signers, in substance, that an instrument governed by this
866 subsection which is signed by a vulnerable adult as defined in
867 s. 415.102, and is remotely witnessed in accordance with this
868 subsection, is voidable and that the signer can instead choose
869 to have such instruments signed in the physical presence of any
870 required witnesses.

871 (6) Pursuant to subpoena, court order, an authorized law
872 enforcement inquiry, or other lawful request, an online notary
873 public shall provide the last known address of any witness who
874 witnessed the signing of an electronic record using audio-video
875 communication technology pursuant to this section.

876 (7) An act of witnessing performed pursuant to this section
877 satisfies any requirement that the witness be a subscribing or
878 attesting witness or be in the presence of the principal at the
879 time of signing.

880
881 The law of this state governs the validity of an act of



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882 witnessing supervised by an online notary public pursuant to
883 this section, regardless of the physical location of the witness
884 at the time of witnessing. State courts and federal courts of
885 this state have subject matter jurisdiction over any dispute
886 arising out of an act of witnessing pursuant to this section,
887 and may issue subpoenas for records or appearance in relation
888 thereto in accordance with applicable law.

889 Section 16. Effective upon becoming a law, section 117.295,
890 Florida Statutes, is created to read:

891 117.295 Standards for electronic and online notarization;
892 rulemaking authority.-

893 (1) For purposes of this part, the Department of State may
894 adopt rules necessary to implement the requirements of this
895 chapter and to set standards for online notarization which
896 include, but are not limited to:

897 (a) Improvements in technology and methods of assuring the
898 identity of principals and the security of an electronic record,
899 including tamper-evident technologies in compliance with the
900 standards adopted pursuant to s. 117.021 which apply to online
901 notarizations.

902 (b) Education requirements for online notaries public and
903 the required terms of bonds and errors and omissions insurance,
904 but not including the amounts of such bonds and insurance
905 policies.

906 (c) Identity proofing, credential analysis, unauthorized
907 interception, remote presentation, audio-video communication
908 technology, and retention of electronic journals and copies of
909 audio-video communications recordings in a secure repository.

910 (2) By January 1, 2020, the Department of State shall adopt



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911 forms, processes, and interim or emergency rules necessary to
912 accept applications from and register online notaries public
913 pursuant to s. 117.225.

914 (3) Until such time as the Department of State adopts rules
915 setting standards that are equally or more protective, the
916 following minimum standards shall apply to any online
917 notarization performed by an online notary public of this state
918 or his or her RON service provider:

919 (a) Use of identity proofing by means of knowledge-based
920 authentication which must have, at a minimum, the following
921 security characteristics:

922 1. The principal must be presented with five or more
923 questions with a minimum of five possible answer choices per
924 question.

925 2. Each question must be drawn from a third-party provider
926 of public and proprietary data sources and be identifiable to
927 the principal's social security number or other identification
928 information, or the principal's identity and historical events
929 records.

930 3. Responses to all questions must be made within a 2-
931 minute time constraint.

932 4. The principal must answer a minimum of 80 percent of the
933 questions correctly.

934 5. The principal may be offered one additional attempt in
935 the event of a failed attempt.

936 6. During the second attempt, the principal may not be
937 presented with more than three questions from the prior attempt.

938 (b) Use of credential analysis using one or more
939 commercially available automated software or hardware processes



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940 that are consistent with sound commercial practices; that aid
941 the notary public in verifying the authenticity of the
942 credential by analyzing the integrity of visual, physical, or
943 cryptographic security features to indicate that the credential
944 is not fraudulent or inappropriately modified; and that use
945 information held or published by the issuing source or
946 authoritative source, as available, to confirm the validity of
947 credential details. The output of the credential analysis
948 process must be provided to the online notary public performing
949 the notarial act.

950 (c) Use of audio-video communication technology in
951 completing online notarizations that must meet the following
952 requirements:

953 1. The signal transmission must be reasonably secure from
954 interception, access, or viewing by anyone other than the
955 participants communicating.

956 2. The technology must provide sufficient audio clarity and
957 video resolution to enable the notary to communicate with the
958 principal and any witness, and to confirm the identity of the
959 principal and any witness, as required, using the identification
960 methods described in s. 117.265.

961 (4) A RON service provider is deemed to have satisfied
962 tamper-evident technology requirements by use of technology that
963 renders any subsequent change or modification to the electronic
964 record evident.

965 (5) In addition to any coverage it elects to provide for
966 individual online notaries public, maintenance of errors and
967 omissions insurance coverage by a RON service provider in a
968 total amount of at least \$250,000 in the annual aggregate with



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969 respect to potential errors or omissions in or relating to the
970 technology or processes provided by the RON service provider. An
971 online notary public is not responsible for the security of the
972 systems used by the principal or others to access the online
973 notarization session.

974 (6) A 2-hour in-person or online course addressing the
975 duties, obligations, and technology requirements for serving as
976 an online notary public offered by the Florida Land Title
977 Association; the Real Property, Probate and Trust Law Section of
978 The Florida Bar; the Florida Legal Education Association; the
979 Department of State; or a vendor approved by the Department of
980 State shall satisfy the education requirements of s. 117.225(2).
981 Each such provider shall make the in-person or online course
982 generally available to all applicants, at the same cost,
983 regardless of membership in the provider's organization.

984 (7) The rulemaking required under this section is exempt
985 from s. 120.541(3).

986 Section 17. Section 117.305, Florida Statutes, is created
987 to read:

988 117.305 Relation to federal law.—This part supersedes the
989 Electronic Signatures in Global and National Commerce Act as
990 authorized under 15 U.S.C. s. 7001 et seq., but does not modify,
991 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
992 or authorize the electronic delivery of the notices described in
993 15 U.S.C. s. 7003(b).

994 Section 18. Present paragraph (h) of subsection (3) of
995 section 28.222, Florida Statutes, is redesignated as paragraph
996 (i), and a new paragraph (h) is added to that subsection, to
997 read:



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998 28.222 Clerk to be county recorder.-

999 (3) The clerk of the circuit court shall record the
1000 following kinds of instruments presented to him or her for
1001 recording, upon payment of the service charges prescribed by
1002 law:

1003 (h) Copies of any instruments originally created and
1004 executed using an electronic signature, as defined in s. 695.27,
1005 and certified to be a true and correct paper printout by a
1006 notary public in accordance with chapter 117, if the county
1007 recorder is not prepared to accept electronic documents for
1008 recording electronically.

1009 Section 19. Subsections (1) and (2) of section 92.50,
1010 Florida Statutes, are amended to read:

1011 92.50 Oaths, affidavits, and acknowledgments; who may take
1012 or administer; requirements.-

1013 (1) IN THIS STATE.-Oaths, affidavits, and acknowledgments
1014 required or authorized under the laws of this state (except
1015 oaths to jurors and witnesses in court and such other oaths,
1016 affidavits and acknowledgments as are required by law to be
1017 taken or administered by or before particular officers) may be
1018 taken or administered by or before any judge, clerk, or deputy
1019 clerk of any court of record within this state, including
1020 federal courts, or by or before any United States commissioner
1021 or any notary public within this state. The jurat, or
1022 certificate of proof or acknowledgment, shall be authenticated
1023 by the signature and official seal of such officer or person
1024 taking or administering the same; however, when taken or
1025 administered by or before any judge, clerk, or deputy clerk of a
1026 court of record, the seal of such court may be affixed as the



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1027 seal of such officer or person.

1028 (2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE
1029 UNITED STATES.—Oaths, affidavits, and acknowledgments required
1030 or authorized under the laws of this state, may be taken or
1031 administered in any other state, territory, or district of the
1032 United States, by or before any judge, clerk or deputy clerk of
1033 any court of record, within such state, territory, or district,
1034 having a seal, or by or before any notary public or justice of
1035 the peace, having a seal, in such state, territory, or district;
1036 provided, however, such officer or person is authorized under
1037 the laws of such state, territory, or district to take or
1038 administer oaths, affidavits and acknowledgments. The jurat, or
1039 certificate of proof or acknowledgment, shall be authenticated
1040 by the signature and official seal of such officer or person
1041 taking or administering the same; provided, however, when taken
1042 or administered by or before any judge, clerk, or deputy clerk
1043 of a court of record, the seal of such court may be affixed as
1044 the seal of such officer or person.

1045 Section 20. Subsection (1) of section 95.231, Florida
1046 Statutes, is amended to read:

1047 95.231 Limitations where deed or will on record.—

1048 (1) Five years after the recording of an instrument
1049 required to be executed in accordance with s. 689.01; 5 years
1050 after the recording of a power of attorney accompanying and used
1051 for an instrument required to be executed in accordance with s.
1052 689.01; or 5 years after the probate of a will purporting to
1053 convey real property, from which it appears that the person
1054 owning the property attempted to convey, affect, or devise it,
1055 the instrument, power of attorney, or will shall be held to have



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1056 its purported effect to convey, affect, or devise, the title to
1057 the real property of the person signing the instrument, as if
1058 there had been no lack of seal or seals, witness or witnesses,
1059 defect in, failure of, or absence of acknowledgment or
1060 relinquishment of dower, in the absence of fraud, adverse
1061 possession, or pending litigation. The instrument is admissible
1062 in evidence. A power of attorney validated under this subsection
1063 shall be valid only for the purpose of effectuating the
1064 instrument with which it was recorded.

1065 Section 21. Section 689.01, Florida Statutes, is amended to
1066 read:

1067 689.01 How real estate conveyed.—

1068 (1) No estate or interest of freehold, or for a term of
1069 more than 1 year, or any uncertain interest of, in or out of any
1070 messuages, lands, tenements or hereditaments shall be created,
1071 made, granted, transferred or released in any other manner than
1072 by instrument in writing, signed in the presence of two
1073 subscribing witnesses by the party creating, making, granting,
1074 conveying, transferring or releasing such estate, interest, or
1075 term of more than 1 year, or by the party's lawfully authorized
1076 agent, unless by will and testament, or other testamentary
1077 appointment, duly made according to law; and no estate or
1078 interest, either of freehold, or of term of more than 1 year, or
1079 any uncertain interest of, in, to, or out of any messuages,
1080 lands, tenements or hereditaments, shall be assigned or
1081 surrendered unless it be by instrument signed in the presence of
1082 two subscribing witnesses by the party so assigning or
1083 surrendering, or by the party's lawfully authorized agent, or by
1084 the act and operation of law. No seal shall be necessary to give



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1085 validity to any instrument executed in conformity with this
1086 section. Corporations may execute any and all conveyances in
1087 accordance with the provisions of this section or ss. 692.01 and
1088 692.02.

1089 (2) For purposes of this chapter:

1090 (a) Any requirement that an instrument be signed in the
1091 presence of two subscribing witnesses may be satisfied by
1092 witnesses being present and electronically signing by means of
1093 audio-video communication technology, as defined in s. 117.201.

1094 (b) The act of witnessing an electronic signature is
1095 satisfied if a witness is in the physical presence of the
1096 principal or present through audio-video communication
1097 technology at the time the principal affixes his or her
1098 electronic signature and the witness hears the principal make a
1099 statement acknowledging that the principal has signed the
1100 electronic record.

1101 (c) The terms used in this subsection have the same
1102 meanings as the terms defined in s. 117.201.

1103 (3) All acts of witnessing made or taken in the manner
1104 described in subsection (2) are validated and, upon recording,
1105 may not be denied to have provided constructive notice based on
1106 any alleged failure to have strictly complied with this section
1107 or the laws governing notarization of instruments, including
1108 online notarization. This subsection does not preclude a
1109 challenge to the validity or enforceability of an instrument or
1110 electronic record based upon fraud, forgery, impersonation,
1111 duress, incapacity, undue influence, minority, illegality,
1112 unconscionability, or any other basis not related to the act of
1113 witnessing.



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1114 Section 22. Section 694.08, Florida Statutes, is amended to
1115 read:

1116 694.08 Certain instruments validated, notwithstanding lack
1117 of seals or witnesses, or defect in acknowledgment,~~ete.~~-

1118 (1) Whenever any power of attorney has been executed and
1119 delivered, or any conveyance has been executed and delivered to
1120 any grantee by the person owning the land therein described, or
1121 conveying the same in an official or representative capacity,
1122 and has, for a period of 7 years or more been spread upon the
1123 records of the county wherein the land therein described has
1124 been or was at the time situated, and one or more subsequent
1125 conveyances of said land or parts thereof have been made,
1126 executed, delivered and recorded by parties claiming under such
1127 instrument or instruments, and such power of attorney or
1128 conveyance, or the public record thereof, shows upon its face a
1129 clear purpose and intent of the person executing the same to
1130 authorize the conveyance of said land or to convey the said
1131 land, the same shall be taken and held by all the courts of this
1132 state, in the absence of any showing of fraud, adverse
1133 possession, or pending litigation, to have authorized the
1134 conveyance of, or to have conveyed, the fee simple title, or any
1135 interest therein, of the person signing such instruments, or the
1136 person in behalf of whom the same was conveyed by a person in an
1137 official or representative capacity, to the land therein
1138 described as effectively as if there had been no defect in,
1139 failure of, or absence of the acknowledgment or the certificate
1140 of acknowledgment, if acknowledged, or the relinquishment of
1141 dower, and as if there had been no lack of the word "as"
1142 preceding the title of the person conveying in an official or



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1143 representative capacity, of any seal or seals, or of any witness
1144 or witnesses, and shall likewise be taken and held by all the
1145 courts of this state to have been duly recorded so as to be
1146 admissible in evidence;

1147 (2) Provided, however, that this section shall not apply to
1148 any conveyance the validity of which shall be contested or have
1149 been contested by suit commenced heretofore or within 1 year of
1150 the effective date of this law.

1151 Section 23. Section 695.03, Florida Statutes, is amended to
1152 read:

1153 695.03 Acknowledgment and proof; validation of certain
1154 acknowledgments; legalization or authentication before foreign
1155 officials.—To entitle any instrument concerning real property to
1156 be recorded, the execution must be acknowledged by the party
1157 executing it, proved by a subscribing witness to it, or
1158 legalized or authenticated in one of the following forms ~~by a~~
1159 ~~civil-law notary or notary public who affixes her or his~~
1160 ~~official seal, before the officers and in the form and manner~~
1161 ~~following:~~

1162 (1) WITHIN THIS STATE.—An acknowledgment or a proof may be
1163 taken, administered, or made within this state by or ~~may be made~~
1164 before a judge, clerk, or deputy clerk of any court; a United
1165 States commissioner or magistrate; or any ~~a~~ notary public or
1166 civil-law notary of this state, and the certificate of
1167 acknowledgment or proof must be under the seal of the court or
1168 officer, as the case may be. ~~All affidavits and acknowledgments~~
1169 ~~heretofore made or taken in this manner are hereby validated.~~

1170 (2) OUTSIDE WITHOUT THIS STATE BUT WITHIN THE UNITED
1171 STATES.—An acknowledgment or a proof taken, administered, or



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1172 made outside ~~out~~ of this state but within the United States may
1173 be taken, administered, or made by or before a civil-law notary
1174 of this state or a commissioner of deeds appointed by the
1175 Governor of this state; a judge or clerk of any court of the
1176 United States or of any state, territory, or district; by or
1177 before a United States commissioner or magistrate; or by or
1178 before any a notary public, justice of the peace, master in
1179 chancery, or registrar or recorder of deeds of any state,
1180 territory, or district having a seal, and the certificate of
1181 acknowledgment or proof must be under the seal of the court or
1182 officer, as the case may be. If the acknowledgment or proof is
1183 taken, administered, or made by or before a notary public who
1184 does not affix a seal, it is sufficient for the notary public to
1185 type, print, or write by hand on the instrument, "I am a Notary
1186 Public of the State of ...(state)..., and my commission expires
1187 on ...(date)...."

1188 (3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN
1189 COUNTRIES.~~An If the~~ acknowledgment, an affidavit, an oath, a
1190 legalization, an authentication, or a proof taken, administered,
1191 or made outside the United States or is made in a foreign
1192 country,~~it~~ may be taken, administered, or made by or before a
1193 commissioner of deeds appointed by the Governor of this state to
1194 act in such country; before a notary public of such foreign
1195 country or a civil-law notary of this state or of such foreign
1196 country who has an official seal; before an ambassador, envoy
1197 extraordinary, minister plenipotentiary, minister, commissioner,
1198 charge d'affaires, consul general, consul, vice consul, consular
1199 agent, or other diplomatic or consular officer of the United
1200 States appointed to reside in such country; or before a military



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1201 or naval officer authorized by 10 U.S.C. s. 1044a ~~the Laws or~~
1202 ~~Articles of War of the United States~~ to perform the duties of
1203 notary public, and the certificate of acknowledgment,
1204 legalization, authentication, or proof must be under the seal of
1205 the officer. A certificate legalizing or authenticating the
1206 signature of a person executing an instrument concerning real
1207 property and to which a civil-law notary or notary public of
1208 that country has affixed her or his official seal is sufficient
1209 as an acknowledgment. For the purposes of this section, the term
1210 "civil-law notary" means a civil-law notary as defined in
1211 chapter 118 or an official of a foreign country who has an
1212 official seal and who is authorized to make legal or lawful the
1213 execution of any document in that jurisdiction, in which
1214 jurisdiction the affixing of her or his official seal is deemed
1215 proof of the execution of the document or deed in full
1216 compliance with the laws of that jurisdiction.

1217 (4) COMPLIANCE AND VALIDATION.—The affixing of the official
1218 seal or the electronic equivalent thereof under s. 117.021 or
1219 other applicable law, including part II of chapter 117,
1220 conclusively establishes that the acknowledgment or proof was
1221 taken, administered, or made in full compliance with the laws of
1222 this state or, as applicable, the laws of the other state, or of
1223 the foreign country governing notarial acts. All affidavits,
1224 oaths, acknowledgments, legalizations, authentications, or
1225 proofs taken, administered, or made in any manner as set forth
1226 in subsections (1), (2), and (3) are validated and upon
1227 recording may not be denied to have provided constructive notice
1228 based on any alleged failure to have strictly complied with this
1229 section, as currently or previously in effect, or the laws



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1230 governing notarization of instruments. This subsection does not
1231 preclude a challenge to the validity or enforceability of an
1232 instrument or electronic record based upon fraud, forgery,
1233 impersonation, duress, incapacity, undue influence, minority,
1234 illegality, unconscionability, or any other basis not related to
1235 the notarial act or constructive notice provided by recording.

1236
1237 ~~All affidavits, legalizations, authentications, and~~
1238 ~~acknowledgments heretofore made or taken in the manner set forth~~
1239 ~~above are hereby validated.~~

1240 Section 24. Section 695.04, Florida Statutes, is amended to
1241 read:

1242 695.04 Requirements of certificate.—The certificate of the
1243 officer before whom the acknowledgment or proof is taken, except
1244 for a certificate legalizing or authenticating the signature of
1245 a person executing an instrument concerning real property
1246 pursuant to s. 695.03(3), shall contain and set forth
1247 substantially the matter required to be done or proved to make
1248 such acknowledgment or proof effectual as set forth in s.
1249 117.05.

1250 Section 25. Section 695.25, Florida Statutes, is amended to
1251 read:

1252 695.25 Short form of acknowledgment.—The forms of
1253 acknowledgment set forth in this section may be used, and are
1254 sufficient for their respective purposes, under any law of this
1255 state. The forms shall be known as "Statutory Short Forms of
1256 Acknowledgment" and may be referred to by that name. The
1257 authorization of the forms in this section does not preclude the
1258 use of other forms.



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1259 (1) For an individual acting in his or her own right:
1260 STATE OF
1261 COUNTY OF

1262 The foregoing instrument was acknowledged before me by
1263 means of [] physical presence or [] online notarization, this
1264 ... (date)... by ... (name of person acknowledging)..., who is
1265 personally known to me or who has produced ... (type of
1266 identification)... as identification.

1267 ... (Signature of person taking acknowledgment)...
1268 ... (Name typed, printed or stamped)...
1269 ... (Title or rank)...
1270 ... (Serial number, if any)...

1271 (2) For a corporation:

1272 STATE OF
1273 COUNTY OF

1274 The foregoing instrument was acknowledged before me by
1275 means of [] physical presence or [] online notarization, this
1276 ... (date)... by ... (name of officer or agent, title of officer
1277 or agent)... of ... (name of corporation acknowledging)..., a
1278 ... (state or place of incorporation)... corporation, on behalf
1279 of the corporation. He/she is personally known to me or has
1280 produced ... (type of identification)... as identification.

1281 ... (Signature of person taking acknowledgment)...
1282 ... (Name typed, printed or stamped)...
1283 ... (Title or rank)...
1284 ... (Serial number, if any)...

1285 (3) For a limited liability company:

1286 STATE OF
1287 COUNTY OF



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1288 The foregoing instrument was acknowledged before me by
1289 means of [] physical presence or [] online notarization, this
1290 ...(date)... by ...(name of member, manager, officer or agent,
1291 title of member, manager, officer or agent)..., of ...(name of
1292 company acknowledging)..., a ...(state or place of formation)...
1293 limited liability company, on behalf of the company, who is
1294 personally known to me or has produced ...(type of
1295 identification)... as identification.

1296
1297 ...(Signature of person taking acknowledgment)...
1298 ...(Name typed, printed or stamped)...
1299 ...(Title or rank)...
1300 ...(Serial number, if any)...

1301 ~~(4)~~~~(3)~~ For a partnership:

1302 STATE OF
1303 COUNTY OF

1304 The foregoing instrument was acknowledged before me by
1305 means of [] physical presence or [] online notarization, this
1306 ...(date)... by ...(name of acknowledging partner or agent)...,
1307 partner (or agent) on behalf of ...(name of partnership)..., a
1308 partnership. He/she is personally known to me or has produced
1309 ...(type of identification)... as identification.

1310 ...(Signature of person taking acknowledgment)...
1311 ...(Name typed, printed or stamped)...
1312 ...(Title or rank)...
1313 ...(Serial number, if any)...

1314 ~~(5)~~~~(4)~~ For an individual acting as principal by an attorney
1315 in fact:

1316 STATE OF



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1317 COUNTY OF

1318 The foregoing instrument was acknowledged before me by
1319 means of [] physical presence or [] online notarization, this
1320 ... (date)... by ... (name of attorney in fact)... as attorney in
1321 fact, who is personally known to me or who has produced ... (type
1322 of identification)... as identification on behalf of ... (name of
1323 principal)....

1324 ... (Signature of person taking acknowledgment)...

1325 ... (Name typed, printed or stamped)...

1326 ... (Title or rank)...

1327 ... (Serial number, if any)...

1328 (6) (5) By any public officer, trustee, or personal
1329 representative:

1330 STATE OF

1331 COUNTY OF

1332 The foregoing instrument was acknowledged before me by
1333 means of [] physical presence or [] online notarization, this
1334 ... (date)... by ... (name and title of position)..., who is
1335 personally known to me or who has produced ... (type of
1336 identification)... as identification.

1337 ... (Signature of person taking acknowledgment)...

1338 ... (Name typed, printed or stamped)...

1339 ... (Title or rank)...

1340 ... (Serial number, if any)....

1341

1342 Section 26. Section 695.28, Florida Statutes, is amended to
1343 read:

1344 695.28 Validity of recorded electronic documents.—

1345 (1) A document that is otherwise entitled to be recorded



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1346 and that was or is submitted to the clerk of the court or county
1347 recorder by electronic or other means and accepted for
1348 recordation is deemed validly recorded and provides notice to
1349 all persons notwithstanding:

1350 (a) That the document was received and accepted for
1351 recordation before the Department of State adopted standards
1352 implementing s. 695.27; ~~or~~

1353 (b) Any defects in, deviations from, or the inability to
1354 demonstrate strict compliance with any statute, rule, or
1355 procedure relating to electronic signatures, electronic
1356 witnesses, electronic notarization, or online notarization, or
1357 for submitting or recording to submit or record an electronic
1358 document in effect at the time the electronic document was
1359 executed or was submitted for recording;

1360 (c) That the document was signed, witnessed, or notarized
1361 electronically, and that the document was notarized by an online
1362 notary public outside the physical presence of the signer
1363 through audio-video communication technology, as defined in s.
1364 117.201, or that witnessing may have been done outside the
1365 physical presence of the notary public or principal through such
1366 audio-visual communication; or

1367 (d) That the document recorded was a certified printout of
1368 a document to which one or more electronic signatures have been
1369 affixed.

1370 (2) This section does not alter the duty of the clerk or
1371 recorder to comply with s. 28.222, s. 695.27, or any rules
1372 adopted pursuant to those sections ~~that section~~.

1373 (3) This section does not preclude a challenge to the
1374 validity or enforceability of an instrument or electronic record



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1375 based upon fraud, forgery, impersonation, duress, incapacity,
1376 undue influence, minority, illegality, unconscionability, or any
1377 other basis not in the nature of those matters described in
1378 subsection (1).

1379 Section 27. Subsections (3) and (4) of section 709.2119,
1380 Florida Statutes, are amended to read:

1381 709.2119 Acceptance of and reliance upon power of
1382 attorney.—

1383 (3) A third person who is asked to accept a power of
1384 attorney that appears to be executed in accordance with s.
1385 709.2105 may in good faith request, and rely upon, without
1386 further investigation:

1387 (a) A certified English translation of the power of
1388 attorney if the power of attorney contains, in whole or in part,
1389 language other than English;

1390 (b) An opinion of counsel as to any matter of law
1391 concerning the power of attorney if the third person making the
1392 request provides in a writing or other record the reason for the
1393 request; ~~or~~

1394 (c) The affidavit described in subsection (2); or

1395 (d) The electronic journal or record made by the notary
1396 public pursuant to the laws of the state in which the notary
1397 public is appointed if the power of attorney is witnessed or
1398 notarized remotely through the use of online witnesses or
1399 notarization.

1400 (4) An English translation, ~~or~~ an opinion of counsel, or an
1401 electronic journal or record requested under this section must
1402 be provided at the principal's expense unless the request is
1403 made after the time specified in s. 709.2120(1) for acceptance



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1404 or rejection of the power of attorney.

1405 Section 28. Subsection (4) of section 709.2120, Florida
1406 Statutes, is amended to read:

1407 709.2120 Rejecting power of attorney.—

1408 (4) A third person is not required to accept a power of
1409 attorney if:

1410 (a) The third person is not otherwise required to engage in
1411 a transaction with the principal in the same circumstances;

1412 (b) The third person has knowledge of the termination or
1413 suspension of the agent's authority or of the power of attorney
1414 before exercising the power;

1415 (c) A timely request by the third person for an affidavit,
1416 English translation, ~~or~~ opinion of counsel, or electronic
1417 journal or record under s. 709.2119 ~~s. 709.2119(4)~~ is refused by
1418 the agent;

1419 (d) The power of attorney is witnessed or notarized
1420 remotely through the use of online witnesses or notarization,
1421 and either the agent is unable to produce the electronic journal
1422 or record, or the notary public did not maintain an electronic
1423 journal or record of the notarization;

1424 (e) ~~(d)~~ Except as provided in paragraph (b), the third
1425 person believes in good faith that the power is not valid or
1426 that the agent does not have authority to perform the act
1427 requested; or

1428 (f) ~~(e)~~ The third person makes, or has knowledge that
1429 another person has made, a report to the local adult protective
1430 services office stating a good faith belief that the principal
1431 may be subject to physical or financial abuse, neglect,
1432 exploitation, or abandonment by the agent or a person acting for



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1433 or with the agent.

1434 Section 29. Present subsection (6) of section 709.2202,
1435 Florida Statutes, is renumbered as subsection (7), and a new
1436 subsection (6) is added to that section, to read:

1437 709.2202 Authority that requires separate signed
1438 enumeration.—

1439 (6) Notwithstanding subsection (1) and s. 709.2106(3), a
1440 power of attorney, executed by a principal domiciled in this
1441 state at the time of execution, that is witnessed remotely
1442 pursuant to s. 117.285 or other applicable law by a witness who
1443 is not in the physical presence of the principal is not
1444 effective to grant authority to an agent to take any of the
1445 actions enumerated in subsection (1).

1446 Section 30. Subsection (40) of section 731.201, Florida
1447 Statutes, is amended to read:

1448 731.201 General definitions.—Subject to additional
1449 definitions in subsequent chapters that are applicable to
1450 specific chapters or parts, and unless the context otherwise
1451 requires, in this code, in s. 409.9101, and in chapters 736,
1452 738, 739, and 744, the term:

1453 (40) "Will" means an instrument, including a codicil,
1454 executed by a person in the manner prescribed by this code,
1455 which disposes of the person's property on or after his or her
1456 death and includes an instrument which merely appoints a
1457 personal representative or revokes or revises another will. The
1458 term includes an electronic will as defined in s. 732.521.

1459 Section 31. Section 732.506, Florida Statutes, is amended
1460 to read:

1461 732.506 Revocation by act.—A will or codicil, other than an



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1462 electronic will, is revoked by the testator, or some other
1463 person in the testator's presence and at the testator's
1464 direction, by burning, tearing, canceling, defacing,
1465 obliterating, or destroying it with the intent, and for the
1466 purpose, of revocation. An electronic will or codicil is revoked
1467 by the testator, or some other person in the testator's presence
1468 and at the testator's direction, by deleting, canceling,
1469 rendering unreadable, or obliterating the electronic will or
1470 codicil, with the intent, and for the purpose, of revocation, as
1471 proved by clear and convincing evidence.

1472 Section 32. Section 732.521, Florida Statutes, is created
1473 to read:

1474 732.521 Definitions.—As used in ss. 732.521-732.525, the
1475 term:

1476 (1) "Audio-video communication technology" has the same
1477 meaning as provided in s. 117.201.

1478 (2) "Electronic record" has the same meaning as provided in
1479 s. 668.50.

1480 (3) "Electronic signature" means an electronic mark visibly
1481 manifested in a record as a signature and executed or adopted by
1482 a person with the intent to sign the record.

1483 (4) "Electronic will" means an instrument, including a
1484 codicil, executed with an electronic signature by a person in
1485 the manner prescribed by this code, which disposes of the
1486 person's property on or after his or her death and includes an
1487 instrument which merely appoints a personal representative or
1488 revokes or revises another will.

1489 (5) "Online notarization" has the same meaning as provided
1490 in s. 117.201.



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1491 (6) "Online notary public" has the same meaning as provided
1492 in s. 117.201.

1493 (7) "Qualified custodian" means a person who meets the
1494 requirements of s. 732.525(1).

1495 (8) "Secure system" means a system that satisfies the
1496 requirements of a secure repository qualified to retain
1497 electronic journals of online notaries public in accordance with
1498 s. 117.245 and any rules established under part II of chapter
1499 117.

1500 Section 33. Effective July 1, 2020, section 732.522,
1501 Florida Statutes, is created to read:

1502 732.522 Method and place of execution.—For purposes of the
1503 execution or filing of an electronic will, the acknowledgment of
1504 an electronic will by the testator and the affidavits of
1505 witnesses under s. 732.503, or any other instrument under the
1506 Florida Probate Code:

1507 (1) Any requirement that an instrument be signed may be
1508 satisfied by an electronic signature.

1509 (2) Any requirement that individuals sign an instrument in
1510 the presence of one another may be satisfied by witnesses being
1511 present and electronically signing by means of audio-video
1512 communication technology that meets the requirements of part II
1513 of chapter 117 and any rules adopted thereunder, if:

1514 (a) The individuals are supervised by a notary public in
1515 accordance with s. 117.285;

1516 (b) The individuals are authenticated and signing as part
1517 of an online notarization session in accordance with s. 117.265;

1518 (c) The witness hears the signer make a statement
1519 acknowledging that the signer has signed the electronic record;



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1520 and

1521 (d) The signing and witnessing of the instrument complies
1522 with the requirements of s. 117.285.

1523 (3) Except as otherwise provided in this part, all
1524 questions as to the force, effect, validity, and interpretation
1525 of an electronic will which comply with this section must be
1526 determined in the same manner as in the case of a will executed
1527 in accordance with s. 732.502.

1528 (4) An instrument that is signed electronically is deemed
1529 to be executed in this state if the instrument states that the
1530 person creating the instrument intends to execute and
1531 understands that he or she is executing the instrument in, and
1532 pursuant to the laws of, this state.

1533 Section 34. Section 732.523, Florida Statutes, is created
1534 to read:

1535 732.523 Self-proof of electronic will.—An electronic will
1536 is self-proved if:

1537 (1) The acknowledgment of the electronic will by the
1538 testator and the affidavits of the witnesses are made in
1539 accordance with s. 732.503 and are part of the electronic record
1540 containing the electronic will, or are attached to, or are
1541 logically associated with, the electronic will;

1542 (2) The electronic will designates a qualified custodian;

1543 (3) The electronic record that contains the electronic will
1544 is held in the custody of a qualified custodian at all times
1545 before being offered to the court for probate; and

1546 (4) The qualified custodian who has custody of the
1547 electronic will at the time of the testator's death certifies
1548 under oath that, to the best knowledge of the qualified



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1549 custodian, the electronic record that contains the electronic
1550 will was at all times before being offered to the court in the
1551 custody of a qualified custodian in compliance with s. 732.524
1552 and that the electronic will has not been altered in any way
1553 since the date of its execution.

1554 Section 35. Section 732.524, Florida Statutes, is created
1555 to read:

1556 732.524 Qualified custodians.—

1557 (1) To serve as a qualified custodian of an electronic
1558 will, a person must be:

1559 (a) Domiciled in and a resident of this state; or

1560 (b) Incorporated, organized, or have its principal place of
1561 business in this state.

1562 (2) A qualified custodian shall:

1563 (a) In the course of maintaining custody of electronic
1564 wills, regularly employ a secure system and store in such secure
1565 system electronic records containing:

1566 1. Electronic wills;

1567 2. Records attached to or logically associated with
1568 electronic wills; and

1569 3. Acknowledgments of the electronic wills by testators,
1570 affidavits of the witnesses, and the records described in s.
1571 117.245(1) and (2) which pertain to the online notarization; and

1572 (b) Furnish for any court hearing involving an electronic
1573 will that is currently or was previously stored by the qualified
1574 custodian any information requested by the court pertaining to
1575 the qualified custodian's qualifications, policies, and
1576 practices related to the creation, sending, communication,
1577 receipt, maintenance, storage, and production of electronic



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1578 wills.

1579 (c) Provide access to or information concerning the
1580 electronic will, or the electronic record containing the
1581 electronic will, only:

1582 1. To the testator;

1583 2. To persons authorized by the testator in the electronic
1584 will or in written instructions signed by the testator with the
1585 formalities required for the execution of a will in this state;

1586 3. After the death of the testator, to the testator's
1587 nominated personal representative; or

1588 4. At any time, as directed by a court of competent
1589 jurisdiction.

1590 (3) The qualified custodian of the electronic record of an
1591 electronic will may elect to destroy such record, including any
1592 of the documentation required to be created and stored under
1593 paragraph (1)(b), at any time after the earlier of the fifth
1594 anniversary of the conclusion of the administration of the
1595 estate of the testator or 20 years after the death of the
1596 testator.

1597 (4) A qualified custodian who at any time maintains custody
1598 of the electronic record of an electronic will may elect to
1599 cease serving in such capacity by:

1600 (a) Delivering the electronic will or the electronic record
1601 containing the electronic will to the testator, if then living,
1602 or, after the death of the testator, by filing the will with the
1603 court in accordance with s. 732.901; and

1604 (b) If the outgoing qualified custodian intends to
1605 designate a successor qualified custodian, by doing the
1606 following:



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1607 1. Providing written notice to the testator of the name,
1608 address, and qualifications of the proposed successor qualified
1609 custodian. The testator must provide written consent before the
1610 electronic record, including the electronic will, is delivered
1611 to a successor qualified custodian;

1612 2. Delivering the electronic record containing the
1613 electronic will to the successor qualified custodian; and

1614 3. Delivering to the successor qualified custodian an
1615 affidavit of the outgoing qualified custodian stating that:

1616 a. The outgoing qualified custodian is eligible to act as a
1617 qualified custodian in this state;

1618 b. The outgoing qualified custodian is the qualified
1619 custodian designated by the testator in the electronic will or
1620 appointed to act in such capacity under this paragraph;

1621 c. The electronic will has at all times been in the custody
1622 of one or more qualified custodians in compliance with this
1623 section since the time the electronic record was created, and
1624 identifying such qualified custodians; and

1625 d. To the best of the outgoing qualified custodian's
1626 knowledge, the electronic will has not been altered since the
1627 time it was created.

1628

1629 For purposes of making this affidavit, the outgoing qualified
1630 custodian may rely conclusively on any affidavits delivered by a
1631 predecessor qualified custodian in connection with its
1632 designation or appointment as qualified custodian; however, all
1633 such affidavits must be delivered to the successor qualified
1634 custodian.

1635 (5) Upon the request of the testator which is made in a



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1636 writing signed with the formalities required for the execution
1637 of a will in this state, a qualified custodian who at any time
1638 maintains custody of the electronic record of the testator's
1639 electronic will must cease serving in such capacity and must
1640 deliver to a successor qualified custodian designated in writing
1641 by the testator the electronic record containing the electronic
1642 will and the affidavit required in subparagraph (4) (b) 3.

1643 (6) A qualified custodian may not succeed to office as a
1644 qualified custodian of an electronic will unless he or she
1645 agrees in writing to serve in such capacity.

1646 (7) If a qualified custodian is an entity, an affidavit, or
1647 an appearance by the testator in the presence of a duly
1648 authorized officer or agent of such entity, acting in his or her
1649 own capacity as such, shall constitute an affidavit, or an
1650 appearance by the testator in the presence of the qualified
1651 custodian.

1652 (8) A qualified custodian must provide a paper copy of an
1653 electronic will and the electronic record containing the
1654 electronic will to the testator immediately upon request. For
1655 the first request, the testator may not be charged a fee for
1656 being provided with these documents.

1657 (9) The qualified custodian shall be liable for any damages
1658 caused by the negligent loss or destruction of the electronic
1659 record, including the electronic will, while it is in the
1660 possession of the qualified custodian. A qualified custodian may
1661 not limit liability for such damages.

1662 (10) A qualified custodian may not terminate or suspend
1663 access to, or downloads of, the electronic will by the testator,
1664 provided that a qualified custodian may charge a fee for



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1665 providing such access and downloads.

1666 (11) Upon receiving information that the testator is dead,
1667 a qualified custodian must deposit the electronic will with the
1668 court in accordance with s. 732.901. A qualified custodian may
1669 not charge a fee for depositing the electronic will with the
1670 clerk, provided the affidavit is made in accordance with s.
1671 732.503, or furnishing in writing any information requested by a
1672 court under paragraph (1) (c).

1673 (12) Except as provided in this act, a qualified custodian
1674 must at all times keep information provided by the testator
1675 confidential and may not disclose such information to any third
1676 party.

1677 (13) A contractual venue provision between a qualified
1678 custodian and a testator is not valid or enforceable to the
1679 extent that it requires a specific jurisdiction or venue for any
1680 proceeding relating to the probate of an estate or the contest
1681 of a will.

1682 Section 36. Section 732.525, Florida Statutes, is created
1683 to read:

1684 732.525 Liability coverage; receivership of qualified
1685 custodians.—

1686 (1) A qualified custodian shall:

1687 (a) Post and maintain a blanket surety bond of at least
1688 \$250,000 to secure the faithful performance of all duties and
1689 obligations required under this part. The bond must be made
1690 payable to the Governor and his or her successors in office for
1691 the benefit of all persons who store electronic records with a
1692 qualified custodian and their estates, beneficiaries,
1693 successors, and heirs, and be conditioned on the faithful



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1694 performance of all duties and obligations under this chapter.
1695 The terms of the bond must cover the acts or omissions of the
1696 qualified custodian and each agent or employee of the qualified
1697 custodian; or

1698 (b) Maintain a liability insurance policy that covers any
1699 losses sustained by any person who stores electronic records
1700 with a qualified custodian and their estates, beneficiaries,
1701 successors, and heirs which are caused by errors or omissions by
1702 the qualified custodian and each agent or employee of the
1703 qualified custodian. The policy must cover losses of at least
1704 \$250,000 in the aggregate.

1705 (2) The Attorney General may petition a court of competent
1706 jurisdiction for the appointment of a receiver to manage the
1707 electronic records of a qualified custodian for proper delivery
1708 and safekeeping if any of the following conditions exist:

1709 (a) The qualified custodian is ceasing operation;

1710 (b) The qualified custodian intends to close the facility
1711 and adequate arrangements have not been made for proper delivery
1712 of the electronic records in accordance with this part;

1713 (c) The Attorney General determines that conditions exist
1714 which present a danger that electronic records will be lost or
1715 misappropriated; or

1716 (d) The qualified custodian fails to maintain and post a
1717 surety bond or maintain insurance as required in this section.

1718 Section 37. Section 732.526, Florida Statutes, is created
1719 to read:

1720 732.526 Probate.—

1721 (1) An electronic will that is filed electronically with
1722 the clerk of the court through the Florida Courts E-Filing



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1723 Portal is deemed to have been deposited with the clerk as an
1724 original of the electronic will.

1725 (2) A paper copy of an electronic will which is certified
1726 by a notary public to be a true and correct copy of the
1727 electronic will may be offered for and admitted to probate and
1728 shall constitute an original of the electronic will.

1729 Section 38. Subsection (1) of section 733.201, Florida
1730 Statutes, is amended to read:

1731 733.201 Proof of wills.—

1732 (1) Self-proved wills executed in accordance with this code
1733 may be admitted to probate without further proof. However, a
1734 purportedly self-proved electronic will may be admitted to
1735 probate only in the manners prescribed in subsections (2) and
1736 (3) if the execution of such electronic will, or the
1737 acknowledgment by the testator and the affidavits of the
1738 witnesses, involves an online notarization in which there was a
1739 substantial failure to comply with the procedures set forth in
1740 s. 117.265.

1741 Section 39. Section 740.10, Florida Statutes, is created to
1742 read:

1743 740.10 Relation to wills.—No act taken pursuant to this
1744 chapter is valid to affect the obligation of a person to deposit
1745 a will of a decedent as required under s. 732.901.

1746 Section 40. Except as otherwise expressly provided in this
1747 act, and except for this section, which shall take effect upon
1748 becoming a law, this act shall take effect January 1, 2020.

1749
1750 ===== T I T L E A M E N D M E N T =====

1751 And the title is amended as follows:



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1752 Delete everything before the enacting clause
1753 and insert:

1754 A bill to be entitled
1755 An act relating to electronic legal documents;
1756 providing directives to the Division of Law Revision;
1757 amending s. 117.01, F.S.; revising provisions relating
1758 to use of the office of notary public; amending s.
1759 117.021, F.S.; requiring electronic signatures to
1760 include access protection; prohibiting a person from
1761 requiring a notary public to perform a notarial act
1762 with certain technology; requiring the Department of
1763 State, in collaboration with the Agency for State
1764 Technology, to adopt rules for certain purposes;
1765 amending s. 117.05, F.S.; revising limitations on
1766 notary fees to conform to changes made by the act;
1767 providing for inclusion of certain information in a
1768 jurat or notarial certificate; providing for
1769 compliance with online notarization requirements;
1770 providing for notarial certification of a printed
1771 electronic record; revising statutory forms for jurats
1772 and notarial certificates; amending s. 117.107, F.S.;
1773 providing applicability; revising prohibited acts;
1774 creating s. 117.201, F.S.; providing definitions;
1775 creating s. 117.209, F.S.; authorizing online
1776 notarizations; providing an exception; creating s.
1777 117.215, F.S.; specifying the application of other
1778 laws in relation to online notarizations; creating s.
1779 117.225, F.S.; specifying registration and
1780 qualification requirements for online notaries public;



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1781 creating s. 117.235, F.S.; authorizing the performance
1782 of certain notarial acts; creating s. 117.245, F.S.;
1783 requiring an online notary public to keep electronic
1784 journals of online notarizations and certain audio-
1785 video communication recordings; specifying the
1786 information that must be included for each online
1787 notarization; requiring that an online notary public
1788 retain a copy of the recording of an audio-video
1789 communication; specifying requirements for the
1790 recording; requiring an online notary public to take
1791 certain steps regarding the maintenance and security
1792 of the electronic journal; specifying that the
1793 Department of State maintains jurisdiction for a
1794 specified period of time for purposes of investigating
1795 notarial misconduct; authorizing the use of specified
1796 information for evidentiary purposes; creating s.
1797 117.255, F.S.; specifying requirements for the use of
1798 electronic journals, signatures, and seals; requiring
1799 an online notary public to provide notification of the
1800 theft, vandalism, or loss of an electronic journal,
1801 signature, or seal; authorizing an online notary
1802 public to make copies of electronic journal entries
1803 and to provide access to related recordings under
1804 certain circumstances; authorizing an online notary
1805 public to charge a fee for making and delivering such
1806 copies; providing an exception; creating s. 117.265,
1807 F.S.; prescribing online notarization procedures;
1808 specifying the manner by which an online notary public
1809 must verify the identity of a principal or a witness;



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1810 requiring an online notary public to take certain
1811 measures as to the security of technology used;
1812 specifying that an electronic notarial certificate
1813 must identify the performance of an online
1814 notarization; specifying that noncompliance does not
1815 impair the validity of a notarial act or the notarized
1816 electronic record; authorizing the use of specified
1817 information for evidentiary purposes; providing for
1818 construction; creating s. 117.275, F.S.; providing
1819 fees for online notarizations; creating s. 117.285,
1820 F.S.; specifying the manner by which an online notary
1821 public may supervise the witnessing of electronic
1822 records of online notarizations; specifying
1823 circumstances under which an instrument is voidable;
1824 specifying duties of remote online notarization
1825 service providers and online notaries public;
1826 specifying applicable law and jurisdiction regarding
1827 witnessing; creating s. 117.295, F.S.; authorizing the
1828 department to adopt rules and standards for online
1829 notarizations; providing minimum standards for online
1830 notarizations until such rules are adopted; creating
1831 s. 117.305, F.S.; superseding certain provisions of
1832 federal law regulating electronic signatures; amending
1833 s. 28.222, F.S.; requiring the clerk of the circuit
1834 court to record certain instruments; amending s.
1835 92.50, F.S.; revising requirements for oaths,
1836 affidavits, and acknowledgments; amending s. 95.231,
1837 F.S.; providing a limitation period for certain
1838 recorded instruments; amending s. 689.01, F.S.;



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1839 providing for witnessing of documents in connection
1840 with real estate conveyances; providing for validation
1841 of certain recorded documents; amending s. 694.08,
1842 F.S.; providing for validation of certain recorded
1843 documents; amending s. 695.03, F.S.; providing and
1844 revising requirements for making acknowledgments,
1845 proofs, and other documents; amending s. 695.04, F.S.;
1846 conforming provisions to changes made by the act;
1847 amending s. 695.25, F.S.; revising the statutory short
1848 form of acknowledgments to include acknowledgment by
1849 online notarization; amending s. 695.28, F.S.;
1850 providing for validity of recorded documents;
1851 conforming provisions to changes made by the act;
1852 amending s. 709.2119, F.S.; authorizing the acceptance
1853 of a power of attorney based upon an electronic
1854 journal or electronic record made by a notary public;
1855 amending s. 709.2120, F.S.; prohibiting acceptance of
1856 a power of attorney if witnessed or notarized
1857 remotely; amending s. 709.2202, F.S.; prohibiting
1858 certain authority granted through a power of attorney
1859 if witnessed or notarized remotely; amending s.
1860 731.201, F.S.; redefining the term "will" to conform
1861 to changes made by the act; amending s. 732.506, F.S.;
1862 exempting electronic wills from provisions governing
1863 the revocation of wills and codicils; prescribing the
1864 manner by which an electronic will or codicil may be
1865 revoked; creating s. 732.521, F.S.; providing
1866 definitions; creating s. 732.522, F.S.; prescribing
1867 the manner by which an electronic will must be



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1868 executed; creating s. 732.523, F.S.; specifying
1869 requirements for the self-proof of an electronic will;
1870 creating s. 732.524, F.S.; specifying requirements
1871 necessary to serve as a qualified custodian of an
1872 electronic will; creating s. 732.525, F.S.; requiring
1873 a qualified custodian to post and maintain a blanket
1874 surety bond of a specified amount and maintain
1875 liability insurance; authorizing the Attorney General
1876 to petition a court to appoint a receiver to manage
1877 electronic records of a qualified custodian; creating
1878 s. 732.526, F.S.; specifying conditions by which an
1879 electronic will is deemed to be an original will;
1880 amending s. 733.201, F.S.; requiring that self-proved
1881 electronic wills meet certain requirements for
1882 admission to probate; creating s. 740.10, F.S.;
1883 specifying that any act taken pursuant to ch. 740,
1884 F.S., does not affect the requirement that a will be
1885 deposited within a certain timeframe; providing
1886 effective dates.

By Senator Brandes

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1 A bill to be entitled
 2 An act relating to electronic legal documents;
 3 providing directives to the Division of Law Revision;
 4 amending s. 117.01, F.S.; revising provisions relating
 5 to use of the office of notary public; amending s.
 6 117.021, F.S.; requiring electronic signatures to
 7 include access protection; prohibiting a person from
 8 requiring a notary public to perform a notarial act
 9 with certain technology; requiring the Department of
 10 State, in collaboration with the Agency for State
 11 Technology, to adopt rules for certain purposes;
 12 amending s. 117.05, F.S.; revising limitations on
 13 notary fees to conform to changes made by the act;
 14 providing for the inclusion of certain information in
 15 a jurat or notarial certificate; providing for
 16 compliance with online notarization requirements;
 17 providing for notarial certification of a printed
 18 electronic record; revising statutory forms for jurats
 19 and notarial certificates; amending s. 117.107, F.S.;
 20 providing applicability; revising prohibited acts;
 21 creating s. 117.201, F.S.; providing definitions;
 22 creating s. 117.209, F.S.; authorizing online
 23 notarizations; providing an exception; creating s.
 24 117.215, F.S.; specifying the application of other
 25 laws in relation to online notarizations; creating s.
 26 117.225, F.S.; specifying registration and
 27 qualification requirements for online notaries public;
 28 creating s. 117.235, F.S.; authorizing the performance
 29 of certain notarial acts; creating s. 117.245, F.S.;

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

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30 requiring a notary public to keep electronic journals
 31 of online notarial acts and certain audio-video
 32 communication recordings; specifying the information
 33 that must be included for each online notarization;
 34 requiring an online notary public to take certain
 35 steps regarding the maintenance and security of the
 36 electronic journal; specifying that the Department of
 37 State maintains jurisdiction for a specified period of
 38 time for purposes of investigating notarial
 39 misconduct; authorizing the use of specified
 40 information for evidentiary purposes; creating s.
 41 117.255, F.S.; specifying requirements for the use of
 42 electronic journals, signatures, and seals; requiring
 43 an online notary public to provide notification of the
 44 theft, vandalism, or loss of an electronic journal,
 45 signature, or seal; authorizing an online notary
 46 public to make copies of electronic journal entries
 47 and to provide access to related recordings under
 48 certain circumstances; authorizing an online notary
 49 public to charge a fee for making and delivering such
 50 copies; providing an exception; creating s. 117.265,
 51 F.S.; prescribing online notarization procedures;
 52 specifying the manner by which an online notary public
 53 must verify the identity of a principal or a witness;
 54 requiring an online notary public to take certain
 55 measures as to the security of technology used;
 56 specifying that an electronic notarial certificate
 57 must identify the performance of an online
 58 notarization; specifying that noncompliance does not

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

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59 impair the validity of a notarial act or the notarized
60 electronic record; authorizing the use of specified
61 information for evidentiary purposes; providing for
62 construction; creating s. 117.275, F.S.; providing
63 fees for online notarizations; creating s. 117.285,
64 F.S.; specifying the manner by which an online notary
65 public may supervise the witnessing of electronic
66 records of online notarizations; creating s. 117.295,
67 F.S.; authorizing the department to adopt rules and
68 standards for online notarizations; providing minimum
69 standards for online notarizations until such rules
70 are adopted; creating s. 117.305, F.S.; superseding
71 certain provisions of federal law regulating
72 electronic signatures; amending s. 28.222, F.S.;
73 requiring the clerk of the circuit court to record
74 certain instruments; amending s. 90.803, F.S.;
75 creating a hearsay exception for certain electronic
76 records created and stored by a qualified custodian;
77 amending s. 92.50, F.S.; revising requirements for
78 oaths, affidavits, and acknowledgements; amending s.
79 95.231, F.S.; providing a limitation period for
80 certain recorded instruments; amending s. 689.01,
81 F.S.; providing for the witnessing of documents in
82 connection with real estate conveyances; providing for
83 the validation of certain recorded documents; amending
84 s. 694.08, F.S.; providing for the validation of
85 certain recorded documents; amending s. 695.03, F.S.;
86 providing and revising requirements for making
87 acknowledgments, proofs, and other documents; amending

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88 s. 695.04, F.S.; conforming provisions to changes made
89 by the act; amending s. 695.25, F.S.; revising the
90 statutory short form of acknowledgements to include
91 acknowledgement by online notarization; amending s.
92 695.28, F.S.; revising the criteria under which an
93 electronic document is deemed to be validly recorded;
94 conforming provisions to changes made by the act;
95 amending s. 709.2119, F.S.; authorizing the acceptance
96 of a power of attorney based upon an electronic
97 journal or electronic record made by a notary public;
98 amending s. 709.2120, F.S.; prohibiting acceptance of
99 a power of attorney if witnessed or notarized
100 remotely; amending s. 709.2202, F.S.; prohibiting the
101 granting of certain authority through a power of
102 attorney that is witnessed or notarized remotely;
103 amending s. 731.201, F.S.; redefining the term "will"
104 to conform to changes made by the act; amending s.
105 732.506, F.S.; exempting electronic wills from
106 provisions governing the revocation of wills and
107 codicils; prescribing the manner by which an
108 electronic will or codicil may be revoked; creating s.
109 732.521, F.S.; providing definitions; creating s.
110 732.522, F.S.; prescribing the manner by which an
111 electronic will must be executed; creating s. 732.523,
112 F.S.; specifying requirements for the self-proof of an
113 electronic will; creating s. 732.524, F.S.; specifying
114 requirements necessary to serve as a qualified
115 custodian of an electronic will; creating s. 732.525,
116 F.S.; requiring a qualified custodian to post and

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117 maintain a blanket surety bond of a specified amount
 118 and maintain liability insurance; authorizing the
 119 Attorney General to petition a court to appoint a
 120 receiver to manage electronic records of a qualified
 121 custodian; creating s. 732.526, F.S.; specifying
 122 conditions by which an electronic will is deemed to be
 123 an original will; amending s. 733.201, F.S.; requiring
 124 that self-proved electronic wills meet certain
 125 requirements for admission to probate; creating s.
 126 740.10, F.S.; specifying that any act taken pursuant
 127 to ch. 740, F.S., does not affect the requirement that
 128 a will be deposited within a certain timeframe;
 129 providing effective dates.

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

132
 133 Section 1. The Division of Law Revision is directed to:

134 (1) Create part I of chapter 117, Florida Statutes,
 135 consisting of ss. 117.01-117.108, Florida Statutes, to be
 136 entitled "General Provisions."

137 (2) Create part II of chapter 117, Florida Statutes,
 138 consisting of ss. 117.201-117.305, Florida Statutes, to be
 139 entitled "Online Notarizations."

140 Section 2. Subsection (1) of section 117.01, Florida
 141 Statutes, is amended to read:

142 117.01 Appointment, application, suspension, revocation,
 143 application fee, bond, and oath.—

144 (1) The Governor may appoint as many notaries public as he
 145 or she deems necessary, each of whom must ~~shall~~ be at least 18

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146 years of age and a legal resident of this ~~the~~ state. A permanent
 147 resident alien may apply and be appointed and shall file with
 148 his or her application a recorded Declaration of Domicile. The
 149 residence required for appointment must be maintained throughout
 150 the term of appointment. A notary public ~~Notaries public~~ shall
 151 be appointed for 4 years and may only ~~shall~~ use and exercise the
 152 office of notary public when he or she is within the boundaries
 153 of this state. An applicant must be able to read, write, and
 154 understand the English language.

155 Section 3. Present subsections (4) and (5) of section
 156 117.021, Florida Statutes, are renumbered as subsections (5) and
 157 (6), respectively, subsection (2) of that section is amended,
 158 and a new subsection (4) and subsection (7) are added to that
 159 section, to read:

160 117.021 Electronic notarization.—

161 (2) In performing an electronic notarial act, a notary
 162 public shall use an electronic signature that is:

163 (a) Unique to the notary public;

164 (b) Capable of independent verification;

165 (c) Retained under the notary public's sole control and
 166 includes access protection through the use of passwords or codes
 167 under control of the notary public; and

168 (d) Attached to or logically associated with the electronic
 169 document in a manner that any subsequent alteration to the
 170 electronic document displays evidence of the alteration.

171 (4) A person may not require a notary public to perform a
 172 notarial act with respect to an electronic record with a form of
 173 technology that the notary public has not selected to use.

174 (7) The Department of State, in collaboration with the

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175 Agency for State Technology, shall adopt rules establishing
 176 standards for tamper-evident technologies that will indicate any
 177 alteration or change to an electronic record after completion of
 178 an electronic notarial act. All electronic notarizations
 179 performed on or after January 1, 2020, must comply with the
 180 adopted standards.

181 Section 4. Subsection (1), paragraph (a) of subsection (2),
 182 subsections (4) and (5), paragraph (a) of subsection (12), and
 183 subsections (13) and (14) of section 117.05, Florida Statutes,
 184 are amended, and paragraph (c) is added to subsection (12) of
 185 that section, to read:

186 117.05 Use of notary commission; unlawful use; notary fee;
 187 seal; duties; employer liability; name change; advertising;
 188 photocopies; penalties.—

189 (1) ~~A~~ ~~no~~ person may not ~~shall~~ obtain or use a notary public
 190 commission in other than his or her legal name, and it is
 191 unlawful for a notary public to notarize his or her own
 192 signature. Any person applying for a notary public commission
 193 must submit proof of identity to the Department of State ~~if so~~
 194 ~~requested~~. Any person who violates ~~the provisions of this~~
 195 subsection commits is guilty of a felony of the third degree,
 196 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

197 (2) (a) The fee of a notary public may not exceed \$10 for
 198 any one notarial act, except as provided in s. 117.045 or s.
 199 117.275.

200 (4) When notarizing a signature, a notary public shall
 201 complete a jurat or notarial certificate in substantially the
 202 same form as those found in subsection (13). The jurat or
 203 certificate of acknowledgment shall contain the following

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204 elements:

205 (a) The venue stating the location of the notary public at
 206 the time of the notarization in the format, "State of Florida,
 207 County of"

208 (b) The type of notarial act performed, an oath or an
 209 acknowledgment, evidenced by the words "sworn" or
 210 "acknowledged."

211 (c) ~~Whether That~~ the signer personally appeared before the
 212 notary public at the time of the notarization by physical
 213 presence or by means of audio-video communication technology as
 214 authorized under part II of this chapter.

215 (d) The exact date of the notarial act.

216 (e) The name of the person whose signature is being
 217 notarized. It is presumed, absent such specific notation by the
 218 notary public, that notarization is to all signatures.

219 (f) The specific type of identification the notary public
 220 is relying upon in identifying the signer, either based on
 221 personal knowledge or satisfactory evidence specified in
 222 subsection (5).

223 (g) The notary public's ~~notary's~~ official signature.

224 (h) The notary public's ~~notary's~~ name, which must be typed,
 225 printed, or stamped below the signature.

226 (i) The notary public's ~~notary's~~ official seal affixed
 227 below or to either side of the notary public's ~~notary's~~
 228 signature.

229 (5) A notary public may not notarize a signature on a
 230 document unless he or she personally knows, or has satisfactory
 231 evidence, that the person whose signature is to be notarized is
 232 the individual who is described in and who is executing the

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233 instrument. A notary public shall certify in the certificate of
 234 acknowledgment or jurat the type of identification, either based
 235 on personal knowledge or other form of identification, upon
 236 which the notary public is relying. In the case of an online
 237 notarization, the online notary public shall comply with the
 238 requirements set forth in part II of this chapter.

239 (a) For purposes of this subsection, the term "personally
 240 knows" means having an acquaintance, derived from association
 241 with the individual, which establishes the individual's identity
 242 with at least a reasonable certainty.

243 (b) For the purposes of this subsection, the term
 244 "satisfactory evidence" means the absence of any information,
 245 evidence, or other circumstances which would lead a reasonable
 246 person to believe that the person whose signature is to be
 247 notarized is not the person he or she claims to be and any one
 248 of the following:

249 1. The sworn written statement of one credible witness
 250 personally known to the notary public or the sworn written
 251 statement of two credible witnesses whose identities are proven
 252 to the notary public upon the presentation of satisfactory
 253 evidence that each of the following is true:

254 a. That the person whose signature is to be notarized is
 255 the person named in the document;

256 b. That the person whose signature is to be notarized is
 257 personally known to the witnesses;

258 c. That it is the reasonable belief of the witnesses that
 259 the circumstances of the person whose signature is to be
 260 notarized are such that it would be very difficult or impossible
 261 for that person to obtain another acceptable form of

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262 identification;

263 d. That it is the reasonable belief of the witnesses that
 264 the person whose signature is to be notarized does not possess
 265 any of the identification documents specified in subparagraph
 266 2.; and

267 e. That the witnesses do not have a financial interest in
 268 nor are parties to the underlying transaction; or

269 2. Reasonable reliance on the presentation to the notary
 270 public of any one of the following forms of identification, if
 271 the document is current or has been issued within the past 5
 272 years and bears a serial or other identifying number:

273 a. A Florida identification card or driver license issued
 274 by the public agency authorized to issue driver licenses;

275 b. A passport issued by the Department of State of the
 276 United States;

277 c. A passport issued by a foreign government if the
 278 document is stamped by the United States Bureau of Citizenship
 279 and Immigration Services;

280 d. A driver license or an identification card issued by a
 281 public agency authorized to issue driver licenses in a state
 282 other than Florida or in, a territory of the United States, or
 283 Canada or Mexico;

284 e. An identification card issued by any branch of the armed
 285 forces of the United States;

286 f. A veteran health identification card issued by the
 287 United States Department of Veterans Affairs;

288 g. An inmate identification card issued on or after January
 289 1, 1991, by the Florida Department of Corrections for an inmate
 290 who is in the custody of the department;

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291 h. An inmate identification card issued by the United
292 States Department of Justice, Bureau of Prisons, for an inmate
293 who is in the custody of the department;

294 i. A sworn, written statement from a sworn law enforcement
295 officer that the forms of identification for an inmate in an
296 institution of confinement were confiscated upon confinement and
297 that the person named in the document is the person whose
298 signature is to be notarized; or

299 j. An identification card issued by the United States
300 Bureau of Citizenship and Immigration Services.

301 (12) (a) A notary public may supervise the making of a copy
302 of a tangible or an electronic record or the printing of an
303 electronic record, photocopy of an original document and attest
304 to the trueness of the copy or of the printout, provided the
305 document is neither a vital record in this state, another state,
306 a territory of the United States, or another country, nor a
307 public record, if a copy can be made by the custodian of the
308 public record.

309 (c) A notary public must use a certificate in substantially
310 the following form in notarizing a copy of a tangible or an
311 electronic record or a printout of an electronic record:

312
313 STATE OF FLORIDA
314 COUNTY OF

315
316 On this day of, ..(year)..., I attest that the
317 preceding or attached document is a true, exact, complete, and
318 unaltered ...(copy of a tangible or an electronic record
319 presented to me by the document's custodian)... or a

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320 ...(printout made by me from such record).... If a printout, I
321 further attest that at the time of printing, no security
322 features, if any, present on the electronic record, indicated
323 that the record had been altered since execution.

324
325 ...(Signature of Notary Public - State of Florida)...
326 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
327

328 (13) The following notarial certificates are sufficient for
329 the purposes indicated, if completed with the information
330 required by this chapter. The specification of forms under this
331 subsection does not preclude the use of other forms.

332 (a) For an oath or affirmation:

333
334 STATE OF FLORIDA
335 COUNTY OF

336
337 Sworn to (or affirmed) and subscribed before me by means of
338 [] physical presence or [] online notarization, this day of
339, ..(year)..., by ... (name of person making
340 statement)...

341
342 ...(Signature of Notary Public - State of Florida)...
343 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

344 Personally Known OR Produced Identification
345

346
347 Type of Identification Produced.....
348

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349 (b) For an acknowledgment in an individual capacity:

350
351 STATE OF FLORIDA
352 COUNTY OF

353
354 The foregoing instrument was acknowledged before me by means of
355 [] physical presence or [] online notarization, this day of
356, ... (year) ..., by ... (name of person acknowledging) ...

357
358 ... (Signature of Notary Public - State of Florida) ...
359 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
360 Personally Known OR Produced Identification
361
362 Type of Identification Produced.....

363
364 (c) For an acknowledgment in a representative capacity:

365
366 STATE OF FLORIDA
367 COUNTY OF

368
369 The foregoing instrument was acknowledged before me by means of
370 [] physical presence or [] online notarization, this day of
371, ... (year) ..., by ... (name of person) ... as ... (type of
372 authority, . . . e.g. officer, trustee, attorney in fact) ... for
373 ... (name of party on behalf of whom instrument was executed) ...

374
375 ... (Signature of Notary Public - State of Florida) ...
376 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
377 Personally Known OR Produced Identification

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378

379 Type of Identification Produced.....

380
381 (14) A notary public must make reasonable accommodations to
382 provide notarial services to persons with disabilities.

383 (a) A notary public may notarize the signature of a person
384 who is blind after the notary public has read the entire
385 instrument to that person.

386 (b) A notary public may notarize the signature of a person
387 who signs with a mark if:

388 1. The document signing is witnessed by two disinterested
389 persons;

390 2. The notary public prints the person's first name at the
391 beginning of the designated signature line and the person's last
392 name at the end of the designated signature line; and

393 3. The notary public prints the words "his (or her) mark"
394 below the person's signature mark.

395 (c) The following notarial certificates are sufficient for
396 the purpose of notarizing for a person who signs with a mark:

397 1. For an oath or affirmation:
398
399 ... (First Name) ... (Last Name) ...
400 ... His (or Her) Mark ...

401
402 STATE OF FLORIDA
403 COUNTY OF

404
405 Sworn to and subscribed before me by means of [] physical
406 presence or [] online notarization, this day of,

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407 ... (year) ..., by ... (name of person making statement) ..., who
 408 signed with a mark in the presence of these witnesses:

409

410 ... (Signature of Notary Public - State of Florida) ...
 411 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
 412 Personally Known OR Produced Identification
 413

414 Type of Identification Produced.....

415

416 2. For an acknowledgment in an individual capacity:

417

418 ... (First Name) ... (Last Name) ...
 419 ... His (or Her) Mark ...

420

421 STATE OF FLORIDA
 422 COUNTY OF

423

424 The foregoing instrument was acknowledged before me by means of
 425 [] physical presence or [] online notarization, this ... day of
 426, ... (year) ..., by ... (name of person acknowledging) ...,
 427 who signed with a mark in the presence of these witnesses:

428

429 ... (Signature of Notary Public - State of Florida) ...
 430 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
 431 Personally Known OR Produced Identification
 432

433 Type of Identification Produced.....

434

435 (d) A notary public may sign the name of a person whose

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436 signature is to be notarized when that person is physically
 437 unable to sign or make a signature mark on a document if:

438 1. The person with a disability directs the notary public
 439 to sign in his or her presence by verbal, written, or other
 440 means;

441 2. The document signing is witnessed by two disinterested
 442 persons; and

443 3. The notary public writes below the signature the
 444 following statement: "Signature affixed by notary, pursuant to
 445 s. 117.05(14), Florida Statutes," and states the circumstances
 446 and the means by which the notary public was directed to sign of
 447 the signing in the notarial certificate.

448

449 The notary public must maintain the proof of direction and
 450 authorization to sign on behalf of the person with a disability
 451 for at least 10 years after the date of the notarial act.

452 (e) The following notarial certificates are sufficient for
 453 the purpose of notarizing for a person with a disability who
 454 directs the notary public to sign his or her name:

455 1. For an oath or affirmation:

456

457 STATE OF FLORIDA
 458 COUNTY OF

459

460 Sworn to (or affirmed) before me by means of [] physical
 461 presence or [] online notarization, this ... day of,
 462 ... (year) ..., by ... (name of person making statement) ..., and
 463 subscribed by ... (name of notary) ... at the direction of ~~and in~~
 464 ~~the presence of~~ ... (name of person making statement) ... by

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465 ... (written, verbal, or other means)..., and in the presence of
 466 these witnesses:

467

468 ... (Signature of Notary Public - State of Florida) ...
 469 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
 470 Personally Known OR Produced Identification
 471
 472 Type of Identification Produced.....

473

474 2. For an acknowledgment in an individual capacity:

475

476 STATE OF FLORIDA
 477 COUNTY OF

478

479 The foregoing instrument was acknowledged before me by means of
 480 [] physical presence or [] online notarization, this ... day of
 481, ... (year) ..., by ... (name of person acknowledging) ...
 482 and subscribed by ... (name of notary) ... at the direction of ~~and~~
 483 ~~in the presence of~~ ... (name of person acknowledging) ..., and in
 484 the presence of these witnesses:

485

486 ... (Signature of Notary Public - State of Florida) ...
 487 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
 488 Personally Known OR Produced Identification
 489
 490 Type of Identification Produced.....

491 Section 5. Subsections (2) and (9) of section 117.107,
 492 Florida Statutes, are amended to read:
 493 117.107 Prohibited acts.-

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494 (2) A notary public may not sign notarial certificates
 495 using a facsimile signature stamp unless the notary public has a
 496 physical disability that limits or prohibits his or her ability
 497 to make a written signature and unless the notary public has
 498 first submitted written notice to the Department of State with
 499 an exemplar of the facsimile signature stamp. This subsection
 500 does not apply to or prohibit the use of an electronic signature
 501 and seal by a notary public who is registered as an online
 502 notary public to perform an electronic or online notarization in
 503 accordance with this chapter.

504 (9) A notary public may not notarize a signature on a
 505 document if the person whose signature is being notarized does
 506 not appear before the notary public either by means of physical
 507 presence or by means of audio-video communication technology as
 508 authorized under part II of this chapter is not in the presence
 509 of the notary public at the time the signature is notarized. Any
 510 notary public who violates this subsection commits is guilty of
 511 a civil infraction, punishable by penalty not exceeding \$5,000,
 512 and such violation constitutes malfeasance and misfeasance in
 513 the conduct of official duties. It is no defense to the civil
 514 infraction specified in this subsection that the notary public
 515 acted without intent to defraud. A notary public who violates
 516 this subsection with the intent to defraud commits a violation
 517 of is guilty of violating s. 117.105.

518 Section 6. Section 117.201, Florida Statutes, is created to
 519 read:
 520 117.201 Definitions.-As used in this part, the term:
 521 (1) "Appear before," "before," or "in the presence of"
 522 means:

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523 (a) In the same physical location as another person and
 524 close enough to see, hear, communicate with, and exchange
 525 credentials with that person; or
 526 (b) In a different physical location from another person,
 527 but able to see, hear, and communicate with the person by means
 528 of audio-video communication technology.
 529 (2) "Audio-video communication technology" means technology
 530 in compliance with applicable law which enables real-time, two-
 531 way communication using electronic means by which participants
 532 are able to see, hear, and communicate with one another.
 533 (3) "Credential analysis" means a process or service, in
 534 compliance with applicable law, in which a third party affirms
 535 the validity of a government-issued identification credential
 536 and data thereon through review of public or proprietary data
 537 sources.
 538 (4) "Electronic," "electronic record," or "electronic
 539 signature" has the same meaning as provided in s. 668.50.
 540 (5) "Errors and omissions insurance" means a type of
 541 insurance that provides coverage for potential errors or
 542 omissions in or relating to the notarial act and is maintained,
 543 as applicable, by the online notary public or his or her
 544 employer, or a remote online notarization service provider.
 545 (6) "Government-issued identification credential" means any
 546 approved credential for verifying identity under s.
 547 117.05(5)(b)2.
 548 (7) "Identity proofing" means a process or service in
 549 compliance with applicable law in which a third party affirms
 550 the identity of an individual through use of public or
 551 proprietary data sources, which may include by means of

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552 knowledge-based authentication or biometric verification.
 553 (8) "Knowledge-based authentication" means a form of
 554 identity proofing based on a set of questions that pertain to an
 555 individual and are formulated from public or proprietary data
 556 sources.
 557 (9) "Online notarization" means the performance of a
 558 notarial act using electronic means by which the principal
 559 appears before the notary public by means of audio-video
 560 communication technology.
 561 (10) "Online notary public" means a notary public
 562 commissioned under part I of this chapter, a civil-law notary
 563 appointed under chapter 118, or a commissioner of deeds
 564 appointed under part IV of chapter 721, who has registered with
 565 the Department of State to perform online notarizations under
 566 this part.
 567 (11) "Physical presence" means being in the same physical
 568 location as another person and close enough to see, hear,
 569 communicate with, and exchange credentials with that person.
 570 (12) "Principal" means an individual whose electronic
 571 signature is acknowledged, witnessed, or attested to in an
 572 online notarization or who takes an oath or affirmation from the
 573 online notary public.
 574 (13) "Record" means information that is inscribed on a
 575 tangible medium or that is stored in an electronic or other
 576 medium and is retrievable in perceivable form, including public
 577 records as defined in s. 119.011.
 578 (14) "Remote online notarization service provider" or "RON
 579 service provider" means a person who provides audio-video
 580 communication technology and related processes, services,

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581 software, data storage, or other services to online notaries
 582 public for the purpose of directly facilitating their
 583 performance of online notarizations in compliance with this
 584 chapter and any rules adopted by the Department of State
 585 pursuant to s. 117.295.

586 (15) "Remote presentation" means transmission of an image
 587 of a government-issued identification credential that is of
 588 sufficient quality to enable the online notary public to
 589 identify the individual seeking the notary's services and to
 590 perform credential analysis through audio-video communication
 591 technology.

592 Section 7. Section 117.209, Florida Statutes, is created to
 593 read:

594 117.209 Authority to perform online notarizations.—

595 (1) An online notary public may perform any of the
 596 functions authorized under part I of this chapter as an online
 597 notarization by complying with the requirements of this part and
 598 any rules adopted by the Department of State pursuant to s.
 599 117.295, excluding solemnizing the rites of matrimony.

600 (2) If a notarial act requires a principal to appear before
 601 or in the presence of the online notary public, the principal
 602 may appear before the online notary public by means of audio-
 603 video communication technology that meets the requirements of
 604 this part and any rules adopted by the Department of State
 605 pursuant to s. 117.295.

606 (3) An online notary public physically located in this
 607 state may perform an online notarization as authorized under
 608 this part, regardless of whether the principal or any witnesses
 609 are physically located in this state at the time of the online

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610 notarization. A commissioner of deeds registered as an online
 611 notary public may perform an online notarization while
 612 physically located within or outside the state in accordance
 613 with the territorial limits of its jurisdiction and other
 614 limitations and requirements otherwise applicable to acts by
 615 commissioners of deeds.

616 (4) The validity of an online notarization performed by an
 617 online notary public registered in this state shall be
 618 determined by applicable laws of this state regardless of the
 619 physical location of the principal or any witnesses at the time
 620 of the notarial act.

621 Section 8. Section 117.215, Florida Statutes, is created to
 622 read:

623 117.215 Relation to other laws.—

624 (1) If a provision of law requires a notary public or other
 625 authorized official of this state to notarize a signature or a
 626 statement, to take an acknowledgement of an instrument, or to
 627 administer an oath or affirmation so that a document may be
 628 sworn, affirmed, made under oath, or subject to penalty of
 629 perjury, an online notarization performed in accordance with
 630 this part and any rules adopted hereunder satisfies such
 631 requirement.

632 (2) If a provision of law requires a signature or an act to
 633 be witnessed, compliance with the online electronic witnessing
 634 standards prescribed in s. 117.285 and any rules adopted
 635 thereunder satisfies that requirement.

636 Section 9. Section 117.225, Florida Statutes, is created to
 637 read:

638 117.225 Registration; qualifications.—A notary public, a

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639 civil-law notary appointed under chapter 118, or a commissioner
 640 of deeds appointed under part IV of chapter 721 may complete
 641 registration as an online notary public with the Department of
 642 State by:

643 (1) Holding a current commission as a notary public under
 644 part I of this chapter, an appointment as a civil-law notary
 645 under chapter 118, or an appointment as a commissioner of deeds
 646 under part IV of chapter 721, and submitting a copy of such
 647 commission or proof of such appointment with his or her
 648 registration.

649 (2) Certifying that the notary public, civil-law notary, or
 650 commissioner of deeds registering as an online notary public has
 651 completed a classroom or online course covering the duties,
 652 obligations, and technology requirements for serving as an
 653 online notary public.

654 (3) Paying a notary public registration fee as required by
 655 s. 113.01.

656 (4) Submitting a registration as an online notary public to
 657 the Department of State, signed and sworn to by the registrant.

658 (5) Identifying the RON service provider whose audio-video
 659 communication technology and processes for credential analysis
 660 and identity proofing technologies the registrant intends to use
 661 for online notarizations, and confirming that such technology
 662 and processes satisfy the requirements of this chapter and any
 663 rules adopted by the Department of State pursuant to s. 117.295.

664 (6) Providing evidence satisfactory to the Department of
 665 State that the registrant has obtained a bond, payable to any
 666 individual harmed as a result of a breach of duty by the
 667 registrant acting in his or her official capacity as an online

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668 notary public, conditioned for the due discharge of the office,
 669 and on such terms as are specified by rule by the Department of
 670 State as reasonably necessary to protect the public. The bond
 671 shall be approved and filed with the Department of State and
 672 executed by a surety company duly authorized to transact
 673 business in this state. Compliance by an online notary public
 674 with this requirement satisfies the requirement of obtaining a
 675 bond under s. 117.01(7).

676 (7) Providing evidence satisfactory to the Department of
 677 State that the registrant acting in his or her capacity as an
 678 online notary public is covered by an errors and omissions
 679 insurance policy from an insurer authorized to transact business
 680 in this state, in the minimum amount of \$25,000 and on such
 681 terms as are specified by rule by the Department of State as
 682 reasonably necessary to protect the public.

683 Section 10. Section 117.235, Florida Statutes, is created
 684 to read:

685 117.235 Performance of notarial acts.-

686 (1) An online notary public is subject to part I of this
 687 chapter to the same extent as a notary public appointed and
 688 commissioned only under that part, including the provisions of
 689 s. 117.021 relating to electronic notarizations.

690 (2) An online notary public may perform notarial acts as
 691 provided by part I of this chapter in addition to performing
 692 online notarizations as authorized and pursuant to the
 693 provisions of this part.

694 Section 11. Section 117.245, Florida Statutes, is created
 695 to read:

696 117.245 Electronic journal of online notarizations.-

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697 (1) An online notary public shall keep one or more secure
 698 electronic journals of online notarial acts performed by the
 699 online notary public. For each online notarization, the
 700 electronic journal entry must contain all of the following:
 701 (a) The date and time of the notarization.
 702 (b) The type of notarial act.
 703 (c) The type, the title, or a description of the electronic
 704 record or proceeding.
 705 (d) The name and address of each principal involved in the
 706 transaction or proceeding.
 707 (e) Evidence of the identity of each principal involved in
 708 the transaction or proceeding in any of the following forms:
 709 1. A statement that the person is personally known to the
 710 online notary public.
 711 2. A notation of the type of government-issued
 712 identification credential provided to the online notary public.
 713 (f) An indication that the principal satisfactorily passed
 714 the identity proofing.
 715 (g) An indication that the government-issued identification
 716 credential satisfied the credential analysis.
 717 (h) The fee, if any, charged for the notarization.
 718 (2) The online notary public shall retain a copy of the
 719 recording of the audio-video communication in which:
 720 (a) The principal and any witnesses appeared before the
 721 notary public.
 722 (b) The identities of the principal and each witness were
 723 confirmed.
 724 (c) Electronic records were signed by the principal and any
 725 witnesses.

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726 (d) The notarial act was performed.
 727 (3) The online notary public shall take reasonable steps
 728 to:
 729 (a) Ensure the integrity, security, and authenticity of
 730 online notarizations.
 731 (b) Maintain a backup record of the electronic journal
 732 required by subsection (1).
 733 (c) Protect the electronic journal, the backup record, and
 734 any other records received by the online notary public from
 735 unauthorized access or use.
 736 (4) The electronic journal required under subsection (1)
 737 and the recordings of audio-video communications required under
 738 subsection (2) must be maintained for at least 10 years after
 739 the date of the notarial act. However, any records relating to
 740 an online notarization session that involves the signing of an
 741 electronic will must be maintained in accordance with s.
 742 732.524. The Department of State maintains jurisdiction over the
 743 electronic journal and audio-video communication recordings to
 744 investigate notarial misconduct for a period of 10 years after
 745 the date of the notarial act. The online notary public, a
 746 guardian of an incapacitated online notary public, or the
 747 personal representative of a deceased online notary public may,
 748 by contract with a secure repository in accordance with any
 749 rules established under this chapter, delegate to the repository
 750 the online notary public's duty to retain the electronic journal
 751 and the required recordings of audio-video communications,
 752 provided that the Department of State is notified of such
 753 delegation of retention duties to the repository within 30 days
 754 thereafter, including the address and contact information for

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755 the repository.

756 (5) An omitted or incomplete entry in the electronic
 757 journal does not impair the validity of the notarial act or the
 758 electronic record that was notarized, but such an entry may be
 759 introduced as evidence to establish violations of this chapter;
 760 as evidence of possible fraud, forgery, impersonation, duress,
 761 incapacity, undue influence, minority, illegality, or
 762 unconscionability; or for other evidentiary purposes.

763 Section 12. Section 117.255, Florida Statutes, is created
 764 to read:

765 117.255 Use of electronic journal, signature, and seal.—

766 (1) An online notary public shall:

767 (a) Take reasonable steps to ensure that any registered
 768 device used to create an electronic signature is current and has
 769 not been revoked or terminated by the issuing or registering
 770 authority of the device.

771 (b) Keep the electronic journal, electronic signature, and
 772 electronic seal secure and under his or her sole control, which
 773 includes access protection using passwords or codes under
 774 control of the online notary public. The online notary public
 775 may not allow another person to use the online notary public's
 776 electronic journal, electronic signature, or electronic seal,
 777 other than a RON service provider or other authorized person
 778 providing services to an online notary public to facilitate
 779 performance of online notarizations.

780 (c) Attach or logically associate the electronic signature
 781 and seal to the electronic notarial certificate of an electronic
 782 record in a manner that is capable of independent verification
 783 using tamper-evident technology that renders any subsequent

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784 change or modification to the electronic record evident.

785 (d) Notify an appropriate law enforcement agency and the
 786 Department of State of any unauthorized use of or compromise to
 787 the security of the electronic journal, official electronic
 788 signature, or electronic seal within 7 days after discovery of
 789 such unauthorized use or compromise to the security.

790 (e) Make electronic copies, upon request, of the pertinent
 791 entries in the electronic journal and provide access to the
 792 related audio-video communication recordings to the following
 793 persons:

794 1. The parties to an electronic record notarized by the
 795 online notary public;

796 2. The title agent, settlement agent, or title insurer who
 797 insured the electronic record or engaged the online notary
 798 public with regard to a real estate transaction;

799 3. The online notary public's RON service provider whose
 800 services were used by the online notary public to notarize the
 801 electronic record;

802 4. Any person who is asked to accept a power of attorney
 803 that was notarized by the online notary public; and

804 5. The Department of State pursuant to a notary misconduct
 805 investigation.

806 (2) The online notary public may charge a fee not to exceed
 807 \$20 per transaction record for making and delivering electronic
 808 copies of a given series of related electronic records, except
 809 if requested by:

810 (a) A party to the transaction record;

811 (b) In a real estate transaction, the title agent, the
 812 settlement agent, or title insurer who insured the transaction

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813 record or engaged the online notary public with regard to such
814 transaction; or

815 (c) The Department of State pursuant to an investigation
816 relating to the official misconduct of an online notary public.

817
818 If the online notary public does charge a fee, the online notary
819 public must disclose the amount of such fee to the requester
820 before making the electronic copies.

821 Section 13. Section 117.265, Florida Statutes, is created
822 to read:

823 117.265 Online notarization procedures.-

824 (1) An online notary public physically located in this
825 state may perform an online notarization that meets the
826 requirements of this part regardless of whether the principal or
827 any witnesses are physically located in this state at the time
828 of the online notarization. A commissioner of deeds registered
829 as an online notary public may perform an online notarization
830 while physically located within or outside of this state in
831 accordance with the territorial limits of its jurisdiction and
832 other limitations and requirements otherwise applicable to acts
833 by commissioners of deeds. An online notarial act performed in
834 accordance with this chapter is deemed to have been performed
835 within this state and is governed by the applicable laws of this
836 state.

837 (2) In performing an online notarization, an online notary
838 public, at the time the signature is taken, shall confirm the
839 identity of a principal and any witness appearing online by
840 using audio-video communication technology and processes that
841 meet the requirements of this part and of any rules adopted

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842 hereunder and record the two-way audio-video conference session
843 between the notary public and the principal and any witnesses. A
844 principal may not act in the capacity of a witness for his or
845 her own signature in an online notarization.

846 (3) In performing an online notarization of a principal not
847 located within this state, an online notary public must confirm
848 that the principal desires for the notarial act to be performed
849 by a Florida notary public and under the general law of this
850 state.

851 (4) An online notary public shall confirm the identity of
852 the principal or any witness by:

853 (a) Personal knowledge of each such individual; or

854 (b) All of the following, as such criteria may be modified
855 or supplemented in rules adopted by the Department of State
856 pursuant to s. 117.295:

857 1. Remote presentation of a government-issued
858 identification credential by each individual.

859 2. Credential analysis of each government-issued
860 identification credential.

861 3. Identity proofing of each individual in the form of
862 knowledge-based authentication or another method of identity
863 proofing that conforms to the standards of this chapter.

864
865 If the online notary public is unable to confirm the identity of
866 the principal or any witness as provided in paragraph (b), or if
867 the databases consulted for identity proofing do not contain
868 sufficient information to permit authentication, the online
869 notary public may not perform the online notarization.

870 (5) An online notary public may change her or his RON

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871 service provider or providers at any time, but shall notify the
 872 Department of State of such change within 30 days thereafter.

873 (6) The online notary public, or his or her RON service
 874 provider, shall take reasonable steps to ensure that the audio-
 875 video communication technology used in an online notarization is
 876 secure from unauthorized interception.

877 (7) The electronic notarial certificate for an online
 878 notarization must include a notation that the notarization is an
 879 online notarization which may be satisfied by placing the term
 880 "online notary" in or adjacent to the online notary public's
 881 seal.

882 (8) Except where otherwise expressly provided in this part,
 883 part I of this chapter applies to an online notarization and an
 884 online notary public.

885 (9) Any failure to comply with the online notarization
 886 procedures set forth in this section does not impair the
 887 validity of the notarial act or the electronic record that was
 888 notarized, but may be introduced as evidence to establish
 889 violations of this chapter; as an indication of possible fraud,
 890 forgery, impersonation, duress, incapacity, undue influence,
 891 minority, illegality, or unconscionability; or for other
 892 evidentiary purposes. This subsection may not be construed to
 893 alter the duty of an online notary public to comply with this
 894 chapter and any rules adopted hereunder.

895 Section 14. Section 117.275, Florida Statutes, is created
 896 to read:

897 117.275 Fees for online notarization.—An online notary
 898 public or the employer of such online notary public may charge a
 899 fee, not to exceed \$25, for performing an online notarization

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900 under this part. Fees for services other than notarial acts are
 901 not governed by this section.

902 Section 15. Section 117.285, Florida Statutes, is created
 903 to read:

904 117.285 Supervising the witnessing of electronic records.—
 905 An online notary public may supervise the witnessing of
 906 electronic records by the same audio-video communication
 907 technology used for online notarization, as follows:

908 (1) The identity of the witness must be verified in the
 909 same manner as the identity of the principal.

910 (2) The witness may be physically present with the
 911 principal or remote from the principal, provided that the
 912 witness and principal are using audio-video communication
 913 technology.

914 (3) The act of witnessing an electronic signature means
 915 that the witness is either in the physical presence of the
 916 principal or present through audio-video communication
 917 technology at the time the principal affixes the electronic
 918 signature and hears the principal make a statement to the effect
 919 that the principal has signed the electronic record.

920 Section 16. Effective upon this act becoming a law, section
 921 117.295, Florida Statutes, is created to read:

922 117.295 Standards for electronic and online notarization;
 923 rulemaking authority.—

924 (1) For purposes of this part, the Department of State may
 925 adopt rules necessary to implement the requirements of this
 926 chapter and to set standards for online notarization which
 927 include, but are not limited to:

928 (a) Improvements in technology and methods of assuring the

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929 identity of principals and the security of an electronic record,
 930 including tamper-evident technologies in compliance with the
 931 standards adopted pursuant to s. 117.021, which apply to online
 932 notarizations.

933 (b) Education requirements for online notaries public and
 934 the required terms of bonds and errors and omissions insurance,
 935 but not including the amounts of such policies.

936 (c) Identity proofing, credential analysis, unauthorized
 937 interception, remote presentation, audio-video communication
 938 technology, and retention of electronic journals and copies of
 939 audio-video communications recordings in a secure repository.

940 (2) By January 1, 2020, the Department of State shall adopt
 941 forms, processes, and interim or emergency rules necessary to
 942 accept applications from and register online notaries public
 943 pursuant to s. 117.225.

944 (3) Until such time as the Department of State adopts rules
 945 setting standards that are equally or more protective, an online
 946 notarization performed by an online notary public of this state
 947 or its RON service provider must:

948 (a) Use identity proofing by means of knowledge-based
 949 authentication that must have, at a minimum, the following
 950 security characteristics:

951 1. The principal must be presented with five or more
 952 questions with a minimum of five possible answer choices per
 953 question.

954 2. Each question must be drawn from a third-party provider
 955 of public and proprietary data sources and be identifiable to
 956 the principal's social security number or other identification
 957 information, or the principal's identity and historical events

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958 records.

959 3. Responses to all questions must be made within a 2-
 960 minute time constraint.

961 4. The principal must answer a minimum of 80 percent of the
 962 questions correctly.

963 5. The principal may be offered one additional attempt in
 964 the event of a failed attempt.

965 6. During the second attempt, the principal may not be
 966 presented with more than three questions from the prior attempt.

967 (b) Use credential analysis that uses one or more
 968 commercially available automated software or hardware processes
 969 that are consistent with sound commercial practices; that aid
 970 the notary public in verifying the authenticity of the
 971 credential by analyzing the integrity of visual, physical, or
 972 cryptographic security features to indicate that the credential
 973 is not fraudulent or inappropriately modified; and that use
 974 information held or published by the issuing source or
 975 authoritative source, as available, to confirm the validity of
 976 credential details. The output of the credential analysis
 977 process must be provided to the online notary public performing
 978 the notarial act.

979 (c) Use audio-video communication technology in completing
 980 online notarizations which meets the following requirements:

981 1. The signal transmission must be reasonably secure from
 982 interception, access, or viewing by anyone other than the
 983 participants communicating.

984 2. The technology must provide sufficient audio clarity and
 985 video resolution to enable the notary public to communicate with
 986 the principal and to confirm the identity of the principal using

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987 identification methods described in s. 117.265.

988 (4) In addition to any coverage it elects to provide for
 989 individual online notaries public, a RON service provider shall
 990 maintain errors and omissions insurance coverage in a total
 991 amount of at least \$250,000 in the annual aggregate with respect
 992 to potential errors or omissions in or relating to the
 993 technology or processes provided by the RON service provider. An
 994 online notary public is not responsible for the security of the
 995 systems used by the principal or others to access the online
 996 notarization session.

997 (5) A 2-hour in-person or online course addressing the
 998 duties, obligations, and technology requirements for serving as
 999 an online notary public offered by the Florida Land Title
 1000 Association or the Real Property, Probate and Trust Law Section
 1001 of The Florida Bar satisfies the education requirements of s.
 1002 117.225(2).

1003 (6) The rulemaking required under this section is exempt
 1004 from s. 120.541(3).

1005 Section 17. Section 117.305, Florida Statutes, is created
 1006 to read:

1007 117.305 Relation to federal law.—This part supersedes the
 1008 Electronic Signatures in Global and National Commerce Act as
 1009 authorized under 15 U.S.C. s. 7001 et seq., but does not modify,
 1010 limit, or supersede s. 101(c) of that act or 15 U.S.C. s.
 1011 7001(c) or authorize the electronic delivery of the notices
 1012 described in 15 U.S.C. s. 7003(b).

1013 Section 18. Present paragraph (h) of subsection (3) of
 1014 section 28.222, Florida Statutes, is redesignated as paragraph
 1015 (i), and a new paragraph (h) is added to that subsection, to

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1016 read:

1017 28.222 Clerk to be county recorder.—

1018 (3) The clerk of the circuit court shall record the
 1019 following kinds of instruments presented to him or her for
 1020 recording, upon payment of the service charges prescribed by
 1021 law:

1022 (h) Copies of any instruments originally created and
 1023 executed using an electronic signature, as defined in s. 695.27,
 1024 and certified to be a true and correct paper printout by a
 1025 notary public in accordance with chapter 117, if the county
 1026 recorder is not prepared to accept electronic documents for
 1027 recording electronically.

1028 Section 19. Subsection (25) is added to section 90.803,
 1029 Florida Statutes, to read:

1030 90.803 Hearsay exceptions; availability of declarant
 1031 immaterial.—The provision of s. 90.802 to the contrary
 1032 notwithstanding, the following are not inadmissible as evidence,
 1033 even though the declarant is available as a witness:

1034 (25) ELECTRONIC RECORDS OF QUALIFIED CUSTODIANS.—The
 1035 electronic records, including, but not limited to, electronic
 1036 wills and the audio-video recordings of the execution of such
 1037 wills, which are created and stored by a qualified custodian in
 1038 the course of the qualified custodian's regularly conducted
 1039 business activity as certified or declared by the qualified
 1040 custodian in accordance with s. 90.902(11).

1041 Section 20. Subsections (1) and (2) of section 92.50,
 1042 Florida Statutes, are amended to read:

1043 92.50 Oaths, affidavits, and acknowledgments; who may take
 1044 or administer; requirements.—

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1045 (1) IN THIS STATE.—Oaths, affidavits, and acknowledgments
 1046 required or authorized under the laws of this state, ~~except~~
 1047 oaths to jurors and witnesses in court and such other oaths,
 1048 affidavits and acknowledgments as are required by law to be
 1049 taken or administered by or before particular officers, ~~+~~ may be
 1050 taken or administered by or before any judge, clerk, or deputy
 1051 clerk of any court of record within this state, including
 1052 federal courts, or by or before any United States commissioner
 1053 or any notary public within this state. The jurat, or
 1054 certificate of proof or acknowledgment, shall be authenticated
 1055 by the signature and official seal of such officer or person
 1056 taking or administering the same; however, when taken or
 1057 administered by or before any judge, clerk, or deputy clerk of a
 1058 court of record, the seal of such court may be affixed as the
 1059 seal of such officer or person.

1060 (2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE
 1061 UNITED STATES.—Oaths, affidavits, and acknowledgments required
 1062 or authorized under the laws of this state, may be taken or
 1063 administered in any other state, territory, or district of the
 1064 United States, by or before any judge, clerk or deputy clerk of
 1065 any court of record, within such state, territory, or district,
 1066 having a seal, or by or before any notary public or justice of
 1067 the peace, having a seal, in such state, territory, or district;
 1068 provided, however, such officer or person is authorized under
 1069 the laws of such state, territory, or district to take or
 1070 administer oaths, affidavits and acknowledgments. The jurat, or
 1071 certificate of proof or acknowledgment, shall be authenticated
 1072 by the signature and official seal of such officer or person
 1073 taking or administering the same; provided, however, when taken

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1074 or administered by or before any judge, clerk, or deputy clerk
 1075 of a court of record, the seal of such court may be affixed as
 1076 the seal of such officer or person.

1077 Section 21. Subsection (1) of section 95.231, Florida
 1078 Statutes, is amended to read:

1079 95.231 Limitations where deed or will on record.—

1080 (1) Five years after the recording of an instrument
 1081 required to be executed in accordance with s. 689.01; 5 years
 1082 after the recording of a power of attorney accompanying and used
 1083 for an instrument required to be executed in accordance with s.
 1084 689.01; or 5 years after the probate of a will purporting to
 1085 convey real property, from which it appears that the person
 1086 owning the property attempted to convey, affect, or devise it,
 1087 the instrument, power of attorney, or will shall be held to have
 1088 its purported effect to convey, affect, or devise, the title to
 1089 the real property of the person signing the instrument, as if
 1090 there had been no lack of seal or seals, witness or witnesses,
 1091 defect in, failure of, or absence of acknowledgment or
 1092 relinquishment of dower, in the absence of fraud, adverse
 1093 possession, or pending litigation. The instrument is admissible
 1094 in evidence. A power of attorney validated under this subsection
 1095 shall be valid only for the purpose of effectuating the
 1096 instrument with which it was recorded.

1097 Section 22. Section 689.01, Florida Statutes, is amended to
 1098 read:

1099 689.01 How real estate conveyed.—

1100 (1) No estate or interest of freehold, or for a term of
 1101 more than 1 year, or any uncertain interest of, in or out of any
 1102 messuages, lands, tenements or hereditaments shall be created,

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1103 made, granted, transferred or released in any other manner than
 1104 by instrument in writing, signed in the presence of two
 1105 subscribing witnesses by the party creating, making, granting,
 1106 conveying, transferring or releasing such estate, interest, or
 1107 term of more than 1 year, or by the party's lawfully authorized
 1108 agent, unless by will and testament, or other testamentary
 1109 appointment, duly made according to law; and no estate or
 1110 interest, either of freehold, or of term of more than 1 year, or
 1111 any uncertain interest of, in, to, or out of any messuages,
 1112 lands, tenements or hereditaments, shall be assigned or
 1113 surrendered unless it be by instrument signed in the presence of
 1114 two subscribing witnesses by the party so assigning or
 1115 surrendering, or by the party's lawfully authorized agent, or by
 1116 the act and operation of law. No seal shall be necessary to give
 1117 validity to any instrument executed in conformity with this
 1118 section. Corporations may execute any and all conveyances in
 1119 accordance with the provisions of this section or ss. 692.01 and
 1120 692.02.

1121 (2) For purposes of this chapter:

1122 (a) Any requirement that an instrument be signed in the
 1123 presence of two subscribing witnesses may be satisfied by the
 1124 witnesses being present and electronically signing the
 1125 instrument by means of audio-video communication technology, as
 1126 defined in s. 117.201.

1127 (b) The act of witnessing an electronic signature is
 1128 satisfied if a witness is present either in the physical
 1129 presence of the principal or present through audio-video
 1130 communication technology at the time the principal affixes his
 1131 or her electronic signature and hears the principal make a

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1132 statement acknowledging that the principal has signed the
 1133 electronic record.

1134 (3) All acts of witnessing heretofore made or taken
 1135 pursuant to subsection (2) are validated and, upon recording,
 1136 may not be denied to have provided constructive notice based on
 1137 any alleged failure to have strictly complied with this section,
 1138 as currently or previously in effect, or the laws governing
 1139 notarization of instruments, including online notarization. This
 1140 subsection does not preclude a challenge to the validity or
 1141 enforceability of an instrument or electronic record based upon
 1142 fraud, forgery, impersonation, duress, incapacity, undue
 1143 influence, minority, illegality, or unconscionability, or on any
 1144 other basis not related to the act of witnessing.

1145 Section 23. Section 694.08, Florida Statutes, is amended to
 1146 read:

1147 694.08 Certain instruments validated, notwithstanding lack
 1148 of seals or witnesses, or defect in acknowledgment,—ete.—

1149 (1) Whenever any power of attorney has been executed and
 1150 delivered, or any conveyance has been executed and delivered to
 1151 any grantee by the person owning the land therein described, or
 1152 conveying the same in an official or representative capacity,
 1153 and has, for a period of 7 years or more been spread upon the
 1154 records of the county wherein the land therein described has
 1155 been or was at the time situated, and one or more subsequent
 1156 conveyances of said land or parts thereof have been made,
 1157 executed, delivered and recorded by parties claiming under such
 1158 instrument or instruments, and such power of attorney or
 1159 conveyance, or the public record thereof, shows upon its face a
 1160 clear purpose and intent of the person executing the same to

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1161 authorize the conveyance of said land or to convey the said
 1162 land, the same shall be taken and held by all the courts of this
 1163 state, in the absence of any showing of fraud, adverse
 1164 possession, or pending litigation, to have authorized the
 1165 conveyance of, or to have conveyed, the fee simple title, or any
 1166 interest therein, of the person signing such instruments, or the
 1167 person in behalf of whom the same was conveyed by a person in an
 1168 official or representative capacity, to the land therein
 1169 described as effectively as if there had been no defect in,
 1170 failure of, or absence of the acknowledgment or the certificate
 1171 of acknowledgment, if acknowledged, or the relinquishment of
 1172 dower, and as if there had been no lack of the word "as"
 1173 preceding the title of the person conveying in an official or
 1174 representative capacity, of any seal or seals, or of any witness
 1175 or witnesses, and shall likewise be taken and held by all the
 1176 courts of this state to have been duly recorded so as to be
 1177 admissible in evidence;

1178 (2) Provided, however, that this section shall not apply to
 1179 any conveyance the validity of which shall be contested or have
 1180 been contested by suit commenced heretofore or within 1 year of
 1181 the effective date of this law.

1182 Section 24. Section 695.03, Florida Statutes, is amended to
 1183 read:

1184 695.03 Acknowledgment and proof; validation of certain
 1185 acknowledgments; legalization or authentication before foreign
 1186 officials.—To entitle any instrument concerning real property to
 1187 be recorded, the execution must be acknowledged by the party
 1188 executing it, proved by a subscribing witness to it, or
 1189 legalized or authenticated in one of the following forms by a

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1190 ~~civil-law notary or notary public who affixes her or his~~
 1191 ~~official seal, before the officers and in the form and manner~~
 1192 ~~following:~~

1193 (1) WITHIN THIS STATE.—An acknowledgment or a proof may be
 1194 taken or administered ~~made~~ within this state by or ~~may be made~~
 1195 before a judge, clerk, or deputy clerk of any court; a United
 1196 States commissioner or magistrate; or any a notary public or
 1197 civil-law notary of this state, and the certificate of
 1198 acknowledgment or proof must be under the seal of the court or
 1199 officer, as the case may be. ~~All affidavits and acknowledgments~~
 1200 ~~heretofore made or taken in this manner are hereby validated.~~

1201 (2) OUTSIDE WITHOUT THIS STATE BUT WITHIN THE UNITED
 1202 STATES.—An acknowledgment or a proof taken, administered, or
 1203 made outside ~~out~~ of this state but within the United States may
 1204 be taken, administered, or made by or before a civil-law notary
 1205 of this state or a commissioner of deeds appointed by the
 1206 Governor of this state; a judge or clerk of any court of the
 1207 United States or of any state, territory, or district; by or
 1208 before a United States commissioner or magistrate; or by or
 1209 before any a notary public, justice of the peace, master in
 1210 chancery, or registrar or recorder of deeds of any state,
 1211 territory, or district having a seal, and the certificate of
 1212 acknowledgment or proof must be under the seal of the court or
 1213 officer, as the case may be. If the acknowledgment or proof is
 1214 taken, administered, or made by or before a notary public who
 1215 does not affix a seal, it is sufficient for the notary public to
 1216 type, print, or write by hand on the instrument, "I am a Notary
 1217 Public of the State of ...(state)..., and my commission expires
 1218 on ...(date)...."

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1219 (3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN
 1220 COUNTRIES.~~An If the acknowledgment, an affidavit, an oath, a~~
 1221 legalization, an authentication, or a proof taken, administered,
 1222 or made outside the United States or is made in a foreign
 1223 country,~~it~~ may be taken, administered, or made by or before a
 1224 commissioner of deeds appointed by the Governor of this state to
 1225 act in such country; before a notary public of such foreign
 1226 country or a civil-law notary of this state or of such foreign
 1227 country who has an official seal; before an ambassador, envoy
 1228 extraordinary, minister plenipotentiary, minister, commissioner,
 1229 charge d'affaires, consul general, consul, vice consul, consular
 1230 agent, or other diplomatic or consular officer of the United
 1231 States appointed to reside in such country; or before a military
 1232 or naval officer authorized by 10 U.S.C. s. 1044a ~~the Laws or~~
 1233 ~~Articles of War of the United States~~ to perform the duties of
 1234 notary public, and the certificate of acknowledgment,
 1235 legalization, authentication, or proof must be under the seal of
 1236 the officer. A certificate legalizing or authenticating the
 1237 signature of a person executing an instrument concerning real
 1238 property and to which a civil-law notary or notary public of
 1239 that country has affixed her or his official seal is sufficient
 1240 as an acknowledgment. For the purposes of this section, the term
 1241 "civil-law notary" means a civil-law notary as defined in
 1242 chapter 118 or an official of a foreign country who has an
 1243 official seal and who is authorized to make legal or lawful the
 1244 execution of any document in that jurisdiction, in which
 1245 jurisdiction the affixing of her or his official seal is deemed
 1246 proof of the execution of the document or deed in full
 1247 compliance with the laws of that jurisdiction.

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1248 (4) COMPLIANCE AND VALIDATION.~~The affixing of the official~~
 1249 seal or the electronic equivalent thereof under s. 117.021 or
 1250 other applicable law, including part II of chapter 117,
 1251 conclusively establishes that the acknowledgement or proof was
 1252 taken, administered, or made in full compliance with the laws of
 1253 this state or, as applicable, the laws of the other state or of
 1254 the foreign country governing notarial acts. All affidavits,
 1255 oaths, acknowledgments, legalizations, authentications, or
 1256 proofs taken, administered, or made in any manner as set forth
 1257 in subsections (1), (2), and (3) are validated and upon
 1258 recording may not be denied to have provided constructive notice
 1259 based on any alleged failure to have strictly complied with this
 1260 section, as currently or previously in effect, or the laws
 1261 governing notarization of instruments. This subsection does not
 1262 preclude a challenge to the validity or enforceability of an
 1263 instrument or electronic record based upon fraud, forgery,
 1264 impersonation, duress, incapacity, undue influence, minority,
 1265 illegality, unconscionability, or any other basis not related to
 1266 the notarial act or constructive notice provided by recording.
 1267
 1268 ~~All affidavits, legalizations, authentications, and~~
 1269 ~~acknowledgments heretofore made or taken in the manner set forth~~
 1270 ~~above are hereby validated.~~
 1271 Section 25. Section 695.04, Florida Statutes, is amended to
 1272 read:
 1273 695.04 Requirements of certificate.~~The certificate of the~~
 1274 ~~officer before whom the acknowledgment or proof is taken, except~~
 1275 ~~for a certificate legalizing or authenticating the signature of~~
 1276 ~~a person executing an instrument concerning real property~~

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1277 pursuant to s. 695.03(3), shall contain and set forth
 1278 substantially the matter required to be done or proved to make
 1279 such acknowledgment or proof effectual as set forth in s.
 1280 117.05.

1281 Section 26. Section 695.25, Florida Statutes, is amended to
 1282 read:

1283 695.25 Short form of acknowledgment.—The forms of
 1284 acknowledgment set forth in this section may be used, and are
 1285 sufficient for their respective purposes, under any law of this
 1286 state. The forms shall be known as "Statutory Short Forms of
 1287 Acknowledgment" and may be referred to by that name. The
 1288 authorization of the forms in this section does not preclude the
 1289 use of other forms.

1290 (1) For an individual acting in his or her own right:

1291 STATE OF
 1292 COUNTY OF

1293 The foregoing instrument was acknowledged before me by
 1294 means of [] physical presence or [] online notarization, this
 1295 ... (date) ... by ... (name of person acknowledging) ..., who is
 1296 personally known to me or who has produced ... (type of
 1297 identification) ... as identification.

1298 ... (Signature of person taking acknowledgment) ...
 1299 ... (Name typed, printed or stamped) ...
 1300 ... (Title or rank) ...
 1301 ... (Serial number, if any) ...

1302 (2) For a corporation:

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1306 STATE OF
 1307 COUNTY OF

1308 The foregoing instrument was acknowledged before me by
 1309 means of [] physical presence or [] online notarization, this
 1310 ... (date) ... by ... (name of officer or agent, title of officer
 1311 or agent) ... of ... (name of corporation acknowledging) ..., a
 1312 ... (state or place of incorporation) ... corporation, on behalf
 1313 of the corporation. He/she is personally known to me or has
 1314 produced ... (type of identification) ... as identification.

1315 ... (Signature of person taking acknowledgment) ...
 1316 ... (Name typed, printed or stamped) ...
 1317 ... (Title or rank) ...
 1318 ... (Serial number, if any) ...

1319 (3) For a limited liability company:

1320 STATE OF
 1321 COUNTY OF

1322 The foregoing instrument was acknowledged before me by
 1323 means of [] physical presence or [] online notarization, this
 1324 ... (date) ... by ... (name of member, manager, officer or agent,
 1325 title of member, manager, officer or agent) ... of ... (name of
 1326 company acknowledging) ..., a ... (state or place of formation) ...
 1327 limited liability company, on behalf of the company, who is
 1328 personally known to me or has produced ... (type of
 1329 identification) ... as identification.

1330 ... (Signature of person taking acknowledgment) ...

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1335 ...(Name typed, printed or stamped)...
 1336 ...(Title or rank)...
 1337 ...(Serial number, if any)...

1338 ~~(4)(3)~~ For a partnership:

1339
 1340 STATE OF

1341 COUNTY OF

1342 The foregoing instrument was acknowledged before me by
 1343 means of [] physical presence or [] online notarization, this
 1344 ... (date)... by ... (name of acknowledging partner or agent)...,
 1345 partner (or agent) on behalf of ... (name of partnership)..., a
 1346 partnership. He/she is personally known to me or has produced
 1347 ... (type of identification)... as identification.

1348
 1349 ... (Signature of person taking acknowledgment)...
 1350 ... (Name typed, printed or stamped)...
 1351 ... (Title or rank)...
 1352 ... (Serial number, if any)...

1353 ~~(5)(4)~~ For an individual acting as principal by an attorney
 1354 in fact:

1355
 1356 STATE OF

1357 COUNTY OF

1358 The foregoing instrument was acknowledged before me by
 1359 means of [] physical presence or [] online notarization, this
 1360 ... (date)... by ... (name of attorney in fact)... as attorney in
 1361 fact, who is personally known to me or who has produced ... (type
 1362 of identification)... as identification on behalf of ... (name of
 1363 principal)....

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1364
 1365 ... (Signature of person taking acknowledgment)...
 1366 ... (Name typed, printed or stamped)...
 1367 ... (Title or rank)...
 1368 ... (Serial number, if any)...

1370 ~~(6)(5)~~ By any public officer, trustee, or personal
 1371 representative:

1372
 1373 STATE OF

1374 COUNTY OF

1375 The foregoing instrument was acknowledged before me by
 1376 means of [] physical presence or [] online notarization, this
 1377 ... (date)... by ... (name and title of position)..., who is
 1378 personally known to me or who has produced ... (type of
 1379 identification)... as identification.

1380
 1381 ... (Signature of person taking acknowledgment)...
 1382 ... (Name typed, printed or stamped)...
 1383 ... (Title or rank)...
 1384 ... (Serial number, if any)....

1385 Section 27. Section 695.28, Florida Statutes, is amended to
 1386 read:

1387 695.28 Validity of recorded electronic documents.—
 1388 (1) A document that is otherwise entitled to be recorded
 1389 and that was or is submitted to the clerk of the court or county
 1390 recorder by electronic or other means and accepted for
 1391 recordation is deemed validly recorded and provides notice to
 1392 all persons notwithstanding:

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1393 (a) That the document was received and accepted for
 1394 recordation before the Department of State adopted standards
 1395 implementing s. 695.27; ~~or~~

1396 (b) Any defects in, deviations from, or the inability to
 1397 demonstrate strict compliance with any statute, rule, or
 1398 procedure relating to electronic signatures, electronic
 1399 witnesses, electronic notarization, or online notarization, or
 1400 for submitting or recording to submit or record an electronic
 1401 document in effect at the time the electronic document was
 1402 executed or ~~was~~ submitted for recording;

1403 (c) That the document was signed, witnessed, or notarized
 1404 electronically, and that the document was notarized by an online
 1405 notary public outside the physical presence of the signer
 1406 through audio-video communication technology, as defined in s.
 1407 117.201, or that witnessing may have been done outside the
 1408 physical presence of the notary public or principal through such
 1409 audio-visual communication technology; or

1410 (d) That the document recorded was a certified printout of
 1411 a document to which one or more electronic signatures have been
 1412 affixed.

1413 (2) This section does not alter the duty of the clerk or
 1414 recorder to comply with s. 28.222, s. 695.27, or any rules
 1415 adopted pursuant to those sections that section.

1416 (3) This section does not preclude a challenge to the
 1417 validity or enforceability of an instrument or electronic record
 1418 based upon fraud, forgery, impersonation, duress, incapacity,
 1419 undue influence, minority, illegality, unconscionability, or any
 1420 other basis not in the nature of those matters described in
 1421 subsection (1).

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1422 Section 28. Subsections (3) and (4) of section 709.2119,
 1423 Florida Statutes, are amended to read:

1424 709.2119 Acceptance of and reliance upon power of
 1425 attorney.—

1426 (3) A third person who is asked to accept a power of
 1427 attorney that appears to be executed in accordance with s.
 1428 709.2105 may in good faith request, and rely upon, without
 1429 further investigation:

1430 (a) A certified English translation of the power of
 1431 attorney if the power of attorney contains, in whole or in part,
 1432 language other than English;

1433 (b) An opinion of counsel as to any matter of law
 1434 concerning the power of attorney if the third person making the
 1435 request provides in a writing or other record the reason for the
 1436 request; ~~or~~

1437 (c) The affidavit described in subsection (2); ~~or-~~

1438 (d) The electronic journal or record made by the notary
 1439 public pursuant to the laws of the state in which the notary
 1440 public is appointed if the power of attorney is witnessed or
 1441 notarized remotely through the use of online witnesses or
 1442 notarization.

1443 (4) An English translation, ~~or~~ an opinion of counsel, or an
 1444 electronic journal or record requested under this section must
 1445 be provided at the principal's expense unless the request is
 1446 made after the time specified in s. 709.2120(1) for acceptance
 1447 or rejection of the power of attorney.

1448 Section 29. Subsection (4) of section 709.2120, Florida
 1449 Statutes, is amended to read:

1450 709.2120 Rejecting power of attorney.—

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1451 (4) A third person is not required to accept a power of
1452 attorney if:

1453 (a) The third person is not otherwise required to engage in
1454 a transaction with the principal in the same circumstances;

1455 (b) The third person has knowledge of the termination or
1456 suspension of the agent's authority or of the power of attorney
1457 before exercising the power;

1458 (c) A timely request by the third person for an affidavit,
1459 English translation, ~~or~~ opinion of counsel, or electronic
1460 journal or record under s. 709.2119 ~~s. 709.2119(4)~~ is refused by
1461 the agent;

1462 (d) The power of attorney is witnessed or notarized
1463 remotely through the use of online witnesses or notarization,
1464 and either the agent is unable to produce the electronic journal
1465 or record, or the notary public did not maintain an electronic
1466 journal or record of the notarization;

1467 (e) ~~(d)~~ Except as provided in paragraph (b), the third
1468 person believes in good faith that the power is not valid or
1469 that the agent does not have authority to perform the act
1470 requested; or

1471 (f) ~~(e)~~ The third person makes, or has knowledge that
1472 another person has made, a report to the local adult protective
1473 services office stating a good faith belief that the principal
1474 may be subject to physical or financial abuse, neglect,
1475 exploitation, or abandonment by the agent or a person acting for
1476 or with the agent.

1477 Section 30. Present subsection (6) of section 709.2202,
1478 Florida Statutes, is renumbered as subsection (7), and a new
1479 subsection (6) is added to that section, to read:

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1480 709.2202 Authority that requires separate signed
1481 enumeration.-

1482 (6) Notwithstanding subsection (1) and s. 709.2106(3), a
1483 power of attorney executed by a principal domiciled in this
1484 state at the time of execution which is witnessed remotely
1485 pursuant to s. 117.285 or other applicable law by a witness who
1486 is not in the physical presence of the principal, or which is
1487 notarized in an online notarization, is not effective to grant
1488 authority to an agent to take any of the actions enumerated in
1489 subsection (1), unless the principal provides, to the
1490 satisfaction of the online notary public during the online
1491 notarization, verbal answers to all of the following questions:

1492 (a) Are you 18 years of age or older?

1493 (b) Are you of sound mind?

1494 (c) Are you signing this power of attorney voluntarily?

1495 (d) Are you under the influence of any drugs or alcohol
1496 that impairs your ability to make decisions?

1497 (e) Has anyone forced or influenced you to include anything
1498 in this power of attorney which you do not wish to include?

1499 (f) Did anyone assist you in accessing this video
1500 conference? If so, who?

1501 (g) Where are you? Name everyone you know in the room with
1502 you.

1503 Section 31. Subsection (40) of section 731.201, Florida
1504 Statutes, is amended to read:

1505 731.201 General definitions.-Subject to additional
1506 definitions in subsequent chapters that are applicable to
1507 specific chapters or parts, and unless the context otherwise
1508 requires, in this code, in s. 409.9101, and in chapters 736,

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1509 738, 739, and 744, the term:

1510 (40) "Will" means an instrument, including a codicil,
 1511 executed by a person in the manner prescribed by this code,
 1512 which disposes of the person's property on or after his or her
 1513 death and includes an instrument which merely appoints a
 1514 personal representative or revokes or revises another will. The
 1515 term includes an electronic will as defined in s. 732.521.

1516 Section 32. Section 732.506, Florida Statutes, is amended
 1517 to read:

1518 732.506 Revocation by act.—A will or codicil, other than an
 1519 electronic will, is revoked by the testator, or some other
 1520 person in the testator's presence and at the testator's
 1521 direction, by burning, tearing, canceling, defacing,
 1522 obliterating, or destroying it with the intent, and for the
 1523 purpose, of revocation. An electronic will or codicil is revoked
 1524 by the testator, or some other person in the testator's presence
 1525 and at the testator's direction, by deleting, canceling,
 1526 rendering unreadable, or obliterating the electronic will or
 1527 codicil with the intent, and for the purpose, of revocation, as
 1528 proved by clear and convincing evidence.

1529 Section 33. Section 732.521, Florida Statutes, is created
 1530 to read:

1531 732.521 Definitions.—As used in ss. 732.521-732.525, the
 1532 term:

1533 (1) "Audio-video communication technology" has the same
 1534 meaning as provided in s. 117.201.

1535 (2) "Electronic signature" means an electronic mark visibly
 1536 manifested in a record as a signature and executed or adopted by
 1537 a person with the intent to sign the record.

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1538 (3) "Electronic will" means an instrument, including a
 1539 codicil, executed with an electronic signature by a person in
 1540 the manner prescribed by this code, which disposes of the
 1541 person's property on or after his or her death and includes an
 1542 instrument that merely appoints a personal representative or
 1543 revokes or revises another will.

1544 (4) "Online notarization" has the same meaning as provided
 1545 in s. 117.201.

1546 (5) "Online notary public" has the same meaning as provided
 1547 in s. 117.201.

1548 (6) "Qualified custodian" means a person who meets the
 1549 requirements of s. 732.524(1).

1550 Section 34. Effective July 1, 2020, section 732.522,
 1551 Florida Statutes, is created to read:

1552 732.522 Method and place of execution.—For purposes of the
 1553 execution or filing of an electronic will, the acknowledgment of
 1554 an electronic will by the testator and the affidavits of
 1555 witnesses under s. 732.503, or any other instrument under the
 1556 Florida Probate Code:

1557 (1) Any requirement that an instrument be signed may be
 1558 satisfied by an electronic signature.

1559 (2) Any requirement that individuals sign an instrument in
 1560 the presence of one another may be satisfied by witnesses being
 1561 present and electronically signing by means of audio-video
 1562 communication technology that meets the requirements of part II
 1563 of chapter 117 and any rules adopted thereunder, if:

1564 (a) The individuals are supervised by a notary public in
 1565 accordance with s. 117.285;

1566 (b) The individuals are authenticated and signing as part

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 1567 of an online notarization session in accordance with s. 117.265;
 1568 (c) The witness hears the signer make a statement
 1569 acknowledging that the signer has signed the electronic record;
 1570 and
 1571 (d) In the case of an electronic will, the testator
 1572 provides, to the satisfaction of the online notary public during
 1573 the online notarization, verbal answers to all of the following
 1574 questions:
 1575 1. Are you 18 years of age or older?
 1576 2. Are you of sound mind?
 1577 3. Are you signing this will voluntarily?
 1578 4. Are you under the influence of any drugs or alcohol that
 1579 impairs your ability to make decisions?
 1580 5. Has anyone forced or influenced you to include anything
 1581 in this will which you do not wish to include?
 1582 6. Did anyone assist you in accessing this video
 1583 conference? If so, who?
 1584 7. Where are you? Name everyone you know in the room with
 1585 you.
 1586 (3) The execution of an electronic will of a testator who
 1587 is a vulnerable adult, as defined in s. 415.102, may not be
 1588 witnessed by means of audio-video communication technology. The
 1589 contestant of the electronic will has the burden of proving that
 1590 the testator was a vulnerable adult at the time of executing the
 1591 electronic will.
 1592 (4) Except as otherwise provided in this part, all
 1593 questions as to the force, effect, validity, and interpretation
 1594 of an electronic will which comply with this section must be
 1595 determined in the same manner as in the case of a will executed

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 1596 in accordance with s. 732.502.
 1597 (5) An instrument that is signed electronically is deemed
 1598 to be executed in this state if the instrument states that the
 1599 person creating the instrument intends to execute and
 1600 understands that he or she is executing the instrument in, and
 1601 pursuant to the laws of, this state.
 1602 Section 35. Section 732.523, Florida Statutes, is created
 1603 to read:
 1604 732.523 Self-proof of electronic will.—An electronic will
 1605 is self-proved if:
 1606 (1) The acknowledgment of the electronic will by the
 1607 testator and the affidavits of the witnesses are made in
 1608 accordance with s. 732.503 and are part of the electronic record
 1609 containing the electronic will, or are attached to, or are
 1610 logically associated with the electronic will;
 1611 (2) The electronic will designates a qualified custodian;
 1612 (3) The electronic record that contains the electronic will
 1613 is held in the custody of a qualified custodian at all times
 1614 before being offered to the court for probate; and
 1615 (4) The qualified custodian who has custody of the
 1616 electronic will at the time of the testator's death certifies
 1617 under oath that, to the best knowledge of the qualified
 1618 custodian, the electronic record that contains the electronic
 1619 will was at all times before being offered to the court in the
 1620 custody of a qualified custodian in compliance with s. 732.524
 1621 and that the electronic will has not been altered in any way
 1622 since the date of its execution.
 1623 Section 36. Section 732.524, Florida Statutes, is created
 1624 to read:

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1625 732.524 Qualified custodians.—

1626 (1) To serve as a qualified custodian of an electronic
1627 will, a person must:

1628 (a) Be domiciled in and a resident of this state or be
1629 incorporated or organized in this state;

1630 (b) In the course of maintaining custody of electronic
1631 wills, regularly employ a secure system and store in such secure
1632 system electronic records containing:

1633 1. Electronic wills;

1634 2. Records attached to or logically associated with
1635 electronic wills; and

1636 3. Acknowledgements of the electronic wills by testators,
1637 affidavits of the witnesses, and the records described in s.
1638 117.245(1) and (2) which pertain to the online notarization; and

1639 (c) Furnish for any court hearing involving an electronic
1640 will that is currently or was previously stored by the qualified
1641 custodian any information requested by the court pertaining to
1642 the qualified custodian's qualifications, policies, and
1643 practices related to the creation, sending, communication,
1644 receipt, maintenance, storage, and production of electronic
1645 wills.

1646 (2) The qualified custodian of an electronic will shall
1647 provide access to or information concerning the electronic will,
1648 or the electronic record containing the electronic will, only:

1649 (a) To the testator;

1650 (b) To persons authorized by the testator in the electronic
1651 will or in written instructions signed by the testator with the
1652 formalities required for the execution of a will in this state;

1653 (c) After the death of the testator, to the testator's

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1654 nominated personal representative; or

1655 (d) At any time, as directed by a court of competent
1656 jurisdiction.

1657 (3) The qualified custodian of the electronic record of an
1658 electronic will may elect to destroy such record, including any
1659 of the documentation required to be created and stored under
1660 paragraph (1) (d), at any time after the earlier of the fifth
1661 anniversary of the conclusion of the administration of the
1662 estate of the testator or 20 years after the death of the
1663 testator.

1664 (4) A qualified custodian who at any time maintains custody
1665 of the electronic record of an electronic will may elect to
1666 cease serving in such capacity by:

1667 (a) Delivering the electronic will or the electronic record
1668 containing the electronic will to the testator, if then living,
1669 or, after the death of the testator, by filing the will with the
1670 court in accordance with s. 732.901; and

1671 (b) If the outgoing qualified custodian intends to
1672 designate a successor qualified custodian, by doing the
1673 following:

1674 1. Providing written notice to the testator of the name,
1675 address, and qualifications of the proposed successor qualified
1676 custodian. The testator must provide written consent before the
1677 electronic record, including the electronic will, is delivered
1678 to a successor qualified custodian;

1679 2. Delivering the electronic record containing the
1680 electronic will to the successor qualified custodian; and

1681 3. Delivering to the successor qualified custodian an
1682 affidavit of the outgoing qualified custodian stating that:

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1683 a. The outgoing qualified custodian is eligible to act as a
 1684 qualified custodian in this state;

1685 b. The outgoing qualified custodian is the qualified
 1686 custodian designated by the testator in the electronic will or
 1687 appointed to act in such capacity under this paragraph;

1688 c. The electronic will has at all times been in the custody
 1689 of one or more qualified custodians in compliance with this
 1690 section since the time the electronic record was created, and
 1691 identifying such qualified custodians; and

1692 d. To the best of the outgoing qualified custodian's
 1693 knowledge, the electronic will has not been altered since the
 1694 time it was created.

1695
 1696 For purposes of making this affidavit, the outgoing qualified
 1697 custodian may rely conclusively on any affidavits delivered by a
 1698 predecessor qualified custodian in connection with its
 1699 designation or appointment as qualified custodian; however, all
 1700 such affidavits must be delivered to the successor qualified
 1701 custodian.

1702 (5) Upon the request of the testator which is made in a
 1703 writing signed with the formalities required for the execution
 1704 of a will in this state, a qualified custodian who at any time
 1705 maintains custody of the electronic record of the testator's
 1706 electronic will must cease serving in such capacity and must
 1707 deliver to a successor qualified custodian designated in writing
 1708 by the testator the electronic record containing the electronic
 1709 will and the affidavit required in subparagraph (4) (b)3.

1710 (6) A qualified custodian may not succeed to office as a
 1711 qualified custodian of an electronic will unless he or she

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1712 agrees in writing to serve in such capacity.

1713 (7) If a qualified custodian is an entity, an affidavit, or
 1714 an appearance by the testator in the presence of a duly
 1715 authorized officer or agent of such entity, acting in his or her
 1716 own capacity as such, shall constitute an affidavit, or an
 1717 appearance by the testator in the presence of the qualified
 1718 custodian.

1719 (8) A qualified custodian must provide a paper copy of an
 1720 electronic will and the electronic record containing the
 1721 electronic will to the testator immediately upon request. For
 1722 the first request, the testator may not be charged a fee for
 1723 being provided with these documents.

1724 (9) The qualified custodian shall be liable for any damages
 1725 caused by the negligent loss or destruction of the electronic
 1726 record, including the electronic will, while it is in the
 1727 possession of the qualified custodian. A qualified custodian may
 1728 not limit liability for such damages.

1729 (10) A qualified custodian may not terminate or suspend
 1730 access to, or downloads of, the electronic will by the testator,
 1731 provided that a qualified custodian may charge a fee for
 1732 providing such access and downloads.

1733 (11) Upon receiving information that the testator is dead,
 1734 a qualified custodian must deposit the electronic will with the
 1735 court in accordance with s. 732.901. A qualified custodian may
 1736 not charge a fee for depositing the electronic will with the
 1737 clerk, providing the affidavit is made in accordance with s.
 1738 732.503, or furnishing in writing any information requested by a
 1739 court under paragraph (1) (d).

1740 (12) Except as provided in this act, a qualified custodian

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1741 must at all times keep information provided by the testator
 1742 confidential and may not disclose such information to any third
 1743 party.

1744 (13) A contractual venue provision between a qualified
 1745 custodian and a testator is not valid or enforceable to the
 1746 extent that it requires a specific jurisdiction or venue for any
 1747 proceeding relating to the probate of an estate or the contest
 1748 of a will.

1749 Section 37. Section 732.525, Florida Statutes, is created
 1750 to read:

1751 732.525 Liability coverage; receivership of qualified
 1752 custodians.-

1753 (1) A qualified custodian shall:

1754 (a) Post and maintain a blanket surety bond of at least
 1755 \$250,000 to secure the faithful performance of all duties and
 1756 obligations required under this part. The bond must be made
 1757 payable to the Governor and his or her successors in office for
 1758 the benefit of all persons who store electronic records with a
 1759 qualified custodian and their estates, beneficiaries,
 1760 successors, and heirs, and be conditioned on the faithful
 1761 performance of all duties and obligations under this chapter.

1762 The terms of the bond must cover the acts or omissions of the
 1763 qualified custodian and each agent or employee of the qualified
 1764 custodian; or

1765 (b) Maintain a liability insurance policy that covers any
 1766 losses sustained by any person who stores electronic records
 1767 with a qualified custodian and their estates, beneficiaries,
 1768 successors, and heirs which are caused by errors or omissions by
 1769 the qualified custodian and each agent or employee of the

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1770 qualified custodian. The policy must cover losses of at least
 1771 \$250,000 in the aggregate.

1772 (2) The Attorney General may petition a court of competent
 1773 jurisdiction for the appointment of a receiver to manage the
 1774 electronic records of a qualified custodian for proper delivery
 1775 and safekeeping if any of the following conditions exists:

1776 (a) The qualified custodian is ceasing operation;

1777 (b) The qualified custodian intends to close the facility
 1778 and adequate arrangements have not been made for proper delivery
 1779 of the electronic records in accordance with this part;

1780 (c) The Attorney General determines that conditions exist
 1781 which present a danger that electronic records will be lost or
 1782 misappropriated; or

1783 (d) The qualified custodian fails to maintain and post a
 1784 surety bond or maintain insurance as required in this section.

1785 Section 38. Section 732.526, Florida Statutes, is created
 1786 to read:

1787 732.526 Probate.-

1788 (1) An electronic will that is filed electronically with
 1789 the clerk of the court through the Florida Courts E-Filing
 1790 Portal is deemed to have been deposited with the clerk as an
 1791 original of the electronic will.

1792 (2) A paper copy of an electronic will which is certified
 1793 by a notary public to be a true and correct copy of the
 1794 electronic will may be offered for and admitted to probate and
 1795 constitutes an original of the electronic will.

1796 Section 39. Subsection (1) of section 733.201, Florida
 1797 Statutes, is amended to read:

1798 733.201 Proof of wills.-

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1799 (1) Self-proved wills executed in accordance with this code
1800 may be admitted to probate without further proof. However, a
1801 purportedly self-proved electronic will may be admitted to
1802 probate only in the manners prescribed in subsections (2) and
1803 (3) if the execution of such electronic will, or the
1804 acknowledgement by the testator and the affidavits of the
1805 witnesses, involves an online notarization in which there was a
1806 substantial failure to comply with the procedures set forth in
1807 s. 117.265.

1808 Section 40. Section 740.10, Florida Statutes, is created to
1809 read:

1810 740.10 Relation to wills.—No act taken pursuant to this
1811 chapter is valid to affect the obligation of a person to deposit
1812 a will of a decedent as required under s. 732.901.

1813 Section 41. Except as otherwise expressly provided in this
1814 act, and except for this section, which shall take effect upon
1815 becoming a law, this act shall take effect January 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 8, 2019

I respectfully request that **Senate Bill #548**, relating to **Electronic Legal Documents**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE APPEARANCE RECORD

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

April 1, 2019

Meeting Date

548

Bill Number (if applicable)

255066

Amendment Barcode (if applicable)

Topic _____

Name Travis Finchum

Job Title _____

Address 901 Chestnut Street, Suite C

Street

Phone 727-631-0970

Clearwater

FL

33756

Email travis@specialneedslawyers.com

City

State

Zip

Speaking: For Against Information

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

Representing Academy of Florida Elder Law Attorneys and Elder Law Section/Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/19

Meeting Date

548

Bill Number (if applicable)

Topic ELECTRONIC DOCUMENTS

255060

Amendment Barcode (if applicable)

Name JIMMIE SHARKEY

Job Title CEO, CAO

Address 100 E COLLEGE AVE

Phone 850 224 1660

Street

Tallah

FL

32201

City

State

Zip

Email jimmysharkey@gmail.com

Speaking: For Against Information

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

Representing QUICKEN LOANS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4-1-19
Meeting Date

SB 548
Bill Number (if applicable)

Topic NOTARY + ELECTRONIC DOCUMENTS

As Needed
Amendment Barcode (if applicable)

Name MICHAEL CHODAS

Job Title GENERAL COUNSEL

Address 745 BOYLSTON ST, #600
Street
BOSTON, MA City State 02116 Zip

Phone 310 480 6538

Email michael@notarize.com

Speaking: For Against Information

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

Representing NOTARIZE, INC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/1/2019

Meeting Date

548

Bill Number (if applicable)

Topic Electronic Legal Documents

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title Associate State Director

Address 200 W. College Ave

Phone 850.228.4243

Street

Tallahassee

FL

32301

Email zsmith@aarp.org

City

State

Zip

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)

4/1/19
Meeting Date

548
Bill Number (if applicable)

Topic Electronic Legal Documents

Amendment Barcode (if applicable)

Name Jennifer Martin

Job Title Senior Director of Governmental Affairs

Address 3692 Coolidge Court

Phone 850-558-1150

Street

Tallahassee

FL

32311

Email jennifer.martin@lscu.coop

City

State

Zip

Speaking: For Against Information

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

Representing Florida Credit Union Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.1.19
Meeting Date

548
Bill Number (if applicable)

Topic NOTARIES

Amendment Barcode (if applicable)

Name Trey Goldman

Job Title Legislative Counsel

Address 200 S. Monroe St

Phone 850/224-1400

Tallahassee FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Realtors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4/11/19 Meeting Date

548 Bill Number (if applicable)

Topic Electronic Legal Documents

Amendment Barcode (if applicable)

Name Mat Forrest

Job Title

Address 201 E. Park Ave. Street

Phone 904-577-0444

Tallahassee FL 32301 City State Zip

Email mat@bellordfl.com

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

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

Representing Bequest

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)

4/1/19

Meeting Date

548

Bill Number (if applicable)

Topic Electronic Legal Documents

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd, Ste 201

Phone 850-509-8020

Street

Tallahassee

FL

32312

City

State

Zip

Email kpratt@floridabankers.com

Speaking: [] For [] Against [] Information

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

Representing Florida Bankers 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.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/1/2019

Meeting Date

548

Bill Number (if applicable)

Topic Notary

Amendment Barcode (if applicable)

Name Woody Simmons

Job Title Contract lobbyist

Address 109 N Monroe St

Phone 850-294-0700

Street

Tallahassee FL 32301

Email Woodrow.Simmons@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing American Resort Developers Assn

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE APPEARANCE RECORD

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

4/1/19

Meeting Date

548

Bill Number (if applicable)

Topic Electronic Legal Documents

Amendment Barcode (if applicable)

Name Chris Carmody

Job Title Attorney

Address 301 E. Pine St., Suite 1400

Phone 407-843-8880

Street Orlando FL 32801

Email ccarmody@grayrobson.com

City State Zip

Speaking: For Against Information

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

Representing NALOP 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)

4/1/19

Meeting Date

548

Bill Number (if applicable)

Topic Electronic Legal Documents

Amendment Barcode (if applicable)

Name Doug Bell

Job Title Attorney

Address 119 S. Monroe Street

Phone 850-205-9000

Street

Tallahassee

FL

Email doug.bell@mhdfirm.com

City

State

Zip

Speaking: For Against Information

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

Representing Westcor Land Title Insurance Company

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

Reference Manual for
COMMISSIONERS OF DEEDS
FOR THE STATE OF FLORIDA



Published by
THE INTERNATIONAL SOCIETY OF
FLORIDA COMMISSIONERS OF DEEDS
August 2009

Resources for Commissioners of Deeds

Questions not covered in this manual should be directed to the Governor's office:

Governor's Appointments Office
The Capitol Building, 7th Floor, Suite 705
Tallahassee, Fla. 32399-0001
TEL: (850) 488-2183

The contents of this manual have not been reviewed or endorsed by the Governor's office or the State of Florida. This manual is published and made available by the *International Society of Florida Commissioners of Deeds*, <http://www.CommissionerOfDeeds.tk>.

The International Society of Florida Commissioners of Deeds is the first and only non-profit organization committed to the education of and advocacy for Commissioners of Deeds for the State of Florida. The ISFCOD is your premiere resource for all of your COD needs, including assistance in applying for appointment or re-appointment as a Commissioner of Deeds.

General Information

What is a Commissioner of Deeds?

A Commissioner of Deeds is an officer appointed and commissioned by the Governor whose function is to take acknowledgments of execution and to administer oaths in a foreign country in connection with a timeshare property located in the State of Florida.

The first Commissioners of Deeds for the State of Florida were authorized to "notarize" any document provided that it was to be used or recorded in Florida. The Governor was also able to appoint commissioners to states within the United States. Current law requires that commissioners may only be appointed to countries or territories outside the 50 states or in international waters, and commissioners may only "notarize" documents related to timeshares. Although the law does not allow the appointment of commissioners to states within the United States, the Governor has on some occasions appointed Commissioners of Deeds with the authority to act in states other than Florida, and there are currently several commissioners appointed as such.

There are currently less than 100 active Commissioners of Deeds for the State of Florida. The majority of these commissioners are working under the direct supervision of a vacation club or timeshare firm, and most commissioners are actively commissioned in more than one country.

Other states such as Texas, Maine, and Kentucky have statutory provisions allowing the governor to appoint Commissioners of Deeds; however, these commissioners are authorized to authenticate *any* document to be used or recorded in the commissioning state. Florida is the only state which restricts the type of documents authorized to be authenticated by a commissioner to documents related to timeshare estates.

In what cases would a Commissioner of Deeds be used?

If a resident of a foreign country wanted to purchase a timeshare condominium in Florida, the real estate firm in Florida would send a Commissioner of Deeds to the potential purchaser to “notarize” the closing paperwork, such as the mortgage. This would enable the document to be recorded in accordance with Florida law.

Another common situation where a commissioner would be used is if an American tourist is abroad and meets with a vacation club representative, and wishes to purchase a timeshare in Florida. Provided that the representative is a Commissioner of Deeds, he or she could “notarize” the potential purchasers' signatures on all necessary paperwork.

Qualifications and Requirements for Appointment

In general, any applicant who is at least 18 years of age may be appointed as a Commissioner of Deeds upon making appropriate application to the Governor's office and upon taking an oath of office, which must be filed with the Department of State.

The Governor may appoint Commissioners of Deeds to any foreign country, international waters, or to any possession, territory or commonwealth of the United States outside the 50 states.

Appointment and Commission

- Commissioners of Deeds are public officers appointed and commissioned by the Governor. You are not licensed, you are appointed. An appointment is a privilege, not a right.
- The term of office is four years. *Example:* A commission which began on January 2, 2008 (12:01 a.m.) will end on January 1, 2012 (11:59 p.m.).
- You are appointed to act in one or more particular countries, and you may only act as a Commissioner of Deeds for the State of Florida within the geographic boundaries of that country. Commissioners may be appointed to act in more than one country.
- It is recommended that you notify the Governor's office of any change in address, telephone number, place of business, or legal name.
- If you lose your commission certificate, you should contact the Governor's office at (850) 488-2183.

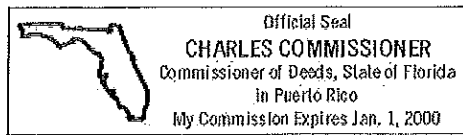
Application Process

- The application for appointment as a Commissioner of Deeds is relatively simple and not difficult to complete. There is no application fee.
- Completed and notarized applications should be mailed to the Governor's Appointments Office, The Capitol Building, 7th Floor, Suite 705, Tallahassee, Florida 32399-0001.
- Renewals must be completed in the same manner.

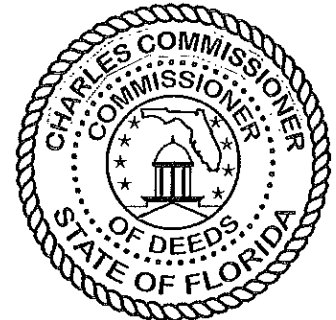
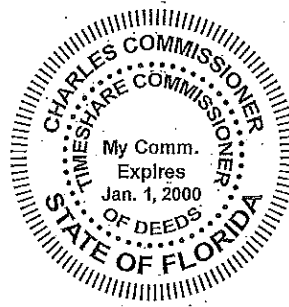
Official Seal

Commissioners of Deeds are not required by law to use any sort of official seal to authenticate their acts. However, the International Society of Florida Commissioners of Deeds strongly recommends that all commissioners secure some type of seal, whether a rubber stamp type seal or impression type seal,

from a company that manufactures rubber stamps or embossers, to be used with all of their official acts. Samples of recommended seals are as follows:



OFFICIAL SEAL
CHARLES COMMISSIONER
COMMISSIONER OF DEEDS FOR THE STATE OF FLORIDA
IN PUERTO RICO, ARGENTINA, AND CHILE
APPOINTED 1/2/08 - COMM. EXPIRES 1/1/12



Your seal may not contain the Great Seal of the State of Florida, but it may include other images such as the shape of Florida, the capitol dome, an eagle, etc. Since there are not requirements for an official seal, it is recommended that the seal include *at least* the name of the commissioner, and the words "Commissioner of Deeds" and "State of Florida". You may also include the name of the country to which you are appointed and the date your commission expires.

As a general rule of thumb, if you use a rubber stamp seal, you should try to affix the stamp underneath or to the side of your signature. It is not recommended that you affix your stamp over your signature, as this makes both your signature and the seal illegible. Some documents contain the letters "L.S." or "(SEAL)", indicating where the seal is to be affixed. Stamp seals should be fixed near, but not on top of, those letters. Embossing or impression seals may be affixed over those letters, over your signature, or to the side of your signature. Because embossing seals do not affect the legibility of the certificate, you may generally affix them anywhere near your signature within your certificate or jurat.

Journal or Protocol

Although not required by law, it is recommended that commissioners record all of their official acts in a journal or protocol. For this purpose you could purchase a "notary journal" from a number of different vendors. If you choose to maintain a journal, you should consistently maintain it and record the following information for each official act you perform:

- Exact date and time of act
- Type of act performed
- Type of document
- Name and address of signer
- Type of identification you relied upon to identify signer
- Any other important notations relating to the act

Duties of a Commissioner of Deeds

Commissioners of Deeds are authorized to perform three types of acts:

- Taking an acknowledgment
- Attesting a proof of execution
- Administering an oath

These acts may only be performed in connection with the execution of any document related to a timeshare located in the State of Florida. The act must be performed in the country to which the commissioner is appointed. Although these duties are similar to those of Notaries Public, commissioners are not authorized to attest photocopies or solemnize marriage.

Acknowledgments

The taking of acknowledgments is one of the most common duties of a Commissioner of Deeds. Acknowledgments typically appear on deeds, mortgages, and powers of attorney. To take an acknowledgment, the signer of a document will appear before you, present a document, and acknowledge that they have signed the document voluntarily. After verifying that the document is related to a timeshare in Florida, you should, at that time, verify the signer's identity, either based on personal knowledge or other satisfactory evidence, and complete a certificate of acknowledgment.

Administering Oaths

Administering oaths is another important duty of a Commissioner of Deeds. Generally, a commissioner may only administer oaths on written documents that are related to timeshares in Florida. A signer will appear before you with some sort of document requiring an oath, such as an affidavit. You would administer the oath to the signer by asking them, "Do you solemnly swear that the statements contained in this document are true and correct to the best of your knowledge and belief?". After the signer gives an affirmative answer, such as "Yes" or "I do", you would instruct them to sign the statement in your presence, and then complete your jurat.

When administering an oath, the signer must sign the document in your presence. It is not sufficient for the signer to simply acknowledge that they have previously signed the document, as with an acknowledgment.

Under Florida law, an affirmation has the same legal effects as an oath. Therefore, if a signer has a religious objection to taking an oath, you may instead administer an affirmation by asking them "Do you declare and solemnly affirm that the statements contained in this document are true and correct to the best of your knowledge and belief?".

Proof of Execution

A "proof of execution" refers to a written statement by a subscribing witness to a deed or other real estate transaction document, in which the witness takes an oath that he or she witnessed the grantor sign the document. This enables real estate documents to be recorded in the event that the grantor is deceased or otherwise unable to appear before a Notary Public to acknowledge their signature.

In this case, the witness would appear before you and present a statement, stating that the grantor signed the document in his or her presence. You should administer an oath to the witness, and they

should then sign the statement. After completing your jurat on the statement, the statement may be attached to the original real estate conveyance document which will allow it to be recorded. Of course, you may only perform this official act if the document is related to a timeshare located in Florida.

Identification

You should never take an acknowledgment or administer an oath unless you personally know the signer or the signer produces some other form of valid photo identification. It is recommended that the signer produce either a U.S. passport or a passport issued by the country where you are appointed to act. The law does not specify certain types of identification that commissioners may rely upon; however, it should be a form of identification satisfactory to you and you should state in your certificate the exact type of identification used.

Completing Certificates and Jurats

Each time you perform an official act you should draft a certificate which declares the particulars of that act. As a general rule, each certificate or jurat should include the following information:

- The venue where the act was performed (i.e. the country and district/municipality where the act was performed; ex. Commonwealth of the Bahamas, Island of New Providence).
- The type of act which was performed (evidenced by the words “acknowledged” or “sworn”).
- The exact date the act was performed
- The name of the signer
- A statement that the signer personally appeared before you
- Your official signature
- Your commissioned name, printed, typed, or stamped underneath your signature
- A statement as to the date your commission expires (i.e. My Commission Expires July 4, 2009), unless the information is already contained in your official seal
- Your official seal, if you use one (see “Official Seal” section for more information)

Certificates of Acknowledgment

A sample certificate of acknowledgment is as follows:

COMMONWEALTH OF PUERTO RICO
MUNICIPALITY OF VEGA BAJA

On this fourth day of July, A.D. 2009, before me, the undersigned officer of the State of Florida, personally came and appeared JOHN DOE, who was proved to me on the basis of a United States passport to be the person whose name is subscribed to the annexed or foregoing instrument, and he acknowledged to me that the instrument was executed in connection with a timeshare located in the State of Florida, and that he signed the document voluntarily, and for the purposes and uses as therein set forth.

WITNESS my hand and official seal at Vega Baja, in the Commonwealth and Municipality last aforesaid.

OFFICIAL SEAL
CHARLES COMMISSIONER
COMMISSIONER OF DEEDS FOR THE STATE OF FLORIDA
IN PUERTO RICO, ARGENTINA, AND CHILE
APPOINTED 1/2/08 - COMM. EXPIRES 1/1/12

Charles Commissioner

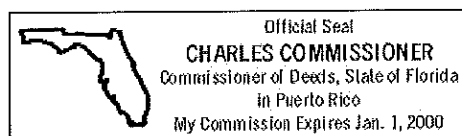
CHARLES COMMISSIONER
Commissioner of Deeds

The "testimonium clause", i.e. the last line of the certificate, usually states language such as "Witness my hand and official seal". If you choose not to use an official seal, you should state "Witness my hand and common seal, as I have not an official seal, ...".

A simple, statutory form of acknowledgment is:

COMMONWEALTH OF PUERTO RICO
MUNICIPALITY OF VEGA BAJA

The foregoing instrument was acknowledged before me this 4th day of July, A.D. 2009, by JOHN DOE, who produced a United States passport as identification.



Charles Commissioner

CHARLES COMMISSIONER
Commissioner of Deeds
for the State of Florida, in Puerto Rico.

Jurat/Oath

Commissioners are authorized to administer oaths. To administer an oath, you would usually have the signer raise their right hand, and you would ask, "Do you solemnly swear [or affirm] that the statements contained in this document are true and correct to the best of your knowledge and belief?". After the signer answers affirmatively, they would sign the document in the appropriate space and you would complete a jurat. In most cases, the jurat will appear only at the bottom of the document, in a form such as:

UNITED KINGDOM
COUNTY OF MIDDLESEX

Subscribed and sworn to before me, the undersigned Commissioner of Deeds for the State of Florida, this fourth day of July, A.D. 2009, by JOHN DOE, who is personally known to me.

In Testimony Whereof, I have hereunto set my hand and seal at London, Middlesex, United Kingdom

Charles Commissioner

CHARLES COMMISSIONER
Commissioner of Deeds
for the State of Florida, in the United Kingdom.
My Commission Expires January 1, 2009



On affidavits, the jurat usually begins at the top of the document and continues to the bottom, with the statements being sworn to "sandwiched" in the middle of the certificate, such as in the following example:

COMMONWEALTH OF THE BAHAMAS
ISLAND OF NEW PROVIDENCE

BEFORE ME, the undersigned officer, a duly appointed Commissioner of Deeds for the State of Florida in

the Bahamas, personally appeared JOHN DOE, who, being first by me duly sworn, deposes and says:

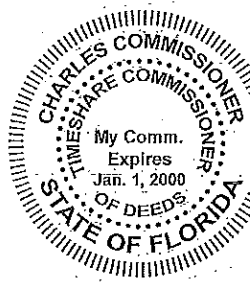
(INSERT HEREIN THE STATEMENTS TO WHICH THE
SIGNER IS SWEARING OR AFFIRMING)

John Doe

JOHN DOE, Affiant.

SUBSCRIBED AND SWORN TO before me this fourth day of July, A.D. 2009, by JOHN DOE, who produced a United States passport as identification.

WITNESS my hand and official seal at Nassau, New Providence, Bahamas.



Charles Commissioner

CHARLES COMMISSIONER
Commissioner of Deeds
for the State of Florida, in the Bahamas.

Proof of Execution

A proof of execution requires a separate document to be prepared, which will be attached to a real estate conveyance document. The document should be similar to the following:

PROOF OF EXECUTION

COMMONWEALTH OF PUERTO RICO
MUNICIPALITY OF VEGA BAJA

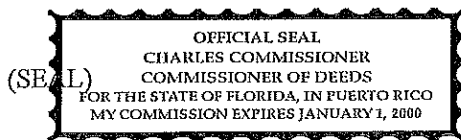
BEFORE ME, the undersigned officer, a duly appointed Commissioner of Deeds for the State of Florida in the Bahamas, personally appeared JOHN DOE, who, being first by me duly sworn, deposes and says that he was one of the subscribing witnesses to the annexed (*insert herein the title of the document*), and that the grantor of said document, (*insert name of grantor*), did execute the annexed instrument as his voluntary act and deed, in his presence, on the _____ day of _____, A.D. 20__.

John Doe

JOHN DOE, Affiant.

SUBSCRIBED AND SWORN TO before me this fourth day of July, A.D. 2009, by JOHN DOE, who produced a United States passport as identification.

WITNESS my hand and official seal at Vega Baja, Puerto Rico.



Charles Commissioner

CHARLES COMMISSIONER
Commissioner of Deeds

Prohibited Acts for Commissioners of Deeds

Commissioners of Deeds may not take an acknowledgment or administer an oath on any document if:

- The signer is not in the commissioner's presence at the time the act is performed.
- The document is incomplete.
- The commissioner knows that the signer is mentally incapacitated.
- The signer is the mother, father, spouse, son, or daughter of the commissioner.
- The commissioner has a financial interest in the document.
- The commissioner is acting outside the country to which he or she is appointed.
- The document is not related to a timeshare estate, personal property timeshare interest, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within the State of Florida.
- The signer is not personally known to the commissioner or is unable to produce valid photo identification.

Additionally, commissioners do not have authority to solemnize matrimony (perform marriage ceremonies), or attest to photocopies.

Laws Relating to Commissioners of Deeds

FLORIDA STATUTES, CHAPTER 721, PART IV

721.96 Purpose.--The purpose of this part is to provide for the appointment of commissioners of deeds to take acknowledgments, proofs of execution, and oaths outside the United States in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other agreement, instrument or writing concerning, relating to, or to be used or recorded in connection with a timeshare estate, personal property timeshare interest, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state.

History.--s. 14, ch. 98-36; s. 31, ch. 2004-279.

721.97 Timeshare commissioner of deeds.--

(1) The Governor may appoint commissioners of deeds to take acknowledgments, proofs of execution, or oaths in any foreign country, in international waters, or in any possession, territory, or commonwealth of the United States outside the 50 states. The term of office is 4 years. Commissioners of deeds shall have authority to take acknowledgments, proofs of execution, and oaths in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other writing to be used or recorded in connection with a timeshare estate, personal property timeshare interest, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state; provided such instrument or writing is executed outside the United States. Such acknowledgments, proofs of execution, and oaths must be taken or made in the manner directed by the laws of this state, including but not limited to s. 117.05(4), (5)(a), and (6), Florida Statutes 1997, and certified by a commissioner of deeds. The certification must be endorsed on or annexed to the instrument or writing aforesaid and has the same effect as if made or taken by a notary public licensed in this state.

(2) Any person seeking to be appointed a commissioner of deeds must take and subscribe to an oath, before a notary public in this state or any other state, or a person authorized to take oaths in another country, to well and faithfully execute and perform the duties of such commissioner of deeds. The oath must be filed with the Department of State prior to the person being commissioned.

(3) Official acts performed by any previously appointed commissioners of deeds, between May 30, 1997, and the effective date of this part, are declared valid as though such official acts were performed in accordance with and under the authority of this part.

History.--s. 14, ch. 98-36; s. 18, ch. 98-322; s. 32, ch. 2004-279; s. 13, ch. 2007-75.

721.98 Powers of the division.--The division has no duty or authority to regulate, enforce, or ensure compliance with any provision of this part.

History.--s. 14, ch. 98-36.

Laws Relating to Taking Acknowledgments and Administering Oaths

The law requires that commissioners take acknowledgments and administer oaths in the same manner as Notaries Public of the State of Florida. Below are the pertinent laws relating to proper procedure in this regard.

From FLORIDA STATUTES, SECTION 117.05

(4) When notarizing a signature, a notary public shall complete a jurat or notarial certificate in substantially the same form as those found in subsection (13). The jurat or certificate of acknowledgment shall contain the following elements:

(a) The venue stating the location of the notarization in the format, "State of Florida, County of _____."

(b) The type of notarial act performed, an oath or an acknowledgment, evidenced by the words "sworn" or "acknowledged."

(c) That the signer personally appeared before the notary public at the time of the notarization.

(d) The exact date of the notarial act.

(e) The name of the person whose signature is being notarized. It is presumed, absent such specific notation by the notary public, that notarization is to all signatures.

(f) The specific type of identification the notary public is relying upon in identifying the signer, either based on personal knowledge or satisfactory evidence specified in subsection (5).

(g) The notary's official signature.

(h) The notary's name, typed, printed, or stamped below the signature.

(i) The notary's official seal affixed below or to either side of the notary's signature.

(5) A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying.

(a) For purposes of this subsection, "personally knows" means having an acquaintance, derived from association with the individual, which establishes the individual's identity with at least a reasonable certainty.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 714

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senators Brandes and Bracy

SUBJECT: Insurance

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 714 amends several insurance-related statutes. More particularly, the bill:

- Requires the Florida Hurricane Catastrophe Fund (FHCF) to reimburse a covered insurer's loss adjustment expenses at 10 percent of the insurer's loss reimbursement, instead of 5 percent as under current law.
- Authorizes insurers to transfer title of totaled motor vehicles or mobile homes to the Department of Highway Safety and Motor Vehicles electronically, as well as through regular mail or other "commercially available delivery service."
- Provides that workers compensation insurance applicants and their agents are no longer required to have their sworn statements notarized as currently required by rule of the Office of Insurance Regulation (OIR).
- Reduces the penalty for filing an application for workers compensation insurance that contains false, misleading, or incomplete information provided for the purpose of avoiding or reducing premiums from a second degree felony to a third degree felony.
- Gives a liability insurer who defends an insured the right to compel the sharing of defense costs by another insurer who also owes a duty to defend the insured on the same claim.
- Prohibits a pre-suit notice for an action brought under s. 624.155, F.S., which relates to bad faith claims and other causes of action against an insurer, from being filed within 60 days after the appraisal process outlined in an insurance contract is invoked.

- Deletes a provision allowing the Department of Financial Services (DFS) to return a pre-suit notice for a bad faith action under s. 624.155, F.S., if the notice lacks specific, required information.
- Provides that a foreign or alien insurer does not need to meet one of the requirements for operating in this state if the OIR is satisfied that its operation in this state is in the best interest of the state and its policyholders.
- Exempts health maintenance organizations and prepaid limited health service organizations (HMO) from having their risk-based capital determined in accordance with the formula set forth in the risk-based capital instructions, unless they also operate in another state.
- Authorizes a surplus lines agent or a retail agent who is servicing a surplus lines policy to charge a reasonable per-policy fee.
- Allows an insurer to offer and give insureds goods or services of any value for the purposes of loss control or loss mitigation related to covered risks. Currently it is an unfair insurance trade practice to provide items or services to an insured valued at more than \$100 per year.
- Allows a property, casualty, or surety insurer to offer a premium discount for a policy if another policy has been purchased from a different insurer that:
 - Has a joint marketing arrangement with the insurer offering the discount;
 - Issued the policy pursuant to the Citizens clearinghouse program if the same agent is servicing both policies; or
 - Has its policy serviced the same agent who is servicing the discounted policy.
- Requires a premium discount offered by a property, casualty, or surety insurer to be actuarially sound.
- Provides an insurer that is asserting a coverage defense more mailing options for sending the required notices.
- Requires a life insurer to provide a notice of lapse to the agent servicing a life insurance policy 21 days prior to the effective date of the lapse unless the:
 - Insurer provides an online method for the agent to identify lapsing policies;
 - Insurer has no record of the agent servicing the policy;
 - Agent is employed by the insurer or its affiliate; or
 - Insurer maintains a procedure that allows an agent to independently determine whether the notice of lapse has been sent to the insured.
- Requires a property insurer to notify a policyholder of its right to participate in mediation at the time of issuance and renewal or when the policyholder files a claim.
- Requires an insurer to collect an amount equal to at least one month's premium, instead 2 month's premium, before issuing a private passenger motor vehicle policy.

The effective date of the bill is July 1, 2019, except as otherwise noted in the bill.

II. Present Situation:

The Florida Hurricane Catastrophe Fund (FHCF)

The FHCF is a tax-exempt¹ fund created in 1993² after Hurricane Andrew³ as a form of mandatory reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration (SBA)⁴ and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent)⁵ of hurricane losses above the insurer's retention (deductible). The FHCF provides insurers an additional source of reinsurance that is less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers.

FHCF Mandatory Coverage

All insurers admitted to do business in this state writing residential property insurance that includes wind coverage must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.⁶ The FHCF is authorized by statute to sell \$17 billion of mandatory layer coverage.⁷ Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. Each insurer may select a reimbursement contract wherein the FHCF promises to reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 5 percent⁸ of the reimbursed losses for loss adjustment expenses.⁹

FHCF Premiums

The FHCF must charge insurers the actuarially indicated premium¹⁰ for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.¹¹ The actuarially indicated premium is an amount that is adequate to pay current and future obligations and expenses of the fund. In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. The cost of FHCF coverage is generally lower than the cost of private reinsurance because the fund is a tax-exempt non-profit corporation and does not

¹ Section 215.555(1)(f), F.S.

² Ch. 93-409, Laws of Fla.

³ Ed Rappaport, *Preliminary Report, Hurricane Andrew* (updated Dec. 10, 1993; addendum Feb. 7, 2005), <https://www.nhc.noaa.gov/1992andrew.html>.

⁴ State Board of Administration of Florida, *About the SBA*, <https://www.sbafla.com/fsb/> (last visited March 27, 2019).

⁵ Section. 215.555(2)(e), F.S.

⁶ *See* s. 215.555(4)(a), F.S.

⁷ Section 215.555(4)(c)1., F.S.

⁸ Section 215.555(4)(b), F.S.

⁹ Loss adjustment expenses are costs incurred by insurers when investigating, adjusting, and processing a claim.

¹⁰ Section 215.555(2)(a), F.S.

¹¹ *See, Florida Commission on Hurricane Loss Methodology*, <https://www.sbafla.com/method/> (last visited March 29, 2019).

charge a risk load as it relates to overhead and operating expenses incurred by other private insurers.¹²

FHCF Bonding and Assessment Authority

When the moneys in the FHCF are or will be insufficient to cover losses, the law¹³ authorizes the FHCF to issue revenue bonds funded by emergency assessments on all lines of insurance except medical malpractice and workers compensation.¹⁴ Emergency assessments may be levied up to 6 percent of premium for losses attributable to any one contract year, and up to 10 percent of premium for aggregate losses from multiple years. The FHCF's broad-based assessment authority is one of the reasons the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.¹⁵

Transfer of Title of Totaled Motor Vehicle or Mobile Home by Insurer to the Department of Highway Safety and Motor Vehicles (DHSMV)

When an insurance company pays money as compensation for the total loss of a motor vehicle or mobile home must obtain the certificate of title and forward it to the DHSMV for processing.¹⁶

Effective July 1, 2023, if the insurance company is unable to obtain a properly assigned certificate of title for the owner or lienholder, then the company may receive a salvage certificate of title or certificate of destruction from the DHSMV.¹⁷ However, the company may only receive this if the motor vehicle or mobile home does not carry an electronic lien on the title and the insurance company has:

- Obtained the release of all liens on the motor vehicle or mobile home;
- Provided proof of payment of the total loss claim; and
- Provided an affidavit on letterhead signed by the insurance company or its authorized agent stating the attempts made to obtain the title from the owner or lienholder and stating that all attempts are to no avail.¹⁸

Right of Contribution

A person or entity often has two or more insurance policies covering the same type of claims. For example, a person may have automobile insurance that covers him or her for liability arising from an accident in which he or she was at fault. This person may also have an “umbrella policy,” which could be issued by a different insurer, and that would apply above the policy

¹² State Board of Administration of Florida, Florida Hurricane Catastrophe Fund, *2016 Annual Report*, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943 (last visited March 29, 2019).

¹³ Section 215.555(6), F.S.

¹⁴ Section 215.555(6)(b), F.S.

¹⁵ The U.S. Internal Revenue Service has, by a Private Letter Ruling, authorized the FHCF to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, for 5 years until June 30, 2003. On May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that the prior exemption, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis (on file with the Committee on Banking and Insurance).

¹⁶ Section 319.30(3)(b), F.S.

¹⁷ Section 319.30(3)(b)1., F.S.

¹⁸ *Id.*

limits of the automobile policy.¹⁹ If the person is at fault in an automobile accident and is sued, and only one insurer pays to defend the insured in the lawsuit, the insurer has no right to force the other insurer to cover the costs of defense; in other words, the insurer has no “right of contribution” from the other insurer.²⁰

Motorist Modernization

According to the DHSMV, the Motorist Modernization initiative

is a multi-year phased plan for re-engineering the Department of Highway Safety and Motor Vehicles’ driver license and motor vehicle systems to create efficiencies in the department’s work processes, enhance safety features for law enforcement agencies and streamline interactivity for customers now and into the future. When complete, the initiative will modernize driver license and vehicle registration systems to serve Florida’s growing population, without growing government. Customers may experience shorter wait times at local driver license and motor vehicle service centers and will gain access to additional online options.²¹

Workers Compensation Insurance Sworn Statements

Employers who apply for workers compensation insurance coverage are required to file applications in a form prescribed by the Financial Services Commission. Submission of an application that contains false, misleading, or incomplete information provided with the purpose of avoiding or reducing the amount of premiums for workers’ compensation coverage is a felony of the second degree.²²

The Financial Services Commission is allowed to adopt rules regarding the submission of such applications. The rules require applications to include information on the employer, the type of business, past and prospective payroll, estimated revenue, previous workers’ compensation experience, employee classification, employee names, and any other information necessary to enable a carrier to accurately underwrite the applicant. The application must contain a sworn statement by the employer attesting to the accuracy of the information submitted. The application must also contain a sworn statement by the agent attesting that the agent explained to the employer or officer the classification codes that are used for premium calculations. Rule 69O-189.003, F.A.C., promulgated by the Financial Services Commission, requires that the sworn statements be notarized.

¹⁹ Investopedia, *Umbrella Insurance Policy*, <https://www.investopedia.com/terms/u/umbrella-insurance-policy.asp> (last visited April 2, 2019).

²⁰ See, e.g., *Continental Cas. Co. v. United Pacific Ins. Co.*, 637 So. 2d 270 (Fla. 4th DCA 1994).

²¹ Florida Department of Highway Safety and Motor Vehicles, *Motorist Modernization*, <https://www.flhsmv.gov/motorist-modernization/> (last visited April 1, 2019). The Motorist Modernization initiative is funded by a nonrecurring appropriation provided in ch. 2018-9, Laws of Fla.

²² Such a felony is punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Civil Remedies Against Insurers

Insurance and Insurer Obligations

Insurance is a contract, commonly referred to as a “policy,” under which, for stipulated consideration called a “premium,” one party, the insurer, undertakes to compensate the other, the insured, for loss on a specified subject from specified perils. Florida residents often obtain property insurance and liability insurance. Property insurance protects individuals from the loss of or damage to property and, in some instances, personal liability pertaining to the property. One of the common lines of insurance in this category is homeowner’s insurance. Automobile liability insurance²³ covers suits against the insured for damages such as injury or death to another driver or passenger, as well as property damage. It is insurance for those damages for which the driver can be held liable due to the operation of the automobile.

A liability insurer generally owes two major contractual duties to its insured in exchange for premium payments—the duty to indemnify and the duty to defend.²⁴ The duty to indemnify refers to the insurer’s obligation to issue payment to the insured or a beneficiary on a valid claim.²⁵ The duty to defend refers to the insurer’s duty to provide a defense for the insured in court against a third party with respect to a claim within the scope of the insurance contract.²⁶

Statutory and Common Law Bad Faith

Common Law Bad Faith – “Third Party Claims”

As early as 1938, Florida courts recognized an additional duty that does not arise directly from the contract, the common law duty of good faith on the part of an insurer to the insured in negotiating settlements with third-party claimants.²⁷ Under a liability policy, the insured’s role is essentially limited to selecting the type and desired level of coverage and paying the corresponding premium.²⁸ As part of the contract, the insured surrenders to the insurer all control over the negotiations and decision making as to third-party claims.²⁹ The insured’s role is relegated to the obligation to cooperate with the insurer’s efforts to adjust the loss.³⁰ The insurer makes all the decisions with regard to third-party claims handling and thereby has the power to settle and foreclose an insured’s exposure to liability, or to refuse to settle and leave the insured exposed to liability in excess of the policy limits.³¹ As a result, “the relationship between the parties arising from the bodily injury liability provisions of the policy is fiduciary in nature, much akin to that of attorney and client,” because the insurer owes a duty to refrain from acting

²³ In Florida, every owner or operator of an automobile is required to maintain liability insurance to cover a minimum of \$10,000 in coverage for damage to another’s property in a crash. Additionally, every owner or registrant of an automobile is required to maintain personal injury protection, which covers medical expenses related to a car accident regardless of fault up to \$10,000. Sections 324.022 and 627.733, F.S.

²⁴ 16 Williston on Contracts s. 49:105 (4th ed.).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Auto. Mut. Indemnity Co. v. Shaw*, 184 So. 852 (Fla. 1938).

²⁸ Rutledge R. Liles, *Florida Insurance Bad Faith Law: Protecting Businesses and You*, 85 Fla. Bar. J. No. 3, p. 8 (March 2011).

²⁹ *Id.*

³⁰ *Id.*

³¹ *State Farm v. Laforet*, 658 So.2d 55, 58 (Fla. 1995).

solely on the basis of its own interests in the settlement of third-party claims.³² Accordingly, and because of this relationship, the insurer owes a duty to the insured to “exercise the utmost good faith and reasonable discretion in evaluating the claim” and negotiating for a settlement within the policy limits.³³ When the insurer fails to act in the best interests of the insured in settling a third-party claim, an injured insured is entitled to hold the insurer accountable for its “bad faith”³⁴ if a third party obtains a judgment against the insured in excess of his or her insurance coverage.³⁵ A third-party claim can be brought by the insured, having been held liable for judgment in excess of policy limits by the third-party claimant,³⁶ or it can be brought by the third party directly or through an assignment of the insured’s rights.³⁷

Statutory Bad Faith -- First- and Third-Party Claims

In 1982 the Legislature enacted s. 624.155, F.S., which provides that *any person* may bring a claim for “bad faith” against an insurer for “not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests,”³⁸ the same as the common law standard.³⁹ Section 624.155, F.S., codifies third-party claims for “bad faith,” but does not preempt the common law remedy.⁴⁰ Additionally, s. 624.155, F.S., recognizes first-party bad faith actions.

“There are three prerequisites to filing a statutory bad-faith claim: (1) determination of the insurer’s liability for coverage; (2) determination of the extent of the insured’s damages; and (3) the required notice must be filed under section 624.155(3)(a).”⁴¹

In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer 60 days’ written notice of the alleged violation.⁴² The insurer has 60 days after the required notice is filed to pay the damages or correct the circumstances giving rise to the violation.⁴³ Because first-party claims are only statutory, that cause of action does not exist until the 60-day cure period provided in the statute expires without payment by the insurer.⁴⁴ However, because third-party claims exist both in statute and at common law, the insurer cannot guarantee avoidance of a third-party bad faith claim by curing within the statutory period.⁴⁵

³² *Baxter v. Royal Indem. Co.*, 285 So.2d 652, 655 (Fla. 1st DCA 1973), *cert. discharged*, 317 So.2d 725 (Fla. 1975).

³³ *Id.*

³⁴ Liles, *supra* note 6.

³⁵ *Opperman v. Nationwide Mut. Fire Ins. Co.*, 515 So.2d 263, 265 (Fla. 5th DCA 1987).

³⁶ See *Powell v. Prudential Prop. and Cas. Ins. Co.*, 584 So.2d 12 (Fla. 3d DCA 1991).

³⁷ See *Thompson v. Commercial Union Ins. Co.* 250 So.2d 259 (Fla. 1971)(recognizing a direct third-party claim under the common law before the enactment of s. 624.155, F.S.); *State Farm Fire and Cas. Co. v. Zebrowski*, 706 So.2d 275 (Fla. 1997).

³⁸ Section 624.155(1)(b), F.S.

³⁹ Fla. Standard Jury Instr. 404.4 (Civil).

⁴⁰ Section 624.155(8), F.S.

⁴¹ *Landers v. State Farm Florida Ins. Co.*, 234 So. 3d 856, 859 (Fla. 5th DCA 2018) (*citing Cammarata v. State Farm Florida Ins. Co.*, 152 So.3d 606 (Fla. 4th DCA 2014)).

⁴² Section 624.155(3)(a), F.S.

⁴³ Section 624.155(3)(d), F.S.

⁴⁴ *Talat Enterprises, Inc. v. Aetna Cas. & Sur. Co.*, 753 So.2d 1278, 1284 (Fla. 2000).

⁴⁵ *Macola v. Gov. Employees Ins. Co.*, 953 So.2d 451, 458 (Fla. 2007) (holding that an insurer’s tender of the policy limits to an insured in response to the filing of a civil remedy notice, after the initiation of a lawsuit against the insured but before entry of an excess judgment, does not preclude a common law cause of action against the insurer for third-party bad faith).

“Acting Fairly” to Settle Third-Party Claims

In interpreting what it means for an insurer to act fairly toward its insured, Florida courts have held that when the insured’s liability is clear and an excess judgment is likely due to the extent of the resulting damage, the insurer has an affirmative duty to initiate settlement negotiations.⁴⁶ If a settlement is not reached, the insurer has the burden of showing that there was no realistic possibility of settlement within policy limits.⁴⁷ Failure to settle on its own does not mean that an insurer acts in bad faith.

The question of whether an insurer has acted in bad faith in handling claims against the insured is determined under the totality of the circumstances standard.⁴⁸ Each case is determined on its own facts and ordinarily the question of failure to act in good faith with due regard for the interests of the insured is for the jury.⁴⁹

In light of the heightened duty on the part of the insurer as a fiduciary, Florida courts focus on the actions of the insurer during the time when it was acting under a duty to the insured, not the actions of the claimant.⁵⁰

Property Insurance Appraisers and Umpires

Insurance companies often include an appraisal clause in property insurance policies.⁵¹ The appraisal clause provides a procedure to resolve disputes between the policyholder and the insurer concerning the value of a covered loss. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process *generally* works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and attempt to reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both appraisers. A decision agreed to by any two of the three will set the amount of the loss.

⁴⁶ See *Powell v. Prudential Property and Casualty Insurance Company*, 584 So.2d 12, 14 (Fla. 3d DCA 1991).

⁴⁷ *Id.*

⁴⁸ See *Berges v. Infinity Ins. Co.*, 896 So.2d 665, 680 (Fla. 2004).

⁴⁹ *Id.*

⁵⁰ *Id.* at 677.

⁵¹ *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So.3d 578 (Fla. 3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America*, 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal clauses.

- The insurance company or the policyholder may challenge the umpire’s impartiality and disqualify a proposed umpire based on criteria set forth in statute.⁵²

Eligibility of a Foreign or Alien Insurer to Transact Insurance in Florida

“Foreign” and “alien” insurers, which are those that are not formed under the laws of this state,⁵³ may nonetheless transact insurance in Florida if they meet statutory criteria. Particularly, the insurer must meet the general requirements to transact insurance under the insurance code, and it must have operated satisfactorily for at least 3 years in its state or country of domicile. However, the Office of Insurance Regulation may waive the 3-year requirement if it:

- Has operated successfully and has capital and surplus of \$5 million;
- Is the wholly owned subsidiary of an insurer which is an authorized insurer in this state;
- Is the successor in interest through merger or consolidation of an authorized insurer; or
- Provides a product or service not readily available to the consumers of this state.

Risk-Based Capital for Insurers & Health Organizations

Risk-based capital (RBC) is a capital adequacy standard that represents the amount of required capital an insurer must maintain, based on the inherent risks in the insurer’s operations. It is determined by a formula that considers certain material risks depending on the type of insurer, and generates the regulatory minimum amount of capital that a company is required to maintain to avoid regulatory action. RBC raises a safety net for insurers, is uniform among states, and operates as a tripwire system to give state insurance regulators authority for timely corrective action.

In March 2006, the National Association of Insurance Commissioners (NAIC)⁵⁴ adopted revisions to the Risk-Based Capital for Insurers Model Act (#312), which provides that states must require both life and health and property and casualty insurers to submit RBC filings with their regulators. In 2010, the NAIC adopted a recommendation to make the Risk-Based Capital for Health Organizations (#315) Model Act an accreditation standard. This model act defines “health organization” to include Health Maintenance Organizations (HMO) and prepaid limited health service organizations (PLHSO). However, the model act permits insurance commissioners to exempt single-state HMOs and PLHSOs who meet specified criteria from the RBC requirements. Accordingly, effective January 1, 2015, it was mandatory for member states to require multi-state and non-exempt single-state HMOs and PLHSOs to submit risk-based capital filings in order to maintain accreditation.

In 2014, Florida adopted the RBC standard for multi-state⁵⁵ HMOs and PLHSOs.⁵⁶ However, Florida has neither extended the RBC requirements to single-state HMOs and PLHSO, nor adopted the exemption criteria permitted by the model act. Thus, life and health insurers,

⁵² See s. 627.70151, F.S.

⁵³ See s. 624.06(2)-(3), F.S.

⁵⁴ The NAIC is a voluntary association of insurance regulators from all 50 states. The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. The NAIC accreditation is a certification that legal, financial and organizational standards are being fulfilled by the OIR.

⁵⁵ Defined to include those authorized in Florida and one or more other states or countries. Section 636.4085(1)(g), F.S.

⁵⁶ Ch. 2014-101, Laws of Fla.

property and casualty insurers, including property and casualty insurers that write accident and health insurance, only, and multi-state HMOs and PLHSOs are subject to the RBC requirements. Single-state HMOs and PLHSOs are not.

Surplus Lines Agents

Surplus lines agents are authorized to handle the placement of insurance coverages with surplus lines insurers.⁵⁷ Licensed resident general lines agents who meet the statutory criteria for licensure are eligible for licensure as a surplus lines agent.⁵⁸ Florida law requires a surplus lines agent to file a quarterly affidavit with the Florida Surplus Lines Service Office (FSLSO) to document all surplus lines insurance transacted in the quarter.⁵⁹ The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts. To account for the administrative costs surplus lines agents incur to comply with reporting requirements, the agent may charge a reasonable per-policy fee, not to exceed \$35, for each policy exported.⁶⁰ This fee has not been adjusted since it was raised from \$25 to \$35 in 2001.⁶¹ Retail agents involved in the export of policies to surplus lines do not get to charge a fee.

Risk-Based Capital Requirements for Insurers

Health maintenance organizations and prepaid limited health service organizations must have their risk-based capital determined in accordance with the formula set forth in the risk-based capital instructions.⁶²

Unfair Insurance Trade Practices

The Unfair Insurance Trade Practices Act,⁶³ among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.⁶⁴ It provides an extensive list of prohibited methods and acts. Among these are prohibitions on certain inducements to the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to the prospective insurance purchaser. The law also describes prohibited discrimination. There are also many exceptions to the prohibitions defined by law.

Among the exceptions is authorization for insurers and their agents to offer and make gifts of charitable contributions, merchandise, goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items up to \$100 per calendar year to an

⁵⁷ Section 626.914(1), F.S.

⁵⁸ Section 626.927, F.S. Generally, to be licensed as a surplus lines agent, an individual must be: (1) deemed by the Department of Financial Services to have sufficient experience in the insurance business (2) have 1-year experience working for a licensed surplus lines agent or have completed 60 class hours in an approved surplus lines course, and (3) pass a written examination.

⁵⁹ FLORIDA SURPLUS LINES SERVICE OFFICE, *Quarterly Report Affidavit as Required by the Surplus Lines Law*, <https://www.fslso.com/docs/default-source/default-document-library/BusinessForms/QuarterlyAffidavit.pdf?sfvrsn=24> (last visited April 2, 2019).

⁶⁰ Section 626.916(4), F.S.

⁶¹ Ch. 2001-213, Laws of Fla.

⁶² Section 624.408(1)(g), (2)(d), F.S.

⁶³ Chapter 626, F.S., part IX.

⁶⁴ Section 626.9541, F.S.

insured, prospective insured, or any person for the purpose of advertising.⁶⁵ There are several similar limitations on advertising gifts under the Florida Insurance Code related to the advertising practices of title insurance agents, agencies and insurers, public adjusters, group and individual health benefit plans, and motor vehicle service agreement companies.⁶⁶

Coverage Defense Notices

A liability insurer may not assert a “coverage defense” unless it sends a notice, and in some cases two notices, to its insured by registered or certified mail.⁶⁷ A “coverage defense” means “a defense to coverage that otherwise exists,” that is, coverage that would exist if an insured had not failed to meet the terms of the policy.⁶⁸ Accordingly, a coverage defense is not a denial of coverage based, for example, on the fact that the policy expressly excludes coverage of the type demanded by the insured.

The first notice that an insurer must send is the “written notice of reservation of rights to assert coverage defense,” which must be sent within 30 days after the liability insurer knew or should have known of the coverage defense. Within 60 days of compliance with the first notice requirement or receipt of a summons and complaint naming the insured as a defendant, but not later than 30 days before trial, the insurer must do one of three things if it desires to assert coverage defense.⁶⁹ One of these options is sending the insured a written notice by certified or registered mail of the insured’s refusal to defend the insured.⁷⁰

Discounts for Purchase of Multiple Insurance Policies

Florida law allows an insurer to include a discount in the premium charged for any policy, contract, or certificate of insurance, because another policy, contract, or certificate of any type has been purchased by the insured from the same insurer or insurer group.⁷¹ Additionally, the discount is allowed when an agent is servicing both an open-market policy for the insured and one issued by Citizens or an insurer that removed the policy from Citizens through the takeout process.⁷²

⁶⁵ Rule 69B-186.010, F.A.C., Unlawful Inducements Related to Title Insurance Transactions, governs inducements related to title insurance, but exempts gifts within the value limitation of s. 626.9541(1)(m), F.S. However, federal law prohibits any fee, kickback or thing of value given for referral of real estate settlement services on mortgage loans related to federal programs. 12 U.S.C. s. 2607 (2017).

⁶⁶ Public adjusters, their apprentices, and anyone acting on behalf of the public adjuster are prohibited from giving gifts of merchandise valued in excess of \$25 as an inducement to contract. Section 626.854(10), F.S. A group or individual health benefit plan may provide merchandise without limitation in value as part of an advertisement for voluntary wellness or health improvement programs. Section 626.9541(4)(a), F.S. Motor vehicle service agreement companies are prohibited from giving gifts of merchandise in excess of \$25 to agreement holders, prospective agreement holders, or others for the purpose of advertising. Section 634.282(17), F.S.

⁶⁷ See s. 627.426(2), F.S.

⁶⁸ See *AIU Ins. Co. v. Block Marina Inv., Inc.*, 544 So. 2d 998 (Fla. 1989).

⁶⁹ Section 627.426(2)(b), F.S.

⁷⁰ *Id.*

⁷¹ Section 627.0655, F.S.

⁷² Florida law provides two methods to depopulate Citizens policies: 1) insurers may “takeout” policies currently issued by Citizens through offers of coverage, and 2) insurance applicants may be prevented from being issued a Citizens policy if an insurer offers the applicant coverage for no more than 15 percent more than the Citizens’ premium through a clearinghouse listing process prior to being issued a Citizens policy. Sections 627.351(6) and 627.3518, F.S.

Secondary Notice Prior to Life Insurance Policy Lapse

Though insurance coverage of various types may lapse for non-payment of premium, in the case of life insurance, the insured is entitled to a minimum 30-day grace period for non-payment.⁷³ A notice of lapse must be issued after expiration of the grace period and at least 21 days prior to the effective date of the lapse. If the policy provides a grace period greater than 51 days (the standard minimum 30-day grace period, plus the 21-day pre-lapse notice period), then the insurer must issue the notice of lapse at least 21 days prior to the expiration of the grace period.⁷⁴ In addition, the insured is entitled to name a second person to receive the notice of lapse on their behalf.

Property Insurance Claim Mediation

The Department of Financial Services (DFS) administers alternative dispute resolution programs for various types of insurance. DFS has mediation programs for property insurance⁷⁵ and automobile insurance⁷⁶ claims. DFS has a neutral evaluation program, similar to mediation, for sinkhole insurance claims.⁷⁷ DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.⁷⁸

For property insurance claims⁷⁹ involving personal lines and commercial residential claims, only the policyholder, as a first-party claimant, or the insurer may request mediation under DFS' program.⁸⁰ This means that third parties cannot utilize the program; however, an insurer may elect to mediate with the third party. This is true even if the policyholder assigns their policy benefit rights to the third party.⁸¹ The insurer must notify the policyholder of the right to mediation under the program upon receipt of the claim.⁸² The mediation costs are generally the responsibility of the insurer.

Initial Payment Requirements for Motor Vehicle Insurance

An insurer or agent may issue a private passenger motor vehicle insurance policy or binder for the policy only after collecting an amount of money that is equal to 2 months' premiums.

⁷³ Section 627.453, F.S.

⁷⁴ Section 627.4555, F.S.

⁷⁵ Section 627.7015, F.S.

⁷⁶ Section 626.745, F.S.

⁷⁷ Section 627.7074, F.S.

⁷⁸ Sections 627.7015, 627.7074, and 627.745, F.S.

⁷⁹ An eligible claim is one that does not involve: suspected fraud; there is no coverage under the policy; one where the insurer reasonably believes the policyholder has made material misrepresentations relevant to the claim and request for payment has been denied for that reason; one for less than \$500 (unless agreed to by the parties); or, windstorm or hurricane loss if the required notice of claim was not issued in compliance with law. Section 627.7015(9), F.S.

⁸⁰ Policyholders may have the assistance of legal counsel during the mediation process. Litigants in the county and circuit court may be referred to the program. Commercial coverages, private passenger motor vehicle coverages, and liability coverages of property insurance policies are not eligible for the property insurance mediation program. Section 627.7015(1), F.S.

⁸¹ Section 627.7015(1), F.S.

⁸² Section 627.7015(2), F.S.

III. Effect of Proposed Changes:

Section 1. Names the act “Omnibus Prime.”

The Florida Hurricane Catastrophe Fund

Section 2. Amends s. 215.555, F.S., to provide that for contracts and rates effective on or after June 1, 2019, the loss adjustment expenses paid by the Florida Hurricane Catastrophe Fund are to increase to 10 percent of an insurer’s reimbursed losses. The current reimbursement rate for loss adjustment expenses is 5 percent of the reimbursed losses.

This section is effective upon becoming a law.

Transfer of Title of a Totaled Motor Vehicles or Mobile Home

Section 3. Amends s. 390.30, F.S. to allow insurers to electronically transfer title of totaled motor vehicles or mobile homes to the DHSMV. Insurers may also send them in the mail or through “another commercially available delivery service.”

The bill also provides a new effective date for a provision of current law that allows insurers who cannot obtain the title from the insured to receive a salvage certificate of title or certificate of destruction from the DHSMV. Under current law, the effective date of this provision is July 1, 2023. Under the bill, the effective date is July 1, 2020.

Finally, this section of the bill allows any signature required under these provisions to be electronic. However, the electronic signature must be in accordance with ch. 668, F.S., which states that an “electronic signature”

means any letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.⁸³

Workers Compensation Sworn Statements

Section 4. Amends s. 440.381, F.S., to provide that workers’ compensation insurance applicants and their agents are no longer required to have their sworn statements notarized as currently required by rule 69O-189.003, F.A.C.

Right of Contribution

Section 5. Creates 624.1055, F.S. to require insurers who cover and have a duty to defend the same insured to share the costs of defending an action against the insured. An insurer’s duty to cover costs includes only the costs incurred after the insurer gets notice of the action. The court shall allocate the costs using appropriate equitable principles, and a liability insurer entitled to contribution may file an action for contribution in a court of competent jurisdiction.

⁸³ Section 668.003(4), F.S.

Civil Remedies Against Insurers

Section 6. Amends s. 624.155, F.S., to prohibit the filing of a civil remedy notice for a bad faith action under s. 624.155, F.S., during the first 60 days of the appraisal process outlined in the insurance contract. The bill also repeals current law that allows the Department of Financial Services to return a civil remedy notice for lack of specificity.

Certificate of Authority

Section 7. Amends s. 624.404, F.S., to provide another exception to the prohibition on a foreign or alien insurer or exchange operating in this state if that insurer or exchange has not operated satisfactorily for 3 years in its state or country of domicile. Under the bill, this 3-year requirement is waived if the insurer or exchange:

Demonstrates to the satisfaction of the [Office of Insurance Regulation] that its authorization to transact insurance in this state is in the best interest of this state and its policyholders.

Risk-Based Capital Requirements for Insurers

Section 8. Amends s. 624.4085, F.S., to exempt health maintenance organizations and prepaid limited health service organizations (HMO) from having their risk-based capital determined in accordance with the formula set forth in the risk-based capital instructions. However, an HMO or prepaid limited health services organization must have its risk-based capital determined in accordance with the formula if it also operates in another state.

Reasonable Per-Policy Fees for Placement or Export of Surplus Lines Policy

Section 9. Amends s. 626.916, F.S., to remove the \$35 limit on the reasonable per-policy fee that a filing surplus lines agent may charge for each policy certified for export. The bill also requires the per-policy fee to be itemized separately to the customer before purchase and enumerated in the policy. The bill also authorizes a retail agent to charge a reasonable per-policy fee for placement of a surplus lines policy, and requires the fee to be itemized to the customer.

Unfair Insurance Trade Practices

Section 10. Amends s. 626.9541(5), F.S., to allow insurers to offer and give insureds goods or services of any value for the purposes of loss control or loss mitigation related to covered risks. Currently it is an unfair insurance trade practice to provide items or services to an insured valued at more than \$100 per year.

Discounts for Purchase of Multiple Insurance Policies

Section 11. Amends s. 627.0655, F.S., to allow a property, casualty, or surety insurer to offer an actuarially sound premium discount for a policy if another policy has been purchased from a different insurer that:

- Has a joint marketing arrangement with the insurer offering the discount; or

- Issued the policy pursuant to the Citizens clearinghouse program if the same agent is servicing both policies.

A property, casualty, or surety insurer may also offer an actuarially sound premium discount based on the fact that another insurer's policy, contract, or certificate of any type is serviced by an insurance agent who is servicing both policies.

Currently, s. 627.0655, F.S., does not expressly require these discounts to be actuarially sound.

Coverage Defense Letter

Section 12. Amends s. 627.426, F.S., to add new options for an insurer's sending of the required coverage-defense notices. In addition to sending these notices via certified or registered mail, as under current law, an insurer may instead send them by "United States postal proof of mailing" or other mailing using the Intelligent Mail barcode or other similar tracking method used or approved by the United States Postal Service.

Secondary Notice Prior to Life Insurance Policy Lapse

Section 13. Amends s. 627.4555, F.S., to require a life insurer to provide a notice of lapse to the agent servicing a life insurance policy 21 days prior to the effective date of the lapse. However, the insurer is not required to issue the notice to the agent servicing the life insurance policy if the:

- Insurer provides an online method for the agent to identify lapsing policies;
- Insurer maintains a procedure that allows an agent to independently determine whether the notice of lapse has been sent to the insured;
- Insurer has no record of the agent servicing the policy; or
- Agent is employed by the insurer or its affiliate. Receipt of the notice does not make the agent responsible for any lapse.

Property Insurance Claim Mediation

Section 14. Amends s. 627.7015, F.S., to provide property insurers an additional option for giving a policyholder notice that the policyholder may elect to participate in mediation of a disputed claim. Under current law, this notice must be given at the time a first-party claim is filed. Under the bill, an insurer may instead provide the notice "at the time of issuance and renewal of a policy."

Motor Vehicle Insurance Initial Payments

Section 15. Amends s. 627.7295, F.S., to permit an insurer to issue a private passenger motor vehicle policy after receiving an amount equal to at least 1 month's premium instead of an amount equal to 2 months' premiums, as under current law.

Effective Date

Section 17. States that except as otherwise expressly provided in the bill, the effective date of the bill is July 1, 2019.

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

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill creates another exception to the requirement that a foreign insurer have operated satisfactorily for at least 3 years in its state or country of domicile in order to receive a certificate of authority to operate in this state. Under the exception, a foreign insurer may receive a certificate of authority if it: “Demonstrates to the satisfaction of the [Office of Insurance Regulation] that its authorization to transact insurance in this state is in the best interest of this state and its policyholders.”

This broad grant of discretion to OIR raises the issue of the nondelegation doctrine of the Florida Constitution. Under this doctrine, the Legislature “may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law.”⁸⁴ Instead, “statutes granting power to the executive branch ‘must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion.’”⁸⁵

Accordingly, to avoid the potential for violating the nondelegation doctrine, the Legislature may wish to amend the bill to give OIR additional guidance or standards for

⁸⁴ *Sloban v. Florida Bd. of Pharmacy*, 892 So. 2d 26, 30 (Fla. 1st DCA 2008) (quoting *Sims v. State*, 754 So.2d 657, 668 (2000)).

⁸⁵ *Id.* at 30 (quoting *Fla. Dep’t of State, Div. of Elections v. Martin*, 916 So.2d 763, 770 (Fla. 2005) (quoting *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55–56 (Fla.1976)).

use in determining whether a foreign insurer should be excepted from requirements to have prior satisfactory operations in its state or country of domicile.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Increasing the amount of reimbursement for loss adjustment expense from the Florida Hurricane Catastrophe Fund should have a positive impact for insurers as some insurers obtain private market reinsurance to cover loss adjustment expenses that often cost more than FHCF premiums. Increasing the amount of loss adjustment expenses covered by the FHCF, however, could result in drawing down the fund quicker, and increasing the risk of assessments being needed. If assessments are needed they would be levied to all lines of insurance excluding medical malpractice and workers compensation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 14 regarding notice for mediation does not appear to require the notice to be sent when a claim is denied. Mediation is available for most reasons for denial; some of the exceptions are suspected fraud, no coverage under the policy, or material misrepresentation by the policyholder.⁸⁶

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.555, 319.30, 440.381, 624.1055, 624.155, 624.404, 624.4085, 626.916, 626.9541, 627.0655, 627.426, 627.4555, 627.7015, 627.7295, and 921.0022.

IX. Additional Information:

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

CS/CS by Judiciary on April 1, 2019:

The committee substitute:

⁸⁶ Section 627.7015(9), F.S.

- Provides that the Florida Hurricane Catastrophe Fund must reimburse the loss adjustment expenses of an insurer at 10 percent of the insurer's reimbursed losses. In the underlying bill, the loss adjustment reimbursement percentage was 15 percent of reimbursed losses or the percentage created by the Financial Services Commission, whichever is less.
- Allows insurers to transfer title of totaled motor vehicles or mobile homes to the DHSMV electronically, as well as through regular mail or "another commercially available delivery service."
- Reduces the penalty for filing an application for workers compensation insurance that contains false, misleading, or incomplete information provided for the purpose of avoiding or reducing premiums from a second degree felony to a third degree felony.
- Gives a liability insurer who defends an insured the right to compel the sharing of defense costs by another insurer who also owes a duty to defend the insured on the same claim.
- Requires a premium discount offered by a property, casualty, or surety insurer to be actuarially sound.
- Provides that a foreign or alien insurer or exchange does not need to meet one of the requirements for operating in this state if the OIR is satisfied that its operation in this state is in the best interest of the state and its policyholders.
- Exempts health maintenance organizations and prepaid limited health service organizations (HMO) from having their risk-based capital determined in accordance with the formula set forth in the risk-based capital instructions, unless they also operate in another state.
- Authorizes a surplus lines agent or a retail agent who is servicing a surplus lines policy to charge a reasonable per-policy fee.
- Authorizes a property, casualty, or surety insurer to offer an actuarially sound premium discount based on the fact that a different insurer's policy, contract, or certificate of any type is serviced by an insurance agent who is servicing both policies.
- Provides more mailing options for an insurer that is asserting a coverage defense to send the required notices.
- Provides that a life insurer is not required to issue notice that a life insurance policy will lapse in 21 days to the agent servicing the life insurance policy if the insurer maintains a procedure that allows an agent to independently determine whether the notice of lapse has been sent to the insured.
- Requires a property insurer to notify a policyholder of its right to participate in mediation at the time of issuance and renewal or when the policyholder files a claim. In the underlying bill, the insurers could provide the notice when the policyholder filed a claim or when coverage is applied and payment is determined.
- Requires an insurer to collect an amount equal to at least one month's premium, instead 2 month's premium, before issuing a private passenger motor vehicle policy.

CS by Banking and Insurance on March 11, 2019:

The CS:

- Revises the reimbursement that insurers receive from the FHCF for loss adjustment expenses from 5 percent of losses to the lesser of 15 percent of losses or the uniform loss adjustment percentage established by rule.
- Deletes a requirement that workers compensation insurance applicants and their agents must have their sworn statements notarized.
- Prohibits filing during the first 60 days of the appraisal process outlined in the insurance contract a civil remedy notice for a bad faith action under s. 624.155, F.S.
- Repeals current law that allows the Department of Financial Services to return for lack of specificity a civil remedy notice.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as "Omnibus Prime."

Section 2. Effective upon this act becoming a law,
paragraph (b) of subsection (4) of section 215.555, Florida
Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(4) REIMBURSEMENT CONTRACTS.—

(b)1. The contract shall contain a promise by the board to



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12 reimburse the insurer for 45 percent, 75 percent, or 90 percent
13 of its losses from each covered event in excess of the insurer's
14 retention, plus 5 percent of the reimbursed losses to cover loss
15 adjustment expenses. For contracts and rates effective on or
16 after June 1, 2019, the loss adjustment expense reimbursement
17 must be 10 percent of the reimbursed losses.

18 2. The insurer must elect one of the percentage coverage
19 levels specified in this paragraph and may, upon renewal of a
20 reimbursement contract, elect a lower percentage coverage level
21 if no revenue bonds issued under subsection (6) after a covered
22 event are outstanding, or elect a higher percentage coverage
23 level, regardless of whether or not revenue bonds are
24 outstanding. All members of an insurer group must elect the same
25 percentage coverage level. Any joint underwriting association,
26 risk apportionment plan, or other entity created under s.
27 627.351 must elect the 90-percent coverage level.

28 3. The contract shall provide that reimbursement amounts
29 shall not be reduced by reinsurance paid or payable to the
30 insurer from other sources.

31 Section 3. Paragraph (b) of subsection (3) of section
32 319.30, Florida Statutes, is amended, and paragraph (d) is added
33 to that section, to read:

34 319.30 Definitions; dismantling, destruction, change of
35 identity of motor vehicle or mobile home; salvage.—

36 (3)

37 (b) The owner, including persons who are self-insured, of a
38 motor vehicle or mobile home that is considered to be salvage
39 shall, within 72 hours after the motor vehicle or mobile home
40 becomes salvage, forward the title to the motor vehicle or



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41 mobile home to the department for processing. However, an
42 insurance company that pays money as compensation for the total
43 loss of a motor vehicle or mobile home shall obtain the
44 certificate of title for the motor vehicle or mobile home, make
45 the required notification to the National Motor Vehicle Title
46 Information System, and, within 72 hours after receiving such
47 certificate of title, forward such title by electronic means,
48 the United States Postal Service, or another commercially
49 available delivery service to the department for processing. The
50 owner or insurance company, as applicable, may not dispose of a
51 vehicle or mobile home that is a total loss before it obtains a
52 salvage certificate of title or certificate of destruction from
53 the department. Effective upon the completion of the Motorist
54 Modernization project by the department, but not later than July
55 1, 2023:

56 1. Thirty days after payment of a claim for compensation
57 pursuant to this paragraph, the insurance company may receive a
58 salvage certificate of title or certificate of destruction from
59 the department if the insurance company is unable to obtain a
60 properly assigned certificate of title from the owner or
61 lienholder of the motor vehicle or mobile home, if the motor
62 vehicle or mobile home does not carry an electronic lien on the
63 title and the insurance company:

64 a. Has obtained the release of all liens on the motor
65 vehicle or mobile home;

66 b. Has provided proof of payment of the total loss claim;
67 and

68 c. Has provided an affidavit on letterhead signed by the
69 insurance company or its authorized agent stating the attempts



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70 that have been made to obtain the title from the owner or
71 lienholder and further stating that all attempts are to no
72 avail. The affidavit must include a request that the salvage
73 certificate of title or certificate of destruction be issued in
74 the insurance company's name due to payment of a total loss
75 claim to the owner or lienholder. The attempts to contact the
76 owner may be by written request delivered in person or by first-
77 class mail with a certificate of mailing to the owner's or
78 lienholder's last known address.

79 2. If the owner or lienholder is notified of the request
80 for title in person, the insurance company must provide an
81 affidavit attesting to the in-person request for a certificate
82 of title.

83 3. The request to the owner or lienholder for the
84 certificate of title must include a complete description of the
85 motor vehicle or mobile home and the statement that a total loss
86 claim has been paid on the motor vehicle or mobile home.

87 (d) An electronic signature that is in accordance with
88 chapter 668 satisfies any signature requirement under this
89 subsection.

90 Section 4. Subsection (2) of section 440.381, Florida
91 Statutes, is amended to read:

92 440.381 Application for coverage; reporting payroll;
93 payroll audit procedures; penalties.-

94 (2) Submission of an application that contains false,
95 misleading, or incomplete information provided with the purpose
96 of avoiding or reducing the amount of premiums for workers'
97 compensation coverage is a felony of the third ~~second~~ degree,
98 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.



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99 The application must contain a statement that the filing of an
100 application containing false, misleading, or incomplete
101 information provided with the purpose of avoiding or reducing
102 the amount of premiums for workers' compensation coverage is a
103 felony of the third degree, punishable as provided in s.
104 775.082, s. 775.083, or s. 775.084. The application must contain
105 a sworn statement by the employer attesting to the accuracy of
106 the information submitted and acknowledging the provisions of
107 former s. 440.37(4). The application must contain a sworn
108 statement by the agent attesting that the agent explained to the
109 employer or officer the classification codes that are used for
110 premium calculations. The sworn statements by the employer and
111 the agent are not required to be notarized.

112 Section 5. Section 624.1055, Florida Statutes, is created
113 to read:

114 624.1055 Right of contribution among insurers for defense
115 costs.—A liability insurer that owes a duty to defend an insured
116 and that defends the insured against a claim, suit, or other
117 action has a right of contribution for defense costs against any
118 other liability insurer that owes a duty to defend the insured
119 against the same claim, suit, or other action, provided that
120 contribution may not be sought from any insurer for defense
121 costs incurred before the insurer's receipt of notice of the
122 claim, suit, or other action.

123 (1) APPORTIONMENT OF COSTS.—The court shall allocate
124 defense costs among insurers that owe a duty to defend the
125 insured against the same claim, suit, or other action in
126 accordance with the terms of the insurance policies. The court
127 may use such equitable factors as the court determines are



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128 appropriate in making such allocation.

129 (2) ENFORCEMENT OF RIGHT OF CONTRIBUTION.—A liability
130 insurer that is entitled to contribution from another insurer
131 under this section may file an action for contribution in a
132 court of competent jurisdiction.

133 (3) CONSTRUCTION.—

134 (a) This section is not intended to alter any term of a
135 liability insurance policy or to create any additional duty on
136 the part of an insurer to an insured.

137 (b) An insured may not rely on this section as grounds for
138 a complaint against an insurer.

139 (4) APPLICABILITY.—

140 (a) This section applies to liability insurance policies
141 issued for delivery in this state or to liability insurance
142 policies under which an insurer has a duty to defend an insured
143 against claims asserted or suits or actions filed in this state.
144 Such liability insurance policies include surplus lines
145 insurance policies authorized under the Surplus Lines Law, ss.
146 626.913-626.937. This section does not apply to motor vehicle
147 liability insurance or medical professional liability insurance.

148 (b) This section applies to any claim, suit, or other
149 action initiated on or after January 1, 2020.

150 Section 6. Subsection (3) of section 624.155, Florida
151 Statutes, is amended to read:

152 624.155 Civil remedy.—

153 (3) (a) As a condition precedent to bringing an action under
154 this section, the department and the authorized insurer must
155 have been given 60 days' written notice of the violation. ~~If the~~
156 ~~department returns a notice for lack of specificity, the 60-day~~



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157 ~~time period shall not begin until a proper notice is filed.~~

158 (b) The notice shall be on a form provided by the
159 department and shall state with specificity the following
160 information, and such other information as the department may
161 require:

162 1. The statutory provision, including the specific language
163 of the statute, which the authorized insurer allegedly violated.

164 2. The facts and circumstances giving rise to the
165 violation.

166 3. The name of any individual involved in the violation.

167 4. Reference to specific policy language that is relevant
168 to the violation, if any. If the person bringing the civil
169 action is a third party claimant, she or he shall not be
170 required to reference the specific policy language if the
171 authorized insurer has not provided a copy of the policy to the
172 third party claimant pursuant to written request.

173 5. A statement that the notice is given in order to perfect
174 the right to pursue the civil remedy authorized by this section.

175 ~~(c) Within 20 days of receipt of the notice, the department~~
176 ~~may return any notice that does not provide the specific~~
177 ~~information required by this section, and the department shall~~
178 ~~indicate the specific deficiencies contained in the notice. A~~
179 ~~determination by the department to return a notice for lack of~~
180 ~~specificity shall be exempt from the requirements of chapter~~
181 ~~120.~~

182 (c)~~(d)~~ No action shall lie if, within 60 days after filing
183 notice, the damages are paid or the circumstances giving rise to
184 the violation are corrected.

185 (d)~~(e)~~ The authorized insurer that is the recipient of a



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186 notice filed pursuant to this section shall report to the
187 department on the disposition of the alleged violation.

188 (e)~~(f)~~ The applicable statute of limitations for an action
189 under this section shall be tolled for a period of 65 days by
190 the mailing of the notice required by this subsection or the
191 mailing of a subsequent notice required by this subsection.

192 (f) A notice required under this subsection may not be
193 filed within 60 days after appraisal is invoked by any party in
194 a residential property insurance claim.

195 Section 7. Subsection (2) of section 624.404, Florida
196 Statutes, is amended to read:

197 624.404 General eligibility of insurers for certificate of
198 authority.—To qualify for and hold authority to transact
199 insurance in this state, an insurer must be otherwise in
200 compliance with this code and with its charter powers and must
201 be an incorporated stock insurer, an incorporated mutual
202 insurer, or a reciprocal insurer, of the same general type as
203 may be formed as a domestic insurer under this code; except
204 that:

205 (2) A ~~No~~ foreign or alien insurer or exchange may not ~~shall~~
206 be authorized to transact insurance in this state unless it is
207 otherwise qualified therefor under this code and has operated
208 satisfactorily for at least 3 years in its state or country of
209 domicile; however, the office may waive the 3-year requirement
210 if the foreign or alien insurer or exchange:

211 (a) Has operated successfully and has capital and surplus
212 of \$5 million;

213 (b) Is the wholly owned subsidiary of an insurer which is
214 an authorized insurer in this state;



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215 (c) Is the successor in interest through merger or
216 consolidation of an authorized insurer; ~~or~~

217 (d) Provides a product or service not readily available to
218 the consumers of this state; or

219 (e) Demonstrates to the satisfaction of the office that its
220 authorization to transact insurance in this state is in the best
221 interest of this state and its policyholders.

222 Section 8. Paragraphs (d) and (e) of subsection (2) of
223 section 624.4085, Florida Statutes, are amended, and paragraph
224 (g) of subsection (1) of that section is republished, to read:

225 624.4085 Risk-based capital requirements for insurers.—

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

227 (g) "Life and health insurer" means an insurer authorized
228 or eligible under the Florida Insurance Code to underwrite life
229 or health insurance. The term includes a property and casualty
230 insurer that writes accident and health insurance only.

231 Effective January 1, 2015, the term also includes a health
232 maintenance organization that is authorized in this state and
233 one or more other states, jurisdictions, or countries and a
234 prepaid limited health service organization that is authorized
235 in this state and one or more other states, jurisdictions, or
236 countries.

237 (2)

238 (d) A life and health insurer's risk-based capital is
239 determined in accordance with the formula set forth in the risk-
240 based capital instructions. The formula takes into account and
241 may adjust for the covariance between:

- 242 1. The risk with respect to the insurer's assets;
243 2. The risk of adverse insurance experience with respect to



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244 the insurer's liabilities and obligations;

245 3. The interest rate risk with respect to the insurer's
246 business; and

247 4. Any other business or other relevant risk set out in the
248 risk-based capital instructions,

249
250 determined in each case by applying the factors in the manner
251 set forth in the risk-based capital instructions. This paragraph
252 does not apply to a health maintenance organization or a prepaid
253 limited health service organization.

254 (e) The risk-based capital of a property and casualty
255 insurer, and, if a health maintenance organization or prepaid
256 limited health service organization is subject to this section
257 pursuant to paragraph (1)(g), the risk-based capital of such
258 organization, ~~insurer's risk-based capital~~ is determined in
259 accordance with the formula set forth in the risk-based capital
260 instructions. The formula takes into account and may adjust for
261 the covariance between:

262 1. The asset risk;

263 2. The credit risk;

264 3. The underwriting risk; and

265 4. Any other business or other relevant risk set out in the
266 risk-based capital instructions,

267
268 determined in each case by applying the factors in the manner
269 set forth in the risk-based capital instructions.

270 Section 9. Subsection (4) of section 626.916, Florida
271 Statutes, is amended, and subsection (5) is added to that
272 section, to read:



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273 626.916 Eligibility for export.-

274 (4) A reasonable per-policy fee, ~~not to exceed \$35,~~ may be
275 charged by the filing surplus lines agent for each policy
276 certified for export. The per-policy fee must be itemized
277 separately to the customer before purchase and must be
278 enumerated in the policy.

279 (5) A retail agent may charge a reasonable per-policy fee
280 for placement of a surplus lines policy under this section. The
281 per-policy fee must be itemized separately to the customer
282 before purchase.

283 Section 10. Paragraph (m) of subsection (1) of section
284 626.9541, Florida Statutes, is amended to read:

285 626.9541 Unfair methods of competition and unfair or
286 deceptive acts or practices defined.-

287 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
288 ACTS.-The following are defined as unfair methods of competition
289 and unfair or deceptive acts or practices:

290 (m) Permissible advertising and promotional gifts, and
291 charitable contributions, and loss mitigation services or loss
292 control items permitted.-

293 1. ~~The provisions of~~ Paragraph (f), paragraph (g), or
294 paragraph (h) do not prohibit a licensed insurer or its agent
295 from:

296 a. Giving to insureds, prospective insureds, or others any
297 article of merchandise, goods, wares, store gift cards, gift
298 certificates, event tickets, anti-fraud ~~or loss mitigation~~
299 services, or other items having a total value of \$100 or less
300 per insured or prospective insured in any calendar year.

301 b. Making charitable contributions, as defined in s. 170(c)



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302 of the Internal Revenue Code, on behalf of insureds or
303 prospective insureds, of up to \$100 per insured or prospective
304 insured in any calendar year.

305 c. Giving to insureds, for free or at a discounted price,
306 loss mitigation services or loss control items of value that
307 relate to the risks covered under the policy.

308 2. ~~The provisions of~~ Paragraph (f), paragraph (g), or
309 paragraph (h) do not prohibit a title insurance agent or title
310 insurance agency, as those terms are defined in s. 626.841, or a
311 title insurer, as defined in s. 627.7711, from giving to
312 insureds, prospective insureds, or others, for the purpose of
313 advertising, any article of merchandise having a value of not
314 more than \$25. A person or entity governed by this subparagraph
315 is not subject to subparagraph 1.

316 Section 11. Section 627.0655, Florida Statutes, is amended
317 to read:

318 627.0655 Policyholder loss or expense-related premium
319 discounts.—An insurer or person authorized to engage in the
320 business of insurance in this state may include, in the premium
321 charged an insured for any policy, contract, or certificate of
322 insurance, an actuarially sound ~~a~~ discount based on the fact
323 that another policy, contract, or certificate of any type has
324 been purchased by the insured from:

325 (1) The same insurer or insurer group, or another insurer
326 under a joint marketing agreement;

327 (2) The Citizens Property Insurance Corporation created
328 under s. 627.351(6), if the same insurance agent is servicing
329 both policies; ~~or~~

330 (3) An insurer that has removed the policy from the



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331 Citizens Property Insurance Corporation or issued a policy
332 pursuant to the clearinghouse program under s. 627.3518, if the
333 same insurance agent is servicing both policies; or

334 (4) An insurer, if the same insurance agent is servicing
335 the policies.

336 Section 12. Subsection (2) of section 627.426, Florida
337 Statutes, is amended to read:

338 627.426 Claims administration.—

339 (2) A liability insurer shall not be permitted to deny
340 coverage based on a particular coverage defense unless:

341 (a) Within 30 days after the liability insurer knew or
342 should have known of the coverage defense, written notice of
343 reservation of rights to assert a coverage defense is given to
344 the named insured by United States postal proof of mailing,
345 registered or certified mail, or other mailing using the
346 Intelligent Mail barcode or other similar tracking method used
347 or approved by the United States Postal Service, sent to the
348 last known address of the insured, or by hand delivery; and

349 (b) Within 60 days of compliance with paragraph (a) or
350 receipt of a summons and complaint naming the insured as a
351 defendant, whichever is later, but in no case later than 30 days
352 before trial, the insurer:

353 1. Gives written notice to the named insured by United
354 States postal proof of mailing, registered or certified mail, or
355 other mailing using the Intelligent Mail barcode or other
356 similar tracking method used or approved by the United States
357 Postal Service, of its refusal to defend the insured;

358 2. Obtains from the insured a nonwaiver agreement following
359 full disclosure of the specific facts and policy provisions upon



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360 which the coverage defense is asserted and the duties,
361 obligations, and liabilities of the insurer during and following
362 the pendency of the subject litigation; or

363 3. Retains independent counsel which is mutually agreeable
364 to the parties. Reasonable fees for the counsel may be agreed
365 upon between the parties or, if no agreement is reached, shall
366 be set by the court.

367 Section 13. Section 627.4555, Florida Statutes, is amended
368 to read:

369 627.4555 Secondary notice.—

370 (1) Except as provided in this section, a contract for life
371 insurance issued or issued for delivery in this state on or
372 after October 1, 1997, covering a natural person 64 years of age
373 or older, which has been in force for at least 1 year, may not
374 be lapsed for nonpayment of premium unless, after expiration of
375 the grace period, and at least 21 days before the effective date
376 of any such lapse, the insurer has mailed a notification of the
377 impending lapse in coverage to the policyowner and to a
378 specified secondary addressee if such addressee has been
379 designated in writing by name and address by the policyowner. An
380 insurer issuing a life insurance contract on or after October 1,
381 1997, shall notify the applicant of the right to designate a
382 secondary addressee at the time of application for the policy,
383 on a form provided by the insurer, and at any time the policy is
384 in force, by submitting a written notice to the insurer
385 containing the name and address of the secondary addressee. For
386 purposes of any life insurance policy that provides a grace
387 period of more than 51 days for nonpayment of premiums, the
388 notice of impending lapse in coverage required by this section



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389 must be mailed to the policyowner and the secondary addressee at
390 least 21 days before the expiration of the grace period provided
391 in the policy. This section does not apply to any life insurance
392 contract under which premiums are payable monthly or more
393 frequently and are regularly collected by a licensed agent or
394 are paid by credit card or any preauthorized check processing or
395 automatic debit service of a financial institution.

396 (2) If the policyowner has a life agent of record or any
397 agent of record, the insurer must also notify the agent of the
398 impending lapse in coverage or mail or send electronically a
399 copy of the notification of the impending lapse in coverage
400 under subsection (1) to the agent at least 21 days before the
401 effective date of any such lapse. Receipt of such notice does
402 not make the agent responsible for any lapse in coverage. An
403 insurer is not required to notify the agent under this
404 subsection if any of the following applies:

405 (a) The insurer maintains an online system that allows an
406 agent to independently determine if a policy has lapsed.

407 (b) The insurer maintains a procedure that allows an agent
408 to independently determine whether the notice of lapse has been
409 sent to the insured.

410 (c) The insurer has no record of the current agent of
411 record.

412 (d) The agent is employed by the insurer or an affiliate of
413 the insurer.

414 Section 14. Subsection (2) of section 627.7015, Florida
415 Statutes, is amended to read:

416 627.7015 Alternative procedure for resolution of disputed
417 property insurance claims.—



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418 (2) At the time of issuance and renewal of a policy or at
419 the time a first-party claim within the scope of this section is
420 filed by the policyholder, the insurer shall notify the
421 policyholder of its right to participate in the mediation
422 program under this section. The department shall prepare a
423 consumer information pamphlet for distribution to persons
424 participating in mediation.

425 Section 15. Subsection (7) of section 627.7295, Florida
426 Statutes, is amended to read:

427 627.7295 Motor vehicle insurance contracts.-

428 (7) A policy of private passenger motor vehicle insurance
429 or a binder for such a policy may be initially issued in this
430 state only if, before the effective date of such binder or
431 policy, the insurer or agent has collected from the insured an
432 amount equal to at least 1 month's ~~2 months'~~ premium. An
433 insurer, agent, or premium finance company may not, directly or
434 indirectly, take any action resulting in the insured having paid
435 from the insured's own funds an amount less than the 1 month's ~~2~~
436 ~~months'~~ premium required by this subsection. This subsection
437 applies without regard to whether the premium is financed by a
438 premium finance company or is paid pursuant to a periodic
439 payment plan of an insurer or an insurance agent. This
440 subsection does not apply if an insured or member of the
441 insured's family is renewing or replacing a policy or a binder
442 for such policy written by the same insurer or a member of the
443 same insurer group. This subsection does not apply to an insurer
444 that issues private passenger motor vehicle coverage primarily
445 to active duty or former military personnel or their dependents.
446 This subsection does not apply if all policy payments are paid



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447 pursuant to a payroll deduction plan, an automatic electronic
448 funds transfer payment plan from the policyholder, or a
449 recurring credit card or debit card agreement with the insurer.
450 This subsection and subsection (4) do not apply if all policy
451 payments to an insurer are paid pursuant to an automatic
452 electronic funds transfer payment plan from an agent, a managing
453 general agent, or a premium finance company and if the policy
454 includes, at a minimum, personal injury protection pursuant to
455 ss. 627.730-627.7405; motor vehicle property damage liability
456 pursuant to s. 627.7275; and bodily injury liability in at least
457 the amount of \$10,000 because of bodily injury to, or death of,
458 one person in any one accident and in the amount of \$20,000
459 because of bodily injury to, or death of, two or more persons in
460 any one accident. This subsection and subsection (4) do not
461 apply if an insured has had a policy in effect for at least 6
462 months, the insured's agent is terminated by the insurer that
463 issued the policy, and the insured obtains coverage on the
464 policy's renewal date with a new company through the terminated
465 agent.

466 Section 16. Paragraph (e) of subsection (3) of section
467 921.0022, Florida Statutes, is amended to read:

468 921.0022 Criminal Punishment Code; offense severity ranking
469 chart.—

470 (3) OFFENSE SEVERITY RANKING CHART

471 (e) LEVEL 5

472

Florida Statute	Felony Degree	Description
--------------------	------------------	-------------

473



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474	316.027 (2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
475	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
476	316.80 (2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
477	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
478	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
	379.365 (2) (c) 1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or



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sale, conspiring or
aiding in such barter,
trade, or sale, or
supplying, agreeing to
supply, aiding in
supplying, or giving
away stone crab trap
tags or certificates;
making, altering,
forging, counterfeiting,
or reproducing stone
crab trap tags;
possession of forged,
counterfeit, or
imitation stone crab
trap tags; and engaging
in the commercial
harvest of stone crabs
while license is
suspended or revoked.

479

379.367(4)

3rd

Willful molestation of a
commercial harvester's
spiny lobster trap,
line, or buoy.

480

379.407(5)(b)3.

3rd

Possession of 100 or
more undersized spiny
lobsters.



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481	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
482	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
483	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
484	440.381 (2)	<u>3rd</u> 2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
485	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
486			



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487	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
488	790.01 (2)	3rd	Carrying a concealed firearm.
489	790.162	2nd	Threat to throw or discharge destructive device.
490	790.163 (1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
491	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
492	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
493	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.



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494	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
495	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
496	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
497	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
498	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
499	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
500	812.131 (2) (b)	3rd	Robbery by sudden snatching.



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501	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
502	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
503	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
504	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of



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personal identification
information of 10 or
more persons.

505

817.611 (2) (a)

2nd

Traffic in or possess 5
to 14 counterfeit credit
cards or related
documents.

506

817.625 (2) (b)

2nd

Second or subsequent
fraudulent use of
scanning device,
skimming device, or
reencoder.

507

825.1025 (4)

3rd

Lewd or lascivious
exhibition in the
presence of an elderly
person or disabled
adult.

508

827.071 (4)

2nd

Possess with intent to
promote any photographic
material, motion
picture, etc., which
includes sexual conduct
by a child.

509

827.071 (5)

3rd

Possess, control, or



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510	828.12 (2)	3rd	intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
511	839.13 (2) (b)	2nd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
512	843.01	3rd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
513	847.0135 (5) (b)	2nd	Resist officer with violence to person; resist arrest with violence.
514	847.0137	3rd	Lewd or lascivious exhibition using computer; offender 18 years or older.
			Transmission of



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515	(2) & (3)		pornography by electronic device or equipment.
	847.0138	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
516	(2) & (3)		
	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
517			
	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
518			
	893.13 (1) (a) 1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 5. drugs).
519			
	893.13 (1) (c) 2.	2nd	Sell, manufacture, or deliver cannabis (or



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other s. 893.03(1)(c),
(2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)6.,
(2)(c)7., (2)(c)8.,
(2)(c)9., (2)(c)10.,
(3), or (4) drugs)
within 1,000 feet of a
child care facility,
school, or state,
county, or municipal
park or publicly owned
recreational facility or
community center.

520

893.13(1)(d)1.

1st

Sell, manufacture, or
deliver cocaine (or
other s. 893.03(1)(a),
(1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)5.
drugs) within 1,000 feet
of university.

521

893.13(1)(e)2.

2nd

Sell, manufacture, or
deliver cannabis or
other drug prohibited
under s. 893.03(1)(c),
(2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)6.,
(2)(c)7., (2)(c)8.,



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(2) (c) 9., (2) (c) 10.,
(3), or (4) within 1,000
feet of property used
for religious services
or a specified business
site.

522

893.13(1)(f)1.

1st

Sell, manufacture, or
deliver cocaine (or
other s. 893.03(1)(a),
(1)(b), (1)(d), or
(2)(a), (2)(b), or
(2)(c)5. drugs) within
1,000 feet of public
housing facility.

523

893.13(4)(b)

2nd

Use or hire of minor;
deliver to minor other
controlled substance.

524

893.1351(1)

3rd

Ownership, lease, or
rental for trafficking
in or manufacturing of
controlled substance.

525

526

527

528

529

Section 17. Except as otherwise expressly provided in this
act and except for this section, which shall take effect upon
this act becoming a law, this act shall take effect July 1,



791632

530 2019.

531

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

533 And the title is amended as follows:

534 Delete everything before the enacting clause
535 and insert:

536 A bill to be entitled
537 An act relating to insurance; providing a short title;
538 amending s. 215.555, F.S.; increasing the required
539 reimbursement of loss adjustment expenses in
540 reimbursement contracts between the State Board of
541 Administration and property insurers under the Florida
542 Hurricane Catastrophe Fund; amending s. 319.30, F.S.;
543 specifying means by which an insurance company may
544 forward certificates of title of certain salvage motor
545 vehicles or mobile homes to the Department of Highway
546 Safety and Motor Vehicles; revising the effective date
547 of certain procedures and requirements relating to
548 certificates of title; providing that certain
549 electronic signatures satisfy certain signature
550 requirements; amending s. 440.381, F.S.; revising a
551 criminal penalty for the submission, with certain
552 intent, of an employer application for workers'
553 compensation insurance coverage which contains false,
554 misleading, or incomplete information; providing that
555 certain sworn statements in such applications are not
556 required to be notarized; creating s. 624.1055, F.S.;
557 providing a right of contribution among insurers for
558 defense costs under certain circumstances; providing a



559 requirement for, and authorizing the use of certain
560 factors by, a court in allocating costs; providing a
561 cause of action to enforce the right of contribution;
562 providing construction and applicability; amending s.
563 624.155, F.S.; deleting a provision that tolls, under
564 certain circumstances, a period before a civil action
565 against an insurer may be brought; deleting a
566 provision authorizing the Department of Financial
567 Services to return a civil remedy notice for lack of
568 specificity; prohibiting the filing of the notice
569 within a certain timeframe under certain
570 circumstances; amending s. 624.404, F.S.; adding a
571 circumstance under which the Office of Insurance
572 Regulation may waive a 3-year operation requirement
573 for foreign or alien insurers and exchanges; amending
574 s. 624.4085, F.S.; specifying the applicable formula
575 for determining risk-based capital of certain health
576 maintenance organizations and prepaid limited health
577 service organizations; amending s. 626.916, F.S.;
578 deleting a limit on fees charged by filing surplus
579 lines agents per policy certified for export;
580 authorizing retail agents to charge reasonable fees
581 for placing surplus lines policies; specifying
582 requirements for itemizing and enumerating fees;
583 amending s. 626.9541, F.S.; providing that insurers
584 and agents may give insureds certain free or
585 discounted loss mitigation services or loss control
586 items; deleting a limitation on the value of loss
587 mitigation services that may be given to insureds;



588 amending s. 627.0655, F.S.; revising circumstances
589 under which insurers or certain authorized persons may
590 provide certain premium discounts to insureds;
591 amending s. 627.426, F.S.; adding means by which
592 liability insurers may provide to named insureds
593 certain notices relating to coverage denials based on
594 a particular coverage defense; amending s. 627.4555,
595 F.S.; requiring life insurers that are required to
596 provide a specified notice to policyowners of an
597 impending lapse in coverage to also notify the
598 policyowner's agent of record within a certain
599 timeframe; providing that the agent is not responsible
600 for any lapse in coverage; exempting the insurer from
601 the requirement under certain circumstances; amending
602 s. 627.7015, F.S.; adding circumstances under which
603 certain property insurers may provide required notice
604 to policyholders of their right to participate in a
605 certain mediation program; amending s. 627.7295, F.S.;
606 reducing the collected premium required before private
607 passenger motor vehicle insurance policies or binders
608 may be initially issued; amending s. 921.0022, F.S.;
609 conforming a provision to changes made by the act;
610 providing effective dates.



640920

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment to Amendment (791632)

Delete lines 53 - 55

and insert:

the department. Effective July 1, 2020 ~~July 1, 2023~~:

By the Committee on Banking and Insurance; and Senator Brandes

597-02929-19

2019714c1

1 A bill to be entitled
 2 An act relating to insurance; providing a short title;
 3 amending s. 215.555, F.S.; revising the reimbursement
 4 of loss adjustment expenses by the Florida Hurricane
 5 Catastrophe Fund; creating s. 215.55953, F.S.;
 6 requiring the Financial Services Commission, by a
 7 specified date, to establish a certain uniform loss
 8 adjustment expense percentage by rule; specifying
 9 information the commission must consider in
 10 determining certain incurred expenses; requiring the
 11 Office of Insurance Regulation, under certain
 12 circumstances, to advise the commission on adopting a
 13 new uniform loss adjustment expense percentage;
 14 requiring the commission to adopt certain rules under
 15 certain circumstances; providing that adopted rules
 16 are not subject to requirements for a statement of
 17 estimated regulatory costs; amending s. 440.381, F.S.;
 18 providing that certain sworn statements in employer
 19 applications for workers' compensation insurance
 20 coverage are not required to be notarized; amending s.
 21 624.155, F.S.; deleting a provision that tolls, under
 22 certain circumstances, a period before a civil action
 23 against an insurer may be brought; deleting a
 24 provision authorizing the Department of Financial
 25 Services to return a civil remedy notice for lack of
 26 specificity; prohibiting the filing of the notice
 27 within a certain timeframe under certain
 28 circumstances; amending s. 626.9541, F.S.; providing
 29 that provisions relating to unfair methods of

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

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30 competition and unfair or deceptive insurance acts or
 31 practices do not prohibit insurers or agents from
 32 offering or giving to insureds certain free or
 33 discounted services or offerings relating to loss
 34 control or loss mitigation; amending s. 627.0655,
 35 F.S.; revising circumstances under which insurers or
 36 certain authorized persons may provide certain premium
 37 discounts to insureds; amending s. 627.4555, F.S.;
 38 requiring life insurers that are required to provide a
 39 specified notice to policyowners of an impending lapse
 40 in coverage to also notify the policyowner's agent of
 41 record within a certain timeframe; providing that the
 42 agent is not responsible for any lapse in coverage;
 43 exempting the insurer from the requirement under
 44 certain circumstances; amending s. 627.7015, F.S.;
 45 adding circumstances under which certain property
 46 insurers may provide required notice to policyholders
 47 of their right to participate in a certain mediation
 48 program; providing effective dates.

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

51 Section 1. This act may be cited as "Omnibus Prime."

52 Section 2. Effective January 1, 2020, paragraph (b) of
 53 subsection (4) of section 215.555, Florida Statutes, is amended
 54 to read:

55 215.555 Florida Hurricane Catastrophe Fund.—

56 (4) REIMBURSEMENT CONTRACTS.—

57 (b)1. The contract shall contain a promise by the board to
 58

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

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 59 reimburse the insurer for 45 percent, 75 percent, or 90 percent
 60 of its losses from each covered event in excess of the insurer's
 61 retention, plus, for the purpose of covering loss adjustment
 62 expenses, the lesser of 15 percent of the reimbursed losses or
 63 the uniform loss adjustment expense percentage adopted pursuant
 64 to s. 215.55953 ~~5 percent of the reimbursed losses to cover loss~~
 65 ~~adjustment expenses.~~

2. The insurer must elect one of the percentage coverage
 levels specified in this paragraph and may, upon renewal of a
 reimbursement contract, elect a lower percentage coverage level
 if no revenue bonds issued under subsection (6) after a covered
 event are outstanding, or elect a higher percentage coverage
 level, regardless of whether or not revenue bonds are
 outstanding. All members of an insurer group must elect the same
 percentage coverage level. Any joint underwriting association,
 risk apportionment plan, or other entity created under s.
 627.351 must elect the 90-percent coverage level.

3. The contract shall provide that reimbursement amounts
 shall not be reduced by reinsurance paid or payable to the
 insurer from other sources.

Section 3. Section 215.55953, Florida Statutes, is created
 to read:

215.55953 Uniform loss adjustment expense percentage.—

(1) No later than December 1, 2019, the Financial Services
Commission shall establish by rule a uniform loss adjustment
expense percentage for the reasonable reimbursement by the
Florida Hurricane Catastrophe Fund of loss adjustment expenses
incurred in adjusting losses for covered policies under s.
215.555. In determining the reasonable loss adjustment expenses

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 88 incurred in adjusting such losses, the commission shall
 89 consider:

(a) The total losses and loss adjustment expenses that have
been incurred by authorized insurers related to losses caused by
covered events as defined in s. 215.555(2) (b).

(b) The actual claims paying capacity of the Florida
Hurricane Catastrophe Fund.

(c) Other information the commission finds is relevant to
determining the reasonable loss expenses incurred in adjusting
losses reimbursable under s. 215.555.

(2) No later than March 1 of the calendar year following a
covered event under s. 215.555, the Office of Insurance
Regulation shall advise the commission as to the necessity of
adopting a new uniform loss adjustment expense percentage. Upon
a recommendation from the Office of Insurance Regulation that
the commission adopt a new uniform loss adjustment percentage,
the commission shall do so by rule no later than December 1 of
the year such recommendation is made.

(3) Rules adopted pursuant to this section are not subject
to the requirements of s. 120.541.

Section 4. Subsection (2) of section 440.381, Florida
 Statutes, is amended to read:

440.381 Application for coverage; reporting payroll;
 payroll audit procedures; penalties.—

(2) Submission of an application that contains false,
 misleading, or incomplete information provided with the purpose
 of avoiding or reducing the amount of premiums for workers'
 compensation coverage is a felony of the second degree,
 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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117 The application must contain a statement that the filing of an
 118 application containing false, misleading, or incomplete
 119 information provided with the purpose of avoiding or reducing
 120 the amount of premiums for workers' compensation coverage is a
 121 felony of the third degree, punishable as provided in s.
 122 775.082, s. 775.083, or s. 775.084. The application must contain
 123 a sworn statement by the employer attesting to the accuracy of
 124 the information submitted and acknowledging the provisions of
 125 former s. 440.37(4). The application must contain a sworn
 126 statement by the agent attesting that the agent explained to the
 127 employer or officer the classification codes that are used for
 128 premium calculations. The sworn statements by the employer and
 129 the agent are not required to be notarized.

130 Section 5. Subsection (3) of section 624.155, Florida
 131 Statutes, is amended to read:

132 624.155 Civil remedy.—

133 (3) (a) As a condition precedent to bringing an action under
 134 this section, the department and the authorized insurer must
 135 have been given 60 days' written notice of the violation. ~~If the~~
 136 ~~department returns a notice for lack of specificity, the 60-day~~
 137 ~~time period shall not begin until a proper notice is filed.~~

138 (b) The notice shall be on a form provided by the
 139 department and shall state with specificity the following
 140 information, and such other information as the department may
 141 require:

142 1. The statutory provision, including the specific language
 143 of the statute, which the authorized insurer allegedly violated.

144 2. The facts and circumstances giving rise to the
 145 violation.

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146 3. The name of any individual involved in the violation.

147 4. Reference to specific policy language that is relevant
 148 to the violation, if any. If the person bringing the civil
 149 action is a third party claimant, she or he shall not be
 150 required to reference the specific policy language if the
 151 authorized insurer has not provided a copy of the policy to the
 152 third party claimant pursuant to written request.

153 5. A statement that the notice is given in order to perfect
 154 the right to pursue the civil remedy authorized by this section.

155 ~~(e) Within 20 days of receipt of the notice, the department~~
 156 ~~may return any notice that does not provide the specific~~
 157 ~~information required by this section, and the department shall~~
 158 ~~indicate the specific deficiencies contained in the notice. A~~
 159 ~~determination by the department to return a notice for lack of~~
 160 ~~specificity shall be exempt from the requirements of chapter~~
 161 ~~120.~~

162 (c) (d) No action shall lie if, within 60 days after filing
 163 notice, the damages are paid or the circumstances giving rise to
 164 the violation are corrected.

165 (d) (e) The authorized insurer that is the recipient of a
 166 notice filed pursuant to this section shall report to the
 167 department on the disposition of the alleged violation.

168 (e) (f) The applicable statute of limitations for an action
 169 under this section shall be tolled for a period of 65 days by
 170 the mailing of the notice required by this subsection or the
 171 mailing of a subsequent notice required by this subsection.

172 (f) A notice required under this subsection may not be
 173 filed within 60 days after appraisal is invoked by any party in
 174 a residential property insurance claim.

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2019714c1

175 Section 6. Subsection (5) is added to section 626.9541,
176 Florida Statutes, to read:

177 626.9541 Unfair methods of competition and unfair or
178 deceptive acts or practices defined.—

179 (5) LOSS CONTROL OR LOSS MITIGATION SERVICES OR OFFERINGS;
180 CONSTRUCTION.—This section does not prohibit an insurer or agent
181 from offering or giving to an insured, for free or at a
182 discounted price, services or other offerings relating to loss
183 control or loss mitigation with respect to the risks covered
184 under the policy.

185 Section 7. Section 627.0655, Florida Statutes, is amended
186 to read:

187 627.0655 Policyholder loss or expense-related premium
188 discounts.—An insurer or person authorized to engage in the
189 business of insurance in this state may include, in the premium
190 charged an insured for any policy, contract, or certificate of
191 insurance, a discount based on the fact that another policy,
192 contract, or certificate of any type has been purchased by the
193 insured from:

194 (1) The same insurer or insurer group, or another insurer
195 under a joint marketing agreement;

196 (2) The Citizens Property Insurance Corporation created
197 under s. 627.351(6), if the same insurance agent is servicing
198 both policies; or

199 (3) An insurer that has removed the policy from the
200 Citizens Property Insurance Corporation or issued a policy
201 pursuant to the clearinghouse program under s. 627.3518, if the
202 same insurance agent is servicing both policies.

203 Section 8. Section 627.4555, Florida Statutes, is amended

597-02929-19

2019714c1

204 to read:

205 627.4555 Secondary notice.—

206 (1) Except as provided in this section, a contract for life
207 insurance issued or issued for delivery in this state on or
208 after October 1, 1997, covering a natural person 64 years of age
209 or older, which has been in force for at least 1 year, may not
210 be lapsed for nonpayment of premium unless, after expiration of
211 the grace period, and at least 21 days before the effective date
212 of any such lapse, the insurer has mailed a notification of the
213 impending lapse in coverage to the policyowner and to a
214 specified secondary addressee if such addressee has been
215 designated in writing by name and address by the policyowner. An
216 insurer issuing a life insurance contract on or after October 1,
217 1997, shall notify the applicant of the right to designate a
218 secondary addressee at the time of application for the policy,
219 on a form provided by the insurer, and at any time the policy is
220 in force, by submitting a written notice to the insurer
221 containing the name and address of the secondary addressee. For
222 purposes of any life insurance policy that provides a grace
223 period of more than 51 days for nonpayment of premiums, the
224 notice of impending lapse in coverage required by this section
225 must be mailed to the policyowner and the secondary addressee at
226 least 21 days before the expiration of the grace period provided
227 in the policy. This section does not apply to any life insurance
228 contract under which premiums are payable monthly or more
229 frequently and are regularly collected by a licensed agent or
230 are paid by credit card or any preauthorized check processing or
231 automatic debit service of a financial institution.

232 (2) If the policyowner has a life agent of record or any

597-02929-19

2019714c1

233 agent of record, the insurer must also notify the agent of the
234 impending lapse in coverage or mail or send electronically a
235 copy of the notification of the impending lapse in coverage
236 under subsection (1) to the agent at least 21 days before the
237 effective date of such lapse. Receipt of such notice does not
238 make the agent responsible for any lapse in coverage. An insurer
239 is not required to notify the agent under this subsection if any
240 of the following applies:

241 (a) The insurer maintains an online system that allows an
242 agent to independently determine if a policy has lapsed.

243 (b) The insurer has no record of the current agent of
244 record.

245 (c) The agent is employed by the insurer or an affiliate of
246 the insurer.

247 Section 9. Subsection (2) of section 627.7015, Florida
248 Statutes, is amended to read:

249 627.7015 Alternative procedure for resolution of disputed
250 property insurance claims.—

251 (2) Either at the time a first-party claim within the scope
252 of this section is filed by the policyholder or at the time
253 coverage is applied and payment is determined, the insurer shall
254 notify the policyholder of its right to participate in the
255 mediation program under this section. The department shall
256 prepare a consumer information pamphlet for distribution to
257 persons participating in mediation.

258 Section 10. Except as otherwise expressly provided in this
259 act, this act shall take effect July 1, 2019.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 18, 2019

I respectfully request that **Senate Bill #714**, relating to **Insurance**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

APPEARANCE RECORD

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

April 1, 2019

Meeting Date

714

Bill Number (if applicable)

791632

Amendment Barcode (if applicable)

Topic Florida Hurricane Catastrophe Fund

Name Anne Bert

Job Title Chief Operating Officer

Address 1801 Hermitage Blvd.

Phone (850)413-1340

Street

Tallahassee

FL

32308

Email anne.bert@sbafla.com

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic SB 714

Name GEORGE LEVESQUE

Job Title ATTORNEY

Address 301 S. BRONOUGH ST 600 Phone _____
Street

TALLAHASSEE FL 32301 Email _____
City State Zip

S 714

Bill Number (if applicable)

791632

Amendment Barcode (if applicable)

Speaking: For Against Information

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

Representing Riverstone

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

April 1

Meeting Date

714

Bill Number (if applicable)

Topic For both strike all (791632) and Bill

791632
Amendment Barcode (if applicable)

Name TIM Meenan

Job Title

Address 300 S. Duval St.
Street

Phone 850 425-4000

Tallahassee FL 32312
City State Zip

Email Tim@meenanlawfirm.com

Speaking: For Against Information

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

Representing National Association of Insurance Financial Advisors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/19

Meeting Date

714

Bill Number (if applicable)

791632

Amendment Barred (if applicable)

Topic INSURANCE

Name PAUL HANDERHAN

Job Title CONSULTANT

Address 120 S MONROE STREET

Street

Tallahassee FL 32301

City

State

Zip

Phone 561 704 0428

Email Paul@ramboconsulting.com

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

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

Representing FAIR

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.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 1, 2019
Meeting Date

714
Bill Number (if applicable)

Topic Insurance

Amendment Barcode (if applicable)

Name Josh Aubuchon

Job Title Attorney

Address 315 S. Calhoun
Street

Phone 224-7000

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 State Farm Insurance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-1-19
Meeting Date

714
Bill Number (if applicable)

Topic Insurance

Amendment Barcode (if applicable)

Name Michael Carlson

Job Title President/CEO

Address 215 S. Monroe St. Ste. 835

Phone 850-597-7425

Street

Tallahassee

FL

32301

Email michael.carlson@piff.net

City

State

Zip

Speaking: For Against Information

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

Representing The Personal Insurance Federation of Florida, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/19
Meeting Date

714
Bill Number (if applicable)

Topic INSURANCE

Amendment Barcode (if applicable)

Name KYLE ULRICH

Job Title SVP

Address 3159 SHAMROCK S.
Street

Phone 566-4204

TALAHASSEE
City State Zip

Email KULRICH@FAIA.COM

Speaking: For Against Information

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

Representing FL. ASSOC. OF INSURANCE AGENTS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/1/19

Meeting Date

714

Bill Number (if applicable)

Topic INSURANCE

Amendment Barcode (if applicable)

Name PAUL HANDERHAN

Job Title CONSULTANT

Address 120 S MONROE STREET

Phone 561 704 0428

Street
Tallahassee FL 32301

PAUL R RAMBA CONSULTING
Email .com

City State Zip

Speaking: For Against Information

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

Representing FAI

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 7096

INTRODUCER: Judiciary Committee

SUBJECT: Constitutional Amendments

DATE: April 3, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Cibula		JU Submitted as Comm. Bill/Fav

I. Summary:

SB 7096 revises the regulations governing the process in which a constitutional amendment is proposed by a citizen initiative. More particularly, the bill:

- Requires a compensated “petition gatherer” to register with the Secretary of State, attesting that he or she has been Florida resident for at least 29 days before registering;
- Disqualifies petitions from counting toward the number of petitions required for an initiative amendment to appear on the ballot if they are collected by:
 - An unregistered petition gatherers; or
 - A petition gatherer or entity who is compensated on a per-signature basis;
- Prohibits compensation to petition-gatherers on a per-signature basis; and
- Requires the ballot for an initiative amendment to include:
 - A bold-print statement describing the financial impact of the initiative on both the state and local economies if the Financial Impact Estimating Conference determines that the measure will increase costs, decrease revenue, or have an indeterminate fiscal impact.
 - The name of the amendment’s sponsor and the percentage of contributions received by the sponsor from in-state persons, excluding political parties, affiliated party committees, or political committees.

II. Present Situation:

Overview

A citizen initiative is one of the five sources from which a constitutional amendment may originate.¹ Like any proposed amendment, an amendment that begins as a citizen initiative becomes effective when it is approved by at least 60 percent of the votes cast on the measure at a general election. However, prior to appearing on a ballot, the law prescribes a multi-step process that must be completed in order for an amendment to qualify for the ballot. Many of these steps

¹ FLA. CONST. art. XI. The other four sources are the Taxation and Budget Reform Commission, the Legislature, the Constitution Revision Commission, and a constitutional convention.

are designed to ensure the integrity of the ballot and to inform voters of the effect of the proposals.

Registration of the Sponsor and the Beginning of the Process

First, the sponsor must register as a political committee and submit the text of the proposed amendment to the Secretary of State.² The sponsor must also submit the petition form on which the sponsor will collect signatures of the Florida voters who want the amendment placed on the ballot.³ Under the Florida Constitution, the number of signatures required for placement on the ballot is 8 percent of the number of people who voted in the last presidential election.⁴ For instance, 766,200 signatures were required to place an initiative amendment on the 2018 General Election ballot.⁵

Submission to the Supervisor of Elections

After obtaining the required number of signatures, the sponsor must present each signed form to the supervisor of elections in the signors' county of residence.⁶ The supervisor must check several things regarding each signature, including that it is the "original signature" of a qualified and registered voter of that county.⁷ The Florida Supreme Court has recognized that the Legislature has a duty and obligation to ensure ballot integrity and that the verification of signatures on initiative petitions is an element of ballot integrity.⁸

Submission to the Secretary of State

Then, the supervisor must submit each qualifying signature to the Secretary of State.⁹ When the Secretary of State receives a certain number of qualifying signatures (roughly 10 percent what is required for placement on the ballot) he or she must submit the initiative amendment to the Attorney General and to the Financial Impact Estimating Conference (FIEC).¹⁰

² Section 100.371(2), F.S.

³ *Id.*

⁴ However, the number must come from at least 14 of this state's 27 congressional districts. FLA. CONST. art. XI s. 3; Florida Dept. of State, *2018 Initiative Petition Handbook*, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf>.

⁵ Florida Dept. of State, *2018 Initiative Petition Handbook*, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf>.

⁶ Section 100.371(3), F.S.

⁷ Section 100.371(3), F.S. This provision also requires the supervisor of elections to ensure, as to each signature, that the form contains the voter's name, address, city, county, and voter registration number or date of birth.

⁸ *Citizens for Tax Relief v. Firestone*, 386 So. 2d 561, 566-67 (Fla. 1990); *see also Floridian Against Expanded Gambling v. Floridians for a Level Playing Field*, 945 So. 2d 553, 557 (Fla. 1st DCA 2006) (In this case, challengers to an initiative alleged that paid petition gatherers were paid up to \$6.50 per petition and that these individuals forged signatures on a large number of petitions.).

⁹ *Id.*

¹⁰ Section 15.21, F.S. The precise threshold is 10 percent of 8 percent of the people who voted in the previous presidential election in 7 of this state's congressional districts. For district-by district breakdown of these numbers, *see* Florida Dept. of State, *2018 Initiative Petition Handbook (Appendix B: Congressional District Requirements)*, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf>.

Financial Review by the FIEC

The FIEC, within 45 days after receiving an initiative amendment, must complete a “financial impact statement.”¹¹ The FIEC must also complete a more-detailed “initiative financial information statement,” which the Department of State must distribute to supervisors of elections and is made available on the Internet.¹²

The financial impact statement, which is to be placed on the ballot, is a statement of 75 words or less as to “the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative.”¹³ The FIEC must submit the financial impact statement to the Attorney General and Secretary of State.¹⁴

Certification of Ballot Position

If the Secretary of State determines that it has received, by February 21 of the year of a general election year, valid and verified petition forms signed by the constitutionally required number of voters, he or she must assign the amendment a number and certify its ballot position.¹⁵

Review by the Florida Supreme Court

The Attorney General must petition the Florida Supreme Court for an advisory opinion on the validity of the amendment.¹⁶ The Supreme Court applies a deferential standard of review of the initiative amendments which is limited to the legal sufficiency of the proposals.¹⁷ This review includes an examination of the ballot title and ballot summary for compliance with the requirement that they provide accurate information to voters. The Supreme Court has explained that

the gist of the constitutional accuracy requirement is simple: A ballot title and summary cannot either “fly under false colors” or “hide the ball” as to the amendment’s true effect.¹⁸

The Court, therefore, does not address the “merits or wisdom” of the amendment, and has repeatedly stated that it has a duty to uphold a proposal unless it is “clearly and conclusively defective.”¹⁹ The Supreme Court’s review does, however, include the legal validity of the financial impact statement.²⁰ Nonetheless, even if the financial impact statement it is deficient, it

¹¹ Section 100.371(5)(a), F.S.

¹² See s. 100.371(5)(e)4.-5., F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 100.371(1), F.S.

¹⁶ FLA. CONST. art IV, s. 10.

¹⁷ *Advisory Opinion to the Attorney General re Rights of Electricity Consumers Regarding Solar Energy Choice*, 188 So. 3d 822 (Fla. 2016) (internal citations omitted).

¹⁸ *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000).

¹⁹ *Id.*

²⁰ See, e.g., *id.* at 833-34.

can be cured, time permitting.²¹ Even if it cannot be cured, the initiative amendment may still proceed to the ballot.²²

III. Effect of Proposed Changes:

The bill makes several changes to statutes regulating the citizen initiative process.

Regulation of Petition Gatherers

Currently, the Florida Statutes do not appear to directly regulate “petition gatherers.” Under the bill, a petition gatherer is a person who works toward obtaining the required number of signatures for an initiative amendment to be placed on the general election ballot. If a person gathers petitions for compensation, he or she must be a resident of this state and must register with the Secretary of State before gathering signatures. When a compensated petition gatherer registers with the Secretary of State, he or she must provide his or her name, date of birth, residential address, as well as his or her “attestation that he or she is a Florida resident.”

Any signature collected by an unregistered compensated petition gatherer is invalid and does not count toward the number required to place an initiative amendment on the ballot.

The Secretary of State must maintain a searchable database of registered petition gatherers.

The bill further prohibits a person from compensating a petition gatherer on a per-signature basis. A person who compensates a petition gatherer in this manner commits a first degree misdemeanor. Moreover, a petition gathered in violation of this provision is void. The ban on per-signature compensation takes effect 41 days after the bill becomes law.

Required Estimate of an Initiative Amendment’s Impact on the State and Local Economy

The bill requires the Financial Impact Estimating Conference (FIEC) to include in its analysis an additional estimation: the proposed amendment’s impact on the state and local economies. Accordingly, the bill increases the FIEC’s timeframe for completing its analysis from 45 days to 60 days.

Initiative Amendment Ballots that are More Informative

In addition to the information required under current law, the bill requires the ballot for an initiative amendment to include:

- The name of the amendment’s sponsor.
- The percentage of contributions received by the sponsor from in-state persons, excluding political parties, affiliated party committees, or political committees.
- If the amendment will cost money or have an indeterminate fiscal impact, a statement in bold print describing the impact of the initiative on the state and local economies.

²¹ See s. 100.571(5)(c), F.S.

²² See s. 100.571(5)(c)3., F.S.

Publication Requirements

The bill provides that once the Secretary of State certifies a proposed amendment for ballot placement, an interested person may file a position statement not exceeding 50 words with the Secretary, to be published on the Department of State's website.

The bill also requires each county supervisor of elections to include a copy of:

- The FIEC's financial information summaries in the publication or mailing for sample ballots; and
- The proposed amendment text in each voting booth.

Effective Date and Application

The bill is effective upon becoming a law. Its changes apply to all initiative amendments proposed for the 2020 ballot and thereafter. However, nothing in the bill affects the validity of a petition gathered before or within 40 days after the bill's effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill may require supervisors of elections to spend additional funds but the expenditures are likely de minimis.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Constitutionality of Pay-Per-Signature Ban and Petition Gatherer Residency Requirements

Two of the bill's key provisions have been upheld as constitutional by some courts, yet found unconstitutional by others.

At least two courts, including a federal appellate court, have upheld in-state residency requirements for petition gatherers.²³ However, at least four federal appellate courts have held that these prohibitions violated citizens' First Amendment free speech rights.²⁴

Bans on compensating petition gatherers on a per-signature basis have had similarly mixed reviews by the courts. One federal appellate court has upheld a ban.²⁵ However, two federal trial courts have struck down these bans as violations, again, of First Amendment free speech rights.²⁶

Florida Case Law on Regulation of the Citizen Initiative Process in General

The Florida Supreme Court's opinion in *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1058 (Fla. 2016), declared a statutory scheme allowing a person to revoke a signature on an initiative petition was unconstitutional. In reaching its conclusion, the Court provided the following rule for assessing the constitutionality of a law regulating citizen initiative amendments:

[L]egislative and executive measures affecting the initiative process that are neither expressly authorized in article XI, sections 3 and 5, nor implicitly contemplated by these constitutional provisions, must be necessary for ballot integrity.

Nonetheless, the Court acknowledged that "the Legislature and Secretary of State have an obligation to ensure ballot integrity and a valid election," yet have only "limited authority to adopt regulations that affect the initiative process."²⁷

It is not clear that any of the bill's measures are expressly authorized in article XI, sections 3 or 5 of the Florida Constitution. However, they might be implicitly contemplated by these provisions. Article XI, section 3 of the Florida constitution reserves the power to propose amendments by initiative to the "people." This bill might be implicitly contemplated by that reservation of power as it appears intended to inform voters of the extent to which a proposed amendment is supported by people in this state and to supply additional information about the potential fiscal impact of constitutional amendments on state residents.

²³ See *Initiative & Referendum Inst. v. Jaeger*, 241 F. 3d 614 (8th Cir. 2001) (holding that North Dakota's proscription against nonresident petition gatherers "does not unduly restrict speech"); *Hart v. Sec'y of State*, 715 A. 2d 165 (Maine 1998).

²⁴ See *Libertarian Party of Virginia v. Judd*, 718 F. 3d 308 (4th Cir. 2013); *Yes on Term Limits, Inc. v. Savage*, 550 F. 3d 1023 (10th Cir. 2008); *Nader v. Blackwell*, 545 F. 3d 459 (6th Cir. 2008); *Nader v. Brewer*, 531 F. 3d 1028 (9th Cir. 2008).

²⁵ See *Prete v. Bradbury*, 438 F. 3d 949 (9th Cir. 2006).

²⁶ See *Limit v. Maleng*, 874 F. Supp. 1138 (W.D. Wa. 1994); *Idaho Coalition United for Bears v. Cenarrusa*, 234 F. Supp. 2d 1159 (D. Idaho 2001).

²⁷ *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1057-58 (Fla. 2016) (quoting *Smith v. Coalition to Reduce Class Size*, 827 So. 2d 959, 962 (Fla. 2002)).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a negative fiscal impact on state and local government for the following reasons. The bill requires the Secretary of State to post position statements on proposed initiative amendments and to create a registry of petition-gatherers. It also requires the FIEC and the Florida Supreme Court to perform more analyses than under current law. Additionally, the bill also requires supervisors of elections to include a financial information summary for each initiative amendment on their websites. Finally, the bill creates a new crime, which could increase the jail population.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 100.371, 101.161, and 101.171.

This bill creates the following section 104.186 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.



504424

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsection (3) of section 100.371,
Florida Statutes, is renumbered as subsection (4), present
subsections (4) through (7) of that section are renumbered as
subsections (6) through (9), respectively, new subsections (3)
and (5) are added to that section, and present subsection (3),
paragraphs (a) and (e) of present subsection (5), and present



504424

12 subsection (6) of that section are amended, to read:

13 100.371 Initiatives; procedure for placement on ballot.-

14 (3) Before obtaining signatures for compensation, a
15 petition gatherer must register with the Secretary of State on a
16 form prepared by the secretary. The registrant must provide his
17 or her name, date of birth, residential address, and attestation
18 that he or she has been a Florida resident for at least 29 days
19 before submitting the registration form. The secretary shall
20 maintain a searchable database of registered petition gatherers.

21 (4) An initiative petition form circulated for signature
22 may not be bundled with or attached to any other petition. Each
23 signature shall be dated when made and shall be valid for a
24 period of 2 years following such date, provided all other
25 requirements of law are met. The sponsor shall submit signed and
26 dated forms to the supervisor of elections for the county of
27 residence listed by the person signing the form for verification
28 of the number of valid signatures obtained. If a signature on a
29 petition is from a registered voter in another county, the
30 supervisor shall notify the petition sponsor of the misfiled
31 petition. The supervisor shall promptly verify the signatures
32 within 30 days after receipt of the petition forms and payment
33 of the fee required by s. 99.097. The supervisor shall promptly
34 record, in the manner prescribed by the Secretary of State, the
35 date each form is received by the supervisor, and the date the
36 signature on the form is verified as valid. The supervisor may
37 verify that the signature on a form is valid only if:

38 (a) The form contains the original signature of the
39 purported elector.

40 (b) The purported elector has accurately recorded on the



504424

41 form the date on which he or she signed the form.

42 (c) The form sets forth the purported elector's name,
43 address, city, county, and voter registration number or date of
44 birth.

45 (d) The purported elector is, at the time he or she signs
46 the form and at the time the form is verified, a duly qualified
47 and registered elector in the state.

48 (e) The petition gatherer who collected the petition is
49 registered with the Secretary of State under subsection (3).

50

51 The supervisor shall retain the signature forms for at least 1
52 year following the election in which the issue appeared on the
53 ballot or until the Division of Elections notifies the
54 supervisors of elections that the committee that circulated the
55 petition is no longer seeking to obtain ballot position.

56 (5) Upon determining that a constitutional amendment
57 proposed by initiative has met the requirements to be placed on
58 the ballot, the Secretary of State shall allow any interested
59 person to file a position statement of not more than 50 words
60 outlining why the person supports or opposes the amendment. The
61 secretary shall publish each position statement on the webpage
62 for constitutional amendments on the department's website.

63 (7) (a) ~~(5) (a)~~ Within 60 ~~45~~ days after receipt of a proposed
64 revision or amendment to the State Constitution by initiative
65 petition from the Secretary of State, the Financial Impact
66 Estimating Conference shall complete an analysis and financial
67 impact statement to be placed on the ballot of the estimated
68 increase or decrease in any revenues or costs to state or local
69 governments and the estimated economic impact on both the state



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70 and local economies resulting from the proposed initiative. The
71 Financial Impact Estimating Conference shall submit the
72 financial impact statement to the Attorney General and Secretary
73 of State.

74 (e)1. Any financial impact statement that the Supreme Court
75 finds not to be in accordance with this subsection shall be
76 remanded solely to the Financial Impact Estimating Conference
77 for redrafting, provided the court's advisory opinion is
78 rendered at least 75 days before the election at which the
79 question of ratifying the amendment will be presented. The
80 Financial Impact Estimating Conference shall prepare and adopt a
81 revised financial impact statement no later than 5 p.m. on the
82 15th day after the date of the court's opinion.

83 2. If, by 5 p.m. on the 75th day before the election, the
84 Supreme Court has not issued an advisory opinion on the initial
85 financial impact statement prepared by the Financial Impact
86 Estimating Conference for an initiative amendment that otherwise
87 meets the legal requirements for ballot placement, the financial
88 impact statement shall be deemed approved for placement on the
89 ballot.

90 3. In addition to the financial impact statement required
91 by this subsection, the Financial Impact Estimating Conference
92 shall draft an initiative financial information statement. The
93 initiative financial information statement should describe in
94 greater detail than the financial impact statement any projected
95 increase or decrease in revenues or costs that the state or
96 local governments would likely experience and the estimated
97 economic impact on both the state and local economies if the
98 ballot measure were approved. If appropriate, the initiative



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99 financial information statement may include both estimated
100 dollar amounts and a description placing the estimated dollar
101 amounts into context. The initiative financial information
102 statement must include both a summary of not more than 500 words
103 and additional detailed information that includes the
104 assumptions that were made to develop the financial impacts,
105 workpapers, and any other information deemed relevant by the
106 Financial Impact Estimating Conference.

107 4. The Department of State shall have printed, and shall
108 furnish to each supervisor of elections, a copy of the summary
109 from the initiative financial information statements. The
110 supervisors shall have the summary from the initiative financial
111 information statements available at each polling place and at
112 the main office of the supervisor of elections upon request.

113 5. The Secretary of State and the Office of Economic and
114 Demographic Research shall make available on the Internet each
115 initiative financial information statement in its entirety. In
116 addition, each supervisor of elections whose office has a
117 website shall post the summary from each initiative financial
118 information statement on the website. Each supervisor shall
119 include a copy of each summary from the initiative financial
120 information statements and the Internet addresses for the
121 information statements on the Secretary of State's and the
122 Office of Economic and Demographic Research's websites in the
123 publication or mailing required by s. 101.20.

124 ~~(8)-(6)~~ The Department of State may adopt rules in
125 accordance with s. 120.54 to carry out the provisions of
126 subsections (1)-(7) ~~(1)-(5)~~.

127 Section 2. Subsection (1) of section 101.161, Florida



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128 Statutes, is amended to read:

129 101.161 Referenda; ballots.—

130 (1) Whenever a constitutional amendment or other public
131 measure is submitted to the vote of the people, a ballot summary
132 of such amendment or other public measure shall be printed in
133 clear and unambiguous language on the ballot after the list of
134 candidates, followed by the word "yes" and also by the word
135 "no," and shall be styled in such a manner that a "yes" vote
136 will indicate approval of the proposal and a "no" vote will
137 indicate rejection. The ballot summary of the amendment or other
138 public measure and the ballot title to appear on the ballot
139 shall be embodied in the constitutional revision commission
140 proposal, constitutional convention proposal, taxation and
141 budget reform commission proposal, or enabling resolution or
142 ordinance. The ballot summary of the amendment or other public
143 measure shall be an explanatory statement, not exceeding 75
144 words in length, of the chief purpose of the measure. In
145 addition, for every amendment proposed by initiative, the ballot
146 shall include, following the ballot summary, in the following
147 order:

148 (a) The name of the initiative's sponsor and the percentage
149 of total contributions obtained by the sponsor from in-state
150 persons. For purposes of this subparagraph, the term "person"
151 has the same meaning as provided in s. 106.011(14), except that
152 the term does not include a political party, an affiliated party
153 committee, or a political committee.

154 (b) A separate financial impact statement concerning the
155 measure prepared by the Financial Impact Estimating Conference
156 in accordance with s. 100.371(7) ~~s. 100.371(5).~~



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157 (c) If the financial impact statement estimates increased
158 costs or decreased revenues, a range that includes increased
159 costs or decreased revenues, or an indeterminate economic impact
160 a statement in bold print describing the impact of the
161 initiative on both the state and local economies.

162
163 The ballot title shall consist of a caption, not exceeding 15
164 words in length, by which the measure is commonly referred to or
165 spoken of. This subsection does not apply to constitutional
166 amendments or revisions proposed by joint resolution.

167 Section 3. Section 101.171, Florida Statutes, is amended to
168 read:

169 101.171 Copy of constitutional amendment to be available at
170 voting locations.—Whenever any amendment to the State
171 Constitution is to be voted upon at any election, the Department
172 of State shall have printed and shall furnish to each supervisor
173 of elections a sufficient number of copies of the amendment
174 either in poster or booklet form, and the supervisor shall have
175 a copy thereof conspicuously posted or available at each voting
176 booth ~~polling room or early voting area upon the day of~~
177 ~~election.~~

178 Section 4. Effective 41 days after the effective date of
179 this act, section 104.186, Florida Statutes, is created to read:

180 104.186 Initiative petitions; prohibition on compensation
181 based on the number of petitions gathered.—A person who
182 compensates an initiative petition gatherer or entity based on
183 the number of petitions gathered commits a misdemeanor of the
184 first degree, punishable as provided in s. 775.082 or s.
185 775.083. A petition gathered in violation of this section is



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186 void.

187 Section 5. The provisions of this act apply to all
188 revisions or amendments to the State Constitution by initiative
189 which are proposed for the 2020 election ballot; however, this
190 act does not affect the validity of any petition gathered before
191 or within 40 days after this act's effective date.

192 Section 6. Except as otherwise expressly provided in this
193 act, this act shall take effect upon becoming a law.

194
195 ===== T I T L E A M E N D M E N T =====

196 And the title is amended as follows:

197 Delete everything before the enacting clause
198 and insert:

199 A bill to be entitled
200 An act relating to constitutional amendments; amending
201 s. 100.371, F.S.; requiring a compensated petition
202 gatherer to register with the Secretary of State and
203 to attest that he or she is a Florida resident for a
204 specified period before obtaining signatures on
205 petition forms; requiring the Secretary of State to
206 maintain a searchable database of such forms; revising
207 requirements regarding the supervisor of elections'
208 determination of a petition form's validity;
209 authorizing interested persons to submit position
210 statements on initiatives for publication on the
211 Department of State's website; extending the timeframe
212 for the Financial Impact Estimating Conference to
213 complete its analysis of an initiative; requiring the
214 analysis to summarize the impact to the state and



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215 local economies; requiring each supervisor to include
216 a copy of the summary in the publication or mailing of
217 a sample ballot; amending s. 101.161, F.S.; requiring
218 the name of the sponsor of an initiative to appear on
219 the ballot with the percentage of donations received
220 from certain in-state donors; defining the term
221 "person"; requiring a statement to appear on the
222 ballot if the amendment is estimated to increase
223 costs, decrease revenues, or have an indeterminate
224 economic impact; amending s. 101.171, F.S.; requiring
225 a copy of proposed amendments be provided in each
226 voting booth; creating s. 104.186, F.S.; prohibiting
227 compensation for initiative petition gatherers or
228 entities based on the number of petitions gathered;
229 providing a penalty; providing for application;
230 providing effective dates.



408336

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/03/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Hutson) recommended the following:

Senate Amendment (with title amendment)

Before line 38
insert:

Section 1. Present subsections (27) through (45) of section 97.021, Florida Statutes, are renumbered as subsections (28) through (46), respectively, and a new subsection (27) is added to that section, to read:

97.021 Definitions.—For the purposes of this code, except where the context clearly indicates otherwise, the term:

(27) "Petition gatherer" means an entity or individual that



12 is compensated to obtain signatures on initiative petition forms
13 for the purpose of placing a proposed revision or amendment to
14 the State Constitution on the ballot.

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

17 And the title is amended as follows:

18 Between lines 2 and 3

19 insert:

20 s. 97.021, F.S.; defining the term "petition gatherer"
21 for purposes of the Florida Election Code; amending

FOR CONSIDERATION By the Committee on Judiciary

590-03536A-19

20197096pb

1 A bill to be entitled
 2 An act relating to constitutional amendments; amending
 3 s. 100.371, F.S.; requiring a petition gatherer to
 4 register with the Secretary of State and attest that
 5 he or she is a Florida resident before obtaining
 6 signatures on petition forms; revising requirements
 7 regarding the supervisor of elections' determination
 8 of a petition form's validity; authorizing interested
 9 persons to submit position statements on initiatives
 10 for publication on the Department of State's website;
 11 extending the timeframe for the Financial Impact
 12 Estimating Conference to complete its analysis of an
 13 initiative; requiring the analysis to summarize the
 14 impact to the state and local economy; requiring each
 15 supervisor to include a copy of the summary in the
 16 publication or mailing of a sample ballot; amending s.
 17 101.161, F.S.; requiring the name of the sponsor of an
 18 initiative to appear on the ballot with the percentage
 19 of donations received from certain in-state donors;
 20 defining the term "person"; requiring a statement to
 21 appear on the ballot if the amendment is estimated to
 22 increase costs, decrease revenues, or have an
 23 indeterminate economic impact; requiring a statement
 24 to appear on the ballot indicating whether the policy
 25 proposed by the initiative can be implemented by the
 26 Legislature; requiring the Attorney General to make
 27 specified requests of the Supreme Court relating to
 28 proposed amendments by initiative; amending s.
 29 101.171, F.S.; requiring a copy of proposed amendments

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30 be provided in each voting booth; creating s. 104.186,
 31 F.S.; prohibiting compensation for initiative petition
 32 gatherers based on the number of petitions gathered;
 33 providing a penalty; providing for application;
 34 providing an effective date.
 35

36 Be It Enacted by the Legislature of the State of Florida:
 37

38 Section 1. Present subsections (3) of section 100.371,
 39 Florida Statutes, is renumbered as subsection (4), present
 40 subsections (4) through (7) of that section are renumbered as
 41 subsections (6) through (9), respectively, present subsections
 42 (3) and (6) and paragraphs (a) and (e) of present subsection (5)
 43 of that section are amended, and new subsections (3) and (5) are
 44 added to that section, to read:

45 100.371 Initiatives; procedure for placement on ballot.—

46 (3) Before obtaining signatures, a petition gatherer must
 47 register with the Secretary of State. The registrant must
 48 provide his or her name, date of birth, residential address, and
 49 attestation that he or she is a Florida resident. The secretary
 50 shall maintain a searchable database of registered petition
 51 gatherers.

52 (4) An initiative petition form circulated for signature
 53 may not be bundled with or attached to any other petition. Each
 54 signature shall be dated when made and shall be valid for a
 55 period of 2 years following such date, provided all other
 56 requirements of law are met. The sponsor shall submit signed and
 57 dated forms to the supervisor of elections for the county of
 58 residence listed by the person signing the form for verification

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59 of the number of valid signatures obtained. If a signature on a
60 petition is from a registered voter in another county, the
61 supervisor shall notify the petition sponsor of the misfiled
62 petition. The supervisor shall promptly verify the signatures
63 within 30 days after receipt of the petition forms and payment
64 of the fee required by s. 99.097. The supervisor shall promptly
65 record, in the manner prescribed by the Secretary of State, the
66 date each form is received by the supervisor, and the date the
67 signature on the form is verified as valid. The supervisor may
68 verify that the signature on a form is valid only if:

69 (a) The form contains the original signature of the
70 purported elector.

71 (b) The purported elector has accurately recorded on the
72 form the date on which he or she signed the form.

73 (c) The form sets forth the purported elector's name,
74 address, city, county, and voter registration number or date of
75 birth.

76 (d) The purported elector is, at the time he or she signs
77 the form and at the time the form is verified, a duly qualified
78 and registered elector in the state.

79 (e) The petition gatherer who collected the petition is
80 registered with the Secretary of State under subsection (3).

81
82 The supervisor shall retain the signature forms for at least 1
83 year following the election in which the issue appeared on the
84 ballot or until the Division of Elections notifies the
85 supervisors of elections that the committee that circulated the
86 petition is no longer seeking to obtain ballot position.

87 (5) Upon determining that a constitutional amendment

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88 proposed by initiative has met the requirements to be placed on
89 the ballot, the Secretary of State shall allow any interested
90 person to file a position statement of no more than 50 words
91 outlining why the person supports or opposes the amendment. The
92 secretary shall publish each position statement on the webpage
93 for constitutional amendments on the department's website.

94 ~~(6)-(4)~~ The Secretary of State shall determine from the
95 signatures verified by the supervisors of elections the total
96 number of verified valid signatures and the distribution of such
97 signatures by congressional districts. Upon a determination that
98 the requisite number and distribution of valid signatures have
99 been obtained, the secretary shall issue a certificate of ballot
100 position for that proposed amendment and shall assign a
101 designating number pursuant to s. 101.161.

102 (7) (a) ~~(5) (a)~~ Within 60 ~~45~~ days after receipt of a proposed
103 revision or amendment to the State Constitution by initiative
104 petition from the Secretary of State, the Financial Impact
105 Estimating Conference shall complete an analysis and financial
106 impact statement to be placed on the ballot of the estimated
107 increase or decrease in any revenues or costs to state or local
108 governments and the estimated economic impact on the state and
109 local economy resulting from the proposed initiative. The
110 Financial Impact Estimating Conference shall submit the
111 financial impact statement to the Attorney General and Secretary
112 of State.

113 (e)1. Any financial impact statement that the Supreme Court
114 finds not to be in accordance with this subsection shall be
115 remanded solely to the Financial Impact Estimating Conference
116 for redrafting, provided the court's advisory opinion is

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117 rendered at least 75 days before the election at which the
 118 question of ratifying the amendment will be presented. The
 119 Financial Impact Estimating Conference shall prepare and adopt a
 120 revised financial impact statement no later than 5 p.m. on the
 121 15th day after the date of the court's opinion.

122 2. If, by 5 p.m. on the 75th day before the election, the
 123 Supreme Court has not issued an advisory opinion on the initial
 124 financial impact statement prepared by the Financial Impact
 125 Estimating Conference for an initiative amendment that otherwise
 126 meets the legal requirements for ballot placement, the financial
 127 impact statement shall be deemed approved for placement on the
 128 ballot.

129 3. In addition to the financial impact statement required
 130 by this subsection, the Financial Impact Estimating Conference
 131 shall draft an initiative financial information statement. The
 132 initiative financial information statement should describe in
 133 greater detail than the financial impact statement any projected
 134 increase or decrease in revenues or costs that the state or
 135 local governments would likely experience and the estimated
 136 economic impact on the state and local economy if the ballot
 137 measure were approved. If appropriate, the initiative financial
 138 information statement may include both estimated dollar amounts
 139 and a description placing the estimated dollar amounts into
 140 context. The initiative financial information statement must
 141 include both a summary of not more than 500 words and additional
 142 detailed information that includes the assumptions that were
 143 made to develop the financial impacts, workpapers, and any other
 144 information deemed relevant by the Financial Impact Estimating
 145 Conference.

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146 4. The Department of State shall have printed, and shall
 147 furnish to each supervisor of elections, a copy of the summary
 148 from the initiative financial information statements. The
 149 supervisors shall have the summary from the initiative financial
 150 information statements available at each polling place and at
 151 the main office of the supervisor of elections upon request.

152 5. The Secretary of State and the Office of Economic and
 153 Demographic Research shall make available on the Internet each
 154 initiative financial information statement in its entirety. In
 155 addition, each supervisor of elections whose office has a
 156 website shall post the summary from each initiative financial
 157 information statement on the website. Each supervisor shall
 158 include a copy of each summary from the initiative financial
 159 information statements and the Internet addresses for the
 160 information statements on the Secretary of State's and the
 161 Office of Economic and Demographic Research's websites in the
 162 publication or mailing required by s. 101.20.

163 ~~(8)(6)~~ The Department of State may adopt rules in
 164 accordance with s. 120.54 to carry out the provisions of
 165 subsections ~~(1)-(7)~~ ~~(1)-(5)~~.

166 ~~(9)(7)~~ No provision of this code shall be deemed to
 167 prohibit a private person exercising lawful control over
 168 privately owned property, including property held open to the
 169 public for the purposes of a commercial enterprise, from
 170 excluding from such property persons seeking to engage in
 171 activity supporting or opposing initiative amendments.

172 Section 2. Subsection (1) of section 101.161, Florida
 173 Statutes, is amended to read:

174 101.161 Referenda; ballots.—

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175 (1) (a) Whenever a constitutional amendment or other public
 176 measure is submitted to the vote of the people, a ballot summary
 177 of such amendment or other public measure shall be printed in
 178 clear and unambiguous language on the ballot after the list of
 179 candidates, followed by the word "yes" and also by the word
 180 "no," and shall be styled in such a manner that a "yes" vote
 181 will indicate approval of the proposal and a "no" vote will
 182 indicate rejection. The ballot summary of the amendment or other
 183 public measure and the ballot title to appear on the ballot
 184 shall be embodied in the constitutional revision commission
 185 proposal, constitutional convention proposal, taxation and
 186 budget reform commission proposal, or enabling resolution or
 187 ordinance. The ballot summary of the amendment or other public
 188 measure shall be an explanatory statement, not exceeding 75
 189 words in length, of the chief purpose of the measure. In
 190 addition, for every amendment proposed by initiative, the ballot
 191 shall include, following the ballot summary, in the following
 192 order:

193 1. The name of the initiative's sponsor and the percentage
 194 of total contributions obtained by the sponsor from in-state
 195 persons. For purposes of this subparagraph, the term "person"
 196 has the same meaning as provided in s. 106.011(14), except that
 197 the term does not include a political party, an affiliated party
 198 committee, or a political committee.

199 2. A separate financial impact statement concerning the
 200 measure prepared by the Financial Impact Estimating Conference
 201 in accordance with s. 100.371(7). ~~s. 100.371(5)~~

202 3. If the financial impact statement estimates increased
 203 costs or decreased revenues, a range that includes increased

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204 costs or decreased revenues, or an indeterminate economic
 205 impact, the following statement in bold print:

206
 207 THE FLORIDA CONSTITUTION REQUIRES A BALANCED BUDGET.
 208 THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO
 209 RESULT IN INDETERMINATE OR INCREASED COSTS OR
 210 INDETERMINATE OR DECREASED REVENUES, WHICH MAY REQUIRE
 211 INCREASED TAXES OR A REDUCTION IN GOVERNMENT SERVICES
 212 THAT ARE CURRENTLY FUNDED.

213
 214 4. The following question, with an accompanying yes or no
 215 answer provided by the Supreme Court pursuant to subparagraph
 216 (b)1.:

217
 218 CAN THE PROPOSED POLICY BE IMPLEMENTED BY THE
 219 LEGISLATURE WITHOUT THE NEED FOR A CONSTITUTIONAL
 220 AMENDMENT?

221
 222 The ballot title shall consist of a caption, not exceeding 15
 223 words in length, by which the measure is commonly referred to or
 224 spoken of. This paragraph subsection does not apply to
 225 constitutional amendments or revisions proposed by joint
 226 resolution.

227 (b) When the Attorney General requests an advisory opinion
 228 of the Supreme Court to review a proposed constitutional
 229 amendment, the Attorney General shall include a request for the
 230 Court to:

231 1. Address whether the proposed policy can be implemented
 232 by the Legislature without the need for a constitutional

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233 amendment and indicate a yes or no answer, which must be printed
234 on the ballot summary.

235 2. Identify any undefined terms within the proposed
236 amendment which will have a substantive impact.

237 Section 3. Section 101.171, Florida Statutes, is amended to
238 read:

239 101.171 Copy of constitutional amendment to be available at
240 voting locations.—Whenever any amendment to the State
241 Constitution is to be voted upon at any election, the Department
242 of State shall have printed and shall furnish to each supervisor
243 of elections a sufficient number of copies of the amendment
244 either in poster or booklet form, and the supervisor shall have
245 a copy thereof conspicuously posted or available at each voting
246 booth ~~polling room or early voting area~~ upon the day of
247 election.

248 Section 4. Section 104.186, Florida Statutes, is created to
249 read:

250 104.186 Initiative petitions; prohibition on compensation
251 based on the number of petitions gathered.—A person who
252 compensates an initiative petition gatherer based on the number
253 of petitions gathered commits a misdemeanor of the first degree,
254 punishable as provided in s. 775.082 or s. 775.083.

255 Section 5. The provisions of this act apply to all
256 revisions or amendments to the State Constitution by initiative
257 which are proposed for the 2020 election ballot; however, this
258 act does not affect the validity of any petition gathered before
259 this act's effective date.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/1/19

Meeting Date

17096

Bill Number (if applicable)

Topic Ballot Initiatives

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title _____

Address 135 S. Monroe
Street

Phone 850-224-6826

Tallahassee FL 32304
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

4pm 1105

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/19
Meeting Date

SB 7096
Bill Number (if applicable)

Topic Concerns Regarding Restricting Ballot-Access

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 W. Flagler St

Phone 786-363-4436

Street

Miami

FL

33134

Email kgross@aclufl.org

City

State

Zip

Speaking: For Against Information

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

Representing ACLU 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

find

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)

Apr Meeting Date

7096 Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Christopher Emmanuel

Job Title Policy Director

Address 136 S Bronough St

Phone

Street

TLH

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 Chamber of Commerce

Appearing at request of Chair: [] Yes [] 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)

4/1/19

Meeting Date

7096

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

City

State

Zip

Email scott.mccoy@spicenter.org

Speaking: For Against Information

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

Representing Southern Poverty Law Center Action Fund

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/1

Meeting Date

7096

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Brewster Beris

Job Title Senior Vice President

Address 576 W Adams St

Phone _____

Street

TCH

City

FL

State

322

Zip

Email beris@avi

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

9/1/19

Meeting Date

SB7096

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Nicolette Springer

Job Title Legislative Analyst

Address

Phone

Street

Orlando

FL

32832

City

State

Zip

Email

Speaking: For Against Information

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

Representing League of Women Voters

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/11/19

Meeting Date

7096

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Adam Basford

Job Title Legislative Affairs Director

Address 310 W College Ave

Phone 222 2557

Tallahassee FL 32301

Email Adam.Basford@ffba.org

Speaking: For Against Information

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

Representing FL 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)

4/1/19

Meeting Date

7096

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID COLLEN

Job Title _____

Address 1674 Univ Pkwy #296

Phone 941.323.2421

Street

SARASOTA FL 34243

Email collenase@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing SUNRA CLUB FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/14

Meeting Date

7096

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Jim Kallinger

Job Title

Address 1400 Pullen Rd

Phone 850-322-6396

Street

Tallahassee FL 32303

City

State

Zip

Email jim.kallinger@gmail.com

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

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

Representing self

Appearing at request of Chair: [] Yes [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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

04/01/2019

Meeting Date

SB7096

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Elizabeth Alvi

Job Title Director Of Policy

Address 308 N. Monroe

Phone 850-999-1028

Street

Tallahassee

FL

32310

Email Balvi@audubon.org

City

State

Zip

Speaking: For Against Information

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

Representing Audubon Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/1/2019
Meeting Date

7096
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title _____

Address 104 S. Monroe St.

Phone 850-425-1344

Tallahassee FL 32301
City State Zip

Email Teglobby@aol.com

Speaking: For Against Information

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

Representing Florida State Conference of NAACP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

4/1/2019
Meeting Date

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

7096
Bill Number (if applicable)

Topic Ballot Initiatives

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title _____

Address 126 N. Mills
Street
Orlando FL 32801
City State Zip

Phone 407 376 4801

Email ida.eskamani@gmail.com

Speaking: For Against Information

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

Representing Organize Florida & New Florida Majority

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/19
Meeting Date

SB 7096
Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Paul Owens

Job Title President, 1000 Friends of Florida

Address 308 N. Monroe St.

Phone 850-222-6277

Street

Tallahassee, FL 32314

City

State

Zip

Email powens@1000fof.org

Speaking: For Against Information

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

Representing 1000 Friends 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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/1/19

Meeting Date

7096

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Jae Earing

Job Title University of South Florida Student

Address 10708 N Oklawaha ave

Phone 813-644-2565

Street

Tampa

City

FL

State

33617

Zip

Email jae.earing@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/1/19
Meeting Date

SB 7096
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jon Harris Maurer

Job Title Public Policy Dir.

Address 201 E Park. Ave., Ste. 200
Street

Phone _____

Tallahassee FL 32301
City State Zip

Email jon.harris@equalityflorida.org

Speaking: For Against Information

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

Representing Equality Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/19 Meeting Date

7096 Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Coll St.

Phone 850-321-9386

Tallahassee FL 32301

Email fctep@yahoo.com

Speaking: For Against Information

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

Representing Florida Center for Fiscal & Economic Policy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/11/19

Meeting Date

7096

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Marcus Dixon

Job Title Political Director

Address 2881 Corporate Way

Phone (305) 720-1627

Street

Miramar FL 33027

City

State

Zip

Email Marcus.Dixon@seiufla.org

Speaking: For Against Information

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

Representing SEIU Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/11/2019

Meeting Date

SB 7096

Bill Number (if applicable)

Topic Constitutional Amendments

Amendment Barcode (if applicable)

Name Alikei Moncrief (a-LEE-key)

Job Title Executive Director

Address 1700 N. Monroe St. #11286

Phone 850 629 4656

Street

7th

FL

State

32303

Zip

Email alikei@ferotens.org

Speaking: For Against Information

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

Representing Florida Conservation Voters

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/19

Meeting Date

SPB 7096

Bill Number (if applicable)

Topic Const. Amendments

Amendment Barcode (if applicable)

Name Dr. Ana Ciereszko

Job Title Leg. Director

Address 11420 N Kendall Dr. #107

Phone 305 321 0016

Street

Miami, FL

33176

City

State

Zip

Email aciereszko@yahoo.com

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

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

Representing United Faculty of Miami Dade 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/19
Meeting Date

SPB-7096
Bill Number (if applicable)

Topic CONSTITUTION AMENDMENTS

Amendment Barcode (if applicable)

Name J. B. CLARK

Job Title LOBBYIST

Address 2071 CYNTHIA DRIVE
Street

Phone 850-556-8143

TALLAHASSEE, FL 32303
City State Zip

Email JBCOOPER@EMTJLLW.COM

Speaking: For Against Information

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

Representing FL. PHARMACEUTICAL WORKERS ASSN.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 760

INTRODUCER: Judiciary Committee and Senator Harrell

SUBJECT: Jury Service

DATE: April 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Farach	Cibula	JU	Fav/CS
2.			ED	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 760 allows a person who is 18 to 21 years of age to be excused from jury service upon request if the person is actively enrolled as a full-time student in high school or at a Florida College System institution, state university, private postsecondary educational institution, or career center.

The bill takes effect July 1, 2019.

II. Present Situation:

Background on Jury Selection

Potential jurors are selected randomly from a list of names provided quarterly to the clerk of the circuit court by the Florida Department of Highway Safety and Motor Vehicles.¹ Jurors must be 18 years of age or older, citizens of the United States, and legal residents of Florida and their respective counties, and have a driver license or identification card record on file with the DHSMV.²

There are two ways in which a juror venire or pool may be selected. In the first, a clerk of court may use the names provided by the DHSMV to generate juror candidate lists as necessary to

¹ Section 40.011, F.S.

² Section 40.01, F.S.

ensure a valid and consistent juror selection process.³ In the second, the chief judge of a circuit court or the clerk of the court may request that the Florida Supreme Court approve the use of an automated electronic system as the exclusive manner in which the names of prospective jurors are randomly selected.⁴ A person who is selected for jury service who does not attend court when summoned may be fined up to \$100 and his or her absence may be considered a contempt of the court.⁵

Disqualification or Excusal from Jury Service

Some persons who otherwise satisfy the basic qualifications for jury service such as the age, residency, and citizenship may be statutorily disqualified from jury service. Others must be excused from service upon request, and still others may be excused at the discretion of a judge.

Persons disqualified from jury selection include:

- A person who is under prosecution for a crime or has committed a felony, unless that person's civil rights have been restored;⁶
- The Governor, Lieutenant Governor, Cabinet officer, clerk of court, or judge;⁷
- Any person interested in any issue to be tried;⁸
- Any person who, because of mental illness, intellectual disability, senility, or other physical or mental incapacity, is permanently incapable of caring for himself or herself;⁹
- Any person who is responsible for the care of a person who, because of mental illness, intellectual disability, senility, or other physical or mental incapacity, is incapable of caring for himself or herself;¹⁰ and
- Any person who does not possess sufficient knowledge of reading, writing, or arithmetic to understand a civil case, if the civil case requires such knowledge.¹¹

Persons who must be excused upon request include:

- Any full-time federal, state, local law enforcement officer, or investigative personnel, unless such persons choose to serve;¹²
- A person who was summoned and who reported as a prospective juror in any court in that person's county of residence within 1 year before the first day for which the person is being considered for jury service;¹³
- Any expectant mother and any parent who is not employed full time and who has custody of a child under 6 years of age;¹⁴ and

³ Section 40.011, F.S.

⁴ Section 40.225, F.S.

⁵ Section 40.23, F.S.

⁶ Section 40.013(1), F.S.

⁷ Section 40.013(2)(a), F.S.

⁸ Section 40.013(3), F.S.

⁹ Section 40.013(9), F.

¹⁰ Section 40.013(10), F.S.

¹¹ Fla. R. Civ. P. 1.431(c)(3).

¹² Section 40.013(2)(b), F.S.

¹³ Section 40.013(7), F.S. Similarly, rule 1.431(c)(3), provides that a party may challenge a prospective juror for cause if that person has served as a juror in the court in which the person was called within the prior year.

¹⁴ Section 40.013(4), F.S.

- A person 70 years of age or older.¹⁵ A person 70 years of age or older may also be permanently excused from jury service upon written request; however, a person who is permanently excused from jury service may subsequently request, in writing, to be included in future jury lists.¹⁶

Persons who may be excused include:

- A practicing attorney, a practicing physician, or a person who is physically infirm from jury service;¹⁷ and
- A person showing of hardship, extreme inconvenience, or public necessity.¹⁸

Students Selected for Jury Service

Selection for jury service is based upon the person's county of residence as it is listed on his or her driver's license.¹⁹ Many students attend college or a university outside of their county of residence, or request to postpone their jury summons due to fear of falling behind in classes. The Florida Statutes presently allow a person to request excusal on the basis of being a full-time student; although, jurors have the option of postponing their service. A person may postpone his or her jury summons, but for no longer than 6 months after the original summoning date.²⁰ Many Florida courts require that full-time students specify the date of their institution's next break when postponing a summons.

Some states, such as Georgia²¹ and North Carolina,²² currently excuse full-time students from jury selection. Other states may extend the postponement period but do not permit excusal on the basis of being a student.

III. Effect of Proposed Changes:

SB 760 allows a person who is 18 to 21 years of age to be excused from jury service upon request if the person is actively enrolled as a full-time student in high school or at a Florida College System institution, state university, private postsecondary educational institution, or career center.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁵ Section 40.013(8), F.S.

¹⁶ *Id.*

¹⁷ Section 40.013(5), F.S.

¹⁸ Section 40.013(6), F.S.

¹⁹ Section 40.01, F.S.

²⁰ Section 40.23, F.S.

²¹ Ga. Code § 15-12-1.1 (2014)

²² N.C. Gen. Stat. § 9-6 (b)(1)

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The language of the bill specifies that only students aged 18 to 21 may be excused from jury service. However, some full-time students or graduate students may be older than 21. As such, the Legislature may wish to eliminate the age restrictions on a full-time student who may be excused from jury service.

VIII. Statutes Affected:

This bill substantially amends section 40.013 of the Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on April 1, 2019:

The committee substitute changes the order of the school types listed in the bill.

- B. **Amendments:**

None.

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



166620

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Harrell) recommended the following:

Senate Amendment

Delete lines 14 - 15
and insert:
or at any state university, private postsecondary educational
institution, Florida College System institution, or career
center

By Senator Harrell

25-01279-19

2019760__

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A bill to be entitled

An act relating to jury service; amending s. 40.013,
F.S.; requiring certain students in specified schools
to be excused from jury service upon request;
providing an effective date.

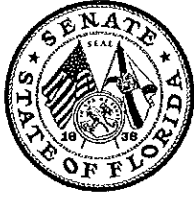
Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (11) is added to section 40.013,
Florida Statutes, to read:

40.013 Persons disqualified or excused from jury service.—

(11) A person between 18 and 21 years of age, inclusive,
who is actively enrolled as a full-time student in high school
or at a Florida College System institution, state university,
private postsecondary educational institution, or career center
shall be excused from jury service upon request.

Section 2. This act shall take effect July 1, 2019.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Health
and Human Services, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Children, Families, and Elder Affairs
Military and Veterans Affairs and Space

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GAYLE HARRELL
25th District

February 23, 2019

Senator David Simmons
404 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Simmons,

I respectfully request that **SB 760 – Jury Service** be placed on the next available agenda for the Judiciary Committee Meeting..

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell
Senate District 25

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

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

APPEARANCE RECORD

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

4/1/19

Meeting Date

SB 760

Bill Number (if applicable)

Topic Jury Service

Amendment Barcode (if applicable)

Name David Shepp

Job Title Lobbyist

Address P.O. Box 3739

Phone 863 581-4250

Street

Lakeland FL 33802

Email sheppstrategy.com

City

State

Zip

Speaking: For Against Information

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

Representing Polk County Clerk of Court

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 768

INTRODUCER: Judiciary Committee and Senator Perry

SUBJECT: Attorney Fees

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 768 prohibits a court from awarding a person attorney fees in an action for an injunction for protection against stalking or sexual, repeat, or dating violence, unless the court finds by clear and convincing evidence that the petitioner knowingly made a false statement or allegation in the petition.

However, to form the basis of an award of attorney fees, the false statement or allegation must have been in regard to a “material matter,” which is “any subject, regardless of its admissibility under the rules of evidence, which could affect the course or outcome of the proceeding.”

II. Present Situation:

Context – A Recent Decision by the Florida Supreme Court

In 2018, the Florida Supreme Court held that a court may require a party who raises a claim unsupported by fact or law to pay the attorney fees of the prevailing party in an action for a protective injunction against repeat or dating violence.¹

¹ See *Hall v. Lopez*, 233 So. 3d 451 (Fla. 2018).

The Court determined that an action of this type is in fact a “civil proceeding or action,” and is therefore within the scope of s. 57.105(1), F.S., which authorizes an award of attorney fees against a party who makes an unsupported claim in a civil action or proceeding.²

However, the dissenting justices argued that these injunction actions are not civil in nature, that the Legislature did not intend s. 57.105, F.S., to apply to these actions, and that the majority’s opinion will have a “chilling effect” on persons who are considering filing an action for a protective injunction.³ In support of its argument regarding legislative intent, the dissent pointed out the “incompatibility” of timeframes in the attorney fee statute and the injunction statute: a person seeking attorney fees must give 21 days’ notice that he or she is seeking attorney fees, but an action for an injunction will often conclude in less than 21 days.⁴ Therefore, the person who filed the action might have less than 21 days to withdraw his or her unsupported claim.

Although the majority opinion did not address the possibility of an award of attorney fees in an action for a protective injunction against *stalking*, it nonetheless appears by inference to authorize a court to award attorney fees in these cases.

Motion for Attorney Fees in a Civil Action under Section 57.105, Florida Statutes

Under the American Rule on the awarding of attorney fees, a “court may award attorney fees only when authorized by statute or by agreement of the parties.”⁵ Section 57.105(1), F.S., is one instance of this authorization. It provides for an award of attorney fees to the prevailing party in a civil action or proceeding if another party makes a claim or defense that is unsupported by the facts or the law:

- (1) Upon the court’s initiative or motion of any party, the court shall award a reasonable attorney’s fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party’s attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party’s attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
 - (a) Was not supported by the material facts necessary to establish the claim or defense; or
 - (b) Would not be supported by the application of then-existing law to those material facts.⁶

A person seeking attorney fees under s. 57.105, F.S. must first serve its motion on the party that it believes has made an unsupported claim.⁷ The person must then wait 21 days before filing the motion for sanctions with the court, during which time the other party may withdraw the

² See *id.* at 453-54.

³ See *id.* at 454-55.

⁴ See *id.* at 456.

⁵ *Florida Patient’s Compensation Fund v. Rowe*, 472 So. 2d 1145, 1148 (Fla. 1985) (citing *Hampton’s Estate v. Fairchild-Florida Construction Co.*, 341 So. 2d 759 (Fla. 1976); *Webb v. Scott*, 176 So. 442 (1936); *State v. Barrs*, 99 So. 668 (1924); *Zinn v. Dzialynski*, 14 Fla. 187 (1872)).

⁶ Emphasis added.

⁷ Section 57.105(4), F.S.

allegedly unsupported claim, thus avoiding a possible sanction.⁸ But as the Supreme Court recently acknowledged, an action for an injunction against repeat or dating violence may conclude sooner than 21 days after it or the motion for fees is filed, thus giving the person who filed the action less than 21 days to withdraw an unsupported claim.

Action for Protective Injunction by Victim of Repeat, Sexual, or Dating Violence, or Stalking

A person who is a victim of repeat violence, dating violence, sexual violence, or stalking, may file a petition for an injunction for protection from any of these.⁹ The purpose of the injunction is to stop the perpetrator from committing further acts of violence or stalking upon the victim.¹⁰ Accordingly, if a judge grants a petition for an injunction, he or she may grant “such relief as the court deems proper,” including directing the perpetrator to not commit violence against the victim, to have no contact with the victim, and to not go within a certain distance (e.g., 500 feet) of the victim’s home or office.¹¹

A victim seeks an injunction by filing a petition with the circuit court.¹² The court then holds a hearing, which may be ex parte, and may enter a temporary injunction at the hearing.¹³ If the court does so, a full hearing, with notice to the alleged perpetrator, must occur within 15 days.¹⁴ Following this hearing, the court may enter a permanent injunction.¹⁵ The injunction must be provided to the local sheriff, who must serve it on the perpetrator.¹⁶

III. Effect of Proposed Changes:

The bill prohibits a court from awarding a person attorney fees in an action for an injunction for protection against stalking or sexual, repeat, or dating violence, unless the court finds by clear and convincing evidence that the petitioner knowingly made a false statement or allegation in the petition.

However, to form the basis of an award of attorney fees, the false statement or allegation must have been about a “material matter,” which is “any subject, regardless of its admissibility under the rules of evidence, which could affect the course or outcome of the proceeding.”¹⁷

The bill is effective July 1, 2019.

⁸ *Id.*

⁹ *See* ss. 784.046 and 784.0485, F.S.

¹⁰ *See Id.*

¹¹ *See* ss. 784.046(6)-(7), and 784.0485(5)-(6), F.S.

¹² Sections 784.046(2) and 784.0485(1), F.S.

¹³ *See* ss. 784.046(5) and 784.0485(5), F.S.

¹⁴ *See* ss. 784.046(6)(c) and 784.0485(5)(c), F.S.

¹⁵ Sections 784.046(7) and 784.0485(6), F.S.

¹⁶ Sections 784.046(8)(c) and 784.0485(8)(b), F.S.

¹⁷ Section 837.011(3), F.S.

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

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 784.046 and 784.0485.

IX. Additional Information:

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

CS by Judiciary on April 2, 2019:

The committee substitute provides an exception to the ban on attorney fees in the underlying bill. The bill permits an award of attorney fees if a petitioner knowingly makes a false statement or allegation in regard to a “material matter.”

- B. **Amendments:**

None.



111000

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/03/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (8) is added to section 57.105,
Florida Statutes, to read:

57.105 Attorney's fee; sanctions for raising unsupported
claims or defenses; exceptions; service of motions; damages for
delay of litigation.—

(8) Attorney fees may not be awarded under this section
pursuant to s. 784.046, unless the court finds by clear and



111000

12 convincing evidence that the petitioner knowingly made a false
13 statement or allegation in the petition in regard to a material
14 matter as defined in s. 837.011(3).

15 Section 2. This act shall take effect July 1, 2019.

16

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

18 And the title is amended as follows:

19 Delete everything before the enacting clause

20 and insert:

21

A bill to be entitled

22

An act relating to attorney fees; amending s. 57.105,

23

F.S.; prohibiting the awarding of attorney fees for a

24

violation of specified provisions; providing an

25

exception; providing an effective date.



321706

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2019	.	
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The Committee on Judiciary (Stargel) recommended the following:

1 **Senate Substitute for Amendment (111000) (with title**
2 **amendment)**

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

6 Section 1. Subsection (8) is added to section 57.105,
7 Florida Statutes, to read:

8 57.105 Attorney's fee; sanctions for raising unsupported
9 claims or defenses; exceptions; service of motions; damages for
10 delay of litigation.—

11 (8) Attorney fees may not be awarded under this section in



321706

12 proceedings for an injunction for protection pursuant to s.
13 784.046 or s. 784.0485, unless the court finds by clear and
14 convincing evidence that the petitioner knowingly made a false
15 statement or allegation in the petition in regard to a material
16 matter as defined in s. 837.011(3).

17 Section 2. This act shall take effect July 1, 2019.

18

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

20 And the title is amended as follows:

21 Delete everything before the enacting clause
22 and insert:

23 A bill to be entitled
24 An act relating to attorney fees; amending s. 57.105,
25 F.S.; prohibiting the awarding of attorney fees for a
26 violation of specified provisions; providing an
27 exception; providing an effective date.

By Senator Perry

8-00919-19

2019768__

1 A bill to be entitled
 2 An act relating to attorney fees; amending ss. 784.046
 3 and 784.0485, F.S.; prohibiting attorney fee awards in
 4 certain injunction proceedings; providing an effective
 5 date.

6
 7 Be It Enacted by the Legislature of the State of Florida:
 8

9 Section 1. Paragraph (f) is added to subsection (2) of
 10 section 784.046, Florida Statutes, to read:

11 784.046 Action by victim of repeat violence, sexual
 12 violence, or dating violence for protective injunction; dating
 13 violence investigations, notice to victims, and reporting;
 14 pretrial release violations; public records exemption.—

15 (2) There is created a cause of action for an injunction
 16 for protection in cases of repeat violence, there is created a
 17 separate cause of action for an injunction for protection in
 18 cases of dating violence, and there is created a separate cause
 19 of action for an injunction for protection in cases of sexual
 20 violence.

21 (f) Notwithstanding any other law, attorney fees may not be
 22 awarded in any proceeding under this section.

23 Section 2. Paragraph (d) is added to subsection (2) of
 24 section 784.0485, Florida Statutes, to read:

25 784.0485 Stalking; injunction; powers and duties of court
 26 and clerk; petition; notice and hearing; temporary injunction;
 27 issuance of injunction; statewide verification system;
 28 enforcement.—

29 (2)

Page 1 of 2

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

8-00919-19

2019768__

30 (d) Notwithstanding any other law, attorney fees may not be
 31 awarded in any proceeding under this section.

32 Section 3. This act shall take effect July 1, 2019.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 18, 2019

I respectfully request that **Senate Bill #768**, relating to Attorney Fees, be placed on the:

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

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1720

INTRODUCER: Senator Lee

SUBJECT: Property Rights

DATE: March 29, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			CA	
3.			RC	

I. Summary:

SB 1720 amends chapter 70, F.S., the Bert J. Harris, Jr., Private Property Rights Protection Act. The Harris Act permits a property owner to seek relief and financial damages when his or her property is inordinately burdened by government regulation.

The bill amends provisions of that chapter and:

- Requires a government to treat “similarly situated” residential properties alike when one property owner is given a settlement offer that includes a modification or variance to a regulation;
- Allows a property owner to request a judge, instead of a jury, to determine damages;
- Revises the criteria for awarding attorney fees and costs to a prevailing property owner and increases the time over which fees and costs may be recovered;
- Allows a property owner to file suit without following the usual formal application process when the government does not provide a mailed notice that a regulation will affect the property and the application process would be futile; and
- Allows a property owner to sue for injunctive relief and have a court declare that a prohibited extraction, which is an unconstitutional condition for a development permit, is invalid without first exhausting the usual administrative remedies.

II. Present Situation:

Private Property Guarantees in the Federal and State Constitution

Both the Federal Constitution and State Constitution guarantee that a person’s private property may not be taken for public use without reimbursement. The Fifth Amendment to the United States Constitution states that no private property shall “be taken for public use without just

compensation.” Similarly, the Florida Constitution provides that no private property shall be taken except for a public purpose and that each owner must be fully compensated.¹

The Bert J. Harris, Jr., Private Property Rights Protection Act

The Legislature enacted the “Bert J. Harris, Jr., Private Property Rights Protection Act” in 1995. The act provides relief to a property owner whose property is inordinately burdened by government regulation. The act is limited in scope and applies only to:

- Real, and not personal, property;
- A property owner and not a leaseholder;
- “As-applied” challenges for specific government actions, not to broad, facial challenges of government regulations; and
- Challenges that are not temporary impacts.²

The Legislature recognized that some laws, regulations, and ordinances of the state and its entities could inordinately burden, restrict, or limit private property rights without amounting to a taking³ under either the State Constitution or the United States Constitution. The Legislature declared that there is “an important state interest in protecting the interests of private property owners from those inordinate burdens.” Accordingly, the Legislature created a separate and distinct cause of action for governmental actions that might not rise to the level of taking under the State Constitution or United States Constitution. The Legislature provided a process for private landowners to seek relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity, as applied, unfairly affects real property.⁴

The phrases “inordinate burden” and “inordinately burdened” mean that an action by one or more governmental entities has directly restricted or limited the use of real property to the extent that:

- The property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole; or
- The property owner is left with existing or vested uses that are unreasonable such that the property owner bears a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.⁵

Presuit Notice

A property owner who seeks compensation under the Harris Act must present a written claim to the head of the government entity at least 150 days before filing an action. If the property in

¹ FLA. CONST. art. X, s. 6.

² Thomas Hawkins, *Land Use Law with a Florida Focus*, 233, (Aug. 2018)

<https://www.dropbox.com/s/3ykseigou178vra/2018%207%2022%20Land%20Use%20with%20a%20Florida%20Focus.pdf?dl=0>.

³ A “taking” is generally understood to mean a government action that deprives an owner of the use or enjoyment of his or her property. A regulatory taking occurs when a government regulation seriously restricts a property owner’s rights. BLACK’S LAW DICTIONARY (10th ed. 2014).

⁴ Section 70.001(1), F.S.

⁵ Section 70.001(3)(e)1. The definition further explains in s. 70.001(3)(e)2, what the terms do not include with regard to other impacts.

question is agricultural, the notice period is 90 days. In addition to the claim, the property owner must submit a valid appraisal that supports the claim and demonstrates the loss in fair market value to the property.^{6,7} If other parties are involved, the governmental entity must notify them, including all owners of real property that is contiguous to the owner's property.⁸

The Government Must Make a Written Settlement Offer

During the 150 or 90 day notice period, which may be extended by an agreement of the parties, the government is required to make a written settlement offer to the claimant. The settlement may contain an offer to:

- Adjust land development, permit standards, or similar provisions controlling the development or use of the land.
- Increase or modify density, intensity, or use of areas of development.
- Transfer development rights.
- Entertain land swaps or exchanges.
- Mitigate, including payments in lieu of onsite mitigation.
- Locate on the least sensitive portion of the property.
- Condition the amount of development or use permitted.
- Require that issues be addressed on a more comprehensive basis.
- Issue a development order, variance, special exception, or other extraordinary relief.
- Purchase the property or an interest in it.
- Make no changes to the proposed action.⁹

If the Government Offer is Rejected; Timeframe for Filing a Lawsuit

If the property owner rejects the settlement offer with the allowable uses, the property owner may file a claim in circuit court and the county where the real property is located.¹⁰ A cause of action may not be filed more than 1 year after a law or regulation is "first applied" by the government to the property at issue. The 1-year time frame begins when the law or regulation is clear and unequivocal in its terms and notice is provided by mail to the affected property owner or registered agent. Otherwise, the law or regulation is considered first applied to the property when there is a formal denial of a written request for development or variance.¹¹

The court then conducts a bench trial to determine whether an existing use of the real property or a vested right to a specific use of the property existed and whether the government inordinately burdened the owner's property. If the court determines that an inordinate burden was imposed,

⁶ Section 70.001(4)(a), F.S.

⁷ The appraisal should contain valuations of the property both before and after the government's restriction was imposed. This will enable the government to adequately evaluate the property owner's potential claim for the purpose of developing a settlement offer during the pre-suit period. Margaret L. Cooper, Ronald L. Weaver, and Joanne M. Connor, *Statutory Private Property Rights Protection*, 6, The Florida Bar, 2018 Florida Real Property Litigation (2018) <https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=0368929390&pubNum=0116933&originatingDoc=N090388C02AB211E5823BE24E38CB0B04&refType=SA&originationContext=contextAnalysis&contextData=%28sc.UserEnteredCitation%29&transitionType=ContextAnalysisItem>.

⁸ Section 70.001(4)(b), F.S.

⁹ Section 70.001(4)(c), F.S.

¹⁰ Section 70.001(5)(b), F.S.

¹¹ Section 70.001(11), F.S.

the court must also determine the percentage of responsibility each governmental entity must bear.¹² The circuit court must impanel a jury to determine the amount of compensation.¹³

Recovery of Reasonable Costs and Attorney Fees

The court, and not the jury, will determine what constitutes reasonable costs and attorney fees.¹⁴

The property owner is entitled to recover reasonable costs and attorney fees from the government from the date the action was filed in circuit court if:

- The property owner prevails; and
- The court determines that the government's settlement offer did not constitute a bona fide offer which reasonably would have resolved the claim during the 90 or 150 day notice-period.¹⁵

Similarly, the government is entitled to recover reasonable costs and attorney fees incurred from the date the action was filed in circuit court if:

- The government prevails; and
- The court determines that the property owner did not accept a bona fide settlement offer which reasonably would have fairly resolved the claim if the offer had been accepted by the property owner during the 90 or 150 day notice-period.¹⁶

Governmental Exactions

Background of Prohibited Exactions

The United States Supreme Court issued a land-use decision in 2013, *Koontz v. St. Johns River Water Management District*,¹⁷ a case that arose in Florida. Mr. Koontz, the land owner, sought to develop a portion of his property that consisted mainly of wetlands. He offered to mitigate the adverse environmental effects of his development proposal by deeding a conservation easement to the St. Johns River Water Management District on nearly three-quarters of his remaining property. The district rejected his proposal and told him that his construction permit would be approved *only if* he agreed to reduce the size of his development and, among other things, deed to the district a conservation easement on the resulting larger remainder of his property *or* he agreed to hire contractors to make improvements on district-owned wetlands located several miles away. Mr. Koontz sued the district under s. 373.617, F.S., which allows a property owner to recover money damages if a government action related to land-use permitting constitutes a taking without just compensation, which is an unreasonable exercise of the state's police power.

The Court held that a government cannot deny a land-use permit based upon a landowner's refusal to agree to the government's demands to either turn over property or pay money to the government *unless* there is an essential nexus and rough proportionality between the government's demand on the landowner and the effect of the proposed land use. The Court's

¹² Section 70.001(6)(a), F.S.

¹³ Section 70.001(6)(b), F.S.

¹⁴ Section 70.001(6)(c)3., F.S.

¹⁵ Section 70.001(6)(c)1., F.S.

¹⁶ Section 70.001(6)(c)2., F.S.

¹⁷ *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595 (2013).

decision was based upon a violation of the “unconstitutional condition” doctrine which precludes the government from burdening the Constitution’s enumerated rights by coercively withholding benefits from those who exercise them. In this particular case, the constitutional right burdened was the right to compensation when private property is taken for public use. The Court explained that “Extortionate demands for property in the land-use permitting context” violate the Fifth Amendment Takings Clause “not because they take property but because they impermissibly burden the right not to have property taken without just compensation.”¹⁸

The Court held that, even though the district’s conditions unconstitutionally burdened the landowner’s Fifth Amendment rights, a constitutional taking did not occur. Instead, the Court left it up to the states to determine what remedies would be available to a landowner who was subject to an unconstitutional demand where no actual taking has occurred. The Court wrote:

Where the permit is denied and the condition is never imposed, nothing has been taken. While the unconstitutional conditions doctrine recognizes that this *burdens* a constitutional right, the Fifth Amendment mandates a particular *remedy* – just compensation – only for takings. In cases where there is an excessive demand but no taking, whether money damages are available is not a question of federal constitutional law but of the cause of action – whether state or federal – on which the landowner relies.¹⁹

2015 Legislative Response

The Legislature enacted s. 70.45, F.S., in 2015, and created a cause of action for a property owner to recover damages caused by a “prohibited exaction.”²⁰ Essential phrases from the *Koontz* decision are embedded in the statute. A prohibited exaction is defined as any condition imposed by a governmental entity on a property owner’s proposed use of real property that does not have “an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity” is seeking to avoid, minimize, or mitigate.²¹

Presuit Notice and Prohibition against Waivers

The action may not be brought until a prohibited exaction is actually imposed or required in writing as a final condition of approval for the requested use of real property. The right to bring the action may not be waived.²²

The property owner must provide a written notice to the relevant governmental entity of his or her proposed action at least 90 days before filing an action but no later than 180 days after imposition of the prohibited exaction. The notice must identify the exaction that the property owner believes is prohibited and briefly explain why he or she believes the action is prohibited along with an estimate of the damages. The relevant governmental entity must review the notice of the claim, respond in writing and identify the basis for the exaction, and explain why it

¹⁸ *Id.* at 607.

¹⁹ *Id.* at 608-609.

²⁰ Ch. 2015-142, s. 2, Laws of Fla.

²¹ Section 70.45(1)(c), F.S.

²² Section 70.45(2), F.S.

maintains that the exaction is proportionate to the harm created by the proposed use of real property, or propose to remove all or a proportion of the exaction.²³

Burden of Proof

The government has the burden of proving that the exaction has an essential nexus to a legitimate public purpose and that it is roughly proportionate to the impact the government seeks to avoid. The burden of proving damages that result from the prohibited exaction rests upon the property owner.²⁴

Attorney Fees and Costs

The court may award attorney fees and costs to the prevailing party. However, if the court finds that the exaction lacks an essential nexus to a legitimate public purpose, the court must award attorney fees and costs to the property owner.²⁵

III. Effect of Proposed Changes:

The bill amends Chapter 70, F.S., the Harris Act, by adding provisions that are beneficial to property owners when a governmental entity enacts an ordinance or regulation that affects their property.

“Similarly Situated” Properties

The bill amends the legislative findings and intent provisions contained in s. 70.001(1), F.S., by adding a provision which states that the Legislature recognizes that it is in the public interest to ensure that “*similarly situated properties*” are subject to the same rules and regulations.

The bill also provides that when a claim involving one or more residential properties is brought due to the enactment of a governmental regulation or ordinance that applies to residential property, any settlement offer that includes a modification or variance to the regulation or ordinance applies to all “*similarly situated residential properties*” subject to regulation by the governmental entity. This provision will require a governmental entity to treat all similarly situated residential properties alike if it offers one property owner a modification or variance.

The term “similarly situated” is not defined in the bill. Determining whether properties are sufficiently similarly situated to merit a waiver or a variance that was offered to another property could create a substantial amount of litigation. This may result in judicially-created guidelines rather than legislatively-created guidelines. To minimize litigation and to provide clarity as to which properties are similarly situated, the Legislature may wish to add some guidelines to the bill.

²³ Section 70.45(3), F.S.

²⁴ Section 70.45(4), F.S.

²⁵ Section 70.45(5), F.S.

Permitting a Judge, Rather than a Jury, to Determine a Property Owner's Damages

Current law provides that a jury must be impaneled to calculate the amount of compensation due to a property owner whose property is inordinately burdened. This provision is amended and permits a property owner to waive the jury requirement and request a court to determine damages.

Awarding a Property Owner Reasonable Costs and Attorney Fees

Currently, a prevailing property owner is entitled to recover reasonable costs and attorney fees beginning on the date an action is filed in court, if the court determines that the government's settlement offer with allowable uses did not constitute a bona fide offer. The condition requiring that the offer must have been a bona fide offer is deleted. The bill allows a property owner to recover attorney fees and costs during the presuit resolution period when a notice is filed with the government, instead of the date of filing suit. The net effect of this change will be to permit a prevailing plaintiff to recover more in attorney fees from the government because the attorney will be billing for a longer period of time and for additional work with more costs preparing the cause of action for court.

Notice and When a Property Owner's Claim is Ripe

The bill states, "If a property owner is not provided notice . . ." that a law or regulation affects his or her property, the property owner may file suit after the law or regulation is enacted. If the law or regulation's effect is clear and unequivocal on its terms, a property owner is not required to follow the usual channels and submit a formal application or proceed through any formal application process if the action would be futile and a waste of resources.

Current law does not require that the notice be sent by certified mail to the property owner. However, this change may require that notice of future changes by the governmental entity be sent by certified mail to clarify whether the notice was sent and received.

Governmental Exactions

This provision permits a property owner to sue for injunctive relief, and a court to declare, that a prohibited exaction is invalid. The property owner does not have to exhaust all administrative remedies before filing suit to declare a prohibited exaction invalid and recover damages.

Effective Date

The bill takes effect July 1, 2018.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

By simplifying the process for property owners to sue for burdensome regulations, more property owners may be encouraged to bring lawsuits and recover attorney fees and costs or have burdensome regulations removed. However, the removal of a regulation that burdens one property may have a negative effect on the values of other nearby properties.

C. Government Sector Impact:

The bill may negatively impact state and local government entities by making it easier for property owners to challenge government regulations and recover attorney fees. However, these changes may encourage government entities to be more responsive to concerns that a regulation that may benefit many properties may, nonetheless, inordinately burden others.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 70.001 and 70.45.

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.



917246

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 20 - 102

and insert:

Section 1. Subsection (6) and paragraph (a) of subsection (11) of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.-

(6) (a) The circuit court shall determine whether an existing use of the real property or a vested right to a specific use of the real property existed and, if so, whether, considering the settlement offer and statement of allowable



917246

12 uses, the governmental entity or entities have inordinately
13 burdened the real property. If the actions of more than one
14 governmental entity, considering any settlement offers and
15 statement of allowable uses, are responsible for the action that
16 imposed the inordinate burden on the real property of the
17 property owner, the court shall determine the percentage of
18 responsibility each such governmental entity bears with respect
19 to the inordinate burden. A governmental entity may take an
20 interlocutory appeal of the court's determination that the
21 action of the governmental entity has resulted in an inordinate
22 burden. An interlocutory appeal does not automatically stay the
23 proceedings; however, the court may stay the proceedings during
24 the pendency of the interlocutory appeal. If the governmental
25 entity does not prevail in the interlocutory appeal, the court
26 shall award to the prevailing property owner the costs and a
27 reasonable attorney fee incurred by the property owner in the
28 interlocutory appeal.

29 (b) Following its determination of the percentage of
30 responsibility of each governmental entity, and following the
31 resolution of any interlocutory appeal, the court shall impanel
32 a jury to determine the total amount of compensation to the
33 property owner for the loss in value due to the inordinate
34 burden to the real property. The property owner may waive the
35 right to a jury and request that the court make such
36 determination. The award of compensation shall be determined by
37 calculating the difference in the fair market value of the real
38 property, as it existed at the time of the governmental action
39 at issue, as though the owner had the ability to attain the
40 reasonable investment-backed expectation or was not left with



41 uses that are unreasonable, whichever the case may be, and the
42 fair market value of the real property, as it existed at the
43 time of the governmental action at issue, as inordinately
44 burdened, considering the settlement offer together with the
45 statement of allowable uses, of the governmental entity or
46 entities. In determining the award of compensation,
47 consideration may not be given to business damages relative to
48 any development, activity, or use that the action of the
49 governmental entity or entities, considering the settlement
50 offer together with the statement of allowable uses has
51 restricted, limited, or prohibited. The award of compensation
52 shall include a reasonable award of prejudgment interest from
53 the date the claim was presented to the governmental entity or
54 entities as provided in subsection (4).

55 (c)1. In any action filed pursuant to this section, the
56 property owner is entitled to recover reasonable costs and
57 attorney fees incurred by the property owner, from the
58 governmental entity or entities, according to their
59 proportionate share as determined by the court, from the date of
60 the governmental entity's denial of the claim made pursuant to

61
62 ===== T I T L E A M E N D M E N T =====

63 And the title is amended as follows:

64 Delete lines 3 - 7

65 and insert:

66 70.001, F.S.; authorizing a property owner to waive
67 the right to a jury and



305214

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Lee) recommended the following:

Senate Amendment

Delete line 169

and insert:

process if such action would be futile.

By Senator Lee

20-01708-19

20191720__

1 A bill to be entitled
 2 An act relating to property rights; amending s.
 3 70.001, F.S.; revising legislative findings; providing
 4 applicability relating to claims that involve one or
 5 more residential properties which are brought as a
 6 result of certain regulations or ordinances;
 7 authorizing a property owner to waive a jury and
 8 request that the court make a determination of
 9 compensation; revising the calculation for costs a
 10 property owner is entitled to recover; authorizing a
 11 property owner to bring a claim under certain
 12 circumstances when he or she is not provided certain
 13 notice; amending s. 70.45, F.S.; authorizing a
 14 property owner to bring an action to declare a
 15 prohibited exaction invalid; making clarifying
 16 changes; providing an effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Present paragraph (d) of subsection (4) of
 21 section 70.001, Florida Statutes, is redesignated as paragraph
 22 (e), a new paragraph (d) is added to that subsection, and
 23 subsections (1) and (6) and paragraph (a) of subsection (11) of
 24 that section are amended, to read:
 25 70.001 Private property rights protection.—
 26 (1) This act may be cited as the “Bert J. Harris, Jr.,
 27 Private Property Rights Protection Act.” The Legislature
 28 recognizes that some laws, regulations, and ordinances of the
 29 state and political entities in the state, as applied, may

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30 inordinately burden, restrict, or limit private property rights
 31 without amounting to a taking under the State Constitution or
 32 the United States Constitution. The Legislature determines that
 33 there is an important state interest in protecting the interests
 34 of private property owners from such inordinate burdens. The
 35 Legislature further recognizes that it is in the public interest
 36 to ensure that similarly situated properties are subject to the
 37 same rules and regulations. Therefore, it is the intent of the
 38 Legislature that, as a separate and distinct cause of action
 39 from the law of takings, the Legislature herein provides for
 40 relief, or payment of compensation, when a new law, rule,
 41 regulation, or ordinance of the state or a political entity in
 42 the state, as applied, unfairly affects real property.
 43 (4)
 44 (d) When the claim involves one or more residential
 45 properties and is brought as a result of the enactment of a
 46 governmental entity’s regulation or ordinance that applies to
 47 residential property, any settlement offer that includes a
 48 modification or variance to such regulation or ordinance applies
 49 to all similarly situated residential properties subject to
 50 regulation by the governmental entity.
 51 (6) (a) The circuit court shall determine whether an
 52 existing use of the real property or a vested right to a
 53 specific use of the real property existed and, if so, whether,
 54 considering the settlement offer and statement of allowable
 55 uses, the governmental entity or entities have inordinately
 56 burdened the real property. If the actions of more than one
 57 governmental entity, considering any settlement offers and
 58 statement of allowable uses, are responsible for the action that

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59 imposed the inordinate burden on the real property of the
 60 property owner, the court shall determine the percentage of
 61 responsibility each such governmental entity bears with respect
 62 to the inordinate burden. A governmental entity may take an
 63 interlocutory appeal of the court's determination that the
 64 action of the governmental entity has resulted in an inordinate
 65 burden. An interlocutory appeal does not automatically stay the
 66 proceedings; however, the court may stay the proceedings during
 67 the pendency of the interlocutory appeal. If the governmental
 68 entity does not prevail in the interlocutory appeal, the court
 69 shall award to the prevailing property owner the costs and a
 70 reasonable attorney fee incurred by the property owner in the
 71 interlocutory appeal.

72 (b) Following its determination of the percentage of
 73 responsibility of each governmental entity, and following the
 74 resolution of any interlocutory appeal, the court shall impanel
 75 a jury to determine the total amount of compensation to the
 76 property owner for the loss in value due to the inordinate
 77 burden to the real property. The property owner may waive a jury
 78 and request that the court make such determination. The award of
 79 compensation shall be determined by calculating the difference
 80 in the fair market value of the real property, as it existed at
 81 the time of the governmental action at issue, as though the
 82 owner had the ability to attain the reasonable investment-backed
 83 expectation or was not left with uses that are unreasonable,
 84 whichever the case may be, and the fair market value of the real
 85 property, as it existed at the time of the governmental action
 86 at issue, as inordinately burdened, considering the settlement
 87 offer together with the statement of allowable uses, of the

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88 governmental entity or entities. In determining the award of
 89 compensation, consideration may not be given to business damages
 90 relative to any development, activity, or use that the action of
 91 the governmental entity or entities, considering the settlement
 92 offer together with the statement of allowable uses has
 93 restricted, limited, or prohibited. The award of compensation
 94 shall include a reasonable award of prejudgment interest from
 95 the date the claim was presented to the governmental entity or
 96 entities as provided in subsection (4).

97 (c)1. In any action filed pursuant to this section, the
 98 property owner is entitled to recover reasonable costs and
 99 attorney fees incurred by the property owner, from the
 100 governmental entity or entities, according to their
 101 proportionate share as determined by the court, from the date of
 102 presenting the claim to the governmental entity pursuant to
 103 paragraph (4) (a) the filing of the circuit court action, if the
 104 property owner prevails in the action ~~and the court determines~~
 105 ~~that the settlement offer, including the statement of allowable~~
 106 ~~uses, of the governmental entity or entities did not constitute~~
 107 ~~a bona fide offer to the property owner which reasonably would~~
 108 ~~have resolved the claim, based upon the knowledge available to~~
 109 ~~the governmental entity or entities and the property owner~~
 110 ~~during the 90-day notice period or the 150-day notice period.~~

111 2. In any action filed pursuant to this section, the
 112 governmental entity or entities are entitled to recover
 113 reasonable costs and attorney fees incurred by the governmental
 114 entity or entities from the date of the filing of the circuit
 115 court action, if the governmental entity or entities prevail in
 116 the action and the court determines that the property owner did

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117 not accept a bona fide settlement offer, including the statement
 118 of allowable uses, which reasonably would have resolved the
 119 claim fairly to the property owner if the settlement offer had
 120 been accepted by the property owner, based upon the knowledge
 121 available to the governmental entity or entities and the
 122 property owner during the 90-day-notice period or the 150-day-
 123 notice period.

124 3. The determination of total reasonable costs and attorney
 125 fees pursuant to this paragraph shall be made by the court and
 126 not by the jury. Any proposed settlement offer or any proposed
 127 decision, except for the final written settlement offer or the
 128 final written statement of allowable uses, and any negotiations
 129 or rejections in regard to the formulation either of the
 130 settlement offer or the statement of allowable uses, are
 131 inadmissible in the subsequent proceeding established by this
 132 section except for the purposes of the determination pursuant to
 133 this paragraph.

134 (d) Within 15 days after the execution of any settlement
 135 pursuant to this section, or the issuance of any judgment
 136 pursuant to this section, the governmental entity shall provide
 137 a copy of the settlement or judgment to the Department of Legal
 138 Affairs.

139 (11) A cause of action may not be commenced under this
 140 section if the claim is presented more than 1 year after a law
 141 or regulation is first applied by the governmental entity to the
 142 property at issue.

143 (a) For purposes of determining when this 1-year claim
 144 period accrues:

145 1.a. A law or regulation is first applied upon enactment

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146 and notice as provided for in this ~~sub-subparagraph~~ subparagraph
 147 if the impact of the law or regulation on the real property is
 148 clear and unequivocal in its terms and notice is provided by
 149 mail to the affected property owner or registered agent at the
 150 address referenced in the jurisdiction's most current ad valorem
 151 tax records. The fact that the law or regulation could be
 152 modified, varied, or altered under any other process or
 153 procedure does not preclude the impact of the law or regulation
 154 on a property from being clear or unequivocal pursuant to this
 155 ~~sub-subparagraph~~ subparagraph. Any notice under this ~~sub-~~
 156 ~~subparagraph~~ subparagraph shall be provided after the enactment
 157 of the law or regulation and shall inform the property owner or
 158 registered agent that the law or regulation may impact the
 159 property owner's existing property rights and that the property
 160 owner may have only 1 year from receipt of the notice to pursue
 161 any rights established under this section.

162 b. If a property owner is not provided notice pursuant to
 163 sub-subparagraph a., the property owner may bring a claim
 164 against the governmental entity after the enactment of the law
 165 or regulation if the law or regulation's effect on the real
 166 property is clear and unequivocal in its terms. In such cases, a
 167 property owner is not required to submit a formal application
 168 for development or to proceed through any formal application
 169 process if such action would be futile and a waste of resources.

170 2. Otherwise, the law or regulation is first applied to the
 171 property when there is a formal denial of a written request for
 172 development or variance.

173 Section 2. Subsections (2), (4), and (5) of section 70.45,
 174 Florida Statutes, are amended to read:

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175 70.45 Governmental exactions.-

176 (2) In addition to other remedies available in law or
177 equity, a property owner may bring an action in a court of
178 competent jurisdiction under this section to declare a
179 prohibited exaction invalid and to recover damages caused by a
180 prohibited exaction. Such action may not be brought until a
181 prohibited exaction is actually imposed or required in writing
182 as a final condition of approval for the requested use of real
183 property. The right to bring an action under this section may
184 not be waived. This section does not apply to impact fees
185 adopted under s. 163.31801 or non-ad valorem assessments as
186 defined in s. 197.3632.

187 (4) For each claim filed under this section, the
188 governmental entity has the burden of proving that the
189 challenged exaction has an essential nexus to a legitimate
190 public purpose and is roughly proportionate to the impacts of
191 the proposed use that the governmental entity is seeking to
192 avoid, minimize, or mitigate. The property owner has the burden
193 of proving damages that result from a prohibited exaction.

194 (5) The court may award attorney fees and costs to the
195 prevailing party; however, if the court determines that the
196 challenged exaction which is the subject of the claim lacks an
197 essential nexus to a legitimate public purpose, the court shall
198 award attorney fees and costs to the property owner.

199 Section 3. This act shall take effect July 1, 2019.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1630

INTRODUCER: Senator Stargel

SUBJECT: Venue for Constitutional Challenges

DATE: March 29, 2019

REVISED: 4/1/19

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	Favorable
2.			ACJ	
3.			AP	

I. Summary:

SB 1630 amends the change of venue statute to provide that constitutional challenges naming the State or a statewide elected official as defendants may be changed to a court outside the Second Judicial Circuit in Leon County. The bill effectively waives venue on behalf of the Legislature, State agencies, and statewide-elected officials in cases specifically involving constitutional challenges to statutes or other legislative actions. The intent of the bill is to ensure that a single trial court does not have a monopoly over cases involving issues of statewide importance.

Procedurally, when cases challenging statutory provisions or other legislative actions are filed against the State or a statewide elected official in the Second Judicial Circuit in Leon County, the bill provides that the case is subject to being transferred to a new venue in one of two ways:

- (1) By mutual agreement of the parties on venue (unless, presumably, the parties agree to the Second Judicial Circuit); or
- (2) Transfer by the Clerk of the Florida Supreme to a venue selected through a blind, random selection process (unless the Second Judicial Circuit is selected through that process).

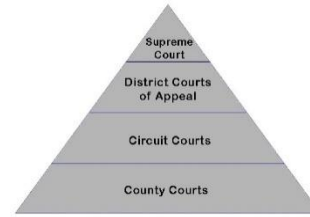
The effective date of the bill is July 1, 2019.

II. Present Situation:

Florida's Court System

The Florida Constitution vests all judicial power in:

- The supreme court;
- The district courts of appeal;
- The circuit courts; and
- The county courts.¹



The Constitution provides that “[n]o other courts may be established by the state, any political subdivision or any municipality.”² Additionally, the Constitution vests the Florida Supreme Court with broad authority to administer the state courts system and establish court rules of procedure.³

Clerk of the Florida Supreme Court

Unlike the clerks of the circuit courts who are independent, constitutional officers carrying out court-related functions,⁴ the clerk of the Florida Supreme Court is appointed directly by the Supreme Court.⁵ As an appointee, the clerk of the Florida Supreme Court serves at the court’s pleasure, completing duties as directed by the court.⁶

Legislative Powers Concerning Court Jurisdiction

The Constitution confers some authority over the jurisdiction of the courts to the Legislature. Although the territorial and subject matter jurisdiction of the Florida Supreme Court is primarily defined by the Constitution, the Legislature has constitutional authority to provide for the territorial jurisdiction and the subject matter jurisdiction of the courts.⁷

Territorial Jurisdiction

The Legislature is constitutionally required to establish the territorial or geographic jurisdiction of the appellate court districts and the judicial circuits “following county lines.”⁸ Currently, there

¹ FLA. CONST. art. V., s. 1.

² *Id.* (although the Constitution permits the Legislature to establish quasi-judicial, administrative courts and a civil traffic infraction hearing officer system).

³ FLA. CONST. art. V, s. 2.

⁴ FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.

⁵ FLA. CONST. art. V, s. 3(c).

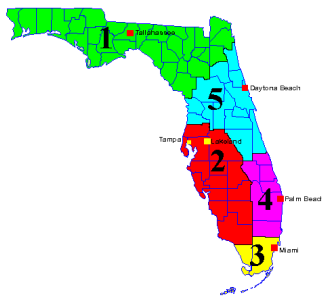
⁶ *Id.*

⁷ “Jurisdiction” is defined as “[a] government’s general power to exercise authority over all persons and things within its territory; esp., a state’s power to create interests that will be recognized under common-law principles as valid in other states <New Jersey’s jurisdiction>.” BLACK’S LAW DICTIONARY (10th ed. 2014). For courts, jurisdiction is defined as “[a] court’s power to decide a case or issue a decree <the constitutional grant of federal-question jurisdiction>.” *Id.* Additionally, jurisdiction is defined geographically: “A geographic area within which political or judicial authority may be exercised <the accused fled to another jurisdiction>.” *Id.*

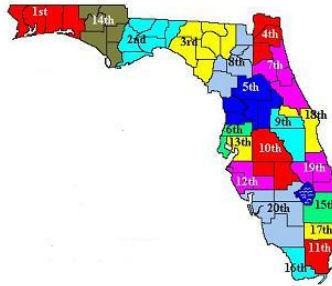
⁸ FLA. CONST. art. V, s. 1.

are five district courts of appeal,⁹ 20 judicial circuits, and 67 county courts, one in each of Florida’s 67 counties¹⁰ as constitutionally required.¹¹

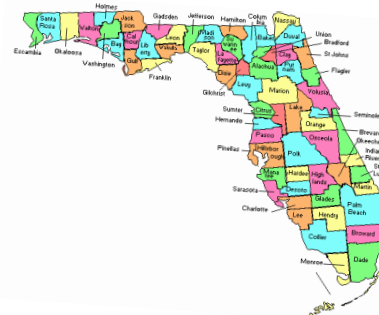
The following maps illustrate the territorial jurisdictions of these courts:¹²



Five District Courts of Appeal



Twenty Judicial Circuits



Sixty-Seven Counties

Subject Matter Jurisdiction

The Legislature’s authority over the subject matter jurisdiction of the Florida Supreme Court and district courts of appeal is fairly limited. With a few exceptions,¹³ the Constitution sets out the subject matter jurisdiction of the Supreme Court and the appellate courts.

On the other hand, under the Constitution, the Legislature is granted broad authority to define the jurisdiction¹⁴ of the county courts: “The county courts shall exercise the jurisdiction *prescribed by general law*. Such jurisdiction shall be uniform throughout the state.”¹⁵

Because the jurisdiction of the circuit court is limited by the jurisdiction of the county courts under the Constitution, the Legislature’s authority to define the jurisdiction of the circuit courts is also fairly broad:

⁹ Florida Courts, *Court System Organization & Structure*, <http://www.flcourts.org/florida-courts/> (last visited Jan. 29, 2019). The First District sits in Tallahassee; the Second District sits in Lakeland; the Third District sits in Miami; the Fourth District sits in West Palm Beach; and the Fifth District sits in Daytona Beach. Florida Courts, *District Courts of Appeal*, <https://www.flcourts.org/Florida-Courts/District-Courts-of-Appeal> (last visited Jan. 29, 2019).

¹⁰ Florida Courts, *Court System Organization & Structure*, <http://www.flcourts.org/florida-courts/> (last visited Jan. 29, 2019).

¹¹ FLA. CONST. art. V, s. 6(a) (“There shall be a county court in each county.”).

¹² Ron DeSantis, 46th Governor of Florida, Judicial and Judicial Nominating Commission Information, *The Florida Court System*, <https://www.flgov.com/judicial-and-judicial-nominating-commission-information/> (last visited Jan. 29, 2019).

¹³ See Art. V, s. 3(b)(2), FLA. CONST. (“When provided by *general law*, [the supreme court] shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.”) (emphasis added); FLA. CONST. art. V, s. 4(b)(2) (“District courts of appeal shall have the power of direct review of administrative action, *as prescribed by general law*.”) (emphasis added).

¹⁴See *Alexdex Corp. v. Nachon Enterprises, Inc.*, 641 So. 2d 858, 861 (Fla. 1994) (“The jurisdiction of the courts of the state is broadly defined by our State Constitution; however, the legislature may further define a court’s jurisdiction so long as the jurisdiction, as redefined, is not in conflict with the Constitution. . . . Absent a constitutional prohibition or restriction, the legislature is free to vest courts with exclusive, concurrent, original, appellate, or final jurisdiction.”) (citing *State v. Sullivan*, 95 Fla. 191, 116 So. 255 (1928)).

¹⁵ FLA. CONST. art. V, s. 6(b) (emphasis added). Additionally, the Legislature establishes the number of judges to serve in each county. *Id.* at s. 6(a).

The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals *when provided by general law*. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action *prescribed by general law*.¹⁶

Subject Matter Jurisdiction of the County and Circuit Courts

As provided by the Legislature in s. 34.01, F.S., the county court is a trial court that has jurisdiction over cases demanding money judgments less than \$15,000. Because the circuit courts have exclusive jurisdiction over “all actions at law not cognizable by the county courts,” the Legislature has provided that the circuit court has jurisdiction in cases demanding money judgments of \$15,000 or above.¹⁷ While there are some areas of concurrent jurisdiction,¹⁸ county courts generally have jurisdiction over criminal misdemeanors, municipal and county ordinances, and matters in equity within the jurisdictional amount (such as an eviction); whereas circuit courts generally have jurisdiction over criminal felony cases, contested dissolution of marriage actions, and matters in equity within its jurisdictional amount.

Additionally, with two exceptions, the circuit court has appellate jurisdiction over county court cases. Under the two exceptions to the circuit court’s appellate jurisdiction, the district court of appeal has appellate jurisdiction when a county court either (1) declares a statute or constitutional provision invalid or (2) certifies a question of great public importance.¹⁹ Additionally, if the law applied by the circuit court sitting in its appellate capacity is in question, a party may seek review by the appropriate district court of appeal by filing a petition for writ of certiorari.²⁰

Importantly, both the county and circuit courts have the power to decide constitutional claims and arguments raised in lawsuits or petitions over which the court otherwise has subject matter jurisdiction.

Venue Generally

“Venue refers to the county, district, or other geographical area, location, or situs in which, for the sake of fairness, convenience, or other commanding policy considerations, a cause is to be tried. It is the place or geographical location of trial.”²¹

¹⁶ FLA. CONST. art. V, s. 5(b) (emphasis added).

¹⁷ Section 26.012(2)(a), F.S.

¹⁸ County and circuit courts both have jurisdiction in disputes between a homeowners association and parcel owners, as well as uncontested divorce proceedings under the simplified procedures.

¹⁹ Section 26.012(1), F.S.

²⁰ FLA. CONST. art. V, s. 4(b)(3) (authorizing district courts of appeal to issue writs of certiorari among others). Philip J. Padovano, *Appellate Practice*, 2 Fla. Prac., § 30:5 (2017 ed.) (“A party may file a petition for writ of certiorari to review . . . an appellate decision of a lower court[.]”). On petition for writ of certiorari, the district court reviews for whether the circuit court departed from the essential requirements of the law; or, put another way, whether the circuit court “(1) afforded the parties due process of law[,] and (2) applied the correct law.” *Id.*

²¹ 56 FLA. JUR. 2d Venue § 1 (footnote and citations omitted).

Distinction between Venue and Jurisdiction

Venue is a distinct concept from jurisdiction. “Jurisdiction is the *power* to determine a cause of action. Venue is the *geographical place* where the cause of action can be determined.”²² Venue “concerns the privilege of being accountable to a court in a particular location while jurisdiction is the power to act, that is, the authority to adjudicate the subject matter.”²³

Because venue is a privilege, it may be waived or agreed to by stipulation of the parties.²⁴ Subject matter jurisdiction or the power of a court to act over a particular matter, however, cannot be waived.²⁵ Thus, “improper venue does not necessarily defeat the court’s jurisdiction.”²⁶

Florida Venue Laws

Legislative Powers Concerning Venue

“It is well settled that except as its power may be limited by express constitutional provisions fixing or regulating venue, a legislature may at its discretion fix the venue or place of trial of civil actions[.]”²⁷ Laws fixing venue must “not transgress fundamental guaranties of equal protection of laws” nor “arbitrarily and unreasonably discriminate against particular persons.”²⁸

Article 3, section 11 of the Florida Constitution contains the only prohibition concerning a law on venue, prohibiting the Legislature from passing a special or general law “of local application pertaining to . . . change of civil or criminal venue[.]”²⁹ Otherwise, the Florida Constitution is silent on the subject of venue.³⁰

Court Interpretation of Venue Statutes

The courts generally view the venue statutes as limitations on the existing common law principles governing venue, not as replacing the common law.³¹ Thus, Florida venue laws are a mix of statutory provisions and case-derived principles and interpretations.

General Venue Statutes

In Florida, chapter 47, F.S. contains the general statutes governing venue. The general venue statutes apply only to actions against residents of Florida and provides that such actions can only be brought in the county where:

²² Henry P. Trawick, Jr., *Local Action Rule*, TRAWICK’S FLA. PRAC. & PROC. § 5:5 (2018-2019 ed.) (footnotes omitted) (citing *City of Kissimmee v. Patterson*, 67 So. 2d 223 (Fla. 1953) for proposition that government can waive venue).

²³ 56 FLA. JUR. 2d Venue § 1 (footnote and citations omitted).

²⁴ See n. 22, *supra*.

²⁵ *Id.*

²⁶ See n. 23, *supra*.

²⁷ *O’Brien v. Mitchell*, 190 So. 2d 189, 190 (Fla. 1st DCA 1966) (citing *Petersburg v. Earle*, 109 So. 2d 388 (Fla.App.2d, 1959).

²⁸ *Id.*

²⁹ FLA. CONST. art. III, s. 11(a)(6).

³⁰ 56 Fla. Jur 2d Venue § 2.

³¹ Trawick, Fla. Prac. & Proc. § 5:5 at n. 9 and surrounding text. See n. 22, *supra*.

- The defendant resides;
- The cause of action accrued; or
- The property at issue in the suit is located.³²

Put another way, for suits *not* involving real property, “a defendant has the privilege of being sued either in the county of his residence or in the county where the cause of action accrued.”³³

Chapter 47, F.S., also addresses a number of venue scenarios, such as actions involving multiple defendants residing in multiple counties or multiple causes of action accruing in different counties. When there are multiple defendants, the proper venue is any county where one of the defendants resides.³⁴ When there are multiple causes of action arising in multiple counties, an appropriate venue is any county where any cause of action arose (unless the court finds it more expedient to hold separate trials).³⁵

“Home Venue Privilege”—When the State or a State Official is the Defendant

Generally, the determination of venue when the State or a State official or agency is named as a defendant is the same as in other cases. The State or State official or agency enjoys essentially the same privilege as other defendants, referred to as the “home rule privilege.” “The home venue privilege provides that, absent waiver or exception, venue in a suit against the State, or an agency or subdivision of the State, is proper only in the county in which the State, or the agency or subdivision of the State, maintains its principal headquarters.”³⁶

Tallahassee, in Leon County, is the seat of *state* government “where the offices of the governor, lieutenant governor, cabinet members and the supreme court shall be maintained and the sessions of the legislature shall be held.”³⁷ Thus, the courts in Leon County, within the Second Judicial Circuit, are always appropriate venues for purposes of the home venue privilege, when the suit names a State official, branch of government, or agency as a defendant.

Like other parties, “[i]mproper venue can be waived, even by governmental entities.”³⁸ Waiver of venue on behalf of a State governmental entity is usually accomplished through a special venue statute.³⁹

³² Section 47.011, F.S.

³³ *Id.* at 578-79 (citations omitted).

³⁴ Section 47.021, F.S.

³⁵ Section 47.041, F.S. Other common venue issues are addressed in ss. 47.025, F.S. (contract provisions in real property naming venue outside Florida void); 47.031, F.S. (concerning venue for receiverships of real property lying in more than one circuit); 47.051, F.S. (venue in actions against corporations); 47.061, F.S. (venue in actions on promissory notes); 47.071, F.S. (concerning territorial jurisdiction and venue of navigable waterways); and 47.081, F.S. (concerning military residents).

³⁶ *Florida Dept. of Children & Families v. Sun-Sentinel, Inc.*, 865 So. 2d 1278, 1286 (Fla. 2004)(citations omitted). *See also* Henry P. Trawick, Jr., *Public Officers and Entities*, TRAWICK’S FLA. PRAC. & PROC. § 5:2 (2018-2019 ed.) (citing *McCarty v. Lichtenberg*, 67 So. 2d 655 (Fla. 1953) for proposition that venue for State is where executive offices or official residences are located).

³⁷ FLA. CONST. art. II, s. 2.

³⁸ Trawick’s Fla. Prac. & Proc. § 5:5. *See* n. 22, *supra*.

³⁹ Henry P. Trawick, Jr., *Public Officers and Entities*, Fla. Prac. & Proc. § 5:2 (2018-2019 ed.).

Special Venue Statutes

Chapter 47, F.S.⁴⁰ and various other statutory provisions in Florida law mandate venue or otherwise provide exceptions to venue in more specific situations. These provisions are sometimes referred to as special venue statutes.⁴¹

For instance, s. 68.083, F.S., contains an exception to the usual privilege for defendants in determining venue for civil actions under the false claims act and mandates that the venue for such actions is the Second Judicial Circuit in Leon County.

On the hand, s. 337.19, F.S., is an example of a statutory waiver of the home rule privilege for a State agency, the Department of Transportation (DOT), providing that suit against the DOT may be brought in multiple venues:

Any action or suit brought against the department shall be brought in the county or counties where the cause of action accrued, or in the county of the department's district headquarters responsible for the work, or in Leon County.⁴²

Other Exceptions to Home Venue Privilege

In addition to statutory waivers, the Florida Supreme Court has recognized three other exceptions to the State's home venue privilege: (1) the "sword-wielder" doctrine; (2) when a governmental defendant is named as a joint tortfeasor; and (3) when a "good cause" petition is filed for access to confidential public records.⁴³

In discussing the origins of the home venue privilege and when certain exceptions apply, the Florida Supreme Court explained and distinguished the "sword-wielder doctrine" from cases seeking a declaration of constitutional rights, noting that the home venue privilege still applies in declaratory rights cases:

Florida's home venue privilege dates back to *Smith v. Williams*, 160 Fla. 580, 35 So. 2d 844 (1948), where this Court distinguished between two different types of suits against state agencies. The first type is those suits

in which the primary purpose of the litigation is to obtain a judicial interpretation or declaration of a party's rights or duties under ... rules and regulations [promulgated by the state agency], where no unlawful invasion

⁴⁰ Other venue issues addressed in ch. 47 are: s. 47.025, F.S. (contract provisions in real property naming venue outside Florida void); s. 47.031, F.S. (concerning venue for receiverships of real property lying in more than one circuit); s. 47.051, F.S. (venue in actions against corporations); s. 47.061, F.S. (venue in actions on promissory notes); s. 47.071, F.S. (concerning territorial jurisdiction and venue of navigable waterways); and s. 47.081, F.S. (concerning military residents).

⁴¹ Henry P. Trawick, Jr, *Special venue statutes*, TRAWICK'S, FLA. PRAC. & PROC. § 5:4 (2018-2019 ed.).

⁴² See also *id.* (listing and citing multiple special venue statutes).

⁴³ *Florida Dept. of Children & Families v. Sun-Sentinel, Inc.*, 865 So. 2d 1278, 1287-88 (Fla. 2004) (citing *Barr v. Fla. Bd. of Regents*, 644 So. 2d 333, 336 (Fla. 1st DCA 1994), accord TRAWICK'S FLA. PRAC. & PROC., § 5-2 (1993 ed.)) (recognizing three exceptions and creating fourth exception concerning public records). See also 56 Fla. Jur 2d Venue § 55, n. 2.

of a lawful right secured ... by the Constitution or laws of the jurisdiction is directly threatened in the county where suit is instituted.

Id. at 846–47. The second type is those suits

in which the primary purpose of the litigation is to obtain direct judicial protection from an alleged unlawful invasion of the constitutional rights of the plaintiff within the county where the suit is instituted, because of the enforcement or threatened enforcement by a state agency of rules and regulations alleged to be unconstitutional as to the plaintiff, and where the validity or invalidity of the rules and regulations sought to be enforced comes into question only secondarily and as incidental to the main issue involved.

Id. at 847.

Unlike those of the second type, which fall under what has now been termed the “sword-wielder” exception, those of the first type are subject to the state’s home venue privilege. The reason for subjecting such suits to the home venue privilege is “to promote orderly, efficient, and economical government.” *Id.* The home venue privilege allows for such suits to be “defended at a minimum expenditure of effort and public funds.” *Id.* It also allows for a “uniformity of interpretation” and “prevents conflicting judicial rulings in different jurisdictions.” *Id.*; *see also Carlile*, 354 So. 2d at 364 (“Such a rule promotes orderly and uniform handling of state litigation and helps to minimize expenditure of public funds and manpower.”); *Triple “A” Enters.*, 387 So. 2d at 943 (“The common law venue privilege allows for uniform interpretation by one court, thus promoting efficient and uniform rulings, and minimizing expenditure of effort and public funds.”).⁴⁴

Changing Venue under Florida Law

Chapter 47, F.S., addresses when the court has the power and a “duty” to grant a change in venue⁴⁵ and sets forth the procedures for changing venue. The courts have also promulgated Florida Rule of Civil Procedure 1.060⁴⁶ concerning the transfer of an action to a different venue to correct a mistake in venue.

Distinction between Change and Transfer

Notably, changes in venue under ch. 47, F.S., and transfers under the Rules of Civil Procedure are two different things serving two different purposes:

- A change in venue under ch. 47, F.S., is intended to prevent a miscarriage of justice in the *correct* venue or afford a more convenient venue, even though the case is filed in the correct court.

⁴⁴ *Florida Dept. of Children & Families v. Sun-Sentinel, Inc.*, 865 So. 2d 1278, 1287 (Fla. 2004).

⁴⁵ Section 47.091, F.S.

⁴⁶ *See also* Fla. Fam. L. R. P. 12.060.

- A transfer under the rules of civil procedure is meant to correct a *mistake* in venue, i.e., when a case is filed in the wrong court.⁴⁷

The venue statutes and the rules are complementary. Florida Rule of Civil Procedure 1.060 explicitly states that a determination that a case has been filed in the wrong venue is determined by looking at the venue statutes.⁴⁸

Statutory Authorization for a Court to Change the Venue

Section 47.091, F.S., generally provides that a court has the authority and, in some cases, the duty to grant a change in venue. Sections 47.101, 47.121, and 47.122, F.S., respectively, authorize the courts to grant a change in venue in three instances, even though venue is correct:⁴⁹

- (1) The party believes he or she will not receive a fair trial in the county where the action is pending.⁵⁰ The court may deny this motion after hearing objections and evidence.⁵¹
- (2) It appears impracticable to obtain a qualified jury in the county where the action is pending. Under this scenario, the court shall grant a change in venue.⁵²
- (3) Either for the convenience of the witnesses and parties or in the interest of justice, a court *may* grant a change in venue.⁵³

When changing venue for either the convenience of the parties or in the interests of justice, the court is directed to transfer venue to a court that could otherwise be a proper venue.⁵⁴

III. Effect of Proposed Changes:

SB 1630 amends s. 47.122, F.S., the change of venue statute, to provide that statewide constitutional challenges naming the State or a statewide elected official as a defendant may be transferred to a court outside the Second Judicial Circuit in Leon County.

The bill creates three subsections. Subsection (1) retains the original statutory language authorizing a change in venue for convenience to the parties or for the sake of justice.

⁴⁷ Henry P. Trawick, Jr., *Transfer*, TRAWICK'S FLA. PRAC. & PROC. § 5:9 (2018-2019 ed.).

⁴⁸ Fla. R. Civ. P. 1.060(b) provides as follows:

(b) Wrong Venue. When any action is filed laying venue in the wrong county, the court may transfer the action in the manner provided in rule 1.170(j) to the proper court in any county where it might have been brought in accordance with the venue statutes. When the venue might have been laid in 2 or more counties, the person bringing the action may select the county to which the action is transferred, but if no such selection is made, the matter shall be determined by the court.

See also Fla. Fam. L. R. P. 12.060(b).

⁴⁹ Henry P. Trawick, Jr., *Change of Venue*, TRAWICK'S FLA. PRAC. & PROC. § 5:10 (2018-2019 ed.).

⁵⁰ Section 47.101(1), (2), F.S. The moving party must file a verified motion stating his or her belief that he or she will not receive a fair jury trial in the court where the action is pending because the county's inhabitants are either (1) unduly influenced by the adverse party, or (2) generally prejudiced against the movant, finding the movant too "odious." The motion must be supported by affidavits from at least two, reputable, disinterested citizens of the county. *Id.*

⁵¹ Section 47.111, F.S.

⁵² Section 47.121, F.S.

⁵³ Section 47.122, F.S.

⁵⁴ *Id.* Trawick's notes that the s. 47.122, F.S. does not currently apply to the State or its subdivisions. *See* Henry P. Trawick, Jr., *Inconvenient venue*, TRAWICK'S FLA. PRAC. & PROC. § 5:11 (2018-2019 ed.).

Subsection (2) provides that any trial court within the state is an appropriate venue for cases involving both:

- State entities as a party, including statewide elected officials in their official capacities, the Legislature, and other state agencies; and
- State constitutional challenges to statutes or other legislative action.

When cases meeting the foregoing criteria are filed in the Second Judicial Circuit in Leon County, the case is subject to being transferred to a new venue in one of two ways:

- By mutual agreement of the parties on venue (unless, presumably, the parties agree to the Second Judicial Circuit); or
- Transfer by the Clerk of the Florida Supreme to a venue selected through a blind, random selection process (unless the Second Judicial Circuit is selected through that process).

Subsection (3) contains a statement of legislative intent for subsection (2), to ensure a single trial court, the Second Judicial Circuit in Leon County, does not effectively have a monopoly over issues of statewide, constitutional importance. Thus, the bill effectively overrules the reasoning set out in *Smith v. Williams*, 160 Fla. 580, 35 So. 2d 844 (1948) and recently reaffirmed in *Florida Dept. of Children & Families v. Sun-Sentinel, Inc.*, 865 So. 2d 1278, 1287 (Fla. 2004), noting the policy reasons behind having one court determine constitutional issues; i.e., to minimize public expenditures and maintain uniform, non-conflicting interpretations of constitutional issues.

The effective date of the bill is July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill requires the Clerk of the Florida Supreme Court to implement a blind, random selection process for purposes of transferring cases involving constitutional issues against statewide-elected officials. Article V, section 3(c) provides that “[t]he supreme court

shall appoint a clerk . . . who shall hold office during the pleasure of the court and perform such duties *as the court directs*.”

Because the Clerk of Florida Supreme Court serves at the direction of the Florida Supreme Court, the bill’s directive to the Clerk of the Florida Supreme Court may not be enforceable under Florida’s constitutional separation of powers provision in article II, section 3 of the Florida Constitution (unless the Florida Supreme Court ratifies the directive). Article II, section 3 provides as follows:

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.

To avoid any separation of powers issue, the word “shall” on line 27 of the bill could be changed to “is authorized to.” Another option is to change the “Clerk of the Florida Supreme Court” to the “Clerk of the Second Judicial Circuit.” The clerks of the circuit courts are independent, elected constitutional officers who complete court-related functions but are not serving solely at the direction of the judicial branch.⁵⁵

Additionally, the bill appears to be aimed at actions solely raising constitutional challenges to statutes and legislative acts and not at secondary constitutional challenges (which may already be subject to venue in a court other than the Second Judicial Circuit). Thus, it may be helpful to add the word “solely” on line 25 to clarify the scope of the bill, as follows: “such action solely challenges the constitutionality of ...”.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because plaintiffs are already subject to the home rule privilege when suing a State agency or official for a declaration of constitutional rights, an increase in litigation expenses is unlikely. Additionally, when the constitutional issue is secondary to injury or damages caused by State action where the plaintiff or the plaintiff’s property is located, the “sword-wielder doctrine” already provides an exception to permit removal of the case to a court venue in the location where the damage or injury is occurring.

C. Government Sector Impact:

State agencies and other statewide-elected officials will bear more expense in litigating constitutional issues in various venues around the state. On the other hand, judges from

⁵⁵ FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.

circuits other than the Second Judicial Circuit will have the opportunity to preside over and gain experience interpreting constitutional issues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

By permitting more trial courts to determine constitutional issues around the state, more conflicting decisions may be rendered from varying judicial perspectives and philosophies, creating more opportunity for higher level review. However, the creation of more conflict also creates more uncertainty in the law and its application.

VIII. Statutes Affected:

This bill substantially amends section 47.122, 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 Senator Stargel

22-01459-19

20191630__

1 A bill to be entitled
 2 An act relating to venue for constitutional
 3 challenges; amending s. 47.122, F.S.; requiring the
 4 Clerk of the Supreme Court to use a blind, random
 5 selection process to determine venue for certain
 6 constitutional challenges under certain circumstances;
 7 providing legislative intent; providing an effective
 8 date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Section 47.122, Florida Statutes, is amended to
 13 read:
 14 47.122 Change of venue; convenience of parties or witnesses
 15 or in the interest of justice; actions challenging the
 16 constitutionality of a statute or a legislative action.—
 17 (1) For the convenience of the parties or witnesses or in
 18 the interest of justice, any court of record may transfer any
 19 civil action to any other court of record in which it might have
 20 been brought.
 21 (2) When an action against either or both houses of the
 22 Legislature or another state entity, a member of the Legislature
 23 acting in his or her official capacity, or a statewide elected
 24 official is filed in the Second Judicial Circuit in and for Leon
 25 County, and such action challenges the constitutionality of a
 26 statute or a legislative action, unless the parties mutually
 27 agree upon a venue, the Clerk of the Supreme Court shall use a
 28 blind, random selection process to determine the circuit to
 29 which the case will be transferred, except when the Second

Page 1 of 2

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22-01459-19

20191630__

30 Judicial Circuit is selected through the blind, random selection
 31 process as the venue. For purposes of this subsection, each
 32 trial court in this state is deemed to have proper jurisdiction
 33 over any action involving a constitutional challenge to which a
 34 state entity is a party.
 35 (3) It is the intent of the Legislature to ensure that a
 36 single trial court does not effectively have a monopoly over
 37 cases raising issues of statewide, constitutional importance.
 38 Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Education, *Chair*
Appropriations
Education
Ethics and Elections
Finance and Tax
Judiciary
Rules

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining

SENATOR KELLI STARGEL
22nd District

March 8, 2019

The Honorable David Simmons
Senate Committee on Judiciary, Chair
404 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100
(850) 487-5009

Dear Chair Simmons:

I respectfully request that SB 1630, related to *Venue for Constitutional Challenges*, be placed on the Judiciary meeting 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 22

Cc: Tom Cibula/Staff Director
Joyce Butler/AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
- 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1764

INTRODUCER: Senator Baxley

SUBJECT: Fees/Foreign Language Court Reporter/Fingerprint Processing

DATE: March 29, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	Favorable
2.	_____	_____	ACJ	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1764 requires applicants for certification as a foreign language court interpreter or certification as a mediator to pay the fees associated with fingerprint processing for the security background investigation required as part of the certification process in SB 656, a linked bill.

The Florida Constitution requires that legislation imposing or authorizing new state taxes or fees¹ and legislation that raises existing state taxes or fees² be passed by a two-thirds vote of the membership of each house of the Legislature, and the tax or fee provisions must be passed in a separate bill.³ This bill requires applicants seeking certification as a foreign language court interpreter or certification as a mediator to pay an additional fee of an unspecified amount. As such, the Florida Constitution may require that the fees be passed in a separate bill approved by a two-thirds vote of the membership of each house of the Legislature.

The bill takes effect on the same date that SB 656, or other similar legislation, takes effect if the legislation is passed during the 2019 Legislative Session or an extension of the session.

¹ FLA. CONST. art. VII, s. 19(a).

² FLA. CONST. art. VII, s. 19(b).

³ FLA. CONST. art. VII, s. 19(e).

II. Present Situation:

Mediators and Foreign Language Court Interpreters

In 1988, the Florida Supreme Court was tasked with the responsibility of establishing minimum standards for qualifications, professional conduct, and training for court mediators^{4,5} and arbitrators. Before a mediator could be appointed to serve in a circuit, he or she was required to be certified by the chief judge in accordance with the Supreme Court standards.⁶

Similarly, in 2006, the Florida Supreme Court was given the responsibility of establishing minimum standards and procedures to qualify, certify, discipline, and train foreign language interpreters who are appointed by a court.^{7,8}

The Authority of the Court Interpreter Certification and Regulation Program/Board and the Florida Dispute Resolution Center

The Supreme Court, with the assistance of the Office of the State Courts Administrator (OSCA), established two boards to oversee the responsibilities required of them by statute. The Florida Dispute Resolution Center (DRC) was established to assess the qualifications of mediators and the Court Interpreter Certification and Regulation Program/Board was established to determine the qualifications of foreign language interpreters. As part of their responsibilities, OSCA conducted background checks to determine the suitability of applicants. According to OSCA, as early as 2007, both groups conducted nationwide criminal history background checks, which required the submission of fingerprints through the Florida Department of Law Enforcement (FDLE) to the Federal Bureau of Investigation (FBI).⁹

In 2017, FDLE conducted records compliance and technical audits to determine whether state entities possessed the appropriate authority to access national criminal justice information.¹⁰ Pursuant to s. 943.053(2), F.S., FDLE is prohibited from disseminating criminal justice information that is not in compliance with federal and state laws, regulations, and rules. FDLE determined that OSCA did not have sufficient statutory authority to request national criminal

⁴ A mediator is a neutral and impartial person who tries to help opposing parties reach a solution to their conflict. BLACK'S LAW DICTIONARY (10th ed. 2014).

⁵ Generally, in order to become a certified mediator someone must be at least 21 years old, of good moral character, and earn a designated number of points for training, education, and mentorship. Training and education requirements vary depending on whether someone seeks to become a county court, family, circuit court, dependency, or appellate mediator. Fla. R. Cert. & Ct.-Apptd. Mediators 10.100(a).

⁶ Ch. 87-133, s. 6, Laws of Florida.

⁷ Ch. 2006-253, s. 1, Laws of Florida.

⁸ To become certified, a court interpreter must be of good moral character, pass a background check, complete courtroom observation requirements, and pass a written and oral exam demonstrating language proficiency. Florida Courts, *Court Interpreter Certification and Regulation Program, Application for Court Interpreter Registration Renewal* (Effective July, 18, 2018), <https://www.flcourts.org/content/download/402733/3454022/application-for-court-interpreter-registration-renewal.pdf>; Florida Courts, *Court Interpreter Certification and Regulation Program, Steps to Court Interpreter Certification* <https://www.flcourts.org/content/download/217092/1968498/FINAL-Certification-Process-Flow-Chart.pdf>.

⁹ Office of the State Courts Administrator, *Judicial Branch 2019 Legislative Agenda*, 19-20, (Jan. 14, 2019) (on file with the Senate Committee on Judiciary).

¹⁰ *Id.*

history checks for a regulatory purpose.¹¹ FDLE determined that OSCA had the authority to perform background checks as a criminal justice agency on its employees, but it did not have the authority to perform criminal history background checks on people who were not employees, such as mediators and court interpreters. Because OSCA lacked the authority to have FDLE access the national criminal history background information in the FBI databases, it was determined that OSCA was limited to accessing the results of Florida background information.

Because FDLE contends that there is no current statutory authority to provide for national criminal background screenings on foreign language court interpreters and mediators, OSCA is of the opinion that this situation would be remedied by crafting a statute that provides the express authority and complies with the requirements of federal law.¹²

FBI Requirements for Conducting a Criminal Record Check for a Noncriminal Justice Licensing or Employment Purpose

The FBI derives its authority to conduct a *criminal* record check for a *noncriminal* justice licensing or employment purpose from Public Law 92-544. Under that law, the FBI is authorized to exchange identification records with state and local government officials for licensing and employment purposes when authorized by a state statute. The statute must be approved by the U.S. Attorney General.¹³ The standards that the FBI relies upon in approving state authorizations have been developed through a number of memoranda issued by the Office of Legal Counsel in the Department of Justice.¹⁴

An authorization consistent with the standards must:

- Be the result of a legislative enactment or its functional equivalent;
- Require fingerprinting of applicants for a license or employment;
- Expressly or by implication authorize the use of FBI records for screening applicants;
- Not be against public policy; and
- Identify the specific category of applicants or licenses to prevent the authorization from being overly broad in scope.¹⁵

Additionally, the state must designate a government agency that is authorized and will be responsible for receiving the results of the record check and screen those results to determine whether the applicant is suitable for employing or licensing.¹⁶

If OSCA receives the requisite statutory authority to conduct criminal history checks for a regulatory purpose, it will be in compliance with federal law.

¹¹ *Id.* OSCA's position, as stated in the *Judicial Branch 2019 Legislative Agenda*, is that the Department of Justice changed its policy on what constituted the proper authority to conduct national background checks, and this change has necessitated this bill.

¹² *Id.*

¹³ The Department of Justice has determined that Attorney General's authority to approve the state "statute is delegated to the FBI by Title 28, Code of Federal Regulations, Section 0.85(j)." U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Identification Services, *Appendix B: Criminal Justice Information (CJIS) Information Letter 95-3, 5* (July 17, 1995), <https://www.ojjdp.gov/pubs/guidelines/appen-b2.html>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

Level 1 and Level 2 Screening Standards

Chapter 435, F.S., establishes two levels of background screenings that employees must undergo as a condition of employment. Level 1 is the more basic screening and involves an in-state name-based background check, employment history check, statewide criminal correspondence check through FDLE, a sex offender registry check, local criminal records check, and a domestic violence check.¹⁷ Level 2 screenings are more thorough because they apply to positions of responsibility or trust, often with more vulnerable people, such as children, the elderly, or the disabled. Level 2 screenings require a security background investigation that includes fingerprint-based searches for statewide criminal history records through FDLE and a national criminal history records check through the Federal Bureau of Investigation. It may also include local criminal records checks. A level 2 screening disqualifies a person from employment if the person has a conviction or unresolved arrest for any one of more than 50 criminal offenses.¹⁸

III. Effect of Proposed Changes:

This bill requires applicants for certification as a foreign language court interpreter or certification as a mediator to pay the fees associated with fingerprint processing for the security background investigations required as part of the certification process in SB 656, a linked bill.

The bill takes effect on the same date that SB 656, or other similar legislation, takes effect if the legislation is passed during the 2019 Legislative Session or an extension of the session.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19 of the Florida Constitution requires that a new state tax or fee, as well as an increased state tax or fee, be approved by two-thirds of the membership of each house of the Legislature and be contained in a separate bill that contains no other subject. Article VII, s. 19(d)(1), of the Florida Constitution defines “fee” to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”

¹⁷ Section 435.03, F.S.

¹⁸ Section 435.04, F.S.

This bill requires applicants seeking certification as a foreign language court interpreter or certification as a mediator to pay an additional fee of an unspecified amount. As such, the Florida Constitution may require that the fees be passed in a separate bill approved by a two-thirds vote of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Those seeking certification as a foreign language court interpreter or as a mediator will bear the costs associated with security background investigations.

C. Government Sector Impact:

The Office of the State Courts Administrator does not anticipate a meaningful increase in judicial workload because court staff are already performing some background screening of applicants for certification as court interpreters and mediators.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 25.386 and 44.106.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

¹⁹ Office of the State Courts Administrator, *Judicial Impact Statement for SB 656* (Feb. 28, 2019).

B. Amendments:

None.

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

By Senator Baxley

12-00990B-19

20191764__

1 A bill to be entitled
 2 An act relating to fees; amending ss. 25.386 and
 3 44.106, F.S.; requiring applicants for certification
 4 as a foreign language court reporter or a mediator,
 5 respectively, to pay fees relating to fingerprint
 6 processing; specifying the cost for fingerprint
 7 processing; providing a contingent effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Subsection (2) of section 25.386, Florida
 12 Statutes, as amended by SB 656, 2019 Regular Session, is amended
 13 to read:
 14 25.386 Foreign language court interpreters.-
 15 (2) An applicant for certification as a foreign language
 16 court interpreter shall undergo security background
 17 investigations, which include, but need not be limited to, the
 18 submission of a full set of fingerprints to the Department of
 19 Law Enforcement or to a vendor, entity, or agency authorized
 20 under s. 943.053(13). The vendor, entity, or agency shall
 21 forward the fingerprints to the Department of Law Enforcement
 22 for state processing and the Department of Law Enforcement shall
 23 forward the fingerprints to the Federal Bureau of Investigation
 24 for national processing. Fees for vendor, state, and federal
 25 fingerprint processing must be borne by the applicant. The cost
 26 for fingerprint processing is as provided in s. 943.053(3)(e)
 27 for records provided to persons or entities other than those
 28 specified as exceptions therein.
 29 Section 2. Subsection (2) of section 44.106, Florida

Page 1 of 2

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

12-00990B-19

20191764__

30 Statutes, as amended by SB 656, 2019 Regular Session, is amended
 31 to read:
 32 44.106 Standards and procedures for mediators and
 33 arbitrators; fees.-
 34 (2) An applicant for certification as a mediator shall
 35 undergo security background investigations, which include, but
 36 need not be limited to, the submission of a full set of
 37 fingerprints to the Department of Law Enforcement or to a
 38 vendor, entity, or agency authorized under s. 943.053(13). The
 39 vendor, entity, or agency shall forward the fingerprints to the
 40 Department of Law Enforcement for state processing and the
 41 Department of Law Enforcement shall forward the fingerprints to
 42 the Federal Bureau of Investigation for national processing.
 43 Fees for vendor, state, and federal fingerprint processing must
 44 be borne by the applicant. The cost for fingerprint processing
 45 is as provided in s. 943.053(3)(e) for records provided to
 46 persons or entities other than those specified as exceptions
 47 therein.
 48 Section 3. This act shall take effect on the same date that
 49 SB 656 or similar legislation takes effect, if such legislation
 50 is adopted in the same legislative session or an extension
 51 thereof and becomes a law.

Page 2 of 2

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THE FLORIDA SENATE

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY
12th District

March 15, 2019

The Honorable Chair David Simmons
404 Senate Office Building
Tallahassee, FL 32399

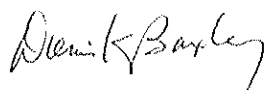
Dear Chairman Simmons,

I would like to request SB 1764 Fees/Background Screening be heard in the next Judiciary Committee meeting.

This is the fee bill to SB 656 Background Screening, which has already passed in Judiciary. This fee bill will require the applicant to cover the cost of fees for vendor, state and federal fingerprint processing.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley
Senate District 12

DKB/dd

cc: Tom Cibula, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012

Email: baxley.dennis@flsenate.gov

Bill Galvano
President of the Senate

David Simmons
President Pro Tempore

Judicial Branch 2019 Legislative Agenda



January 14, 2019

Legislative Issue 2019 Legislative Session

Subject:

Authority to Conduct Criminal Background Checks

Source of Proposal:

Court Interpreter Certification and Regulation Program/Board and Florida Dispute Resolution Center

Statement of Issue:

This issue addresses authority of the Court Interpreter Certification and Regulation Program/Board (CICRPB) and Florida Dispute Resolution Center (DRC) to conduct criminal background checks as part of their regulatory duties.

Although Fla. R. Cert. & Reg. Ct. Interp. 14.200(b)(5) requires all court interpreters to “undergo and pass a background check according to standards prescribed by the [Court Interpreter Certification] board and published in board operating procedures,” the Florida Department of Law Enforcement (FDLE) determined on October 6, 2017, that the CICRPB was no longer authorized to utilize the Originating Agency Identifier (ORI) number assigned to the Supreme Court/OSCA for conducting name-based background checks on interpreters.⁸ Although s. 25.386, F.S., requires the Supreme Court to “establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training of foreign language court interpreters who are appointed by a court of competent jurisdiction,” FDLE contends that this does not give the CICRPB the expressed authority necessary to conduct national criminal history checks on program participants. Ultimately, FDLE has determined that without explicit statutory authority, the use of the Department of Justice’s criminal justice information system is limited only to the Court’s function in the administration of criminal justice.

In addition, FDLE determined that the DRC of the Office of the State Courts Administrator (OSCA) was no longer authorized to utilize the OIR number assigned to the Supreme Court/OSCA for conducting name-based background checks on mediators. Although s. 44.106, F.S., requires the Supreme Court to “establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training for mediators and arbitrators who are appointed,” FDLE contends that this does not give DRC the expressed authority necessary to conduct national criminal history checks on mediators. As with the CICRPB, FDLE has determined that without explicit statutory authority, the use of the

⁸ Both the CICRPB and DRC conducted nationwide criminal background checks through the FDLE as far back as 2007. Due to recent policy changes by the U.S. Department of Justice, however, the FDLE now requires express statutory authority in order to ensure it maintains its own accreditation.

Department of Justice's criminal justice information system is limited only to the Court's function in the administration of criminal justice.

The CICRPB and DRC request that the Court affirmatively support pursuit of explicit statutory authority to conduct criminal background checks.

Supreme Court Action:

The Court affirmatively supports pursuit of this issue.

Present Situation:

Since FDLE contends that there is currently no statutory provision that provides for national criminal background checks, statewide criminal history checks from FDLE are the only method of background screening available to the CICRPB and DRC at this time. With the mobility of the modern workforce, especially as the state of Florida attracts new residents from around the United States, the statewide criminal history check leaves immense gaps in background information. These gaps in background information could be detrimental to the Florida residents and judiciary that depend on trustworthy interpretations from certified interpreters and on trustworthy, certified mediators.

Effect of Proposed Changes:

An amendment to s. 25.386, F.S., would enable the CICRPB to fulfill the requirement under Fla. R. Cert. & Reg. Ct. Interp. 14.200 to conduct a thorough background check according to the standards prescribed by the board.

An amendment to s. 44.106, F.S., would enable the DRC to conduct a thorough background check on mediators.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/1/19
Meeting Date

1764
Bill Number (if applicable)

Topic Fees / Foreign Language Court Interpreters Amendment Barcode (if applicable)

Name Sarah Naf Beni

Job Title Chief of Legislative Affairs

Address 500 S. Duval St.
Street

Phone 850-922-5692

Tallahassee FL 32399
City State Zip

Email naf's@flcourts.org

Speaking: For Against Information

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

Representing State Courts System

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/27/19	SM	Report Submitted
04/1/19	JU	Fav/CS
	GO	
	RC	

March 27, 2019

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 38** – Judiciary Committee and Senator Thurston
HB 6523 – Representative Rodriguez
Relief of Jane Doe by the School Board of Miami-Dade County

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR THE REMAINING SETTLEMENT AMOUNT OF \$1.3 MILLION FROM THE MIAMI-DADE COUNTY SCHOOL BOARD FOR THE RAPE AND ATTEMPTED MURDER OF JANE DOE, A TEACHER, BY A STUDENT.

FINDINGS OF FACT:

On September 19, 2014, Ms. Jane Doe, a teacher at South Dade Senior High School, stayed late to finish some work at the request of her supervisor. While she was working, a student returned to her classroom around 4:30 p.m. As the student began to close the blinds, Ms. Doe attempted to gather her belongings and leave the room. The student then physically attacked Ms. Doe while she tried to fight him off. He slammed Ms. Doe's head to the ground, choked her with his hands until she was unconscious, and then raped her. The student then put Ms. Doe's phone in the trash can, placed the condom he used into her purse, stole her keys, left her unconscious on the floor of her classroom, and stole her car.

When Ms. Doe regained consciousness, her clothing was removed from the lower half of her body and there were

clumps of hair and smears of blood on the floor of her classroom. Ms. Doe was able to find another employee who called emergency personnel.

Approximately five hours after the attack, the student was apprehended while driving Ms. Doe's vehicle. He confessed and was charged with attempted felony murder, sexual battery of a physically incapacitated victim, robbery, and grand theft.

Due to the effects of the attack, Ms. Doe was not able to testify in a criminal trial so the student entered a plea deal. On April 20, 2019, he was sentenced to 25 years in state prison.

In addition to physical injuries, Ms. Doe suffered psychological injuries including depression, post-traumatic stress disorder, gastrointestinal issues, fear of being alone and leaving the house, nightmares, anxiety, mood swings, suicidal thoughts, and panic attacks.

Background Information

At the special master hearing, and in voluminous documentation provided during the claim bill process and hearing, information related to Ms. Doe's teaching background and that student's behavioral history was submitted to the undersigned. The most relevant portions of the information are summarized below.

Ms. Jane Doe

In 2012, Ms. Doe earned a bachelor's degree in Exceptional Student Education. During the 2012 – 2013 school year, Ms. Doe was hired by the School Board of Miami Dade County to teach students who were deaf and hard of hearing, which is the area within which she studied and specialized.

During the 2013 – 2014 school year, while studying for a master's degree in speech and language, Ms. Doe was assigned to a middle school where she taught a class of nine students who were deaf and hearing impaired.

Ms. Doe did not have a contract for the 2014 – 2015 school year but was considered "surplus" and reassigned to South Dade Senior High School. Her new assignment began in August 2014 and she taught history, economics, and

government to high school students with emotional and behavioral disorders. Ms. Doe had no prior experience in any of these content areas, nor was she a behavioral management teacher or trained to teach students with emotional or behavioral disorders.

The student was assigned to Ms. Doe's 2014 – 2015 class. She was unaware of his prior history and she had not received self-defense training or attended security or crisis management training.

Ms. Doe was in her third year of teaching, was 4'11", and weighed 105 pounds.

The Student

The student was an individual with known, escalating emotional and behavioral concerns related to aggression, and defiance of authority figures.

In addition to incidents where the school district had direct knowledge, on June 26, 2013, 15 months before the attack on Ms. Doe, the student was arrested and charged with a second-degree felony under section 836.10, Florida Statutes (2013), for written threats to kill or do bodily injury. He never went to trial because, on May 12, 2014, a juvenile court found him incompetent to stand trial and determined he would not attain competency.

The student was 6'1" and weighed 200 pounds.

LITIGATION HISTORY:

Ms. Doe filed suit in May 2016 and subsequently settled the matter in early 2018 for \$3 million. Ms. Doe received \$1.7 million from insurance proceeds through Gallagher Bassett and United Educators Insurance and pursues the remaining \$1.3 million in this claim bill. As part of the settlement, the school board agreed not to oppose or support the claim bill.

CONCLUSIONS OF LAW:

A *de novo* hearing was held as the Legislature is not bound by settlements or jury verdicts when considering a claim bill, passage of which is an act of legislative grace.

Generally, the underlying tortious cause of action in a claim bill is a negligence claim for which sovereign immunity is waived up to caps identified in section 768.28(5), Florida Statutes. However, in this particular matter, the claimant was

an employee of the school district and received workers' compensation.¹ Workers' compensation is an exclusive remedy² unless one of the egregious statutory exceptions is demonstrated by an employee working in furtherance of the employer.³

A narrow exception to workers' compensation immunity is provided when the claimant can demonstrate that an intentional tort, as defined by the statute, was committed. The exception relevant to the analysis of this claim bill requires the claimant to demonstrate that an intentional tort causing injury or death was committed.⁴

The statute defines "intentional tort" for the purpose of identifying exceptions to workers' compensation immunity. The relevant definition of "intentional tort" in this matter, which under the statute must be demonstrated by clear and convincing evidence, requires that the:

- (1) employer engaged in conduct the employer knew, based on prior similar accidents or explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee, and
- (2) employee was not aware of the risk because the danger was not apparent, and
- (3) employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work.⁵

Regarding the intentional tort exception to workers' compensation immunity, the Florida Supreme Court has applied the standard of "substantial certainty."⁶ The Court

¹ Although not argued at the claim bill hearing, claimant submitted information that litigation would have included federal claims alleging violations of 42 U.S.C. §1983 and 20 U.S.C. §§1681 et seq. (Title IX). The settlement agreement forecloses any claims by claimant against the respondent with regard to this matter.

² See section 440.11(1), Florida Statutes, which provides that "[t]he liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including vicarious liability, of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death" except as provided in certain situations.

³ See *Ramsey v. Dewitt Excavating, Inc.*, 248 So.3d 1270, 1272 (Fla. 2018); *Bakerman v. The Bombay Co., Inc.*, 961 So.2d 259, 261 – 261 (Fla. 2007) (stating, in reference to the comprehensive Florida Workers' Compensation scheme in Chapter 440, that "employers that comply with the provisions of the chapter are given immunity from civil suit by the employee, except in the most egregious circumstances").

⁴ Section 440.11(1)(b), Florida Statutes.

⁵ *Id.*

⁶ See *Bakerman*, 961 So.2d at 262 (citing and quoting *Turner v. PCR, Inc.*, 754 So.2d 683 (Fla. 2000)).

provided that “[u]nder an objective test for the substantial certainty standard, an analysis of the circumstances in a case would be required to determine whether a reasonable person would understand that the employer’s conduct was ‘substantially certain’ to result in injury or death to the employee.”⁷ Concealment of a danger is not necessarily required, but rather a factor, in determining substantial certainty as a matter of law, and whether a plaintiff has demonstrated substantial certainty would be a question for a jury.⁸

Although the elements of the intentional tort exception may be difficult to demonstrate by clear and convincing evidence, it is possible that a jury would have found for Ms. Doe in the present matter.

Employer’s Prior Knowledge of a Known Danger

The record shows that the school district knew of the student’s significant behavioral issues, including his violent tendencies and proceeded to assign Ms. Doe (whose experience was with deaf and hearing-impaired students) to a classroom of students with emotional and behavioral disorders – including the student who subsequently attacked Ms. Doe. A jury could find that the student’s escalating behavior and violent prior actions provided explicit warning to the employer of the danger he posed to others.

Employee Unaware of Risk

Ms. Doe was unaware of the student’s history of defiance, violence, and recent threat to kill or do bodily harm to another. She had just started in her new role in August and she was attacked by the student in September. Ms. Doe provides that she did not receive any warning regarding the student or his history. Additionally, she was not provided the requisite self-defense, safety, and crisis management training which may have also alerted her to the risks associated with her new role.

Concealment by Employer as to Prevent Informed Judgment of Employee about Whether to Perform the Work

A jury may also have found that failure to warn Ms. Doe was concealment or misrepresentation of the risks associated

⁷ *Id.*

⁸ *Id.* at 263 – 265.

with her new assignment – especially because she had not yet received any training pertaining to her new job working with students who had emotional and behavioral disorders.

Given the information presented by the claimant, it is possible that a jury could have found that the school district's conduct was substantially certain to result in injury to Ms. Doe.

IMPACT OF PAYMENT:

The School Board of Miami-Dade County stated that funds for this claim bill would be paid by the school district from the general revenue fund "which funds all aspects" of the school district.

ATTORNEY FEES:

The bill provides that attorney fees may not exceed 25 percent of the total amount awarded.

Claimant seeks the remaining \$1.3 million of a \$3 million settlement agreement with the respondent.

Outstanding costs total \$3,084.56.

CONCLUSION:

Based upon the information provided by the claimant before, during, and after the special master hearing, the undersigned finds that evidence exists for a jury to have found in favor of Ms. Doe's claim under an exception to workers' compensation immunity.

While it is also possible that a jury may have been able to find for the school district, the details and perspective of that argument is less clear as the school district (pursuant to the settlement agreement not to oppose or support the claim bill) did not present a case at the claim bill hearing.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

Instead of a limit on the percentage of the proceeds of the claim bill that may be paid as attorney fees, the committee specifies dollar amounts that may be paid for attorney fees, lobbying fees, and costs and similar expenses.



264464

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2019	.	
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	.	
	.	

The Committee on Judiciary (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete lines 136 - 138
and insert:
injuries and damages to Jane Doe. Of the amount awarded under
this act, the total amount paid for attorney fees may not exceed
\$260,000, the total amount paid for lobbying fees may not exceed
\$65,000, and the total amount paid for costs or other similar
expenses may not exceed \$3,084.56.

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



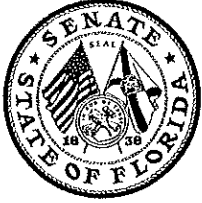
264464

12 And the title is amended as follows:

13 Delete lines 6 - 7

14 and insert:

15 Board of Miami-Dade County; providing limitations on
16 attorney fees, lobbying fees, and certain costs and
17 expenses; providing an effective



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Transportation,
Tourism, and Economic Development, *Vice Chair*
Appropriations
Banking and Insurance
Rules

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining

SENATOR PERRY E. THURSTON, JR.

33rd District

March 27, 2019

The Honorable David Simmons
404 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Simmons,

Please be advised that I am writing this letter concerning my bill, SB 38: Relief of Jane Doe by the School Board of Miami-Dade County. The bill has been referred to the Senate Judiciary Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please do not hesitate to contact me if you have any questions.

Respectfully,

Perry E. Thurston, Jr.

Perry E. Thurston, Jr., District 33

REPLY TO:

2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (888) 284-6086

206 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/27/19	SM	Report Submitted
4/1/19	JU	Fav/CS
	GO	
	RC	

March 27, 2019

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 200** – Judiciary Committee and Senator Cruz
HB 6515 – Representative Fernandez-Barquin
Relief of Estate of Herminio Padilla, Jr., by the City of West Palm Beach
and Others

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED, SETTLED CLAIM FOR \$100,000 FROM THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, THE CITY OF LAKE WORTH, THE CITY OF RIVIERA BEACH, AND THE TOWN OF PALM BEACH TO THE ESTATE OF MR. HERMINIO PADILLA, JR., AS A RESULT OF HIS WRONGFUL DEATH.

FINDINGS OF FACT:

On January 17, 2015, shortly after midnight, Mr. Herminio Padilla, Jr., 48, was at work at the East Central Regional Water Reclamation Facility. As he was walking on a catwalk above a sewage basin, the grate on which Mr. Padilla was standing fell out of the catwalk causing Mr. Padilla to fall into the basin and drown.

The City of West Palm Beach conducted an internal audit of the facility in February 2014, which revealed shortcomings, including management issues.¹

¹ City of West Palm Beach Internal Auditor, Investigative Audit of East Central Regional Water Reclamation Facility Report (Feb. 21, 2014), 10 – 11.

In October 2014, the facility hired Brown and Caldwell to conduct a walk-through of the facility and provide a report. The report noted that many of the grates and guardrails were severely corroded and in need of immediate replacement or repair.²

An employee stated he had told management about a number of issues, including unfit grating that was in need of replacement. He said he had previously made a statement to others at the facility that “it was not if[,] but when[,] they pull a rotting corpse out that maybe things would change.”³

After Mr. Padilla’s death, the City hired WJE Engineers to investigate why the grate collapsed. The engineers and the West Palm Beach Police reported similar findings. Namely, that the grate only had two fasteners on the south side (none on the north, east, or west edges) and seemed to have slipped toward the south edge and off of the north edge.⁴ Mr. Padilla. and the grate fell through and into the basin below. There was no net or safety mechanism in place to catch someone who may fall from the catwalks above the basins.

The City of West Palm Beach holds the title to, owns, and operates, the facility. West Palm Beach confirmed that Mr. Padilla. was an employee and the city owned, operated and maintained the facility.

All five respondents share usage of the facility pursuant to an interlocal agreement. The settlement divides payment of the claim bill award by each respondent’s usage percentage at the time they entered into the interlocal agreement in 1991. Payment would be divided as follows:

- West Palm Beach – \$54,091.00
- Palm Beach County – \$22,727.00⁵
- City of Lake Worth – \$11,363.50
- City of Riviera Beach – \$7,273.00
- Town of Palm Beach – \$4,545.50

² Brown and Caldwell Report, (Dec. 17, 2014).

³ Patrick Tranchese, (Jan. 18, 2015).

⁴ See WJE Engineers Report (Feb. 17, 2015), 4; West Palm Beach Police Department Report (Jan. 30, 2015).

⁵ Parties agree there was a scrivener’s error in the settlement where Palm Beach County’s percentage of the \$100,000 claim was listed as \$22,272.00 when it should be \$22,727.00. The bill should be amended to reflect the same.

Mr. Padilla was divorced and left three adult sons. His family received \$7,500 in funeral expenses from workers' compensation, \$80,000 from a \$40,000 double indemnity life insurance policy Mr. Padilla had through his employer, and another \$5,000 from an accidental death policy.

POSITIONS OF
RESPONDENTS:

All five respondents support this claim bill and did not contest the claim at the special master hearing.

The City of West Palm Beach concedes that it owns, operates, and maintains the facility and confirmed that Mr. Padilla was an employee working within the scope of his employment when the accident occurred. The City has also commemorated a bench and named a road at the plant in memory of Mr. Padilla.

The other respondents did not contest the bill or give an argument at the hearing. However, had litigation continued, respondents had arguments denying the allegations and liability. They also would have argued that they did not own or operate the facility and therefore did not owe a duty of care. If found to be owners or operators, they were prepared to argue that they were entitled to workers' compensation immunity and did not have notice of dangerous conditions. The suit was settled in mediation.

These arguments, in accordance with the settlement agreement not to oppose the bill, were not presented at the claim bill hearing.

CONCLUSIONS OF LAW:

A *de novo* hearing was held as the Legislature is not bound by settlements or jury verdicts when considering a claim bill, passage of which is an act of legislative grace.

Generally, the underlying tortious cause of action in a claim bill is a negligence claim for which sovereign immunity is waived up to caps identified in section 768.28(5), Florida Statutes. However, in this particular matter, the claimant was an employee of the City of West Palm Beach. Workers' compensation is an exclusive remedy⁶ unless one of the

⁶ See section 440.11(1), Florida Statutes, which provides that "[t]he liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including vicarious liability, of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of

egregious statutory exceptions is demonstrated by an employee working in furtherance of the employer.⁷

A narrow exception to workers' compensation immunity is provided when the claimant can demonstrate that an intentional tort, as defined by the statute, was committed. The exception relevant to the analysis of this claim bill requires the claimant to demonstrate that an intentional tort causing injury or death was committed.⁸

The statute defines "intentional tort" for the purpose of identifying exceptions to workers' compensation immunity. The relevant definition of "intentional tort" in this matter, which under the statute must be demonstrated by clear and convincing evidence, requires that the:

- (1) employer engaged in conduct the employer knew, based on prior similar accidents or explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee, and
- (2) employee was not aware of the risk because the danger was not apparent, and
- (3) employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work.⁹

Regarding the intentional tort exception to workers' compensation immunity, the Florida Supreme Court has applied the standard of "substantial certainty."¹⁰ The Court provided that "[u]nder an objective test for the substantial certainty standard, an analysis of the circumstances in a case would be required to determine whether a reasonable person would understand that the employer's conduct was 'substantially certain' to result in injury or death to the employee."¹¹ Concealment of a danger is not necessarily required, but rather a factor, in determining substantial

kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death" except as provided in certain situations.

⁷ See *Ramsey v. Dewitt Excavating, Inc.*, 248 So.3d 1270, 1272 (Fla. 2018); *Bakerman v. The Bombay Co., Inc.*, 961 So.2d 259, 261 – 261 (Fla. 2007) (stating, in reference to the comprehensive Florida Workers' Compensation scheme in Chapter 440, that "employers that comply with the provisions of the chapter are given immunity from civil suit by the employee, except in the most egregious circumstances").

⁸ Section 440.11(1)(b), Florida Statutes.

⁹ *Id.*

¹⁰ See *Bakerman*, 961 So.2d at 262 (citing and quoting *Turner v. PCR, Inc.*, 754 So.2d 683 (Fla. 2000)).

¹¹ *Id.*

certainty as a matter of law, and whether a plaintiff has demonstrated substantial certainty would be a question for a jury.¹²

Although the elements of the intentional tort exception may be difficult to demonstrate by clear and convincing evidence, it is possible that a jury would have found for the claimant in this matter.

Employer's Prior Knowledge of a Known Danger

The employer had prior knowledge of maintenance issues by way of employee complaints and at least two reports regarding the status of the facility. The reports identified grates that were not secure and noted the need for grates to be repaired or replaced immediately. The employer had to know that, especially without a safety net or safety mechanism below a catwalk over a basin, an employee could fall to their demise if grates were not secure.

Employee Unaware of the Risk

There is no indication in the record that Mr. Padilla had any prior knowledge of the maintenance concerns regarding the grating in the facility.

Concealment by Employer as to Prevent Informed Judgment of Employee about Whether to Perform the Work

The record does not indicate whether the employer made employees aware of the maintenance and safety concerns at the facility. There is no information suggesting that Mr. Padilla, himself, was ever aware of the risks of walking on the catwalk grating.

LITIGATION HISTORY:

Stephen P. Padilla filed suit against all five respondents for the wrongful death of his father while also asserting negligence claims with regard to the operation and maintenance of the facility.

On October of 2018, the case settled during mediation for \$300,000 and, as a condition of the settlement agreement, the respondents would not contest this \$100,000 claim bill.

IMPACT OF PAYMENT:

The respondents have all represented that they are able to pay their respective portions of the claim and encourage the

¹² *Id.* at 263 – 265.

passage of this claim bill. Respondents are self-insured and state that the amounts due fall within their self-insured retention.

ATTORNEY FEES:

The bill provides that attorney fees may not exceed 25 percent of the amount of the amount awarded.

RECOMMENDED
AMENDMENT:

Parties agree there was a scrivener's error in the settlement where Palm Beach County's percentage of the \$100,000 claim was listed as \$22,272.00 when it should be \$22,727.00. The bill should be amended to reflect the same.

The parties have also provided agreed upon language, which may also be considered as an amendment.

CONCLUSION:

Based upon the information provided by the claimant before and during the special master hearing, the undersigned finds that evidence exists for a jury to have found in favor of Mr. Stephen Padilla's claim, on behalf of the estate, against the City of West Palm Beach under an exception to workers' compensation immunity.

While there is a question as to liability of the other respondents, the undersigned did not have the benefit of hearing arguments from those parties due to the settlement agreement precluding them from opposing the bill.

All respondents have agreed to pay a percentage, as previously outlined, of the award in this claim bill and support its passage.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute changes Palm Beach County's payment to \$22,727 from \$22,272 in the underlying bill.



904166

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Cruz) recommended the following:

Senate Amendment

1
2
3 Delete line 60
4 and insert:
5 of \$54,091, \$22,727, \$11,363.50, \$7,273, and \$4,545.50,



The Florida Senate

Committee Agenda Request

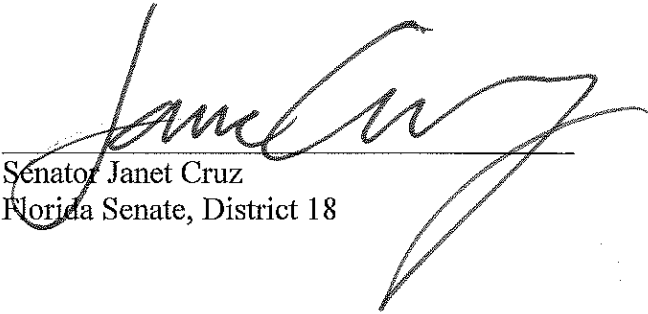
To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 27, 2019

I respectfully request that **Senate Bill #200**, relating to Relief of the Estate of Herminio Padilla, Jr., by the City of West Palm Beach and Others, be placed on the:

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



Senator Janet Cruz
Florida Senate, District 18

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 4/1/2019 4:05:14 PM

Ends: 4/1/2019 5:59:02 PM Length: 01:53:49

4:05:13 PM Meeting called to order by Chair Simmons
4:05:14 PM Roll call by Administrative Assistant Joyce Butler
4:05:18 PM Quorum present
4:05:30 PM Announcements
4:07:23 PM Announcement by Senator Gibson
4:08:43 PM SB 38 presented by Senator Thurston
4:10:33 PM Late-filed amendment Barcode No. 264464 presented by Senator Thurston
4:11:25 PM Amendment adopted
4:13:13 PM Roll call vote
4:13:25 PM CS/SB 38 reported favorably
4:14:22 PM SB 200 presented by Senator Cruz
4:15:41 PM Amendment Barcode No. 904166 presented by Senator Cruz
4:16:53 PM Question by Senator Hutson
4:17:01 PM Response by Senator Cruz
4:17:28 PM Question by Senator Hutson
4:17:35 PM Response by Senator Cruz
4:17:44 PM Amendment adopted
4:18:29 PM Roll call vote
4:18:43 PM CS/SB 200 reported favorably
4:19:10 PM SB 760 presented by Senator Harrell
4:19:48 PM Question by Senator Gibson
4:20:26 PM Response by Senator Harrell
4:20:39 PM Question by Senator Gibson
4:20:49 PM Response by Senator Harrell
4:21:25 PM Question by Senator Gibson
4:21:29 PM Response by Senator Harrell
4:22:44 PM Amendment Barcode No. 166620 presented by Senator Harrell
4:23:01 PM Amendment adopted
4:23:55 PM Speaker David Shepp, Polk County Clerk of Court in favor
4:24:48 PM Question by Senator Gibson
4:24:54 PM Response by Speaker David Shepp
4:25:33 PM Debate by Chair Simmons
4:25:59 PM Response by Speaker David Shepp
4:26:13 PM Question by Chair Simmons
4:26:21 PM Response by Speaker David Shepp
4:27:21 PM Senator Harrell closes on CS/SB 760
4:27:29 PM Roll call vote
4:28:15 PM CS/SB 760 reported favorably
4:28:59 PM SB 1630 presented by Senator Stargel
4:29:50 PM Question by Senator Rodriguez
4:29:58 PM Response by Senator Stargel
4:30:07 PM Debate by Senator Rodriguez

4:31:31 PM Debate by Senator Baxley
4:32:56 PM Senator Stargel closes on SB 1630
4:33:09 PM Roll call vote
4:33:36 PM SB 1630 reported favorably
4:33:57 PM SB 768 presented by Senator Stargel
4:34:27 PM Amendment Barcode No. 111000 presented by Senator Stargel
4:36:08 PM Substitute Amendment Barcode No. 321706 adopted
4:38:00 PM Roll call vote
4:38:20 PM CS/SB 768 reported favorably
4:38:50 PM SB 1764 presented by Senator Baxley
4:40:22 PM Speaker Sarah Nah Biehl, State Courts Systems waives in support
4:40:56 PM Roll call vote
4:41:14 PM SB 1764 reported favorably
4:41:47 PM SB 546 presented by Senator Brandes
4:42:48 PM Amendment Barcode No. 255066 presented by Senator Brandes
4:43:50 PM Speaker Travis Finchum, Academy of Florida Elder Law Attorneys and Elder Law Section/Florida Bar in support
4:45:30 PM Speaker Jeffrey Sharkey, Quicken Loans waives in support
4:45:58 PM Amendment adopted
4:46:46 PM Question by Senator Gibson
4:46:52 PM Response by Senator Brandes
4:48:03 PM Speaker Michael Chodas, Notarize, Inc. waives in support
4:48:14 PM Speaker Zayne Smith, AARP waives in support
4:48:22 PM Speaker Jennifer Martin, Florida Credit Union Association waives in support
4:48:36 PM Speaker Trey Goldman, Florida Realtors waives in support
4:48:50 PM Speaker Matt Forrest, Bequest waives in support
4:49:08 PM Speaker Kenneth Pratt, Florida Bankers Association waives in support
4:49:23 PM Speaker Woody Simmons, American Resort Developers Association waives in support
4:49:42 PM Speaker Chris Carmody, NAIOP of Florida in support
4:50:10 PM Speaker Doug Bell, Westcor Land Title Insurance Company waives in support
4:51:20 PM Debate by Senator Baxley
4:53:56 PM Roll call vote
4:54:04 PM CS/SB 548 reported favorably
4:54:26 PM CS/SB 714 presented by Senator Brandes
4:55:26 PM Amendment Barcode No. 791632 presented by Senator Brandes
4:56:44 PM Amendment Barcode No. 640920 presented by Senator Brandes
4:58:10 PM Question by Senator Rodriguez
4:58:24 PM Response by Senator Brandes
4:59:12 PM Question by Senator Gibson
5:00:12 PM Amendment to Amendment adopted
5:01:13 PM Question by Senator Gibson
5:01:31 PM Response by Senator Brandes
5:02:19 PM Speaker Anne Bert, Chief Operating Officer for information
5:03:08 PM Speaker George Levesque, Riverstone waives in support
5:03:20 PM Speaker Tim Meenan, National Association of Insurance & Funeral Advisors waives in support
5:03:32 PM Speaker Paul Handerhan, FAIR waives in support
5:03:57 PM Amendment adopted
5:04:24 PM Speaker Josh Aubuchan, State Farm Insurance waives in support
5:04:40 PM Speaker Michael Carlson, The Personal Insurance Federation of Florida, Inc. waives in support
5:04:53 PM Speaker Kyle Ulrich, Florida Association of Insurance Agents waives in support

5:05:05 PM Speaker Paul Handerhan, FAIR waives in support
5:05:12 PM Roll call vote
5:05:43 PM CS/CS/SB 714 reported favorably
5:06:11 PM SB 1720 TP'd
5:07:06 PM SPB 7096 presented by Senator Rodriguez
5:08:15 PM Amendment Barcode No. 504424 presented by Senator Simmons
5:23:20 PM Amendment adopted
5:24:27 PM Question by Senator Gibson
5:25:10 PM Response by Senator Simmons
5:25:21 PM Question by Senator Gibson
5:26:15 PM Response by Senator Simmons
5:26:32 PM Question by Senator Gibson
5:26:53 PM Response by Senator Simmons
5:28:40 PM Question by Senator Gibson
5:29:40 PM Response by Senator Simmons
5:30:32 PM Question by Senator Rodriguez
5:31:32 PM Response by Senator Simmons
5:32:18 PM Question by Senator Rodriguez
5:33:15 PM Response by Senator Simmons
5:36:37 PM Question by Senator Rodriguez
5:37:37 PM Response by Senator Simmons
5:40:15 PM Speaker Rich Templin in opposition
5:43:17 PM Senator Stargel moves for time certain vote at 5:58
5:44:03 PM Time certain adopted
5:44:08 PM Speaker Kara Gross, ACLU of Florida in opposition
5:45:56 PM Speaker Christopher Emmanuel, Florida Chamber of Commerce in support
5:47:05 PM Speaker Scott McCoy, Southern Poverty Law Center Action Fund in opposition
5:47:35 PM Speaker Brewster Bevis, Associated Industries of Florida waives in support
5:48:35 PM Speaker Nicolette Springer, League of Women Voters waives in opposition
5:48:49 PM Speaker Adam Basford, Florida Farm Bureau in support
5:49:08 PM Speaker David Cullen, Sierra Club of Florida in opposition
5:50:18 PM Speaker Jim Kallinger in support
5:52:02 PM Speaker Elizabeth Alvi, Audubon Florida in Opposition
5:53:02 PM Pamela Burch Fort, Florida State Conference of NAACP in opposition
5:53:12 PM Ida Eskamani, Organize Florida & New Florida Majority in opposition
5:53:22 PM Paul Owens, 1000 Friends of Florida in opposition
5:53:30 PM Jay Earing in opposition
5:53:36 PM Jon Harris, Equality Florida in opposition
5:53:44 PM Karen Woodall, Florida Center for Fiscal & Economic Policy in opposition
5:53:49 PM Marcus Dixon, SEIU Florida in opposition
5:53:58 PM Aliko Moncrief, Florida Conservation Voters in opposition
5:54:04 PM Dr. Ana Ciereszko, United Faculty of Miami Dade College in opposition
5:54:12 PM J.D. Clark, Florida Electrical Workers Association in opposition
5:54:25 PM Debate by Senator Baxley
5:54:53 PM Debate by Senator Rodriguez
5:55:50 PM Senator Simmons closes on CS/SB 7096
5:56:37 PM Roll call vote
5:57:37 PM SPB 7096 reported favorably as Committee Bill
5:58:09 PM Senator Rodriguez moves to be shown in the affirmative on CS/SB 38 and CS/SB 200
5:58:30 PM Senator Baxley moves to adjourn, meeting adjourned without objection