

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Tuesday, April 8, 2014
TIME: 9:00 —11:00 a.m.
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1176 Abruzzo (Identical H 1049)	Divers; Requiring all divers to prominently display a divers-down flag or buoy in the area in which the diving occurs; requiring vessel operators encountering divers-down buoys to take specified actions; prohibiting a divers-down buoy from being used or displayed onboard a vessel, etc.	EP 03/20/2014 Favorable CM 03/31/2014 Favorable JU 04/08/2014
2	CS/SB 1556 Commerce and Tourism / Simpson (Similar CS/CS/H 489, CS/S 1032)	Subsurface Rights; Requiring a seller to provide a prospective purchaser with a subsurface rights disclosure summary; providing the form for the disclosure summary; requiring the disclosure summary to be included in, or incorporated by reference in, the contract for sale, etc.	CM 03/17/2014 Fav/CS JU 04/08/2014
3	CS/CS/SB 722 Children, Families, and Elder Affairs / Health Policy / Garcia (Similar CS/H 591)	Newborn Health Screening; Authorizing the State Public Health Laboratory to release the results of a newborn's hearing and metabolic tests or screenings to the newborn's health care practitioner; requiring an audiologist to provide an opportunity for the parent or legal guardian of an infant or toddler who is diagnosed with a hearing impairment to provide contact information so that he or she may receive information directly from specified service providers; requiring the Department of Health to post a list of certain service providers on the department website; requiring the audiologist or his or her designee to transmit a consent form to the providers listed on the department website, etc.	HP 03/11/2014 Fav/CS CF 03/25/2014 Fav/CS JU 04/08/2014

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1172 Sobel (Similar H 1311)	Conveyance of Property Taken by Eminent Domain; Authorizing a condemning authority to convey, without restriction, lands condemned for specific noise mitigation or noise compatibility programs at certain large hub airports to a person or private entity, etc. CA 03/25/2014 Favorable JU 04/08/2014 RC	
5	CS/SB 768 Criminal Justice / Braynon (Similar CS/CS/H 989, Compare H 1071)	Human Trafficking; Redefining the term "sexual abuse of a child" to include human trafficking; authorizing a defendant who has been charged with specified human trafficking offenses to apply for an order of disclosure of confidential and exempt information; providing an exception to ineligibility for victim assistance awards to specified victims of human trafficking; authorizing the Department of Legal Affairs to provide relocation assistance to a victim of specified human trafficking offenses, etc. CJ 03/24/2014 Fav/CS JU 04/08/2014 AP	
6	CS/CS/SB 612 Community Affairs / Governmental Oversight and Accountability / Hays (Compare CS/H 801)	Government Contracting; Preempting and superseding a local ordinance or regulation that gives preference for an award to a certified contractor under certain circumstances; requiring a university, college, county, municipality, school district, or other political subdivision to make specified disclosures in competitive solicitation documents; requiring agencies to provide the Department of Management Services with copies of vendor complaints and names of suspended and terminated vendors, etc. GO 03/06/2014 Fav/CS CA 03/19/2014 Fav/CS JU 04/08/2014 AP	

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 810 Regulated Industries / Galvano (Similar CS/H 773, Compare CS/CS/H 775, Link CS/CS/S 808)	Pugilistic Exhibitions; Revising the duties and responsibilities of the executive director of the Florida State Boxing Commission; deleting a provision requiring the electronic recording of commission proceedings; clarifying the commission's exclusive jurisdiction over approval of amateur and professional boxing, kickboxing, and mixed martial arts matches; providing for immediate license suspension and other disciplinary action if a participant fails or refuses to provide a urine sample or tests positive for specified prohibited substances; authorizing the commission and the Department of Business and Professional Regulation to audit specified records retained by a promoter, etc.	RI 03/13/2014 Fav/CS GO 03/26/2014 Favorable JU 04/08/2014 AP
8	CS/SB 832 Banking and Insurance / Flores (Similar CS/H 783)	Financing of Motor Vehicles; Prohibiting a finance company that is affiliated with or controlled by, or that has a contractual relationship with, a manufacturer or wholesale distributor from taking specified actions relating to certain finance obligations arising from the retail sale or lease of a motor vehicle that includes a third party's automotive related product, etc.	BI 03/05/2014 Fav/CS JU 04/08/2014 RC
9	CS/SB 918 Health Policy / Flores (Similar CS/H 1047)	Termination of Pregnancies; Revising the circumstances under which a pregnancy in the third trimester may be terminated; authorizing administrative discipline for a violation of certain provisions by certain licensed professionals; requiring a physician to perform certain examinations to determine the viability of a fetus; prohibiting an abortion of a viable fetus outside of a hospital, etc.	HP 03/05/2014 Temporarily Postponed HP 04/01/2014 Fav/CS JU 04/08/2014 RC

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	SB 1060 Evers (Similar H 7029)	Code of Student Conduct; Providing that simulating a firearm or weapon while playing or wearing certain clothing or accessories is not grounds for disciplinary action or referral to the criminal justice or juvenile justice system; providing actions that constitute simulating a firearm or weapon while playing; providing criteria for determining whether certain student conduct warrants disciplinary action, etc.	CJ 03/03/2014 Favorable ED 03/25/2014 Favorable JU 04/08/2014
11	SB 1008 Stargel (Similar CS/H 609)	Article V Constitutional Conventions; Citing this act as the "Article V Constitutional Convention Act"; establishing qualifications of delegates and alternate delegates to an Article V constitutional convention; providing for the appointment of delegates by the Legislature; requiring majority vote approval in each chamber for the appointment of delegates; authorizing the Legislature to recall a delegate and fill a vacancy; authorizing the Governor to call a special legislative session to fill a vacancy; establishing a legislative method for appointments and recalls, etc.	JU 04/08/2014 AP RC
12	CS/SB 588 Children, Families, and Elder Affairs / Richter (Similar CS/CS/H 409, Compare CS/CS/H 1029, CS/S 1472)	Offenses Against Vulnerable Persons; Revising when an out-of-court statement by an elderly person or disabled adult is admissible in certain proceedings; deleting a requirement that property of an elderly person or disabled adult be obtained by deception or intimidation in order to constitute exploitation of such a person; creating a presumption that certain inter vivos transfers are a result of exploitation, etc.	CF 02/18/2014 Fav/CS CJ 03/31/2014 Favorable JU 04/08/2014

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	CS/SB 1238 Banking and Insurance / Richter (Similar CS/CS/H 1267, Compare CS/CS/H 1269, Link CS/S 1320)	Family Trust Companies; Citing this act as the "Florida Family Trust Company Act"; providing for the calculation of kinship; exempting a family trust company or foreign licensed family trust company from licensure; specifying the maximum number of designated relatives allowed for a family trust company and a licensed family trust company; requiring that licensed family trust companies procure and maintain fidelity bonds or specified capital account and errors and omissions insurance; prohibiting certain activities on the part of family trust companies, etc.	BI 03/25/2014 Fav/CS JU 04/08/2014
14	SB 1498 Joyner (Similar H 1279)	Marriage of Minors; Revising provisions that allow the issuance of marriage licenses to persons younger than 18 years of age in certain circumstances; removing exceptions that allow the issuance of a marriage license to persons younger than 16 years of age; conforming provisions to changes made by the act, etc.	JU 04/08/2014 CF RC
15	CS/SB 1190 Children, Families, and Elder Affairs / Lee (Similar CS/H 1397)	Family Law; Creating the "Collaborative Law Act"; declaring that a collaborative law process commences when the parties enter into a collaborative law participation agreement; providing that a tribunal may not order a party to participate in a collaborative law process over the party's objection; providing for confidentiality of communications made during the collaborative law process, etc.	CF 04/01/2014 Fav/CS JU 04/08/2014
16	CS/SB 1466 Regulated Industries / Lee (Compare CS/H 7037)	Residential Communities; Allowing for reasonable charges to be imposed for collection of a delinquent assessment; requiring a claim of lien on a condominium parcel to be in a specific form; deleting a provision providing for the expiration of certain liens; requiring a claim of lien on a parcel within a homeowners' association to be in a specific form, etc.	RI 03/26/2014 Fav/CS JU 04/08/2014 AP

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1176

INTRODUCER: Senator Abruzzo

SUBJECT: Divers

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	Favorable
2.	<u>Askey</u>	<u>Hrdlicka</u>	<u>CM</u>	Favorable
3.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting

I. Summary:

SB 1176 authorizes divers to display a divers-down buoy instead of a divers-down flag when diving. The bill specifies design and display requirements for a divers-down buoy but prohibits the use or display of the divers-down buoy onboard a vessel. Similarly, the current requirements for vessel operators and divers when a divers-down flag is used will apply when a divers-down buoy is used.

II. Present Situation:

Diving in Florida

Florida's coastlines, coral reefs, rivers, springs, and lakes provide more dive sites and attract more visitors than any other diving destination in the country. The state waters provide year-round diving opportunities that include shore-entry diving, wreck diving, cave diving, spear fishing, and treasure hunting. According to the Florida Fish and Wildlife Commission, Florida is home to more divers, dive stores, and dive boats than any other destination sought by divers. It is estimated that the diving industry generates billions of dollars in local sales and income and provides thousands of full-time and part-time jobs.¹

Current state law defines a diver as "any person who is wholly or partially submerged in the waters of the state and is equipped with a facemask and snorkel or underwater breathing apparatus."² Divers in North America commonly use a sport diver flag, or "divers-down flag," when diving and it is generally recognized as a red flag with a solid, diagonal white stripe. Additionally the "alpha flag" is an internationally recognized flag flown on vessels during diving operations. The alpha flag is blue and white, and has a different pattern than the sport diver flag.

¹ Florida Fish and Wildlife Commission, *Senate Bill 1176 Agency Analysis*, 2 (March 6, 2014).

² Section 327.331(1)(a), F.S.

Diving Regulation

Recreational diving is not regulated by the U.S. Coast Guard (USCG). However, a USCG licensed master of a commercial vessel that transports divers or passengers is responsible for vessel and passenger safety and administrative action may be taken against an operator if his or her unsafe actions or decisions lead to an injury or fatality.³ The USCG does require the alpha flag to be flown on small vessels engaged in diving activities since the vessel's ability to maneuver is limited. In sports diving, the divers are typically free swimming but displaying the divers-down flag is recommended.⁴

Florida regulates the display of a divers-down flag in s. 327.331, F.S. The divers-down flag must meet the following specifications:

- The flag must be a square or rectangular. If the flag is rectangular the length must not be less than the height, or more than 25 percent longer than the height;
- The flag must have a wire or stiffener to hold the flag extended in the absence of wind;
- The flag must be red with a diagonal white stripe that begins at the top staff-side of the flag and extends diagonally to the lower opposite corner. The width of the stripe must be 25 percent of the height of the flag;
- The minimum size of a divers-down flag displayed from a vessel or structure must be 20 inches by 24 inches;
- The minimum size of a flag displayed from a buoy or float towed by a diver is 12 inches by 12 inches; and
- Any divers-down flag displayed from a vessel must be displayed from the highest point of the vessel or other location where the visibility of the divers-down flag is not obstructed in any direction.

Divers must prominently display the divers-down flag in the area when diving occurs, but not if the area is customarily used for swimmers only. Except in an emergency, divers may not display one or more divers-down flags on a river, inlet, or navigation channel in a way that presents a navigational hazard. Divers are required to make reasonable efforts to stay within 100 feet of the divers-down flag when diving in rivers, inlets, and navigational channels. The divers-down flag must be lowered when no divers are in the water and a vessel may not display a divers-down flag when no divers are in the water.

Vessel operators must make reasonable efforts to stay at least 100 feet away from a divers-down flag in rivers, inlets, and navigation channels, and at least 300 feet away in other waters. Any vessel that is not a rescue or law enforcement vessel entering within those distances must slow to the minimum necessary speed to maintain headway and steerage.

The statute provides that a violation of these provisions, unless the violation is considered reckless or careless operation of a vessel, is a noncriminal infraction, punishable by a civil

³ USCG Marine Safety Advisory, *Recommendations for Recreational Diving Operations Occurring from Commercial Passenger Vessels* (June 21, 2012) Available at: <http://www.capca.net/PDF/RecDivingAdvisory01-12.pdf> (last visited April 4, 2014).

⁴ USCG Boating Safety Information, 9, available at: http://www.uscg.mil/d1/prevention/NavInfo/navinfo/documents/B-Boating_Safety.PDF (last visited April 4, 2014).

penalty of \$50.⁵ The Florida Fish and Wildlife Commission reported that the number of divers-down flag related citations was 343 in Fiscal Year 2010-2011, 329 in Fiscal Year 2011-2012, and 225 in Fiscal Year 2012-2013.⁶

Diver Accident Statistics

From 2009 through 2013, 13 boating accidents were reported that involved divers or snorkelers being struck by boats where the visibility of a diver down flag may have been a contributing factor. These accidents involved two fatalities and 11 injuries requiring more treatment than basic first aid.⁷ A boat collision with a diver in the water is likely to result in severe injury or death to the diver because the diver is likely to contact the boat's steering and propulsion system.

III. Effect of Proposed Changes:

Section 1 amends s. 327.331, F.S., providing divers with the option of using a divers-down buoy instead of a divers-down flag. It defines "divers-down buoy" as a "buoyant device, other than a vessel, which displays a divers-down symbol of at least 12 inches by 12 inches on four flat sides, which is prominently visible on the water's surface when in use." The bill specifies the divers-down buoy may not be used or displayed onboard.

In addition, the bill defines the "divers-down symbol," to be used on a divers-down buoy or flag, to be "a rectangular or square red symbol with a white diagonal stripe. If rectangular, the length must not be less than the height or more than 25 percent longer than the height. The width of the stripe must be 25 percent of the height of the symbol."

Sections 2 and 3 amend ss. 327.395 and 327.73, F.S., respectively, providing conforming changes to incorporate the divers-down buoy into existing regulations for the divers-down flag.

Section 4 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ See ss. 327.331(8) and 327.33(1)(u), F.S.

⁶ Florida Fish and Wildlife Commission, *Senate Bill 1176 Agency Analysis*, 3 (March 6, 2014).

⁷ *Id.*

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

None.

B. Private Sector Impact:

Because the bill only adds an additional method divers may use to comply with the requirement to display a symbol when they are participating in diving activities, the bill does not require divers to purchase additional items to continue diving activities. The bill may provide a financial benefit to private companies that manufacture buoys by expanding the market to divers who must display a symbol when they are diving.

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: 327.331, 327.395, and 327.73.

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

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Richter) recommended the following:

Senate Amendment

Delete line 34

and insert:

inches by 12 inches on three or four flat sides, which is
prominently

By Senator Abruzzo

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A bill to be entitled

An act relating to divers; amending s. 327.331, F.S.; defining the terms "divers-down buoy" and "divers-down symbol"; revising the definition of "divers-down" flag; requiring all divers to prominently display a divers-down flag or buoy in the area in which the diving occurs; requiring vessel operators encountering divers-down buoys to take specified actions; prohibiting a divers-down buoy from being used or displayed onboard a vessel; conforming provisions to changes made by the act; making technical changes; amending ss. 327.395 and 327.73, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 327.331, Florida Statutes, is amended, and subsection (1) of that section is reordered, to read:

327.331 Divers; definitions; divers-down flag or buoy required; obstruction to navigation of certain waters; penalty.-

(1) As used in this section:

(a) "Diver" means a ~~any~~ person who is wholly or partially submerged in the waters of the state and is equipped with a face mask and snorkel or underwater breathing apparatus.

(e) ~~(b)~~ "Underwater breathing apparatus" means any apparatus, whether self-contained or connected to a distant source of air or other gas, whereby a person wholly or partially submerged in water is enabled to obtain or reuse air or any

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other gas or gases for breathing without returning to the surface of the water.

(b) "Divers-down buoy" means a buoyant device, other than a vessel, which displays a divers-down symbol of at least 12 inches by 12 inches on four flat sides, which is prominently visible on the water's surface when in use.

(c) "Divers-down flag" means a flag that meets the following specifications:

1. The flag must be square or rectangular. If rectangular, the length must not be less than the height, or more than 25 percent longer than the height. The flag must have a wire or other stiffener to hold it fully unfurled and extended in the absence of a wind or breeze.

2. The flag must consist of a divers-down symbol on each side with ~~be red with~~ a white diagonal stripe that begins at the top staff-side of the flag and extends diagonally to the lower opposite corner. ~~The width of the stripe must be 25 percent of the height of the flag.~~

3. The minimum size for any divers-down flag displayed on a buoy or float towed by the diver is 12 inches by 12 inches. The minimum size for any divers-down flag displayed from a vessel or structure is 20 inches by 24 inches.

4. Any divers-down flag displayed from a vessel must be displayed from the highest point of the vessel or such other location which provides that the visibility of the divers-down flag is not obstructed in any direction.

(d) "Divers-down symbol" means a rectangular or square red symbol with a white diagonal stripe. If rectangular, the length must not be less than the height or more than 25 percent longer

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59 than the height. The width of the stripe must be 25 percent of
60 the height of the symbol.

61 (2) All divers must prominently display a divers-down flag
62 or buoy in the area in which the diving occurs, other than when
63 diving in an area customarily used for swimming only. A divers-
64 down buoy may not be used or displayed onboard a vessel.

65 (3) A diver or group of divers may not ~~No diver or group of~~
66 ~~divers shall~~ display one or more divers-down flags or buoys on a
67 river, inlet, or navigation channel, except in case of
68 emergency, in a manner which shall unreasonably constitute a
69 navigational hazard.

70 (4) Divers shall make reasonable efforts to stay within 100
71 feet of a the divers-down flag or buoy on rivers, inlets, and
72 navigation channels. A Any person operating a vessel on a river,
73 inlet, or navigation channel must make a reasonable effort to
74 maintain a distance of at least 100 feet from any divers-down
75 flag or buoy.

76 (5) Divers must make reasonable efforts to stay within 300
77 feet of a the divers-down flag or buoy on all waters other than
78 rivers, inlets, and navigation channels. A Any person operating
79 a vessel on waters other than a river, inlet, or navigation
80 channel must make a reasonable effort to maintain a distance of
81 at least 300 feet from any divers-down flag or buoy.

82 (6) A Any vessel other than a law enforcement or rescue
83 vessel that approaches within 100 feet of a divers-down flag or
84 buoy on a river, inlet, or navigation channel, or within 300
85 feet of a divers-down flag or buoy on waters other than a river,
86 inlet, or navigation channel, must proceed no faster than is
87 necessary to maintain headway and steerageway.

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88 (7) A The divers-down flag or buoy may not be displayed
89 ~~must be lowered~~ once all divers are aboard or ashore. A No
90 person may not operate any vessel displaying a divers-down flag
91 unless the vessel has one or more divers in the water.

92 (8) Except as provided in s. 327.33, a any violation of
93 this section is shall be a noncriminal infraction punishable as
94 provided in s. 327.73.

95 Section 2. Subsection (3) of section 327.395, Florida
96 Statutes, is amended to read:

97 327.395 Boating safety identification cards.-

98 (3) Any commission-approved boater education or boater
99 safety course, course-equivalency examination developed or
100 approved by the commission, or temporary certificate examination
101 developed or approved by the commission must include a component
102 regarding diving vessels, awareness of divers in the water,
103 divers-down flags and buoys, and the requirements of s. 327.331.

104 Section 3. Paragraph (u) of subsection (1) of section
105 327.73, Florida Statutes, is amended to read:

106 327.73 Noncriminal infractions.-

107 (1) Violations of the following provisions of the vessel
108 laws of this state are noncriminal infractions:

109 (u) Section 327.331, relating to divers-down flags and
110 buoys, except for violations meeting the requirements of s.
111 327.33.

112 Section 4. This act shall take effect July 1, 2014.

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 1556

INTRODUCER: Commerce and Tourism Committee and Senator Simpson

SUBJECT: Mineral Rights

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Baye</u>	<u>Hrdlicka</u>	<u>CM</u>	Fav/CS
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1556 requires that sellers of residential property provide a prospective purchaser with a disclosure summary at or before the execution of the contract for sale if a subsurface right or right of entry was severed or retained by the seller or an affiliated or related entity, or will be severed or retained by the seller or an affiliated or related entity. The disclosure summary must inform the purchaser that the subsurface rights have been or will be severed from the property.

II. Present Situation:

Pursuant to ch. 689.01, F.S., property conveyed for a term of more than 1 year must be made by an instrument in writing. "A landowner is entitled to the surface and all that is below it, and on the execution of a deed that contains no reservation and does not limit the estate conveyed, the owner conveys everything under the surface as well as on the surface itself."¹ A landowner may also sever his or her mineral rights in the land and sell them separately.²

Generally, when the surface estate is severed from the mineral estate, the mineral estate is the dominant estate and the owner of the mineral estate has the right of ingress and egress to explore for, locate, and remove the minerals.³ However, the owner of the mineral estate cannot take

¹ 36 Fla. Jur. 2d Mines and Minerals s. 54.

² *Id.*

³ *P&N Inv. Corp. v. Florida Ranchettes, Inc.*, 220 So. 2d 451, 453 (Fla. 1st DCA 1968).

actions that unreasonably injure or destroy the value of the surface estate and may be liable for damages to the owner of the surface estate for any unreasonable damages.”⁴

Some developers retain mineral rights without a reference to the mineral rights on the face of the deed. There may be a catch-all provision in the deed indicating that the land is “subject to Covenants, Conditions, Restrictions, Reservations, Limitations, Easements, and Agreements of Records, if any.” In this case, the prospective purchaser may be unsure about the state of the mineral rights on the land.

In February 2014, Florida Attorney General Pam Bondi stated in a press release that her office was working with a home builder to notify approximately 18,000 homeowners who had purchased real property from the builder without knowledge that the mineral rights to the property had been severed.⁵ The notice informs the homeowners that they have the option to receive the mineral rights by completing a certification form. The home builder agreed to cease the practice of reserving mineral rights until the Florida Legislature provides guidance on the issue.⁶

III. Effect of Proposed Changes:

CS/SB 1556 creates s. 689.29, F.S., to provide that the seller must provide a prospective purchaser of residential property with a disclosure summary about the subsurface rights of the real property if a subsurface right or right of entry was severed or retained by the seller or an affiliated or related entity, or will be severed or retained by the seller or an affiliated or related entity. The disclosure summary must inform the prospective purchaser:

- That subsurface rights have been or will be severed and may permit the owner of those rights to access the property and remove subsurface minerals from the property; and
- That subsurface rights may have a monetary value.

The disclosure summary is required for the sale of residential property upon which a new dwelling:

- Will be constructed pursuant to a contract of sale;
- Is being constructed; or
- Has been constructed since the last transfer of the property.

The disclosure summary must be provided at or before the execution of the contract for sale if a subsurface right or the right of entry was severed or retained by the seller or an affiliated or related entity, or will be severed or retained by the seller or an affiliated or related entity. The disclosure summary must be conspicuous, in boldfaced type, and in a form substantially similar to the form contained in the bill. The purchaser is also required to initial the disclosure summary.

⁴ *Id.*

⁵ See also, Drew Harwell, *Home Builder Grabs Drilling Rights Beneath Thousands of Tampa Bay Homes*, TAMPA BAY TIMES, November 8, 2013, at <http://www.tampabay.com/news/business/realestate/homebuilder-pockets-drilling-rights-beneath-thousands-of-tampa-bay-homes/2151468> (last visited April 3, 2014).

⁶ Florida Office of the Attorney General, *Attorney General Pam Bondi Announces that Home Builder is Notifying Florida Homeowners of Option to Request Mineral Rights*, February 7, 2014, available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/06535F8FE26017C785257C780071C51D> (last visited March 11, 2014).

If the disclosure summary is not included in the contract for sale, the contract for sale must refer to and incorporate by reference the disclosure summary and must include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary.

The term “subsurface rights” means the rights to all minerals and mineral fuels, and other resources, including, but not limited to, oil, gas, coal, oil shale, uranium, metals, and phosphate, whether or not it may be mixed with any other substance, found, or located beneath the surface of the earth.

The term “seller” means any seller of real property which, at the time of sale, is zoned for residential use and is property upon which a new dwelling is being constructed, or will be constructed pursuant to the contract of sale with the seller, or has been constructed since the last transfer of the property.

This bill takes effect October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may impact the private sector related to the cost of providing notice to buyers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 689.29 of the Florida Statutes.

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

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

CS by Commerce and Tourism on March 17, 2014:

The committee substitute:

- Requires a disclosure summary only if a subsurface right or the right of entry was severed or retained by the seller or an affiliated or related entity, or will be severed or retained by the seller or an affiliated or related entity.
- Changes the form of the disclosure summary.
- Deletes the requirement for the disclosure summary to be in the contract for sale. The amendment provides if the disclosure summary is not included in the contract for sale, the contract for sale must refer to and incorporate by reference the disclosure summary and must include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary.
- Defines “subsurface rights” to include all minerals, mineral fuels, and other resources, including, but not limited to, oil, gas, coal, oil shale, uranium, and phosphate, whether or not it may be mixed with any other substance, found, or located beneath the surface of the earth.
- Defines the term “seller” to mean any seller of real property which, at the time of sale, is zoned for residential use and is property upon which a new dwelling is being constructed, or will be constructed pursuant to the contract of sale with the seller, or has been constructed since the last transfer of the property.
- Changes the effective date of the bill from July 1, 2014 to October 1, 2014.

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senator Simpson

577-02738-14

20141556c1

1 A bill to be entitled
 2 An act relating to subsurface rights; creating s.
 3 689.29, F.S.; requiring a seller to provide a
 4 prospective purchaser with a subsurface rights
 5 disclosure summary; providing the form for the
 6 disclosure summary; requiring the disclosure summary
 7 to be included in, or incorporated by reference in,
 8 the contract for sale; defining the term "subsurface
 9 rights"; defining the term "seller"; providing an
 10 effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 689.29, Florida Statutes, is created to
 15 read:

16 689.29 Disclosure of subsurface rights to prospective
 17 purchaser.—

18 (1) The seller must provide a prospective purchaser of
 19 residential property with a disclosure summary at or before the
 20 execution of the contract for sale if a subsurface right or the
 21 right of entry was severed or retained by the seller or an
 22 affiliated or related entity, or will be severed or retained by
 23 the seller or an affiliated or related entity. The disclosure
 24 summary must be conspicuous, in boldfaced type, and in a form
 25 substantially similar to the following:

26
 27 SUBSURFACE RIGHTS
 28 DISCLOSURE SUMMARY
 29

Page 1 of 3

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

577-02738-14

20141556c1

30 SUBSURFACE RIGHTS HAVE BEEN OR WILL BE SEVERED FROM THE TITLE TO
 31 REAL PROPERTY BY CONVEYANCE (DEED) OF THE SUBSURFACE RIGHTS FROM
 32 THE SELLER OR BY RESERVATION OF THE SUBSURFACE RIGHTS BY THE
 33 SELLER OR AN AFFILIATED OR RELATED ENTITY. WHEN SUBSURFACE
 34 RIGHTS ARE SEVERED FROM THE PROPERTY, THE OWNER OF THOSE RIGHTS
 35 MAY HAVE THE PERPETUAL RIGHT TO DRILL, MINE, EXPLORE, AND REMOVE
 36 ANY OF THE SUBSURFACE RESOURCES ON OR FROM THE PROPERTY EITHER
 37 DIRECTLY FROM THE SURFACE OF THE PROPERTY OR FROM A NEARBY
 38 LOCATION. SUBSURFACE RIGHTS MAY HAVE A MONETARY VALUE.

39
 40 ...(Buyer Initials)...

41
 42 (2) If the disclosure summary is not included in the
 43 contract for sale, the contract for sale must refer to and
 44 incorporate by reference the disclosure summary and must
 45 include, in prominent language, a statement that the potential
 46 purchaser should not execute the contract until he or she has
 47 read the disclosure summary required under this section.

48 (3) As used in this section, the term "subsurface rights"
 49 means the rights to all minerals, mineral fuels, and other
 50 resources, including, but not limited to, oil, gas, coal, oil
 51 shale, uranium, metals, and phosphate, whether or not it may be
 52 mixed with any other substance, found, or located beneath the
 53 surface of the earth.

54 (4) As used in this section, the term "seller" means any
 55 seller of real property which, at the time of sale, is zoned for
 56 residential use and is property upon which a new dwelling is
 57 being constructed, or will be constructed pursuant to the
 58 contract of sale with the seller, or has been constructed since

Page 2 of 3

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

577-02738-14

20141556c1

59 the last transfer of the property.

60 Section 2. This act shall take effect October 1, 2014.

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 722

INTRODUCER: Children, Families, and Elder Affairs Committee; Health Policy Committee; and Senator Garcia

SUBJECT: Newborn Health Screening

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
3.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 722 expands the list of health care providers who may receive the results of a newborn's hearing or metabolic tests or screenings from the State Public Health Laboratory and revises the definition of "hearing impairment" to conform to national standards. Additionally, if an audiologist diagnoses an infant or toddler with hearing loss, the bill requires that the audiologist or his or her designee ask the parent or guardian if he or she would like to receive information about services directly from Early Steps providers. The bill also makes two technical corrections, deleting an obsolete date and updating a cross-reference to federal law.

II. Present Situation:

Newborn Screening

Newborn screening (NBS) is a preventive public health program that provides early identification of rare genetic, metabolic, hormonal, and functional disorders among infants and follow-up care for those affected. Babies with these conditions appear healthy at birth, but can develop serious medical problems later in infancy or childhood. Without treatment, the screened-for disorders can result in significant health consequences and in some cases, death. Virtually all¹ newborns in the United States are screened and only for disorders for which there is documented

¹ Florida's newborn screening statute allows a parent to refuse the test. Section 383.14(4), F.S.

benefit to the infant from early detection and for which there is a reliable screening test that is feasible in a public health setting.

Newborn screening began in the 1960s with testing for phenylketonuria (PKU). In 2002, the Maternal and Child Health Bureau of the Health Resources and Services Administration (HRSA), U.S. Department of Health and Human Services, commissioned the American College of Medical Genetics (ACMG) to develop a report outlining a process to standardize guidelines for newborn screenings. At the time, some state programs were screening for as few as five conditions and others as many as 50. The ACMG panel recommended 29 conditions as part of a core screening panel. Two additional conditions were recommended in 2010 by the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children.² The Secretary has adopted all 31 conditions as part of the Recommended Uniform Screening Panel (RUSP). Although states are not required to adopt the RUSP, all states currently screen for the substantial majority of the RUSP core conditions.³

Florida Newborn Screening

Florida's newborn screening program is administered by the Department of Health (DOH). It began in 1965 with testing for Phenylketonuria and has since expanded to cover 37 conditions, including all of the core conditions contained on the RUSP. Florida's newborn screening program requires that all babies born alive be tested before 1 week of age.⁴ Before leaving the hospital or other birthing facility, a few drops of blood are taken from the heel of the baby and the baby's ears are also tested for hearing. The hospital or birthing facility sends the blood sample to the State Public Health Laboratory in Jacksonville. The lab sends all test results back to the hospital or birthing facility, which, in turn, is required to forward them to the baby's physician.⁵ Physicians can also get results for their patients from the Florida Newborn Screening Results website. If the screening results are abnormal, the Newborn Screening Follow-up Program, which is a part of Children's Medical Services (CMS), contacts the parent or the physician about additional testing and continues follow-up until the disorder is either ruled out or confirmed.⁶

Current law prohibits the release of DNA testing results, whether held by a public or private entity, without the consent of the person tested, except for purposes of criminal prosecutions or paternity determinations. In addition, records held by a public entity are exempt from disclosure

² The Secretary's Advisory Committee on Heritable Disorders in Newborns and Children was chartered in February 2003 to advise the Secretary of the U.S. Department of Health and Human Services regarding the most appropriate application of technologies, policies, guidelines, and standards for effectively reducing morbidity and mortality in newborns and children who have or are at risk for heritable disorders. (Secretary's Advisory Committee on Heritable Disorders in Newborns and Children) *2011 Annual Report to Congress*, available at <http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/reportsrecommendations/reports/sachdnc2011report.pdf> (last visited April 5, 2014).

³ National Newborn Screening and Genetics Resource Center, *National Newborn Screening Status Report* (January 1, 2013), available at <http://genes-r-us.uthscsa.edu/sites/genes-r-us/files/nbsdisorders.pdf> (last visited April 5, 2014). Critical Congenital Heart Disease and Severe Combined Immunodeficiency are the two conditions that are part of the RUSP, but implemented by only a minority of states.

⁴ Section 383.14(2), F.S., Rule 64C-7.002, F.A.C.

⁵ Rule 64C-7.005, F.A.C.

⁶ Florida Department of Health, *Newborn Screening*, <http://www.floridahealth.gov/healthy-people-and-families/childrens-health/newborn-screening> (last visited April 5, 2014).

under Florida's public records laws. A person who commits a violation of the confidentiality requirements is guilty of a first degree misdemeanor.⁷ Notwithstanding this or any other law to the contrary, the lab may release newborn screening results either directly or indirectly through CMS to the newborn's primary care physician.⁸ Other practitioners may be involved in the care and treatment of the newborn; but, because of the narrow language in the statute, they cannot be granted access to the Florida Newborn Screening Results website.⁹

Newborn and Infant Hearing Screening

The Centers for Disease Control (CDC) has tracked the number of children with hearing loss since the 1980s. The information assists in identifying risk factors for hearing loss and helps health departments, service providers, and early intervention programs estimate case loads, plan for services, and advocate for needed resources. The CDC's Early Hearing Detection and Intervention (EHDI) program works with states to ensure that infants are screened for hearing loss no later than 1 month of age, infants who do not pass the screening for hearing loss get a full hearing evaluation no later than 3 months of age, and infants with a hearing loss receive intervention services no later than 6 months of age.¹⁰

The EHDI, in collaboration with partners that included state EHDI programs, the HRSA, and other stakeholders, developed a survey instrument to collect standardized data from state EHDI programs about the screening, diagnostic, and intervention status of all newborns. The survey is voluntary, but serves as the primary national source of hearing screening and follow-up related data.¹¹

Currently, the EHDI survey is based on the classification system adopted by the American Speech-Language-Hearing Association (ASHA).^{12,13} The system classifies hearing loss in decibels (dB HL) as follows:¹⁴

- Normal (-10 to 14 dB HL)
- Slight (16 to 25 dB HL)
- Mild (26 to 40 dB HL)

⁷ Section 760.40(2), F.S.

⁸ Section 383.14(1)(c), F.S.

⁹ Florida Department of Health, *Senate Bill 722 Legislative Bill Analysis* (January 24, 2014) (on file with the Senate Judiciary Committee).

¹⁰ Centers for Disease Control, *Hearing Loss in Children*, available at <http://www.cdc.gov/ncbddd/hearingloss/about.html> (last visited April 5, 2014).

¹¹ Email from Marcus Gaffney, MPH, Health Scientist, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention (February 19, 2014) (on file with the Senate Health Policy Committee).

¹² Email from Marcus Gaffney, MPH, Health Scientist, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention to Pam Tempson, Florida Department of Health (March 1, 2013) (on file with the Senate Health Policy Committee).

¹³ ASHA is the national professional, scientific, and credentialing association for more than 166,000 members and affiliates who are audiologists, speech-language pathologists, speech, language, and hearing scientists, audiology and speech-language pathology support personnel, and students. (American Speech-Language Hearing Association, *About the American Speech-Language-Hearing Association (ASHA)*, available at <http://www.asha.org/about/> (last visited April 5, 2014).

¹⁴ American Speech-Language-Hearing Association, *Type, Degree, and Configuration of Hearing Loss* (2011), available at <http://www.asha.org/uploadedFiles/AIS-Hearing-Loss-Types-Degree-Configuration.pdf> (last visited April 5, 2014).

- Moderate (41 to 55 dB HL)
- Moderately severe (56 to 70 dB HL)
- Severe (71 to 90 dB HL)
- Profound (91+ dB HL)

Florida Newborn Hearing Screening

The 2000 Legislature created the Newborn and Infant Hearing Screening program with the goal of screening “all newborns for hearing impairment in order to alleviate the adverse effects of hearing loss on speech and language development, academic performance, and cognitive development.”¹⁵ The program is implemented as a component of the newborn screening program.

All hearing screenings must be conducted by a licensed audiologist or physician, or appropriately supervised individual who has completed training specifically for newborn screening.¹⁶ Any child who is diagnosed as having a permanent hearing impairment¹⁷ must be referred to a primary care physician for medical management, treatment, and follow up services.¹⁸

In addition and in accordance with the Individuals with Disabilities Education Act (act),¹⁹ a child up to the age of 3 years of age who is diagnosed as having a hearing impairment that requires ongoing special hearing services must be referred to the DOH Children’s Medical Services early intervention program (Early Steps). Early Steps is Florida’s program for providing services to eligible infants and toddlers with significant delays or a condition likely to result in a developmental delay. Special services provided by Early Steps include assistive technology, speech therapy, and developmental therapy. Funding for the program is a combination of federal, state (general revenue and Medicaid), and private for those children having insurance coverage.²⁰

III. Effect of Proposed Changes:

Section 1 amends s. 383.14, F.S., to authorize the State Public Health Laboratory to release the results of a newborn’s hearing and metabolic tests or screenings to additional individuals. Under existing law, the results may be released only to the newborn’s primary care physician. Under the bill, the results may be released to the newborn’s health care practitioner, which includes a physician or physician assistant, advanced registered nurse practitioner, registered nurse or licensed practical nurse, midwife, speech-language pathologist or audiologist, or dietician or nutritionist.

¹⁵ Section 383.145, F.S.

¹⁶ Section 383.145(3)(e), F.S.

¹⁷ “Hearing impairment” is defined as a loss of 30dB HL or greater in the frequency region important for speech recognition and comprehension in one or both ears, approximately 500 through 4,000 hertz. Section 383.145(2)(c), F.S.

¹⁸ Section 383.145(3)(k), F.S.

¹⁹ The act governs how states and public agencies provide early intervention, special education, and related services to children with disabilities. Children ages birth to 2 years are covered under part C of the act, relating to Infants and Toddlers with Disabilities. The act was reauthorized in 2004. Pub. Law No. 108-446, H.R. 1350, 108th Cong. (December 3, 2004).

²⁰ Conversation between Senate Health Policy Committee staff and Renee Jenkins and Pam Tempson, Florida Department of Health (February 25, 2014).

Section 2 amends s. 383.145, F.S. The bill deletes a reference to October 1, 2000, which was the deadline for hospitals to implement newborn hearing screening. Full implementation has occurred and the date is now obsolete. The bill updates a reference to part C of the act, which relates to Infants and Toddlers with Disabilities.

Section 3 creates s. 383.146, F.S. This section directs an audiologist or his or her designee to offer parents and legal guardians of an infant or toddler diagnosed as having a permanent hearing impairment the opportunity to receive information from qualified Early Steps providers that offer early intervention services and that specialize in serving children with hearing loss. The parent or legal guardian wishing to receive the information will sign a consent form which will be sent by the audiologist or his or her designee by secure transmission to the providers listed on the department's website. Finally, the bill directs the Department of Health to post on its website the list of qualified Early Steps providers that have notified the department of its interest in communicating with families who wish to receive information about the services they provide.

Section 4 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Health care practitioners who diagnose a child as having a permanent hearing impairment will incur an indeterminate cost for the time required to transmit the contact information of parents to participating service providers.

C. Government Sector Impact:

According to the Department of Health,²¹ the expanded definition will not have a fiscal impact on the state because Early Steps and Medicaid use separate criteria for

²¹ See *supra* note 9.

determining eligibility for services. Early Steps uses a threshold of 25 dB²² in accordance with guidelines established by the Florida Early Hearing Loss Detection Intervention Advisory Council. Although the council could change the standard, the hearing loss of a child receiving services would still need to meet the federal standard of putting the child at risk of experiencing a substantial delay if early intervention services were not provided. Medicaid uses a threshold of 40 dB.

The department may incur nominal costs associated with the portion of the bill related to notice to parents about services. It will be required to process requests from service providers to be on the list of those interested in providing information about services directly to families. The bill does not create an approval process, however, and only requires the department to confirm that the provider is on the list already maintained through the Early Steps Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 383.14 and 383.145.

This bill creates section 383.146 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/CS by Children, Families, and Elder Affairs on March 25, 2014:

The Committee Substitute for Committee Substitute establishes:

- At the time of diagnosis of an infant or toddler as having permanent hearing loss, authorized an audiologist or his or her designee to inquire if the child's parent or legal guardian would like to receive direct correspondence from qualified Early Steps providers.
- A parent or legal guardian of an infant or child diagnosed with permanent hearing loss that would like to receive such information shall sign a consent form. The consent form shall be sent by the audiologist or his or her designee by secure transmission to the providers listed on the department's website.

²² Florida Department of Health, Children's Medical Services, *Florida Newborn Screening Guidelines 2012, 51*, available at http://www.floridahealth.gov/healthy-people-and-families/childrens-health/newborn-screening/_documents/guidelines-final-05-24-2012small.pdf (last visited March 7, 2014).

- DOH shall post on its website a list of qualified Early Steps providers of early intervention services which specialize in serving children with hearing loss that have notified the department of their interest in communicating with families that wish to receive information about the services they provide.

CS by Health Policy on March 11, 2014:

The Committee Substitute:

- Creates a new section of law that directs health care practitioners to offer parents and legal guardians of children who are diagnosed as having a permanent hearing impairment the opportunity to receive information from certain service providers who are listed with the Children's Medical Services Early Steps Program to provide services to children who are deaf or hard of hearing.
- Directs the DOH to post the list of providers on its website and authorizes it to adopt any necessary rules.

B. Amendments:

None.



162312

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment

Delete lines 79 - 80

and insert:

services. Furthermore, in accordance with Part C of the
Individuals with Disabilities Education Act, Pub. L. No. 108-446
105-17, Infants and Toddlers with Disabilities ~~The Infants and~~

By the Committees on Children, Families, and Elder Affairs; and Health Policy; and Senator Garcia

586-03142-14

2014722c2

1 A bill to be entitled
 2 An act relating to newborn health screening; amending
 3 s. 383.14, F.S.; authorizing the State Public Health
 4 Laboratory to release the results of a newborn's
 5 hearing and metabolic tests or screenings to the
 6 newborn's health care practitioner; defining the term
 7 "health care practitioner" as it relates to such
 8 release; amending s. 383.145, F.S.; updating a cross-
 9 reference; creating s. 383.146, F.S.; requiring an
 10 audiologist to provide an opportunity for the parent
 11 or legal guardian of an infant or toddler who is
 12 diagnosed with a hearing impairment to provide contact
 13 information so that he or she may receive information
 14 directly from specified service providers; requiring
 15 the Department of Health to post a list of certain
 16 service providers on the department website; requiring
 17 the audiologist or his or her designee to transmit a
 18 consent form to the providers listed on the department
 19 website; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Paragraph (c) of subsection (1) of section
 24 383.14, Florida Statutes, is amended to read:
 25 383.14 Screening for metabolic disorders, other hereditary
 26 and congenital disorders, and environmental risk factors.—
 27 (1) SCREENING REQUIREMENTS.—To help ensure access to the
 28 maternal and child health care system, the Department of Health
 29 shall promote the screening of all newborns born in Florida for

586-03142-14

2014722c2

30 metabolic, hereditary, and congenital disorders known to result
 31 in significant impairment of health or intellect, as screening
 32 programs accepted by current medical practice become available
 33 and practical in the judgment of the department. The department
 34 shall also promote the identification and screening of all
 35 newborns in this state and their families for environmental risk
 36 factors such as low income, poor education, maternal and family
 37 stress, emotional instability, substance abuse, and other high-
 38 risk conditions associated with increased risk of infant
 39 mortality and morbidity to provide early intervention,
 40 remediation, and prevention services, including, but not limited
 41 to, parent support and training programs, home visitation, and
 42 case management. Identification, perinatal screening, and
 43 intervention efforts shall begin prior to and immediately
 44 following the birth of the child by the attending health care
 45 provider. Such efforts shall be conducted in hospitals,
 46 perinatal centers, county health departments, school health
 47 programs that provide prenatal care, and birthing centers, and
 48 reported to the Office of Vital Statistics.

49 (c) *Release of screening results.*—Notwithstanding any ~~other~~
 50 law to the contrary, the State Public Health Laboratory may
 51 release, directly or through the Children's Medical Services
 52 program, the results of a newborn's hearing and metabolic tests
 53 or ~~screenings~~ screening to the newborn's health care
 54 practitioner. As used in this paragraph, the term "health care
 55 practitioner" means a physician or physician assistant licensed
 56 under chapter 458; an osteopathic physician or physician
 57 assistant licensed under chapter 459; an advanced registered
 58 nurse practitioner, registered nurse, or licensed practical

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2014722c2

59 nurse licensed under part I of chapter 464; a midwife licensed
 60 under chapter 467; a speech-language pathologist or audiologist
 61 licensed under part I of chapter 468; or a dietician or
 62 nutritionist licensed under part X of chapter 468 ~~primary care~~
 63 ~~physician.~~

64 Section 2. Paragraphs (i) and (k) of subsection (3) of
 65 section 383.145, Florida Statutes, are amended to read:

66 383.145 Newborn and infant hearing screening.—

67 (3) REQUIREMENTS FOR SCREENING OF NEWBORNS; INSURANCE
 68 COVERAGE; REFERRAL FOR ONGOING SERVICES.—

69 (i) ~~By October 1, 2000,~~ Newborn hearing screening must be
 70 conducted on all newborns in hospitals in this state on birth
 71 admission. When a newborn is delivered in a facility other than
 72 a hospital, the parents must be instructed on the importance of
 73 having the hearing screening performed and must be given
 74 information to assist them in having the screening performed
 75 within 3 months after the child's birth.

76 (k) A ~~Any~~ child who is diagnosed as having a permanent
 77 hearing impairment shall be referred to the primary care
 78 physician for medical management, treatment, and followup
 79 services. Furthermore, in accordance with Pub. L. No. 108-446
 80 ~~105-17, Infants and Toddlers with Disabilities~~ The Infants and
 81 ~~Toddlers Program~~, Individuals with Disabilities Education Act, a
 82 ~~any~~ child from birth to 36 months of age who is diagnosed as
 83 having a hearing impairment that requires ongoing special
 84 hearing services shall ~~must~~ be referred to the Children's
 85 Medical Services Early Intervention Program serving the
 86 geographical area in which the child resides.

87 Section 3. Section 383.146, Florida Statutes, is created to

586-03142-14

2014722c2

88 read:

89 383.146 Infants and toddlers who are deaf or hard of
 90 hearing; notice of service providers.—

91 (1) At the time that an audiologist diagnoses an infant or
 92 toddler as having a permanent hearing impairment, the
 93 audiologist or his or her designee shall ask the child's parent
 94 or legal guardian if he or she would like to authorize the
 95 release of contact information in order to receive direct
 96 correspondence from qualified Early Steps providers that offer
 97 early intervention services and that specialize in serving
 98 children with hearing loss. A parent or legal guardian that
 99 wishes to receive the direct correspondence shall authorize the
 100 release of the contact information by signing a consent form.

101 (2) The Department of Health shall post on its website a
 102 list of qualified Early Steps providers of early intervention
 103 services which specialize in serving children with hearing loss
 104 and which have notified the department of their interest to
 105 provide direct communication to families who wish to receive
 106 information about the services that they provide.

107 (3) The audiologist or his or her designee shall send by
 108 secure transmission the consent form to those providers listed
 109 on the department's website.

110 Section 4. This act shall take effect July 1, 2014.

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 1172

INTRODUCER: Senator Sobel

SUBJECT: Conveyance of Property Taken by Eminent Domain

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1172 authorizes the state or a political subdivision to convey, without restriction, property taken by eminent domain to a private party if the property is near a large hub airport and the property is condemned pursuant to a noise mitigation or noise compatibility program.

II. Present Situation:

Constitutional Provisions on Takings

The Fifth Amendment of the United States Constitution applies to the states through the Fourteenth Amendment and provides, in part: “nor shall private property be taken for public use, without just compensation.”¹

Similarly, the Florida Constitution states that: “No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.”²

There is no absolute definition of what constitutes a public use. The concept changes along with evolutions of societal norms and changed “circumstances brought about by an increase in population and new modes of communication and transportation.”³ In situations where both private and public benefits result from a condemnation, the determination of whether the condemnation was for a public use may turn on whether the public benefits are of a primary or an incidental character.⁴ An incidental benefit to a private party does not render a taking invalid so long as the primary benefit is to the public.

¹ U.S.C.A. CONST. AMEND V.

² FLA. CONST., Article X., s. 6(a).

³ 21 Fla. Jur. 2d Eminent Domain s. 27, *Generally; public purpose distinguished* (2014).

⁴ 21 Fla. Jur. 2d Eminent Domain s. 29, *Purpose partly public and partly private; incidental private use or benefit* (2014).

Florida Law on Eminent Domain

Florida affords generous treatment to private property owners, or defendants in eminent domain proceedings. In Florida, the owner is entitled to full and fair compensation.⁵ Compensation is generally the payment of the fair market value of the property.⁶ Fair market value is considered to be based upon what a willing buyer would pay to a willing seller.⁷ Also, the petitioner must always pay attorney's fees and reasonable costs to the defendant.⁸ Reasonable costs include appraisal fees and, if business damages are involved, an accountant's fee.⁹ Defendants also have the right to a jury trial.¹⁰

Eminent domain is effected in one of two ways. The first is through the traditional eminent domain process, which involves the filing of a petition for condemnation and, if the property owner challenges the action, a jury trial.¹¹ The second process, called a "quick taking," occurs when the governmental entity files a declaration of taking (containing a good faith estimate of the value of the property) and takes immediate possession of the property before the completion of the judicial procedure.¹² "A taking may result from a 'physical invasion' of the property or may follow a 'regulatory imposition.'"¹³

Restrictions on the Conveyance of Condemned Property to Private Parties

The state may not authorize the taking of private property solely for another private party's private use, even if the state pays full compensation for the condemned property.¹⁴ Neither the state nor any political subdivision may convey a property taken by condemnation to a private entity, unless the conveyance is authorized by law.¹⁵ Current law allows condemned property to be conveyed to a private party for:

- Use in common carrier services or systems;
- Use as a road or other right-of-way;
- Use in providing utility services or systems; and
- Use in providing public infrastructure.

There are also statutory restrictions on the subsequent conveyance of a condemned property that has already been conveyed to a private party. If ownership of a condemned property is conveyed to a private party pursuant to one of the statutory exceptions described above and at least 10 years have elapsed since the condemning authority acquired title to the property, then the property may be transferred again to another private party after public notice and competitive

⁵ Debra Herman and Jorge Martinez-Esteve, *The Admissibility of Dedication Requirements in Condemnation Cases: No Longer the Road Less Traveled*, 85 FLA. B.J. 20, 21 (November 2011).

⁶ *Id.*

⁷ *Id.*

⁸ Section 73.091(1), F.S.

⁹ *Id.*

¹⁰ Section 73.071(1), F.S.

¹¹ Sections 73.031(1) and 73.071(1), F.S.

¹² Section 74.031, F.S.

¹³ *Alachua Land Investors, LLC v. City of Gainesville*, 107 So. 3d 1154, 1158 (Fla. 1st DCA 2013) (internal citations omitted).

¹⁴ 21 Fla. Jur. 2d Eminent Domain s. 25, *Taking for private use restricted* (2014).

¹⁵ FLA. CONST., Article X, s. 6(c); *see also*, s 73.013(1), F.S.

bidding (unless otherwise provided by general law).¹⁶ If fewer than 10 years have elapsed since the condemning authority acquired title to the property, the property may be conveyed a second time if the current titleholder certifies that the property is no longer needed for the use for which the property was originally condemned, and the owner from whom the property was taken by eminent domain is given the opportunity to repurchase the property at the price received from the condemning authority.¹⁷ Two statutory exceptions that substitute the condemning authority for the certifying party or the current titleholder operate similarly.¹⁸

Large Hub Airports

According to the Federal Aviation Administration, a “large hub airport” is a public use airport that serves civil aviation and accounts for 1 percent or more of annual national passenger boarding.¹⁹ There are four large hub airports in Florida: Fort Lauderdale-Hollywood International Airport, Miami International Airport, Orlando International Airport, and Tampa International Airport.²⁰

The National Plan of Integrated Airport Systems is overseen by the United States Secretary of Transportation.²¹ The plan is designed to ensure a “safe, efficient, and integrated system of public-use airports adequate to anticipate and meet the needs of civil aeronautics, to meet the national defense requirements of the Secretary of Defense, and to meet identified needs of the United States Postal Service.”²²

The State of Florida and its political subdivisions have the authority to condemn property when necessary for air approach protection.²³ A county’s taking of only residential property (but not similarly situated commercial property) serves a valid public purpose when the residential property is condemned “because the airport zoning laws indicate that residential construction in areas exceeding certain noise level requirements is an incompatible use, and testimony indicates that the parcels taken meet the requirements for incompatible use.”²⁴

Appendix A of 14 C.F.R. part 150 regulates “noise exposure maps” related to airports. A noise exposure map is a “scaled, geographic depiction of an airport, its noise contours, and surrounding area.”²⁵ Appendix A establishes a uniform methodology for the development and preparation of airport noise exposure maps. It also identifies land uses that are considered to be compatible with various exposures of individuals to noise around airports. Residential land uses are not recommended for areas with an average noise exposure above 65 decibels.

¹⁶ Section 73.013(2)(a), F.S.

¹⁷ Section 73.013(2)(b), F.S.

¹⁸ Sections 73.013(1)(f) and (g), F.S.

¹⁹ Federal Aviation Administration, *Airport Categories – Airports*, available at,

http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/categories/ (last visited March 26, 2014).

²⁰ Wikipedia, *List of airports in Florida*, available at, http://en.wikipedia.org/wiki/List_of_airports_in_Florida (last visited March 26, 2014).

²¹ 49 U.S.C. s. 47103.

²² *Id.*

²³ Section 333.12, F.S.

²⁴ 21 Fla. Jur. 2d Eminent Domain s. 31, *Airports* (2014).

²⁵ 14 C.F.R. s. 150.7.

III. Effect of Proposed Changes:

Section 1 authorizes the state or a political subdivision to convey a condemned property without restriction to a private party if the property is near a large hub airport and the property is condemned pursuant to:

- A noise mitigation program; or
- A noise compatibility program; and
- The property was condemned on the basis:
 - That the property is deemed incompatible with residential land use under the standards provided by the Federal Aviation Administration in Appendix A of 14 C.F.R. part 150;
 - Of noise mitigation measures; or
 - Of measures required for the safety utility, or efficiency of an airport identified in a Record of Decision or other evaluation issued by the Federal Aviation Administration in connection with an airport development project.

This authority only applies to large hub airports identified in the National Plan of Integrated Airport Systems prepared in accordance with 49 U.S.C. s. 47103.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Constitution prohibits the conveyance of private property taken by eminent domain after January 2, 2007, to a private party, unless that conveyance is authorized by a general law passed by 60 percent of the membership of each house of the Legislature.²⁶ The bill authorizes the conveyance of private property taken by eminent domain, therefore it requires a 60 percent vote for final passage.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁶ FLA. CONST., Article X., s. 6(c).

B. Private Sector Impact:

Florida's eminent domain law requires a condemning authority to pay the owner of the condemned lands full compensation (as opposed to the federally mandated "just compensation"). Therefore, any private owner of condemned lands should not suffer an adverse fiscal impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 73.013 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.)

None.

B. Amendments:

None.

By Senator Sobel

33-01132-14

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A bill to be entitled

An act relating to the conveyance of property taken by eminent domain; amending s. 73.013, F.S.; authorizing a condemning authority to convey, without restriction, lands condemned for specific noise mitigation or noise compatibility programs at certain large hub airports to a person or private entity; providing an effective date.

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

Section 1. Subsection (1) of section 73.013, Florida Statutes, is amended to read:

73.013 Conveyance of property taken by eminent domain; preservation of government entity communications services eminent domain limitation; exception to restrictions on power of eminent domain.—

(1) Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, if the state, any political subdivision as defined in s. 1.01(9), or any other entity to which the power of eminent domain is delegated files a petition of condemnation on or after the effective date of this section regarding a parcel of real property in this state, ownership or control of property acquired pursuant to such petition may not be conveyed by the condemning authority or any other entity to a natural person or private entity, by lease or otherwise, except that ownership or control of property acquired pursuant to such petition may be conveyed, by lease or otherwise, to a natural person or private

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entity:

(a) For use in providing common carrier services or systems;

(b)1. For use as a road or other right-of-way or means that is open to the public for transportation, whether at no charge or by toll;

2. For use in the provision of transportation-related services, business opportunities, and products pursuant to s. 338.234, on a toll road;

(c) That is a public or private utility for use in providing electricity services or systems, natural or manufactured gas services or systems, water and wastewater services or systems, stormwater or runoff services or systems, sewer services or systems, pipeline facilities, telephone services or systems, or similar services or systems;

(d) For use in providing public infrastructure;

(e) That occupies, pursuant to a lease, an incidental part of a public property or a public facility for the purpose of providing goods or services to the public;

(f) Without restriction, after public notice and competitive bidding unless otherwise provided by general law, if less than 10 years have elapsed since the condemning authority acquired title to the property and the following conditions are met:

1. The condemning authority or governmental entity holding title to the property documents that the property is no longer needed for the use or purpose for which it was acquired by the condemning authority or for which it was transferred to the current titleholder; and

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59 2. The owner from whom the property was taken by eminent
60 domain is given the opportunity to repurchase the property at
61 the price that he or she received from the condemning authority;

62 (g) After public notice and competitive bidding unless
63 otherwise provided by general law, if the property was owned and
64 controlled by the condemning authority or a governmental entity
65 for at least 10 years after the condemning authority acquired
66 title to the property; ~~or~~

67 (h) In accordance with subsection (2); or

68 (i) Without restriction, if the condemning authority
69 condemns the property pursuant to a noise mitigation or noise
70 compatibility program at an airport governed by Federal Aviation
71 Administration requirements on the basis that the property is
72 deemed incompatible with residential land use under the
73 standards provided in Appendix A of 14 C.F.R. part 150 or on the
74 basis of noise mitigation measures or measures required for the
75 safety, utility, or efficiency of an airport identified in a
76 Record of Decision or other evaluation issued by the Federal
77 Aviation Administration in connection with an airport
78 development project. This paragraph applies only to large hub
79 airports identified in the National Plan of Integrated Airport
80 Systems prepared in accordance with 49 U.S.C. s. 47103.

81 Section 2. This act shall take effect July 1, 2014.

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: Criminal Justice Committee and Senator Braynon

SUBJECT: Human Trafficking

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 768 revises laws on human trafficking. These changes:

- Provide that the definition of “sexual abuse of a child” used in dependency proceedings includes allowing, encouraging, or forcing a child to participate in human trafficking for commercial sexual activity;
- Allow a defendant who is charged with the crime of human trafficking of a minor to access court records relating to the victim to prepare a defense, but prohibits the defendant from disclosing the victim’s identity to persons not related to the preparation of the defense;
- Clarify that the offense of human trafficking includes human trafficking that does and does not involve a venture;
- Prohibit a public employee or officer having access to specified personal information regarding a victim of human trafficking for labor or services or human trafficking for commercial sexual activity from willfully and knowingly disclosing information to unauthorized persons or entities;
- Authorize compensation claims for victims of human trafficking; and
- Make victims of human trafficking eligible for victim relocation assistance.

II. Present Situation:

Human Trafficking

Section 787.06, F.S., punishes “human trafficking,” which the statute defines as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining¹ another person for the purpose of exploitation of that person.”²

The statute punishes a variety of acts relating to human trafficking.³ Specifically, the statute provides that any person who knowingly, or in reckless disregard of the facts, engages in, or attempts to engage in, or benefits financially by receiving anything of value from participating in a venture⁴ involving human trafficking:

- Using coercion⁵ for labor⁶ or services⁷ commits a first degree felony (s. 787.06(3)(a), F.S.);⁸
- Using coercion for commercial sexual activity⁹ commits a first degree felony (s. 787.06(3)(b), F.S.);
- Using coercion for labor or services of any individual who is an unauthorized alien commits a first degree felony (s. 787.06(3)(c), F.S.);
- Using coercion for commercial sexual activity of an unauthorized alien commits a first degree felony (s. 787.06(3)(d), F.S.);
- Using coercion for labor or services by transferring or transporting a person into the state commits a felony of the first degree (s. 787.06(3)(e), F.S.);
- Using coercion for commercial sexual activity by transferring or transporting a person into the state commits a first degree felony (s. 787.06(3)(f), F.S.);

¹ “Obtain” means, in relation to labor or services, to secure performance thereof. Section 787.06(2)(g), F.S.

² Section 787.06(2)(d), F.S.

³ The statute was substantially amended by the Legislature in 2012. HB 7049 (2012-97, L.O.F.). Among other things the legislation consolidated in s. 787.06, F.S., sex trafficking offenses that were previously contained in other statutes.

⁴ “Venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

Section 787.06(2)(k), F.S.

⁵ “Coercion” means: 1) using or threatening to use physical force against any person; 2) restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; 3) using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; 4) destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; 5) causing or threatening to cause financial harm to any person; 6) enticing or luring any person by fraud or deceit; or 7) providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person. Section 787.06(2)(a), F.S.

“Financial harm” includes extortionate extension of credit, loan sharking as defined in s. 687.071, F.S., or employment contracts that violate the statute of frauds as provided in s. 725.01, F.S. Section 787.06(2)(c), F.S.

⁶ “Labor” means work of economic or financial value. Section 787.06(2)(e), F.S.

⁷ “Services” means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs. Section 787.06(2)(h), F.S.

⁸ Generally, a first degree felony is punishable by up to 30 years in state prison, a fine of up to \$10,000, or imprisonment and a fine. Sections 775.082 and 775.083, F.S.

⁹ “Commercial sexual activity” means any violation of ch. 796, F.S. (Prostitution), or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(b), F.S. “Sexually explicit performance” means an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest. Section 787.06(2)(i), F.S.

- For commercial sexual activity in which any child under the age of 18 is involved commits a first degree felony, punishable by imprisonment of up to life imprisonment (s. 787.06(3)(g), F.S.); or
- For commercial sexual activity in which any child under the age of 15 is involved commits a life felony (s. 787.06(3)(h), F.S.).

Additionally, a parent, legal guardian, or other person having custody or control of a minor commits a first degree felony if they sell or otherwise transfer custody or control of the minor, or offers to sell or otherwise transfer custody of the minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking (s. 787.06(4), F.S.).

Definition of “Sexual Abuse of a Child”

Chapter 39, F.S., addresses proceedings relating to the protection of the welfare of children.¹⁰ The definition of “sexual abuse of a child” in s. 39.01(67), F.S., includes the sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in ch. 796, F.S. (prostitution) based on such behavior; or allowing, encouraging, or forcing a child to:

- Solicit for or engage in prostitution;
- Engage in a sexual performance, as defined by ch. 827, F.S. (child abuse); or
- Participate in sex trafficking as provided in s. 796.035 (selling or buying of minors into prostitution).

Prior to legislation that passed in 2012,¹¹ s. 796.035, F.S., provided:

Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge that, as a consequence of the sale or transfer, the minor will engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

As a result of the 2012 legislation, the offense was modified and reference to the “trade of sex trafficking” was removed.¹² The statute now reads:

Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as

¹⁰ Chapter 39, F.S., establishes a Florida child dependency process and provides the process and procedures for: reporting child abuse and neglect; protective investigations; taking children into custody and shelter hearings; petition, arraignment, and adjudication of dependency; disposition of the dependent child; post-disposition change of custody; case plans; permanency; judicial reviews; and termination of parental rights.

¹¹ Chapter 2012-97, L.O.F.

¹² Additionally, the 2012 legislation repealed s. 796.045, F.S., which punished sex trafficking. Sex trafficking is now addressed in s. 787.06, F.S.

a consequence of the sale or transfer, the minor will engage in prostitution commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Consequently, as a result of the 2012 legislative changes, the reference to “trade of sex trafficking in s. 796.035” is not in current law.

Victim Identity Information in Judicial Proceedings and Records

Section 92.56(1)(a), F.S., provides that the confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to s. 119.071(2)(h), F.S., must be maintained in court records pursuant to s. 119.0714(1)(h), F.S.,¹³ and in court proceedings, including testimony from witnesses.

Section 119.071(2)(h), F.S., provides that the following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution:

- Any information, including the photograph, name, address, or other fact, which reveals the identity of a victim of child abuse as defined by ch. 827, F.S.¹⁴
- Any information which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewd acts), ch. 827, F.S. (child abuse), or ch. 847, F.S. (acts involving obscenity or materials harmful to a minor).
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under any of the previously referenced chapters, regardless of whether the photograph, videotape, or image identifies the victim.¹⁵

If a petition for access to confidential and exempt records is filed with the trial court having jurisdiction over the alleged offense, the court must maintain the confidential and exempt status of this information if the state or the victim demonstrates that:

- The identity of the victim is not already known in the community;
- The victim has not voluntarily called public attention to the offense;
- The identity of the victim has not otherwise become a reasonable subject of public concern;
- The disclosure of the victim’s identity would offend a reasonable person; and
- The disclosure of the victim’s identity would:

¹³ Section 119.0714(1), F.S., provides that nothing in ch. 119, F.S. (the public records chapter), shall be construed to exempt from s. 119.07(1), F.S. (inspection and copying), a public record that was made a part of a court file and that is not specifically closed by order of court, except for a record or information specified in that subsection. One of the exceptions is criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h), F.S. Section 119.0714(1)(h), F.S.

¹⁴ Section 827.03(1)(b), F.S., defines “child abuse” as: 1) intentional infliction of physical or mental injury upon a child; 2) an intentional act that could reasonably be expected to result in physical or mental injury to a child; or 3) active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

¹⁵ Section 2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency: a) in the furtherance of its official duties and responsibilities; b) for print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered; and c) to another governmental agency in the furtherance of its official duties and responsibilities. Section 119.071(2)(h)2., F.S.

- Endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim;
- Endanger the victim because of the likelihood of retaliation, harassment, or intimidation;
- Cause severe emotional or mental harm to the victim;
- Make the victim unwilling to testify as a witness; or
- Be inappropriate for other good cause shown.

A defendant charged with a crime described in ch. 794, F.S., or ch. 800, F.S., or with child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order under s. 92.56, F.S.

The previously-described victim identification information may be released to the defendant or his or her attorney to prepare for defense. The confidential and exempt status of this information may not be construed to prevent disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

The state may use a pseudonym instead of the victim's name to designate the victim of a crime described in ch. 794, F.S., or ch. 800, F.S., or of child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., or any crime involving the production, possession, or promotion of child pornography as described in ch. 847, F.S., in all court records and records of court proceedings, both civil and criminal.

The protection of s. 92.56, F.S., may be waived by the victim of the alleged offense by filing with the court a written consent to the use or release of identifying information during court proceedings and in the records of court proceedings.

Section 92.56, F.S., does not prohibit publication or broadcast of the substance of trial testimony in a prosecution for an offense described in ch. 794, F.S., or ch. 800, F.S., or a crime of child abuse, aggravated child abuse, or sexual performance by a child, as described in ch. 827, F.S., but publication or broadcast may not include an identifying photograph, an identifiable voice, or the name or address of the victim, unless the victim has filed with the court written consent or the court has declared such records not confidential and exempt as provided for in s. 92.56 (1), F.S. A willful and knowing violation of s. 92.56, F.S., or a willful and knowing failure to obey any court order issued under the statute constitutes contempt.¹⁶

Victim Compensation and Relocation Assistance

The Florida Crimes Compensation Act¹⁷ authorizes the Florida Attorney General's Division of Victim Services to administer a compensation program to ensure financial assistance for victims

¹⁶ Section 92.56(6), F.S.

¹⁷ Sections 960.01-960.28, F.S.

of crime. Injured crime victims may be eligible for financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury.¹⁸ Currently, s. 906.065(2), F.S., makes ineligible compensation claims filed by persons engaged in unlawful activity at the time of the crime.

Section 960.199, F.S., provides relocation assistance to victims of sexual battery. The Department of Legal Affairs (the Florida Attorney General's Office) administers the assistance program. Under this program, a victim of sexual battery¹⁹ who needs relocation assistance may receive a one-time payment not exceeding \$1,500 on any one claim and a lifetime maximum of \$3,000 if all of the following criteria are met:

- Proof that a sexual battery offense was committed.
- The sexual battery offense must be reported to the proper authorities.
- The victim's need for assistance as certified by a certified rape crisis center in this state.
- The center must certify that the victim is cooperating with law enforcement officials, if applicable, and document that the victim has developed a safety plan.
- The act of sexual battery must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear his or her continued safety.²⁰

III. Effect of Proposed Changes:

CS/SB 768 revises the law on human trafficking. These changes:

- Provide that the definition of "sexual abuse of a child" used in dependency proceedings includes allowing, encouraging, or forcing a child to participate in human trafficking for commercial sexual activity;
- Provide protections for disclosure of court record information that identifies a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity;
- Clarify the offense of human trafficking includes human trafficking that does and does not involve a venture;
- Prohibit a public employee or officer having access to specified personal information regarding a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity from willfully and knowingly disclosing that information to an unauthorized person or entity;
- Authorize a compensation claim filed by a person engaged in prostitution as a result of being a victim of human trafficking for commercial sexual activity; and
- Provide that a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity is eligible for victim relocation assistance.

Section 1. Amends the definition of "sexual abuse of a child" in s. 39.01, F.S., to delete reference to "the trade of sex trafficking as provide in s. 796.035" (an obsolete reference) and

¹⁸ Attorney General, *Crime Victims' Services*.

<http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited on April 3, 2014).

¹⁹ See s. 794.011, F.S. (sexual battery).

²⁰ Section 960.199(2), F.S.

include within that definition the sexual exploitation of a child that involves allowing, encouraging, or forcing a child to participate in human trafficking:

- For commercial sexual activity in which a child younger than 18 years of age is involved; and
- For commercial sexual activity in which a child younger than 15 years of age is involved.

Section 2. Amends s. 92.56, F.S. (judicial proceedings and court records involving sexual offenses), to specify in the title of the statute that the statute also includes human trafficking offenses and to add the following offenses to s. 92.56(2), (3), and (5), F.S., that involve human trafficking:

- Using coercion for labor or services, if the victim is younger than 18 years of age;
- Using coercion for commercial sexual activity;
- Using coercion for commercial sexual activity of an individual who is an unauthorized alien;
- Using coercion for commercial sexual activity who does so by the transfer or transport of an individual from outside this state to within the state;
- For commercial sexual activity in which a child younger than 18 years of age is involved; and
- For commercial sexual activity in which a child younger than 15 years of age is involved.

The effects of this change are:

- A defendant charged with any of these specified human trafficking offenses may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order, in order for the defendant to prepare for his or her defense.
- The state may use a pseudonym instead of the victim's name to designate the victim of any of these specified human trafficking offenses in all court records and records of court proceedings, both civil and criminal.
- Section 92.56, F.S., does not prohibit the publication or broadcast of the substance of trial testimony in a prosecution for any of these human trafficking offenses.

Section 3. Currently, s. 787.06(3), F.S., provides that it is unlawful for any person to knowingly, or in reckless disregard of the facts, engage in, or attempt to engage in, or benefit financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking involving any of a number of specified acts. The bill clarifies its application to human trafficking whether or not the activity involve a venture.

Section 4. Section 906.065(2), F.S., provides that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award under the Florida Crimes Compensation Act. The bill amends this subsection to provide an exception for a victim engaged in prostitution as a result of being a victim of human trafficking:

- Using coercion for commercial sexual activity;
- Using coercion for commercial sexual activity of an individual who is an unauthorized alien;
- Using coercion for commercial sexual activity who does so by the transfer or transport of an individual from outside this state to within the state;
- For commercial sexual activity in which a child younger than 18 years of age is involved; or

- For commercial sexual activity in which a child younger than 15 years of age is involved.

Section 5. Section 960.199, F.S., provides relocation assistance to victims of sexual battery. The bill extends relocation assistance to victims of human trafficking.

The bill also amends criteria in the statute for granting relocation assistance to sexual battery victims and victims of human trafficking involving commercial sexual activity. The statute currently provides that the victim's need for assistance must be certified by a certified rape center in this state. The bill allows this certification to be made by the state attorney or statewide prosecutor having jurisdiction over the offense.

Florida law provides that the center's certification must assert that the victim is cooperating with law enforcement officials, if applicable, and document that the victim has developed a safety plan. The bill provides that, with the approval of the state attorney or statewide prosecutor, the center must make this assertion.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final official estimate of the prison bed impact, if any, of legislation, has yet reviewed the bill. However, the Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will not have a prison bed impact.

In its analysis of the impact of the bill on the court system, the Office of the State Courts Administrator (OSCA) states that the anticipated judicial or court workload impact is not significant. However, the OSCA provides the following additional comments regarding the bill's impact:

The existing definition of "sexual abuse" of a child includes allowing, encouraging, or forcing a child to engage in prostitution. The extent to which judicial workload would be affected by this bill depends upon the number of human trafficking offenses that would be filed as a result of this bill, which is unknown. The more human trafficking cases that are filed as a result of this bill, the more judicial workload may be increased due to prosecution of the cases, decisions on applications for disclosure of information by defendants in the cases, and because the increased opportunity for a public employee or officer to unlawfully disclose information about victims may result in additional prosecutions of such violations.²¹

The Department of Legal Affairs has not provided an analysis of the bill's impact. The bill may result in more victims receiving victim compensation funds from the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 92.56, 787.06, 960.065, and 960.199.

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 Criminal Justice on March 24, 2014:

Removes a provision from the bill that provides a penalty for a public employee/officer who willfully and knowingly discloses certain information regarding a human trafficking victim to a person not authorized to have access to that information.

- B. **Amendments:**

None.

²¹ 2014 Judicial Impact Statement (SB 768) (March 5, 2014), Office of the State Courts Administrator (on file with the Senate Committee on Criminal Justice).

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



295964

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 229 - 234

and insert:

offense. A victim of human trafficking's need for assistance may also be certified by a state-certified domestic violence center.

(d) The center's ~~center~~ certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan. If the victim seeking relocation assistance is a victim of a human trafficking offense as



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12 specified in s. 787.06(3)(b), (d), (f), (g), or (h), the
13 certified rape crisis center's or certified domestic violence
14 center's certification shall include approval of the state
15 attorney or statewide prosecutor, who shall attest that the
16 victim is cooperating with law enforcement officials, if
17 applicable.

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 lines 23 - 24

22 and insert:

23 the state attorney's or statewide prosecutor's
24 approval of a rape crisis center's or a certified
25 domestic violence center's certification that a victim

By the Committee on Criminal Justice; and Senator Braynon

591-03102-14

2014768c1

1 A bill to be entitled
 2 An act relating to human trafficking; amending s.
 3 39.01, F.S.; redefining the term "sexual abuse of a
 4 child" to include human trafficking; amending s.
 5 92.56, F.S.; authorizing a defendant who has been
 6 charged with specified human trafficking offenses to
 7 apply for an order of disclosure of confidential and
 8 exempt information; authorizing the court to use a
 9 pseudonym, instead of a victim's name, to designate
 10 the victim of specified human trafficking offenses;
 11 providing that trial testimony for specified human
 12 trafficking offenses may be published or broadcast
 13 under certain circumstances; amending s. 787.06, F.S.;
 14 making technical changes; amending s. 960.065, F.S.;
 15 providing an exception to ineligibility for victim
 16 assistance awards to specified victims of human
 17 trafficking; amending s. 960.199, F.S.; authorizing
 18 the Department of Legal Affairs to provide relocation
 19 assistance to a victim of specified human trafficking
 20 offenses; requiring the human trafficking offense to
 21 be reported to the proper authorities and certified by
 22 the state attorney or statewide prosecutor; requiring
 23 the state attorney or statewide prosecutor's approval
 24 of a rape crisis center's certification that a victim
 25 is cooperating with law enforcement officials;
 26 providing that the act of human trafficking must occur
 27 under certain circumstances for the victim to be
 28 eligible for relocation assistance; providing an
 29 effective date.

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

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30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Paragraph (g) of subsection (67) of section
 34 39.01, Florida Statutes, is amended to read:
 35 39.01 Definitions.—When used in this chapter, unless the
 36 context otherwise requires:
 37 (67) "Sexual abuse of a child" for purposes of finding a
 38 child to be dependent means one or more of the following acts:
 39 (g) The sexual exploitation of a child, which includes the
 40 act of a child offering to engage in or engaging in
 41 prostitution, provided that the child is not under arrest or is
 42 not being prosecuted in a delinquency or criminal proceeding for
 43 a violation of any offense in chapter 796 based on such
 44 behavior; or allowing, encouraging, or forcing a child to:
 45 1. Solicit for or engage in prostitution;
 46 2. Engage in a sexual performance, as defined by chapter
 47 827; or
 48 3. Participate in commercial sexual activity ~~the trade of~~
 49 ~~sex trafficking~~ as provided in ss. 787.06(3)(g) or (h) and
 50 796.035 ~~s. 796.035~~.
 51 Section 2. Section 92.56, Florida Statutes, is amended to
 52 read:
 53 92.56 Judicial proceedings and court records involving
 54 sexual offenses and human trafficking.—
 55 (1)(a) The confidential and exempt status of criminal
 56 intelligence information or criminal investigative information
 57 made confidential and exempt pursuant to s. 119.071(2)(h) must
 58 be maintained in court records pursuant to s. 119.0714(1)(h) and

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

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59 in court proceedings, including testimony from witnesses.

60 (b) If a petition for access to such confidential and
61 exempt records is filed with the trial court having jurisdiction
62 over the alleged offense, the confidential and exempt status of
63 such information shall be maintained by the court if the state
64 or the victim demonstrates that:

65 1. The identity of the victim is not already known in the
66 community;

67 2. The victim has not voluntarily called public attention
68 to the offense;

69 3. The identity of the victim has not otherwise become a
70 reasonable subject of public concern;

71 4. The disclosure of the victim's identity would be
72 offensive to a reasonable person; and

73 5. The disclosure of the victim's identity would:

74 a. Endanger the victim because the assailant has not been
75 apprehended and is not otherwise known to the victim;

76 b. Endanger the victim because of the likelihood of
77 retaliation, harassment, or intimidation;

78 c. Cause severe emotional or mental harm to the victim;

79 d. Make the victim unwilling to testify as a witness; or

80 e. Be inappropriate for other good cause shown.

81 (2) A defendant charged with a crime specified described in
82 s. 787.06(3)(a), if the victim is younger than 18 years of age,
83 in s. 787.06(3)(b), (d), (f), (g), or (h), or in chapter 794 or
84 chapter 800, or with child abuse, aggravated child abuse, or
85 sexual performance by a child as described in chapter 827, may
86 apply to the trial court for an order of disclosure of
87 information in court records held confidential and exempt

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88 pursuant to s. 119.0714(1)(h) or maintained as confidential and
89 exempt pursuant to court order under this section. Such
90 identifying information concerning the victim may be released to
91 the defendant or his or her attorney in order to prepare the
92 defense. The confidential and exempt status of this information
93 ~~does may not be construed to~~ prevent the disclosure of the
94 victim's identity to the defendant; however, the defendant may
95 not disclose the victim's identity to any person other than the
96 defendant's attorney or any other person directly involved in
97 the preparation of the defense. A willful and knowing disclosure
98 of the identity of the victim to any other person by the
99 defendant constitutes contempt.

100 (3) The state may use a pseudonym instead of the victim's
101 name to designate the victim of a crime specified described in
102 s. 787.06(3)(a), if the victim is younger than 18 years of age,
103 in s. 787.06(3)(b), (d), (f), (g), or (h), or in chapter 794 or
104 chapter 800, or of child abuse, aggravated child abuse, or
105 sexual performance by a child as described in chapter 827, or
106 any crime involving the production, possession, or promotion of
107 child pornography as described in chapter 847, in all court
108 records and records of court proceedings, both civil and
109 criminal.

110 (4) The protection of this section may be waived by the
111 victim of the alleged offense in a writing filed with the court,
112 in which the victim consents to the use or release of
113 identifying information during court proceedings and in the
114 records of court proceedings.

115 (5) This section does not prohibit the publication or
116 broadcast of the substance of trial testimony in a prosecution

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117 for an offense specified ~~described~~ in s. 787.06(3)(a), if the
 118 victim is younger than 18 years of age, in s. 787.06(3)(b), (d),
 119 (f), (g), or (h), or in chapter 794 or chapter 800, or for a
 120 crime of child abuse, aggravated child abuse, or sexual
 121 performance by a child, as described in chapter 827; however,
 122 ~~but~~ the publication or broadcast may not include an identifying
 123 photograph, an identifiable voice, or the name or address of the
 124 victim, unless the victim has consented in writing to the
 125 publication and filed such consent with the court or unless the
 126 court has declared such records not confidential and exempt as
 127 provided for in subsection (1).

128 (6) A willful and knowing violation of this section or a
 129 willful and knowing failure to obey a any court order issued
 130 under this section constitutes contempt.

131 Section 3. Subsection (3) of section 787.06, Florida
 132 Statutes, is amended to read:

133 787.06 Human trafficking.—

134 (3) A ~~Any~~ person who knowingly, or in reckless disregard of
 135 the facts, engages in, or attempts to engage in human
 136 trafficking, or benefits financially by receiving anything of
 137 value from participation in a venture that has subjected a
 138 person to human trafficking:

139 (a) Using coercion for labor or services commits a felony
 140 of the first degree, punishable as provided in s. 775.082, s.
 141 775.083, or s. 775.084.

142 (b) Using coercion for commercial sexual activity commits a
 143 felony of the first degree, punishable as provided in s.
 144 775.082, s. 775.083, or s. 775.084.

145 (c) Using coercion for labor or services of an any

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146 individual who is an unauthorized alien commits a felony of the
 147 first degree, punishable as provided in s. 775.082, s. 775.083,
 148 or s. 775.084.

149 (d) Using coercion for commercial sexual activity of an any
 150 individual who is an unauthorized alien commits a felony of the
 151 first degree, punishable as provided in s. 775.082, s. 775.083,
 152 or s. 775.084.

153 (e) Using coercion for labor or services who does so by the
 154 transfer or transport of an any individual from outside this
 155 state to within the state commits a felony of the first degree,
 156 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

157 (f) Using coercion for commercial sexual activity who does
 158 so by the transfer or transport of an any individual from
 159 outside this state to within the state commits a felony of the
 160 first degree, punishable as provided in s. 775.082, s. 775.083,
 161 or s. 775.084.

162 (g) For commercial sexual activity in which a any child
 163 younger than under the age of 18 years of age is involved
 164 commits a felony of the first degree, punishable by imprisonment
 165 for a term of years not exceeding life, or as provided in s.
 166 775.082, s. 775.083, or s. 775.084. In a prosecution under this
 167 paragraph in which the defendant had a reasonable opportunity to
 168 observe the person who was subject to human trafficking, the
 169 state is not required to need not prove that the defendant knew
 170 that the person was younger than had not attained the age of 18
 171 years of age.

172 (h) For commercial sexual activity in which a any child
 173 younger than under the age of 15 years of age is involved
 174 commits a life felony, punishable as provided in s. 775.082, s.

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175 775.083, or s. 775.084. In a prosecution under this paragraph in
 176 which the defendant had a reasonable opportunity to observe the
 177 person who was subject to human trafficking, the state is not
 178 required to need not prove that the defendant knew that the
 179 person was younger than had not attained the age of 15 years of
 180 age.

181
 182 For each instance of human trafficking of any individual under
 183 this subsection, a separate crime is committed and a separate
 184 punishment is authorized.

185 Section 4. Subsection (2) of section 960.065, Florida
 186 Statutes, is amended to read:

187 960.065 Eligibility for awards.-

188 (2) A ~~Any~~ claim is ineligible for an award if it is filed
 189 by or on behalf of a person who:

190 (a) Committed or aided in the commission of the crime upon
 191 which the claim for compensation was based;

192 (b) Was engaged in an unlawful activity at the time of the
 193 crime upon which the claim for compensation is based, unless the
 194 victim was engaged in prostitution as a result of being a victim
 195 of human trafficking as described in s. 787.06(3)(b), (d), (f),
 196 (g), or (h);

197 (c) Was in custody or confined, regardless of conviction,
 198 in a county or municipal detention facility, a state or federal
 199 correctional facility, or a juvenile detention or commitment
 200 facility at the time of the crime upon which the claim for
 201 compensation is based;

202 (d) Has been adjudicated as a habitual felony offender,
 203 habitual violent offender, or violent career criminal under s.

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204 775.084; or

205 (e) Has been adjudicated guilty of a forcible felony
 206 offense as described in s. 776.087

207
 208 ~~is ineligible for an award.~~

209 Section 5. Section 960.199, Florida Statutes, is amended to
 210 read:

211 960.199 Relocation assistance for victims of sexual battery
 212 or human trafficking.-

213 (1) The department may award a one-time payment of up to
 214 \$1,500 on any one claim and a lifetime maximum of \$3,000 to a
 215 victim of sexual battery as defined in s. 794.011 or of human
 216 trafficking as described in s. 787.06(3)(b), (d), (f), (g), or
 217 (h) who needs relocation assistance.

218 (2) In order for an award to be granted to a victim for
 219 relocation assistance:

220 (a) There must be proof that a sexual battery offense or
 221 human trafficking offense as described in s. 787.06(3)(b), (d),
 222 (f), (g), or (h) was committed.

223 (b) The sexual battery offense or human trafficking offense
 224 as specified in s. 787.06(3)(b), (d), (f), (g), or (h) must be
 225 reported to the proper authorities.

226 (c) The victim's need for assistance must be certified by a
 227 certified rape crisis center in this state or by the state
 228 attorney or statewide prosecutor having jurisdiction over the
 229 offense.

230 (d) With the approval of the state attorney or statewide
 231 prosecutor, the center's center certification must assert that
 232 the victim is cooperating with law enforcement officials, if

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233 applicable, and must include documentation that the victim has
234 developed a safety plan.

235 (e) The act of sexual battery or human trafficking as
236 specified in s. 787.06(3)(b), (d), (f), (g), or (h) must be
237 committed in the victim's place of residence or in a location
238 that would lead the victim to reasonably fear for his or her
239 continued safety in the place of residence.

240 (3) Relocation payments for a sexual battery or human
241 trafficking claim under this section shall be denied if the
242 department has previously approved or paid out a domestic
243 violence relocation claim under s. 960.198 to the same victim
244 regarding the same incident.

245 Section 6. This act shall take effect July 1, 2014.

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 612

INTRODUCER: Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senator Hays

SUBJECT: Government Contracting

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 612 provides that state law preempts and supersedes local ordinances and regulations that give preference to local contractors if a competitive solicitation for personal property uses state funds to pay for 20 percent or more of the total cost. Current law requires agencies and political subdivisions of the state except for counties and municipalities in purchasing personal property through competitive solicitation to give a preference to a vendor whose principal place of business is in Florida. The bill removes counties and municipalities from the exemption on preference requirements, so that counties and municipalities must now comply with legislative preference requirements.

The bill requires a political subdivision of the state to disclose in the solicitation document of a competitive solicitation whether payment will come from funds appropriated by the state and the amount or percentage relative to the total cost of the personal property or construction services, if known.

The bill requires the Department of Management Services to maintain a vendor complaint list, a suspended vendor list, and a terminated vendor list, which are comprised of vendors identified by state agencies and participating local governments. Agencies must consider the fact of a vendor's status on any of the lists in evaluating competitive solicitations.

Within 30 days after an agency contracts with a vendor, the bill requires an agency to update the Florida Accountability Contract Tracking System website indicating whether the contract was issued to a vendor on one of the lists.

II. Present Situation:

Procurement of Commodities and Services

Chapter 287, F.S., regulates the procurement of personal property¹ and services by state agencies.² The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology. The DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements intended to leverage state buying power.³

Depending on the cost and characteristics of the needed goods or services, agencies may use a variety of procurement methods, which include:⁴

- Single source contracts, used if an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, used if an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used if procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, used if negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.

For contracts for commodities or services in excess of \$35,000, agencies must follow a competitive solicitation, or bid process.⁵ Section 287.012(6), F.S., provides that competitive solicitation means "the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement."

¹ "Personal property" is not independently defined for purposes of ch. 287, F.S., but the title of the chapter is "Procurement of Personal Property and Services." Additionally, the definition of "commodity" in s. 287.012(5), F.S., is "any of the various supplies, materials, goods, merchandise, food, equipment, information technology, *and other personal property*, including a mobile home, trailer, or other portable structure that has less than 5,000 square feet of floor space, purchased, leased, or otherwise contracted for by the state and its agencies." This definition is used in Part I of ch. 287, F.S., "Commodities, Insurance, and Contractual Services."

² Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

³ Section 287.042(1) and (2), F.S.

⁴ Sections 287.012(6) and 287.057(1) and (3)(c), F.S.

⁵ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

Vendor Reporting

The DMS has some limited general authority in policing vendors who fail to adequately perform their contractual duties. The DMS currently maintains a convicted vendor list, suspended vendor list, and a vendor complaint list.⁶ The DMS must maintain the convicted vendor list pursuant to s. 287.133, F.S., which prohibits persons convicted of public entity crimes from being awarded contracts and requires the DMS to place people on the list using an administrative process.⁷ The DMS maintains the suspended vendor list pursuant to its general authority to “remove from its vendor list any source of supply which fails to fulfill any of its duties specified in a contract with the state.”⁸ The suspended vendor list consists of vendors whose contracts have been found in default by state agencies.⁹ The vendor complaint list consists of all formal vendor complaints issued to vendors by state agencies and received by the DMS.¹⁰ Florida law does not require agencies to formally report to the DMS if agencies experience problems with vendors or terminate vendors due to contract nonperformance.

Though s. 287.133(1)(g), F.S., allows the DMS to place persons convicted of public entity crimes against political subdivisions on the convicted vendor list, if political subdivisions terminate vendors for cause due to contract nonperformance issues, Florida law does not mandate the reporting of termination of vendors to the DMS.

Contract Tracking

Pursuant to s. 215.985(14), F.S., the Chief Financial Officer (CFO) is required to establish and maintain a publically-available contract tracking system. Within 30 days of contract execution, each state entity must submit specified information to the CFO’s website.¹¹ The information includes:

- Names of the contracting entities.
- Procurement method.
- Beginning and ending dates of the contract.
- Nature or type of the commodities or services purchased.
- Applicable contract unit prices and deliverables.
- Total compensation to be paid or received under the contract.

⁶ See The Florida Department of Management Services, Convicted/Suspended/Discriminatory/Complaints Vendor Lists website.

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists (last visited April 2, 2014).

⁷ As of April 2, 2014, no one is listed on the convicted vendor list.

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/convicted_vendor_list.

⁸ Section 287.042(1)(b), F.S. The administrative rule implementing this authority is Rule 60A-1.006(2), F.A.C.

⁹ As of April 2, 2014, there are 89 vendors on the suspended vendor list,

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/suspended_vendor_list.

¹⁰ As of April 2, 2014, four vendors are on this list.

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/vendor_complaint_list.

¹¹ The system is called the Florida Accountability Contract Tracking System (FACTS).

<https://facts.fldfs.com/Search/ContractSearch.aspx> (last visited April 2, 2014).

- All payments made to the contractor to date.
- Applicable contract performance measures.
- If a competitive solicitation was not used to procure the goods or services, the justification of the action, including a citation to a statutory exemption or exception from competitive solicitation requirements, if any.
- Electronic copies of the contract and procurement documents that have been redacted to exclude confidential or exempt information.

Procurement of Construction Services

Chapter 255, F.S., specifies procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The department is responsible for establishing in rule:¹²

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids on building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications if negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities if the contracts are determined to be in the best interest of the state.

State contracts for construction projects projected to cost in excess of \$200,000 must be competitively bid.¹³ Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must submit the project to competitive bidding if the projected cost exceeds \$300,000.¹⁴

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Weekly¹⁵ at least 21 days before the established bid opening. If the construction project is projected to exceed \$500,000, the advertisement must be published in the Florida Administrative Weekly at least 30 days before the bid opening and in a newspaper of general circulation in the county where the project is located at least 30 days before the bid opening.¹⁶

III. Effect of Proposed Changes:

Preference to Florida Businesses in Awarding Contracts

Existing s. 287.084, F.S., addresses situations in which an agency or entity must give preference to Florida business in the purchase of personal property through competitive solicitation. The bill

¹² Section 255.29, F.S.

¹³ See ch. 60D-5.002(2)(d) and 60D-5.0073(4), F.A.C.; see also s. 255.0525(1), F.S.

¹⁴ See s. 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

¹⁵ The Florida Administrative Weekly was renamed the Florida Administrative Register during the 2012 Session. Chapter 2012-63, L.O.F.

¹⁶ For counties, municipalities, and political subdivisions, similar publishing provisions apply. Section 255.0525(2), F.S.

provides that Florida law preempts local laws that give preference to a local contractor if a local government entity will use state funds to pay for at least 20 percent of the cost of personal property or construction services.

In any competitive solicitation subject to the bill, the local government entity must disclose in the solicitation document whether payment will come from state-appropriated funds, and the amount or percentage of the funds compared to the total cost of the personal property or construction services.

The bill repeals a provision that makes counties and municipalities exempt from requirements that state entities and subdivisions grant a preference to businesses in this state if the lowest bidder on a solicitation is from another state or subdivision of another state which grants preferences to its businesses.

Transparency on Contractor Performance and Public Access to Information

The bill requires that state entities entering into agreements with a contractor post to the FACTS website within 30 days after the agreement whether the contractor is or was on the vendor complaint list, suspended vendor list, or terminated vendor list at the time the contract was initially entered into.

The DMS is required to compile and maintain the following three lists, and provide public access to the lists through its website:

- A “suspended vendor list” of all vendors whose ability to bid or perform state or local government contracts has been temporarily suspended by an agency or a participating local governmental entity due to a contract default by the vendor or for other good cause.
- A “terminated vendor list” of all reported vendors whose contracts have been terminated by an agency or a participating local governmental entity due to a contract default by the vendor or for other good cause.
- A “vendor complaint list” of complaints that have been issued to vendors by an agency or participating local governmental entity.

The bill defines “vendor” as an entity or person in a contractual relationship with an agency or a local governmental entity.

Agencies must, and local governmental entities may, provide the DMS with copies of complaints issued to vendors and the names of suspended and terminated vendors for the vendor complaint list, the suspended vendor list, and the terminated vendor list. Agencies must, and local governmental entities may, report quarterly to the DMS with updated information necessary to maintain the lists. Agencies must report to the DMS all instances of a material breach of a contract or a notice of default and subsequent termination within 30 days after the occurrence. The DMS must maintain and update the above lists and provide the public access on the DMS website.

Agencies must require that a vendor responding to a competitive solicitation disclose whether the vendor has, within the previous five years, had a contract terminated by a federal, state, or local governmental entity after defaulting on a contract; paid a fine or penalty incurred by

nonperformance of a federal, state, or local government contract; or entered into an agreement with a federal, state, or local governmental entity in settlement of any issues related to default or nonperformance of a contract. An agency may consider a vendor's failure to disclose such information in determining whether the vendor is in breach of any resulting contract. Local governmental entities may require such disclosures.

When evaluating bids, proposals, or replies to competitive solicitations, an agency must consider information available on the three lists in determining whether the vendor submitting a response to the competitive solicitation is a responsible and responsive vendor. If an agency enters into a contract with a vendor on any of the three lists, the contract file must contain documentation specifying that the agency's designee with authority to sign the contract was aware that the contracted vendor was named on the list at the time the contract was initially entered into.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Sec. 18, of the Constitution of the State of Florida excuses local governments from complying with state mandates that impose negative fiscal consequences.

Subsection (a) provides, "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds" unless certain requirements are met. However, several exemptions and exceptions exist. The exceptions to the constitutional provision include a legislative determination that the law fulfills an important state interest and one of the following relevant conditions: (a) the law requiring the expenditure is approved by two-thirds of the membership of each chamber or (b) the expenditure is required to comply with a law that applies to all persons similarly situated.

The bill deletes the provision in s. 287.084, F.S., which exempts counties and municipalities from state preference requirements in contracting. Therefore, local entities will have to give preference to qualifying contractors, regardless of whether the contractors present the lowest bid. The bill does not contain a legislative determination that the bill fulfills an important state interest.

Subsection (d) of Article VII, Sec. 18, of the State Constitution exempts laws that have an insignificant fiscal impact from the requirements of the mandates provision. Whether a particular bill results in a significant impact on cities and counties must be determined on an aggregate, statewide basis. Laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.9 million for FY 2013-2014¹⁷), are exempt.¹⁸

¹⁷ Based on the Demographic Estimating Conference's final population estimate for April 1, 2014, which was adopted on February 10, 2014. The Executive Summary can be found at:

<http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf>.

¹⁸ Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Fiscal Impact*, (September 2011). <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf>.

The Revenue Estimating Conference has not met on this bill, so financial impact is unknown at this time. If the overall aggregate fiscal impact on cities and counties exceeds \$1.9 million per year, the bill, to be binding on all cities and counties, must meet the relevant conditions as an exception to the constitutional requirements.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Contractors who breach contracts through shoddy work performance or otherwise may suffer financially by not being awarded future contracts by government entities.

C. Government Sector Impact:

Whether the bill will have a fiscal impact on local entities is indeterminate. The extent to the fiscal impact on counties and municipalities due to the bill's legislative preemption of local preference ordinances is unknown.

VI. Technical Deficiencies:

The title provides that s. 287.1335, F.S., is amended in the bill. This section is new, however, so the language should say "creating s. 287.1335."

VII. Related Issues:

The bill creates a preemption in ch. 287, F.S., that applies to both procurement of personal property and construction services. Laws related to the procurement of personal property are located in ch. 287, F.S. However, public construction contracting is regulated in ch. 255, F.S. The construction preference preemption may be better placed in ch. 255, F.S.

The DMS may need rulemaking authority to implement the vendor reporting requirements.

The requirement that agencies consider in competitive solicitations whether a vendor is listed on any of the three vendor action lists could offer another avenue for aggrieved vendors to attack agency actions in procurement protests.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.985 and 287.084.

This bill creates section 287.1335 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Community Affairs on March 19, 2014:

Deletes the provision that added “construction services” to the state preference for Florida businesses.

- Provides that the state preemption of local preference laws and regulations will only be triggered by competitive solicitations for personal property or construction services that utilize state funds to pay for 20 percent or more of the total cost.

CS by Governmental Oversight and Accountability on March 6, 2014:

The CS adds a new section requiring state agencies to report contract problems, fines, defaults, and terminations to the DMS, and for DMS to maintain a vendor complaint list, a suspended vendor list, and a terminated vendor list. Agencies must consider the fact of a vendor’s status on any of the lists in evaluating competitive solicitations. Local governments may participate in the vendor reporting provisions.

- B. **Amendments:**

None.



668504

LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

House

The Committee on Judiciary (Richter) recommended the following:

Senate Amendment

Delete line 73

and insert:

or construction services provides that 51 percent or more of the

By the Committees on Community Affairs; and Governmental Oversight and Accountability; and Senator Hays

578-02843-14

2014612c2

1 A bill to be entitled
 2 An act relating to government contracting; amending s.
 3 215.985, F.S.; revising information to be posted on
 4 the Chief Financial Officer's contract tracking system
 5 to conform to changes made by the act; amending s.
 6 287.084, F.S.; preempting and superseding a local
 7 ordinance or regulation that gives preference for an
 8 award to a certified contractor under certain
 9 circumstances; requiring a university, college,
 10 county, municipality, school district, or other
 11 political subdivision to make specified disclosures in
 12 competitive solicitation documents; providing that a
 13 university, college, county, municipality, school
 14 district, or other political subdivision is not
 15 prohibited from awarding a contract to a vendor under
 16 certain circumstances; amending s. 287.1335, F.S.;
 17 defining terms; requiring agencies to provide the
 18 Department of Management Services with copies of
 19 vendor complaints and names of suspended and
 20 terminated vendors; authorizing local governmental
 21 entities to provide such information to the
 22 department; requiring the department to maintain
 23 certain information regarding vendors on its website;
 24 requiring an agency to submit specified information to
 25 the department on a quarterly basis; authorizing a
 26 local governmental entity to submit such information
 27 on the same basis; requiring a vendor responding to an
 28 agency's competitive solicitation to disclose certain
 29 information; specifying certain requirements for

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30 considering a response to a competitive solicitation
 31 or entering a contract; providing an effective date.
 32
 33 Be It Enacted by the Legislature of the State of Florida:
 34
 35 Section 1. Section 1. Paragraph (a) of subsection (14) of
 36 section 215.985, Florida Statutes, is amended to read:
 37 215.985 Transparency in government spending.—
 38 (14) The Chief Financial Officer shall establish and
 39 maintain a secure contract tracking system available for viewing
 40 and downloading by the public through a secure website. The
 41 Chief Financial Officer shall use appropriate Internet security
 42 measures to ensure that no person has the ability to alter or
 43 modify records available on the website.
 44 (a) Within 30 calendar days after executing a contract,
 45 each state entity shall post the following information relating
 46 to the contract on the contract tracking system:
 47 1. The names of the contracting entities.
 48 2. The procurement method.
 49 3. The contract beginning and ending dates.
 50 4. The nature or type of the commodities or services
 51 purchased.
 52 5. Applicable contract unit prices and deliverables.
 53 6. Total compensation to be paid or received under the
 54 contract.
 55 7. All payments made to the contractor to date.
 56 8. Applicable contract performance measures.
 57 9. If a competitive solicitation was not used to procure
 58 the goods or services, the justification of such action,

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59 including citation to a statutory exemption or exception from
60 competitive solicitation, if any.

61 10. Electronic copies of the contract and procurement
62 documents that have been redacted to exclude confidential or
63 exempt information.

64 11. Whether the contractor was listed on the vendor
65 complaint list, suspended vendor list, or terminated vendor list
66 under s. 287.1335 at the time the contract was initially entered
67 into.

68 Section 2. Paragraph (c) of subsection (1) of section
69 287.084, Florida Statutes, is amended to read:

70 287.084 Preference to Florida businesses.—

71 (1)

72 (c) 1. If a competitive solicitation for personal property
73 or construction services provides that 20 percent or more of the
74 cost is to be paid from state-appropriated funds, this section
75 preempts and supersedes any local ordinance or regulation that
76 gives preference to a vendor who is a certified contractor as
77 defined in s. 489.105(8) for an award predicated upon:

78 a. The vendor maintaining an office or place of business
79 within a particular local jurisdiction;

80 b. The vendor hiring employees or subcontractors from
81 within a particular local jurisdiction; or

82 c. The vendor's prior payment of local taxes, assessments,
83 or duties within a particular local jurisdiction.

84 2. In any competitive solicitation subject to this section,
85 a university, college, county, municipality, school district, or
86 other political subdivision of this state shall disclose in the
87 solicitation document whether payment will come from funds

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88 appropriated by the state and, if known, the amount of such
89 funds or the percentage of such funds as compared to the
90 anticipated total cost of the personal property or construction
91 services.

92 3. Except as provided in subparagraph 1., this section does
93 not prohibit a university, college, county, municipality, school
94 district, or other political subdivision of this state from
95 awarding a contract to a vendor in accordance with applicable
96 state laws or local ordinances or regulations. ~~As used in this~~
97 section, the term "other political subdivision of this state"
98 does not include counties or municipalities.

99 Section 3. Section 287.1335, Florida Statutes, is created
100 to read:

101 287.1335 Vendors; reporting by agencies and local
102 governmental entities.—

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

104 (a) "Suspended vendor list" means a list compiled by the
105 department of all reported vendors whose ability to bid or
106 perform state or local government contracts has been temporarily
107 suspended by an agency or a participating local governmental
108 entity due to a contract default by the vendor or for other good
109 cause.

110 (b) "Terminated vendor list" means a list compiled by the
111 department of all reported vendors whose contracts have been
112 terminated by an agency or a participating local governmental
113 entity due to a contract default by the vendor or for other good
114 cause.

115 (c) "Vendor" means an entity or person in a contractual
116 relationship with an agency or a local governmental entity.

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117 (d) "Vendor complaint list" means a list compiled by the
 118 department of complaints that have been issued to vendors by an
 119 agency or participating local governmental entity.

120 (2) An agency shall provide the department with copies of
 121 complaints issued to vendors and the names of suspended and
 122 terminated vendors for the vendor complaint list, the suspended
 123 vendor list, and the terminated vendor list, respectively. A
 124 local governmental entity may provide such information to the
 125 department.

126 (3) The department shall maintain and update, on its
 127 website, the vendor complaint list, the suspended vendor list,
 128 and the terminated vendor list. In addition, the department
 129 shall provide public access through its website of copies of
 130 complaints issued to a vendor by an agency or participating
 131 local governmental entity.

132 (4) An agency shall provide the department each quarter
 133 with updated information necessary to maintain the vendor
 134 complaint list, the suspended vendor list, and the terminated
 135 vendor list. A local governmental entity may provide such
 136 information to the department each quarter. An agency shall
 137 report to the department all instances of a material breach of a
 138 contract or a notice of default and subsequent termination
 139 within 30 days after such occurrence.

140 (5) (a) An agency shall require that a vendor responding to
 141 a competitive solicitation disclose whether the vendor has,
 142 within the previous 5 years, had a contract terminated by a
 143 federal, state, or local governmental entity after defaulting on
 144 a contract; paid a fine or penalty incurred by nonperformance of
 145 a federal, state, or local government contract; or entered into

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146 an agreement with a federal, state, or local governmental entity
 147 in settlement of any issues related to default or nonperformance
 148 of a contract. An agency may consider a vendor's failure to
 149 disclose such information in determining whether the vendor is
 150 in breach of any resulting contract.

151 (b) A local governmental entity may require such
 152 disclosures from a vendor in response to a competitive
 153 solicitation.

154 (6) When evaluating bids, proposals, or replies to
 155 competitive solicitations, an agency must consider information
 156 available on the vendor complaint list, suspended vendor list,
 157 and terminated vendor list in determining whether the vendor
 158 submitting a response to the competitive solicitation is a
 159 responsible and responsive vendor. If an agency enters into a
 160 contract with a vendor on the vendor complaint list, suspended
 161 vendor list, or terminated vendor list, the contract file must
 162 contain documentation specifying that the agency's designee with
 163 authority to sign the contract was aware that the contracted
 164 vendor was named on the vendor complaint list, suspended vendor
 165 list, or terminated vendor list at the time the contract was
 166 initially entered into.

167 Section 4. This act shall take effect July 1, 2014.

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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 810

INTRODUCER: Regulated Industries Committee and Senator Galvano

SUBJECT: Pugilistic Exhibitions

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 810 relates to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, which are regulated by the Florida State Boxing Commission within the Department of Business and Professional Regulation.

The bill makes a number of clarifying and modernizing changes to existing law which do not appear to be significant policy changes. However, the more significant changes include:

- Eliminating requirements that a promoter provide the commission with gross price charged for broadcast rights to an event if the promoter pays the commission the maximum tax of \$40,000 on the broadcast rights.
- Exempting from the 5 percent gross receipts tax the face value of tickets to an event which are given away free of charge and which generally may not exceed 5 percent of the tickets to the event.
- Authorizing the commission to exempt complimentary tickets from the gross receipts tax exceeding 5 percent of the tickets to an event if those tickets are given to military servicemembers, veterans, or nonprofit organizations.
- Exempting the proceeds from the sale of souvenirs and programs from a 5 percent gross receipts tax.
- Specifying amateur matches that are not regulated by the commission.
- Eliminating of licenses for concessionaires, booking agents, and foreign co-promoters.

- Requiring an event promoter to maintain records relating to its payments of the gross receipts tax and authorizing the commission to audit those records.
- Expressly providing that disciplinary action by the commission must comply with the Administrative Procedure Act.
Providing an appropriation of \$111,000 to the Department of Business and Professional Regulation to Implement the Act.

II. Present Situation:

Florida State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation (department). Section 548.006(3), F.S., provides the commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches. Professional matches held in this state must meet the requirements for holding the match ch. 548, F.S., and the rules adopted by the commission.

The commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.¹ Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.² This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

According to the department, the commission's primary duty is to ensure all matches comply with the laws and rules and the matches are competitive and physically safe for the participants. For the most recent period for which data is available, the commission licensed 1,224 professionals in FY 2011-12 and processed 51 live event permits.³ According to the department, it had 1,056 licensed professional and processed 39 live permits for FY 2012-2013.

In addition to its daily processing of applications for licensure and the approval or denial of live event permits, the commission coordinates live event schedules and evaluates proposed fight cards. It also evaluates the assignment of officials (referees, judges, physicians) and event staff (event coordinator, chief inspector, inspectors, and timekeeper).

A department representative or commission representative is assigned to attend each official weigh-in and live event. This person attends the official weigh-in during which the application is processed, license fees are collected, the results of participant medical examinations are verified, pre-fight physicals are conducted by physicians, the promoter/participant contracts are collected, participants' weights are recorded, officials' (referee, judges, and physicians) pay from the promoter are collected, and the required accidental death and health insurance for each of the

¹ Section 548.006(3), F.S.

² Section 548.002(2), F.S.

³ See *Annual Report, Fiscal Year 2011-2012*, Florida State Boxing Commission, Department of Business and Professional Regulation. A copy is available at: <http://www.myfloridalicense.com/dbpr/os/documents/SBCAR2012v6.pdf> (Last visited March 8, 2014).

participants is verified. The department or commission representative is also accompanied to the event by the department's OPS event staff, i.e., the event coordinator, timekeeper, and inspector. The OPS event staff and the representative from the department or commission also inspect the ring for safety standards, verify that emergency medical personnel and an ambulance are on-site, assign inspectors to each of the fighters, conduct match timekeeping, verify assigned officials are present, distribute officials' pay following the event, and conduct participant drug tests, if necessary.

Definitions

Section 548.002(3), F.S., defines the term "boxing" to mean "to compete with the fists."

Section 548.002(5), F.S., defines the term "concessionaire" to mean:

any person or business entity not licensed as a promoter which receives revenues or other compensation from the sale of tickets or from the sale of souvenirs, programs, broadcast rights, or any other concessions in conjunction with the promotion of a match.

Section 548.002(6), F.S., defines the term "contest" to mean "a boxing, kickboxing, or mixed martial arts engagement in which persons participating strive earnestly to win using, but not necessarily being limited to, strikes and blows to the head."

Section 548.002(9), F.S., defines the term "exhibition" to mean:

a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using, but not necessarily being limited to, strikes and blows to the head.

Section 548.002(12), F.S., defines the term "kickboxing" to mean to "compete with the fists, feet, legs, or any combination thereof, and includes "punchkick" and other similar competitions."

Section 548.002(16), F.S., defines the term "mixed martial arts" to mean:

unarmed combat involving the use, subject to any applicable limitations set forth in this chapter, of a combination of techniques from different disciplines of the martial arts, including, but not limited to, grappling, kicking, and striking.

Section 548.006(17), F.S., defines a "participant" to mean "a professional competing in a boxing, kickboxing, or mixed martial arts match."

Section 548.006(19), F.S., defines the term "professional" to

a person who has received or competed for any purse or other article of a value greater than \$50, either for the expenses of training or for participating in any match.

Section 548.002(20), F.S., defines the term “promoter” to mean:

any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

Section 548.002(21), F.S., defines the term “purse” to mean:

the financial guarantee or other remuneration for which a professional is participating in a match and includes the professional’s share of any payment received for radio broadcasting, television, and motion picture rights.

Executive Director

Section 548.004(1), F.S., requires the department, with the approval of the commission, to employ an executive director. The duties and responsibilities of the executive director include:

- Keeping a record of all proceedings of the commission;
- Preserving all books, papers, and documents pertaining to the business of the commission;
- Preparing any notices and papers required;
- Appointing judges, referees, and other officials as delegated by the commission and pursuant to ch. 548, F.S., and the rules of the commission; and
- Performing any other duties as the department or commission directs.

Recording of Commission Proceedings

Section 548.004(2), F.S., requires the commission to electronically record all of its scheduled proceedings. Section 455.203(7), F.S., also requires the department to electronically record all of its proceedings.

Licenses

Several professions are licensed by the commission. A license is required to be the promoter of a match.⁴ Before acting in any capacity in a match, a license is required to be a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, concessionaire, or booking agent or representative of a booking agent.⁵ Prior to working as the ringside physician, a physician must be licensed under ch. 458, F.S., or ch. 459, F.S., must maintain an unencumbered license in good standing, and must demonstrate satisfactory medical training or experience in boxing, or a combination of both, to the executive director. The commission also licenses the concessionaires.⁶

Exceptions

The commission’s jurisdiction does not extend to:

⁴ See s. 548.012(1), F.S.

⁵ Section 548.017, F.S.

⁶ See s. 548.015, F.S.

- A match conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program;
- A match conducted or sponsored by any company or detachment of the Florida National Guard, if the match is limited to participants who are members of the Florida National Guard; or
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateur participants and is held in conjunction with a charitable event.⁷

Revocation and Suspension of a License

Section 548.046(3)(c), F.S., provides that the failure or refusal to provide a urine sample, immediately upon request, results in the revocation of the participant's license.

Withholding of Purses

Section 548.054, F.S., provides the procedure for the withholding of prize purses. A member of the commission, a commission representative, or the referee may order a promoter to surrender any purse or other funds payable to a participant, or to withhold the share of any manager, if it appears that:

- The participant is not competing honestly, or is intentionally not competing to the best of his or her ability and skill in a match represented to be a contest; or
- The participant, his or her manager, or any of the participant's seconds has violated ch. 548, F.S.⁸

In the event a purse is withheld, the purse must be delivered to the commission by the promoter.⁹ Within 10 days after the match, the person from whom the purse was withheld may apply, in writing, to the commission for a hearing.¹⁰ Upon receipt of the application, the commission must set the date for a hearing. Within 10 days after the hearing or after ten days following the match, if no application for a hearing is filed, the commission is required to meet and determine the disposition of the withheld purse.¹¹ If the commission finds the charges sufficient, it may decide that all or a part of the funds be forfeited.¹² Conversely, if the commission does not find the charges sufficient, it must distribute the withheld funds immediately.¹³

Reporting and Tax Requirement

Within 72 hours after a match, the promoter of that match must file a written report with the commission.¹⁴ The report must include information about the number of tickets sold, the amount

⁷ See s. 548.007, F.S.

⁸ Section 548.054(1), F.S.

⁹ Section 548.054(2), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Section 548.06(1), F.S.

of gross receipts, and any other facts that the commission requires.¹⁵ Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term “gross receipts” includes:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;
- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.¹⁶

According to the department, the current definition of “gross receipts” has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Florida State Boxing Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.¹⁷

Concessionaire must also file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.¹⁸

Any written report that must be filed with the commission and postmarked within 72 hours after the conclusion of the match with an additional five days allowed for mailing.¹⁹ According to the department, the report is required to enable the commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.

Section 548.015, F.S., requires that a concessionaire must file a surety bond, cash deposit, or other security in an amount determined by the commission. The security is required before licensure, license renewal, or before a match.

These written reports must be accompanied with a tax payment in the amount of 5 percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed \$40,000 for any single event.²⁰

¹⁵ *Id.*

¹⁶ Section 548.06(1), F.S.

¹⁷ Section 548.06(2), F.S.

¹⁸ Section 548.06(3), F.S.

¹⁹ Section 548.06(4), F.S.

²⁰ Section 548.06(5), F.S.

Commission Hearings

Section 548.073, F.S., provides any member of the commission may conduct a hearing. Notwithstanding, the provisions of ch. 120, F.S., the Administrative Procedures Act, before any adjudication is rendered, a majority of the commission must examine the record and approve the adjudication and order.

Emergency Suspensions

Section 120.60(6), F.S., permits agencies to order the emergency suspension, restriction, or limitation of a license upon a finding of immediate serious danger to the public health, safety, or welfare. The agency may take such action by any procedure that is fair under the circumstances if:

- (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
- (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
- (c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon.

III. Effect of Proposed Changes:

This revises the laws relating to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, administered by the Florida State Boxing Commission within the Department of Business and Professional Regulation.

The bill makes a number of clarifying and modernizing changes to existing law which do not appear to be significant policy changes. However, the more significant changes include:

- Eliminating requirements that a promoter provide the commission with gross price charged for broadcast rights to an event if the promoter pays the commission the maximum tax of \$40,000 on the broadcast rights.
- Exempting from the 5 percent gross receipts tax the face value of tickets to an event which are given away free of charge and which generally may not exceed 5 percent of the tickets to the event.
- Authorizing the commission to exempt complimentary tickets from the gross receipts tax exceeding 5 percent of the tickets to an event if those tickets are given to military servicemembers, veterans, or nonprofit organizations.
- Exempting the proceeds from the sale of souvenirs and programs from a 5 percent gross receipts tax.
- Specifying amateur matches that are not regulated by the commission.
- Eliminating of licenses for concessionaires, booking agents, and foreign co-promoters.

- Requiring an event promoter to maintain records relating to its payments of the gross receipts tax and authorizing the commission to audit those records.
- Expressly providing that disciplinary action by the commission must comply with the Administrative Procedure Act.
- Providing an appropriation of \$111,000 to the Department of Business and Professional Regulation to Implement the Act

The bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In section 12 of the bill, s. 548.06(2)(e), F.S., is amended to allow promoters to give complimentary tickets for up to 5 percent of the seats in the house for an event. If the promoter wants to give more complimentary tickets, the commission, executive director, or his or her designee approve any amount in excess of the 5 percent threshold. The bill's only criteria for the commission's authorization of complimentary tickets are the limitation that complimentary tickets may not exceed 5 percent of the seats in the house and the requirement that the complimentary tickets are specified in ss. 548.06(2)(a)-(c), F.S. The bill does not provide a clear delegation of authority, beyond the requirements of ss. 548.06(2)(a)-(c), F.S., for the sitting or limits on complimentary tickets or to determine which portion of the portion of the requested percentage above 5 percent it may authorize. To the extent that this paragraph authorizes the commission to set limitations on complimentary tickets or for the denial or approval of complimentary tickets beyond the reasons specified in ss. 548.06(2)(a)-(c), F.S., such authority may constitute an unconstitutional delegation of legislative authority.

An invalid delegation of authority violates the principle of separation of powers in Article II, s. 3, Florida Constitution.²¹ When assigning to an agency a regulatory responsibility, the legislature must provide the agency with adequate standards and guidelines when delegating the duties.²² The executive branch must be limited and guided

²¹ *Gallagher v. Motors Insurance Corp.*, 605 So. 2d 62 (Fla. 1992).

²² *Askew v. Cross Key Waterways*, 372 So. 2d. 913 (Fla. 1978); *Florida East Coast Industries, Inc. v. Dept. of Community Affairs*, 677 So. 2d 357 (Fla. 1st DCA 1996).

by an appropriately detailed legislative statement of the standards and policies to be followed.²³ The bill may constitute an unconstitutional delegation of authority because it fails to provide the commission with any standards by which to judge the appropriateness of those minimum standards.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill deletes the licensure requirement for concessionaires. The current license fee for concessionaires is \$100. Concessionaires would also not be required to report and pay taxes on gross receipts.

The bill repeals the license requirement for persons who have the right to telecast matches.

C. Government Sector Impact:

The department collects \$600 annually from the licensure of concessionaires. The department estimates a reduction of approximately \$40,000 in post-event taxes for complimentary tickets and \$60,000 in post-event taxes from concessions.

The bill provides a \$111,000 appropriation from the General Revenue Fund.

VI. Technical Deficiencies

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 548.002, 548.004, 548.006, 548.007, 548.013, 548.014, 548.015, 548.017, 548.046, 548.052, 548.054, 548.06, 548.07, and 548.073.

²³ *Florida Home Builders Association v. Division of Labor*, 367 So. 2d 219 (Fla. 1979).

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 Regulated Industries on March 13, 2014:

The committee substitute differs from the underlying bill in that it makes:

- Technical changes throughout the bill.
- Removes the concept of foreign copromoters from chapter 548, F.S.
- Expressly provides that disciplinary action by the Florida State Boxing Commission must comply with chapter 120, F.S., the Administrative Procedure Act.
- Establishes procedures for a promoter to seek the approval of the commission to issue complimentary tickets to an event in excess of a 5 percent threshold and avoid liability for gross receipts taxes that would otherwise apply to the tickets.
- Provides that a promoter who pays the maximum tax applicable to the sale or lease of broadcast rights is not required to disclose to the commission the price charged for the sale of the broadcast rights.

- B. **Amendments:**

None.

By the Committee on Regulated Industries; and Senator Galvano

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1 A bill to be entitled
 2 An act relating to pugilistic exhibitions; amending s.
 3 548.002, F.S.; revising definitions; amending s.
 4 548.004, F.S.; revising the duties and
 5 responsibilities of the executive director of the
 6 Florida State Boxing Commission; deleting a provision
 7 requiring the electronic recording of commission
 8 proceedings; amending s. 548.006, F.S.; clarifying the
 9 commission's exclusive jurisdiction over approval of
 10 amateur and professional boxing, kickboxing, and mixed
 11 martial arts matches; amending s. 548.007, F.S.;
 12 revising applicability of ch. 548, F.S.; repealing s.
 13 548.013, F.S.; relating to foreign copromoter license
 14 requirement; amending s. 548.014, F.S.; deleting
 15 references to foreign copromoters; repealing s.
 16 548.015, F.S., relating to the authority of the
 17 commission to require a concessionaire to file a form
 18 of security with the commission; amending s. 548.017,
 19 F.S.; deleting a requirement for the licensure of
 20 concessionaires; amending s. 548.046, F.S.; providing
 21 for immediate license suspension and other
 22 disciplinary action if a participant fails or refuses
 23 to provide a urine sample or tests positive for
 24 specified prohibited substances; amending s. 548.052,
 25 F.S.; deleting a reference to foreign copromoters;
 26 amending s. 548.054, F.S.; revising procedures and
 27 requirements for requesting a hearing following the
 28 withholding of a purse; amending s. 548.06, F.S.;
 29 specifying a circumstance under which a report is not

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30 required to be filed with the commission; revising the
 31 calculation of gross receipts that are required to be
 32 filed in a report to the commission; requiring
 33 promoters to retain specified documents and records;
 34 authorizing the commission and the Department of
 35 Business and Professional Regulation to audit
 36 specified records retained by a promoter; requiring
 37 the commission to adopt rules; amending s. 548.07,
 38 F.S.; revising the procedure for suspension of
 39 licensure; amending s. 548.073, F.S.; requiring that
 40 commission hearings be held in accordance with ch.
 41 120, F.S.; providing an appropriation; providing an
 42 effective date.
 43
 44 Be It Enacted by the Legislature of the State of Florida:
 45
 46 Section 1. Section 548.002, Florida Statutes, is amended to
 47 read:
 48 548.002 Definitions.—As used in this chapter, the term:
 49 (1) "Amateur" means a person who has never received nor
 50 competed for any purse or other article of value, either for the
 51 expenses of training or for participating in a match, other than
 52 a prize of \$50 or less in value ~~or less~~.
 53 (2) "Amateur sanctioning organization" means a ~~any~~ business
 54 entity organized for sanctioning and supervising matches
 55 involving amateurs.
 56 (3) "Boxing" means the unarmed combat sport of fighting by
 57 striking with fists ~~to compete with the fists~~.
 58 (4) "Commission" means the Florida State Boxing Commission.

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59 ~~(5) "Concessionaire" means any person or business entity~~
 60 ~~not licensed as a promoter which receives revenues or other~~
 61 ~~compensation from the sale of tickets or from the sale of~~
 62 ~~souvenirs, programs, broadcast rights, or any other concessions~~
 63 ~~in conjunction with the promotion of a match.~~

64 ~~(5)(6)~~ "Contest" means a boxing, kickboxing, or mixed
 65 martial arts engagement in which persons participating strive
 66 earnestly to win using, ~~but not necessarily being limited to,~~
 67 strikes and blows to the head or other full-contact maneuvers.

68 ~~(6)(7)~~ "Department" means the Department of Business and
 69 Professional Regulation.

70 ~~(7)(8)~~ "Event" means one or more matches comprising a show.

71 ~~(8)(9)~~ "Exhibition" means a boxing, kickboxing, or mixed
 72 martial arts engagement in which persons participating show or
 73 display their skill without necessarily striving to win using,
 74 ~~but not necessarily being limited to,~~ strikes and blows to the
 75 head or other full-contact maneuvers.

76 ~~(9)~~ "Face value" means the dollar value of a ticket equal
 77 to the dollar amount that a customer is required to pay or, for
 78 complimentary tickets, would have been required to pay to
 79 purchase a ticket with equivalent seating priority in order to
 80 view the event. If the ticket specifies the amount of admission
 81 charges attributable to state or federal taxes, such taxes are
 82 not included in the face value.

83 ~~(10)~~ "Full contact" means the use of strikes and blows
 84 during a match which:

85 (a) Are intended to break the plane of the receiving
 86 participant or amateur's body;

87 (b) Are delivered to the head, face, neck, or body of the

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88 receiving participant or amateur; and

89 (c) Cause the receiving participant or amateur to move in
 90 response to the strike or blow.

91 ~~(10) "Foreign copromoter" means a promoter who has no place~~
 92 ~~of business within this state.~~

93 ~~(11) "Judge" means a person licensed by the commission who~~
 94 ~~evaluates and scores a match using a designated scoring system~~
 95 ~~who has a vote in determining the winner of any contest.~~

96 ~~(12) "Kickboxing" means the unarmed combat sport of~~
 97 ~~fighting by striking to compete with the fists, hands, feet,~~
 98 ~~legs, or any combination thereof, and includes "punchkick" and~~
 99 ~~other similar competitions. The term does not include any form~~
 100 ~~of ground fighting techniques.~~

101 ~~(13) "Manager" means a any person who, directly or~~
 102 ~~indirectly, controls or administers the boxing, kickboxing, or~~
 103 ~~mixed martial arts affairs of a any participant.~~

104 ~~(14) "Match" means a any contest or exhibition.~~

105 ~~(15) "Matchmaker" means a person who brings together~~
 106 ~~professionals or arranges matches for professionals.~~

107 ~~(16) "Mixed martial arts" means the unarmed combat sport~~
 108 ~~involving the use, subject to any applicable limitations set~~
 109 ~~forth in this chapter, of a combination of techniques,~~
 110 ~~including, but not limited to, grappling, kicking, striking, and~~
 111 ~~using techniques from different disciplines of the martial arts,~~
 112 ~~including, but not limited to, boxing, kickboxing, Muay Thai,~~
 113 ~~jujitsu, and wrestling grappling, kicking, and striking.~~

114 ~~(17) "Participant" means a professional competing in a~~
 115 ~~boxing, kickboxing, or mixed martial arts match.~~

116 ~~(18) "Physician" means a person who is approved by the~~

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117 ~~commission, who is an individual licensed to practice medicine~~
 118 ~~under chapter 458 or chapter 459, and whose license is~~
 119 ~~unencumbered and in good standing to practice medicine and~~
 120 ~~surgery in this state.~~

121 (19) "Professional" means a person who has received or
 122 competed for ~~a any~~ purse or other article of a value greater
 123 than \$50, either for the expenses of training or for
 124 participating in ~~a any~~ match.

125 (20) "Promoter" means ~~a any~~ person or entity, including an
 126 ~~and includes any officer, director, trustee, partner employee,~~
 127 ~~or owner stockholder~~ of a corporate promoter or promoter
 128 partnership, who produces, arranges, or stages ~~a any~~ match
 129 involving a professional.

130 (21) "Purse" means the financial guarantee or other
 131 remuneration for which a professional is participating in a
 132 match and includes the professional's share of any payment
 133 received for radio broadcasting ~~and~~ television, including pay-
 134 per-view or closed circuit and motion picture rights.

135 (22) "Second" or "cornerman" means a person who assists ~~a~~
 136 ~~the match~~ participant in preparing for a match and between
 137 rounds, and who maintains the corner of a the participant during
 138 a the match.

139 (23) "Secretary" means the Secretary of Business and
 140 Professional Regulation.

141 (24) "Unarmed combat" means a form of competition in which
 142 a strike or blow is struck which may reasonably be expected to
 143 inflict injury.

144 Section 2. Section 548.004, Florida Statutes, is amended to
 145 read:

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146 548.004 Executive director; duties, compensation,
 147 administrative support.-

148 (1) The department shall employ an executive director with
 149 the approval of the commission. The executive director shall
 150 serve at the pleasure of the secretary. The executive director
 151 or his or her designee shall perform the duties specified by the
 152 commission, including conducting the functions of the commission
 153 office; appointing event and commission officials; approving
 154 licenses, permits, and matches; and performing any keep a record
 155 ~~of all proceedings of the commission; shall preserve all books,~~
 156 ~~papers, and documents pertaining to the business of the~~
 157 ~~commission; shall prepare any notices and papers required; shall~~
 158 ~~appoint judges, referees, and other officials as delegated by~~
 159 ~~the commission and pursuant to this chapter and rules of the~~
 160 ~~commission; and shall perform such other duties as the~~
 161 department or commission deems necessary to fulfill the duties
 162 of the position directs. The executive director may issue
 163 subpoenas and administer oaths to witnesses, permitholders,
 164 record custodians, and licensees.

165 ~~(2) The commission shall require electronic recording of~~
 166 ~~all scheduled proceedings of the commission.~~

167 ~~(2)-(3)~~ The department shall provide assistance in budget
 168 development and budget submission for state funding requests.
 169 The department shall submit an annual balanced legislative
 170 budget for the commission which is based upon anticipated
 171 revenue. The department shall provide technical assistance and
 172 administrative support, if requested or determined necessary
 173 ~~needed~~, to the commission and its executive director on issues
 174 relating to personnel, contracting, property management, or

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175 other issues identified as important to performing the duties of
176 this chapter and to protecting the interests of the state.

177 Section 3. Section 548.006, Florida Statutes, is amended to
178 read:

179 548.006 Power of commission to control professional and
180 amateur boxing, kickboxing, and mixed martial arts matches
181 ~~pugilistic contests and exhibitions~~; certification of
182 competitiveness of professional mixed martial arts and
183 kickboxing matches.-

184 (1) The commission has exclusive jurisdiction over every
185 boxing, kickboxing, and mixed martial arts match held within the
186 state which involves a professional.

187 (2) As to professional mixed martial arts and kickboxing,
188 until a central repository of match records for each exists and
189 is approved by the commission, the matchmaker shall certify as
190 to the competitiveness of each match.

191 (3) The commission has exclusive jurisdiction over
192 approval, disapproval, suspension of approval, and revocation of
193 approval of all amateur sanctioning organizations for amateur
194 boxing, and kickboxing, and mixed martial arts matches held in
195 this state.

196 (4) Professional and amateur matches shall be held in
197 accordance with this chapter and the rules adopted by the
198 commission.

199 Section 4. Section 548.007, Florida Statutes, is amended to
200 read:

201 548.007 Exemptions.-This chapter does ~~Applicability of~~
202 ~~provisions to amateur matches and certain other matches or~~
203 ~~events.-Sections 548.001-548.079 do not apply to any of the~~

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204 following:

205 (1) A match that does not allow full contact ~~conducted or~~
206 ~~sponsored by a bona fide nonprofit school or education program~~
207 ~~whose primary purpose is instruction in the martial arts,~~
208 ~~boxing, or kickboxing,~~ if the match ~~held in conjunction with the~~
209 ~~instruction~~ is limited to amateur participants, ~~who are students~~
210 ~~of the school or instructional program.~~

211 (2) A match conducted or sponsored by a any company or
212 detachment of the Florida National Guard or the United States
213 Armed Forces, if the match is limited to amateurs participants
214 who are members of a the company or detachment of the Florida
215 National Guard or United States Armed Forces. ~~or~~

216 (3) A match conducted or sponsored by the Fraternal Order
217 of Police, if the match is limited to amateurs amateur
218 ~~participants~~ and is held in conjunction with a charitable event.

219 (4) A match conducted by or between public postsecondary
220 educational institutions or public K-12 schools, as defined in
221 s. 1000.04, if the match is limited to amateurs who are members
222 of a school-sponsored club or team.

223 (5) A match conducted by the International Olympic
224 Committee, the International Paralympic Committee, the Special
225 Olympics, or the Junior Olympics, if the match is limited to
226 amateurs who are competing in or attempting to qualify for the
227 Olympics, Paralympics, Special Olympics, or Junior Olympics.

228 (6) A professional or amateur martial arts activity. As
229 used in this subsection, the term "martial arts" means one of
230 the traditional forms of self-defense or unarmed combat
231 involving the use of physical skill and coordination, including,
232 but not limited to, karate, aikido, judo, and kung fu. The term

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233 does not include mixed martial arts.

234 Section 5. Section 548.013, Florida Statutes, is repealed.

235 Section 6. Subsections (1) and (2) of section 548.014,
236 Florida Statutes, are amended to read:

237 548.014 Promoters ~~and foreign copromoters~~; bonds or other
238 security.—

239 (1) (a) Before any license is issued or renewed to a
240 promoter ~~or foreign copromoter~~ and before any permit is issued
241 to a promoter ~~or foreign copromoter~~, she or he must file a
242 surety bond with the commission in such reasonable amount, but
243 not less than \$15,000, as the commission determines.

244 (b) All bonds must be upon forms approved and supplied by
245 the commission.

246 (c) The sufficiency of any surety is subject to approval of
247 the commission.

248 (d) The surety bond must be conditioned upon the faithful
249 performance by the promoter ~~or foreign copromoter~~ of her or his
250 obligations under this chapter and upon the fulfillment of her
251 or his contracts with any other licensees under this chapter.
252 However, the aggregate annual liability of the surety for all
253 obligations and fees may not exceed the amount of the bond.

254 (2) In lieu of a surety bond, the promoter ~~or foreign~~
255 ~~copromoter~~ may deposit with the commission cash or a certified
256 check, in an equivalent amount and subject to the same
257 conditions as the bond. Such security may not be returned to the
258 promoter until 1 year after the date on which it was deposited
259 with the commission unless a surety bond is substituted for it.
260 If no claim against the deposit is outstanding, it shall be
261 returned to the depositor 1 year after the date it was

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262 deposited.

263 Section 7. Section 548.015, Florida Statutes, is repealed.

264 Section 8. Subsection (1) of section 548.017, Florida
265 Statutes, is amended to read:

266 548.017 Participants, managers, and other persons required
267 to have licenses.—

268 (1) A participant, manager, trainer, second, timekeeper,
269 referee, judge, announcer, physician, matchmaker,
270 ~~concessionaire, or promoter must~~ booking agent or representative
271 ~~of a booking agent shall~~ be licensed before directly or
272 indirectly acting in such capacity in connection with any match
273 involving a participant. A physician approved by the commission
274 must be licensed pursuant to chapter 458 or chapter 459, must
275 maintain an unencumbered license in good standing, and must
276 demonstrate satisfactory medical training or experience in
277 boxing, or a combination of both, to the executive director
278 before ~~prior to~~ working as the ringside physician.

279 Section 9. Paragraph (c) of subsection (3) of section
280 548.046, Florida Statutes, is amended, and paragraph (d) is
281 added to that subsection, to read:

282 548.046 Physician's attendance at match; examinations;
283 cancellation of match.—

284 (3)

285 (c) A participant who fails or refuses ~~Failure or refusal~~
286 to provide a urine sample immediately upon request shall be
287 considered an immediate, serious danger to the health, safety,
288 and welfare of the public and his or her opponent. If a
289 participant fails or refuses to provide a urine sample, his or
290 her license shall be immediately suspended pursuant to

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291 s.120.60(6), and such failure or refusal is grounds for
 292 additional disciplinary action result in the revocation of the
 293 participant's license. Any participant who has been adjudged the
 294 loser of a match and who subsequently refuses to or is unable to
 295 provide a urine sample shall forfeit his or her share of the
 296 purse to the commission. A Any participant who is adjudged the
 297 winner of a match and who subsequently refuses to or is unable
 298 to provide a urine sample forfeits shall forfeit the win and
 299 shall not be allowed to engage in any future match in the state.
 300 The decision shall be changed to a no-decision result and shall
 301 be entered into the official record as the result of the match.
 302 The purse shall be redistributed as though the participant found
 303 to be in violation of this subsection had lost the match. If
 304 ~~redistribution of the purse is not necessary or after~~
 305 ~~redistribution of the purse is completed, the participant found~~
 306 ~~to be in violation of this subsection shall forfeit his or her~~
 307 ~~share of the purse to the commission.~~

308 (d) If a participant tests positive for a prohibited
 309 substance as specified by commission rule, the participant shall
 310 be considered an immediate, serious danger to the health,
 311 safety, and welfare of the public and his or her opponent. The
 312 participant's license shall be immediately suspended pursuant to
 313 s. 120.60(6), and subject to additional disciplinary action.

314 Section 10. Section 548.052, Florida Statutes, is amended
 315 to read:

316 548.052 Payment of advances by promoter ~~or foreign~~
 317 ~~copromoter~~ regulated.—A promoter ~~or foreign copromoter~~ may not
 318 pay, lend, or give a participant an advance against her or his
 319 purse before a contest, except with the prior written permission

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320 of the commission or the executive director, or his or her
 321 ~~designee a commissioner~~; and, if permitted, such advance may be
 322 made only for expenses for transportation and maintenance in
 323 preparation for a contest.

324 Section 11. Subsection (2) of section 548.054, Florida
 325 Statutes, is amended to read:

326 548.054 Withholding of purses; hearing; disposition of
 327 withheld purse forfeiture.—

328 (2) Any purse so withheld shall be delivered by the
 329 promoter to the commission upon demand. Within 10 days after the
 330 match, the person from whom the sum was withheld may submit a
 331 petition for a hearing to the commission pursuant to s. 120.569
 332 apply in writing to the commission for a hearing. Upon receipt
 333 of the petition application, the commission shall hold shall fix
 334 a date for a hearing pursuant to ss. 120.569 and 120.57. Within
 335 10 days after the hearing or after 10 days following the match,
 336 If no petition application for a hearing is filed, the
 337 commission shall meet and determine the disposition to be made
 338 of the withheld purse. If the commission finds the charges
 339 sufficient, it may declare all or any part of the funds
 340 forfeited. If the commission finds the charges insufficient not
 341 sufficient upon which to base a withholding order, it shall
 342 immediately distribute the withheld funds to the appropriate
 343 persons entitled thereto.

344 Section 12. Section 548.06, Florida Statutes, is amended to
 345 read:

346 548.06 Payments to state; exemptions; audit of records.—

347 (1) Except as provided in subsection (4), a promoter
 348 holding a match shall, within 72 hours after the match, file

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349 with the commission a written report ~~that which~~ includes the
 350 number of tickets sold, the amount of gross receipts, and any
 351 other facts the commission may require. For the purposes of this
 352 chapter, ~~total~~ gross receipts include each of the following:

353 (a) The gross price charged for the sale or lease of
 354 broadcasting, television, and pay-per-view motion picture rights
 355 of any match occurring within the state without any deductions
 356 for commissions, brokerage fees, distribution fees, advertising,
 357 or other expenses or charges.

358 ~~(b) The portion of the receipts from the sale of souvenirs,~~
 359 ~~programs, and other concessions received by the promoter;~~

360 ~~(b)(c)~~ The face value of all tickets sold and complimentary
 361 tickets issued, provided, or given above 5 percent of the seats
 362 in the house designated for use in the event and not authorized
 363 by the commission pursuant to subsection (2). ~~and~~

364 ~~(c)(d)~~ The face value of any seat or seating issued,
 365 provided, or given in exchange for advertising, sponsorships, or
 366 anything of value to the promotion of an event.

367 (2) A promoter may issue, provide, or give complimentary
 368 tickets for up to 5 percent of the seats in the house designated
 369 for use in the event, equally distributed between or among the
 370 price categories for which complimentary tickets are issued,
 371 without including the face value of such tickets issued,
 372 provided, or given, in gross receipts, and without paying the
 373 taxes required in subsection (4). If a promoter wishes to issue,
 374 provide, or give complimentary tickets for more than 5 percent
 375 of the seats in the house designated for use in the event
 376 without including the face value of such tickets issued,
 377 provided, or given, in gross receipts, the promoter must obtain

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378 written authorization from the commission or the executive
 379 director, or his or her designee ~~Where the rights to telecast a~~
 380 ~~match or matches held in this state under the supervision of the~~
 381 ~~Florida State Boxing Commission are in whole owned by, sold to,~~
 382 ~~acquired by, or held by any person who intends to or~~
 383 ~~subsequently sells or, in some other manner, extends such rights~~
 384 ~~in part to another, such person is deemed to be a promoter and~~
 385 ~~must be licensed as such in this state. Such person shall,~~
 386 ~~within 72 hours after the sale, transfer, or extension of such~~
 387 ~~rights in whole or in part, file with the commission a written~~
 388 ~~report that includes the number of tickets sold, the amount of~~
 389 ~~gross receipts, and any other facts the commission may require.~~

390 (a) The commission may not consider complimentary tickets
 391 that it authorizes under this subsection as part of the total
 392 gross receipts from admission fees.

393 (b) A promoter may issue, provide, or give complimentary
 394 tickets for more than 5 percent of the seats in the house
 395 designated for use in the event without obtaining written
 396 authorization from the commission, the executive director, or
 397 his or her designee if the promoter includes the face value of
 398 such tickets issued, provided, or given over 5 percent of the
 399 seats in the house designated for use in the event in gross
 400 receipts and pays the taxes as required in subsection (4).

401 (c) The commission, the executive director, or his or her
 402 designee, may authorize more than 5 percent of the tickets to be
 403 issued as complimentary tickets to the following:

- 404 1. Reserve or active members of the United States Armed
- 405 Forces or National Guard;
- 406 2. A veteran, as defined in s. 1.01(14). The veteran need

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407 not have served during wartime periods of service as listed
 408 under s. 1.01(14) or in a campaign or expedition for which a
 409 campaign badge has been authorized; and

410 3. Not-for-profit organizations with tax-exempt status
 411 pursuant to s. 501(c) (3) of the United States Internal Revenue
 412 Code.

413 (d) A promoter who wishes to obtain authorization to issue
 414 more than 5 percent complimentary tickets shall:

415 1. Submit an application adopted by the commission no later
 416 than 2 business days before the date of the professional event.
 417 The application must include, at a minimum, the date, time, and
 418 location of the event, the number of complimentary tickets being
 419 requested, the percentage of total tickets issued for the seats
 420 in the house designated for use in the event being requested as
 421 complimentary tickets, and which individuals or entities will
 422 receive the complimentary tickets.

423 2. Maintain documentation evidencing that the tickets were
 424 given to individuals or entities that fall into the categories
 425 listed in paragraph (c). These documents are subject to auditing
 426 requirements as set forth in subsection (7).

427 (e) The commission, executive director, or his or her
 428 designee shall deny or approve the application. The commission,
 429 executive director, or his or her designee may set limitations
 430 on the approval and may approve all or a portion of the
 431 requested percentage above 5 percent. The commission, executive
 432 director, or his or her designee shall provide the decision in
 433 writing to the promoter at least 1 business day before the start
 434 of the event, with an explanation for the denial or approval and
 435 an explanation for any limitation on the approval. The promoter

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436 remains responsible for complying with other reporting and
 437 taxation requirements as set forth in this chapter.

438 ~~(3) A concessionaire shall, within 72 hours after the~~
 439 ~~match, file with the commission a written report that includes~~
 440 ~~the number of tickets sold, the amount of gross receipts, and~~
 441 ~~any other facts the commission may require.~~

442 (3)(4) A Any written report required to be filed with the
 443 commission under this section ~~must shall~~ be postmarked within 72
 444 hours after the conclusion of the match, and an additional 5
 445 days ~~is shall be~~ allowed for mailing.

446 (4)(5) Each the written report ~~must shall~~ be accompanied by
 447 a tax payment in the amount of 5 percent of the total gross
 448 receipts exclusive of any federal taxes, except that the tax
 449 payment derived from the gross price charged for the sale or
 450 lease of broadcasting, television, and pay-per-view motion
 451 picture rights of any match occurring within the state may shall
 452 not exceed \$40,000 for a any single event. If a promoter remits
 453 the maximum tax amount of \$40,000 for the sale or lease of
 454 broadcasting, television, or pay-per-view rights of any single
 455 event pursuant to this subsection, the promoter is only required
 456 to indicate that the amount of \$40,000 has been remitted for
 457 such taxes on a form provided by the commission. The promoter
 458 remains responsible for complying with other reporting and
 459 taxation requirements related to other gross receipts as set
 460 forth in this chapter.

461 (5)(6)(a) A Any promoter who willfully makes a false and
 462 fraudulent report under this section ~~commits is guilty of~~
 463 perjury and, upon conviction, is subject to punishment as
 464 provided by law. Such penalty ~~is shall be~~ in addition to any

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465 other penalties imposed under ~~by~~ this chapter.

466 (b) ~~A~~ Any promoter who willfully fails, neglects, or
467 refuses to make a report or to pay the taxes as prescribed or
468 who refuses to allow the commission to examine the books,
469 papers, and records of a ~~any~~ promotion commits is guilty of a
470 misdemeanor of the second degree, punishable as provided in s.
471 775.082 or s. 775.083.

472 (6) A promoter shall retain a copy of the following records
473 for 1 year and provide a copy of the following records to the
474 commission upon request:

475 (a) Records necessary to support each report submitted to
476 the commission, including a copy of any report filed with the
477 commission.

478 (b) A copy of each independently prepared ticket manifest.

479 (c) Documentation verifying the issuance of complimentary
480 tickets approved by the commission pursuant to subsection (2) to
481 individuals or entities which meet the requirements as set forth
482 in paragraph (2)(c).

483 (7) Compliance with this section is subject to verification
484 by department or commission audit. The commission may, upon
485 reasonable notice to the promoter, audit a promoter's books and
486 records relating to the promoter's operations under this
487 chapter.

488 (8) The commission shall adopt rules establishing a
489 procedure for auditing a promoter's records and resolving any
490 inconsistencies revealed by an audit and shall adopt a rule
491 imposing a late fee in the event of taxes owed.

492 Section 13. Section 548.07, Florida Statutes, is amended to
493 read:

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

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494 548.07 Suspension of license or permit by commissioner;
495 hearing.—

496 (1) The commission or the executive director, or his or her
497 designee, may issue an emergency suspension order pursuant to s.
498 120.60(6), suspending the license of any person or entity
499 licensed under this chapter who poses an immediate, serious
500 danger to the health, safety, and welfare of the public or the
501 participants in a match.

502 (2) The department's Office of General Counsel shall review
503 the grounds for each emergency suspension order issued and, if
504 sufficient, shall file an administrative complaint against the
505 licensee within 21 days after the issuance of the emergency
506 suspension order.

507 (3) After service of the administrative complaint pursuant
508 to the procedure of s. 455.275, the disciplinary process shall
509 proceed pursuant to chapter 120. Notwithstanding any provision
510 of chapter 120, any member of the commission may, upon her or
511 his own motion or upon the verified written complaint of any
512 person charging a licensee or permittee with violating this
513 chapter, suspend any license or permit until final determination
514 by the commission if such action is necessary to protect the
515 public welfare and the best interests of the sport. The
516 commission shall hold a hearing within 10 days after the date on
517 which the license or permit is suspended.

518 Section 14. Section 548.073, Florida Statutes, is amended
519 to read:

520 548.073 Commission hearings.—All hearings held under this
521 chapter shall be held in accordance with chapter 120.

522 ~~Notwithstanding the provisions of chapter 120, any member of the~~

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

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523 ~~commission may conduct a hearing. Before any adjudication is~~
524 ~~rendered, a majority of the members of the commission shall~~
525 ~~examine the record and approve the adjudication and order.~~

526 Section 15. The sum of \$111,000 in recurring funds is
527 appropriated from the General Revenue Fund to the Department of
528 Business and Professional Regulation for the implementation of
529 this act by the Florida State Boxing Commission during the 2014-
530 2015 fiscal year.

531 Section 16. This act shall take effect July 1, 2014.

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 832

INTRODUCER: Banking and Insurance Committee, Senators Flores and Diaz de la Portilla

SUBJECT: Financing of Motor Vehicles

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>CJ</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 832 prohibits a finance company that is owned, affiliated, or contracts with an automobile manufacturer from denying, charging a fee, or applying less favorable financing terms on a motor vehicle contract, solely because that contract includes a competing third party automotive-related product that is of similar nature, scope and quality to an automotive-related product offered by the finance company or its affiliates. The bill provides that a violation of its provisions is not a criminal violation of ch. 545, F.S., which regulates the relationship between motor vehicle manufacturers and dealers.

II. Present Situation:

Motor Vehicle Service Agreement

Motor vehicle service agreements indemnify the service agreement holder (owner) of the motor vehicle listed on the service agreement from losses caused by the failure or improper function of any mechanical or other component part arising out of the ownership, operation, and use of the motor vehicle.¹ Such products can include:

- *Mechanical and electrical coverage* – This product covers the cost of replacement and repair, beyond the manufacturer’s warranty, for limited mechanical and electrical components of an automobile. The coverage is often limited to the time of ownership or by the mileage of the automobile.

¹ Section 634.011(8), F.S.

- *Tire & Wheel replacement coverage* – This product covers the cost of replacement or repair to a damaged wheel or tire. Such coverage is often limited to the time of ownership or by the mileage of the automobile.
- *Paint-less dent removal* – This product removes dents, dings, and creases, including hail damage, from a vehicle without affecting the existing paint finish, but does not include services that involve the replacement of vehicle body panels or sanding, bonding, or painting. Such coverage is often limited to time of ownership and mileage of the automobile.
- *Lost key replacement* – This product covers the cost of replacing a lost smart key with a new key that has been programmed by the manufacturer. The costs of replacing today's smart keys can range from \$200 to more than \$400 for a new key that has been programmed by the manufacturer.²
- *Anti-theft deterrent etch coverage* – This is a vehicle protection product³ where the Vehicle Identification Number (VIN) is etched into the glass of an automobile making those parts easier to identify after a theft.
- *Vehicle theft recovery coverage* – This is a vehicle protection product⁴ where a device is installed in the automobile that allows a vehicle monitoring service to locate the automobile through the use of global positioning satellites (GPS) in the event of a theft.

Other automotive-related products offered by automobile dealers not regulated under ch. 634, F.S., may include:

- *Basic Maintenance coverage* – This product covers the labor cost of servicing an automobile, as well as any costs for replacing parts and fluids based on normal use of the vehicle. Such coverage is often limited to time of ownership and mileage of the automobile.
- *Appearance protection* – This product is a film or spray applied to an automobile to help protect against damage from the elements as well as dents and scratches that can occur through normal use of the automobile.
- *Auto detailing service* – This product is for periodic interior and exterior car cleaning service. Such coverage is often limited to a number of cleanings per given month or year.

Service agreements that cover motor vehicles used for commercial purposes and sold to persons other than consumers are excluded from the definition and are exempt from regulation under the Florida Insurance Code.⁵

Any motor vehicle service agreement may be canceled by the owner within 60 days after purchase. The owner is entitled to a refund of 100 percent of the gross premium paid minus any claims paid on the service agreement.⁶ An administrative fee of not more than 5 percent of the gross premium paid by the owner may be assessed. Once a motor vehicle service agreement has been in effect for 60 days it may not be canceled by the insurer or service agreement company unless: there has been a material misrepresentation or fraud at the time of sale of the service agreement, the owner has failed to maintain the motor vehicle as prescribed by the manufacturer,

² Donna Freedman, *Lost your car key? That'll be \$400*, MSN, Apr. 22, 2013, <http://money.msn.com/saving-money-tips/post.aspx?post=e297a885-9af3-4274-8228-89b9c7eb0680> .

³ Section 634.011(8)(b)1.b.

⁴ *Id.*

⁵ Section 634.011(8), F.S.

⁶ Section 634.121(3)(a), F.S.

the odometer has been tampered with or disabled and the owner has failed to repair the odometer, or for nonpayment of premium by the owner.⁷ If the insurer or service agreement company cancels the service agreement, the refund to the owner must be at least 100 percent of the paid unearned pro rata premium minus any claims paid on the agreement. However, if the agreement is canceled after 60 days by the owner, the insurer or service agreement company must return directly to the owner at least 90 percent of the unearned pro rata premium minus any claims paid on the agreement.⁸ A full refund to the owner on canceled service agreements remains the responsibility of the service agreement company; however, the salesperson and agent are responsible for refunding the unearned pro rata commission. Under current law, the company may effectuate refunds through the issuing salesperson or agent.⁹

The Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) may, within their respective regulatory jurisdictions, examine and investigate every person involved in the business of motor vehicle service agreements in this state to determine whether a person is engaged in any unfair method of competition or in any unfair or deceptive acts or practices that are prohibited by s. 634.2815, F.S.¹⁰

The OIR conducts financial examinations of motor vehicle service agreement companies using part II of ch. 634, F.S. The OIR may examine the companies as often as may be warranted for the protection of policyholders and the public interest, but an examination may cover a period of only the most 5 recent years.¹¹ Criteria are provided for the OIR to consider in determining whether to conduct an examination of a company. The examinations may be conducted by an independent certified public accountant, actuary, investment specialist, information technology specialist, or reinsurance specialist, with the costs paid for by the companies.¹² Section 634.141, F.S., authorizes the establishment of rules whereby a motor vehicle service company may be exempted from examination. Motor vehicle service agreement companies that meet certain criteria and file an exemption fee of \$2,000 to be deposited in the Regulatory Trust Fund may be exempt from examination.¹³

Guaranteed Asset Protection (GAP)

A Guaranteed Asset Protection (GAP) product is a form of debt cancellation product. These products are generally sold in conjunction with an automobile loan and state that the lending institution for the loan will waive the difference between the value of the vehicle and the outstanding balance of the loan or lease, if the loan or lease balance is greater than the vehicle value. The product is not an insurance product regulated under the Florida Insurance Code.¹⁴

⁷ Section 634.121(3)(b), F.S.

⁸ Section 634.121(3)(b)(4), F.S.

⁹ *Id.*

¹⁰ Section 634.283, F.S.

¹¹ Section 634.141, F.S.

¹² Section 624.316(2)(e), F.S.

¹³ The Office of Insurance Regulation, Rule 69O-200.014, FAC.

¹⁴ Section 520.02(7), F.S.

Under current law,¹⁵ a motor vehicle retail installment seller,¹⁶ a sales finance company,¹⁷ a retail lessor,¹⁸ and any assignee of such an entity may offer, for a fee or otherwise, optional guaranteed asset protection products. The purchase of a guaranteed asset protection product may not be required as a condition for making the loan. In order to offer any guaranteed asset protection product those authorized to do so must comply with the following:

- The cost of any guaranteed asset protection product, with respect to any loan covered by the guaranteed asset protection product, may not exceed the amount of the indebtedness.
- Any contract or agreement pertaining to a guaranteed asset protection product shall be governed by s. 520.07, F.S.
- A guaranteed asset protection product is considered an obligation of any person that purchases or otherwise acquires the loan contract covering the product.
- An entity providing guaranteed asset protection products shall provide readily understandable disclosures that explain in detail eligibility requirements, conditions, refunds, and exclusions. The disclosures must provide that the purchase of the product is optional. The disclosures must be in plain language and of a typeface and size that are easy to read.
- An entity must provide a copy of the executed guaranteed asset protection product contract to the buyer. The entity bears the burden of proving the contract was provided to the buyer.
- An entity may not offer a contract for a guaranteed asset protection product that contains terms giving the entity the right to unilaterally modify the contract unless:
 - The modification is favorable to the buyer and is made without additional charge to the buyer; or
 - The buyer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes in effect.

If a contract for a guaranteed asset protection product is canceled, the issuer shall refund to the buyer any unearned fees paid for the contract unless the contract provides otherwise. A refund is not due to a consumer who receives a benefit under such product. In order to receive a refund, the buyer must notify the issuer of the event terminating the contract and request a refund within 90 days after the occurrence of the event terminating the contract. An issuer may offer a buyer a contract that does not provide for a refund only if the issuer also offers that buyer a bona fide option to purchase a comparable contract that provides for a refund.¹⁹

III. Effect of Proposed Changes:

Section 1 of the bill defines:

- “Affiliated finance company” as a finance company which is affiliated with or controlled by a manufacturer or wholesale distributor through common ownership, officers, directors, or management; or has a contractual agreement with a manufacturer or wholesale distributor to finance, via sale or lease, motor vehicles produced or distributed by such manufacturer or wholesale distributor.

¹⁵ Section 520.07(11), F.S.

¹⁶ Section 520.02(11), F.S.

¹⁷ Section 520.02(19), F.S.

¹⁸ Section 521.003(8), F.S.

¹⁹ Section 520.07(11), F.S.

- “Automotive related product” as a motor vehicle service agreement, as defined in s. 634.011, F.S., or a guaranteed asset protection product, as defined in s. 520.02, F.S., or other non-tangible ancillary product that is purchased or otherwise provided as part of the sale or lease of a motor vehicle by a dealer.
- “Third party provider” as a provider of an automotive related product that is not an affiliated finance company, manufacturer, or wholesale distributor.
- “Vehicle contract” as a conditional sales contract, retail installment sales contract, chattel mortgage, lease agreement, promissory note, or any other financial obligation arising from the retail sale or lease of a motor vehicle.

The bill also revises the definitions of:

- “Person” to include a limited liability company.
- “Dealer” to mean franchised motor vehicle dealer, as defined in s. 320.27(1)(c)1, F.S.
- “Finance company” to mean a person engaged in the business of financing the sale or lease of motor vehicles, or engaged in the business of purchasing or acquiring vehicle contracts.

Section 2 of the bill provides that an affiliated finance company may not, solely because the vehicle contract contains a third party’s automotive related product:

- Refuse to purchase or accept the assignment of the vehicle contract from a dealer;
- Charge a dealer an additional fee or surcharge for the purchase of, or acceptance of the assignment of, the vehicle contract; or
- Offer to purchase or accept assignment of the vehicle contract from a dealer on less favorable terms than a vehicle contract that contains otherwise substantially similar credit risk, duration, and other terms.

The prohibitions of the bill only apply to third party automotive-related products that are of similar nature, scope, and quality to an automotive-related product offered by the affiliated finance company or a wholesaler or manufacturer that is affiliated with the finance company.

When determining similar nature, scope, and quality of a competing third party product, the affiliated finance company may review the financial capacity of the third party provider’s ability to meet all its obligations, inclusive of any contractual liability insurance policies, and the third party provider’s history of compliance with any applicable state and federal regulations.

Violations are exempt from the criminal penalties in s. 545.12, F.S.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires an affiliated finance company to finance on equally favorable terms competing automotive related products that are determined to be of similar nature, scope, and quality to their own products. The bill only applies to an affiliated finance company as defined in the bill and does not apply to other automobile lenders or finance companies.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill amends section 545.01 of the Florida Statutes.

This bill creates section 545.045 of the Florida Statutes.

IX. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Banking and Insurance on March 5, 2014:

- Adds a new definition for “affiliated finance company” and “third party provider.”
- When determining similar nature, scope, and quality, the CS allows the affiliated finance company to review the financial capacity of the third party provider’s ability to meet all its obligations, as well as the third party provider’s history of compliance with any applicable state and federal regulations.
- The CS exempts violations from the criminal penalties in ch. 545, F.S.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 545.01, Florida Statutes, is reordered
and amended to read:

545.01 Definitions.—As used in this chapter, the term:

(1) "Affiliated finance company" means a finance company
which:

(a) Is affiliated with or controlled by a manufacturer or
wholesale distributor through common ownership, officers,



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12 directors, or management; or

13 (b) Has a contractual agreement with a manufacturer or
14 wholesale distributor to finance, via sale or lease, motor
15 vehicles produced or distributed by such manufacturer or
16 wholesale distributor.

17 (2) "Automotive-related product" means a motor vehicle
18 service agreement, as defined in s. 634.011, or a guaranteed
19 asset protection product, as defined in s. 520.02, or other non-
20 tangible ancillary product that is purchased or otherwise
21 provided as part of the sale or lease of a motor vehicle by a
22 dealer.

23 ~~(6)(1) The term "Person" as used in this chapter means an~~
24 ~~any individual, firm, corporation, partnership, limited~~
25 ~~liability company, association, trustee, receiver, or assignee~~
26 ~~for the benefit of creditors.~~

27 ~~(7)(2) The terms "Sell," "sold," "buy," or and "purchase,"~~
28 ~~includes as used in this chapter, include an exchange, barter,~~
29 ~~gift, or and offer to contract to sell or buy.~~

30 ~~(5)(3) The term "Manufacturer" means a any person engaged,~~
31 ~~directly or indirectly, in the manufacture of motor vehicles.~~

32 ~~(10)(4) The term "Wholesale distributor" means a any person~~
33 ~~engaged, directly or indirectly, in the sale or distribution of~~
34 ~~motor vehicles to agents or to dealers.~~

35 ~~(3)(5) The term "Dealer" means a franchised motor vehicle~~
36 ~~dealer, as defined in s. 320.27(1)(c)1. any person who is~~
37 ~~engaged in, or who intends to engage in the business of selling~~
38 ~~motor vehicles at retail in this state. The term "dealer" shall~~
39 ~~also include "retail agent."~~

40 ~~(4)(6) The term "Finance company" means a any person~~



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41 engaged in the business of financing the sale or lease of motor
42 vehicles, or engaged in the business of purchasing or acquiring
43 vehicle contracts ~~conditional bills of sale, or promissory~~
44 ~~notes, either secured by vendor's lien or chattel mortgages, or~~
45 ~~arising from the sale of motor vehicles~~ in this state.

46 (8) "Third-party provider" means a provider of an
47 automotive-related product that is not an affiliated finance
48 company, manufacturer, or wholesale distributor.

49 (9) "Vehicle contract" means a conditional sales contract,
50 retail installment sales contract, chattel mortgage, lease
51 agreement, promissory note, or any other financial obligation
52 arising from the retail sale or lease of a motor vehicle.

53 Section 2. Section 545.045, Florida Statutes, is created to
54 read:

55 545.045 Purchase or assignment of third-party financing.—

56 (1) When a vehicle contract contains a third-party
57 provider's automotive-related product that is of similar nature,
58 scope, and quality to an automotive-related product offered for
59 sale by an affiliated finance company or its related
60 manufacturer or wholesale distributor, that affiliated finance
61 company may not, solely because the vehicle contract contains a
62 third party's automotive-related product:

63 (a) Refuse to purchase or accept the assignment of the
64 vehicle contract from a dealer; or

65 (b) Charge a dealer an additional fee or surcharge for the
66 purchase of, or acceptance of the assignment of, the vehicle
67 contract.

68 (2) Factors in determining whether an automotive-related
69 product is similar in nature, scope, and quality include, but



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70 are not limited to, the financial capacity of the third-party
71 provider to meet all of its obligations, inclusive of any
72 contractual liability insurance policies, and the third-party
73 provider's history of compliance with any applicable state and
74 federal regulations.

75 (3) A violation of this section does not constitute a
76 criminal offense pursuant to s. 545.12.

77 Section 3. Paragraphs (c) and (d) of subsection (1) of
78 section 320.27, Florida Statutes, are amended to read:

79 320.27 Motor vehicle dealers.—

80 (1) DEFINITIONS.—The following words, terms, and phrases
81 when used in this section have the meanings respectively
82 ascribed to them in this subsection, except where the context
83 clearly indicates a different meaning:

84 (c) "Motor vehicle dealer" means any person engaged in the
85 business of buying, selling, or dealing in motor vehicles or
86 offering or displaying motor vehicles for sale at wholesale or
87 retail, or who may service and repair motor vehicles pursuant to
88 an agreement as defined in s. 320.60(1). Any person who buys,
89 sells, or deals in three or more motor vehicles in any 12-month
90 period or who offers or displays for sale three or more motor
91 vehicles in any 12-month period shall be prima facie presumed to
92 be engaged in such business. The terms "selling" and "sale"
93 include lease-purchase transactions. A motor vehicle dealer may,
94 at retail or wholesale, sell a recreational vehicle as described
95 in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the
96 sale of a motor vehicle, provided such acquisition is incidental
97 to the principal business of being a motor vehicle dealer.
98 However, a motor vehicle dealer may not buy a recreational



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99 vehicle for the purpose of resale unless licensed as a
100 recreational vehicle dealer pursuant to s. 320.771. A motor
101 vehicle dealer may apply for a certificate of title to a motor
102 vehicle required to be registered under s. 320.08(2)(b), (c),
103 and (d), using a manufacturer's statement of origin as permitted
104 by s. 319.23(1), only if such dealer is authorized by a
105 franchised agreement as defined in s. 320.60(1), to buy, sell,
106 or deal in such vehicle and is authorized by such agreement to
107 perform delivery and preparation obligations and warranty defect
108 adjustments on the motor vehicle; provided this limitation shall
109 not apply to recreational vehicles, van conversions, or any
110 other motor vehicle manufactured on a truck chassis. The
111 transfer of a motor vehicle by a dealer not meeting these
112 qualifications shall be titled as a used vehicle. The
113 classifications of motor vehicle dealers are defined as follows:

114 1. "Franchised motor vehicle dealer" means any person who
115 engages in the business of repairing, servicing, buying,
116 selling, or dealing in motor vehicles pursuant to an agreement
117 as defined in s. 320.60(1).

118 2. "Independent motor vehicle dealer" means any person
119 other than a franchised or wholesale motor vehicle dealer who
120 engages in the business of buying, selling, or dealing in motor
121 vehicles, and who may service and repair motor vehicles.

122 3. "Wholesale motor vehicle dealer" means any person who
123 engages exclusively in the business of buying, selling, or
124 dealing in motor vehicles at wholesale or with motor vehicle
125 auctions. Such person shall be licensed to do business in this
126 state, may ~~shall~~ not sell or auction a vehicle to any person who
127 is not a licensed dealer, and may ~~shall~~ not have the privilege



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128 of the use of dealer license plates. Any person who buys, sells,
129 or deals in motor vehicles at wholesale or with motor vehicle
130 auctions on behalf of a licensed motor vehicle dealer and as a
131 bona fide employee of such licensed motor vehicle dealer is not
132 required to be licensed as a wholesale motor vehicle dealer. In
133 such cases it shall be prima facie presumed that a bona fide
134 employer-employee relationship exists. A wholesale motor vehicle
135 dealer shall be exempt from the display provisions of this
136 section but shall maintain an office wherein records are kept in
137 order that those records may be inspected.

138 4. "Motor vehicle auction" means any person offering motor
139 vehicles or recreational vehicles for sale to the highest bidder
140 where buyers are licensed motor vehicle dealers. Such person may
141 ~~shall~~ not sell a vehicle to anyone other than a licensed motor
142 vehicle dealer.

143 5. "Salvage motor vehicle dealer" means any person who
144 engages in the business of acquiring salvaged or wrecked motor
145 vehicles for the purpose of reselling them and their parts.

146
147 The term "motor vehicle dealer" does not include persons not
148 engaged in the purchase or sale of motor vehicles as a business
149 who are disposing of vehicles acquired for their own use or for
150 use in their business or acquired by foreclosure or by operation
151 of law, provided such vehicles are acquired and sold in good
152 faith and not for the purpose of avoiding the provisions of this
153 law; persons engaged in the business of manufacturing, selling,
154 or offering or displaying for sale at wholesale or retail no
155 more than 25 trailers in a 12-month period; public officers
156 while performing their official duties; receivers; trustees,



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157 administrators, executors, guardians, or other persons appointed
158 by, or acting under the judgment or order of, any court; banks,
159 finance companies, or other loan agencies that acquire motor
160 vehicles as an incident to their regular business; ~~motor vehicle~~
161 ~~brokers,~~ and motor vehicle rental and leasing companies that
162 sell motor vehicles to motor vehicle dealers licensed under this
163 section. Vehicles owned under circumstances described in this
164 paragraph may be disposed of at retail, wholesale, or auction,
165 unless otherwise restricted. A manufacturer of fire trucks,
166 ambulances, or school buses may sell such vehicles directly to
167 governmental agencies or to persons who contract to perform or
168 provide firefighting, ambulance, or school transportation
169 services exclusively to governmental agencies without processing
170 such sales through dealers if such fire trucks, ambulances,
171 school buses, or similar vehicles are not presently available
172 through motor vehicle dealers licensed by the department.

173 ~~(d) "Motor vehicle broker" means any person engaged in the~~
174 ~~business of offering to procure or procuring motor vehicles for~~
175 ~~the general public, or who holds himself or herself out through~~
176 ~~solicitation, advertisement, or otherwise as one who offers to~~
177 ~~procure or procures motor vehicles for the general public, and~~
178 ~~who does not store, display, or take ownership of any vehicles~~
179 ~~for the purpose of selling such vehicles.~~

180 Section 4. This act shall take effect July 1, 2014.

181
182 ===== T I T L E A M E N D M E N T =====

183 And the title is amended as follows:

184 Delete everything before the enacting clause
185 and insert:



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186 A bill to be entitled
187 An act relating to motor vehicle sales; amending s.
188 545.01, F.S.; revising and reordering definitions;
189 defining terms; creating s. 545.045, F.S.; prohibiting
190 an affiliated finance company from taking specified
191 actions relating to certain finance obligations
192 arising from a vehicle contract that contains a third-
193 party provider's specified automotive-related product;
194 providing factors to determine whether an automotive-
195 related product is similar in nature, scope, and
196 quality to an automotive-related product offered for
197 sale by an affiliated finance company or its related
198 manufacturer or wholesale distributor; providing that
199 a violation does not constitute a criminal offense;
200 amending s. 320.27, F.S.; deleting the definition of
201 the term "motor vehicle broker"; conforming a
202 reference; providing an effective date.

By the Committee on Banking and Insurance; and Senators Flores
and Diaz de la Portilla

597-02193-14

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1 A bill to be entitled
2 An act relating to the financing of motor vehicles;
3 amending s. 545.01, F.S.; revising definitions;
4 defining terms; creating s. 545.045, F.S.; prohibiting
5 a finance company that is affiliated with or
6 controlled by, or that has a contractual relationship
7 with, a manufacturer or wholesale distributor from
8 taking specified actions relating to certain finance
9 obligations arising from the retail sale or lease of a
10 motor vehicle that includes a third party's automotive
11 related product; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Section 545.01, Florida Statutes, is reordered
16 and amended to read:
17 545.01 Definitions.—As used in this chapter, the term:
18 (1) "Affiliated finance company" means a finance company
19 which:
20 (a) Is affiliated with or controlled by a manufacturer or
21 wholesale distributor through common ownership, officers,
22 directors, or management; or
23 (b) Has a contractual agreement with a manufacturer or
24 wholesale distributor to finance, via sale or lease, motor
25 vehicles produced or distributed by such manufacturer or
26 wholesale distributor.
27 (2) "Automotive related product" means a motor vehicle
28 service agreement, as defined in s. 634.011, or a guaranteed
29 asset protection product, as defined in s. 520.02, or other non-

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30 tangible ancillary product that is purchased or otherwise
31 provided as part of the sale or lease of a motor vehicle by a
32 dealer.
33 ~~(6)(1) The term "Person" as used in this chapter means an~~
34 ~~any individual, firm, corporation, partnership, limited~~
35 ~~liability company, association, trustee, receiver, or assignee~~
36 ~~for the benefit of creditors.~~
37 ~~(7)(2) The terms "Sell," "sold," "buy," or "purchase,"~~
38 ~~includes as used in this chapter, include an exchange, barter,~~
39 ~~gift, or offer to contract to sell or buy.~~
40 ~~(5)(3) The term "Manufacturer" means a any person engaged,~~
41 ~~directly or indirectly, in the manufacture of motor vehicles.~~
42 ~~(10)(4) The term "Wholesale distributor" means a any person~~
43 ~~engaged, directly or indirectly, in the sale or distribution of~~
44 ~~motor vehicles to agents or to dealers.~~
45 ~~(3)(5) The term "Dealer" means a franchised motor vehicle~~
46 ~~dealer, as defined in s. 320.27(1)(c)1. any person who is~~
47 ~~engaged in, or who intends to engage in the business of selling~~
48 ~~motor vehicles at retail in this state. The term "dealer" shall~~
49 ~~also include "retail agent."~~
50 ~~(4)(6) The term "Finance company" means a any person~~
51 ~~engaged in the business of financing the sale or lease of motor~~
52 ~~vehicles, or engaged in the business of purchasing or acquiring~~
53 ~~vehicle contracts conditional bills of sale, or promissory~~
54 ~~notes, either secured by vendor's lien or chattel mortgages, or~~
55 ~~arising from the sale of motor vehicles in this state.~~
56 (8) "Third party provider" means a provider of an
57 automotive related product that is not an affiliated finance
58 company, manufacturer, or wholesale distributor.

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59 (9) "Vehicle contract" means a conditional sales contract,
 60 retail installment sales contract, chattel mortgage, lease
 61 agreement, promissory note, or any other financial obligation
 62 arising from the retail sale or lease of a motor vehicle.

63 Section 2. Section 545.045, Florida Statutes, is created to
 64 read:

65 545.045 Purchase or assignment of third-party financing.—

66 (1) When a vehicle contract contains a third party
 67 provider's automotive related product that is of similar nature,
 68 scope, and quality to an automotive related product offered for
 69 sale by an affiliated finance company or its related
 70 manufacturer or wholesale distributor, that affiliated finance
 71 company may not, solely because the vehicle contract contains a
 72 third party's automotive related product:

73 (a) Refuse to purchase or accept the assignment of the
 74 vehicle contract from a dealer;

75 (b) Charge a dealer an additional fee or surcharge for the
 76 purchase of, or acceptance of the assignment of, the vehicle
 77 contract; or

78 (c) Offer to purchase or accept assignment of the vehicle
 79 contract from a dealer on less favorable terms than a vehicle
 80 contract that contains otherwise substantially similar credit
 81 risk, duration, and other terms.

82 (2) Factors in determining whether an automotive related
 83 product is similar in nature, scope, and quality include, but
 84 are not limited to, the financial capacity of the third party
 85 provider to meet all its obligations, inclusive of any
 86 contractual liability insurance policies, and the third party
 87 provider's history of compliance with any applicable state and

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88 federal regulations.

89 (3) A violation of this section does not constitute a
 90 criminal offense pursuant to s. 545.12.

91 Section 3. This act shall take effect July 1, 2014.

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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 918

INTRODUCER: Health Policy Committee and Senator Flores

SUBJECT: Termination of Pregnancies

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Fav/CS
2.	Davis	Cibula	JU	Pre-meeting
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 918 limits the circumstances in which an abortion may be lawfully performed on a viable fetus. Under existing law, abortions are generally prohibited during the third trimester. Under the bill, abortions are also prohibited when a fetus reaches viability, which might occur before the third trimester.

The bill also redefines viability. Existing law describes a viable fetus as a fetus who with a reasonable degree of medical probability may survive indefinitely outside the womb. The bill defines a viable fetus as a fetus who is sustainable outside the womb through standard medical procedures. Under the bill, before performing an abortion, a physician must examine the fetus to determine whether it is viable.

Under existing law, an abortion may be performed during the third trimester to “preserve the health of the pregnant woman.” However, existing law does not describe what it means to preserve the health of a pregnant woman. The bill effectively defines this concept as averting a “serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition.” The bill applies the new standard to abortions in the third trimester or on a viable fetus. The bill, as under existing law, allows an abortion when a pregnant woman’s life is at risk.

II. Present Situation:

Case Law on Abortion

In 1973, the U.S. Supreme Court issued the landmark *Roe v. Wade* decision.¹ Using strict scrutiny, the court determined that a woman's right to terminate a pregnancy is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.² Further, the court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.³ The court established the trimester framework for the regulation of termination – holding that in the third trimester, a state could prohibit termination to the extent that the woman's life or health was not at risk.⁴

In *Planned Parenthood v. Casey*, the U.S. Supreme Court, while upholding the fundamental holding of *Roe*, recognized that medical advancement could shift determinations of fetal viability away from the trimester framework.⁵

Abortion in Florida

Article I, section 23 of the State Constitution provides an express right to privacy. The Florida Supreme Court has recognized that this constitutional right to privacy “is clearly implicated in a woman's decision whether or not to continue her pregnancy.”⁶

In *In re T.W.*, the Florida Supreme Court determined that:

[p]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests. . . .

Under our Florida Constitution, the state's interest becomes compelling upon viability. . . . Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures.⁷

The Florida Supreme Court recognized that after viability, the state can regulate termination in the interest of the unborn child as long as the mother's health is not in jeopardy.⁸

¹ 410 U.S. 113 (1973).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ 505 U.S. 833 (1992).

⁶ *See In re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989) (holding that a parental consent statute was unconstitutional because it intrudes on a minor's right to privacy).

⁷ *Id.*, at 1193-94.

⁸ *Id.*

Under Florida law, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.⁹ A termination of pregnancy must be performed by a physician¹⁰ licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.¹¹

A termination of pregnancy may not be performed in the third trimester unless there is a medical necessity. Florida law defines the third trimester to mean the weeks of pregnancy after the 24th week.¹² Specifically, an abortion may not be performed within the third trimester unless two physicians certify in writing that, to a reasonable degree of medical probability, the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman. If a second physician is not available, one physician may certify in writing to the medical necessity for legitimate emergency medical procedures for termination of the pregnancy.¹³

Section 390.0111(4), F.S., provides that if a termination of pregnancy is performed during viability, the person who performs or induces the termination of pregnancy must use that degree of professional skill, care, and diligence to preserve the life and health of the fetus, which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. Viability is defined in this provision to mean that stage of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb. However, the woman's life and health constitute an overriding and superior consideration to the concern for the life and health of the fetus when such concerns are in conflict.

A termination of pregnancy in the third trimester must be performed in a hospital.¹⁴

Statistical Information on Live Births and Terminations of Pregnancy in Florida

In 2013, The Department of Health reported 214,405 live births in Florida.¹⁵ In that same year, the Agency for Health Care Administration (AHCA) reported 71,503 induced terminations of pregnancy.¹⁶ The information supplied by AHCA provides that

- 65,098 terminations were performed in the first trimester,
- 6,405 were performed in the second trimester, and
- None was performed in the third trimester or after 25 weeks.

⁹ Section 390.011(1), F.S.

¹⁰ Section 390.0111(2), F.S.

¹¹ Section 390.011(8), F.S.

¹² Section 390.011(9), F.S.

¹³ Section 390.0111(1), F.S.

¹⁴ Section 797.03(3), F.S.

¹⁵ Florida Department of Health, *Florida Vital Statistics Annual Reports – Births*, on file with the Senate Committee on Judiciary.

¹⁶ Agency for Health Care Administration, *Reported Induced Terminations of Pregnancy (ITOP) by Reason, By Weeks of Gestation, Calendar Year: 2013*, on file with the Senate Committee on Judiciary.

Reasons	Total	12 Weeks or fewer	13 to 24 Weeks	25 Weeks or more
Abortion Performed due to Emotional/Psychological Health of the Mother	85	35	50	0
Abortion Performed due to Incest	2	2	0	0
Abortion Performed due to Physical Health of Mother that is not Life Endangering	92	85	7	0
Abortion Performed due to Rape	240	232	8	0
Abortion Performed due to Serious Fetal Genetic Defect, Deformity, or Abnormality	493	62	431	0
Abortion Performed due to Social or Economic Reasons	5,338	4,967	371	0
Abortion Performed due to a Life Endangering Physical Condition	43	22	21	0
Elective Abortion	65,210	59,693	5,517	0
Florida Totals:	71,503	65,098	6,405	0

The statics on this chart were supplied by AHCA. See note 16.

Viability

Current law defines “viability” to mean that stage of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb.¹⁷

The gestational age at which a fetus is viable has occurred earlier in the pregnancy in recent years. The American Academy of Pediatrics, in 1935, chose to define a premature infant as one who weighed less than 2,500 grams at birth and no consideration was given to gestational age. No minimum weight for viability was established, but 1,250 grams was often used and corresponded to an estimated gestational age of 28 weeks. As new medical advances have become increasingly mainstream, the medical definition of viability has continued to evolve as well. With additional medical advancements, infants born at 23 and 24 weeks’ estimated gestational age are surviving more frequently¹⁸

Determining the viability of a fetus is not an exact science and depends on each pregnant woman and fetus. Many factors, including gestational age, weight, sex, and whether it is a single fetus, are considered in determining viability now and in the future as neonatal and medical care advances.^{19,20}

¹⁷ Section 390.0111(4), F.S.

¹⁸ Bonnie Hope Arzuaga, MD and Ben Hokew Lee, MD, MPH, MSCR, *See Limits of Human Viability in the United States: A Medicolegal Review*, PEDIATRICS PERSPECTIVES, November 1, 2011, <http://pediatrics.aappublications.org/content/128/6/1047.full> (Last visited April 6, 2014)

¹⁹ Wolters Kluwer Health, Limit of Viability, UPTODATE, <http://www.uptodate.com/contents/limit-of-viability#H8144843>, (Last visited April 7, 2014).

²⁰ The U.S. Department of Health and Human Services, Eunice Kennedy Shriver National Institute of Child Health and Human Development, Pregnancy and Perinatology Branch-supported researchers developed a tool using data from the Neonatal Research Network (NRN) that shows outcome trends for infants born at extremely preterm gestations.

Twenty-one states place limits on abortions after the fetus is viable. Generally, exceptions are made when the life and health of the women is at risk.²¹

Documenting Gestational Age

The Agency for Health Care Administration is responsible for regulating abortion clinics under ch. 390, F.S., and part II of ch. 408, F.S. Section 390.012, F.S., requires the agency to adopt rules²² for, among other things, clinics that perform abortions after the first trimester of pregnancy. These rules must address physical facilities, supplies and equipment standards, personnel, medical screening and evaluation of patients, abortion procedures, recovery room standards, follow-up care, and adverse incident reporting. The statutes further prescribe specific components to be included within the rules relating to each of these subject areas.

Within rules relating to medical screening and evaluation of patients, the rules must, among other things, require that the physician is responsible for estimating the gestational age of the fetus based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age and shall write the estimate in the patient's medical history. The physician is also required to keep original prints of each ultrasound examination in the patient's medical history file.

III. Effect of Proposed Changes:

The bill prohibits abortions once a physician has determined that, in reasonable medical judgment, a fetus is viable in the same manner as abortions are prohibited during the third trimester of pregnancy. This provides for comparable treatment as medical advances allow the life of a fetus to be sustainable outside the womb at an earlier point of gestation than the third trimester. The bill leaves in place the current prohibition on performing abortions during the third trimester.

Definitions

Section 1

The bill defines the term "reasonable medical judgment" as a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and treatment possibilities with respect to the medical conditions involved.

The term "viable" or "viability" is redefined and moved from another section of law²³ into the definitions section for applicability to the entire ch. 390, F.S. Under the bill, "viable" or "viability" means the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.

²¹ These states include Arizona, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Ohio, Tennessee, Utah, Washington, Wisconsin, and Wyoming. See Guttmacher Institute State Policies in Brief, *State Policies on Later Abortions*, April 1, 2014, found at: http://www.guttmacher.org/statecenter/spibs/spib_PLTA.pdf (Last visited April 6, 2014).

²² These rules are found in Rule 59A-9, F.A.C.

²³ Section 390.0111(4), F.S.

“Standard medical measure” is defined in the bill to mean the medical care that a physician would provide based on the particular facts of the pregnancy, the information available to the physician, and the technology reasonably available in a hospital, as defined in s. 395.002, F.S., with an obstetrical department, to preserve the life and health of the fetus, with or without temporary artificial life sustaining support, if the fetus were born at the same stage of fetal development.

Termination of Pregnancy in the Third Trimester and During Viability

Sections 2 and 3

The bill establishes the same prohibitions and conditions for performing an abortion in the third trimester of pregnancy and once a fetus achieves viability. The medical exceptions that allow a physician to perform an abortion in the third trimester of pregnancy are modified and are consistent with the medical exceptions established during viability.

The bill authorizes a termination of pregnancy in the third trimester or during viability when two physicians certify in writing that, in reasonable medical judgment, the termination is necessary to save the pregnant woman’s life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition. If a second physician is not available, the physician may certify in writing to the medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman’s life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition.

The bill specifies a standard of care when a termination of pregnancy occurs during viability that parallels the standard of care required when a termination of pregnancy occurs in the third trimester. The physician performing the abortion must exercise the same degree of professional skill, care, and diligence to preserve the life and health of the fetus which the physician would be required to exercise in order to preserve the life and health of a fetus intended to be born and not aborted. Further, if preserving the life and health of the fetus conflicts with preserving the life and health of the woman, the physician must consider preserving the woman’s life and health the overriding and superior concern.

Section 4

This section amends s. 797.03, F.S., to prohibit a person from performing an abortion on a person during viability in a facility other than in a hospital. A person who wilfully violates this provision is guilty of a misdemeanor of the second degree, punishable by a definite term of imprisonment not exceeding 60 days and subject to a fine of up to \$500.

Determination of Viability

Section 3

Before terminating a pregnancy, a physician must determine, in reasonable medical judgment, whether the fetus has achieved viability. At a minimum, the physician must perform a medical examination of the pregnant woman and, to the maximum extent possible through reasonably

available tests and the ultrasound,²⁴ an examination of the fetus. The physician must document in the pregnant woman's medical file his or her determination and the method, equipment, fetal measurements, and any other information used to determine the viability of the fetus.

Penalties

Section 2

The penalties for violating the bill's provisions pertaining to termination of pregnancies during viability in s. 390.01112, F.S., are similar to those for violating the provisions pertaining to termination of pregnancies during the third trimester in s. 390.0111, F.S.

Specifically, the bill provides that a person who willfully performs, or actively participates in, a termination of pregnancy in violation of the requirements of s. 390.01112, F.S., commits a felony of the third degree. If the woman dies as a result of this act, the person commits a felony of the second degree. A felony of the third degree is punishable by a term of imprisonment not exceeding 5 years and may incur a fine of up to \$5,000. A felony of the second degree is punishable by a term of imprisonment not exceeding 15 years and may incur a fine of up to \$10,000.

Section 5

This section provides for severability and reversion. If any provision of the bill or its application to any person or circumstance is held invalid, then other provisions which can be given effect are to be given effect. Notwithstanding that, if s. 390.01112, F.S., governing the termination of pregnancies during viability, is held unconstitutional and severed, then the amendments in this act to the other provisions of law are repealed and will revert to the law as it existed on January 1, 2014.

The effective date of this act is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁴ Current law requires an ultrasound to be performed before an abortion may be performed. *See* s. 390.0111(3)(a)1.b., F.S.

D. Other Constitutional Issues:

Roe v. Wade, was decided by the U.S. Supreme Court in 1973.²⁵ Using strict scrutiny, the court determined that a woman’s right to terminate a pregnancy is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.²⁶ Further, the court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.²⁷ The court established the trimester framework for the regulation of termination – holding that in the third trimester, a state could prohibit termination to the extent that the woman’s life or health was not at risk.²⁸

Later, in 1992, in *Planned Parenthood v. Casey*, the U.S. Supreme Court, while upholding the fundamental holding of *Roe*, recognized that medical advancement could shift determinations of fetal viability away from the trimester framework.²⁹

Article I, Section 23 of the State Constitution provides an express right to privacy. The Florida Supreme Court has recognized that an individual’s constitutional right to privacy “is clearly implicated in a woman’s decision whether or not to continue her pregnancy.”³⁰

In *In re T.W.*, the Florida Supreme Court determined that:

[p]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests. . . . Under our Florida Constitution, the state’s interest becomes compelling upon viability. . . . Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures.

The Florida Supreme Court recognized that after viability, the state can regulate termination in the interest of the unborn child as long as the mother’s health is not in jeopardy.³¹

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

None.

²⁵ 410 U.S. 113 (1973).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ 505 U.S. 833 (1992).

³⁰ See *In re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989) (holding that a parental consent statute was unconstitutional because it intrudes on a minor’s right to privacy).

³¹ *Id.*

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 390.011, 390.0111, and 797.03.

This bill creates section 390.01112 of the Florida Statutes.

This bill creates an unnumbered section of the Florida Statutes.

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

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

CS by Health Policy on April 1, 2014:

The CS defines the term “reasonable medical judgment.” The CS requires a physician to use reasonable medical judgment, as defined, when determining:

- Whether a fetus is viable, in lieu of “good faith medical judgment”; and,
- Whether a woman’s life and health is in sufficient danger to require a termination of pregnancy in either the third trimester or after the fetus is viable, in lieu of a reasonable degree of medical probability.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Flores

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1 A bill to be entitled
 2 An act relating to the termination of pregnancies;
 3 amending s. 390.011, F.S.; defining the terms
 4 "reasonable medical judgment" and "standard medical
 5 measure" and redefining the term "viability"; amending
 6 s. 390.0111, F.S.; revising the circumstances under
 7 which a pregnancy in the third trimester may be
 8 terminated; providing the standard of medical care for
 9 the termination of a pregnancy during the third
 10 trimester; providing criminal penalties for a
 11 violation of s. 390.01112, F.S.; authorizing
 12 administrative discipline for a violation of s.
 13 390.01112, F.S., by certain licensed professionals;
 14 creating s. 390.01112, F.S.; prohibiting the
 15 termination of a viable fetus; providing exceptions;
 16 requiring a physician to perform certain examinations
 17 to determine the viability of a fetus; providing the
 18 standard of care for the termination of a viable
 19 fetus; amending s. 797.03, F.S.; prohibiting an
 20 abortion of a viable fetus outside of a hospital;
 21 providing for severability; providing for a contingent
 22 future repeal and reversion of law; providing an
 23 effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Present subsection (9) of section 390.011,
 28 Florida Statutes, is redesignated as subsection (11) and new
 29 subsections (9), (10) and (12) are added to that section, to

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30 read:
 31 390.011 Definitions.—As used in this chapter, the term:
 32 (9) "Reasonable medical judgment" means a medical judgment
 33 that would be made by a reasonably prudent physician,
 34 knowledgeable about the case and treatment possibilities with
 35 respect to the medical conditions involved.
 36 (10) "Standard medical measure" means the medical care that
 37 a physician would provide based on the particular facts of the
 38 pregnancy, the information available to the physician, and the
 39 technology reasonably available in a hospital, as defined in s.
 40 395.002, with an obstetrical department, to preserve the life
 41 and health of the fetus, with or without temporary artificial
 42 life sustaining support, if the fetus were born at the same
 43 stage of fetal development.
 44 (12) "Viable" or "viability" means the stage of fetal
 45 development when the life of a fetus is sustainable outside the
 46 womb through standard medical measures.
 47 Section 2. Subsections (1), (4), (10), and (13) of section
 48 390.0111, Florida Statutes, are amended to read:
 49 390.0111 Termination of pregnancies.—
 50 (1) TERMINATION IN THIRD TRIMESTER; WHEN ALLOWED.—No
 51 termination of pregnancy shall be performed on any human being
 52 in the third trimester of pregnancy unless one of the following
 53 conditions is met:
 54 (a) Two physicians certify in writing ~~to the fact that, in~~
 55 reasonable medical judgment to a reasonable degree of medical
 56 probability, the termination of the pregnancy is necessary to
 57 save the pregnant woman's life or avert a serious risk of
 58 substantial and irreversible physical impairment of a major

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59 bodily function of the pregnant woman other than a psychological
 60 condition. or preserve the health of the pregnant woman, or

61 (b) The physician certifies in writing that, in reasonable
 62 medical judgment, there is a to the medical necessity for
 63 legitimate emergency medical procedures for termination of the
 64 pregnancy to save the pregnant woman's life or avert a serious
 65 risk of imminent substantial and irreversible physical
 66 impairment of a major bodily function of the pregnant woman
 67 other than a psychological condition in the third trimester, and
 68 another physician is not available for consultation.

69 (4) STANDARD OF MEDICAL CARE TO BE USED IN THIRD TRIMESTER
 70 DURING VIABILITY.-If a termination of pregnancy is performed in
 71 the third trimester, the physician performing during viability,
 72 no person who performs or induces the termination of pregnancy
 73 must exercise the same shall fail to use that degree of
 74 professional skill, care, and diligence to preserve the life and
 75 health of the fetus which the physician such person would be
 76 required to exercise in order to preserve the life and health of
 77 a any fetus intended to be born and not aborted. However, if
 78 preserving the life and health of the fetus conflicts with
 79 preserving the life and health of the pregnant woman, the
 80 physician must consider preserving the woman's life and health
 81 the overriding and superior concern "Viability" means that stage
 82 of fetal development when the life of the unborn child may with
 83 a reasonable degree of medical probability be continued
 84 indefinitely outside the womb. Notwithstanding the provisions of
 85 this subsection, the woman's life and health shall constitute an
 86 overriding and superior consideration to the concern for the
 87 life and health of the fetus when such concerns are in conflict.

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88 (10) PENALTIES FOR VIOLATION.-Except as provided in
 89 subsections (3), (7), and (12):

90 (a) Any person who willfully performs, or actively
 91 participates in, a termination of pregnancy ~~procedure~~ in
 92 violation of the requirements of this section or s. 390.01112
 93 commits a felony of the third degree, punishable as provided in
 94 s. 775.082, s. 775.083, or s. 775.084.

95 (b) Any person who performs, or actively participates in, a
 96 termination of pregnancy ~~procedure~~ in violation of ~~the~~
 97 ~~provisions of~~ this section or s. 390.01112 which results in the
 98 death of the woman commits a felony of the second degree,
 99 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

100 (13) FAILURE TO COMPLY.-Failure to comply with the
 101 requirements of this section or s. 390.01112 constitutes grounds
 102 for disciplinary action under each respective practice act and
 103 under s. 456.072.

104 Section 3. Section 390.01112, Florida Statutes, is created
 105 to read:

106 390.01112 Termination of pregnancies during viability.-

107 (1) No termination of pregnancy shall be performed on any
 108 human being if the physician determines that, in reasonable
 109 medical judgment, the fetus has achieved viability, unless:

110 (a) Two physicians certify in writing that, in reasonable
 111 medical judgment, the termination of the pregnancy is necessary
 112 to save the pregnant woman's life or avert a serious risk of
 113 substantial and irreversible physical impairment of a major
 114 bodily function of the pregnant woman other than a psychological
 115 condition; or

116 (b) The physician certifies in writing that, in reasonable

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117 medical judgment, there is a medical necessity for legitimate
 118 emergency medical procedures for termination of the pregnancy to
 119 save the pregnant woman's life or avert a serious risk of
 120 imminent substantial and irreversible physical impairment of a
 121 major bodily function of the pregnant woman other than a
 122 psychological condition, and another physician is not available
 123 for consultation.

124 (2) Before performing a termination of pregnancy, a
 125 physician must determine if the fetus is viable by, at a
 126 minimum, performing a medical examination of the pregnant woman
 127 and, to the maximum extent possible through reasonably available
 128 tests and the ultrasound required under s. 390.0111(3), an
 129 examination of the fetus. The physician must document in the
 130 pregnant woman's medical file the physician's determination and
 131 the method, equipment, fetal measurements, and any other
 132 information used to determine the viability of the fetus.

133 (3) If a termination of pregnancy is performed during
 134 viability, the physician performing the termination of pregnancy
 135 must exercise the same degree of professional skill, care, and
 136 diligence to preserve the life and health of the fetus that the
 137 physician would be required to exercise in order to preserve the
 138 life and health of a fetus intended to be born and not aborted.
 139 However, if preserving the life and health of the fetus
 140 conflicts with preserving the life and health of the woman, the
 141 physician must consider preserving the woman's life and health
 142 the overriding and superior concern.

143 Section 4. Subsection (3) of section 797.03, Florida
 144 Statutes, is amended to read:

145 797.03 Prohibited acts; penalties.—

588-03595-14 2014918c1

146 (3) It is unlawful for any person to perform or assist in
 147 performing an abortion on a person during viability or in the
 148 third trimester other than in a hospital.

149 Section 5. Severability and reversion.—

150 (1) If any provision of this act or its application to any
 151 person or circumstance is held invalid, the invalidity does not
 152 affect other provisions or applications of this act which can be
 153 given effect without the invalid provision or application, and
 154 to this end the provisions of this act are severable.

155 (2) Notwithstanding subsection (1), if s. 390.01112,
 156 Florida Statutes, is held unconstitutional and severed by a
 157 court having jurisdiction, the amendments made by this act to s.
 158 390.011, Florida Statutes, and subsections (4), (10), and (13)
 159 of s. 390.0111, Florida Statutes, will be repealed and will
 160 revert to the law as it existed on January 1, 2014.

161 Section 6. This act shall take effect July 1, 2014.

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 1060

INTRODUCER: Senator Evers

SUBJECT: Code of Student Conduct

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Hand</u>	<u>Klebacha</u>	<u>ED</u>	Favorable
3.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting

I. Summary:

SB 1060 provides that students are not subject to discipline for simulating a firearm or weapon while playing or wearing clothing or accessories that depict a firearm or weapon or expressing an opinion on Second Amendment rights. The bill defines simulating a firearm or weapon while playing to include:

- Brandishing a partially consumed pastry or other food item as a firearm or weapon;
- Possessing a toy firearm or weapon that is 2 inches or less in overall length;
- Possessing a toy firearm or weapon made of plastic snap-together building blocks;
- Using a finger or hand to simulate a firearm or weapon;
- Vocalizing sounds of an imaginary firearm or weapon;
- Drawing a picture of, or possessing an image of, a firearm or weapon; or
- Using a pencil, pen, or other writing or drawing utensil to simulate a firearm or weapon.

The bill preserves the authority of district school boards to discipline students when simulating a firearm or weapon substantially disrupts student learning, cause's bodily harm to another person, or causes reasonable fear of bodily harm. Consequences imposed upon a student must be proportionate to the severity of the infraction and consistent with school board policies for similar infractions. If a student is disciplined, the school must phone the student's parent.

Disciplinary actions involving student clothing or accessories must be addressed according to the statutorily prescribed interventions for dress code violations, unless wearing the clothing item or accessory causes a substantial disruption to student learning. If it does, the infraction may be addressed in a manner that is consistent with school board policies for similar infractions.

II. Present Situation:

Gun and Weapon Free Schools

Generally speaking, the disciplinary policies of public schools nationwide include measures for deterring student firearm and weapon possession in schools by imposing consistent and firm consequences for such behavior.¹ In recent years, news reports from across the country describe several incidents in which penalties applied to actual student firearm and weapon possession, such as suspension or expulsion, were imposed on students for simulating a firearm or weapon while playing or wearing clothing or accessories depicting firearms or for supporting firearm rights.² A number of these incidents involved children under the age of 10 years old.³ Examples of these incidents include students who:

- Chewed a breakfast pastry into the shape of a gun;⁴
- Possessed a miniature gun keychain;⁵
- Possessed a tiny Lego action figure gun or built a gun with Lego blocks;⁶
- Used a finger as an imaginary gun and vocalized the sound of a gun;⁷
- Drew a picture of a gun or a person holding a gun;⁸ and
- Wore a National Rifle Association T-shirt to school.⁹

These incidents have fueled concerns regarding how best to balance the difficult job of maintaining an orderly and safe school environment with the need to exercise discretion when addressing student misconduct.¹⁰

¹ National Association of School Psychologists, *Zero Tolerance and Alternative Strategies: A Fact Sheet for Educators and Policy Makers*. http://www.nasponline.org/resources/factsheets/zt_fs.aspx.

² Gavin Aronson, *Blam! These Tykes Got Busted for "Guns" Made of Legos, Pop-Tarts, and Paper*, Mother Jones, (March 8, 2013). <http://www.motherjones.com/politics/2013/03/zero-tolerance-guns-schools-newtown>.

³ *Id.*

⁴ Donna St. George, *Boy Suspended for Chewing Breakfast Pastry into a Gun Shape Will Get Hearing* (September 13, 2013), http://articles.washingtonpost.com/2013-09-13/local/42025625_1_hearing-examiner-pastry-school-officials.

⁵ NBC 10, Cranston, RI, *7th Grader Suspended for Having Gun Keychain* (September 27, 2013). <http://www.turto10.com/story/23551467/7th-grader-suspended-for-having-gun-keychain>.

⁶ ABC 40, Springfield, MA, *Toy Gun Causes Disturbance on Palmer Elementary School Bus* (May 24th, 2013), <http://www.wggb.com/2013/05/24/toy-gun-causes-disturbance-on-palmer-elementary-school-bus/>. Todd Starnes, *Child Faces Suspension for Making Lego Gun*, Fox News (January 29, 2013).

⁷ Fox News, *Florida Boy, 8, Suspended From School After Using Finger As Imaginary Gun* (October 2, 2013), <http://www.foxnews.com/us/2013/10/02/florida-boy-8-suspended-from-school-after-using-finger-as-pretend-gun/>. This student's suspension was reversed by the school board. WKMG Local 6, Orlando, FL, *Pretend Gun Suspension Reversed*, (October 15, 2013), <http://www.clickorlando.com/news/pretend-gun-suspension-reversed/-/1637132/22456002/-/4tba6y/-/index.html>.

⁸ Eric Owens, *Principal Threatens to Expel Third Grader Over These Awesome Drawings*, The Daily Caller (November 4, 2013), <http://dailycaller.com/2013/11/04/principal-threatens-to-expel-third-grader-over-these-awesome-drawings/> (last visited March 21, 2014). CBS News, *13-Year-Old Suspended For Doodling Gun* (February 11, 2009), http://www.cbsnews.com/2100-201_162-3197492.html. Fox News, *Second Grade Student Suspended for Drawing Stick Figure Firing Gun* (October 21, 2007), <http://www.foxnews.com/story/2007/10/21/second-grade-student-suspended-for-drawing-stick-figure-firing-gun/>.

⁹ Pam Ramsey, *Student Charged After Refusing To Remove NRA Shirt*, Huffington Post (April 21, 2013), http://www.huffingtonpost.com/2013/04/21/student-nra-shirt_n_3128715.html.

¹⁰ USA Today, *Doctors Oppose Automatic School Suspensions, Expulsions* (February 25, 2013) <http://www.usatoday.com/story/news/nation/2013/02/25/automatic-school-suspensions-not-ideal-doctors-group>

Zero Tolerance Policies

Federal law requires states receiving federal funds under the No Child Left Behind Act of 2001 to have in effect a state law requiring local education agencies (LEA)¹¹ to expel a student from school for a minimum of 1 year and refer the student to the criminal justice or juvenile justice system if the LEA determines that the student brought a firearm to a school or possessed a firearm at a school.¹² State law must allow the chief administering officer of the LEA to modify the expulsion requirement for a student on a case-by-case basis.¹³ A state is not prevented from allowing a LEA to provide educational services to an expelled student in an alternative educational setting.¹⁴

Florida law requires each district school board to adopt zero tolerance policies which, among other things, requires that a student which possesses a firearm at school or brings a firearm or weapon to school, a school function, or onto school-sponsored transportation, be expelled from the student's regular school for a minimum of 1 year and referred to the criminal justice or juvenile justice system.¹⁵ Florida law defines the terms "firearm" and "weapon" as follows:

- "Firearm" means "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime."¹⁶
- "Weapon" means "any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife."¹⁷

Florida law provides a district school superintendent may consider the 1-year expulsion requirement on a case-by-case basis and request that the school board modify the requirement by assigning the student to a disciplinary program or second chance school if such modification is in the best interest of the student and the school system.¹⁸ Additionally, Florida law provides district school boards with the discretion to provide continuing educational services to an expelled student in an alternative educational setting.¹⁹

Florida law states that the purpose of zero tolerance policies is to protect students and staff from serious threats to school safety and the policies should not be applied to petty acts of misconduct

[says/1943997/](https://www.nationalreview.com/nrd/articles/360840/prohibition-childhood#/). Joshua Dunn, *The Prohibition of Childhood*, National Review (October 28, 2013), [https://www.nationalreview.com/nrd/articles/360840/prohibition-childhood#!](https://www.nationalreview.com/nrd/articles/360840/prohibition-childhood#/)

¹¹ See 34 C.F.R. s. 77.1. The term "local educational agency" means a public board of education or other public authority legally constituted within a State to administratively control or direct, or perform service functions for, public schools. *Id.*

¹² See 20 U.S.C. s. 7151 (January 8, 2002).

¹³ 20 U.S.C. s. 7151(b)(1).

¹⁴ 20 U.S.C. s. 7151(b)(2).

¹⁵ Sections 1006.13, 1006.07(2)(g) and (l), F.S.,

¹⁶ Section 790.001(6), F.S.

¹⁷ Section 790.001(13), F.S. School boards must adhere to these definitions when determining punishments for school-related firearms and weapons infractions. Sections 1006.07(2)(g) and 1006.13(3)(a), F.S.

¹⁸ Section 1006.13(3), F.S., (flush-left provision at end of subsection).

¹⁹ *Id.*

and misdemeanors, including, but not limited to, minor fights or disturbances.²⁰ Among other things, each district school board's zero tolerance policy must define acts that pose a serious threat to school safety and petty acts of misconduct.²¹

The Florida Department of Education's policy statement on zero tolerance policies provides that it "is incumbent upon districts to use discretion and take a "common sense" approach to school discipline. District administrators must investigate and take into consideration mitigating circumstances (on a case-by-case basis) when determining appropriate disciplinary responses to student misconduct."²²

Student Codes of Conduct

Each district school board must adopt a code of student conduct which includes consistent policies and specific grounds for disciplinary action, including in-school suspension, out-of-school suspension, expulsion, disciplinary actions for possession or use of alcohol on school property or while attending a school function, or for the illegal use, sale, or possession of controlled substances.²³ Among other things, the code must include notice of disciplinary policies regarding student firearm and weapon possession.²⁴

Student codes of conduct must also include an explanation of student responsibilities regarding appropriate dress, respect for self and others, and the role that appropriate dress and respect for self and others has on an orderly learning environment.²⁵ The law prescribes an escalating series of interventions which school boards must apply when addressing dress code violations:

- For a first offense, a student must be given a verbal warning and the school principal must call the student's parent or guardian.
- For a second offense, the student is ineligible to participate in any extracurricular activity for a period of time of up to 5 days and the school principal must meet with the student's parent or guardian.
- For a third or subsequent offense, a student must receive an in-school suspension for up to 3 days, the student is ineligible to participate in extracurricular activities for up to 30 days, and the school principal must call the student's parent or guardian and send the parent or guardian a written letter regarding the student's in-school suspension and ineligibility to participate in extracurricular activities.²⁶

Student codes of conduct must be distributed to teachers, school personnel, students, and parents at the beginning of each school year.²⁷

²⁰ Section 1006.13(1), F.S.

²¹ Section 1006.13(2)(b) and (c), F.S.

²² Florida Department of Education, *Florida Department of Education's Position on Zero Tolerance*.

http://www.fldoe.org/safeschools/zero_tolerance.asp

²³ Section 1006.07(2)(a), F.S.

²⁴ Section 1006.07(2)(g) and (l), F.S.

²⁵ Section 1006.07(2)(d), F.S.

²⁶ *Id.*

²⁷ Section 1006.07(2), F.S.

III. Effect of Proposed Changes:

SB 1060 provides that public school students are not subject to discipline, including referral to the criminal justice or juvenile justice system, for:

- Simulating a firearm or weapon while playing;
- Wearing clothing or accessories that depict a firearm or weapon; or
- Expressing an opinion on Second Amendment rights²⁸.

The bill defines simulating a firearm or weapon while playing to include:

- Brandishing a partially consumed pastry or other food item to simulate a firearm or weapon;
- Possessing a toy firearm or weapon that is two inches or less in overall length;
- Possessing a toy firearm or weapon made of plastic snap-together building blocks;
- Using a finger or hand to simulate a firearm or weapon;
- Vocalizing sounds of an imaginary firearm or weapon;
- Drawing a picture of, or possessing an image of, a firearm or weapon; or
- Using a pencil, pen, or other writing or drawing utensil to simulate a firearm or weapon.

The bill preserves district school board authority to discipline students when simulating a firearm or weapon substantially disrupts student learning, causes bodily harm to another person, or causes reasonable fear of bodily harm. In such cases, the severity of any consequences imposed upon a student must be proportionate to the severity of the infraction and consistent with school board policies for similar infractions. If a student is disciplined for such conduct, the school principal or his or her designee must call the student's parent. These provisions provide flexibility to school officials to address conduct that is truly disruptive.

Disciplinary actions involving student clothing or accessories must be addressed according to the statutorily prescribed interventions for dress code violations, unless the wearing of clothing or accessory causes a substantial disruption to student learning. If so, the infraction may be addressed in a manner that is consistent with district school board policies for similar infractions.

The bill recognizes the right of a public school to adopt a school uniform policy. If a school does require students to wear school uniforms, students of the school may not wear clothing or accessories which depict firearms or other weapons.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁸ The Second Amendment of the U.S. Constitution states that "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., Amend. 2.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1006.07 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Evers

2-00165A-14

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1 A bill to be entitled
 2 An act relating to the code of student conduct;
 3 amending s. 1006.07, F.S.; providing that simulating a
 4 firearm or weapon while playing or wearing certain
 5 clothing or accessories is not grounds for
 6 disciplinary action or referral to the criminal
 7 justice or juvenile justice system; providing actions
 8 that constitute simulating a firearm or weapon while
 9 playing; providing criteria for determining whether
 10 certain student conduct warrants disciplinary action;
 11 providing criteria for determining appropriate
 12 consequences for such conduct; providing an effective
 13 date.
 14
 15 Be It Enacted by the Legislature of the State of Florida:
 16
 17 Section 1. Paragraph (g) of subsection (2) of section
 18 1006.07, Florida Statutes, is amended to read:
 19 1006.07 District school board duties relating to student
 20 discipline and school safety.—The district school board shall
 21 provide for the proper accounting for all students, for the
 22 attendance and control of students at school, and for proper
 23 attention to health, safety, and other matters relating to the
 24 welfare of students, including:
 25 (2) CODE OF STUDENT CONDUCT.—Adopt a code of student
 26 conduct for elementary schools and a code of student conduct for
 27 middle and high schools and distribute the appropriate code to
 28 all teachers, school personnel, students, and parents, at the
 29 beginning of every school year. Each code shall be organized and

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30 written in language that is understandable to students and
 31 parents and shall be discussed at the beginning of every school
 32 year in student classes, school advisory council meetings, and
 33 parent and teacher association or organization meetings. Each
 34 code shall be based on the rules governing student conduct and
 35 discipline adopted by the district school board and shall be
 36 made available in the student handbook or similar publication.
 37 Each code shall include, but is not limited to:
 38 (g) Notice that the possession of a firearm or weapon as
 39 defined in chapter 790 by any student while the student is on
 40 school property or in attendance at a school function is grounds
 41 for disciplinary action and may also result in criminal
 42 prosecution. Simulating a firearm or weapon while playing or
 43 wearing clothing or accessories that depict a firearm or weapon
 44 or expressing an opinion regarding a right guaranteed by the
 45 Second Amendment to the United States Constitution is not
 46 grounds for disciplinary action or referral to the criminal
 47 justice or juvenile justice system under this section or s.
 48 1006.13. Simulating a firearm or weapon while playing includes,
 49 but is not limited to:
 50 1. Brandishing a partially consumed pastry or other food
 51 item to simulate a firearm or weapon.
 52 2. Possessing a toy firearm or weapon that is 2 inches or
 53 less in overall length.
 54 3. Possessing a toy firearm or weapon made of plastic snap-
 55 together building blocks.
 56 4. Using a finger or hand to simulate a firearm or weapon.
 57 5. Vocalizing sounds of an imaginary firearm or weapon.
 58 6. Drawing a picture or possessing an image of a firearm or

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59 weapon.

60 7. Using a pencil, pen, or other writing or drawing utensil
61 to simulate a firearm or weapon.

62
63 However, a student may be subject to disciplinary action if
64 simulating a firearm or weapon while playing substantially
65 disrupts student learning, causes bodily harm to another person,
66 or places another person in reasonable fear of bodily harm. The
67 severity of consequences imposed upon a student, including
68 referral to the criminal justice or juvenile justice system,
69 must be proportionate to the severity of the infraction and
70 consistent with district school board policies for similar
71 infractions. If a student is disciplined for such conduct, the
72 school principal or his or her designee must call the student's
73 parent. Disciplinary action resulting from a student's clothing
74 or accessories shall be determined pursuant to paragraph (d)
75 unless the wearing of the clothing or accessory causes a
76 substantial disruption to student learning, in which case the
77 infraction may be addressed in a manner that is consistent with
78 district school board policies for similar infractions. This
79 paragraph does not prohibit a public school from adopting a
80 school uniform policy.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1008

INTRODUCER: Senator Stargel

SUBJECT: Article V Constitutional Conventions

DATE: April 9, 2014

REVISED: 04/07/14

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.			AP	
3.			RC	

I. Summary:

SB 1008 creates the “Article V Constitutional Convention Act” and establishes a framework for selecting and authorizing delegates to attend an amendments convention for the purpose of proposing amendments to the United States Constitution.

The bill provides that:

- Delegates and alternate delegates will be appointed by the Senate and House of Representatives pursuant to joint rules adopted by both chambers;
- Delegates must execute a written oath stating that the delegate will support the U.S. Constitution and the State Constitution and abide by any instructions adopted by the Legislature;
- The Legislature must adopt a concurrent resolution once delegates are appointed and provide instructions to the delegates regarding the rules of procedure and relevant matters relating to the Article V convention;
- A delegate who votes outside the scope of the instructions is subject to criminal penalties and forfeits his or her appointment and the vote is void; and
- An advisory group shall be appointed to advise the delegates on whether certain actions would violate the instructions established by the Legislature.

II. Present Situation:

Methods of Amending the U.S. Constitution

Article V of the United States Constitution provides two methods for proposing amendments to the Constitution. The first method authorizes Congress to propose amendments to the states which are approved by a two-thirds vote of both Houses of Congress.¹ Amendments approved in this manner do not require the President's signature and are transmitted to each state for ratification.² Starting with the Bill of Rights in 1789, Congress used this method to submit 33 amendments to the states. Of those 33 proposals, 27 amendments to the Constitution were approved by the states.³

The second method, which has never been used, requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures apply to Congress to call an amendments convention.⁴ Currently, 34 states would need to make applications to meet the two-thirds requirement to call an Article V Convention. Because an Article V amendments convention has never been conducted, what might actually occur procedurally or substantively is unclear.⁵

With the recent passage of a Michigan balanced budget memorial,⁶ it has been suggested that the requisite 34 states have now made application to Congress for an Article V amendments convention. Because some states have passed and rescinded their applications, the final count is unclear and will likely involve legal analysis by Congress as how to best proceed.

If an Article V amendments convention is called by Congress, there is nothing in Florida law or federal law giving guidance as to how delegates will be selected or what the scope of their authority will be. Because it is not known how delegates to the amendments convention will be apportioned, whether following a model similar to the Electoral College which is based on population, or an assignment based on the Senate model of two people per state, it is also not known how many delegates Florida will be entitled to send.

¹ U.S. CONST. Article V.

² U.S. National Archives and Records Administration, *The Constitutional Amendment Process*, <http://www.archives.gov/federal-register/constitution> (last visited February 4, 2014).

³ Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (July 9, 2012), <http://www.fas.org/sgp/crs/misc/R42589.pdf>.

⁴ U.S. CONST. Article V.

⁵ Article V further provides that the amendments shall become a part of the Constitution when ratified by the Legislatures of three-fourths of the states or by conventions in three-fourths of the states. This would require ratification by 38 states. Because Article V provides that the amendments become valid when ratified by three-fourths of the legislatures or conventions "as the one or the other Mode of Ratification may be proposed by the Congress," Congress may choose the method of ratification. With the exception of the 21st Amendment, which repealed the 18th Amendment and prohibition, Congress has sent all proposed amendments to the legislatures for ratification.

⁶ Stephan Dinan, *Constitutional conundrum: Michigan demand for a balanced budget could trigger amendment convention*, THE WASHINGTON TIMES, March 31, 2014, <http://www.washingtontimes.com/news/2014/mar/31/constitutional-conundrum-michigan-demand-for-a-bal/>; Barnini Chakraborty, *Did Michigan just trigger 'constitutional convention'? Bid gains steam*, FOX NEWS, April 2, 2014, <http://www.foxnews.com/politics/2014/04/02/rare-option-forcing-congress-to-meet-change-constitution-gains-momentum/>

III. Effect of Proposed Changes:

Purpose

This bill creates the “Article V Constitutional Convention Act” and establishes a framework for selecting and authorizing delegates to attend an amendments convention for the purpose of proposing amendments to the United States Constitution. The legislation is similar to a format adopted by Indiana for the same purpose.

Appointment of Delegates

The Senate and House of Representatives will appoint an equal number of delegates and alternate delegates by concurrent resolution pursuant to joint rules adopted by each chamber. It is presumed that Florida will have two delegates but authority is granted to appoint the number of delegates that the state is allocated.

If the Legislature is not in session at the time that delegates must be appointed, the Governor must call the Legislature into special session for the purpose of appointing the delegates.

To be appointed as a delegate or alternate delegate a person must receive, in each chamber, a vote of a majority of all the members elected to that chamber. At the time of appointment each alternate delegate will be paired with a delegate. An alternate delegate must act in the place of the paired delegate if the delegate is absent from the Article V convention or vacates the office.

The Legislature may recall a delegate or alternate delegate and replace that person at any time. If the Legislature is not in session when a vacancy needs to be filled, the Governor shall call a special session for that purpose.

Qualifications of Delegates and Alternate Delegates

A delegate or alternate delegate must:

- Reside in the state;
- Be a registered voter in the state; and
- Not be registered or required to be registered as a lobbyist under state law.

A person may not be a delegate if he or she holds a federal office.

Reimbursement of Expenses

Delegates serve without compensation but may be reimbursed for their per diem and travel expenses.

Oath of Office

Each delegate and alternate delegate is required to execute an oath in writing before exercising any function of that position. The oath provides that he or she will:

- Support the United States Constitution and the State Constitution:

- Faithfully abide by and execute any instructions adopted by the Legislature; and
- Otherwise faithfully discharge the duties of a delegate or alternate delegate.

The executed oath must be filed with the Secretary of State. After the oath is filed, the Governor will issue a commission to the delegate or alternate delegate.

Instructions

After delegates and alternate delegates are appointed, the Legislature shall adopt a concurrent resolution to provide instructions to the delegates and alternate delegates to provide instructions on the rules of procedure and any other matter relating to the convention that the Legislature deems necessary. Those instructions may be amended by the Legislature at any time by a concurrent resolution.

Votes Cast Outside the Scope of Instructions or Limits

A vote is void if a delegate or alternate delegate casts a vote at an Article V convention and the vote is:

- Outside the scope of the instructions established by the Legislature's concurrent resolution; or
- Outside the limits placed by the Legislature in its application calling for the Article V convention.

Status of Appointment

If a delegate or alternate delegate votes or attempts to vote outside the Legislature's instructions or the limits of the Legislature's application for a convention, the delegate or alternate forfeits his or her appointment. If the delegate forfeits an appointment for these reasons, the paired alternate delegate assumes the role of the delegate at the time that the forfeiture occurs.

Status of Application

If all of the delegates and alternate delegates vote or attempt to vote outside the scope of the Legislature's instructions or outside the limits placed by the Legislature in its application for the constitutional convention, then the Legislature's application for the constitutional convention ceases to be a continuing application and is to be treated as having no effect.

Criminal Liability

If a delegate or alternate knowingly or intentionally votes or attempts to vote outside the scope of the instructions or limits as discussed above, he or she commits a third degree felony, which is punishable by a term of imprisonment that does not exceed 5 years and a fine that does not exceed \$5,000.

Advisory Group

Membership and Policies

The bill establishes an Article V convention advisory group. The advisory group consists of the Chief Justice of the Supreme Court, who will serve as chair, an attorney appointed by the President of the Senate, and an attorney appointed by the Speaker of the House of Representatives. The group will meet at the call of the chair and establish policies and procedures that the group deems necessary to carry out the provisions of this bill.

Responsibilities

The advisory group is responsible to advise a delegate or alternate delegate, when asked by the delegate or alternate delegate, whether an action or attempt to take an action would:

- Violate the instructions established by the Legislature; or
- Exceed the limits placed by the Legislature in the application for an Article V convention on the subjects and amendments that may be considered by the convention.

The advisory group must render an advisory determination within 24 hours after receiving a request and must transmit a copy of its determination to the requester as expeditiously as possible.

Upon the request of the President of the Senate, the Speaker of the House, the Attorney General, or on its own motion, the advisory group shall advise the Attorney General whether there is reason to believe that a vote or attempt to vote has violated the instructions of the Legislature or the limits placed in the application for an amendments convention. The opinion may be issued without notice or an evidentiary proceeding or after a hearing conducted by the advisory group. The advisory determination must be rendered within 24 hours after the request and a copy of the opinion must be transmitted to the Attorney General as expeditiously as possible.

Revocation of Credentials

When the Attorney General receives an advisory determination stating that a vote or attempt to vote is a violation of the Legislature's instructions or exceeds the limits placed by the Legislature in the constitutional convention application, he or she must inform the delegates, alternate delegates, President of the Senate, Speaker of the House, and the Article V convention that:

- The vote or attempt to vote did not comply with Florida law and is void and has no effect; and
- The credentials of the delegate or alternate delegate who violated the instructions and limits are revoked.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although the bill establishes a framework for appointing delegates to an Article V Convention, the Legislature will need to establish joint rules governing the appointment of delegates at a later date.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 11.93, 11.931, 11.932, 11.933, 11.9331, 11.9332, 11.9333, 11.9334, 11.9335, 11.9336, 11.9337, 11.934, 11.9341, 11.9342, 11.9343, 11.9344, 11.9345, 11.935, 11.9351, and 11.9352.

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

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1 A bill to be entitled
 2 An act relating to Article V constitutional
 3 conventions; creating s. 11.93, F.S.; providing a
 4 short title; creating s. 11.931, F.S.; providing for
 5 applicability; creating s. 11.932, F.S.; providing
 6 definitions; creating s. 11.933, F.S.; establishing
 7 qualifications of delegates and alternate delegates to
 8 an Article V constitutional convention; creating s.
 9 11.9331, F.S.; providing for the appointment of
 10 delegates by the Legislature; creating s. 11.9332,
 11 F.S.; requiring majority vote approval in each chamber
 12 for the appointment of delegates; creating s. 11.9333,
 13 F.S.; authorizing the Legislature to recall a delegate
 14 and fill a vacancy; authorizing the Governor to call a
 15 special legislative session to fill a vacancy;
 16 creating s. 11.9334, F.S.; establishing a legislative
 17 method for appointments and recalls; creating s.
 18 11.9335, F.S.; providing for the reimbursement of
 19 delegates and alternate delegates for per diem and
 20 travel expenses; creating s. 11.9336, F.S.; requiring
 21 delegates and alternate delegates to execute a written
 22 oath of responsibilities; creating s. 11.9337, F.S.;
 23 providing for the filing of delegates' oaths and the
 24 issuance of commissions; creating s. 11.934, F.S.;
 25 providing for instructions to delegates and alternate
 26 delegates; creating s. 11.9341, F.S.; establishing
 27 duties of alternate delegates; creating s. 11.9342,
 28 F.S.; establishing circumstances under which a
 29 convention vote is declared void; creating s. 11.9343,

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30 F.S.; providing circumstances under which a delegate
 31 or alternate delegate's appointment is forfeited;
 32 creating s. 11.9344, F.S.; establishing circumstances
 33 under which the application to call an Article V
 34 convention ceases to be a continuing application and
 35 is deemed to have no effect; creating s. 11.9345,
 36 F.S.; providing penalties for a delegate or alternate
 37 delegate who votes or attempts to vote outside the
 38 scope of the Legislature's instructions or the limits
 39 of the call for a constitutional convention; creating
 40 ss. 11.935, 11.9351, and 11.9352, F.S.; establishing a
 41 delegate advisory group, its membership, duties, and
 42 responsibilities; providing an effective date.

43
 44 Be It Enacted by the Legislature of the State of Florida:

45
 46 Section 1. Section 11.93, Florida Statutes, is created to
 47 read:

48 11.93 Short title.—Sections 11.93-11.9352 may be cited as
 49 the "Article V Constitutional Convention Act."

50 Section 2. Section 11.931, Florida Statutes, is created to
 51 read:

52 11.931 Applicability.—Sections 11.93-11.9352 shall apply
 53 when an Article V convention is called for the purpose of
 54 proposing amendments to the Constitution of the United States.

55 Section 3. Section 11.932, Florida Statutes, is created to
 56 read:

57 11.932 Definitions.—As used in ss. 11.93-11.9352, the term:
 58 (1) "Alternate delegate" means an individual who is

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59 appointed as an alternate delegate as provided by law.
 60 (2) "Article V convention" means a convention called for by
 61 the states under Article V of the Constitution of the United
 62 States for the purpose of proposing amendments to the
 63 Constitution of the United States.
 64 (3) "Chamber" means either the Senate or the House of
 65 Representatives.
 66 (4) "Delegate" means an individual appointed to represent
 67 Florida at an Article V convention.
 68 (5) "Paired delegate" means the delegate with whom an
 69 alternate delegate is paired.
 70 Section 4. Section 11.933, Florida Statutes, is created to
 71 read:
 72 11.933 Qualifications of delegates and alternate
 73 delegates.—
 74 (1) To be appointed as a delegate or alternate delegate to
 75 an Article V convention, a person must:
 76 (a) Reside in this state.
 77 (b) Be a registered voter in this state.
 78 (c) Not be registered or required to be registered as a
 79 lobbyist under the laws of this state.
 80 (2) A person may not be appointed as a delegate if he or
 81 she holds a federal office.
 82 Section 5. Section 11.9331, Florida Statutes, is created to
 83 read:
 84 11.9331 Appointment of delegates by Legislature.—
 85 (1) Whenever an Article V convention is called, the Senate
 86 and House of Representatives shall appoint, under rules adopted
 87 jointly by the Senate and House of Representatives:

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88 (a) The number of delegates allocated to represent Florida.
 89 (b) An equal number of alternate delegates.
 90 (2) Unless otherwise established by the rules of procedure
 91 of an Article V convention, it is presumed that Florida has two
 92 delegates and two alternate delegates designated to represent
 93 the state.
 94 (3) If the Legislature is not in session when delegates
 95 must be appointed, the Governor shall call the Legislature into
 96 special session pursuant to s. 3(c), Art. III of the State
 97 Constitution for the purpose of appointing delegates and
 98 alternate delegates.
 99 Section 6. Section 11.9332, Florida Statutes, is created to
 100 read:
 101 11.9332 Appointment by majority vote of each chamber;
 102 pairing delegates and alternate delegates.—
 103 (1) To be appointed as a delegate or an alternate delegate,
 104 a person must receive, in each chamber, the vote of a majority
 105 of all the members elected to that chamber.
 106 (2) At the time of appointment, each alternate delegate
 107 must be paired with a delegate as provided by a concurrent
 108 resolution adopted by the Legislature.
 109 Section 7. Section 11.9333, Florida Statutes, is created to
 110 read:
 111 11.9333 Recall; filling a vacancy; special legislative
 112 session.—
 113 (1) The Legislature may, at any time, recall a delegate or
 114 alternate delegate and replace that delegate or alternate
 115 delegate with an individual appointed under ss. 11.93-11.9352.
 116 (2) The Legislature may, at any time, fill a vacancy in the

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117 office of delegate or alternate delegate with a person appointed
 118 under ss. 11.93-11.9352. If the Legislature is not in session
 119 when a vacancy occurs with respect to both a delegate and the
 120 paired alternate delegate, the Governor shall call the
 121 Legislature into special session pursuant to s. 3(c), Art. III
 122 of the State Constitution for the purpose of appointing a
 123 delegate and an alternate delegate to fill the vacancies.

124 Section 8. Section 11.9334, Florida Statutes, is created to
 125 read:
 126 11.9334 Method of appointment and recall.—The Legislature
 127 shall appoint or recall delegates or alternate delegates by
 128 concurrent resolution.

129 Section 9. Section 11.9335, Florida Statutes, is created to
 130 read:
 131 11.9335 Reimbursement of per diem and travel expenses.—A
 132 delegate or alternate delegate shall serve without compensation
 133 but may be reimbursed for per diem and travel expenses pursuant
 134 to s. 112.061.

135 Section 10. Section 11.9336, Florida Statutes, is created
 136 to read:
 137 11.9336 Oath.—Each delegate and alternate delegate shall,
 138 before exercising any function of the position, execute an oath
 139 in writing that the delegate or alternate delegate will:
 140 (1) Support the Constitution of the United States and the
 141 State Constitution.
 142 (2) Faithfully abide by and execute any instructions to
 143 delegates and alternate delegates adopted by the Legislature.
 144 (3) Otherwise faithfully discharge the duties of a delegate
 145 or alternate delegate.

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146 Section 11. Section 11.9337, Florida Statutes, is created
 147 to read:
 148 11.9337 Filing of oath; issuance of commission.—The
 149 executed oath of a delegate or alternate delegate shall be filed
 150 with the Secretary of State. After the oath is filed, the
 151 Governor shall issue a commission to the delegate or alternate
 152 delegate.

153 Section 12. Section 11.934, Florida Statutes, is created to
 154 read:
 155 11.934 Instructions to delegates.—
 156 (1) When delegates and alternate delegates are appointed,
 157 the Legislature shall adopt a concurrent resolution to provide
 158 instructions to the delegates and alternate delegates regarding
 159 the rules of procedure and any other matter relating to the
 160 Article V convention that the Legislature considers necessary.
 161 (2) The Legislature may amend the instructions at any time
 162 by concurrent resolution.

163 Section 13. Section 11.9341, Florida Statutes, is created
 164 to read:
 165 11.9341 Duties of alternate delegates.—An alternate
 166 delegate:
 167 (1) Shall act in the place of the paired delegate when the
 168 paired delegate is absent from the Article V convention.
 169 (2) Replaces the paired delegate if the alternate
 170 delegate's paired delegate vacates the office.

171 Section 14. Section 11.9342, Florida Statutes, is created
 172 to read:
 173 11.9342 Vote cast outside the scope of instructions or
 174 limits; status of vote.—A vote cast by a delegate or an

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175 alternate delegate at an Article V convention is void if the
176 vote is outside the scope of:

177 (1) The instructions established by a concurrent resolution
178 adopted pursuant to ss. 11.93-11.9352; or

179 (2) The limits placed by the Legislature in a concurrent
180 resolution or memorial that calls for an Article V convention
181 for the purpose of proposing one or more amendments to the
182 Constitution of the United States on the subjects and amendments
183 that may be considered by the Article V convention.

184 Section 15. Section 11.9343, Florida Statutes, is created
185 to read:

186 11.9343 Vote cast outside the scope of instructions or
187 limits; appointment forfeited.-

188 (1) A delegate or alternate delegate forfeits his or her
189 appointment by virtue of a vote or attempt to vote that is
190 outside the scope of:

191 (a) The instructions established by a concurrent resolution
192 adopted pursuant to ss. 11.93-11.9352; or

193 (b) The limits placed by the Legislature in a concurrent
194 resolution or memorial that calls for an Article V convention
195 for the purpose of proposing one or more amendments to the
196 Constitution of the United States on the subjects and amendments
197 that may be considered by the Article V convention.

198 (2) If a delegate forfeits an appointment under subsection
199 (1), the paired alternate delegate of the delegate becomes the
200 delegate at the time the forfeiture of the appointment occurs.

201 Section 16. Section 11.9344, Florida Statutes, is created
202 to read:

203 11.9344 Vote cast outside the scope of instructions or

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204 limits; status of application.-The application of the
205 Legislature to call an Article V convention for proposing
206 amendments to the Constitution of the United States ceases to be
207 a continuing application and shall be treated as having no
208 effect if all of the delegates and alternate delegates vote or
209 attempt to vote outside the scope of:

210 (1) The instructions established by a concurrent resolution
211 adopted pursuant to ss. 11.93-11.9352; or

212 (2) The limits placed by the Legislature in a concurrent
213 resolution or memorial that calls for an Article V convention
214 for the purpose of proposing one or more amendments to the
215 Constitution of the United States on the subjects and amendments
216 that may be considered by the Article V convention.

217 Section 17. Section 11.9345, Florida Statutes, is created
218 to read:

219 11.9345 Vote cast outside the scope of instructions;
220 criminal liability.-A delegate or alternate delegate commits a
221 felony of the third degree, punishable as provided in s. 775.082
222 or s. 775.083, who knowingly or intentionally votes or attempts
223 to vote outside the scope of:

224 (1) The instructions established by a concurrent resolution
225 adopted pursuant to ss. 11.93-11.9352; or

226 (2) The limits placed by the Legislature in a concurrent
227 resolution or memorial that calls for an Article V convention
228 for the purpose of proposing one or more amendments to the
229 Constitution of the United States on the subjects and amendments
230 that may be considered by the Article V convention.

231 Section 18. Section 11.935, Florida Statutes, is created to
232 read:

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233 11.935 Article V convention advisory group.-
 234 (1) As used in this section, the term "advisory group"
 235 means the Article V convention delegate advisory group.
 236 (2) The advisory group consists of the following members:
 237 (a) The Chief Justice of the Supreme Court, who shall serve
 238 as the chair.
 239 (b) An attorney appointed by the President of the Senate.
 240 (c) An attorney appointed by the Speaker of the House of
 241 Representatives.
 242 (3) The advisory group shall meet at the call of the chair
 243 and shall establish the policies and procedures that the
 244 advisory group determines necessary to carry out ss. 11.93-
 245 11.9352.
 246 (4) Upon the request of a delegate or alternate delegate,
 247 the advisory group shall advise the delegate or alternate
 248 delegate whether there is reason to believe that an action or an
 249 attempt to take an action by a delegate or alternate delegate
 250 would:
 251 (a) Violate the instructions established by a concurrent
 252 resolution adopted by the Legislature under ss. 11.93-11.9352;
 253 or
 254 (b) Exceed the limits placed by the Legislature in a
 255 concurrent resolution or memorial that calls for an Article V
 256 convention for the purpose of proposing one or more amendments
 257 to the Constitution of the United States on the subjects and
 258 amendments that may be considered by the Article V convention.
 259 (5) The advisory group:
 260 (a) May render an advisory determination under this section
 261 in any summary manner considered appropriate by the advisory

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262 group.
 263 (b) Shall render an advisory determination under this
 264 section within 24 hours after receiving a request for a
 265 determination.
 266 (c) Shall transmit a copy of an advisory determination
 267 under this section in the most expeditious manner possible to
 268 the delegate or alternate delegate who requested the advisory
 269 determination.
 270 (d) If the advisory group renders an advisory determination
 271 under this section, the advisory group may also take an action
 272 permitted under s. 11.9351.
 273 Section 19. Section 11.9351, Florida Statutes, is created
 274 to read:
 275 11.9351 Oversight of delegates with respect to
 276 instructions.-
 277 (1) The advisory group, on its own motion, or upon the
 278 request of the President of the Senate, the Speaker of the House
 279 of Representatives, or the Attorney General, shall advise the
 280 Attorney General whether there is reason to believe that a vote
 281 or an attempt to vote by a delegate or alternate delegate has:
 282 (a) Violated the instructions established by a concurrent
 283 resolution adopted by the Legislature under ss. 11.93-11.9352;
 284 or
 285 (b) Exceeded the limits placed by the Legislature in a
 286 concurrent resolution or memorial that calls for an Article V
 287 convention for the purpose of proposing one or more amendments
 288 to the Constitution of the United States on the subjects and
 289 amendments that may be considered by the Article V convention.
 290 (2) The advisory group shall issue the advisory

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291 determination under this section by one of the following summary
292 procedures:

293 (a) Without notice or an evidentiary proceeding; or

294 (b) After a hearing conducted by the advisory group.

295 (3) The advisory group shall render an advisory
296 determination under this section within 24 hours after receiving
297 a request for an advisory determination.

298 (4) The advisory group shall transmit a copy of an advisory
299 determination in the most expeditious manner possible to the
300 Attorney General.

301 Section 20. Section 11.9352, Florida Statutes, is created
302 to read:

303 11.9352 Advisory determination concerning a vote outside
304 the scope of instructions.—Immediately, upon receipt of an
305 advisory determination that finds that a vote or attempt to vote
306 by a delegate or alternate delegate is a violation as described
307 in s. 11.9351 or in excess of the authority of the delegate or
308 alternate delegate, the Attorney General shall inform the
309 delegates, alternate delegates, the President of the Senate, the
310 Speaker of the House of Representatives, and the Article V
311 convention that:

312 (1) The vote or attempt to vote did not comply with Florida
313 law, is void, and has no effect.

314 (2) The credentials of the delegate or alternate delegate
315 who is the subject of the determination are revoked.

316 Section 21. This act shall take effect July 1, 2014.

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 588

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Richter

SUBJECT: Offenses Against Vulnerable Persons

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	Fav/CS
2.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
3.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 588 provides additional protections for elderly persons and disabled adults who are vulnerable to instances of exploitation and increases the penalties for committing such acts. The bill amends the hearsay exception for statements of an elderly person or disabled adult in s. 90.803, F.S., to allow an out of court statement by an elderly person or disabled adult in certain circumstances to conform to existing case law making such statements admissible.

The bill also amends the definition of “exploitation of an elderly person or disabled adult” to delete the requirement that a person use deception or intimidation to obtain or use such vulnerable adult’s funds, assets, or property. The bill specifies that “unauthorized appropriation” occurs when an elderly person or disabled adult does not receive reasonably equivalent financial value in goods or services or when specified fiduciaries violate specified duties. The bill also specifies conduct that constitutes “exploitation of an elderly person or disabled adult.”

The bill amends s. 825.103, F.S., to specify when an unlawful appropriation occurs; decreases the property threshold values for criminal exploitation of elderly persons or disabled adults; creates a presumption that certain inter vivos transfers are a result of exploitation; and requires the court in specified cases to return the vulnerable adult’s property before trial if, after conducting an evidentiary hearing, the court makes certain findings.

The bill also amends s. 817.568, F.S., to provide that any person, including any person in the relationship of parent or legal guardian, that willfully and without authorization uses the personal

identification of an individual 60 years of age or older without first obtaining the consent of the individual commits a second degree felony.

II. Present Situation:

Elderly and Disabled Populations

The 2010 Census recorded the greatest number and proportion of people aged 65 and over in the history of the United States – 40,300,000, or 13 percent of the total population.¹ In 2010, Florida had the highest proportion of people over the age of 65, making up 17 percent of the total state population.²

In 2011, there were 11,468,487 people aged 18 to 64 in Florida.³ Of that number of people, 1,131,661, or 9.9 percent, had at least one disability.⁴ The number of individuals aged 65 and older in Florida in 2011 totaled 3,296,861.⁵ Of that number of people, 1,136,372, or 34.5 percent, had at least one disability.⁶

Nationwide, life expectancies of individuals reaching the ages of 65 and 85 are increasing. Individuals who survive to the age of 65 can be expected to live another 19.2 years.⁷ As the population of elderly and disabled persons in Florida increases, so does the pool of potential victims of abuse.

Hearsay Exception for Vulnerable Adults

“Hearsay” is a statement,⁸ other than one made by the declarant⁹ while testifying at trial or a hearing offered in evidence to prove the truth of the matter asserted.¹⁰ Currently, hearsay statements are not admissible at trial unless a statutory exception applies.¹¹

Section 90.803(24), F.S., creates a hearsay exception specifically relating to vulnerable adults. The statute specifies that unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out of court statement made by a vulnerable adult describing any act of abuse or neglect, any act of exploitation, the

¹ Administration on Aging, National Center for Elder Abuse, *America’s Growing Elderly Population*, available at <http://www.ncea.aoa.gov/Library/Data/index.aspx> (citing U.S. Department of Commerce, U.S. Census Bureau, *The older population; 2010*, Publication C2010BR-09 (last visited February 11, 2014)).

² *Id.*

³ U.S. Department of Commerce, U.S. Census Bureau, American FactFinder, *Selected Social Characteristics in the U.S.-Florida-2011 American Community Survey 1 year estimates*, available at

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_DP02&prodType=table (last visited February 11, 2014).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 24.

⁸ A “statement” is either an oral or written assertion or nonverbal conduct of a person if it is intended by the person as an assertion; *See* s. 90.801(1)(a), F.S.

⁹ The “declarant” is the person who made the statement; *See* s. 90.801(1)(b), F.S.

¹⁰ Section 90.801(1)(c), F.S.

¹¹ Section 90.802, F.S.

offense of battery or aggravated battery or assault or aggravated assault or sexual battery, or any other violent act on the declarant vulnerable adult, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and
- The vulnerable adult either:
 - Testifies; *or*
 - Is unavailable as a witness, provided that there is corroborative evidence of the abuse or offense. Unavailability must include a finding by the court that the vulnerable adult's participation in the trial or proceeding would result in a substantial likelihood of severe emotional, mental, or physical harm, in addition to findings pursuant to s. 90.804(1), F.S.¹²

The party seeking to introduce a hearsay statement under the exception in s. 90.803, F.S., bears the burden of establishing that the declarant is unavailable as a witness at a pretrial hearing.¹³ In the time since the hearsay exception for vulnerable adults was enacted,¹⁴ the United States Supreme Court (Court) has held the admission of certain out of court statements violates the Confrontation Clause of the Sixth Amendment.^{15,16} In *Crawford*, the Court held that before an out of court statement that is testimonial in nature can be admissible in a criminal proceeding the Confrontation Clause requires the:

- Declarant to be unavailable; and
- Defendant to have had a prior opportunity to cross-examine such declarant.

The Court later held that the distinction of whether evidence is testimonial or nontestimonial in nature rests on the primary purpose of the statement.

Further, in *State v. Hosty*, the Florida Supreme Court has examined s. 90.803(24), F.S., in light of *Crawford* and held that the Confrontation Clause requires the declarant to be unavailable for testimonial hearsay statements to be admissible.¹⁷

The statute does not currently conform with this ruling because it states that certain hearsay statements may be admitted even if the declarant testifies.

Financial Exploitation of Elderly Persons and Disabled Adults

According to the National Center on Elder Abuse, financial exploitation of the elderly includes “the illegal or improper use of an elder’s funds, property or assets.”¹⁸ For example, forging an

¹² Section 90.804(1), F.S.

¹³ See *Jones v. State*, 678 So.2d 309, 314 (Fla. 1996).

¹⁴ The hearsay exception in s. 90.803(24), F.S., was enacted by the Legislature in 1995. *Conner v. State*, 748 So.2d 950, 957 (Fla. 1999).

¹⁵ *Crawford v. Washington* 124 S.Ct. 1354 (2004).

¹⁶ The Sixth Amendment of the U.S. Constitution provides, in part: “In all criminal prosecutions...the accused shall enjoy the right to ...be confronted with the witnesses against him.”

¹⁷ 944 So.2d 255 (Fla. 2006)

¹⁸ The National Center on Elder Abuse, *Types of Abuse-Financial or Material Exploitation*, available at <http://www.ncea.aoa.gov/faq/index.aspx> (last visited February 11, 2014).

older person's signature, misusing or stealing an older person's money or possessions, coercing or deceiving an older person into signing a document and improperly using a conservatorship, guardianship, or power of attorney are examples of financial exploitation.¹⁹ Disabled adults, who can be equally vulnerable to financial crimes, are often victims of similar offenses.

Financial exploitation of the elderly and disabled is reported less than other forms of abuse. It is believed that only 1 in 14 cases of financial exploitation against disabled adults are reported and that the yearly number of cases nationwide could exceed 850,000.²⁰ The "typical" victim of financial exploitation is between 70 and 89 years of age, Caucasian, female, frail, and cognitively impaired.²¹ It has been estimated that the financial loss to victims of these types of crimes is at least \$2.9 billion nationwide.²²

Florida Law – "Exploitation of an Elderly Person or Disabled Adult"

Section 825.101, F.S., defines the following terms:

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

Section 825.103(1), F.S., defines exploitation of an elderly person or disabled adult as:

- Knowingly, by deception²³ or intimidation,²⁴ obtaining or using, or endeavoring to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the vulnerable adult, by a person who:
 - Stands in a position of trust and confidence with the vulnerable adult; or
 - Has a business relationship with the vulnerable adult;
- Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or

¹⁹ *Id.*

²⁰ MetLife Mature Market Institute, the National Committee for the Prevention of Elder Abuse, and the Center for Gerontology at Virginia Polytechnic Institute and State University, *Broken Trust: Elders, Family, and Finances, A Study on Elder Financial Abuse Prevention*, (March 2009), page 8; see also The National Committee for the Prevention of Elder Abuse and the National Adult Protective Services Association, *The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 years of Age and Older*, (February 2006), page 20. (on file with the Senate Committee on Children, Families, and Elder Affairs.)

²¹ *Id.*

²² Andrew Jay McClurg, *Preying on the Graying: A Statutory Presumption to Prosecute Elder Financial Exploitation*, *Hastings Law Journal*, Vol. 65, No. 4 at 125 (2014) this report is further cited as "*Preying on the Graying*." (on file with the Senate Committee on Children, Families, and Elder Affairs.)

²³ Section 825.101(3), F.S.

²⁴ Section 825.101(8), F.S.

property, or to benefit someone other than the vulnerable adult, by a person who knows or reasonable should know that the vulnerable adult lacks the capacity to consent;²⁵ or

- Breaching a fiduciary duty to a vulnerable adult by the person's guardian or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property.

If the funds, assets, or property involved in a violation of the offense is:

- Valued at \$100,000 or more, it is a first degree felony;²⁶
- Valued at \$20,000 or more but less than \$100,000, it is a second degree felony;²⁷ and
Valued at less than \$20,000, it is a third degree felony.^{28,29,30}

On the other hand, s. 812.0145, F.S., provides lower property threshold amounts that trigger enhanced criminal penalties for committing theft against persons 65 years of age or older as follows:

- If the funds, assets, or property involved is valued at \$50,000 or more, it is a first degree felony;
- If the funds, assets, or property involved is valued at \$10,000 or more, but less than \$50,000, it is a second degree felony; and
- If the funds, assets, or property involved is valued at \$300 or more, but less than \$10,000, it is a third degree felony.³¹

Prosecutions of financial exploitation of elderly persons often face significant roadblocks due to the difficulty in proving that what may superficially look like voluntary gifts is in fact exploitation.³² Exploited elders frequently are unable, and sometimes unwilling, to effectively assist prosecutors.³³ Prosecutions are further complicated by the fact that the transactions often occur in secret and often times the elderly person may not be a good witness as a result of cognitive or other impairments.³⁴

²⁵ Section 825.101(9), F.S.

²⁶ Punishable by up to 30 years in prison and up to \$10,000 in fines. Sections 775.082, 775.083, or 775.084, F.S.

²⁷ Punishable by up to 15 years in prison and up to \$10,000 in fines. Sections 775.082, 775.083, or 775.084, F.S.

²⁸ Punishable by up to 5 years in prison and up to \$5,000 in fines. Sections 775.082, 775.083, or 775.084, F.S.

²⁹ Section 812.0145(2)(a), (b), and (c), F.S.

³⁰ These offenses are currently ranked in the Criminal Punishment Code offense severity ranking chart at Level 8, Level 7, and Level 6, respectively. The Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based, in part, on points assigned for the offense severity ranking. The points are added in order to determine the "lowest permissible sentence" for the offense. Section 921.0022, F.S.

³¹ Section 812.0145(2)(a), (b), and (c), F.S.

³² *Preying on the Graying*, at 125.

³³ *Id.*

³⁴ *Id.*

Permissive Presumption

A presumption in a legal proceeding is an assumption of the existence of a fact which is in reality unproved by direct evidence.³⁵ A presumption is derived from another fact or group of facts that has been proven in the action.³⁶ There are two types of presumptions: conclusive presumptions, which *require* the jury to find the presumed fact if the underlying facts are proved; and permissive presumptions, which *allow*, but do not require, the jury to find the presumed fact if it finds the underlying fact to be true.³⁷

Hundreds of presumptions exist in American jurisprudence.³⁸ There are several premises that support the creation of presumptions in the law, including fairness, the desire to advance substantive policies, and the need for some device to resolve certain issues that could not otherwise be resolved due to a lack of proof.³⁹ The strongest justification for most presumptions is the probabilistic determination that the existence of certain facts can be logically inferred from other facts.⁴⁰ Currently, s. 825.103, F.S., does not provide any presumptions.

Personal Identification Information

Section 817.568, F.S., contains a variety of provisions criminalizing the fraudulent use of a person's personal identification information. Personal identification information is defined as "any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual."⁴¹

Subsections (6) and (7) of the s. 817.568, F.S. makes it a second degree felony for a person:

- To willfully and without authorization fraudulently use personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or of his or her legal guardian; or
- Who is in the relationship of parent or legal guardian, or who otherwise exercises custodial authority over an individual who is less than 18 years of age, to willfully and fraudulently use personal identification information of that individual.

III. Effect of Proposed Changes:

Section 1 amends s. 90.803(24), F.S., by deleting the language that allows a testimonial hearsay statement to be admissible even if the declarant testifies, thus conforming this exception to the holding in *Crawford* and *Hosty*.

Section 2 amends s. 817.568(6) and (7), F.S., to make it a second degree felony for any person, including a parent or legal guardian, or anyone else who otherwise exercises custodial authority over an individual 60 years of age or older, to willfully and without authorization fraudulently

³⁵ *Ibarrondo v. State*, 1 So. 3d 226, 232 (Fla. 5th DCA 2008)

³⁶ *Id.*

³⁷ *Marcolini v. State*, 673 So. 2d 3, 5 (Fla. 1996); *see also State v. Rygwelski*, 899 So.2d 498, 501 (Fla. 2d DCA 2005) and *Ibarrondo*, at 232.

³⁸ *Preying on the Graying*, at 125 (citations omitted).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Section 817.568, F.S.

use that individual's personal identification information. (Currently this crime only applies when the victim is less than 18 years of age.)

Section 3 deletes the definition of "deception" in s. 825.101(3), F.S. The bill then amends s. 825.103(1)(a), F.S., by removing the requirement that a person use *deception or intimidation* to obtain or use a vulnerable adult's funds, assets, or property.⁴² This will allow prosecution against individuals who exploit elderly persons or disabled adults in a broader range of instances.

Section 4 amends the definition of "exploitation of an elderly person or disabled adult" in s. 825.103(1)(c), F.S., to specify that an "unauthorized appropriation" occurs when:

- An elderly person or disabled adult does not receive reciprocal financial value in goods or services; or
- Persons appointed under chs. 709, 736, and 744, F.S., violate specified duties.

This section creates additional instances that constitute "exploitation of an elderly person or disabled adult" by including the following:

- Misappropriation, misuse or unauthorized transfer of moneys from a personal or joint account in which the elderly person or disabled adult placed, owned and was the sole contributor or payee of the funds prior to the misappropriation, misuse or unauthorized transfer. (The new provision is only applicable to personal accounts, joint accounts created with the intent that only the elderly person or disabled adult enjoys all interests in the moneys deposited into the account, or convenience accounts created under s. 655.80, F.S.)
- Intentionally or negligently failing to effectively use an elderly person's or disabled adult's income and assets for the necessities required for that person's support and maintenance, by a caregiver⁴³ or a person who stands in a position of trust and confidence with the elderly person or disabled adult.

The bill also lowers the property threshold amounts in s. 825.103, F.S., to be consistent with the ones in s. 812.0145, F.S., by providing that if the funds, assets, or property involved in a violation of the offense is:

- Valued at \$50,000 or more, it is a first degree felony;
- Valued at \$10,000 or more but less than \$50,000, it is a second degree felony; and
- Valued at less than \$10,000, it is a third degree felony.

In cases where the taking of or loss of the vulnerable adult's property is valued at more than \$5,000 and the property belonging to the victim is seized from the defendant pursuant to a search warrant, the bill requires the court to:

- Conduct an evidentiary hearing to determine if the defendant unlawfully obtained the victim's property; and
- Order that the property be returned to the victim before trial if the court finds, by a preponderance of the evidence, that the defendant unlawfully obtained the property.

⁴² The bill also deletes the definitions of the terms "misrepresentation" and "intimidation" as they are no longer applicable to chapter 825, F.S.

⁴³ Section 825.101(2), F.S. defines "caregiver."

The evidentiary hearing is for restitution purposes only, and the court's finding that the defendant unlawfully obtained the property is inadmissible at trial and does not give rise to any inference that the defendant has committed an offense under s. 825.103, F.S.

This section also creates a permissive presumption in s. 825.103, F.S., that an inter vivos transfer of money or property valued in excess of \$10,000 at the time of transfer, whether in a single transaction or multiple transactions, was the result of exploitation if it was made by a person 65 years or older to a nonrelative whom the transferor knew for less than 2 years before the first transfer and the transferor did not receive reciprocal value in goods or services.

The presumption applies regardless of whether the transfer or transfers are identified by the parties as a gift or loan. However, the presumption does not apply to a valid loan evidenced in writing that includes definite repayment dates, unless repayment of such loan is in default, in whole or in part, for more than 65 days. The bill provides exemptions from the presumption for:

- Persons who are in the business of making loans; or
- Bona fide charitable donations to nonprofit organizations that qualify for tax exempt status under the Internal Revenue code.

This bill also requires the court to instruct a jury that:

- They may, but are not required to, draw an inference of exploitation upon proof beyond a reasonable doubt of the facts listed in this subsection; and
- The presumption imposes no burden of proof on the defendant.

Section 5 amends s. 775.0844, F.S., to correctly identify the statutory definition of an elderly person to s. 825.101, F.S.

Section 6 amends s. 921.0022(3)(f), (g), and (h), F.S., the offense severity ranking chart of the Criminal Punishment Code, to reflect the new threshold dollar amounts for the exploitation of an elderly person or disabled adult (3rd degree felony – less than \$10,000, 2nd degree felony – greater than \$10,000 but less than \$50,000, and 1st degree felony - \$50,000 or more).

Section 7 reenacts s. 772.11(1), F.S., relating to a civil remedy for theft or exploitation to incorporate the amendment to s. 825.103, F.S.

Section 8 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Due Process Clauses of the United States and Florida Constitutions require the State to prove every element of a criminal offense beyond a reasonable doubt.⁴⁴ Conclusive presumptions that shift the burden of persuasion of a statutorily defined element of the offense to the defendant are impermissible under the Due Process Clause.⁴⁵ Permissive presumptions can be constitutional, but only if they do not shift the burden of persuasion to the defendant.⁴⁶

When reviewing a permissive presumption, the United States Supreme Court requires the challenging party to demonstrate its invalidity as applied.⁴⁷ Because a permissive presumption allows the trier of fact to be free to accept or reject the inference and does not shift the burden of proof, the only instance that affects the application of the “beyond a reasonable doubt” standard is if, under the facts of the case, there is no rational way the trier could make the connection permitted by the inference.⁴⁸ This is the only situation where any risk that an explanation of the permissible inference to a jury, or its use by a jury, has caused the presumptively rational fact finder to make an erroneous factual determination.⁴⁹

For a permissive inference to withstand constitutional challenge, a rational connection must exist between the facts in the record and the ultimate fact to be presumed.⁵⁰ A permissive presumption will be upheld if it can be said with substantial assurance that the presumed fact is more likely to flow from the proved fact on which it is made to depend.⁵¹

The bill creates a permissive presumption of exploitation if the State proves the occurrence of an inter vivos transfer of \$10,000 by an elderly person to someone the elderly person knew less than two years, which did not result in receipt of reciprocal value in goods or services. To the extent that the bill relieves the State of its obligation to prove the elements of a specified instance of exploitation of an elderly person beyond a reasonable doubt, the presumption could be challenged as being unconstitutional.

⁴⁴ *Buttram v. State*, 780 S.2d 224 (Fla. 2d DCA 2001).

⁴⁵ *Francis v. Franklin*, 105 S.Ct. 1965, 1971 (1985); *Sandstrom v. Montana*, 99 S.Ct. 2450, 2459 (1979); *State v. Rolle*, 560 So.2d 1154, 1159 (Fla. 1990); and *Tatum v. State*, 857 So.2d 331 (Fla.2d DCA 2003).

⁴⁶ *County Court of Ulster County, N.Y. v. Allen*, 99 S.Ct. 2213 (1979).

⁴⁷ *U.S. v. Gainey*, 85 S.Ct. 754, 757 (1965)

⁴⁸ *County Court of Ulster County, N.Y. v. Allen*, 99 S.Ct. 2213 at 225 (1979).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *State v. Brake*, 796 So.2d 522 (Fla. 2001).

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

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

The Criminal Justice Impact Conference reviewed the bill on March 3, 2014 and determined that any impact on the prison population will be insignificant.

According to the Office of the State Court Administrator, any fiscal impact upon the court system is indeterminate.⁵²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 90.803, 772.11, 775.0844, 817.568, 825.101, 825.103, 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 by Children, Families, and Elder Affairs on February 18, 2014:

- The amendment revises s. 817.568, F.S., to clarify that any person, including any person in the relationship of parent or legal guardian, that willfully and without authorization uses the personal identification of an individual younger than 18 years of age or 60 years of age or older without first obtaining the consent of the individual commits a second degree felony.

B. Amendments:

None.

⁵² Office of State Courts Administrator, *2014 Judicial Impact Statement for CS/SB 588* (March 3, 2014).

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



809956

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Richter) recommended the following:

Senate Amendment

Delete lines 144 - 178

and insert:

lacks the capacity to consent; ~~or~~

(c) Breach of a fiduciary duty to an elderly person or disabled adult by the person's guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property. An unauthorized appropriation under this paragraph occurs when the elderly person or disabled adult does not receive the reasonably



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12 equivalent financial value in goods or services, or when the
13 fiduciary violates any of these duties:
14 1. For agents appointed under chapter 709:
15 a. Committing fraud in obtaining their appointments;
16 b. Abusing their powers;
17 c. Wasting, embezzling, or intentionally mismanaging the
18 assets of the principal or beneficiary; or
19 d. Acting contrary to the principal's sole benefit or best
20 interest; or
21 2. For guardians and trustees who are individuals and who
22 are appointed under chapter 736 or chapter 744:
23 a. Committing fraud in obtaining their appointments;
24 b. Abusing their powers; or
25 c. Wasting, embezzling, or intentionally mismanaging the
26 assets of the ward or beneficiary of the trust;
27 (d) Misappropriating, misusing, or transferring without
28 authorization money belonging to an elderly person or disabled
29 adult from an account in which the elderly person or disabled
30 adult placed the funds, owned the funds, and was the sole
31 contributor or payee of the funds before the misappropriation,
32 misuse, or unauthorized transfer. This paragraph only applies to
33 the following types of accounts:
34 1. Personal accounts;
35 2. Joint accounts created with the intent that only the
36 elderly person or disabled adult enjoys all rights, interests,
37 and claims to moneys deposited into such account; or
38 3. Convenience accounts created in accordance with s.
39 655.80; or

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

586-01859-14

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1 A bill to be entitled
2 An act relating to offenses against vulnerable
3 persons; amending s. 90.803, F.S.; revising when an
4 out-of-court statement by an elderly person or
5 disabled adult is admissible in certain proceedings;
6 amending s. 817.568, F.S.; expanding applicability of
7 prohibition on the fraudulent use of personal
8 identification information of specified victims
9 without consent to include persons 60 years of age or
10 older; amending s. 825.101, F.S.; revising and
11 deleting definitions; amending s. 825.103, F.S.;
12 deleting a requirement that property of an elderly
13 person or disabled adult be obtained by deception or
14 intimidation in order to constitute exploitation of
15 such a person; specifying additional circumstances
16 that constitute a breach of a fiduciary duty and
17 specifying when an unauthorized appropriation occurs;
18 creating a presumption that certain inter vivos
19 transfers are a result of exploitation; providing
20 exceptions; providing for jury instructions concerning
21 the presumption; revising the valuation of funds,
22 assets, or property involved for various degrees of
23 offenses of exploitation of an elderly person or
24 disabled adult; providing for return of property
25 seized from a defendant to the victim before trial in
26 certain circumstances; amending ss. 775.0844 and
27 921.0022, F.S.; conforming provisions to changes made
28 by the act; reenacting s. 772.11(1), F.S., relating to
29 a civil remedy for theft or exploitation, to

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

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30 incorporate the amendments made by the act to s.
31 825.103, F.S., in a reference thereto; providing an
32 effective date.
33
34 Be It Enacted by the Legislature of the State of Florida:
35
36 Section 1. Paragraph (a) of subsection (24) of section
37 90.803, Florida Statutes, is amended to read:
38 90.803 Hearsay exceptions; availability of declarant
39 immaterial.—The provision of s. 90.802 to the contrary
40 notwithstanding, the following are not inadmissible as evidence,
41 even though the declarant is available as a witness:
42 (24) HEARSAY EXCEPTION; STATEMENT OF ELDERLY PERSON OR
43 DISABLED ADULT.—
44 (a) Unless the source of information or the method or
45 circumstances by which the statement is reported indicates a
46 lack of trustworthiness, an out-of-court statement made by an
47 elderly person or disabled adult, as defined in s. 825.101,
48 describing any act of abuse or neglect, any act of exploitation,
49 the offense of battery or aggravated battery or assault or
50 aggravated assault or sexual battery, or any other violent act
51 on the declarant elderly person or disabled adult, not otherwise
52 admissible, is admissible in evidence in any civil or criminal
53 proceeding if:
54 1. The court finds in a hearing conducted outside the
55 presence of the jury that the time, content, and circumstances
56 of the statement provide sufficient safeguards of reliability.
57 In making its determination, the court may consider the mental
58 and physical age and maturity of the elderly person or disabled

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59 adult, the nature and duration of the abuse or offense, the
60 relationship of the victim to the offender, the reliability of
61 the assertion, the reliability of the elderly person or disabled
62 adult, and any other factor deemed appropriate; and

63 2. The elderly person or disabled adult ~~either~~

64 ~~a. Testifies, or~~

65 ~~b.~~ is unavailable as a witness, provided that there is
66 corroborative evidence of the abuse or offense. Unavailability
67 shall include a finding by the court that the elderly person's
68 or disabled adult's participation in the trial or proceeding
69 would result in a substantial likelihood of severe emotional,
70 mental, or physical harm, in addition to findings pursuant to s.
71 90.804(1).

72 Section 2. Subsections (6) and (7) of section 817.568,
73 Florida Statutes, are amended to read:

74 817.568 Criminal use of personal identification
75 information.—

76 (6) Any person who willfully and without authorization
77 fraudulently uses personal identification information concerning
78 an individual who is younger ~~less~~ than 18 years of age or 60
79 years of age or older without first obtaining the consent of
80 that individual or of his or her legal guardian commits a felony
81 of the second degree, punishable as provided in s. 775.082, s.
82 775.083, or s. 775.084.

83 (7) Any person who is in the relationship of parent or
84 legal guardian, or who otherwise exercises custodial authority
85 over an individual who is younger ~~less~~ than 18 years of age or
86 60 years of age or older, who willfully and fraudulently uses
87 personal identification information of that individual commits a

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88 felony of the second degree, punishable as provided in s.
89 775.082, s. 775.083, or s. 775.084.

90 Section 3. Subsections (2), (3), and (8) of section
91 825.101, Florida Statutes, are amended to read:

92 825.101 Definitions.—As used in this chapter:

93 (2) "Caregiver" means a person who has been entrusted with
94 or has assumed responsibility for the care or the property of an
95 elderly person or disabled adult. "Caregiver" includes, but is
96 not limited to, relatives, court-appointed or voluntary
97 guardians, adult household members, neighbors, health care
98 providers, and employees and volunteers of facilities as defined
99 in subsection (6) ~~(7)~~.

100 ~~(3) "Deception" means:~~

101 ~~(a) Misrepresenting or concealing a material fact relating~~
102 ~~to:~~

103 ~~1. Services rendered, disposition of property, or use of~~
104 ~~property, when such services or property are intended to benefit~~
105 ~~an elderly person or disabled adult;~~

106 ~~2. Terms of a contract or agreement entered into with an~~
107 ~~elderly person or disabled adult; or~~

108 ~~3. An existing or preexisting condition of any property~~
109 ~~involved in a contract or agreement entered into with an elderly~~
110 ~~person or disabled adult; or~~

111 ~~(b) Using any misrepresentation, false pretense, or false~~
112 ~~promise in order to induce, encourage, or solicit an elderly~~
113 ~~person or disabled adult to enter into a contract or agreement.~~

114 ~~(8) "Intimidation" means the communication by word or act~~
115 ~~to an elderly person or disabled adult that the elderly person~~
116 ~~or disabled adult will be deprived of food, nutrition, clothing,~~

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117 ~~shelter, supervision, medicine, medical services, money, or~~
 118 ~~financial support or will suffer physical violence.~~

119 Section 4. Section 825.103, Florida Statutes, is amended to
 120 read:

121 825.103 Exploitation of an elderly person or disabled
 122 adult; penalties.—

123 (1) "Exploitation of an elderly person or disabled adult"
 124 means:

125 (a) Knowingly, ~~by deception or intimidation,~~ obtaining or
 126 using, or endeavoring to obtain or use, an elderly person's or
 127 disabled adult's funds, assets, or property with the intent to
 128 temporarily or permanently deprive the elderly person or
 129 disabled adult of the use, benefit, or possession of the funds,
 130 assets, or property, or to benefit someone other than the
 131 elderly person or disabled adult, by a person who:

132 1. Stands in a position of trust and confidence with the
 133 elderly person or disabled adult; or

134 2. Has a business relationship with the elderly person or
 135 disabled adult;

136 (b) Obtaining or using, endeavoring to obtain or use, or
 137 conspiring with another to obtain or use an elderly person's or
 138 disabled adult's funds, assets, or property with the intent to
 139 temporarily or permanently deprive the elderly person or
 140 disabled adult of the use, benefit, or possession of the funds,
 141 assets, or property, or to benefit someone other than the
 142 elderly person or disabled adult, by a person who knows or
 143 reasonably should know that the elderly person or disabled adult
 144 lacks the capacity to consent; or

145 (c) Breach of a fiduciary duty to an elderly person or

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146 disabled adult by the person's guardian or agent under a power
 147 of attorney which results in an unauthorized appropriation,
 148 sale, or transfer of property. An unauthorized appropriation
 149 under this paragraph occurs when the elderly person or disabled
 150 adult does not receive the reasonably equivalent financial value
 151 in goods or services, or when the fiduciary violates any of
 152 these duties:

153 1. For agents appointed under chapter 709:

154 a. Committing fraud in obtaining their appointments;

155 b. Abusing their powers;

156 c. Wasting, embezzling, or intentionally mismanaging the
 157 assets of the ward or beneficiary of the trust; or

158 d. Acting contrary to the principal's sole benefit or best
 159 interest.

160 2. For guardians and trustees appointed under chapter 736
 161 or chapter 744:

162 a. Committing fraud in obtaining their appointments;

163 b. Abusing their powers; or

164 c. Wasting, embezzling, or intentionally mismanaging the
 165 assets of the ward or beneficiary of the trust.

166 (d) Misappropriating, misusing, or transferring without
 167 authorization money belonging to an elderly person or disabled
 168 adult from an account in which the elderly person or disabled
 169 adult placed the funds, owned the funds, and was the sole
 170 contributor or payee of the funds before the misappropriation,
 171 misuse, or unauthorized transfer. This paragraph only applies to
 172 the following types of accounts:

173 1. Personal accounts;

174 2. Joint accounts created with the intent that only the

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175 elderly person or disabled adult enjoys all rights, interests,
 176 and claims to moneys deposited into such account; or
 177 3. Convenience accounts created in accordance with s.
 178 655.80.

179 (e) Intentionally or negligently failing to effectively use
 180 an elderly person's or disabled adult's income and assets for
 181 the necessities required for that person's support and
 182 maintenance, by a caregiver or a person who stands in a position
 183 of trust and confidence with the elderly person or disabled
 184 adult.

185 (2) Any inter vivos transfer of money or property valued in
 186 excess of \$10,000 at the time of the transfer, whether in a
 187 single transaction or multiple transactions, by a person age 65
 188 or older to a nonrelative whom the transferor knew for fewer
 189 than 2 years before the first transfer and for which the
 190 transferor did not receive the reasonably equivalent financial
 191 value in goods or services creates a permissive presumption that
 192 the transfer was the result of exploitation.

193 (a) This subsection applies regardless of whether the
 194 transfer or transfers are denoted by the parties as a gift or
 195 loan, except that it does not apply to a valid loan evidenced in
 196 writing that includes definite repayment dates. However, if
 197 repayment of any such loan is in default, in whole or in part,
 198 for more than 65 days, the presumption of this subsection
 199 applies.

200 (b) This subsection does not apply to:

201 1. Persons who are in the business of making loans.

202 2. Bona fide charitable donations to nonprofit
 203 organizations that qualify for tax exempt status under the

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204 Internal Revenue Code.

205 (c) In a criminal case to which this subsection applies, if
 206 the trial is by jury, jurors shall be instructed that they may,
 207 but are not required to, draw an inference of exploitation upon
 208 proof beyond a reasonable doubt of the facts listed in this
 209 subsection. The presumption of this subsection imposes no burden
 210 of proof on the defendant.

211 (3)(2)(a) If the funds, assets, or property involved in the
 212 exploitation of the elderly person or disabled adult is valued
 213 at \$50,000 ~~\$100,000~~ or more, the offender commits a felony of
 214 the first degree, punishable as provided in s. 775.082, s.
 215 775.083, or s. 775.084.

216 (b) If the funds, assets, or property involved in the
 217 exploitation of the elderly person or disabled adult is valued
 218 at \$10,000 ~~\$20,000~~ or more, but less than \$50,000 ~~\$100,000~~, the
 219 offender commits a felony of the second degree, punishable as
 220 provided in s. 775.082, s. 775.083, or s. 775.084.

221 (c) If the funds, assets, or property involved in the
 222 exploitation of an elderly person or disabled adult is valued at
 223 less than \$10,000 ~~\$20,000~~, the offender commits a felony of the
 224 third degree, punishable as provided in s. 775.082, s. 775.083,
 225 or s. 775.084.

226 (4) If a person is charged with financial exploitation of
 227 an elderly person or disabled adult that involves the taking of
 228 or loss of property valued at more than \$5,000 and property
 229 belonging to a victim is seized from the defendant pursuant to a
 230 search warrant, the court shall hold an evidentiary hearing and
 231 determine, by a preponderance of the evidence, whether the
 232 defendant unlawfully obtained the victim's property. If the

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233 court finds that the property was unlawfully obtained, the court
 234 may order it returned to the victim for restitution purposes
 235 before trial on the charge. This determination is inadmissible
 236 in evidence at trial on the charge and does not give rise to any
 237 inference that the defendant has committed an offense under this
 238 section.

239 Section 5. Paragraph (a) of subsection (5) of section
 240 775.0844, Florida Statutes, is amended to read:

241 775.0844 White Collar Crime Victim Protection Act.—

242 (5) Any person who commits an aggravated white collar crime
 243 as defined in this section and in so doing either:

244 (a) Victimizes 10 or more elderly persons, as defined in s.
 245 825.101~~(5)~~;

246
 247 and thereby obtains or attempts to obtain \$50,000 or more,
 248 commits a felony of the first degree, punishable as provided in
 249 s. 775.082, s. 775.083, or s. 775.084.

250 Section 6. Paragraphs (f), (g), and (h) of subsection (3)
 251 of section 921.0022, Florida Statutes, are amended to read:

252 921.0022 Criminal Punishment Code; offense severity ranking
 253 chart.—

254 (3) OFFENSE SEVERITY RANKING CHART

255 (f) LEVEL 6

256

Florida Statute	Felony Degree	Description
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.

257

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258	499.0051(3)	2nd	Knowing forgery of pedigree papers.
259	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
260	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
261	775.0875(1)	3rd	Taking firearm from law enforcement officer.
262	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
263	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
264	784.041	3rd	Felony battery; domestic battery by strangulation.
265	784.048(3)	3rd	Aggravated stalking; credible threat.
266	784.048(5)	3rd	Aggravated stalking of person under 16.

267	586-01859-14		2014588c1	
	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.	
268				
	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.	
269				
	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.	
270				
	784.081(2)	2nd	Aggravated assault on specified official or employee.	
271				
	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.	
272				
	784.083(2)	2nd	Aggravated assault on code inspector.	
273				
	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.	
274				
	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.	
275				
	790.161(2)	2nd	Make, possess, or throw	

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				destructive device with intent to do bodily harm or damage property.
276				
	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.	
277				
	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.	
278				
	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.	
279				
	794.05(1)	2nd	Unlawful sexual activity with specified minor.	
280				
	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.	
281				
	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.	
282				

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806.031(2) 2nd Arson resulting in great bodily
harm to firefighter or any
other person.

283 810.02(3)(c) 2nd Burglary of occupied structure;
unarmed; no assault or battery.

284 810.145(8)(b) 2nd Video voyeurism; certain minor
victims; 2nd or subsequent
offense.

285 812.014(2)(b)1. 2nd Property stolen \$20,000 or
more, but less than \$100,000,
grand theft in 2nd degree.

286 812.014(6) 2nd Theft; property stolen \$3,000
or more; coordination of
others.

287 812.015(9)(a) 2nd Retail theft; property stolen
\$300 or more; second or
subsequent conviction.

288 812.015(9)(b) 2nd Retail theft; property stolen
\$3,000 or more; coordination of
others.

289 812.13(2)(c) 2nd Robbery, no firearm or other
weapon (strong-arm robbery).

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290 817.4821(5) 2nd Possess cloning paraphernalia
with intent to create cloned
cellular telephones.

291 825.102(1) 3rd Abuse of an elderly person or
disabled adult.

292 825.102(3)(c) 3rd Neglect of an elderly person or
disabled adult.

293 825.1025(3) 3rd Lewd or lascivious molestation
of an elderly person or
disabled adult.

294 825.103(3)(c) 3rd Exploiting an elderly person or
~~825.103(2)(e)~~ disabled adult and property is
valued at less than \$10,000
~~\$20,000~~.

295 827.03(2)(c) 3rd Abuse of a child.

296 827.03(2)(d) 3rd Neglect of a child.

297 827.071(2) & (3) 2nd Use or induce a child in a
sexual performance, or promote
or direct such performance.

298 836.05 2nd Threats; extortion.

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299 836.10 2nd Written threats to kill or do
bodily injury.

300 843.12 3rd Aids or assists person to
escape.

301 847.011 3rd Distributing, offering to
distribute, or possessing with
intent to distribute obscene
materials depicting minors.

302 847.012 3rd Knowingly using a minor in the
production of materials harmful
to minors.

303 847.0135(2) 3rd Facilitates sexual conduct of
or with a minor or the visual
depiction of such conduct.

304 914.23 2nd Retaliation against a witness,
victim, or informant, with
bodily injury.

305 944.35(3)(a)2. 3rd Committing malicious battery
upon or inflicting cruel or
inhuman treatment on an inmate
or offender on community
supervision, resulting in great

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bodily harm.

306 944.40 2nd Escapes.

307 944.46 3rd Harboring, concealing, aiding
escaped prisoners.

308 944.47(1)(a)5. 2nd Introduction of contraband
(firearm, weapon, or explosive)
into correctional facility.

309 951.22(1) 3rd Intoxicating drug, firearm, or
weapon introduced into county
facility.

310 (g) LEVEL 7

311

312 Florida Felony Description
Statute Degree

313 316.027(1)(b) 1st Accident involving death,
failure to stop; leaving scene.

314 316.193(3)(c)2. 3rd DUI resulting in serious bodily
injury.

315 316.1935(3)(b) 1st Causing serious bodily injury
or death to another person;
driving at high speed or with

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wanton disregard for safety
 while fleeing or attempting to
 elude law enforcement officer
 who is in a patrol vehicle with
 siren and lights activated.

316 327.35(3)(c)2. 3rd Vessel BUI resulting in serious
 bodily injury.

317 402.319(2) 2nd Misrepresentation and
 negligence or intentional act
 resulting in great bodily harm,
 permanent disfiguration,
 permanent disability, or death.

318 409.920 3rd Medicaid provider fraud;
 (2)(b)1.a. \$10,000 or less.

319 409.920 2nd Medicaid provider fraud; more
 than \$10,000, but less than
 \$50,000.

320 456.065(2) 3rd Practicing a health care
 profession without a license.

321 456.065(2) 2nd Practicing a health care
 profession without a license
 which results in serious bodily
 injury.

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322 458.327(1) 3rd Practicing medicine without a
 license.

323 459.013(1) 3rd Practicing osteopathic medicine
 without a license.

324 460.411(1) 3rd Practicing chiropractic
 medicine without a license.

325 461.012(1) 3rd Practicing podiatric medicine
 without a license.

326 462.17 3rd Practicing naturopathy without
 a license.

327 463.015(1) 3rd Practicing optometry without a
 license.

328 464.016(1) 3rd Practicing nursing without a
 license.

329 465.015(2) 3rd Practicing pharmacy without a
 license.

330 466.026(1) 3rd Practicing dentistry or dental
 hygiene without a license.

331 467.201 3rd Practicing midwifery without a

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 license.

332 468.366 3rd Delivering respiratory care
 services without a license.

333 483.828(1) 3rd Practicing as clinical
 laboratory personnel without a
 license.

334 483.901(9) 3rd Practicing medical physics
 without a license.

335 484.013(1)(c) 3rd Preparing or dispensing optical
 devices without a prescription.

336 484.053 3rd Dispensing hearing aids without
 a license.

337 494.0018(2) 1st Conviction of any violation of
 ss. 494.001-494.0077 in which
 the total money and property
 unlawfully obtained exceeded
 \$50,000 and there were five or
 more victims.

338 560.123(8)(b)1. 3rd Failure to report currency or
 payment instruments exceeding
 \$300 but less than \$20,000 by a
 money services business.

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339 560.125(5)(a) 3rd Money services business by
 unauthorized person, currency
 or payment instruments
 exceeding \$300 but less than
 \$20,000.

340 655.50(10)(b)1. 3rd Failure to report financial
 transactions exceeding \$300 but
 less than \$20,000 by financial
 institution.

341 775.21(10)(a) 3rd Sexual predator; failure to
 register; failure to renew
 driver's license or
 identification card; other
 registration violations.

342 775.21(10)(b) 3rd Sexual predator working where
 children regularly congregate.

343 775.21(10)(g) 3rd Failure to report or providing
 false information about a
 sexual predator; harbor or
 conceal a sexual predator.

344 782.051(3) 2nd Attempted felony murder of a
 person by a person other than
 the perpetrator or the

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 perpetrator of an attempted
 345 feloncy.
 782.07(1) 2nd Killing of a human being by the
 act, procurement, or culpable
 negligence of another
 346 (manslaughter).
 782.071 2nd Killing of a human being or
 viable fetus by the operation
 of a motor vehicle in a
 reckless manner (vehicular
 347 homicide).
 782.072 2nd Killing of a human being by the
 operation of a vessel in a
 reckless manner (vessel
 348 homicide).
 784.045(1) (a) 1. 2nd Aggravated battery;
 intentionally causing great
 349 bodily harm or disfigurement.
 784.045(1) (a) 2. 2nd Aggravated battery; using
 deadly weapon.
 350 784.045(1) (b) 2nd Aggravated battery; perpetrator
 aware victim pregnant.
 351

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 784.048(4) 3rd Aggravated stalking; violation
 of injunction or court order.
 352 784.048(7) 3rd Aggravated stalking; violation
 of court order.
 353 784.07(2) (d) 1st Aggravated battery on law
 enforcement officer.
 354 784.074(1) (a) 1st Aggravated battery on sexually
 violent predators facility
 355 staff.
 784.08(2) (a) 1st Aggravated battery on a person
 65 years of age or older.
 356 784.081(1) 1st Aggravated battery on specified
 official or employee.
 357 784.082(1) 1st Aggravated battery by detained
 person on visitor or other
 358 detainee.
 784.083(1) 1st Aggravated battery on code
 inspector.
 359 787.06(3) (a) 1st Human trafficking using
 coercion for labor and
 services.

360	586-01859-14		2014588c1	
	787.06(3) (e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.	
361	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).	
362	790.16(1)	1st	Discharge of a machine gun under specified circumstances.	
363	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.	
364	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.	
365	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.	
366	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax	

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	586-01859-14		2014588c1	weapon of mass destruction while committing or attempting to commit a felony.
367	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.	
368	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.	
369	796.03	2nd	Procuring any person under 16 years for prostitution.	
370	800.04(5) (c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.	
371	800.04(5) (c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.	
372	806.01(2)	2nd	Maliciously damage structure by	

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 fire or explosive.

373 810.02(3)(a) 2nd Burglary of occupied dwelling;
 unarmed; no assault or battery.

374 810.02(3)(b) 2nd Burglary of unoccupied
 dwelling; unarmed; no assault
 or battery.

375 810.02(3)(d) 2nd Burglary of occupied
 conveyance; unarmed; no assault
 or battery.

376 810.02(3)(e) 2nd Burglary of authorized
 emergency vehicle.

377 812.014(2)(a)1. 1st Property stolen, valued at
 \$100,000 or more or a
 semitrailer deployed by a law
 enforcement officer; property
 stolen while causing other
 property damage; 1st degree
 grand theft.

378 812.014(2)(b)2. 2nd Property stolen, cargo valued
 at less than \$50,000, grand
 theft in 2nd degree.

379 812.014(2)(b)3. 2nd Property stolen, emergency

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 medical equipment; 2nd degree
 grand theft.

380 812.014(2)(b)4. 2nd Property stolen, law
 enforcement equipment from
 authorized emergency vehicle.

381 812.0145(2)(a) 1st Theft from person 65 years of
 age or older; \$50,000 or more.

382 812.019(2) 1st Stolen property; initiates,
 organizes, plans, etc., the
 theft of property and traffics
 in stolen property.

383 812.131(2)(a) 2nd Robbery by sudden snatching.

384 812.133(2)(b) 1st Carjacking; no firearm, deadly
 weapon, or other weapon.

385 817.034(4)(a)1. 1st Communications fraud, value
 greater than \$50,000.

386 817.234(8)(a) 2nd Solicitation of motor vehicle
 accident victims with intent to
 defraud.

387 817.234(9) 2nd Organizing, planning, or
 participating in an intentional

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 388 motor vehicle collision.
 817.234(11)(c) 1st Insurance fraud; property value
 389 \$100,000 or more.
 817.2341 1st Making false entries of
 (2)(b) & (3)(b) material fact or false
 statements regarding property
 values relating to the solvency
 of an insuring entity which are
 a significant cause of the
 390 insolvency of that entity.
 817.535(2)(a) 3rd Filing false lien or other
 391 unauthorized document.
 825.102(3)(b) 2nd Neglecting an elderly person or
 disabled adult causing great
 bodily harm, disability, or
 392 disfigurement.
825.103(3)(b) 2nd Exploiting an elderly person or
~~825.103(2)(b)~~ disabled adult and property is
 valued at \$10,000 ~~\$20,000~~ or
 more, but less than \$50,000
 393 ~~\$100,000~~.
 827.03(2)(b) 2nd Neglect of a child causing
 great bodily harm, disability,

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 394 or disfigurement.
 827.04(3) 3rd Impregnation of a child under
 16 years of age by person 21
 395 years of age or older.
 837.05(2) 3rd Giving false information about
 alleged capital felony to a law
 enforcement officer.
 396 838.015 2nd Bribery.
 397 838.016 2nd Unlawful compensation or reward
 for official behavior.
 398 838.021(3)(a) 2nd Unlawful harm to a public
 servant.
 399 838.22 2nd Bid tampering.
 400 843.0855(2) 3rd Impersonation of a public
 officer or employee.
 401 843.0855(3) 3rd Unlawful simulation of legal
 process.
 402 843.0855(4) 3rd Intimidation of a public
 officer or employee.
 403

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847.0135(3) 3rd Solicitation of a child, via a computer service, to commit an unlawful sex act.

847.0135(4) 2nd Traveling to meet a minor to commit an unlawful sex act.

872.06 2nd Abuse of a dead human body.

874.05(2)(b) 1st Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.

874.10 1st,PBL Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.

893.13(1)(c)1. 1st Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or

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community center.

893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.

893.13(4)(a) 1st Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

893.135(1)(a)1. 1st Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

893.135 (1)(b)1.a. 1st Trafficking in cocaine, more than 28 grams, less than 200 grams.

893.135 (1)(c)1.a. 1st Trafficking in illegal drugs, more than 4 grams, less than 14 grams.

893.135(1)(d)1. 1st Trafficking in phencyclidine,

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				more than 28 grams, less than 200 grams.
415	893.135(1)(e)1.	1st		Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
416	893.135(1)(f)1.	1st		Trafficking in amphetamine, more than 14 grams, less than 28 grams.
417	893.135 (1)(g)1.a.	1st		Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
418	893.135 (1)(h)1.a.	1st		Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
419	893.135 (1)(j)1.a.	1st		Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
420	893.135 (1)(k)2.a.	1st		Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
421	893.1351(2)	2nd		Possession of place for

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				trafficking in or manufacturing of controlled substance.
422	896.101(5)(a)	3rd		Money laundering, financial transactions exceeding \$300 but less than \$20,000.
423	896.104(4)(a)1.	3rd		Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
424	943.0435(4)(c)	2nd		Sexual offender vacating permanent residence; failure to comply with reporting requirements.
425	943.0435(8)	2nd		Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
426	943.0435(9)(a)	3rd		Sexual offender; failure to comply with reporting requirements.
427	943.0435(13)	3rd		Failure to report or providing false information about a

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 sexual offender; harbor or
 conceal a sexual offender.
 428 943.0435 (14) 3rd Sexual offender; failure to
 report and reregister; failure
 to respond to address
 verification.
 429 944.607 (9) 3rd Sexual offender; failure to
 comply with reporting
 requirements.
 430 944.607 (10) (a) 3rd Sexual offender; failure to
 submit to the taking of a
 digitized photograph.
 431 944.607 (12) 3rd Failure to report or providing
 false information about a
 sexual offender; harbor or
 conceal a sexual offender.
 432 944.607 (13) 3rd Sexual offender; failure to
 report and reregister; failure
 to respond to address
 verification.
 433 985.4815 (10) 3rd Sexual offender; failure to
 submit to the taking of a
 digitized photograph.

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 434 985.4815 (12) 3rd Failure to report or providing
 false information about a
 sexual offender; harbor or
 conceal a sexual offender.
 435 985.4815 (13) 3rd Sexual offender; failure to
 report and reregister; failure
 to respond to address
 verification.
 436 (h) LEVEL 8
 437
 438 Florida Felony Description
 Statute Degree
 439 316.193 2nd DUI manslaughter.
 (3) (c) 3.a.
 440 316.1935 (4) (b) 1st Aggravated fleeing or attempted
 eluding with serious bodily
 injury or death.
 441 327.35 (3) (c) 3. 2nd Vessel BUI manslaughter.
 442 499.0051 (7) 1st Knowing trafficking in
 contraband prescription drugs.
 443 499.0051 (8) 1st Knowing forgery of prescription

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				labels or prescription drug labels.
444	560.123(8)(b)2.	2nd		Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
445	560.125(5)(b)	2nd		Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
446	655.50(10)(b)2.	2nd		Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
447	777.03(2)(a)	1st		Accessory after the fact, capital felony.
448	782.04(4)	2nd		Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping,

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				aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
449	782.051(2)	1st		Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
450	782.071(1)(b)	1st		Committing vehicular homicide and failing to render aid or give information.
451	782.072(2)	1st		Committing vessel homicide and failing to render aid or give information.
452	787.06(3)(b)	1st		Human trafficking using coercion for commercial sexual activity.
453	787.06(3)(c)	1st		Human trafficking using coercion for labor and services of an unauthorized alien.
454	787.06(3)(f)	1st		Human trafficking using coercion for commercial sexual activity by the transfer or

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transport of any individual
from outside Florida to within
the state.

455

790.161(3) 1st Discharging a destructive
device which results in bodily
harm or property damage.

456

794.011(5) 2nd Sexual battery, victim 12 years
or over, offender does not use
physical force likely to cause
serious injury.

457

794.08(3) 2nd Female genital mutilation,
removal of a victim younger
than 18 years of age from this
state.

458

800.04(4) 2nd Lewd or lascivious battery.

459

806.01(1) 1st Maliciously damage dwelling or
structure by fire or explosive,
believing person in structure.

460

810.02(2)(a) 1st,PBL Burglary with assault or
battery.

461

810.02(2)(b) 1st,PBL Burglary; armed with explosives
or dangerous weapon.

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462 810.02(2)(c) 1st Burglary of a dwelling or
structure causing structural
damage or \$1,000 or more
property damage.

463

812.014(2)(a)2. 1st Property stolen; cargo valued
at \$50,000 or more, grand theft
in 1st degree.

464

812.13(2)(b) 1st Robbery with a weapon.

465

812.135(2)(c) 1st Home-invasion robbery, no
firearm, deadly weapon, or
other weapon.

466

817.535(2)(b) 2nd Filing false lien or other
unauthorized document; second
or subsequent offense.

467

817.535(3)(a) 2nd Filing false lien or other
unauthorized document; property
owner is a public officer or
employee.

468

817.535(4)(a)1. 2nd Filing false lien or other
unauthorized document;
defendant is incarcerated or
under supervision.

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469	586-01859-14		2014588c1	
	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.	
470	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.	
471	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.	
472	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.	
473	<u>825.103(3)(a)</u> 825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at <u>\$50,000</u> \$100,000 or more.	
474	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.	
475	837.021(2)	2nd	Making contradictory statements	

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			in official proceedings relating to prosecution of a capital felony.	
476	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.	
477	860.16	1st	Aircraft piracy.	
478	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).	
479	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).	
480	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).	
481	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.	
482	893.135	1st	Trafficking in cocaine, more	

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	(1) (b) 1.b.		than 200 grams, less than 400 grams.
483	893.135	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
	(1) (c) 1.b.		
484	893.135	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
	(1) (d) 1.b.		
485	893.135	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
	(1) (e) 1.b.		
486	893.135	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
	(1) (f) 1.b.		
487	893.135	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
	(1) (g) 1.b.		
488	893.135	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
	(1) (h) 1.b.		
489	893.135	1st	Trafficking in 1,4-Butanediol,

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	586-01859-14		2014588c1
	(1) (j) 1.b.		5 kilograms or more, less than 10 kilograms.
490	893.135	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
	(1) (k) 2.b.		
491	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
492	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
493	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
494	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
495	896.101(5) (b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.

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496

896.104(4)(a)2. 2nd Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.

497 Section 7. For the purpose of incorporating the amendment
498 made by this act to section 825.103, Florida Statutes, in a
499 reference thereto, subsection (1) of section 772.11, Florida
500 Statutes, is reenacted to read:

501 772.11 Civil remedy for theft or exploitation.—

502 (1) Any person who proves by clear and convincing evidence
503 that he or she has been injured in any fashion by reason of any
504 violation of ss. 812.012-812.037 or s. 825.103(1) has a cause of
505 action for threefold the actual damages sustained and, in any
506 such action, is entitled to minimum damages in the amount of
507 \$200, and reasonable attorney's fees and court costs in the
508 trial and appellate courts. Before filing an action for damages
509 under this section, the person claiming injury must make a
510 written demand for \$200 or the treble damage amount of the
511 person liable for damages under this section. If the person to
512 whom a written demand is made complies with such demand within
513 30 days after receipt of the demand, that person shall be given
514 a written release from further civil liability for the specific
515 act of theft or exploitation by the person making the written
516 demand. Any person who has a cause of action under this section
517 may recover the damages allowed under this section from the
518 parents or legal guardian of any unemancipated minor who lives

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519

520 with his or her parents or legal guardian and who is liable for
521 damages under this section. Punitive damages may not be awarded
522 under this section. The defendant is entitled to recover
523 reasonable attorney's fees and court costs in the trial and
524 appellate courts upon a finding that the claimant raised a claim
525 that was without substantial fact or legal support. In awarding
526 attorney's fees and costs under this section, the court may not
527 consider the ability of the opposing party to pay such fees and
528 costs. This section does not limit any right to recover
529 attorney's fees or costs provided under any other law.

Section 8. This act shall take effect October 1, 2014.

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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 1238

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Family Trust Companies

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1238 creates “Family Trust Companies” in Florida. Trust companies are for-profit business organizations that are authorized to engage in trust business and to act as a fiduciary for the general public. Some states allow families to form and operate private or family trust companies that provide trust services similar to those that can be provided by an individual trustee or a financial institution. However these family trust companies are owned exclusively by family members and may not provide fiduciary services to the public. These private, family trust companies are generally formed to manage the wealth of high net-worth families in lieu of traditional individual or institutional trustee arrangements for a variety of personal, investment, regulatory, and tax reasons. Currently, there are no Florida statutes authorizing the formation of family trust companies, licensed family trust companies, and foreign licensed family trust companies.

The bill authorizes families to form and operate any of these three family trust companies in Florida, subject to varying regulatory requirements, including a license or registration with the Office of Financial Regulation (OFR), maintenance of minimum capital accounts with a principal place of business in Florida, and certain reporting requirements. This bill specifies the powers of family trust companies such as serving as a trustee of trusts held for the benefit of family members and providing fiduciary, investment advisory, and wealth management services to a family. A family trust company cannot perform these services for the general public.

This bill authorizes the OFR to investigate applications for licensure or registration, requires annual renewals and other regulatory filings from licensees and registrants, and authorizes the

OFR to conduct periodic examinations of family trust companies, licensed family trust companies, and foreign licensed family trust companies.

This bill is effective October 1, 2015, if the linked public records bill or similar legislation is adopted in the same legislative session.¹

II. Present Situation:

Trusts

A trust is generally defined as, “a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it”² A trust must have three interest holders—a settlor (also called a “grantor”), a trustee, and a beneficiary. The settlor is the party creating the trust. The trustee holds legal title to the property held in trust for the benefit of the beneficiary.³ The beneficiary has an equitable interest in property subject to trust, enjoying the benefit of the administration of the trust by a trustee.⁴ A trust company may offer its services to the general public to serve as trustee of private trusts.

Trust Companies

The OFR supervises banks and trust companies.⁵ The OFR issues charters to state trust companies to conduct “general . . . trust business.”⁶ A “trust company” is a business organization, other than a bank or state or federal association, engaged in “trust business.”⁷ “Trust business” is the business of acting as a fiduciary when such business is conducted by a bank, state or federal association, or a trust company and when conducted by any other business organization as its sole or principal business.⁸

The Family Trust Company

A family trust company provides trust services to a related group of people and cannot provide services to the general public.⁹ This includes serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family.¹⁰ At least 14 states currently have statutes governing the organization and operation of family trust companies.¹¹

¹ See Senate Bill 1320 (2014).

² 55A Fla. Jur.2d Trusts s. 1; s. 731.201(38), F.S.

³ 55A Fla. Jur.2d Trusts s. 1.

⁴ *Id.*

⁵ See s. 20.121(3)(a)2., F.S.

⁶ See s. 658.16(1) and 658.12(19), F.S.

⁷ See s. 658.12(21), F.S.

⁸ See s. 658.12(20), F.S.

⁹ See White Paper for SB 1238 by Senator Richter Relating to Family Trust Companies provided by the Real Property, Probate, and Trust Law Section of the Florida Bar (on file with the Senate Committee on Banking and Insurance).

¹⁰ *Id.*

¹¹ *Id.*

No Florida statutes authorizes the formation of a family trust company. Other vehicles are currently used which were primarily designed for trust companies serving the general public. Traditional trust companies require regulatory oversight, licensing of investment personnel, public disclosure and capitalization requirements considered by practitioners to be overbroad and intrusive for the family trust.¹²

According to the Real Property, Probate, and Trust Law Section of The Florida Bar, some families enter into agreements with the OFR to form a “family trust company” by agreeing to limit the trust services to the family and not operate for profit or offer services to the general public.¹³ Creation of a statutory regulatory structure would eliminate the need for these specialized agreements.¹⁴

III. Effect of Proposed Changes:

This bill creates ch. 662, F.S., entitled “Family Trust Companies” and provides that the chapter may be cited as the “Florida Family Trust Company Act.” This bill provides that its purpose is to establish requirements for licensing private trust companies, to provide regulation of those persons who provide fiduciary services to family members of no more than two families and their related interests as a private family trust company, and establish the degree of regulatory oversight required of the OFR over such companies.

Types of Family Trust Companies

This bill creates three types of family trust companies: family trust companies, licensed family trust companies, and foreign licensed family trust companies.

This bill defines “family trust company” as a corporation or limited liability company (LLC) that is exclusively owned by one or more family members, is organized or qualified to do business in Florida, acts or proposes to act as a fiduciary to serve one or more family members, and does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of the family trust company or one or more trusts, companies, or other entities that are family members.

A “licensed family trust company” means a family trust company that operates in accordance with this chapter and has been issued a license that has not been revoked or suspended by the OFR.

A “foreign licensed family trust company” means a family trust company that is licensed by a state other than Florida, has its principal place of business in a jurisdiction in the United States other than Florida, is operated in accordance with family or private trust company laws of a jurisdiction other than Florida, and is subject to statutory or regulatory mandated supervision by the jurisdiction in which the principal place of business is located.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

A family trust company must be exclusively owned by family members. This bill defines “family members” as:

- A designated relative.¹⁵
- A person within the fourth degree of lineal kinship to a designated relative of a family trust company, or a person within the sixth degree of lineal kinship to a designated relative of a licensed family trust company.
- A person within the seventh degree of collateral kinship to a designated relative of a family trust company, or a person within the ninth degree of collateral kinship to a designated relative of a licensed family trust company.
- The spouse or former spouse of an individual qualifying as a family member and an individual who is within the fifth degree of lineal kinship to that spouse or former spouse.
- A family affiliate.¹⁶
- A trust established by a family member if the trust is funded exclusively by one or more family members.
- A trust established by an individual who is not a family member if all of the noncharitable qualified beneficiaries of the trust are family members.
- The probate estate of a family member or the probate estate of an individual who is not a family member if all of the noncharitable beneficiaries of the estate are family members.
- A charitable entity in which a majority of the governing body is composed of family members.

Section 1 provides that the financial institutions codes¹⁷ do not apply to a family trust company, licensed family trust company, or foreign licensed family trust company except as provided in the bill.

Section 7 provides that a family trust company or a foreign licensed family trust company is not required to be a licensed family trust company.

Powers of a Family Trust Company (Sections 21, 22)

Section 21 of this bill provides that a family trust company and a licensed family trust company may:

- Act as a sole or copersonal representative, executor, or curator for probate estates being administered in a state or jurisdiction other than Florida.
- Act as an attorney-in-fact or agent under a power of attorney, other than a power of attorney governed by ch. 709, F.S.
- Act within or outside of Florida as sole fiduciary or cofiduciary and possess, purchase, sell, invest, reinvest, safekeep, or otherwise manage or administer the real or personal property of eligible individuals and members.

¹⁵“Designated relative” means a common ancestor of a family, who may be a living or deceased person, and who is so designated in the application for a license or annual license.

¹⁶“Family affiliate” is a company or other entity in which one or more family members own, control, or have the power to directly or indirectly vote more than 50 percent of a class of voting securities in the company or entity.

¹⁷ The “financial institutions codes” are chs. 655, 657, 658, 660, 663, 665, and 667, F.S. But see, ch. 662, F.S., relating to family trust companies.

- Exercise the powers of a corporation or LLC incorporated or organized under Florida law, or qualified to transact business as a foreign corporation or LLC under Florida law, which are reasonably necessary to enable it to fully exercise, in accordance with commonly accepted customs and usages, a power conferred by the Florida Family Trust Company Act.
- Delegate duties and powers, including investment functions under s. 518.112, F.S., in accordance with the powers granted to a trustee under ch. 736, F.S., or other applicable law, and retain agents, attorneys, accountants, investment advisers, or other individuals or entities to advise or assist the family trust company, licensed family trust company, or foreign licensed family trust company in the exercise of its powers and duties.
- Perform all acts necessary for exercising these powers.

A foreign licensed family trust company that is in good standing in its principal jurisdiction may exercise all the trust powers in Florida that a Florida family trust company may exercise.

A family trust company, a licensed family trust company, and a foreign licensed family trust company:

- May not engage in commercial banking; however, it may establish accounts at financial institutions for its own purposes or on behalf of family members to whom it provides services.
- May not engage in fiduciary services with the public unless licensed pursuant to ch. 658, F.S.
- May not serve as a personal representative or a copersonal representative of a probate estate administered in Florida.
- May not serve as an attorney in fact or agent, including as a co-attorney in fact or co-agent, under a power of attorney pursuant to ch. 709, F.S.

Number of Designated Relatives (Section 9)

A family trust company can only have one designated relative so it can operate for only one family. A licensed family trust company can have two designated relatives so it can operate for two families.

Licensing Process (Section 10)

Section 10 provides that an applicant seeking to operate as a licensed family trust company must file an application with the OFR on forms prescribed by the OFR. There is a nonrefundable \$10,000 application fee. The application must contain or be accompanied by:

- The name of the proposed licensed family trust company.
- A copy of the articles of incorporation or articles of organization and the bylaws or operating agreement.
- The physical address and mailing address of the proposed licensed family trust company.
- A statement describing in detail the services that will be provided to family members.
- The name and biographical information of each individual who will initially serve as a director, officer, manager, or member acting in a managerial capacity of the proposed licensed family trust company.

- The name and biographical information of each individual who owns or has the ability or power to directly or indirectly vote at least 10 percent or more of the outstanding shares, membership interest, or membership units of the proposed licensed family trust company.
- The names of the designated relatives.
- The amount of the initial capital account and the form in which the capital was paid and will be maintained.
- The type and amount of bonds or insurance that will be procured and maintained on directors, officers, managers, or members acting in a managerial capacity or employees.

In addition, the application must include a statement signed by the applicant or the applicant's representative affirming that the proposed licensed family trust company is not currently transacting business with the general public. The applicant must affirm that no director, officer, manager, or member has served as a director, officer, or manager, or acted in a managerial capacity, for a trust company or any other financial institution that had a license issued that was suspended or revoked within the 10 years preceding the date of the application. It must affirm that no director, officer, manager, or member acting in a managerial capacity has been convicted of, or pled nolo contendere to, violations of specified crimes or rules. Finally, it must affirm that no director, officer, manager, or member acting in a managerial capacity has had a professional license suspended or revoked within the 10 years preceding the date of the application.

Investigation of Applicants by the OFR (Sections 11, 37)

Once an application is filed, Section 11 of this bill requires the OFR to conduct an investigation to confirm that persons who will serve as directors or officers of the corporation or, if the applicant is a LLC, managers or members acting in a managerial capacity, have not:

- Been convicted of, or entered a plea of nolo contendere to, a crime involving fraud, misrepresentation, or moral turpitude.
- Been convicted of, or pled nolo contendere to, a violation of the financial institutions codes or similar state or federal laws.
- Been directors or executive officers of a financial institution licensed or chartered under the financial institutions codes or by the Federal Government or any other state, the District of Columbia, a territory of the United States, or a foreign country, whose license or charter was suspended or revoked within the 10 years preceding the date of the application.
- Had a professional license suspended or revoked within 10 years preceding the application.
- Made a false statement of material fact on the application.

The OFR must also confirm that the name of the proposed company complies with naming requirements, that capital accounts of the proposed company conform to relevant law, that the fidelity bonds and errors and omissions insurance coverage required are issued and effective, and that the articles of incorporation or articles of organization conform to applicable law. If the OFR determines that an applicant does not meet the requirements, it must issue a notice of intent to deny the application and provides the applicant with an opportunity to request an administrative hearing pursuant to the Administrative Procedures Act.

Section 37 requires the OFR to approve or deny an application for a new licensed family trust company within 180 days after receipt of the application and required additional information.

Registration of Unlicensed or Foreign Family Trust Companies (Section 12)

A family trust company that does not seek to be licensed must register with the OFR. The registration application must provide the name of the designated relative, state that the company is a family trust company and that it will comply with the laws relating to family trust companies, and provide location and contact information.

A foreign licensed family trust company must register with the OFR before beginning operations in Florida. The registration application must state that the company's operations will comply with relevant family trust company laws and that it is currently in compliance with the family trust company laws and regulations of its principal jurisdiction. The registration application must provide addresses and contact information in Florida and in the company's principal jurisdiction. The registration must include documentation that the company is in good standing in the jurisdiction where it is licensed and proof that the company is organized in a manner similar to a family trust company as defined in Florida.

The registration application required for a family trust company and a foreign licensed family trust company must be accompanied by a registration fee of \$5,000.

Requirements for a Family Trust Company, a Licensed Family Trust Company, and a Foreign Licensed Family Trust Company (Section 13)

A family trust company or a licensed family trust must maintain a principal office in Florida. It must maintain original or true copies of all records and accounts of the family trust company or licensed family trust company at that office and make them available for examination by the OFR. A family trust company and a licensed family trust must also have a registered agent in Florida, maintain all applicable state and local business licenses, charters, and permits, and have a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida.

A foreign licensed family trust company must maintain an office in Florida and must maintain original or true copies of all records and accounts of the family trust company or licensed family trust company at that office and make them available for examination by the OFR. It must have a registered agent in Florida, maintain all applicable state and local business licenses, charters, permits, and a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida. Finally, it must be in good standing in its principal jurisdiction.

Requirements in Corporate Documents (Section 14)

This bill requires that the articles of incorporation, certificate of incorporation, or articles of organization (articles) of a family trust company or licensed family trust company contain the name adopted by the company. The name must be distinguishable from other family trust companies or trust companies. The articles must provide the purpose for which the company is formed, and must clearly identify the restricted activities permissible to a family trust company or licensed family trust company. The articles must state that the company will not offer its services to the general public and state that the articles will not be amended without the prior

written consent of the OFR. Any proposed amendment to the articles, bylaws, or operating agreement to a family trust company must be submitted to the OFR for review and approval at least 30 days before the amendment is filed or effective.

Minimum Capital Requirements (Section 15)

A licensed family trust company that has one designated relative may not be organized or operated with an owners' capital account of less than \$250,000. The minimum owners' equity shall be increased to \$350,000 if two designated relatives of the licensed family trust company are named in the application for a license or in the annual license renewal. A family trust company may not be organized or operated with owners' equity of less than \$250,000. The initial minimum owners' equity of a family trust company or licensed family trust company must be composed of cash, government obligations or secured deposits, or marketable securities.

Directors in Licensed and Unlicensed Family Trust Companies (Section 16)

This bill vests exclusive authority to manage a family trust company or licensed family trust company in a board of directors or, if the company is a LLC, a board of directors or managers. A family trust company or licensed family trust company shall have at least three directors or managers. At least one director or manager of the company must be a resident of Florida.

A licensed family trust company must notify the OFR of the proposed appointment of an individual to the board of directors or addition as a member (if an LLC) or the appointment or employment of an individual as an officer or manager or member acting in a managerial capacity at least 60 days before such appointment or employment becomes effective if (1) the company has been licensed for less than 2 years, (2) the company has undergone a change in control within the preceding 2 years, or (3) the company is operating under a cease and desist order. The OFR shall issue a notice of disapproval if it finds that the proposed appointment or employment would cause the licensed family trust company to violate provisions of the Family Trust Act.

Bond and Insurance Requirements (Section 17)

This bill requires the directors or managers of a licensed family trust company to procure and maintain fidelity bonds of at least \$1 million on all active officers, directors, managers, members acting in a managerial capacity, and employees of the company in order to indemnify the company against loss because of a dishonest, fraudulent, or criminal act or omission. In lieu of the fidelity bonds, a licensed family trust company may increase its minimum owners' equity required by \$1 million so that if it has one designated relative, it is organized or operated with an owners' equity of at least \$1.25 million or if it has two designated relatives it is organized or operated with an owners' equity of at least \$1.35 million. A licensed family trust company must also procure and maintain an errors and omissions insurance policy of at least \$1 million in which it is listed as the insured to cover the acts of officers, directors, managers, and members acting in a managerial capacity.

A family trust company or licensed family trust company may also procure and maintain other insurance policies necessary or desirable in connection with the business of the company, including, but not limited to, one or more casualty insurance policies. A family trust company

that is not a licensed family trust company may procure and maintain fidelity bonds and may procure and maintain errors and omissions insurance coverage, but it is not required to do so.

Record Keeping (Section 18)

Each family trust company and licensed family trust company must maintain its fiduciary books and records separate and distinct from other company records. It must segregate all assets held in any fiduciary capacity from other company assets. Assets received or held in a fiduciary capacity by a family trust company or licensed family trust company are not subject to the debts or obligations of the company.

Renewal of Licenses or Registrations (Section 19)

This bill requires family trust companies, licensed family trust companies, and foreign licensed family trust companies to file annual renewal applications with the OFR. This bill specifies the information that must be provided on each type of application. It provides for renewal fees of \$750 for a family trust company, \$1,500 for a licensed family trust company, and \$1,000 for a foreign licensed family trust company.

Licensed Family Trust Company Discontinuing Business (Section 20)

If a licensed family trust company desires to discontinue business as a licensed family trust company, it must file with the OFR a certified copy of the resolution of the board of directors authorizing that action. Upon discharge from all fiduciary duties that it has undertaken, the company must provide certification of such discharge and voluntarily relinquish its license to operate as a licensed family trust company to the OFR. Once it has done so, the licensed family trust company is released from any fidelity bonds.

Investments (Section 23)

This bill describes the type of assets that may be held to form the minimum capital of a licensed or unlicensed family trust company for all periods subsequent to its initial owners' equity contribution. In general, the minimum capital must be retained in liquid investments and the aggregate market value of these assets must be at least 100 percent of the company's required owners' equity. If the assets' value falls below the minimum, the company has 5 days to cure the problem.

This bill authorizes a family trust company or licensed family trust company to purchase or rent real or personal property for use in the conduct of the business or other activities. A family trust company or licensed family trust company may invest its funds, other than the minimum capital account, in any type or character of equity securities, debt securities, or other assets.

This bill places restrictions and requirements on a family trust company or licensed family trust company to the extent it desires to purchase or invest as a fiduciary for a fiduciary estate in securities of which the family trust company, licensed family trust company or a family affiliate has an interest. First, the investment cannot be expressly prohibited by the instrument establishing the fiduciary relationship. The family trust company or licensed family trust

company must obtain the written consent of other fiduciaries. Finally, the family trust company or licensed family trust company must notify persons to whom it sends account statements of the investment, the fees it will receive, and the nature of the relationship between the family trust company and the investment company.

Examinations, Investigations and Discipline by the OFR (Sections 28, 29, 30, 31)

This bill provides that the OFR must conduct an examination of a licensed family trust company, family trust company, and foreign licensed family trust company at least once every 18 months. The licensed family trust company, family trust company, and foreign licensed family trust company must pay the OFR a fee for the costs of the examination. The OFR must determine whether the family trust company or licensed family trust company is operating in compliance with relevant statutes and rules. In lieu of an examination, the OFR may accept an audit of a family trust company, licensed family trust company, or foreign licensed family trust company by a certified public accountant who is independent of the company, or other person or entity acceptable to the OFR. In addition, the OFR may conduct an examination or investigation of a family trust company, licensed family trust company, or foreign licensed family trust company at any time to determine if a company has violated or is about to violate any provision of the financial institutions codes or the rules adopted by the Financial Services Commission. The following acts or conduct constitute grounds for the revocation by the OFR of the license of a licensed family trust company:

- The company is not a family trust company.
- A violation of specified provisions of the Florida Family Trust Company Act.
- A violation of chapter 896, relating to financial transactions offenses, or any similar state or federal law or a violation of any rule of the Financial Service Commission or order of the OFR.
- A breach of any written agreement with the OFR.
- A failure to provide information or documents to the OFR upon written request.
- An act of commission or omission or a practice that is a breach of trust or of fiduciary duty.

Upon a finding that a licensed family trust company has committed any of the above acts, the OFR may enter an order suspending the company's license and provide notice of its intention to revoke the license and of the opportunity for a hearing pursuant to the Administrative Procedure Act. The licensed family trust company shall have 90 days to wind up its affairs after license revocation. If after 90 days the company is still in operation, the OFR may seek an order from the circuit court for the annulment or dissolution of the company.

The OFR may issue and serve a complaint stating charges upon a family trust company, licensed family trust company, or foreign licensed family trust company, or upon a family trust company-affiliated party,¹⁸ if the OFR has reason to believe that such company, family trust company-affiliated party, or individual named therein is engaging in or has engaged in conduct that:

¹⁸ A "family trust company-affiliated party" is a director, officer, manager, employee, or controlling stockholder or member of a family trust company, licensed family trust company, or foreign licensed family trust company. The term also includes a stockholder, member, or any other person as determined by the OFR who participates in the affairs of a family trust company, licensed family trust company, or foreign licensed family trust company.

- Indicates that the company is not a family trust company or foreign licensed family trust company.
- Is a violation of relevant provisions of the Florida Family Trust Company Act.
- Is a violation of any rule of the Financial Services Commission or any order of the OFR.
- Is a breach of any written agreement with the OFR.
- Is a prohibited act or practice pursuant to the Florida Family Trust Company Act.
- Is a willful failure to provide information or documents to the OFR upon written request.
- Is an act of commission or omission or a practice that is a breach of trust or of fiduciary duty.

The complaint must contain a statement of facts and a notice of opportunity for a hearing pursuant to the Administrative Procedures Act. If no hearing is requested or if a hearing is held and the OFR finds that any of the charges are true, the OFR may enter an order directing the family trust company, licensed family trust company, or foreign licensed family trust company, or family trust company-affiliated party, or the individual named therein to cease and desist from engaging in the conduct complained of and to take corrective action. A failure to respond to the complaint justifies the entry of a cease and desist order by the OFR. This bill also contains provisions allowing the OFR to enter an emergency cease and desist order.

If a family trust company, licensed family trust company, or foreign licensed family trust company fails to timely submit its annual certification or any other required report, the OFR may impose a fine of up to \$100 for each day that the report is overdue. The failure to provide the annual certification within 60 days after the end of the calendar year will automatically result in termination of registration of a family trust company or revocation of the license of a licensed family trust company.

Grounds for Removal of a Family Trust Company Affiliated Party (Section 32)

The OFR may issue and serve upon a licensed family trust company or a family trust company and a family trust company-affiliated party a complaint stating charges if the OFR has reason to believe that the family trust company-affiliated party is engaging or has engaged in conduct that:

- Demonstrates that the company is not a family trust company.
- Is a violation of various provisions of the Florida Family Trust Company Act.
- Is a violation of any other law involving fraud or felony moral turpitude.
- Is a violation of chapter 896, relating to financial transactions or similar state or federal law.
- Is a willful violation of a rule of the Financial Services Commission, a willful violation of an order of the OFR, or a willful breach of a written agreement with the OFR.
- Is an act of commission or omission or a practice that is a breach of trust or fiduciary duty.

The complaint must contain a statement of facts and give notice of an opportunity for an administrative hearing. If no hearing is requested or if a hearing is held and the OFR finds that any of the charges in the complaint is true, the OFR may enter an order removing the family trust company-affiliated party or restricting or prohibiting participation by the family trust company-affiliated party in the affairs of the family trust company, licensed family trust company, or other state financial institution, subsidiary, or service corporation.

This bill provides that the OFR may enter an emergency order suspending the family trust company-affiliated party if a family trust company-affiliated party is charged with a felony in a state, a federal court, or certain foreign courts which involves a violation of law relating to fraud, currency transaction reporting, money laundering, theft, or moral turpitude. The emergency order must contain notice of an opportunity for a hearing.

Confidentiality of Books and Records (Section 33)

Section 33 provides that the books and records¹⁹ of a family trust company, licensed family trust company, and foreign licensed family trust company are confidential.²⁰ This bill provides that the books and records shall be made available for inspection only:

- To the OFR or its authorized representative.
- To any person authorized to act for the company.
- As compelled by a court, pursuant to a subpoena issued pursuant to the Florida Rules of Civil Procedure, the Florida Rules of Criminal Procedure, or the Federal Rules of Civil Procedure.
- Pursuant to a subpoena issued in accordance with state or federal law.
- As authorized by the board of directors or the managers of the corporation or LLC.

This bill further provides that each customer, stockholder, or member (if the company is a LLC) has the right to inspect the books and records of a family trust company or licensed family trust company as they pertain to his or her accounts or the determination of his or her voting rights.

This bill provides that the books and records pertaining to customers, members, and stockholders of a family trust company or licensed family trust company must be kept confidential by the company and its directors, managers, officers, and employees. The books and records of customers, members, and stockholders, with limited exceptions, may not be released except upon the express authorization of the customer as to his or her own accounts or a stockholder or member regarding his or her voting rights. Violation of provisions relating to unlawful disclosure of confidential information is a third degree felony.

The confidentiality provisions do not apply to a foreign licensed family trust company. The laws of the jurisdiction of its principal place of business govern the rights of customers, members, and stockholders to inspect its books and records.

Records Relating to the OFR Examination (Section 34)

A family trust company, licensed family trust company, and foreign licensed family trust company must keep full and complete records of the names and residences of all the shareholders or members of the trust company and the number of shares or membership units held by each. It must also keep records of the ownership percentage of each shareholder or member. The records are subject to the inspection of all the shareholders or members of the trust

¹⁹ This bill defines “books and records” as including an application for a license and any documents connected with the application, the OFR’s corresponding investigation granting or denying the issuance of the license, the initial registration documents of a family trust company or foreign licensed family trust company, the annual certification made by a family trust company, licensed family trust company, or foreign licensed family trust company, and the documentation submitted to the OFR in connection with a licensed family trust company discontinuing its business.

²⁰ The books and records here are not held by a state agency; so Article I, s. 24, Fla. Const., is not implicated here.

company, and the officers authorized to assess taxes under state authority. A current list of shareholders or members shall be made available to the OFR and shall be submitted to the OFR upon request.

This bill requires the OFR to retain examination reports, investigatory reports, documents relating to family trust company licensure or registration, annual certifications by all types of family trust companies, and documents relating to licensed family trust companies discontinuing business for 10 years.

This bill provides that a copy of any document on file with the OFR which is certified by the OFR as being a true copy may be introduced in evidence as if it were the original.

This bill provides that orders issued by courts or administrative law judges for the production of confidential records or information must provide for inspection in camera by the court or the administrative law judge. If the court or administrative law judge determines that the documents requested are relevant or would likely lead to the discovery of admissible evidence, the documents shall be subject to further orders by the court or the administrative law judge to protect the confidentiality of the documents. An order directing the release of information is immediately reviewable. A petition by the OFR for review of the order stays any further proceedings in the trial court or the administrative hearing until the disposition of the petition by the reviewing court. If any other party files a petition for review, it will operate as a stay of the proceedings only upon order of the reviewing court.

Domestication of a Foreign Family Trust Company (Section 35)

A foreign family trust company in good standing with the state regulatory agency in the jurisdiction where it is organized may become domesticated in Florida by filing a certificate of domestication and articles of incorporation with the Department of State. It must also file an application for a license as a licensed family trust company or file registration forms with the OFR.

Registration of Foreign FTC (Section 36)

A foreign licensed family trust company in good standing with the state regulatory agency in the jurisdiction under the law of which it is organized may qualify to begin operations in Florida by filing an application with the Department of State or to apply for a statement of foreign qualification to transact business in Florida. It must also file an initial registration to begin operations as a foreign licensed family trust company. If a company in operation on the effective date of this bill meets the definition of a family trust company, it must apply for licensure as a licensed family trust company, register as a family trust company or foreign licensed family trust company, or cease doing business in Florida within 90 days.

Miscellaneous Provisions (Sections 24, 25, 26, 27, 38, 39, and 40)

Section 24 of this bill provides who can make an oath, affirmation, affidavit, or acknowledgment on behalf of a family trust company or licensed family trust company.

Section 25 of this bill provides that a family trust company, a licensed family trust company, or a foreign licensed family trust company may not advertise its services to the public.

Section 26 provides that a licensed family trust company is not required to provide or otherwise post a bond to serve as a court-appointed fiduciary.

Section 27 provides that the Financial Services Commission may adopt rules necessary to carry out the purposes of this bill.

Section 38 allows a family trust company, a licensed family trust company, or a foreign licensed family trust company to engage in certain transactions authorized by the Florida Family Trust Company Act without violating the duty of loyalty in s. 736.0802, F.S.

Section 39 provides that a licensed family trust company or a foreign licensed family trust company is not required to file a bond when acting as a guardian pursuant to the Florida Guardianship Law.

Section 40 provides an effective date of October 1, 2015, contingent upon the passage of a public records bill. The public records bill linked to this bill is SB 1320.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill provides that an applicant for licensure as a licensed family trust company must pay a \$10,000 application fee and a licensed family trust company must pay a \$1,500 annual renewal fee.

Applicants for registration as a family trust company or foreign licensed family trust company must pay a \$5,000 registration fee. A family trust company must pay a \$750 annual renewal fee and a foreign licensed family trust company must pay a \$1,000 annual renewal fee.

This bill requires a licensed family trust company, family trust company, and foreign licensed family trust company to pay the OFR a fee for the costs of examinations required under this bill.

All fees collected pursuant to this bill are deposited in the Financial Institutions Regulatory Trust Fund.

B. Private Sector Impact:

This bill could make Florida a more attractive jurisdiction for the establishment of family trust companies.

C. Government Sector Impact:

The OFR will have an increased workload but the OFR anticipates that existing legal resources are sufficient to handle the increased workload.²¹

VI. Technical Deficiencies:

VII. None. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 662.10, 662.102, 662.111, 662.112, 662.113, 662.114, 662.115, 662.120, 662.121, 662.1215, 662.122, 662.1225, 662.123, 662.124, 662.125, 662.126, 662.127, 662.128, 662.129, 662.130, 662.131, 662.132, 662.133, 662.134, 662.135, 662.140, 662.141, 662.142, 662.143, 662.144, 662.145, 662.146, 662.147, 662.150, and 662.151.

This bill amends the following sections of the Florida Statutes: 120.80, 655.005, 736.0802, and 744.351.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Banking and Insurance on March 25, 2014:

The committee adopted an amendment making numerous technical changes to this bill.

The amendment:

- Clarified that the Florida Family Trust Act is to be included within the Financial Institutions Codes.
- Provided for the treatment of confidential records or information in judicial or administrative proceedings from the linked public records bill.

²¹ Office of Financial Regulation, (CS/HB 1267) *SB 1238 Legislative Bill Analysis* (March 26, 2014) (on file with the Senate Committee on Judiciary).

- Clarified the definitions of “capital account,” “foreign licensed family trust company,” and “officer.”
- Clarified the permissible use of “trust” in a family trust company’s name.
- Clarified that licensees and registrants certify compliance with other applicable state and federal laws and regulations.
- Clarified that the powers of any family trust company type apply as to its eligible members and individuals.
- Removed language providing for limited confidentiality of emergency orders by the OFR.
- Provided rulemaking authority for the Financial Services Commission instead of the OFR.
- Changed the effective date to October 1, 2015.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Richter

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1 A bill to be entitled
 2 An act relating to family trust companies; amending s.
 3 655.005, F.S.; revising the definition of the term
 4 "financial institutions codes"; creating chapter 662,
 5 F.S.; creating s. 662.10, F.S.; providing a short
 6 title; creating s. 662.102, F.S.; providing the
 7 purpose of the act; creating s. 662.111, F.S.;
 8 defining terms; creating s. 662.112, F.S.; providing
 9 for the calculation of kinship; creating s. 662.114,
 10 F.S.; exempting a family trust company or foreign
 11 licensed family trust company from licensure; creating
 12 s. 662.115, F.S.; providing for the applicability of
 13 the chapter to a family trust company or foreign
 14 licensed family trust company; creating s. 662.120,
 15 F.S.; specifying the maximum number of designated
 16 relatives allowed for a family trust company and a
 17 licensed family trust company; creating s. 662.121,
 18 F.S.; providing procedures for applying for a family
 19 trust company license; requiring a fee; creating s.
 20 662.1215, F.S.; providing for investigations of
 21 applicants by the Office of Financial Regulation;
 22 creating s. 662.122, F.S.; providing procedures for
 23 the registration of a family trust company or a
 24 foreign licensed family trust company; requiring a
 25 fee; creating s. 662.1225, F.S.; providing
 26 requirements for a family trust company, licensed
 27 family trust company, and foreign licensed family
 28 trust company; creating s. 662.123, F.S.; requiring
 29 organizational documents to include certain

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30 provisions; authorizing the use of the term "trust";
 31 creating s. 662.124, F.S.; requiring a minimum capital
 32 account; creating s. 662.125, F.S.; vesting exclusive
 33 authority to manage a family trust company or licensed
 34 family trust company in a board of directors or
 35 managers; providing for appointment of directors and
 36 managers; requiring certain notice to the office in
 37 specified circumstances; requiring the office to issue
 38 a notice of disapproval of a proposed appointment in
 39 specified circumstances; creating s. 662.126, F.S.;
 40 requiring that licensed family trust companies procure
 41 and maintain fidelity bonds or specified minimum
 42 capital account and errors and omissions insurance;
 43 authorizing a family trust company that is not
 44 licensed to procure and maintain such coverage;
 45 authorizing licensed and unlicensed family trust
 46 companies to procure and maintain other insurance
 47 policies; creating s. 662.127, F.S.; requiring certain
 48 books and records to be segregated; creating s.
 49 662.128, F.S.; requiring annual license and
 50 registration renewal; requiring a fee; creating s.
 51 662.129, F.S.; providing for the discontinuance of a
 52 licensed family trust company; creating s. 662.130,
 53 F.S.; authorizing family trust companies to conduct
 54 certain activities; creating s. 662.131, F.S.;
 55 prohibiting certain activities on the part of family
 56 trust companies; creating s. 662.132, F.S.; imposing
 57 certain requirements on the assets that form the
 58 minimum capital of licensed family trust companies and

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59 family trust companies; authorizing such trust
 60 companies to purchase or rent real or personal
 61 property, invest funds, and, while acting as a
 62 fiduciary, make certain purchases; imposing a
 63 restriction on that authorization; clarifying the
 64 degree of prudence required of fiduciaries;
 65 restricting the authority of a fiduciary to purchase
 66 certain bonds or securities; specifying additional
 67 authority of fiduciaries; applying the duty of loyalty
 68 to family trust companies in certain cases; creating
 69 s. 662.133, F.S.; requiring certain officers,
 70 directors, or managers of a licensed family trust
 71 company or a family trust company to make an oath,
 72 affirmation, affidavit, or acknowledgment on behalf of
 73 the company in certain circumstances; creating s.
 74 662.134, F.S.; prohibiting a family trust company from
 75 advertising to the public; creating s. 662.135, F.S.;
 76 providing that a licensed family trust company is not
 77 required to post a bond to serve as a court-appointed
 78 fiduciary; creating s. 662.140, F.S.; authorizing the
 79 commission to adopt rules; creating s. 662.141, F.S.;
 80 authorizing the office to conduct examinations and
 81 investigations; requiring that family trust companies
 82 be examined at least once every 18 months; authorizing
 83 the office to accept an independent audit in lieu of
 84 conducting an examination; requiring the office to
 85 examine the books and records of a family trust
 86 company or licensed family trust company; authorizing
 87 the office to rely on a certificate of trust, trust

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88 summary, or written statement in certain
 89 circumstances; authorizing the commission to adopt
 90 rules relating to records and requirements;
 91 authorizing the office to examine the books and
 92 records of a foreign licensed family trust company;
 93 requiring family trust companies to pay examination
 94 fees tied to actual costs incurred by the office;
 95 providing a penalty for late payment and authorizing
 96 an administrative fine if late payment is intentional;
 97 creating s. 662.142, F.S.; providing for license
 98 revocation; specifying acts and conduct that
 99 constitute grounds for revocation; authorizing the
 100 office to suspend a license pending revocation;
 101 creating s. 662.143, F.S.; authorizing the office to
 102 issue a cease and desist order and an emergency cease
 103 and desist order; creating s. 662.144, F.S.;
 104 authorizing the office to collect fines for the
 105 failure to submit required reports; creating s.
 106 662.145, F.S.; providing grounds for the removal of an
 107 officer, director, manager, employee, or agent of a
 108 licensed family trust company or a family trust
 109 company; creating s. 662.146, F.S.; providing for the
 110 confidentiality of certain company books and records;
 111 creating s. 662.147, F.S.; providing requirements for
 112 books and records of family trust companies; requiring
 113 the office to retain certain records for a specified
 114 time; allowing the introduction of certain copies into
 115 evidence; requiring the office to establish a schedule
 116 of fees for such copies; providing requirements for

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117 orders issued by courts or administrative law judges
 118 for the production of confidential records or
 119 information; creating s. 662.150, F.S.; providing for
 120 the domestication of a foreign family trust company;
 121 creating s. 662.151, F.S.; providing for the
 122 registration of a foreign licensed family trust
 123 company; amending s. 120.80, F.S.; adding licensed
 124 family trust companies to the entities regulated by
 125 the office that are exempted from licensing timeframes
 126 under ch. 120, F.S.; amending s. 736.0802, F.S.;
 127 providing circumstances under which certain trust
 128 transactions are not voidable by a beneficiary
 129 affected by a transaction; providing circumstances
 130 under which certain transactions involving the
 131 investment or management of trust property are not
 132 presumed to be affected by conflicts of interest;
 133 providing an exception; amending s. 744.351, F.S.;
 134 exempting a family trust company from certain bond
 135 requirements and applying those requirements to
 136 licensed family trust companies and foreign licensed
 137 family trust companies; providing a contingent
 138 effective date.

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

141
 142 Section 1. Paragraph (k) of subsection (1) of section
 143 655.005, Florida Statutes, is amended to read:

144 655.005 Definitions.—

145 (1) As used in the financial institutions codes, unless the

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146 context otherwise requires, the term:
 147 (k) "Financial institutions codes" means:
 148 1. Chapter 655, relating to financial institutions
 149 generally;
 150 2. Chapter 657, relating to credit unions;
 151 3. Chapter 658, relating to banks and trust companies;
 152 4. Chapter 660, relating to trust business;
 153 5. Chapter 662, relating to family trust companies;
 154 ~~6.5-~~ Chapter 663, relating to international banking;
 155 ~~7.6-~~ Chapter 665, relating to associations; and
 156 ~~8.7-~~ Chapter 667, relating to savings banks.
 157 Section 2. Chapter 662, Florida Statutes, consisting of ss.
 158 662.10-662.151, Florida Statutes, to be entitled "Family Trust
 159 Companies," is created.
 160 Section 3. Section 662.10, Florida Statutes, is created to
 161 read:
 162 662.10 Short title.—This chapter may be cited as the
 163 "Florida Family Trust Company Act."
 164 Section 4. Section 662.102, Florida Statutes, is created to
 165 read:
 166 662.102 Purpose.—The purpose of the Family Trust Company
 167 Act is to establish requirements for licensing family trust
 168 companies, to provide regulation of those persons who provide
 169 fiduciary services to family members of no more than two
 170 families and their related interests as a family trust company,
 171 and to establish the degree of regulatory oversight required of
 172 the Office of Financial Regulation over such companies. Unlike
 173 trust companies formed under chapter 658, there is no public
 174 interest to be served outside of ensuring that fiduciary

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175 activities performed by a family trust company are restricted to
 176 family members and their related interests and as otherwise
 177 provided for in this chapter. Therefore, family trust companies
 178 are not financial institutions within the meaning of the
 179 financial institutions codes, and licensure of these companies
 180 pursuant to chapters 658 and 660 should not be required as it
 181 would not promote the purposes of the codes as set forth in s.
 182 655.001. Consequently, the Office of Financial Regulation is not
 183 responsible for regulating family trust companies to ensure
 184 their safety and soundness, and the responsibility of the office
 185 is limited to ensuring that fiduciary services provided by such
 186 companies are restricted to family members and related interests
 187 and not to the general public.

188 Section 5. Section 662.111, Florida Statutes, is created to
 189 read:

190 662.111 Definitions.—As used in this chapter, the term:

191 (1) "Applicant" means the corporation or limited liability
 192 company on whose behalf an application for a license to operate
 193 as a licensed family trust company is submitted under s.
 194 662.121.

195 (2) "Authorized representative" means an officer or
 196 director of a family trust company, licensed family trust
 197 company, or foreign licensed family trust company, if organized
 198 as a corporation; or a manager, officer, or member of a family
 199 trust company, licensed family trust company, or foreign
 200 licensed family trust company, if organized as a limited
 201 liability company.

202 (3) "Capital account" means the aggregate value of
 203 unimpaired capital stock based on the par value of the shares,

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204 plus any unimpaired surplus and undivided profits or retained
 205 earnings of a family trust company organized as a corporation;
 206 or the initial cash investment remitted for membership interests
 207 in a family trust company organized as a limited liability
 208 company, plus any undivided profits or retained earnings of the
 209 limited liability company.

210 (4) "Capital stock" means the shares of stock issued to
 211 create nonwithdrawable capital for a corporation, or membership
 212 interests issued to create nonwithdrawable capital for a limited
 213 liability company.

214 (5) "Collateral kinship" means a relationship that is not
 215 lineal but derives from a common ancestor.

216 (6) "Commercial banking" means the business of receiving
 217 demand and time deposits, paying checks, or lending money to the
 218 public.

219 (7) "Commission" means the Financial Services Commission.

220 (8) "Controlling stockholder or member" means an individual
 221 who owns or has the ability or power to directly or indirectly
 222 vote at least 10 percent or more of the outstanding shares,
 223 membership interest, or membership units of the family trust
 224 company or licensed family trust company.

225 (9) "Designated relative" means a common ancestor of a
 226 family, who may be a living or deceased person, and who is so
 227 designated in the application for a license or annual license.

228 (10) "Family affiliate" means a company or other entity in
 229 which one or more family members own, control, or have the power
 230 to directly or indirectly vote more than 50 percent of a class
 231 of voting securities of that company or other entity.

232 (11) "Family member" means:

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233 (a) A designated relative.
 234 (b) A person within the fourth degree of lineal kinship to
 235 a designated relative of a family trust company, or a person
 236 within the sixth degree of lineal kinship to a designated
 237 relative of a licensed family trust company.
 238 (c) A person within the seventh degree of collateral
 239 kinship to a designated relative of a family trust company, or a
 240 person within the ninth degree of collateral kinship to a
 241 designated relative of a licensed family trust company.
 242 (d) The spouse or former spouse of an individual qualifying
 243 as a family member and an individual who is within the fifth
 244 degree of lineal kinship to that spouse or former spouse.
 245 (e) A family affiliate.
 246 (f) A trust established by a family member if the trust is
 247 funded exclusively by one or more family members. A trust to
 248 which property has been transferred as a result of a family
 249 member's exercise of a power of appointment shall be deemed
 250 established by that family member if all qualified beneficiaries
 251 of the appointee trust are family members.
 252 (g) A trust established by an individual who is not a
 253 family member if all of the noncharitable qualified
 254 beneficiaries of the trust are family members, except that a
 255 trust composed exclusively of nonindividual qualified
 256 beneficiaries is considered to be a family member if all of the
 257 nonindividual qualified beneficiaries are charitable foundations
 258 or other charitable entities as described in paragraph (j).
 259 (h) The probate estate of a family member.
 260 (i) The probate estate of an individual who is not a family
 261 member if all of the noncharitable beneficiaries of the estate

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262 are family members, except that an estate composed exclusively
 263 of nonindividual beneficiaries is considered to be a family
 264 member if all of the nonindividual beneficiaries are charitable
 265 foundations or other charitable entities as described in
 266 paragraph (j).
 267 (j) A charitable foundation or other charitable entity in
 268 which a majority of the governing body is composed of family
 269 members.
 270 (12) "Family trust company" means a corporation or limited
 271 liability company that:
 272 (a) Is exclusively owned by one or more family members.
 273 (b) Is organized or qualified to do business in this state.
 274 (c) Acts or proposes to act as a fiduciary to serve one or
 275 more family members.
 276 (d) Does not serve as a fiduciary for a person, entity,
 277 trust, or estate that is not a family member, except that it may
 278 serve as a fiduciary for up to 35 individuals who are not family
 279 members if the individuals are current or former employees of
 280 the family trust company or one or more trusts, companies, or
 281 other entities that are family members.
 282 (13) "Family trust company-affiliated party" means:
 283 (a) A director, officer, manager, employee, or controlling
 284 stockholder or member of a family trust company, licensed family
 285 trust company, or foreign licensed family trust company; or
 286 (b) A stockholder, a member, or any other person as
 287 determined by the office who participates in the affairs of a
 288 family trust company, licensed family trust company, or foreign
 289 licensed family trust company.
 290 (14) "Financial institutions codes" has the same meaning as

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291 provided in s. 655.005(1).

292 (14) "Foreign licensed family trust company" means a family
 293 trust company that:

294 (a) Is licensed by a state in the United States other than
 295 this state or the District of Columbia.

296 (b) Has its principal place of business in a state in the
 297 United States other than this state or the District of Columbia.

298 (c) Is operated in accordance with family or private trust
 299 company laws of the state in which it is licensed or of the
 300 District of Columbia.

301 (d) Is subject to statutory or regulatory mandated
 302 supervision by the state in which the principal place of
 303 business is located or by the District of Columbia.

304 (e) Is not owned by, or a subsidiary of, a corporation,
 305 limited liability company, or other business entity that is
 306 organized in or licensed by any foreign country as defined in s.
 307 663.01(3).

308 (16) "Licensed family trust company" means a family trust
 309 company that operates in accordance with this chapter and has
 310 been issued a license that has not been revoked or suspended by
 311 the office.

312 (17) "Lineal kinship" means a family member who is in the
 313 direct line of ascent or descent from a designated relative.

314 (18) "Office" means the Office of Financial Regulation.

315 (19) "Officer" of a family trust company means an
 316 individual, regardless of whether the individual has an official
 317 title or receives a salary or other compensation, who may
 318 participate in the major policymaking functions of a family
 319 trust company, other than as a director. The term does not

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320 include an individual who may have an official title and
 321 exercise discretion in the performance of duties and functions,
 322 but who does not participate in determining the major policies
 323 of the family trust company and whose decisions are limited by
 324 policy standards established by other officers, regardless of
 325 whether the policy standards have been adopted by the board of
 326 directors. The chair of the board of directors, the president,
 327 the chief officer, the chief financial officer, the senior trust
 328 officer, and all executive vice presidents of a family trust
 329 company, and all managers if organized as a limited liability
 330 company, are presumed to be executive officers unless such
 331 officer is excluded, by resolution of the board of directors or
 332 members or by the bylaws or operating agreement of the family
 333 trust company, other than in the capacity of a director, from
 334 participating in major policymaking functions of the family
 335 trust company, and such excluded officer does not actually
 336 participate therein.

337 (20) "Qualified beneficiary" has the same meaning as
 338 provided in s. 736.0103.

339 Section 6. Section 662.112, Florida Statutes, is created to
 340 read:

341 662.112 Degrees of kinship.—Degrees of kinship shall be
 342 calculated by adding the number of steps from a designated
 343 relative through each person to the family member, directly in
 344 the case of lineal kinship, or through the common ancestor in
 345 the case of collateral kinship.

346 Section 7. Section 662.114, Florida Statutes, is created to
 347 read:

348 662.114 Family trust company and foreign licensed family

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349 trust company licensing not required.-A family trust company or
 350 foreign licensed family trust company is not required to be a
 351 licensed family trust company.

352 Section 8. Section 662.115, Florida Statutes, is created to
 353 read:

354 662.115 Applicability of chapter to a family trust company
 355 or foreign licensed family trust company.-

356 (1) A family trust company that is not a licensed family
 357 trust company or a foreign licensed family trust company is
 358 subject to the provisions of this chapter unless the provisions
 359 are expressly limited in applicability to a licensed family
 360 trust company or foreign licensed family trust company.

361 (2) A licensed family trust company is subject to the
 362 provisions of this chapter that expressly refer to a licensed
 363 family trust company or that are not expressly limited to a
 364 family trust company that is not a licensed family trust company
 365 or to a foreign licensed family trust company.

366 (3) A foreign licensed family trust company is subject to
 367 the provisions of this chapter that expressly state that such
 368 provisions apply to a foreign licensed family trust company.

369 Section 9. Section 662.120, Florida Statutes, is created to
 370 read:

371 662.120 Maximum number of designated relatives.-

372 (1) A family trust company may not have more than one
 373 designated relative.

374 (2) A licensed family trust company may not have more than
 375 two designated relatives, and the designated relatives may not
 376 have a common ancestor within five generations.

377 Section 10. Section 662.121, Florida Statutes, is created

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378 to read:

379 662.121 Application for licensed family trust company;
 380 fees.-An applicant seeking to operate as a licensed family trust
 381 company must file an application with the office on forms
 382 prescribed by the office, accompanied by a nonrefundable \$10,000
 383 application fee to be deposited into the Financial Institutions'
 384 Regulatory Trust Fund pursuant to s. 655.049 for the purpose of
 385 administering this chapter. The application must contain or be
 386 accompanied by:

387 (1) The name of the proposed licensed family trust company.

388 (2) A copy of the articles of incorporation or articles of
 389 organization and the bylaws or operating agreement of the
 390 proposed licensed family trust company.

391 (3) The physical address and mailing address of the
 392 proposed licensed family trust company, which must be located in
 393 this state.

394 (4) A statement describing in detail the services that will
 395 be provided to family members by the proposed licensed family
 396 trust company.

397 (5) The name and biographical information of each
 398 individual who will initially serve as a director, officer,
 399 manager, or member acting in a managerial capacity of the
 400 proposed licensed family trust company.

401 (6) The name and biographical information of each
 402 individual who owns or has the ability or power to directly or
 403 indirectly vote at least 10 percent or more of the outstanding
 404 shares, membership interest, or membership units of the proposed
 405 licensed family trust company.

406 (7) The names of the designated relatives.

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407 (8) The amount of the initial capital account of the
 408 proposed licensed family trust company and the form in which the
 409 capital was paid and will be maintained.

410 (9) The type and amount of bonds or insurance that will be
 411 procured and maintained on directors, officers, managers, or
 412 members acting in a managerial capacity or employees pursuant to
 413 s. 662.126.

414 (10) A statement signed by the applicant, or by the
 415 individual signing on behalf of the proposed licensed family
 416 trust company, under penalty of perjury, affirming that the
 417 following statements are true:

418 (a) The proposed licensed family trust company is not
 419 currently transacting business with the general public.

420 (b) No director, officer, manager, or member served as a
 421 director, officer, or manager, or acted in a managerial
 422 capacity, for a trust company or any other financial institution
 423 that had a license issued under the financial institutions codes
 424 or by the Federal Government or any other state, the District of
 425 Columbia, a territory of the United States, or a foreign country
 426 that was suspended or revoked within the 10 years preceding the
 427 date of the application.

428 (c) No director, officer, manager, or member acting in a
 429 managerial capacity has been convicted of, pled guilty or nolo
 430 contendere, regardless of whether adjudication of guilt is
 431 entered by the court, to a violation of the financial
 432 institutions codes, including s. 655.50, chapter 896, or similar
 433 state or federal law or related rule, or to a crime involving
 434 fraud, misrepresentation, or moral turpitude.

435 (d) No director, officer, manager, or member acting in a

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436 managerial capacity has had a professional license suspended or
 437 revoked within the 10 years preceding the date of the
 438 application.

439 (e) All information contained in the application is true
 440 and correct to the best knowledge of the individual signing the
 441 application on behalf of the proposed licensed family trust
 442 company.

443 (11) Any other additional information reasonably required
 444 by the office.

445 Section 11. Section 662.1215, Florida Statutes, is created
 446 to read:

447 662.1215 Investigation of license applicants.—

448 (1) For the purpose of this section, the application is not
 449 deemed to be filed until the applicant has provided the office
 450 with all information required to be included pursuant to s.
 451 662.121.

452 (2) Upon filing an application for a license to operate as
 453 a licensed family trust company, the office shall conduct an
 454 investigation to confirm:

455 (a) That the persons who will serve as directors or
 456 officers of the corporation or, if the applicant is a limited
 457 liability company, managers or members acting in a managerial
 458 capacity, have not:

459 1. Been convicted of, or entered a plea of nolo contendere
 460 to, a crime involving fraud, misrepresentation, or moral
 461 turpitude;

462 2. Been convicted of, or pled nolo contendere to, a
 463 violation of the financial institutions codes, including s.
 464 655.50, chapter 896, or similar state or federal law;

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465 3. Been directors, officers, managers, or members of a
 466 financial institution licensed or chartered under the financial
 467 institutions codes or by the Federal Government or any other
 468 state, the District of Columbia, a territory of the United
 469 States, or a foreign country, whose license or charter was
 470 suspended or revoked within the 10 years preceding the date of
 471 the application;

472 4. Had a professional license suspended or revoked within
 473 the 10 years preceding the date of the application; or

474 5. Made a false statement of material fact on the
 475 application.

476 (b) That the name of the proposed company complies with s.
 477 662.123.

478 (c) That capital accounts of the proposed company conform
 479 to s. 662.124 and that fidelity bonds and errors and omissions
 480 insurance coverage required under s. 662.126 are issued and
 481 effective.

482 (d) That the articles of incorporation or articles of
 483 organization conform to s. 662.123(1).

484 (3) If the investigation required under this section
 485 confirms that the applicant has met the requirements of ss.
 486 662.1225, 662.123(1), 662.124, 662.125, and 662.126, and that
 487 the persons who will serve as directors or officers of the
 488 corporation or the managers or members acting in a managerial
 489 capacity of the limited liability company, as applicable,
 490 satisfy the criteria set forth in subsection (2), the office
 491 shall issue a license authorizing the applicant to operate as a
 492 licensed family trust company.

493 (4) If the office determines the criteria in subsection (2)

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494 have not been met, the office shall serve notice of its intent
 495 to deny the application and of the applicant's opportunity to
 496 request a hearing pursuant to ss. 120.569 and 120.57.

497 Section 12. Section 662.122, Florida Statutes, is created
 498 to read:

499 662.122 Registration of a family trust company or a foreign
 500 licensed family trust company.—

501 (1) A family trust company that is not applying under s.
 502 662.121 to become a licensed family trust company must register
 503 with the office before beginning operations in this state. The
 504 registration application must:

505 (a) Provide the name of the designated relative.

506 (b) State that the family trust company is a family trust
 507 company as defined under this chapter and that its operations
 508 will comply with ss. 662.1225, 662.125, 662.131, and 662.134.

509 (c) Provide the current telephone number and street address
 510 of the physical location in this state of its principal place of
 511 operations where its books and records will be maintained.

512 (d) List the name and current street address in this state
 513 of its registered agent.

514 (2) A foreign licensed family trust company must register
 515 with the office before beginning operations in this state.

516 (a) The registration application must state that its
 517 operations will comply with ss. 662.1225, 662.125, 662.131, and
 518 662.134 and that it is currently in compliance with the family
 519 trust company laws and regulations of its principal
 520 jurisdiction.

521 (b) The registration application must provide:

522 1. The current telephone number and street address of the

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523 physical location of its principal place of business in its
524 principal jurisdiction.

525 2. The current telephone number and street address of the
526 physical location in this state of its principal place of
527 operations where its books and records pertaining to its
528 operations in this state will be maintained.

529 3. The current telephone number and street address of the
530 physical location of any other offices located within this
531 state.

532 4. The name and current street address in this state of its
533 registered agent.

534 (c) The registration must include a certified copy of a
535 certificate of good standing, or an equivalent document,
536 authenticated by the official having custody of records in the
537 jurisdiction where the foreign licensed family trust company is
538 organized, along with satisfactory proof that the company is
539 organized in a manner similar to a family trust company as
540 defined under this chapter.

541 (3) The registration application required under this
542 section for a family trust company and a foreign licensed family
543 trust company must be accompanied by a nonrefundable
544 registration fee of \$5,000.

545 (4) Registration applications required by this section
546 shall be submitted on a form prescribed by the office and be
547 signed, under penalty of perjury, by an officer or director if
548 the family trust company is organized as a corporation, or by a
549 manager, officer, or member if the family trust company is
550 organized as a limited liability company.

551 (5) All fees received by the office pursuant to this

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552 section shall be deposited into the Financial Institutions'
553 Regulatory Trust Fund pursuant to s. 655.049 for purposes of
554 administering this chapter.

555 Section 13. Section 662.1225, Florida Statutes, is created
556 to read:

557 662.1225 Requirements for a family trust company, licensed
558 family trust company, and foreign licensed family trust
559 company.—

560 (1) A family trust company and a licensed family trust
561 company shall maintain:

562 (a) A principal office physically located in this state
563 where original or true copies of all records and accounts of the
564 family trust company or licensed family trust company may be
565 accessed and made readily available for examination by the
566 office in accordance with this chapter. A family trust company
567 or licensed family trust company may also maintain one or more
568 branch offices within or outside of this state.

569 (b) A registered agent who has an office in this state at
570 the street address of the registered agent.

571 (c) All applicable state and local business licenses,
572 charters, and permits.

573 (d) A deposit account with a state-chartered or national
574 financial institution that has a principal or branch office in
575 this state.

576 (2) In order to operate in this state, a foreign licensed
577 family trust company must be in good standing in its principal
578 jurisdiction and maintain:

579 (a) An office physically located in this state where
580 original or true copies of all records and accounts of the

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581 foreign licensed family trust company pertaining to its
 582 operations in this state may be accessed and made readily
 583 available for examination by the office in accordance with this
 584 chapter.

585 (b) A registered agent who has an office in this state at
 586 the street address of the registered agent.

587 (c) All applicable state and local business licenses,
 588 charters, and permits.

589 (d) A deposit account with a state-chartered or national
 590 financial institution that has a principal or branch office in
 591 this state.

592 Section 14. Section 662.123, Florida Statutes, is created
 593 to read:

594 662.123 Organizational documents; use of term "family
 595 trust" in name.-

596 (1) The articles of incorporation, certificate of
 597 incorporation, or articles of organization of a family trust
 598 company or licensed family trust company must contain:

599 (a) The name adopted by the company, which must distinguish
 600 the company from any other trust company formed in this state or
 601 engaged in the business of a trust company, family trust
 602 company, or licensed family trust company in this state. If the
 603 term "trust" is included in the name adopted by a family trust
 604 company, it must be immediately preceded by the term "family" so
 605 as to distinguish the entity from a trust company operating
 606 under chapter 658. This paragraph does not apply to a foreign
 607 licensed family trust company using a fictitious name that is
 608 registered and maintained pursuant to s. 865.09 and that
 609 distinguishes it.

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610 (b) The purpose for which the company is formed, which must
 611 clearly identify the restricted activities permissible to a
 612 family trust company or licensed family trust company under this
 613 chapter.

614 (c) A statement that the company will not offer its
 615 services to the general public.

616 (d) A statement affirming that the articles of
 617 incorporation, certificate of incorporation, or articles of
 618 organization will not be amended without prior written notice to
 619 the office.

620 (2) A proposed amendment to the articles of incorporation,
 621 articles of organization, bylaws, or articles of organization of
 622 a limited liability company, family trust company, or licensed
 623 family trust company must be submitted to the office for review
 624 at least 30 days before it is filed or effective. An amendment
 625 is not considered filed or effective if the office issues a
 626 notice of disapproval with respect to the proposed amendment.

627 (3) The term "family trust" in the name adopted by a family
 628 trust company or licensed family trust company does not
 629 disqualify the name from being allowed under s. 605.0112 or s.
 630 607.0401.

631 Section 15. Section 662.124, Florida Statutes, is created
 632 to read:

633 662.124 Minimum capital account required.-

634 (1) A licensed family trust company that has one designated
 635 relative may not be organized or operated with an owners'
 636 capital account of less than \$250,000. The minimum capital
 637 account shall be increased to \$350,000 if two designated
 638 relatives of the licensed family trust company are named in the

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639 application for a license or in the annual license renewal. A
 640 family trust company may not be organized or operated with a
 641 capital account of less than \$250,000.

642 (2) The full amount of the initial capital account of a
 643 family trust company or licensed family trust company must be
 644 composed of one or more of the asset groups described in s.
 645 662.132(1)(a), exclusive of all organization expenses.

646 Section 16. Section 662.125, Florida Statutes, is created
 647 to read:

648 662.125 Directors or managers.-

649 (1) Exclusive authority to manage a family trust company or
 650 licensed family trust company is vested in a board of directors,
 651 if a corporation, or a board of directors or managers, if a
 652 limited liability company.

653 (2) A family trust company or licensed family trust company
 654 shall have at least three directors, if a corporation, or three
 655 directors or managers, if a limited liability company. At least
 656 one director or manager of the company must be a resident of
 657 this state.

658 (3) The licensed family trust company shall notify the
 659 office of the proposed appointment of an individual to the board
 660 of directors or addition as a member, or the appointment or
 661 employment of an individual as an officer or manager or member
 662 acting in a managerial capacity or equivalent position, at least
 663 60 days before such appointment or employment becomes effective,
 664 if the company:

665 (a) Has been licensed for less than 2 years.

666 (b) Has undergone a change in control within the preceding
 667 2 years.

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668 (c) Is operating under a cease and desist order.

669
 670 The notification must include the name and such biographical
 671 information as the office may reasonably require.

672 (4) A licensed family trust company may not appoint an
 673 individual to the board of directors, add a member, or appoint
 674 or employ an officer or manager or member acting in a managerial
 675 capacity or equivalent, if the office issues a notice of
 676 disapproval with respect to that person.

677 (5) The office shall issue a notice of disapproval if the
 678 office finds that the proposed appointment or employment of a
 679 person would otherwise cause the licensed family trust company
 680 to violate any of the requirements set forth in s.
 681 662.121(10)(b)-(d) or s. 662.1215(2)(a).

682 Section 17. Section 662.126, Florida Statutes, is created
 683 to read:

684 662.126 Fidelity bonds; insurance.-

685 (1) The directors or managers of a licensed family trust
 686 company shall procure and maintain fidelity bonds on all active
 687 officers, directors, managers, members acting in a managerial
 688 capacity, and employees of the company, regardless of whether
 689 they receive a salary or other compensation from the company, in
 690 order to indemnify the company against loss because of a
 691 dishonest, fraudulent, or criminal act or omission on their
 692 part, whether acting alone or in combination with other persons.

693 (2) Each fidelity bond shall be issued in an amount of at
 694 least \$1 million.

695 (3) In lieu of the fidelity bonds required under subsection
 696 (1), a licensed family trust company may increase its capital

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697 account required under s. 662.124 by \$1 million so that if it
 698 has one designated relative, it is organized or operated with a
 699 capital account of at least \$1.25 million, or if it has two
 700 designated relatives, it is organized or operated with a capital
 701 account of at least \$1.35 million.

702 (4) The licensed family trust company shall also procure
 703 and maintain an errors and omissions insurance policy of at
 704 least \$1 million in which it is listed as the insured to cover
 705 the acts and omissions of officers, directors, managers, and
 706 members acting in a managerial capacity, regardless of whether
 707 the person receives a salary or other compensation from the
 708 company.

709 (5) A family trust company or licensed family trust company
 710 may also procure and maintain other insurance policies necessary
 711 or desirable in connection with the business of the company,
 712 including, but not limited to, one or more casualty insurance
 713 policies.

714 (6) A family trust company that is not a licensed family
 715 trust company may procure and maintain fidelity bonds as
 716 described in this section.

717 (7) A family trust company that is not a licensed family
 718 trust company may procure and maintain errors and omissions
 719 insurance coverage as described in this section.

720 Section 18. Section 662.127, Florida Statutes, is created
 721 to read:

722 662.127 Segregation of books, records, and assets;
 723 fiduciary assets not liable.-

724 (1) Each family trust company and licensed family trust
 725 company shall maintain its fiduciary books and records separate

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726 and distinct from other records of the company and shall
 727 segregate all assets held in any fiduciary capacity from other
 728 assets of the company.

729 (2) Assets received or held in a fiduciary capacity by a
 730 family trust company or licensed family trust company are not
 731 subject to the debts or obligations of the company.

732 Section 19. Section 662.128, Florida Statutes, is created
 733 to read:

734 662.128 Annual renewal.-

735 (1) Within 30 days after the end of each calendar year,
 736 family trust companies, licensed family trust companies, and
 737 foreign licensed family trust companies shall file their annual
 738 renewal application with the office.

739 (2) The license renewal application filed by a licensed
 740 family trust company must include a verified statement that:

741 (a) The licensed family trust company operated in full
 742 compliance with this chapter, chapter 896, or similar state or
 743 federal law, or any related rule or regulation. The application
 744 must include proof acceptable to the office that the company is
 745 a family trust company as defined under this chapter.

746 (b) Describes any material changes to its operations,
 747 principal place of business, directors, officers, managers,
 748 members acting in a managerial capacity, and designated
 749 relatives since the end of the preceding calendar year.

750 (3) The registration renewal application filed by a family
 751 trust company must include a verified statement by an officer of
 752 the company that it is a family trust company as defined under
 753 this chapter and that its operations are in compliance with ss.
 754 662.1225, 662.125, 662.131, and 662.134; chapter 896; or similar

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755 state or federal law, or any related rule or regulation, and
 756 include the name of its designated relative or relatives, if
 757 applicable, and the street address for its principal place of
 758 business.

759 (4) The registration renewal application filed by a foreign
 760 licensed family trust company must include a verified statement
 761 that its operations are in compliance with ss. 662.1225,
 762 662.125, 662.131, and 662.134 and in compliance with the family
 763 trust company laws and regulations of its principal
 764 jurisdiction. It must also provide:

765 (a) The current telephone number and street address of the
 766 physical location of its principal place of business in its
 767 principal jurisdiction.

768 (b) The current telephone number and street address of the
 769 physical location in this state of its principal place of
 770 operations where its books and records pertaining to its
 771 operations in this state are maintained.

772 (c) The current telephone number and address of the
 773 physical location of any other offices located in this state.

774 (d) The name and current street address in this state of
 775 its registered agent.

776 (e) Documentation satisfactory to the office that the
 777 foreign licensed family trust company is in compliance with the
 778 family trust company laws and regulations of its principal
 779 jurisdiction.

780 (5) The annual renewal application shall be submitted on a
 781 form prescribed by the office and signed under penalty of
 782 perjury by an authorized representative.

783 (6) A fee of \$750 for a family trust company, \$1,500 for a

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784 licensed family trust company, and \$1,000 for a foreign licensed
 785 family trust company shall be submitted with the annual renewal
 786 application. All fees received by the office pursuant to this
 787 section shall be deposited into the Financial Institutions'
 788 Regulatory Trust Fund pursuant to s. 655.049 for the purpose of
 789 administering this chapter.

790 Section 20. Section 662.129, Florida Statutes, is created
 791 to read:

792 662.129 Discontinuing business.—If a licensed family trust
 793 company desires to discontinue business as a licensed family
 794 trust company, it must file with the office a certified copy of
 795 the resolution of the board of directors, or members if a
 796 limited liability company, authorizing that action. Upon
 797 discharge from all fiduciary duties which it has undertaken, the
 798 licensed family trust company shall provide certification of
 799 such discharge and voluntarily relinquish its license to operate
 800 as a licensed family trust company to the office, whereupon it
 801 shall be released from any fidelity bonds that it maintained
 802 pursuant to s. 662.126(1).

803 Section 21. Section 662.130, Florida Statutes, is created
 804 to read:

805 662.130 Powers of family trust companies, licensed family
 806 trust companies, and foreign licensed family trust companies.—

807 (1) A family trust company and a licensed family trust
 808 company may, for its eligible members and individuals:

809 (a) Act as a sole or copersonal representative, executor,
 810 or curator for probate estates being administered in a state or
 811 jurisdiction other than this state.

812 (b) Act as an attorney in fact or agent under a power of

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813 attorney, other than a power of attorney governed by chapter
814 709.

815 (c) Except as provided in s. 662.131, act within or outside
816 this state as a sole fiduciary or cofiduciary, including acting
817 as a trustee, advisory agent, assignee, assignee for the benefit
818 of creditors, authenticating agent, bailee, bond or indenture
819 trustee, conservator, conversion agent, custodian, escrow agent,
820 fiscal or paying agent, financial advisor, guardian, investment
821 advisor or manager, managing agent, purchase agent, receiver,
822 registrar, safekeeping or subscription agent, transfer agent,
823 except for public companies, warrant agent, or similar
824 capacities generally performed by corporate trustees, and in so
825 acting possess, purchase, sell, invest, reinvest, safekeep, or
826 otherwise manage or administer the real or personal property of
827 eligible members and individuals.

828 (d) Exercise the powers of a corporation or limited
829 liability company incorporated or organized under the laws of
830 this state, or qualified to transact business as a foreign
831 corporation or limited liability company under the laws of this
832 state, which are reasonably necessary to enable it to fully
833 exercise, in accordance with commonly accepted customs and
834 usages, a power conferred under this chapter.

835 (e) Delegate duties and powers, including investment
836 functions under s. 518.112, in accordance with the powers
837 granted to a trustee under chapter 736 or other applicable law,
838 and retain agents, attorneys, accountants, investment advisers,
839 or other individuals or entities to advise or assist the family
840 trust company, licensed family trust company, or foreign
841 licensed family trust company in the exercise of its powers and

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842 duties under this chapter and chapter 736. Such exercise of
843 power may include, but is not limited to, retaining a bank trust
844 department, or a public trust company, other than another family
845 trust company, licensed family trust company, or foreign
846 licensed family trust company.

847 (f) Perform all acts necessary for exercising the powers
848 enumerated in this section or authorized by this chapter and
849 other applicable laws of this state.

850 (2) Except as otherwise provided in s. 662.131, a foreign
851 licensed family trust company that is in good standing in its
852 principal jurisdiction may exercise all the trust powers in this
853 state that a Florida family trust company may exercise.

854 Section 22. Section 662.131, Florida Statutes, is created
855 to read:

856 662.131 Prohibitions.—Notwithstanding any provision of this
857 chapter, a family trust company, licensed family trust company,
858 or foreign licensed family trust company may not:

859 (1) Engage in commercial banking; however, it may establish
860 accounts at financial institutions for its own purposes or on
861 behalf of family members to whom it provides services pursuant
862 to this chapter.

863 (2) Engage in fiduciary services with the public unless
864 licensed pursuant to chapter 658.

865 (3) Serve as a personal representative or a copersonal
866 representative of a probate estate administered in this state.

867 (4) Serve as an attorney in fact or agent, including as a
868 co-attorney in fact or co-agent, under a power of attorney
869 pursuant to chapter 709.

870 Section 23. Section 662.132, Florida Statutes, is created

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871 to read:

872 662.132 Investments.—873 (1) The assets forming the minimum capital account of a
874 family trust company or licensed family trust company must:875 (a) Consist of cash, United States Treasury obligations, or
876 any combination thereof.877 (b) Have an aggregate market value of at least 100 percent
878 of the company's required capital account, as specified in s.
879 662.124. If the aggregate market value of 100 percent of the
880 company's capital account is, at any time, less than the amount
881 required under s. 662.124, the company has 5 business days to
882 bring such capital account into compliance with s. 662.124.883 (2) A family trust company or licensed family trust company
884 may purchase or rent real or personal property for use in the
885 conduct of the business and other activities of the company.886 (3) Notwithstanding any other provision of law, a family
887 trust company or licensed family trust company may invest funds
888 for its own account, other than those required or allowed under
889 subsection (1) or subsection (2), in any type or character of
890 equity securities, debt securities, or other assets.891 (4) Notwithstanding any other law, a family trust company
892 or licensed family trust company may, while acting as a
893 fiduciary, purchase directly from underwriters or distributors
894 or in the secondary market:895 (a) Bonds or other securities underwritten or distributed
896 by:897 1. The family trust company or licensed family trust
898 company;899 2. A family affiliate; or

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900 3. A syndicate, including the family trust company,
901 licensed family trust company, or family affiliate.902 (b) Securities of an investment company, including a mutual
903 fund, closed-end fund, or unit investment trust, as defined
904 under the federal Investment Company Act of 1940, for which the
905 family trust company or licensed family trust company acts as an
906 advisor, custodian, distributor, manager, registrar, shareholder
907 servicing agent, sponsor, or transfer agent.908 (5) The authority granted in subsection (4) may be
909 exercised only if:910 (a) The investment is not expressly prohibited by the
911 instrument, judgment, decree, or order establishing the
912 fiduciary relationship.913 (b) The family trust company or licensed family trust
914 company procures in writing the consent of any cofiduciaries
915 with discretionary investment powers to the investment.916 (c) The family trust company or licensed family trust
917 company discloses in writing to the person or persons to whom it
918 sends account statements its intent to exercise the authority
919 granted in subsection (4) before the first exercise of that
920 authority, and each such disclosure reflects:921 1. The nature of any interest the family trust company or
922 licensed family trust company has, or is reasonably expected to
923 have, in the underwriting or distribution of bonds or securities
924 purchased.925 2. The nature and amount of any fee or other compensation
926 received, or reasonably expected to be received, by the family
927 trust company or licensed family trust company in connection
928 with the transaction.

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929 3. The nature of the relationship between the family trust
 930 company or licensed family trust company and an investment
 931 company described in paragraph (4) (b).

932 4. The nature and amount of any fee or other compensation
 933 received, or reasonably expected to be received, by the family
 934 trust company or licensed family trust company for providing
 935 services to an investment company described in paragraph (4) (b).

936 (6) Subsections (4) and (5) do not affect the degree of
 937 prudence required of fiduciaries under the laws of this state.
 938 However, a purchase of bonds or securities pursuant to
 939 subsections (4) and (5) is not presumed to be affected by a
 940 conflict between the fiduciary's personal and fiduciary
 941 interests if such purchase:

942 (a) Is negotiated at a fair price.
 943 (b) Is in accordance with:

944 1. The interest of the qualified beneficiaries.
 945 2. The purposes of the trusts.

946 (c) Otherwise complies with:

947 1. The prudent investor rule in s. 518.11, or other prudent
 948 investor or similar rule under other applicable law, unless such
 949 compliance is waived in accordance with s. 518.11 or other
 950 applicable law.

951 2. The terms of the instrument, judgment, decree, or order
 952 establishing the fiduciary relationship.

953 (7) Notwithstanding subsections (1)-(6), a family trust
 954 company or licensed family trust company may not, while acting
 955 as a fiduciary, purchase a bond or security issued by the
 956 company or an affiliate thereof unless:

957 (a) The family trust company or licensed family trust

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958 company is expressly authorized to do so by:

959 1. The terms of the instrument creating the trust;
 960 2. A court order;
 961 3. The written consent of the settlor of the trust for
 962 which the family trust company or licensed family trust company
 963 is serving as trustee; or

964 4. The written consent of every adult qualified beneficiary
 965 of the trust who, at the time of such purchase, is entitled to
 966 receive income under the trust or who would be entitled to
 967 receive a distribution of principal if the trust were
 968 terminated; and

969 (b) The purchase of the security is at a fair price and
 970 complies with:

971 1. The prudent investor rule in s. 518.11, or other prudent
 972 investor or similar rule under other applicable law, unless such
 973 compliance is waived in accordance with s. 518.11 or other
 974 applicable law.

975 2. The terms of the instrument, judgment, decree, or order
 976 establishing the fiduciary relationship.

977 (8) Except as otherwise expressly limited by this section,
 978 a family trust company or licensed family trust company, while
 979 acting as a fiduciary, is also authorized, without limiting any
 980 powers otherwise conferred on fiduciaries by law, to do any of
 981 the following, which are not presumed to be affected by a
 982 conflict between the fiduciary's personal and fiduciary
 983 interests:

984 (a) Make an equity investment in a closely held entity that
 985 may or may not be marketable and that is directly or indirectly
 986 owned or controlled by one or more family members.

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987 (b) Place a security transaction using a broker who is a
 988 family member.
 989 (c) Enter into an agreement with a family member who is the
 990 settlor or a qualified beneficiary of a trust with respect to
 991 the appointment of the family trust company or licensed family
 992 trust company as a fiduciary of the trust, or with respect to
 993 the compensation of the family trust company and licensed family
 994 trust company for service as a fiduciary.
 995 (d) Transact business with a family member.
 996 (e) Transact business with or invest in any asset of
 997 another trust, estate, guardianship, or conservatorship for
 998 which the family trust company or licensed family trust company
 999 is a fiduciary or in which a family member has an interest.
 1000 (f) Deposit trust assets in a financial institution that is
 1001 owned, controlled, or operated by one or more family members.
 1002 (g) Purchase, sell, hold, own, or invest in a security,
 1003 bond, real or personal property, stock, or other asset of a
 1004 family member.
 1005 (h) With or without adequate security, lend money to or
 1006 borrow money from a family member or a trust, estate, or
 1007 guardianship for which the family trust company or licensed
 1008 family trust company serves as a fiduciary.
 1009 (9) If not inconsistent with and subject to the terms of
 1010 subsections (4)-(8), the duty of loyalty under s. 736.0802
 1011 applies to family trust companies, licensed family trust
 1012 companies, and foreign licensed family trust companies when
 1013 serving as trustee of a trust whose administration is subject to
 1014 chapter 736.
 1015 Section 24. Section 662.133, Florida Statutes, is created

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1016 to read:
 1017 662.133 Oaths, affidavits, and acknowledgments.—If a family
 1018 trust company or licensed family trust company is required to
 1019 make an oath, affirmation, affidavit, or acknowledgment
 1020 regarding a fiduciary capacity in which it is acting or is
 1021 preparing to act, a director or officer or, if the company is a
 1022 limited liability company, a manager or officer expressly
 1023 authorized by the family trust company or licensed family trust
 1024 company, shall make and, if required, subscribe to such oath,
 1025 affirmation, affidavit, or acknowledgment on behalf of the
 1026 company.
 1027 Section 25. Section 662.134, Florida Statutes, is created
 1028 to read:
 1029 662.134 Unlawful to advertise services.—A family trust
 1030 company, licensed family trust company, or foreign licensed
 1031 family trust company may not advertise its services to the
 1032 public.
 1033 Section 26. Section 662.135, Florida Statutes, is created
 1034 to read:
 1035 662.135 Service as court-appointed fiduciary; bond
 1036 requirement.—A licensed family trust company is not required to
 1037 provide or otherwise post a bond or other surety to serve as a
 1038 court-appointed fiduciary in a proceeding brought or conducted
 1039 in this state.
 1040 Section 27. Section 662.140, Florida Statutes, is created
 1041 to read:
 1042 662.140 Rules.—The commission may adopt rules necessary to
 1043 carry out the purposes of this chapter.
 1044 Section 28. Section 662.141, Florida Statutes, is created

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1045 to read:

1046 662.141 Examination, investigations, and fees.-The office
 1047 may conduct an examination or investigation of a family trust
 1048 company, licensed family trust company, or foreign licensed
 1049 family trust company at any time it deems necessary to determine
 1050 whether a family trust company, licensed family trust company,
 1051 foreign licensed family trust company, or family trust company-
 1052 affiliated person has violated or is about to violate any
 1053 provision of the financial institution's codes or the rules
 1054 adopted by the commission pursuant to such codes.

1055 (1) The office shall conduct an examination of a licensed
 1056 family trust company, family trust company, and foreign licensed
 1057 family trust company at least once every 18 months.

1058 (2) In lieu of an examination by the office, the office may
 1059 accept an audit of a family trust company, licensed family trust
 1060 company, or foreign licensed family trust company by a certified
 1061 public accountant licensed to practice in this state who is
 1062 independent of the company, or other person or entity acceptable
 1063 to the office. If the office accepts an audit pursuant to this
 1064 subsection, the office shall conduct the next required
 1065 examination.

1066 (3) The office shall examine the books and records of a
 1067 family trust company or licensed family trust company as
 1068 necessary to determine whether it is a family trust company or
 1069 licensed family trust company as defined in this chapter, and is
 1070 operating in compliance with ss. 662.1225, 662.125, 662.126,
 1071 662.131, and 662.134, as applicable. The office may rely upon a
 1072 certificate of trust, trust summary, or written statement from
 1073 the trust company identifying the qualified beneficiaries of any

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1074 trust or estate for which the family trust company serves as a
 1075 fiduciary and the qualification of the qualified beneficiaries
 1076 as permissible recipients of company services. The commission
 1077 may establish by rule the records to be maintained or
 1078 requirements necessary to demonstrate conformity with this
 1079 chapter as a family trust company or licensed family trust
 1080 company.

1081 (4) The office shall examine the books and records of a
 1082 foreign licensed family trust company as necessary to determine
 1083 if it is a foreign licensed trust company as defined in this
 1084 chapter and is in compliance with ss. 662.1225, 662.125,
 1085 662.130(2), 662.131, and 662.134. In connection with an
 1086 examination of the books and records of the company, the office
 1087 may rely upon the most recent examination report or review or
 1088 certification letters or similar documentation issued by the
 1089 regulatory agency to which the foreign licensed family trust
 1090 company is subject to supervision. The commission may establish
 1091 by rule the records to be maintained or requirements necessary
 1092 to demonstrate conformity with this chapter as a foreign
 1093 licensed family trust company. The office's examination of the
 1094 books and records of a foreign licensed family trust company is,
 1095 to the extent practicable, limited to books and records of the
 1096 operations in this state.

1097 (5) For each examination of the books and records of a
 1098 family trust company, licensed family trust company, or foreign
 1099 licensed family trust company as authorized under this chapter,
 1100 the trust company shall pay a fee for the costs of the
 1101 examination by the office. As used in this section, the term
 1102 "costs" means the salary and travel expenses of field staff

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1103 which are directly attributable to the examination of the trust
 1104 company and the travel expenses of any supervisory or support
 1105 staff required as a result of examination findings. The mailing
 1106 of payment for costs incurred must be postmarked within 30 days
 1107 after the receipt of a notice stating that such costs are due.
 1108 The office may levy a late payment of up to \$100 per day or part
 1109 thereof that a payment is overdue, unless waived for good cause.
 1110 However, if the late payment of costs is intentional, the office
 1111 may levy an administrative fine of up to \$1,000 per day for each
 1112 day the payment is overdue.

1113 (6) All fees collected under this section must be deposited
 1114 into the Financial Institutions' Regulatory Trust Fund pursuant
 1115 to s. 655.049 for the purpose of administering this chapter.

1116 Section 29. Section 662.142, Florida Statutes, is created
 1117 to read:

1118 662.142 Revocation of license.—

1119 (1) The following acts or conduct constitutes grounds for
 1120 the revocation by the office of the license of a licensed family
 1121 trust company:

1122 (a) The company is not a family trust company as defined in
 1123 this chapter;

1124 (b) A violation of s. 662.1225, s. 662.123(1)(a), s.
 1125 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, s.
 1126 662.131, s. 662.134, or s. 662.144;

1127 (c) A violation of chapter 896, relating to financial
 1128 transactions offenses, or any similar state or federal law or
 1129 any related rule or regulation;

1130 (d) A violation of any rule of the commission;

1131 (e) A violation of any order of the office;

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1132 (f) A breach of any written agreement with the office;
 1133 (g) A prohibited act or practice under s. 662.131;
 1134 (h) A failure to provide information or documents to the
 1135 office upon written request; or
 1136 (i) An act of commission or omission that is judicially
 1137 determined to be a breach of trust or of fiduciary duty pursuant
 1138 to a court of competent jurisdiction.

1139 (2) Upon a finding that a licensed family trust company has
 1140 committed any of the acts set forth in paragraphs (1)(a)-(h),
 1141 the office may enter an order suspending the company's license
 1142 and provide notice of its intention to revoke the license and of
 1143 the opportunity for a hearing pursuant to ss. 120.569 and
 1144 120.57. If there has been a commission or omission under
 1145 paragraph (1)(i), the office may immediately enter an order
 1146 revoking the license. The licensed family trust company shall
 1147 have 90 days to wind up its affairs after license revocation. If
 1148 after 90 days the company is still in operation, the office may
 1149 seek an order from the circuit court for the annulment or
 1150 dissolution of the company.

1151 Section 30. Section 662.143, Florida Statutes, is created
 1152 to read:

1153 662.143 Cease and desist authority.—

1154 (1) The office may issue and serve upon a family trust
 1155 company, licensed family trust company, or foreign licensed
 1156 family trust company, or upon a family trust company-affiliated
 1157 party, a complaint stating charges if the office has reason to
 1158 believe that such company, family trust company-affiliated
 1159 party, or individual named therein is engaging in or has engaged
 1160 in conduct that:

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- 1161 (a) Indicates that the company is not a family trust
 1162 company or foreign licensed family trust company as defined in
 1163 this chapter;
- 1164 (b) Is a violation of s. 662.1225, s. 662.123(1)(a), s.
 1165 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, or
 1166 s. 662.134;
- 1167 (c) Is a violation of any rule of the commission;
 1168 (d) Is a violation of any order of the office;
 1169 (e) Is a breach of any written agreement with the office;
 1170 (f) Is a prohibited act or practice pursuant to s. 662.131;
 1171 (g) Is a willful failure to provide information or
 1172 documents to the office upon written request;
- 1173 (h) Is an act of commission or omission or a practice that
 1174 the office has reason to believe is a breach of trust or of
 1175 fiduciary duty; or
- 1176 (i) Is a violation of chapter 896 or similar state or
 1177 federal law or any related rule or regulation.
- 1178 (2) The complaint must contain the statement of facts and a
 1179 notice of opportunity for a hearing pursuant to ss. 120.569 and
 1180 120.57.
- 1181 (3) If no hearing is requested within the time allowed by
 1182 ss. 120.569 and 120.57, or if a hearing is held and the office
 1183 finds that any of the charges are true, the office may enter an
 1184 order directing the family trust company, licensed family trust
 1185 company, or foreign licensed family trust company, or family
 1186 trust company-affiliated party, or the individual named therein
 1187 to cease and desist from engaging in the conduct complained of
 1188 and to take corrective action.
- 1189 (4) If the family trust company, licensed family trust

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- 1190 company, foreign licensed family trust company, or family trust
 1191 company-affiliated party, or the individual named in such order,
 1192 fails to respond to the complaint within the time allotted in
 1193 ss. 120.569 and 120.57, such failure constitutes a default and
 1194 justifies the entry of a cease and desist order.
- 1195 (5) A contested or default cease and desist order is
 1196 effective when reduced to writing and served upon the family
 1197 trust company, licensed family trust company, or foreign
 1198 licensed family trust company, or family trust company-
 1199 affiliated party, or the individual named therein. An
 1200 uncontested cease and desist order is effective as agreed.
- 1201 (6) If the office finds that conduct described in
 1202 subsection (1) is likely to cause substantial prejudice to
 1203 members, shareholders, or beneficiaries of fiduciary accounts of
 1204 the family trust company, licensed family trust company, or
 1205 foreign licensed family trust company, or to beneficiaries of
 1206 services rendered by such company, it may issue an emergency
 1207 cease and desist order requiring the family trust company,
 1208 licensed family trust company, or foreign licensed family trust
 1209 company, family trust company-affiliated party, or individual
 1210 named therein to immediately cease and desist from engaging in
 1211 the conduct complained of and to take corrective action. The
 1212 emergency order is effective immediately upon service of a copy
 1213 of the order upon the family trust company, licensed family
 1214 trust company, or foreign licensed family trust company, or
 1215 family trust company-affiliated party and remains effective for
 1216 90 days. If the office begins nonemergency cease and desist
 1217 proceedings under subsection (1), the emergency order remains
 1218 effective until the conclusion of the proceedings under ss.

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1219 120.569 and 120.57.

1220 (7) A family trust company or foreign licensed family trust
 1221 company shall have 90 days to wind up its affairs after entry of
 1222 any order to cease and desist from operating as a family trust
 1223 company or foreign licensed family trust company. If, after 90
 1224 days, a family trust company is still operating, the office may
 1225 seek an order from the circuit court for the annulment or
 1226 dissolution of the company. If, after 90 days, a foreign
 1227 licensed family trust company is still operating, the office may
 1228 seek an injunction from the circuit court restraining the
 1229 company from continuing to operate in this state.

1230 Section 31. Section 662.144, Florida Statutes, is created
 1231 to read:

1232 662.144 Failure to submit required report; fines.—If a
 1233 family trust company, licensed family trust company, or foreign
 1234 licensed family trust company fails to submit within the
 1235 prescribed period its annual renewal or any other report
 1236 required by this chapter or any rule, the office may impose a
 1237 fine of up to \$100 for each day that the annual renewal or
 1238 report is overdue. Failure to provide the annual renewal within
 1239 60 days after the end of the calendar year shall automatically
 1240 result in termination of registration of a family trust company
 1241 or revocation of the license of a licensed family trust company.
 1242 The trust company shall thereafter have 90 days to wind up its
 1243 affairs.

1244 Section 32. Section 662.145, Florida Statutes, is created
 1245 to read:

1246 662.145 Grounds for removal.—

1247 (1) The office may issue and serve upon a licensed family

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1248 trust company or a family trust company and a family trust
 1249 company-affiliated party a complaint stating charges if the
 1250 office has reason to believe that the family trust company-
 1251 affiliated party is engaging or has engaged in conduct that:

1252 (a) Demonstrates that the company is not a family trust
 1253 company as defined in this chapter;

1254 (b) Is a prohibited act or practice under s. 662.131;

1255 (c) Is a violation of s. 662.1225, s. 662.123(1)(a), s.
 1256 662.126, s. 662.127, s. 662.128, s. 662.130, or s. 662.134;

1257 (d) Is a violation of any other law involving fraud or
 1258 moral turpitude which constitutes a felony;

1259 (e) Is a violation of chapter 896, relating to offenses
 1260 related to financial transactions, or similar state or federal
 1261 law;

1262 (f) Is a willful violation of a rule of the commission;

1263 (g) Is a willful violation of an order of the office;

1264 (h) Is a willful breach of a written agreement with the
 1265 office; or

1266 (i) Is an act of commission or omission or a practice that
 1267 the office has reason to believe is a breach of trust or
 1268 fiduciary duty.

1269 (2) The complaint must contain a statement of facts and a
 1270 notice of opportunity for a hearing pursuant to ss. 120.569 and
 1271 120.57.

1272 (3) If no hearing is requested within the time allowed by
 1273 ss. 120.569 and 120.57, or if a hearing is held and the office
 1274 finds that any of the charges in the complaint is true, the
 1275 office may enter an order removing the family trust company-
 1276 affiliated party or restricting or prohibiting participation by

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1277 the family trust company-affiliated party in the affairs of the
 1278 family trust company, licensed family trust company, or state
 1279 financial institution, subsidiary, or service corporation.

1280 (4) If the family trust company-affiliated party fails to
 1281 respond to the complaint within the time allowed in ss. 120.569
 1282 and 120.57, such failure constitutes a default and justifies the
 1283 entry of an order of removal.

1284 (5) A contested or default order of removal is effective
 1285 when reduced to writing and served on the family trust company
 1286 or licensed family trust company and the family trust company-
 1287 affiliated party. An uncontested order of removal is effective
 1288 as agreed.

1289 (6) The chief executive officer, or the person holding the
 1290 equivalent office, of a family trust company or licensed family
 1291 trust company shall promptly notify the office if he or she has
 1292 actual knowledge that a family trust company-affiliated party is
 1293 charged with a felony in a state or federal court.

1294 (a) If a family trust company-affiliated party is charged
 1295 with a felony in a state or federal court, or in the courts of a
 1296 foreign country with which the United States maintains
 1297 diplomatic relations which involves a violation of law relating
 1298 to fraud, currency transaction reporting, money laundering,
 1299 theft, or moral turpitude and the charge is equivalent to a
 1300 felony charge under state or federal law, the office may enter
 1301 an emergency order suspending the family trust company-
 1302 affiliated party or restricting or prohibiting participation by
 1303 such company-affiliated party in the affairs of that particular
 1304 family trust company or licensed family trust company or any
 1305 financial institution, subsidiary, or service corporation, upon

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1306 service of the order upon the company and the family trust
 1307 company-affiliated party so charged.

1308 (b) The order must contain notice of opportunity for a
 1309 hearing pursuant to ss. 120.569 and 120.57, at which the family
 1310 trust company-affiliated party may request a postsuspension
 1311 hearing to show that continued service to or participation in
 1312 the affairs of the family trust company or licensed family trust
 1313 company does not pose a threat to the interests of the company.
 1314 In accordance with applicable commission rules, the office shall
 1315 notify the family trust company-affiliated party whether the
 1316 order suspending or prohibiting the company-affiliated party
 1317 from participating in the affairs of a licensed family trust
 1318 company or family trust company, or state financial institution,
 1319 subsidiary, or service corporation will be rescinded or
 1320 otherwise modified. The emergency order remains in effect,
 1321 unless otherwise modified by the office, until the criminal
 1322 charge is disposed of. The acquittal of the family trust
 1323 company-affiliated party charged, or the final, unappealed
 1324 dismissal of all charges against such person, dissolves the
 1325 emergency order, but does not prohibit the office from
 1326 instituting proceedings under subsection (1). If the family
 1327 trust company-affiliated party charged is convicted or pleads
 1328 guilty or nolo contendere, regardless of adjudication, the
 1329 emergency order becomes final.

1330 (7) A family trust company-affiliated party removed from
 1331 office pursuant to this section is not eligible for reelection
 1332 to such position or to any official position in a family trust
 1333 company, licensed family trust company, or financial institution
 1334 in this state except with the written consent of the office. A

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1335 family trust company-affiliated party who is removed,
 1336 restricted, or prohibited from participation in the affairs of a
 1337 family trust company, licensed family trust company, or state
 1338 financial institution pursuant to this section may petition the
 1339 office for modification or termination of such removal,
 1340 restriction, or prohibition.

1341 (8) The resignation, termination of employment or
 1342 participation, or separation from a family trust company or a
 1343 licensed family trust company of the family trust company-
 1344 affiliated party does not affect the jurisdiction and authority
 1345 of the office to issue a notice and proceed under this section
 1346 against the company-affiliated party if such notice is served
 1347 before the end of the 6-year period beginning on the date such
 1348 person ceases to be a family trust company-affiliated party with
 1349 respect to such company.

1350 Section 33. Section 662.146, Florida Statutes, is created
 1351 to read:

1352 662.146 Confidentiality of books and records.-

1353 (1) The books and records of a family trust company,
 1354 licensed family trust company, and foreign licensed family trust
 1355 company are confidential and shall be made available for
 1356 inspection and examination only:

1357 (a) To the office or its authorized representative;

1358 (b) To any person authorized to act for the company;

1359 (c) As compelled by a court, pursuant to a subpoena issued
 1360 pursuant to the Florida Rules of Civil Procedure, the Florida
 1361 Rules of Criminal Procedure, or the Federal Rules of Civil
 1362 Procedure or pursuant to a subpoena issued in accordance with
 1363 state or federal law. Before the production of the books and

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1364 records of a family trust company, licensed family trust
 1365 company, or foreign licensed family trust company, the party
 1366 seeking production must reimburse the company for the reasonable
 1367 costs and fees incurred in compliance with the production. If
 1368 the parties disagree regarding the amount of reimbursement, the
 1369 party seeking the records may request the court having
 1370 jurisdiction to set the amount of reimbursement;

1371 (d) Pursuant to a subpoena, to any federal or state law
 1372 enforcement or prosecutorial instrumentality authorized to
 1373 investigate suspected criminal activity;

1374 (e) As authorized by the board of directors, if in
 1375 corporate form, or the managers, if in limited liability company
 1376 form; or

1377 (f) As provided in subsection (2).

1378 (2) (a) Each customer and stockholder, if a corporation, or
 1379 member, if a limited liability company, has the right to inspect
 1380 the books and records of a family trust company or licensed
 1381 family trust company as they pertain to his or her accounts or
 1382 the determination of his or her voting rights.

1383 (b) The books and records pertaining to customers, members,
 1384 and stockholders of a family trust company or licensed family
 1385 trust company shall be kept confidential by the company and its
 1386 directors, managers, officers, and employees. The books and
 1387 records of customers, members, and stockholders may not be
 1388 released except upon the express authorization of the customer
 1389 as to his or her own accounts or a stockholder or member
 1390 regarding his or her voting rights. However, information may be
 1391 released, without the authorization of a customer, member, or
 1392 shareholder in a manner prescribed by the board of directors, if

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1393 a corporation, or managers, if a limited liability company, to
 1394 verify or corroborate the existence or amount of a customer's
 1395 account if that information is reasonably provided to meet the
 1396 needs of commerce and to ensure accurate credit information.
 1397 Notwithstanding this paragraph, this subsection does not
 1398 prohibit a family trust company or licensed family trust company
 1399 from disclosing financial information referenced in this
 1400 subsection as permitted under 15 U.S.C. s. 6802, as amended.

1401 (c) A person who willfully violates a provision of this
 1402 section which relates to unlawful disclosure of confidential
 1403 information commits a felony of the third degree, punishable as
 1404 provided in s. 775.082, s. 775.083, or s. 775.084.

1405 (d) This subsection does not apply to a foreign licensed
 1406 family trust company. The laws of the jurisdiction of its
 1407 principal place of business govern the rights of customers,
 1408 members, and stockholders to inspect its books and records.

1409 (3) For purposes of this section, the term "books and
 1410 records" includes, but is not limited to, an application for a
 1411 license and any documents connected with the application under
 1412 s. 662.121; the office's corresponding investigation under s.
 1413 662.1215 in granting or denying the issuance of the license; the
 1414 initial registration documents of a family trust company or
 1415 foreign licensed family trust company under s. 662.122; the
 1416 annual renewal made by a family trust company, licensed family
 1417 trust company, or foreign licensed family trust company under s.
 1418 662.128; and the documentation submitted to the office in
 1419 connection with a licensed family trust company discontinuing
 1420 its business under s. 662.129.

1421 Section 34. Section 662.147, Florida Statutes, is created

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1422 to read:

1423 662.147 Records relating to the office examination; limited
 1424 restrictions on public access.-

1425 (1) A family trust company, licensed family trust company,
 1426 and foreign licensed family trust company shall keep at the
 1427 office it is required to maintain pursuant to s. 662.1225 full
 1428 and complete records of the names and residences of all the
 1429 shareholders or members of the trust company and the number of
 1430 shares or membership units held by each, as applicable, as well
 1431 as the ownership percentage of each shareholder or member, as
 1432 the case may be. The records are subject to the inspection of
 1433 all the shareholders or members of the trust company, and the
 1434 officers authorized to assess taxes under state authority,
 1435 during the normal business hours of the trust company. A current
 1436 list of shareholders or members shall be made available to the
 1437 office's examiners for their inspection and, upon the request of
 1438 the office, shall be submitted to the office.

1439 (2) The office shall retain for at least 10 years:

1440 (a) Examination reports.

1441 (b) Investigatory records.

1442 (c) The application for a license, any documents connected
 1443 with the application, and the office's corresponding
 1444 investigation in granting or denying the issuance of the
 1445 license.

1446 (d) The initial registration documents of a family trust
 1447 company or foreign licensed family trust company.

1448 (e) The annual renewal made by a family trust company,
 1449 licensed family trust company, or foreign licensed family trust
 1450 company.

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

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1451 (f) The documentation submitted to the office in connection
 1452 with a licensed family trust company discontinuing its business
 1453 and any related information compiled by the office, or
 1454 photographic copies thereof.

1455 (3) A copy of any document on file with the office which is
 1456 certified by the office as being a true copy may be introduced
 1457 in evidence as if it were the original. The office shall
 1458 establish a schedule of fees for preparing true copies of
 1459 documents.

1460 (4) Orders issued by courts or administrative law judges
 1461 for the production of confidential records or information must
 1462 provide for inspection in camera by the court or the
 1463 administrative law judge. If the court or administrative law
 1464 judge determines that the documents requested are relevant or
 1465 would likely lead to the discovery of admissible evidence, the
 1466 documents shall be subject to further orders by the court or the
 1467 administrative law judge to protect the confidentiality thereof.
 1468 An order directing the release of information shall be
 1469 immediately reviewable, and a petition by the office for review
 1470 of the order shall automatically stay any further proceedings in
 1471 the trial court or the administrative hearing until the
 1472 disposition of the petition by the reviewing court. If any other
 1473 party files a petition for review, it will operate as a stay of
 1474 the proceedings only upon order of the reviewing court.

1475 Section 35. Section 662.150, Florida Statutes, is created
 1476 to read:

1477 662.150 Domestication of a foreign family trust company.—

1478 (1) A foreign family trust company lawfully organized and
 1479 currently in good standing with the state regulatory agency in

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1480 the jurisdiction where it is organized may become domesticated
 1481 in this state by:

1482 (a) Filing with the Department of State a certificate of
 1483 domestication and articles of incorporation in accordance with
 1484 and subject to s. 607.1801 or by filing articles of conversion
 1485 in accordance with s. 605.1045; and

1486 (b) Filing an application for a license to begin operations
 1487 as a licensed family trust company in accordance with s.
 1488 662.121, which must first be approved by the office or by filing
 1489 the prescribed form with the office to register as a family
 1490 trust company to begin operations in accordance with s. 662.122.

1491 (2) A foreign family trust company may apply pursuant to
 1492 paragraph (1) (b) before satisfying the requirements of paragraph
 1493 (1) (a); however, upon receipt of a certificate of authority, the
 1494 company must satisfy the requirements of paragraph (1) (a) before
 1495 beginning operations.

1496 Section 36. Section 662.151, Florida Statutes, is created
 1497 to read:

1498 662.151 Registration of a foreign licensed family trust
 1499 company to operate in this state.—A foreign licensed family
 1500 trust company lawfully organized and currently in good standing
 1501 with the state regulatory agency in the jurisdiction under the
 1502 law of which it is organized may qualify to begin operations in
 1503 this state by:

1504 (1) Filing an application with the Department of State to
 1505 apply for a certificate of authority in accordance with and
 1506 subject to s. 605.0902 or s. 607.1503.

1507 (2) Filing an initial registration to begin operations as a
 1508 foreign licensed family trust company in accordance with and

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1509 subject to s. 662.122 and subject to the sections of this
 1510 chapter which specifically state that they apply to a foreign
 1511 licensed family trust company.

1512 (3) A company in operation as of the effective date of this
 1513 act that meets the definition of a family trust company shall
 1514 have 90 days from the effective date of this act to apply for
 1515 licensure as a licensed family trust company, register as a
 1516 family trust company or foreign licensed family trust company,
 1517 or cease doing business in this state.

1518 Section 37. Paragraph (a) of subsection (3) of section
 1519 120.80, Florida Statutes, is amended to read:

1520 120.80 Exceptions and special requirements; agencies.—

1521 (3) OFFICE OF FINANCIAL REGULATION.—

1522 (a) Notwithstanding s. 120.60(1), in proceedings for the
 1523 issuance, denial, renewal, or amendment of a license or approval
 1524 of a merger pursuant to title XXXVIII:

1525 1.a. The Office of Financial Regulation of the Financial
 1526 Services Commission shall have published in the Florida
 1527 Administrative Register notice of the application within 21 days
 1528 after receipt.

1529 b. Within 21 days after publication of notice, any person
 1530 may request a hearing. Failure to request a hearing within 21
 1531 days after notice constitutes a waiver of any right to a
 1532 hearing. The Office of Financial Regulation or an applicant may
 1533 request a hearing at any time prior to the issuance of a final
 1534 order. Hearings shall be conducted pursuant to ss. 120.569 and
 1535 120.57, except that the Financial Services Commission shall by
 1536 rule provide for participation by the general public.

1537 2. Should a hearing be requested as provided by sub-

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1538 subparagraph 1.b., the applicant or licensee shall publish at
 1539 its own cost a notice of the hearing in a newspaper of general
 1540 circulation in the area affected by the application. The
 1541 Financial Services Commission may by rule specify the format and
 1542 size of the notice.

1543 3. Notwithstanding s. 120.60(1), and except as provided in
 1544 subparagraph 4., an every application for license for a new
 1545 bank, new trust company, new credit union, ~~or~~ new savings and
 1546 loan association, or new licensed family trust company must
 1547 ~~shall~~ be approved or denied within 180 days after receipt of the
 1548 original application or receipt of the timely requested
 1549 additional information or correction of errors or omissions. An
 1550 ~~Any~~ application for such a license or for acquisition of such
 1551 control which is not approved or denied within the 180-day
 1552 period or within 30 days after conclusion of a public hearing on
 1553 the application, whichever is later, shall be deemed approved
 1554 subject to the satisfactory completion of conditions required by
 1555 statute as a prerequisite to license and approval of insurance
 1556 of accounts for a new bank, a new savings and loan association,
 1557 ~~or~~ a new credit union, or a new licensed family trust company by
 1558 the appropriate insurer.

1559 4. In the case of an every application for license to
 1560 establish a new bank, trust company, or capital stock savings
 1561 association in which a foreign national proposes to own or
 1562 control 10 percent or more of any class of voting securities,
 1563 and in the case of an every application by a foreign national
 1564 for approval to acquire control of a bank, trust company, or
 1565 capital stock savings association, the Office of Financial
 1566 Regulation shall request that a public hearing be conducted

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1567 pursuant to ss. 120.569 and 120.57. Notice of such hearing shall
1568 be published by the applicant as provided in subparagraph 2. The
1569 failure of ~~any~~ such foreign national to appear personally at the
1570 hearing shall be grounds for denial of the application.

1571 Notwithstanding ~~the provisions of~~ s. 120.60(1) and subparagraph
1572 3., every application involving a foreign national shall be
1573 approved or denied within 1 year after receipt of the original
1574 application or any timely requested additional information or
1575 the correction of any errors or omissions, or within 30 days
1576 after the conclusion of the public hearing on the application,
1577 whichever is later.

1578 Section 38. Subsections (2) and (3) of section 736.0802,
1579 Florida Statutes, are amended, and paragraph (i) is added to
1580 subsection (5) of that section, to read:

1581 736.0802 Duty of loyalty.—

1582 (2) Subject to the rights of persons dealing with or
1583 assisting the trustee as provided in s. 736.1016, a sale,
1584 encumbrance, or other transaction involving the investment or
1585 management of trust property entered into by the trustee for the
1586 trustee's own personal account or which is otherwise affected by
1587 a conflict between the trustee's fiduciary and personal
1588 interests is voidable by a beneficiary affected by the
1589 transaction unless:

- 1590 (a) The transaction was authorized by the terms of the
1591 trust;
- 1592 (b) The transaction was approved by the court;
- 1593 (c) The beneficiary did not commence a judicial proceeding
1594 within the time allowed by s. 736.1008;
- 1595 (d) The beneficiary consented to the trustee's conduct,

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1596 ratified the transaction, or released the trustee in compliance
1597 with s. 736.1012;

1598 (e) The transaction involves a contract entered into or
1599 claim acquired by the trustee when that person had not become or
1600 contemplated becoming trustee;

1601 (f) The transaction was consented to in writing by a
1602 settlor of the trust while the trust was revocable; ~~or~~

1603 (g) The transaction is one by a corporate trustee that
1604 involves a money market mutual fund, mutual fund, or a common
1605 trust fund described in s. 736.0816(3); or

1606 (h) With regard to a trust that is administered by a family
1607 trust company, licensed family trust company, or foreign
1608 licensed family trust company operating under chapter 662, the
1609 transaction is authorized by s. 662.132(4)-(8).

1610 (3) (a) A sale, encumbrance, or other transaction involving
1611 the investment or management of trust property is presumed to be
1612 affected by a conflict between personal and fiduciary interests
1613 if the sale, encumbrance, or other transaction is entered into
1614 by the trustee with:

1615 1. ~~(a)~~ The trustee's spouse;

1616 2. ~~(b)~~ The trustee's descendants, siblings, parents, or
1617 their spouses;

1618 3. ~~(c)~~ An officer, director, employee, agent, or attorney of
1619 the trustee; or

1620 4. ~~(d)~~ A corporation or other person or enterprise in which
1621 the trustee, or a person that owns a significant interest in the
1622 trustee, has an interest that might affect the trustee's best
1623 judgment.

1624 (b) This subsection does not apply to a trust being

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1625 administered by a family trust company, licensed family trust
1626 company, or foreign licensed family trust company operating
1627 under chapter 662 if the sale, encumbrance, or other transaction
1628 is authorized by s. 662.132(4)-(8).

1629 (5)

1630 (i) This subsection does not apply to a trust administered
1631 by a family trust company, licensed family trust company, or
1632 foreign licensed family trust company operating under chapter
1633 662.

1634 Section 39. Subsection (5) of section 744.351, Florida
1635 Statutes, is amended to read:

1636 744.351 Bond of guardian.-

1637 (5) Financial institutions as defined in s. 744.309(4),
1638 other than a trust company operating under chapter 662 which is
1639 not a licensed family trust company or foreign licensed family
1640 trust company, and public guardians authorized by law to be
1641 guardians are ~~shall not be~~ required to file bonds.

1642 Section 40. This act shall take effect October 1, 2015, if
1643 SB 1320 or similar legislation is adopted in the same
1644 legislative session or an extension thereof and becomes law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1498

INTRODUCER: Senator Joyner

SUBJECT: Marriage of Minors

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Pre-meeting
2.			CF	
3.			RC	

I. Summary:

SB 1498 requires a minor seeking a marriage license without the consent of his or her parents to be at least 16 years of age.

Current law allows a county court judge to grant a marriage license to a minor without the consent of his or her parents under three circumstances:

- At least one of the applicants for a marriage license is under 18 and the applicants swear under oath that they are parents of a child.
- At least one of the applicants for a marriage license is under 18 and a doctor verifies in writing that the female is pregnant and the parties swear under oath that they are expectant parents of a child.
- The female is under 18 and the male is older than 18 and the female swears under oath that she is an expectant parent.

Current law does not specify an age at which a minor under the circumstances above is too young to receive a marriage license.

II. Present Situation:

Age Limits for Marriage Licenses

A marriage may not be solemnized¹ without the parties having obtained a marriage license in advance.² These licenses are issued by county court judges and circuit court clerks.³ “The county

¹ Persons approved in law to solemnize marriages are ordained clergy and elders in communion, judicial officers, clerks of the circuit court, and notaries public. Section 741.07(1), F.S.

² Section 741.08, F.S.

³ Section 741.01(1), F.S.

court judge or clerk of the circuit court shall issue such license, upon application for the license, if there appears to be no impediment to the marriage.”⁴

A county court judge or clerk of the circuit court may not issue a marriage license unless the parties present a signed and sworn affidavit which provides social security numbers of the parties and the true and correct ages of the parties who generally must be at least 18 year of age.⁵ To obtain a marriage license, the parties must additionally provide a signed statement that specifies whether the parties, separately or together, have completed a premarital preparation course⁶ and a statement that verifies that both parties have obtained and read or accessed contained in the family law handbook.⁷

If either of the marriage license applicants is more than 16 years old but under the age of 18 years old, the minor must present written, sworn consent of the parents or guardian.⁸ Parental consent is waived if the parents are deceased at the time the parties apply for a marriage license or if the minor has previously been married.⁹

If, however, the parties swear under oath that they are parents to a child, a county court judge is authorized, in his or her discretion, to issue a marriage license to minors without parental consent.¹⁰

If the female is pregnant, and a licensed physician verifies the pregnancy in writing, the county court judge may, in his or her discretion, issue a marriage license:

- To a male or female under the age of 18 if the parties swear under oath that they are expecting a child; or
- To a female under the age of 18 years old and a male over the age of 18 years old if the female swears under oath that she is pregnant.¹¹

Other than the situation in which the parties are expecting a child or the female is pregnant, a judge may not issue a marriage license to a person under the age of 16 years old without parental consent.¹²

Sexual Offenses Involving Children

Chapter 794, F.S., governs the crime of sexual battery. One of the sexual battery crimes is statutory rape, a strict liability crime in that the state is not required to prove that the defendant has mens rea, or intent to commit a crime. In s. 794.021, F.S., if criminality of conduct for any

⁴ *Id.*

⁵ Section 741.04(1), F.S.

⁶ Although completion of a premarital preparation course is voluntary, couples who present valid certificates of completion shall receive a discount on their marriage license in the amount of \$32.50.

⁷ Section 741.04(1) and (2), F.S. The family law handbook, drafted by the Family Law Section of the Florida Bar, is made available to marriage license applicants. The handbook describes sections of Florida law on the rights and responsibilities of marital partners to each other and their children, both during marriage and dissolution. Section 741.0306(1), F.S.

⁸ Section 741.0405(1), F.S.

⁹ *Id.*

¹⁰ Section 741.0405(2), F.S.

¹¹ Section 741.0405(3), F.S.

¹² Section 741.0405(4), F.S.

sexual battery crime depends upon the victim's age, ignorance of the victim's age is not a defense.

Section 794.05(1), F.S., defines statutory rape as sexual activity between a person who is 24 years old or older and a person who is 16 or 17 years old. Statutory rape is a second-degree felony, punishable by up to 15 years imprisonment.

Section 800.00(4), F.S., describes lewd or lascivious battery as sexual activity with a victim who is at least 12 but younger than 16. The offender's age, which could also be less than 16, is immaterial. This lewd and lascivious battery, like statutory rape, is a second degree felony.

III. Effect of Proposed Changes:

Current law allows a county court judge to issue a marriage license to a minor without the consent of his or her parents if the applicants are parents or the parties are expectant parents. This bill requires that the applicants be at least 16.

Senate Bill 1498 prohibits the court from issuing a marriage license to minors under the age of 16 in any circumstance. If the parties are parents or the female is pregnant, current law does not provide a minimum age required for marriage.

The interaction between the criminal statutes relating to sexual offenses with minors and marriage where one of the parties is a minor (s. 741.0405, F.S.) is unclear.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 741.0405, F.S.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (2), (3), and (4) of section
741.0405, Florida Statutes, are amended to read:

741.0405 When marriage license may be issued to persons
under 18 years.—

(2) The county court judge of any county in the state may,
in the exercise of his or her discretion, issue a license to
marry to a ~~any~~ male or female under the age of 18 years, but at



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12 least 16 years of age, upon application of both parties sworn
13 under oath that they are the parents of a child.

14 (3) When the fact of pregnancy is verified by the written
15 statement of a licensed physician, the county court judge of any
16 county in the state may, in his or her discretion, issue a
17 license to marry:

18 (a) To a any male or female under the age of 18 years, but
19 at least 16 years of age, upon application of both parties sworn
20 under oath that they are the expectant parents of a child; or

21 (b) To a any female under the age of 18 years, but at least
22 16 years of age, and male over the age of 18 years upon the
23 female's application sworn under oath that she is an expectant
24 parent.

25 (4) No license to marry shall be granted to a any person
26 under the age of 16 years, with or without the consent of the
27 parents, ~~except as provided in subsections (2) and (3).~~

28 Section 2. This act shall take effect July 1, 2014.

29
30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

32 Delete everything before the enacting clause
33 and insert:

34 A bill to be entitled
35 An act relating to marriage of minors; amending s.
36 741.0405, F.S.; deleting provisions that allow the
37 issuance of marriage licenses to minors under 16 years
38 of age in certain circumstances; conforming provisions
39 to changes made by the act; providing an effective
40 date.

By Senator Joyner

19-01449-14

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A bill to be entitled

An act relating to marriage of minors; amending s. 741.0405, F.S.; revising provisions that allow the issuance of marriage licenses to persons younger than 18 years of age in certain circumstances; removing exceptions that allow the issuance of a marriage license to persons younger than 16 years of age; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (2) through (4) of section 741.0405, Florida Statutes, are amended to read:

741.0405 When marriage license may be issued to persons under 18 years.—

(2) The county court judge of any county in the state may, ~~in the exercise of his or her discretion,~~ issue a license to marry to a any male or female younger than under the age of 18 years of age, but at least 16 years of age, upon application of both parties sworn under oath that they are the parents of a child.

(3) ~~If when~~ the fact of pregnancy is verified by the written statement of a licensed physician, the county court judge of any county in the state may, ~~in his or her discretion,~~ issue a license to marry:

(a) To a any male or female younger than under the age of 18 years of age, but at least 16 years of age, upon application of both parties sworn under oath that they are the expectant

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parents of a child; or

(b) To a any female younger than under the age of 18 years of age, but at least 16 years of age, and a male older than ~~over~~ the age of 18 years of age upon the female's application sworn under oath that she is an expectant parent.

(4) A ~~No~~ license to marry may not shall be granted to a any person younger than under the age of 16 years of age, with or without the consent of the parents, ~~except as provided in subsections (2) and (3).~~

Section 2. This act shall take effect July 1, 2014.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1190

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Lee

SUBJECT: Family Law

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1190 creates the Collaborative Law Act (Act). The Act codifies the collaborative process, which is used to facilitate the settlement of matters relating to the dissolution of marriage, such as the distribution of property, alimony, child custody, visitation, and support. A form of alternative dispute resolution, the collaborative process brings together the parties, collaborative attorneys, and specialists, which may include mental health professionals and financial specialists. The hallmark of the collaborative process is the disqualification of the parties' attorneys from further representation if the process terminates without an agreement.

The bill defines terms used in the collaborative law process. The bill also specifies circumstances in which the collaborative process continues, concludes, or terminates, and generally prohibits the disclosure, discovery, or admissibility of communications made during a collaborative law process.

The bill will take effect 30 days after the Supreme Court adopts rules consistent with the bill.

II. Present Situation:

Florida does not currently have a collaborative law process in statute. However, Florida law recognizes forms of alternative dispute resolution and is considered a leader among states in that

regard.¹ Florida public policy favors arbitration² and “mediation and settlement of family law disputes is highly favored in Florida law.”³ Arbitration and mediation provisions are provided in ch. 44, F.S. (Mediation Alternatives to Judicial Action).

The collaborative law movement began in 1990. The movement started to significantly gain in popularity after 2000.⁴ Known as an interdisciplinary dispute resolution process, the model envisions a collaborative team of professionals assembled to assist the divorcing couple in negotiating resolution of their issues. In addition to the collaborative attorneys, the collaborative team may consist of mental health professionals, or divorce coaches, a child specialist, and a financial specialist.⁵ The entire team does not attend all of the meetings.

Today, collaborative law is practiced in every state, in every English-speaking country, and in other countries.⁶ Established in 2000, the International Academy of Collaborative Professionals has more than 4,000 professionals as members from 24 countries.⁷ In the United States, at least 22,000 attorneys have been trained in the collaborative process.⁸

In the United States, the Uniform Law Commission established the Uniform Collaborative Law Act of 2009 (amended in 2010) which regulates the best use of collaborative law, a form of alternative dispute resolution. According to the ULC:

Collaborative Law is a voluntary dispute-resolution process in which clients agree that, with respect to a particular matter in dispute, their named counsel will represent them solely for purposes of negotiation, and, if the matter is not settled out of court that new counsel will be retained for purposes of litigation. The parties and their lawyers work together to find an equitable resolution of a dispute, retaining experts as necessary. The process is intended to promote full and open disclosure and, as is the case in mediation, information disclosed ... is privileged against use in any subsequent litigation. ... Collaborative Law is governed by a patchwork of state laws, state Supreme Court rules, local rules, and ethics opinions. The Uniform Collaborative Law Rules/Act (UCLR/A) is intended to create a uniform national framework for the use of Collaborative Law; one which includes important consumer protections and enforceable privilege provisions.⁹

Seven states, Alabama, District of Columbia, Hawaii, Nevada, Texas, Utah, and Washington have enacted the Uniform Collaborative Law Act, and bills are pending in six states other than

¹ Fran L. Tetunic, *Demystifying Florida Mediator Ethics: the Good, the Bad, and the Unseemly*, 32 NOVA L. REV. 205, 243 (Fall 2007).

² *Shotts v. OP Winter Haven, Inc.*, 86 So. 3d 456, 472 (Fla. 2011).

³ *Griffith v. Griffith*, 860 So. 2d 1069, 1073 (Fla. 1st DCA 2003).

⁴ John Lande and Forrest S. Mosten, *Family Lawyering: Past, Present, and Future*, 51 FAM. CT. REV. 20, 23 (January 2013).

⁵ Glen L. Rabenn, Marc R. Bertone, and Paul J. Toohey, *Collaborative Divorce – A Follow Up*, 55-APR Orange County Law 32, 32 (April 2013).

⁶ *Id.*

⁷ *Id.*

⁸ Andrew J. Meyer, *The Uniform Collaborative Law Act: Statutory Framework and the Struggle for Approval by the American Bar Association*, 4 Y.F. ON ARB. & MEDIATION 212, 213 (2012).

⁹ Uniform Law Commission, Uniform Collaborative Law Rules/Act Short Summary.

http://www.uniformlaws.org/Shared/Docs/Collaborative_Law/UCLA%20Short%20Summary.pdf

Florida.¹⁰ Six states, including Florida, address the collaborative process through local court rules.¹¹

The purported benefits of collaborative divorce are that the process hastens resolution of disputed issues in a dissolution of marriage case and that total expenses of the parties are less than the parties would incur in traditional litigation. Although a comparison of costs is not available, the International Academy of Collaborative Professionals (IACP) studied 933 cases in which the parties agreed to the collaborative process.

The IACP found that:

- Eighty percent of all collaborative cases resolved within a year;
- Eighty six percent of the cases studied were resolved with a formal agreement and no court appearances; and
- The average fees for all professionals totaled \$24,185.¹²

Case profiles considered inappropriate for the collaborative law approach include cases that involve domestic violence, substance abuse, or severe mental illness.¹³

Critical to the collaborative law approach is the “disqualification clause,” which requires that if the parties fail to reach an agreement and intend to engage in contested litigation, both collaborative lawyers are disqualified from further representation, and the parties must start again with new counsel. “The disqualification provision thus creates incentives for parties and Collaborative lawyers to settle.”¹⁴ Still, the American Bar Association (ABA) has cited the disqualification provision as the primary basis for the ABA to not approve the Uniform Collaborative Law Act. The ABA claims that the disqualification provision, unfairly enables one party to disqualify the other party’s attorney simply by terminating the collaborative process or initiating litigation.¹⁵

III. Effect of Proposed Changes:

CS/SB 1190 creates the Collaborative Law Act. The bill defines the collaborative law process as a process intended to resolve a collaborative matter in the family law context without intervention by a tribunal in which the parties sign a collaborative law participation agreement and are represented by collaborative attorneys.

¹⁰ Illinois, Massachusetts, Michigan, New Jersey, Oklahoma, and South Carolina.

<http://www.uniformlaws.org/Act.aspx?title=Collaborative%20Law%20Act> (last visited April 4, 2014).

¹¹ California, Florida, Indiana, Kansas, Louisiana, and Wisconsin. Email correspondence with Meghan McCann, National Conference of State Legislatures (March 12, 2014). At least four judicial circuits in Florida have adopted local court rules on collaborative law. These are the 9th, 11th, 13th, and 18th judicial circuits. Other circuits may however recognize the collaborative process in the absence of issuing a formal administrative order.

¹² Rabenn, *supra* note 5, at 36.

¹³ *Id.*

¹⁴ John Lande, *The Revolution in Family Law Dispute Resolution*, 24 J. AM. ACAD. MATRIM. LAW. 411, 429 (2012).

¹⁵ Meyer, *supra* note 8, at 216.

Uses of the Collaborative Process in Settling Issues in Dispute

The collaborative process may be useful in facilitating early settlement of legal issues. Matters addressed in the collaborative process generally relate to the dissolution of marriage, including the distribution of marital property, alimony, and child support and custody.

The bill specifically defines collaborative matters as matters arising under ch. 61, F.S., (Dissolution of Marriage; Support; Time-sharing) or ch. 742, F.S., (Determination of Parentage) such as:

- Marriage, divorce, dissolution, annulment, and marital property distribution;
- Child custody, visitation, parenting plans, and parenting time;
- Alimony, maintenance, and child support;
- Parental relocation with a child;
- Determination of parentage; and
- Premarital, marital, and postmarital agreements.

A collaborative participation agreement is an agreement between parties to participate in the collaborative law process.

The bill defines a proceeding as a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including prehearing and posthearing motions, conferences, and discovery.

The bill further defines a tribunal as a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity.

The collaborative process is voluntary and parties have the option of beginning the process before filing a petition in court or after a party files a petition for dissolution of marriage.

Circumstances in Which the Collaborative Process Continues, Concludes, or Terminates

In addition to methods specified by the parties in the agreement, the process is concluded by:

- Resolution as evidenced by a signed agreement;
- Partial resolution in which the parties agree that some of the matters will be resolved outside of the process; or
- Termination of the process.

The process can terminate through a variety of actions by a party, including when a party:

- Gives notice that the process is concluded;
- Begins a proceeding related to the process without agreement of all parties;
- Initiates contact with the court or other tribunal, through a pleading, motion, order to show cause, or request for a conference; or
- Discharges a collaborative attorney.

A party may terminate the process with or without cause.

If a collaborative attorney is discharged or withdraws, the unrepresented party has 30 days to hire another collaborative attorney. Parties must consent to continue the process by reaffirming the collaborative law participation agreement in a signed record. The parties must also amend the agreement to identify the successor attorney and the successor attorney must confirm that he or she represents one of the parties.

The parties may request that the tribunal approve a resolution of the collaborative matter.

Confidentiality and Privilege

Communications made during the collaborative law process are privileged, not subject to discovery and inadmissible in evidence. If a communication is privileged, a party may refuse to disclose or may prevent another person's disclosure of the communication. However, evidence or information otherwise admissible or subject to discovery is not privileged solely because of its disclosure or use in the collaborative law process. The parties may agree to a partial or complete waiver of privilege of the collaborative law process, as evidenced in a signed record.

A privilege to a collaborative communication may be waived if it is waived by all parties, and if it is the privilege of a nonparty participant, the nonparty participant expressly waives the privilege.

A person may not assert a privilege to a collaborative communication if he or she discloses a collaborative communication that causes prejudice to another person in a proceeding. However, the privilege is waived only to the extent necessary for the prejudiced person to respond to the disclosure.

A privilege does not apply to any collaborative communication that is:

- Available under ch. 119, F.S., as a public record, or made during an open session of a collaborative law process, or during which a session is required by law to be open to the public;
- A threat or statement of a plan to inflict bodily injury or commit a violent crime;
- Intentionally used to plan, commit, or attempt to commit a crime, or conceal criminal activity; or
- In a collaborative law participation agreement, signed by the parties.

A privilege also does not apply to the extent that a collaborative communications is:

- Sought or offered to prove or disprove a claim of professional misconduct or malpractice related to the collaborative law process;
- Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult unless the Department of Children and Families participates in the process;
- Sought by a party and found by a tribunal to not otherwise be available as evidence, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the communication is sought or offered in:
 - A court proceeding involving a felony; or
 - A proceeding seeking rescission or reformation of a contract arising from the collaborative law process, or in which a party asserts a defense to avoid liability in the contract.

Effective Date of the Collaborative Process Act (Act)

The Act does not take effect until 30 days after the Florida Supreme Court approves and publishes:

- The Rules of Professional Conduct requiring collaborative attorneys and attorneys in the same law firm to disqualify themselves from representing a participant to the process in court except in limited circumstances relating to the seeking of an emergency order to protect the health, safety, and welfare, or interest of a party until a successor attorney is available and for continued representation of government entities; and
- The Family Law Rules of Procedure governing the collaborative law process which must address the collaborative law participation agreement and requiring a stay of ongoing proceedings if a party has already filed a petition on the same matter.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The use of a collaborative process may reduce litigation costs for litigants by reducing attorney fees, case related costs, and court fees.

C. Government Sector Impact:

The Office of State Courts Administrator (OSCA) indicates that this bill may decrease judicial workload due to fewer filings, hearings, and contested issues in each case in which the process is used. A reduced workload will only happen in instances in which the collaborative process ends in an agreement. Although fiscal impact is expected to be positive, exact impact is unknown at this time.¹⁶

¹⁶ Office of the State Courts Administrator, *2014 Judicial Impact Statement, CS/SB 1190* (April 4, 2014).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 61.55, 61.56, 61.57 and 61.58.

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 Children, Families, and Elder Affairs on April 1, 2014:

The Committee Substitute:

- Provides legislative purpose to create a system of practice of a collaborative law process.
- Adds definitions of terms used in the collaborative law process.
- Provides that certain sections created in the proposed legislation not take effect until 30 days after the approval and publication by the Florida Supreme Court of Rules of Professional Conduct and Family Law Rules of Procedure.

- B. **Amendments:**

None.

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

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A bill to be entitled

An act relating to family law; providing legislative findings; creating Part III of ch. 61, F.S., entitled the "Collaborative Law Act"; creating s. 61.55, F.S.; declaring the purpose of the act; creating s. 61.56, F.S.; defining terms; creating s. 61.57, F.S.; declaring that a collaborative law process commences when the parties enter into a collaborative law participation agreement; providing that a tribunal may not order a party to participate in a collaborative law process over the party's objection; providing conditions under which a collaborative law process is concluded; creating s. 61.58, F.S.; providing for confidentiality of communications made during the collaborative law process; providing exceptions; providing that the effective date of specified provisions are contingent upon approval and publication of Florida Supreme Court rules governing specified subjects; providing effective dates.

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

Section 1. The Legislature finds and declares that the purpose of this part is to:

(1) Create a system of practice of a collaborative law process for proceedings under chapters 61 and 742, Florida Statutes.

(2) Encourage the peaceful resolution of disputes and the early settlement of pending litigation through voluntary

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settlement procedures.

(3) Preserve the working relationship between parties to a dispute through a nonadversarial method that reduces the emotional and financial toll of litigation.

Section 2. Part III of chapter 61, Florida Statutes, consisting of ss. 61.55-61.58, is created and entitled the "Collaborative Law Act."

Section 3. Section 61.55, Florida Statutes, is created to read:

61.55 Purpose.—The purpose of this part is to create a uniform system of practice for the collaborative law process in this state. It is the policy of this state to encourage the peaceful resolution of disputes and the early settlement of pending litigation through a voluntary settlement process. The collaborative law process is a unique nonadversarial process that preserves a working relationship between the parties and reduces the emotional and financial toll of litigation.

Section 4. Section 61.56, Florida Statutes, is created to read:

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

(1) "Collaborative attorney" means an attorney who represents a party in a collaborative law process.

(2) "Collaborative law communication" means an oral or written statement, including a statement made in a record, or nonverbal conduct, which:

(a) Is made in the conduct of or in the course of participating in, continuing, or reconvening a collaborative law process; or

(b) Occurs after the parties sign a collaborative law

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59 participation agreement and before the collaborative law process
60 is concluded.

61 (3) "Collaborative law participation agreement" means an
62 agreement between persons to participate in a collaborative law
63 process.

64 (4) "Collaborative law process" means a process intended to
65 resolve a collaborative matter without intervention by a
66 tribunal in which persons sign a collaborative law participation
67 agreement and are represented by collaborative attorneys.

68 (5) "Collaborative matter" means a dispute, transaction,
69 claim, problem, or issue for resolution including a dispute,
70 claim, or issue in a proceeding that is described in a
71 collaborative law participation agreement and arises under
72 chapter 61 or chapter 742, including, but not limited to:

73 (a) Marriage, divorce, dissolution, annulment, and marital
74 property distribution.

75 (b) Child custody, visitation, parenting plans, and
76 parenting time.

77 (c) Alimony, maintenance, and child support.

78 (d) Parental relocation with a child.

79 (e) Parentage.

80 (f) Premarital, marital, and postmarital agreements.

81 (6) "Law firm" means:

82 (a) An attorney or attorneys who practice law in a
83 partnership, professional corporation, sole proprietorship,
84 limited liability company, or association; or

85 (b) An attorney or attorneys employed in a legal services
86 organization, the legal department of a corporation or other
87 organization, or the legal department of a governmental entity,

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88 subdivision, agency, or instrumentality.

89 (7) "Nonparty participant" means a person, other than a
90 party and the party's collaborative attorney, who participates
91 in a collaborative law process.

92 (8) "Party" means a person who signs a collaborative law
93 participation agreement and whose consent is necessary to
94 resolve a collaborative matter.

95 (9) "Person" means an individual; a corporation; a business
96 trust; estate; trust; partnership; a limited liability company;
97 association; joint venture; public corporation; a government or
98 governmental subdivision, agency, or instrumentality; or any
99 other legal or commercial entity.

100 (10) "Proceeding" means a judicial, administrative,
101 arbitral, or other adjudicative process before a tribunal,
102 including related prehearing and posthearing motions,
103 conferences, and discovery.

104 (11) "Prospective party" means a person who discusses with
105 a prospective collaborative attorney the possibility of signing
106 a collaborative law participation agreement.

107 (12) "Record" means information that is inscribed on a
108 tangible medium or that is stored in an electronic or other
109 medium and is retrievable in perceivable form.

110 (13) "Related to a collaborative matter" means involving
111 the same parties, transaction or occurrence, nucleus of
112 operative fact, dispute, claim, or issue as the collaborative
113 matter.

114 (14) "Sign" means, with present intent to authenticate or
115 adopt a record:

116 (a) To execute or adopt a tangible symbol; or

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117 (b) To attach to or logically associate with the record an
 118 electronic symbol, sound, or process.

119 (15) "Tribunal" means a court, arbitrator, administrative
 120 agency, or other body acting in an adjudicative capacity that,
 121 after presentation of evidence or legal argument, has
 122 jurisdiction to render a decision affecting a party's interests
 123 in a matter.

124 Section 5. Section 61.57, Florida Statutes, is created to
 125 read:

126 61.57 Beginning and concluding a collaborative law
 127 process.-

128 (1) The collaborative law process commences, regardless of
 129 whether a legal proceeding is pending, when the parties enter
 130 into a collaborative law participation agreement.

131 (2) A tribunal may not order a party to participate in a
 132 collaborative law process over that party's objection.

133 (3) A collaborative law process is concluded by a:

134 (a) Resolution of a collaborative matter as evidenced by a
 135 signed record;

136 (b) Resolution of a part of the collaborative matter,
 137 evidenced by a signed record, in which the parties agree that
 138 the remaining parts of the collaborative matter will not be
 139 resolved in the process; or

140 (c) Termination of the process.

141 (4) A collaborative law process terminates when a party:

142 (a) Gives notice to other parties in a record that the
 143 collaborative law process is concluded;

144 (b) Begins a proceeding related to a collaborative matter
 145 without the agreement of all parties;

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146 (c) Initiates a pleading, motion, order to show cause, or
 147 request for a conference with a tribunal in a pending proceeding
 148 related to the collaborative matter;

149 (d) Requests that the proceeding be put on the tribunal's
 150 active calendar in a pending proceeding related to the
 151 collaborative matter;

152 (e) Takes similar action requiring notice to be sent to the
 153 parties in a pending proceeding related to the collaborative
 154 matter; or

155 (f) Discharges a collaborative attorney or a collaborative
 156 attorney withdraws from further representation of a party,
 157 except as otherwise provided in subsection (7).

158 (5) A party's collaborative attorney shall give prompt
 159 notice to all other parties in a record of a discharge or
 160 withdrawal.

161 (6) A party may terminate a collaborative law process with
 162 or without cause.

163 (7) Notwithstanding the discharge or withdrawal of a
 164 collaborative attorney, a collaborative law process continues
 165 if, not later than 30 days after the date that the notice of the
 166 discharge or withdrawal of a collaborative attorney required by
 167 subsection (5) is sent to the parties:

168 (a) The unrepresented party engages a successor
 169 collaborative attorney;

170 (b) The parties consent to continue the collaborative law
 171 process by reaffirming the collaborative law participation
 172 agreement in a signed record;

173 (c) The collaborative law participation agreement is
 174 amended to identify the successor collaborative attorney in a

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175 signed record; and

176 (d) The successor collaborative attorney confirms the
 177 attorney's representation of a party in the collaborative law
 178 participation agreement in a signed record.

179 (8) A collaborative law process does not conclude if, with
 180 the consent of the parties, a party requests a tribunal to
 181 approve a resolution of the collaborative matter or any part
 182 thereof as evidenced by a signed record.

183 (9) A collaborative law participation agreement may provide
 184 additional methods for concluding a collaborative law process.

185 Section 6. Section 61.58, Florida Statutes, is created to
 186 read:

187 61.58 Confidentiality of a collaborative law
 188 communication.—Except as provided in this section, a
 189 collaborative law communication is confidential to the extent
 190 agreed by the parties in a signed record or as otherwise
 191 provided by law.

192 (1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW
 193 COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

194 (a) Subject to subsections (2) and (3), a collaborative law
 195 communication is privileged as provided under paragraph (b), is
 196 not subject to discovery, and is not admissible into evidence.

197 (b) In a proceeding, the following privileges apply:

198 1. A party may refuse to disclose, and may prevent another
 199 person from disclosing, a collaborative law communication.

200 2. A nonparty participant may refuse to disclose, and may
 201 prevent another person from disclosing, a collaborative law
 202 communication of a nonparty participant.

203 (c) Evidence or information that is otherwise admissible or

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204 subject to discovery does not become inadmissible or protected
 205 from discovery solely because of its disclosure or use in a
 206 collaborative law process.

207 (2) WAIVER AND PRECLUSION OF PRIVILEGE.—

208 (a) A privilege under subsection (1) may be waived orally
 209 or in a record during a proceeding if it is expressly waived by
 210 all parties and, in the case of the privilege of a nonparty
 211 participant, if it is expressly waived by the nonparty
 212 participant.

213 (b) A person who makes a disclosure or representation about
 214 a collaborative law communication that prejudices another person
 215 in a proceeding may not assert a privilege under subsection (1).
 216 This preclusion applies only to the extent necessary for the
 217 person prejudiced to respond to the disclosure or
 218 representation.

219 (3) LIMITS OF PRIVILEGE.—

220 (a) A privilege under subsection (1) does not apply for a
 221 collaborative law communication that is:

222 1. Available to the public under chapter 119 or made during
 223 a session of a collaborative law process that is open, or is
 224 required by law to be open, to the public;

225 2. A threat or statement of a plan to inflict bodily injury
 226 or commit a crime of violence;

227 3. Intentionally used to plan a crime, commit or attempt to
 228 commit a crime, or conceal an ongoing crime or ongoing criminal
 229 activity; or

230 4. In an agreement resulting from the collaborative law
 231 process, as evidenced by a record signed by all parties to the
 232 agreement.

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233 (b) The privilege under subsection (1) for a collaborative
 234 law communication does not apply to the extent that such
 235 communication is:

236 1. Sought or offered to prove or disprove a claim or
 237 complaint of professional misconduct or malpractice arising from
 238 or related to a collaborative law process; or

239 2. Sought or offered to prove or disprove abuse, neglect,
 240 abandonment, or exploitation of a child or adult unless the
 241 Department of Children and Families is a party to or otherwise
 242 participates in the process.

243 (c) A privilege under subsection (1) does not apply if a
 244 tribunal finds, after a hearing in camera, that the party
 245 seeking discovery or the proponent of the evidence has shown
 246 that the evidence is not otherwise available, the need for the
 247 evidence substantially outweighs the interest in protecting
 248 confidentiality, and the collaborative law communication is
 249 sought or offered in:

250 1. A court proceeding involving a felony; or

251 2. A proceeding seeking rescission or reformation of a
 252 contract arising out of the collaborative law process or in
 253 which a defense is asserted to avoid liability on the contract.

254 (d) If a collaborative law communication is subject to an
 255 exception under paragraph (b) or paragraph (c), only the part of
 256 the communication necessary for the application of the exception
 257 may be disclosed or admitted.

258 (e) Disclosure or admission of evidence excepted from the
 259 privilege under paragraph (b) or paragraph (c) does not make the
 260 evidence or any other collaborative law communication
 261 discoverable or admissible for any other purpose.

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262 (f) The privilege under subsection (1) does not apply if
 263 the parties agree in advance in a signed record, or if a record
 264 of a proceeding reflects agreement by the parties, that all or
 265 part of a collaborative law process is not privileged. This
 266 paragraph does not apply to a collaborative law communication
 267 made by a person who did not receive actual notice of the
 268 collaborative law participation agreement before the
 269 communication was made.

270 Section 7. Sections 61.55-61.58, Florida Statutes, as
 271 created by this act, shall not take effect until 30 days after
 272 approval and publication by the Florida Supreme Court of:

273 (1) The Rules of Professional Conduct, governing:

274 (a) The mandatory disqualification of a collaborative
 275 attorney, and attorneys in the same law firm, from appearing
 276 before a tribunal to represent a party to a collaborative law
 277 process in a proceeding related to the collaborative matter.

278 (b) Limited exceptions to mandatory disqualification to
 279 seek emergency orders for the protection of the health, safety,
 280 welfare, or interest of a party until such time as a successor
 281 collaborative attorney is available and for continued
 282 representation of government entities, subject to certain
 283 conditions.

284 (2) The Family Law Rules of Procedure, governing:

285 (a) Required elements of a collaborative law participation
 286 agreement defining the commencement, procedures, and termination
 287 of the collaborative law process.

288 (b) The stay of ongoing proceedings upon referral to a
 289 collaborative law process and related status reports.

290 Section 8. Except as otherwise expressly provided in this

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291 act, this act shall take effect July 1, 2014.

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 Regulated Industries

BILL: CS/SB 1466

INTRODUCER: Regulated Industries Committee and Senators Lee and Evers

SUBJECT: Residential Communities

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1466 expands the services that may be performed by community association managers on behalf of condominiums, cooperatives, and homeowners' associations. The bill authorizes community association managers to perform duties in 12 categories that are currently not provided in statute.

The bill provides a "claim of lien" form, "notice of contest of lien" form, and "release of lien" form for condominium, cooperative, and homeowners' associations. It provides a "delinquent assessment" form for condominium and homeowners' associations. The bill also provides a "notice of contest of lien" form for cooperative associations.

The bill provides that the claim of lien of a cooperative association is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. It provides that the 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. This conforms the requirements for a claim of lien by cooperative associations with the claim of lien requirements for condominium associations.

II. Present Situation:

Community Association Management

Community association managers (CAMs) are licensed and regulated by the Department of Business and Professional Regulation pursuant to ch. 468, F.S. According to the department, 16,312 individuals are currently licensed as community association managers as well as 1,612 firms.¹

Section 468.431(2), F.S., defines “community association management” to mean:

any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of \$100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A license is not required for persons who perform clerical or ministerial functions under the direct supervision and control of a licensed manager or who only perform the maintenance of a community association and do not assist in any of the management services.²

Community association managers are regulated by the seven-member Regulatory Council of Community Association Managers. Five of the members must be licensed CAMs, one of whom must be a CAM for a timeshare. The other two must not be CAMs. Members are appointed to 4-year terms by the Governor and confirmed by the Senate.³

To become licensed as a CAM, a person must apply to the department to take the licensure examination and submit to a background check. Upon determination that the applicant is of good moral character, the applicant must attend a department-approved in-person training prior to taking the examination.⁴ Community association managers must successfully complete an exam and pay a fee to become licensed. They must also complete continuing education hours as approved by the council to maintain their licenses.⁵

¹ E-mail from Daniel Olson, Deputy Director, Office of Legislative Affairs, Department of Business and Professional Regulation (April 2, 2014) (on file with the Senate Committee on Judiciary).

² Section 468.431(2), F.S.

³ Section 468.4315(1), F.S.

⁴ Section 468.433, F.S.

⁵ Sections 468.4336 and 468.4337, F.S.

Unlicensed Practice of Law

The Florida Bar has a Standing Committee that focuses on the unlicensed practice of law.⁶ The committee is authorized to issue advisory opinions to individuals or organizations seeking guidance as to whether certain activities constitute the unlicensed practice of law. In 1995, a CAM requested an advisory opinion to determine if certain practices constituted the unlicensed practice of law. The committee held hearings and issued a proposed advisory opinion which was then reviewed by the Florida Supreme Court.

The court issued its opinion in 1996 and determined that performance of the following activities by CAMs were ministerial in nature and did not constitute the unlicensed practice of law because they did not require significant legal expertise and interpretation to complete; completing the Secretary of State form CR2EO45 (Statement of Change of Registered Office or Registered Agent or Both for Corporations), and drafting certificates of assessments, first notices of date of election, second notices of date of election, ballots, written notices of annual meeting, annual meeting or board meeting agendas, affidavits of mailing notices of board meetings, and board meeting agendas.⁷

The standing committee determined that the following other duties commonly performed by CAMs did constitute the unlicensed practice of law:

- Completing department form BPR 33-032 (Frequently Asked Question and Answers Sheet);
- Drafting a Claim of Lien, Satisfaction of Claim of Lien, and Notice of Commencement form;
- Determining the timing, method, and form of giving notice of meetings;
- Determining the votes necessary for certain actions which would entail interpretation of certain statutes and rules; and
- Answering a community association's question about the application of law to a matter being considered or advising a community association that an action or course of action may not be authorized by law or rule.⁸

The Standing Committee determined the following actions exist in a grey area and may or may not involve the unlicensed practice of law, depending on the circumstances:

- Modifying form BPR 33-033 (Limited Proxy Form);
- Drafting a limited proxy form; and
- Drafting documents required to exercise the community association's right of approval or right of first refusal on the sale or lease of a parcel.⁹

The Supreme Court noted that there is no generally comprehensive definition of what constitutes the unlicensed practice of law, and relied on the following to guide its opinion:

It is generally understood that the performance of services in representing another before the courts is the practice of law. But the practice of law also includes the

⁶ See Florida Supreme Court, Standing Committees, Unlicensed Practice of Law, at: <https://www.floridabar.org/DIVEXE/BD/CMStanding.nsf/2021e58ed0c7505585256e45004b060d/494974ec1e28b2a785256c5b0055481e?OpenDocument> (Last visited March 19, 2014).

⁷ *The Florida Bar re Advisory Opinion – Activities of Community Association Managers*, 681 So. 2d 1119, 1123 (Fla. 1996).

⁸ *Id.*, at 1123.

⁹ *Id.*, at 1124.

giving of legal advice and counsel to others as to their rights and obligations under the law and the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, although such matters may not then or ever be the subject of proceedings in a court.¹⁰

On May 15, 2013, the Standing Committee, in response to a 2012 request for an advisory opinion regarding CAMs, proposed a subsequent advisory opinion to clarify the Court's earlier opinion regarding the unlicensed practice of law. The proposed advisory opinion recommended that the 1996 Court opinion remain in effect, but also requested that the Court consider other common practices by CAMs that were not fully addressed in the 1996 opinion. The Florida Supreme Court has not issued an opinion regarding the Standing Committee's proposed advisory opinion.

Specifically, the Standing Committee's proposed advisory opinion suggests that the following acts, when prepared by a nonlawyer, should constitute the unlicensed practice of law:

- Drafting amendments to declaration of covenants, bylaws, and articles of incorporation when such documents are to be voted upon by the members;
- Determining the number of days to be provided for statutory notice;
- Modifying limited proxy forms promulgated by the state if there is any discretion involved;
- Preparing documents concerning the right of the association to approve new prospective owners, if the preparation requires the exercise of discretion or the interpretation of statutes or legal documents;
- Determining the votes needed to pass a proposition or amendment to recorded documents if it requires the interpretation and application of statutes and governing documents;
- Determining the number of owners' votes needed to establish a quorum, if it requires the interpretation and application of statutes and governing documents;
- Preparing construction lien documents;
- Preparing, reviewing, drafting, and/or substantial involvement in the preparation/execution of contracts, including construction contracts, management contracts, cable television contracts, etc.;
- Making a legal determination of who is the owner of a property that is to receive a statutory pre-lien letter; and
- Any activity that requires statutory or case law analysis to reach a legal conclusion.¹¹

Condominiums

A condominium is a "form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."¹² A condominium is

¹⁰ *Id.* at 1123, quoting *State ex rel. Florida Bar v. Sperry*, 140 So.2d 587, 591 (Fla. 1962), vacated on other grounds, 373 U.S. 379, 83 S.Ct. 1322, 10 L.Ed.2d 428 (1963).

¹¹ The Florida Bar Standing Committee on the Unlicensed Practice of Law, FAO #2012-2, *Activities of Community Association Managers*, Proposed Advisory Opinion, May 15, 2013. (See pages 11-21.)

¹² Section 718.103(11), F.S.

created by recording a declaration of condominium in the public records of the county where the condominium is located.¹³ A declaration is like a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.¹⁴

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”¹⁵ A declaration of condominium may be amended as provided in the declaration.¹⁶ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.¹⁷ Condominiums are administered by a board of directors referred to as a “board of administration.”¹⁸

Section 718.116(5)(a), F.S., provides that the claim of lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. It provides that the 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel.

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” to mean:

That form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.¹⁹

Section 719.108(4), F.S., provides that the cooperative association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any authorized administrative late fees. If the cooperative documents attorney’s fees, the lien also secures reasonable attorney’s fees incurred by the association incident to the collection of the rents and assessments or

¹³ Section 718.104(2), F.S.

¹⁴ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

¹⁵ Section 718.104(5), F.S.

¹⁶ *See* s. 718.110(1)(a), F.S.

¹⁷ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

¹⁸ Section 718.103(4), F.S.

¹⁹ *See* ss. 719.106(1)(g) and 719.107, F.S.

enforcement of the lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. The association's lien expires if a claim of lien has not been filed within 1 year after the date the assessment was due. The lien also does not continue for longer than 1 year after the claim of lien has been recorded unless, within that time, an action to enforce the lien has been commenced. The association must wait 30 days after the date a notice of intent to file a lien has been delivered to the owner before it can file a lien against a cooperative parcel.

Homeowners' Associations

The purpose of ch. 720, F.S., is to give statutory recognition to corporations not for profit that operate residential communities in this state. Chapter 720, F.S., also provides procedures for operating homeowners' associations and for protecting the rights of association members without unduly impairing the ability of associations to perform their functions.²⁰

A "homeowners' association" is defined as a:

Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.²¹

Homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.²²

Section 720.301(4), F.S., defines the terms "declaration of covenants," or "declaration," to mean: a recorded written instrument in the nature of covenants running with the land which subjects the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members.

Homeowners' associations are administered by a board of directors whose members are elected.²³ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.²⁴ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.²⁵

²⁰ See s. 720.302(1), F.S.

²¹ Section 720.301(9), F.S.

²² Section 720.302(5), F.S.

²³ See ss. 720.303 and 720.307, F.S.

²⁴ See ss. 720.301 and 720.303, F.S.

²⁵ Section 720.303(1), F.S.

Division of Florida Condominiums, Timeshares, and Mobile Homes

The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to condominium and cooperative associations that are still under developer control.²⁶ The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.²⁷ In regards to homeowners' associations, the division's authority is limited to arbitration of recall election disputes.²⁸

III. Effect of Proposed Changes:

The bill amends s. 468.431(2), F.S., to expand the list of duties or activities that constitute "community association management." The bill permits CAMs to provide the following additional services to residential communities:

- Determine the number of days required for statutory notices;
- Determine the amounts due the association;
- Collect amounts due to the association before filing a civil action;
- Calculate the votes required for a quorum or to approve a proposition or amendment;
- Complete forms related to the management of a community association which have been created by statute or by a state agency;
- Draft meeting notices and agendas;
- Calculate and prepare certificates of assessment and estoppel certificates;
- Respond to requests for certificates of assessment and estoppel certificates;
- Negotiate monetary or performance terms of a contract subject to approval by an association;
- Draft prearbitration demands;
- Coordinate or perform maintenance for real or personal property and other routine services involved in the operation of a community association; and
- Comply with the association's governing documents and the requirements of law as necessary to perform such practices.

Statutory Forms

Claim of Lien Form

The bill amends ss. 718.116(5)(b), 719.108(4)(b), and 720.3085(1)(a), F.S., to provide a claim of lien form for a condominium, cooperative, and homeowners' association, respectively. It is not clear whether the "claim of lien" form provided in the bill is a form "related to the management of a community association that have been created by statute or by a state agency," within the meaning of s. 468.431(2), F.S. It is also unclear whether a CAM who completes a "claim of lien form" engages in an activity that constitutes the unlicensed practice of law as has been

²⁶ Section 718.501(1), F.S., and s. 719.501(1), F.S., respectively.

²⁷ Section 718.501(1), F.S. See Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

²⁸ See s. 720.303(10)(d), F.S.

previously determined by the Florida Supreme Court regarding the drafting of a claim of lien by a CAM.²⁹ The Supreme Court found that the drafting of a claim of lien required a legal description of the property when determining that drafting the claim of lien is the unlicensed practice of law. The forms in the bill also require a legal description of the property.

Release of Lien Form

The bill amends ss. 718.116(5)(d), and 720.3085(1)(d), F.S., and creates s. 719.108(4)(d), F.S., to provide a release of lien form for a condominium, homeowners' association, and cooperative, respectively. It is not clear whether the "release of lien" form provided in the bill is a form "related to the management of a community association that have been created by statute or by a state agency," within the meaning of s. 468.431(2), F.S. It is also unclear whether a CAM who completes the "claim of lien" engages in an activity that constitutes the unlicensed practice of law as has been previously determined by the Florida Supreme Court in regards to the drafting of a satisfaction of a claim of lien by a CAM.³⁰ As with the claim of lien, the Supreme Court found that the drafting a satisfaction of a claim of lien required a legal description of the property when it determined that drafting the satisfaction of a claim of lien is the unlicensed practice of law. The forms in the bill also require a legal description of the property.

Delinquent Assessment Form

The bill amends ss. 718.116(6)(b) and 720.3085(5), F.S., to provide a "delinquent assessment" form for condominium and homeowners' associations, respectively. The bill does not provide a "delinquent assessment" form for cooperative associations.

Notice of Intent to Record a Claim of Lien Form

The bill amends s. 718.121(4), 719.108(4)(a), 720.3085(4)(a), to create a "notice of intent to record a claim of lien" form. It is not clear whether the "notice of intent to record a claim of lien" form provided in the bill is a form "related to the management of a community association that have been created by statute or by a state agency," within the meaning of s. 468.431(2), F.S. It is also unclear whether a CAM who completes the claim of lien form engages in an activity that constitutes the unlicensed practice of law.

Notice of Contest of Lien Form

The bill creates s. 719.108(4)(c), F.S., to create a "notice of contest of lien" form. Current law provides a comparable "notice of contest of lien" for condominium and homeowners' associations in ss. 718.116(5)(c) and 720.3085(1)(b), respectively.

Charges and Liens

Authorization

The bill amends ss. 718.116(3), 719.108(3), and 720.3085(3)(a), F.S., to permit condominium, cooperative, and homeowners' associations, respectively, to recover from the delinquent owner any reasonable charges imposed upon the association under a contract with its management or

²⁹ *Supra* at note 7.

³⁰ *Id.*

bookkeeping company, or collection agent, incurred in connection with collecting a delinquent assessment.

Distribution of Payments

The bill amends ss. 718.116(3), 719.108(3), and 720.3085(3)(b), F.S., to include the reasonable costs of collection services contracted by association in the schedule that assigns how the an association must apply payments it receives from a delinquent owner. The bill requires that payment received by the association be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, then to any reasonable costs for collection services contracted by the association, and then to the delinquent assessment.

Claim of Lien

The bill amends ss. 718.116(5)(b), F.S., to provide that a condominium association's claim of lien secures unpaid assessments and administrative late fees, including reasonable costs for collection services contracted by the association.

Deleting Expiration of Lien Provision

The bill amends s. 719.108(4), F.S., to delete the provision that the cooperative association's lien expires if a claim of lien has not been filed within 1 year after the date the assessment was due, and that the lien also does not continue for longer than 1 year after the claim of lien has been recorded unless, within that time, an action to enforce the lien has been commenced.

Application of Claim of Lien

The bill amends s. 719.108(4)(b), F.S., to provide that a cooperative association's claim of lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. It provides that the 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. This conforms the requirements for a claim of lien for cooperative associations with the requirements in s. 718.116(5)(b), F.S., for a claim of lien by condominium associations.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 468.431, 718.116, 718.121, 719.108, and 720.3085.

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 Regulated Industries on March 26, 2014:

The committee substitute (CS) differs from the bill as follows:

- The CS removes from s. 468.431(2), F.S., the authorization for CAM's to draft demand letters, pre-lien letters, and letters of intended action, and to prepare statutory construction lien documents for association projects. It also amends this section to permit CAM's to prepare certificates of assessment and estoppel certificates instead of for estoppel letters. It also permits CAM's to respond to requests for certificates of assessment and estoppel certificates instead of for estoppel letters.
- The CS amends ss. 718.116(3), 719.108(3), and 720.3085(3)(a), F.S., to permit condominium, cooperative, and homeowners' associations, respectively, to recover from the unit owner any reasonable charges imposed upon the association under a contract with its management or bookkeeping company, or collection agent, incurred in connection with collecting a delinquent assessment.

- The CS amends ss. 718.116(3), 719.108(3), and 720.3085(3)(b), F.S., to include the reasonable costs of collection services contracted by association in the schedule that assigns how an association must apply payments it receives from a member.
- The CS amends the claim of lien form in ss. 718.116(5)(b) and 720.3085(1)(a) F.S., for condominium and homeowners' associations, respectively, to include the dates of delinquency on the form, and provides that the lien may include any other amounts which a lien may secure pursuant to ch. 718, F.S., and ch. 720, F.S., respectively.
- The CS amends ss. 718.116(5)(b), F.S., to provide that a condominium association's claim of lien secures administrative late fees and fees incurred by the association incident to the collection process include any reasonable costs for collection services contracted by the association.
- The CS amends ss. 18.116(6)(b) and 720.3085(5), F.S., to provide a "delinquent assessment" form.
- The CS amends ss. 718.121(4), 719.108(4)(a), 720.3085(4)(a), F.S., to create a "notice of intent to record a claim of lien" form.
- The CS amends the Release of Lien form for cooperative associations in s. 719.108(4)(d), F.S., to reference the "cooperative parcel" "instead of the "unit." It also deleted the portion of the form that provides that the description of the cooperative parcel includes, but is not limited to, all appurtenances to the cooperative unit.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (2) of section 468.431, Florida
Statutes, is amended to read:

468.431 Definitions.—As used in this part:

(2) "Community association management" means any of the
following practices requiring substantial specialized knowledge,
judgment, and managerial skill when done for remuneration and
when the association or associations served contain more than 10



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12 units or have an annual budget or budgets in excess of \$100,000:
13 controlling or disbursing funds of a community association,
14 preparing budgets or other financial documents for a community
15 association, assisting in the noticing or conduct of community
16 association meetings, determining the number of days required
17 for statutory notices, determining amounts due to the
18 association, collecting amounts due to the association before
19 filing of a civil action, calculating the votes required for a
20 quorum or to approve a proposition or amendment, completing
21 forms related to the management of a community association that
22 have been created by statute or by a state agency, drafting
23 meeting notices and agendas, calculating and preparing
24 certificates of assessment and estoppel certificates, responding
25 to requests for certificates of assessment and estoppel
26 certificates, negotiating monetary or performance terms of a
27 contract subject to approval by an association, drafting
28 prearbitration demands, coordinating or performing maintenance
29 for real or personal property and other related routine services
30 involved in the operation of a community association, and
31 complying with the association's governing documents and the
32 requirements of law as necessary to perform such practices and
33 coordinating maintenance for the residential development and
34 other day-to-day services involved with the operation of a
35 community association. A person who performs clerical or
36 ministerial functions under the direct supervision and control
37 of a licensed manager or who is charged only with performing the
38 maintenance of a community association and who does not assist
39 in any of the management services described in this subsection
40 is not required to be licensed under this part.



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41 Section 2. Section 468.4334, Florida Statutes, is created
42 to read:

43 468.4334 Duty of care; liability; indemnification.—

44 (1) The duty of care owed by a community association
45 manager and a community association management firm to a
46 community association is that level of care that a reasonably
47 careful community association manager or firm would provide in
48 like circumstances.

49 (2) A contract between a managed community association and
50 a community association manager or a community association
51 management firm may provide that the community association
52 indemnifies and holds harmless the community association manager
53 or community association management firm for ordinary negligence
54 that results from the manager's or management firm's act or
55 omission that was the result of a lawful instruction of the
56 directors or an officer of the community association. The
57 provision for indemnification must be clear and conspicuous in
58 the agreement. However, such indemnification may not cover, and
59 the community association manager or a community association
60 management firm may be held liable for, any act or omission
61 that:

62 (a) Violates a criminal law as such is defined in s.
63 617.0834(1)(b)1.;

64 (b) Derives an improper personal benefit, either directly
65 or indirectly;

66 (c) Is grossly negligent; or

67 (d) Is reckless, is in bad faith, is with malicious
68 purpose, or is in a manner exhibiting wanton and willful
69 disregard of human rights, safety, or property.



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70 Section 3. Subsections (3), (5), and (6) of section
71 718.116, Florida Statutes, are amended to read:

72 718.116 Assessments; liability; lien and priority;
73 interest; collection.—

74 (3) Assessments and installments on assessments which are
75 not paid when due bear interest at the rate provided in the
76 declaration, from the due date until paid. The rate may not
77 exceed the rate allowed by law, and, if no rate is provided in
78 the declaration, interest accrues at the rate of 18 percent per
79 year. If provided by the declaration or bylaws, the association
80 may, in addition to such interest, charge an administrative late
81 fee of up to the greater of \$25 or 5 percent of each delinquent
82 installment for which the payment is late. The association may
83 also recover from the unit owner any reasonable charges imposed
84 upon the association under a written contract with its
85 management or bookkeeping company, or collection agent, incurred
86 in connection with collecting a delinquent assessment. Any
87 payment received by an association must be applied first to any
88 interest accrued by the association, then to any administrative
89 late fee, then to any costs and reasonable attorney ~~attorney's~~
90 fees incurred in collection, then to any reasonable costs for
91 collection services contracted by the association, and then to
92 the delinquent assessment. The foregoing is applicable
93 notwithstanding any restrictive endorsement, designation, or
94 instruction placed on or accompanying a payment. A late fee is
95 not subject to chapter 687 or s. 718.303(4).

96 (5) (a) The association has a lien on each condominium
97 parcel to secure the payment of assessments. Except as otherwise
98 provided in subsection (1) and as set forth below, the lien is



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99 effective from and shall relate back to the recording of the
100 original declaration of condominium, or, in the case of lien on
101 a parcel located in a phase condominium, the last to occur of
102 the recording of the original declaration or amendment thereto
103 creating the parcel. However, as to first mortgages of record,
104 the lien is effective from and after recording of a claim of
105 lien in the public records of the county in which the
106 condominium parcel is located. Nothing in this subsection shall
107 be construed to bestow upon any lien, mortgage, or certified
108 judgment of record on April 1, 1992, including the lien for
109 unpaid assessments created herein, a priority which, by law, the
110 lien, mortgage, or judgment did not have before that date.

111 (b) To be valid, a claim of lien must state the description
112 of the condominium parcel, the name of the record owner, the
113 name and address of the association, the amount due, and the due
114 dates. It must be executed and acknowledged by an officer or
115 authorized agent of the association. The lien is not effective 1
116 year after the claim of lien was recorded unless, within that
117 time, an action to enforce the lien is commenced. The 1-year
118 period is automatically extended for any length of time during
119 which the association is prevented from filing a foreclosure
120 action by an automatic stay resulting from a bankruptcy petition
121 filed by the parcel owner or any other person claiming an
122 interest in the parcel. The claim of lien secures all unpaid
123 assessments that are due and that may accrue after the claim of
124 lien is recorded and through the entry of a final judgment, as
125 well as interest, authorized administrative late fees, and all
126 reasonable costs and attorney ~~attorney's~~ fees incurred by the
127 association incident to the collection process, including but



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128 not limited to, any reasonable costs for collection services
129 contracted by the association. Upon payment in full, the person
130 making the payment is entitled to a satisfaction of the lien.

131 (c) By recording a notice in substantially the following
132 form, a unit owner or the unit owner's agent or attorney may
133 require the association to enforce a recorded claim of lien
134 against his or her condominium parcel:

135 NOTICE OF CONTEST OF LIEN

136 TO: ...(Name and address of association)... You are
137 notified that the undersigned contests the claim of lien filed
138 by you on, ...(year)..., and recorded in Official Records
139 Book at Page, of the public records of County,
140 Florida, and that the time within which you may file suit to
141 enforce your lien is limited to 90 days from the date of service
142 of this notice. Executed this day of, ...(year)....

143 Signed: ...(Owner or Attorney)...
144

145 After notice of contest of lien has been recorded, the clerk of
146 the circuit court shall mail a copy of the recorded notice to
147 the association by certified mail, return receipt requested, at
148 the address shown in the claim of lien or most recent amendment
149 to it and shall certify to the service on the face of the
150 notice. Service is complete upon mailing. After service, the
151 association has 90 days in which to file an action to enforce
152 the lien; and, if the action is not filed within the 90-day
153 period, the lien is void. However, the 90-day period shall be
154 extended for any length of time during which the association is
155 prevented from filing its action because of an automatic stay
156 resulting from the filing of a bankruptcy petition by the unit



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157 owner or by any other person claiming an interest in the parcel.

158 (d) A release of lien must be in substantially the
159 following form:

160

161 RELEASE OF LIEN

162

163 The undersigned lienor, in consideration of the final payment in
164 the amount of \$...., hereby waives and releases its lien and
165 right to claim a lien for unpaid assessments through,
166 ...(year)..., recorded in Official Records Book at Page
167, of the public records of County, Florida, for the
168 following described real property:

169

170 UNIT NO. OF (NAME OF CONDOMINIUM), A CONDOMINIUM
171 AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE
172 EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF,
173 RECORDED IN OFFICIAL RECORDS BOOK, PAGE, OF
174 THE PUBLIC RECORDS OF COUNTY, FLORIDA. THE ABOVE
175 DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL
176 APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED,
177 INCLUDING THE UNDIVIDED INTEREST IN THE COMMON
178 ELEMENTS OF SAID CONDOMINIUM.

179

180 ...(signature of witness)... ...(signature of authorized
181 agent)...

182 Print name: Print name:

183

184 ...(signature of witness)...

185 Print name:



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186
187 Sworn to (or affirmed) and subscribed before me this day of
188, ...(year)..., by ...(name of person making statement)....
189 ...(Signature of Notary Public)...
190 ...(Print, type, or stamp commissioned name of Notary Public)...
191 Personally Known.... OR Produced.... as identification.

192 (6) (a) The association may bring an action in its name to
193 foreclose a lien for assessments in the manner a mortgage of
194 real property is foreclosed and may also bring an action to
195 recover a money judgment for the unpaid assessments without
196 waiving any claim of lien. The association is entitled to
197 recover its reasonable attorney's fees incurred in either a lien
198 foreclosure action or an action to recover a money judgment for
199 unpaid assessments.

200 (b) No foreclosure judgment may be entered until at least
201 30 days after the association gives written notice to the unit
202 owner of its intention to foreclose its lien to collect the
203 unpaid assessments. The notice must be in substantially the
204 following form:

205
206 DELINQUENT ASSESSMENT
207

208 This letter is to inform you that a Claim of Lien has been filed
209 against your property because you have not paid the
210 assessment to Association. The Association intends to
211 foreclose the lien and collect the unpaid amount within 30 days
212 of this letter being provided to you.

213
214 You owe the interest accruing from (month/year) to the present.



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215 As of the date of this letter, the total amount due with
216 interest is \$..... All costs of any action and interest from
217 this day forward will also be charged to your account.

218
219 Any questions concerning this matter should be directed to
220 ...(insert name, addresses and telephone numbers of Association
221 representative)....

222
223 If this notice is not given at least 30 days before the
224 foreclosure action is filed, and if the unpaid assessments,
225 including those coming due after the claim of lien is recorded,
226 are paid before the entry of a final judgment of foreclosure,
227 the association shall not recover attorney's fees or costs. The
228 notice must be given by delivery of a copy of it to the unit
229 owner or by certified or registered mail, return receipt
230 requested, addressed to the unit owner at his or her last known
231 address; and, upon such mailing, the notice shall be deemed to
232 have been given, and the court shall proceed with the
233 foreclosure action and may award attorney's fees and costs as
234 permitted by law. The notice requirements of this subsection are
235 satisfied if the unit owner records a notice of contest of lien
236 as provided in subsection (5). The notice requirements of this
237 subsection do not apply if an action to foreclose a mortgage on
238 the condominium unit is pending before any court; if the rights
239 of the association would be affected by such foreclosure; and if
240 actual, constructive, or substitute service of process has been
241 made on the unit owner.

242 (c) If the unit owner remains in possession of the unit
243 after a foreclosure judgment has been entered, the court, in its



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244 discretion, may require the unit owner to pay a reasonable
245 rental for the unit. If the unit is rented or leased during the
246 pendency of the foreclosure action, the association is entitled
247 to the appointment of a receiver to collect the rent. The
248 expenses of the receiver shall be paid by the party which does
249 not prevail in the foreclosure action.

250 (d) The association has the power to purchase the
251 condominium parcel at the foreclosure sale and to hold, lease,
252 mortgage, or convey it.

253 Section 4. Subsection (4) of section 718.121, Florida
254 Statutes, is amended to read:

255 718.121 Liens.—

256 (4) Except as otherwise provided in this chapter, no lien
257 may be filed by the association against a condominium unit until
258 30 days after the date on which a notice of intent to file a
259 lien has been delivered to the owner by registered or certified
260 mail, return receipt requested, and by first-class United States
261 mail to the owner at his or her last address as reflected in the
262 records of the association, if the address is within the United
263 States, and delivered to the owner at the address of the unit if
264 the owner's address as reflected in the records of the
265 association is not the unit address. If the address reflected in
266 the records is outside the United States, sending the notice to
267 that address and to the unit address by first-class United
268 States mail is sufficient. Delivery of the notice shall be
269 deemed given upon mailing as required by this subsection. The
270 notice must be in substantially the following form:

271
272 NOTICE OF INTENT TO RECORD A CLAIM OF LIEN



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273
274 Re: Unit of (name of association)

275
276 The following amounts are currently due on your account to
277 Association, and must be paid within thirty (30) days after your
278 receipt of this letter. This letter shall serve as the
279 Association's notice of intent to record a Claim of Lien against
280 your property after thirty (30) days from your receipt of this
281 letter, unless you pay in full the amounts set forth below:

282

283	<u>Maintenance due ... (dates) ...</u>	<u>\$....</u>
284	<u>Late fee, if applicable</u>	<u>\$....</u>
285	<u>Interest through *</u>	<u>\$....</u>
286	<u>Certified mail charges</u>	<u>\$....</u>
287	<u>Other costs</u>	<u>\$....</u>
288		
289	<u>TOTAL OUTSTANDING</u>	<u>\$....</u>

290
291 *Interest accrues at the rate of \$.... per day.

292 Section 5. Subsections (3) and (4) of section 719.108,
293 Florida Statutes, are amended to read:

294 719.108 Rents and assessments; liability; lien and
295 priority; interest; collection; cooperative ownership.-

296 (3) Rents and assessments, and installments on them, not
297 paid when due bear interest at the rate provided in the
298 cooperative documents from the date due until paid. This rate
299 may not exceed the rate allowed by law and, if a rate is not
300 provided in the cooperative documents, accrues at 18 percent per
301 annum. If the cooperative documents or bylaws so provide, the



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302 association may charge an administrative late fee in addition to
303 such interest, not to exceed the greater of \$25 or 5 percent of
304 each installment of the assessment for each delinquent
305 installment that the payment is late. The association may also
306 recover from the unit owner any reasonable charges imposed upon
307 the association under a written contract with its management or
308 bookkeeping company, or collection agent, incurred in connection
309 with collecting a delinquent assessment. Any payment received by
310 an association must be applied first to any interest accrued by
311 the association, then to any administrative late fee, then to
312 any costs and reasonable attorney ~~attorney's~~ fees incurred in
313 collection, then to any reasonable costs for collection services
314 contracted for by the association, and then to the delinquent
315 assessment. The foregoing applies notwithstanding any
316 restrictive endorsement, designation, or instruction placed on
317 or accompanying a payment. A late fee is not subject to chapter
318 687 or s. 719.303(4).

319 (4) The association has a lien on each cooperative parcel
320 for any unpaid rents and assessments, plus interest, authorized
321 administrative late fees and any reasonable costs for collection
322 services contracted for by the association, and any authorized
323 administrative late fees. If authorized by the cooperative
324 documents, the lien also secures reasonable attorney ~~attorney's~~
325 fees incurred by the association and all reasonable collection
326 costs incident to the collection of the rents and assessments or
327 enforcement of such lien. The lien is effective from and after
328 recording a claim of lien in the public records in the county in
329 which the cooperative parcel is located which states the
330 description of the cooperative parcel, the name of the unit



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331 owner, the amount due, and the due dates. ~~The lien expires if a~~
332 ~~claim of lien is not filed within 1 year after the date the~~
333 ~~assessment was due, and the lien does not continue for longer~~
334 ~~than 1 year after the claim of lien has been recorded unless,~~
335 ~~within that time, an action to enforce the lien is commenced.~~
336 Except as otherwise provided in this chapter, a lien may not be
337 filed by the association against a cooperative parcel until 30
338 days after the date on which a notice of intent to file a lien
339 has been delivered to the owner.

340 (a) The notice must be sent to the unit owner at the
341 address of the unit by first-class United States mail and the
342 notice must be in substantially the following form:

343
344 NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

345
346 Re: Unit of ...(name of cooperative)...

347
348 The following amounts are currently due on your account to
349 Association, and must be paid within thirty (30) days after your
350 receipt of this letter. This letter shall serve as the
351 Association's notice of intent to record a Claim of Lien against
352 your property after thirty (30) days from your receipt of this
353 letter, unless you pay in full the amounts set forth below:

354		
355	<u>Maintenance due ...(dates)...</u>	<u>\$....</u>
356	<u>Late fee, if applicable</u>	<u>\$....</u>
357	<u>Interest through *</u>	<u>\$....</u>
358	<u>Certified mail charges</u>	<u>\$....</u>
359	<u>Other costs</u>	<u>\$....</u>



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TOTAL OUTSTANDING \$....

*Interest accrues at the rate of \$.... per day.

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by ~~registered or~~ certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by ~~registered or~~ certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing. A claim of lien must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the claim of lien is recorded and



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389 through the entry of a final judgment, as well as interest and
390 all reasonable costs and attorney's fees incurred by the
391 association incident to the collection process. Upon payment in
392 full, the person making the payment is entitled to a
393 satisfaction of the lien.

394 (c) By recording a notice in substantially the following
395 form, a unit owner or the unit owner's agent or attorney may
396 require the association to enforce a recorded claim of lien
397 against his or her cooperative parcel:

398
399 NOTICE OF CONTEST OF LIEN

400
401 TO: ...(Name and address of association)... You are
402 notified that the undersigned contests the claim of lien filed
403 by you on, ...(year)..., and recorded in Official Records
404 Book at Page, of the public records of County,
405 Florida, and that the time within which you may file suit to
406 enforce your lien is limited to 90 days from the date of service
407 of this notice. Executed this day of, ...(year)....
408 Signed: ...(Owner or Attorney)...

409
410 After notice of contest of lien has been recorded, the clerk of
411 the circuit court shall mail a copy of the recorded notice to
412 the association by certified mail, return receipt requested, at
413 the address shown in the claim of lien or most recent amendment
414 to it and shall certify to the service on the face of the
415 notice. Service is complete upon mailing. After service, the
416 association has 90 days in which to file an action to enforce
417 the lien; and, if the action is not filed within the 90-day



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418 period, the lien is void. However, the 90-day period shall be
419 extended for any length of time during which the association is
420 prevented from filing its action because of an automatic stay
421 resulting from the filing of a bankruptcy petition by the unit
422 owner or by any other person claiming an interest in the parcel.

423 (d) A release of lien must be in substantially the
424 following form:

425
426 RELEASE OF LIEN
427

428 The undersigned lienor, in consideration of the final payment in
429 the amount of \$...., hereby waives and releases its lien and
430 right to claim a lien for unpaid assessments through,
431 ...(year)..., recorded in Official Records Book at Page
432, of the public records of County, Florida, for the
433 following described real property:

434
435 THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO.
436 OF (NAME OF COOPERATIVE), A COOPERATIVE AS SET FORTH
437 IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED
438 THERE TO AND FORMING A PART THEREOF, RECORDED IN
439 OFFICIAL RECORDS BOOK, PAGE, OF THE PUBLIC
440 RECORDS OF COUNTY, FLORIDA.

441
442 ...(signature of witness)... ...(signature of authorized
443 agent)...

444 Print name: Print name:

445
446 ...(signature of witness)...



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447 Print name:

448
449 Sworn to (or affirmed) and subscribed before me this day of
450, ...(year)..., by ...(name of person making statement)....
451 ...(Signature of Notary Public)...
452 ...(Print, type, or stamp commissioned name of Notary Public)...
453 Personally Known.... OR Produced.... as identification.

454 Section 6. Subsections (1), (3), (4), and (5) of section
455 720.3085, Florida Statutes, are amended to read:

456 720.3085 Payment for assessments; lien claims.—

457 (1) When authorized by the governing documents, the
458 association has a lien on each parcel to secure the payment of
459 assessments and other amounts provided for by this section.
460 Except as otherwise set forth in this section, the lien is
461 effective from and shall relate back to the date on which the
462 original declaration of the community was recorded. However, as
463 to first mortgages of record, the lien is effective from and
464 after recording of a claim of lien in the public records of the
465 county in which the parcel is located. This subsection does not
466 bestow upon any lien, mortgage, or certified judgment of record
467 on July 1, 2008, including the lien for unpaid assessments
468 created in this section, a priority that, by law, the lien,
469 mortgage, or judgment did not have before July 1, 2008.

470 (a) To be valid, a claim of lien must state the description
471 of the parcel, the name of the record owner, the name and
472 address of the association, the assessment amount due, and the
473 due date. The claim of lien secures all unpaid assessments that
474 are due and that may accrue subsequent to the recording of the
475 claim of lien and before entry of a certificate of title, as



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476 well as interest, late charges, and reasonable collection costs
477 and attorney ~~attorney's~~ fees incurred by the association
478 incident to the collection process. The person making payment is
479 entitled to a satisfaction of the lien upon payment in full.

480 (b) By recording a notice in substantially the following
481 form, a parcel owner or the parcel owner's agent or attorney may
482 require the association to enforce a recorded claim of lien
483 against his or her parcel:

484 NOTICE OF CONTEST OF LIEN

485 TO: ...(Name and address of association)...

486 You are notified that the undersigned contests the claim of lien
487 filed by you on, ...(year)...., and recorded in Official
488 Records Book at page, of the public records of
489 County, Florida, and that the time within which you may file
490 suit to enforce your lien is limited to 90 days following the
491 date of service of this notice. Executed this day of,
492 ...(year)....

493 Signed: ...(Owner or Attorney)...

494
495 After the notice of a contest of lien has been recorded, the
496 clerk of the circuit court shall mail a copy of the recorded
497 notice to the association by certified mail, return receipt
498 requested, at the address shown in the claim of lien or the most
499 recent amendment to it and shall certify to the service on the
500 face of the notice. Service is complete upon mailing. After
501 service, the association has 90 days in which to file an action
502 to enforce the lien and, if the action is not filed within the
503 90-day period, the lien is void. However, the 90-day period
504 shall be extended for any length of time that the association is



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505 prevented from filing its action because of an automatic stay
506 resulting from the filing of a bankruptcy petition by the parcel
507 owner or by any other person claiming an interest in the parcel.

508 (c) The association may bring an action in its name to
509 foreclose a lien for assessments in the same manner in which a
510 mortgage of real property is foreclosed and may also bring an
511 action to recover a money judgment for the unpaid assessments
512 without waiving any claim of lien. The association is entitled
513 to recover its reasonable attorney's fees incurred in an action
514 to foreclose a lien or an action to recover a money judgment for
515 unpaid assessments.

516 (d) A release of lien must be in substantially the
517 following form:

518
519 RELEASE OF LIEN

520
521 The undersigned lienor, in consideration of the final payment in
522 the amount of \$...., hereby waives and releases its lien and
523 right to claim a lien for unpaid assessments through,
524 ...(year)..., recorded in Official Records Book at Page
525, of the public records of County, Florida, for the
526 following described real property:

527
528 ...(PARCEL NO. OR LOT AND BLOCK)... OF
529 SUBDIVISION AS SHOWN IN THE PLAT THEREOF, RECORDED AT
530 PLAT BOOK, PAGE, OF THE OFFICIAL RECORDS OF
531 COUNTY, FLORIDA.

532
533 ...(or insert appropriate metes and bounds description



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534 here)...
535
536 ...(signature of witness)... ...(signature of authorized
537 agent)...
538
539 ...(signature of witness)...
540
541 Sworn to (or affirmed) and subscribed before me this day of
542 , ...(year)...., by ...(name of person making statement)....
543 ...(Signature of Notary Public)...
544 ...(Print, type, or stamp commissioned name of Notary Public)...
545 Personally Known.... OR Produced.... as identification.
546
547 (e)~~(d)~~ If the parcel owner remains in possession of the
548 parcel after a foreclosure judgment has been entered, the court
549 may require the parcel owner to pay a reasonable rent for the
550 parcel. If the parcel is rented or leased during the pendency of
551 the foreclosure action, the association is entitled to the
552 appointment of a receiver to collect the rent. The expenses of
553 the receiver must be paid by the party who does not prevail in
554 the foreclosure action.
555 (f)~~(e)~~ The association may purchase the parcel at the
556 foreclosure sale and hold, lease, mortgage, or convey the
557 parcel.
558 (3) Assessments and installments on assessments that are
559 not paid when due bear interest from the due date until paid at
560 the rate provided in the declaration of covenants or the bylaws
561 of the association, which rate may not exceed the rate allowed
562 by law. If no rate is provided in the declaration or bylaws,



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563 interest accrues at the rate of 18 percent per year.

564 (a) If the declaration or bylaws so provide, the
565 association may also charge an administrative late fee not to
566 exceed the greater of \$25 or 5 percent of the amount of each
567 installment that is paid past the due date. The association may
568 also recover from the parcel owner any reasonable charges
569 imposed upon the association under a written contract with its
570 management or bookkeeping company, or collection agent, incurred
571 in connection with collecting a delinquent assessment.

572 (b) Any payment received by an association and accepted
573 shall be applied first to any interest accrued, then to any
574 administrative late fee, then to any costs and reasonable
575 attorney ~~attorney's~~ fees incurred in collection, then to any
576 reasonable costs for collection services contracted for by the
577 association, and then to the delinquent assessment. This
578 paragraph applies notwithstanding any restrictive endorsement,
579 designation, or instruction placed on or accompanying a payment.
580 A late fee is not subject to the provisions of chapter 687 and
581 is not a fine.

582 (4) A homeowners' association may not file a record of lien
583 against a parcel for unpaid assessments unless a written notice
584 or demand for past due assessments as well as any other amounts
585 owed to the association pursuant to its governing documents has
586 been made by the association. The written notice or demand must:

587 (a) Provide the owner with 45 days following the date the
588 notice is deposited in the mail to make payment for all amounts
589 due, including, but not limited to, any attorney's fees and
590 actual costs associated with the preparation and delivery of the
591 written demand. The notice must be in substantially the



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592 following form:

593

594 NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

595

596 Re: Parcel or (lot/block) of ...(name of association)...

597

598 The following amounts are currently due on your account to
599 Association, and must be paid within forty-five (45) days after
600 your receipt of this letter. This letter shall serve as the
601 Association's notice of intent to record a Claim of Lien against
602 your property after forty-five (45) days from your receipt of
603 this letter, unless you pay in full the amounts set forth below:

604

605 <u>Maintenance due ...(dates)...</u>	<u>\$....</u>
606 <u>Late fee, if applicable</u>	<u>\$....</u>
607 <u>Interest through *</u>	<u>\$....</u>
608 <u>Certified mail charges</u>	<u>\$....</u>
609 <u>Other costs</u>	<u>\$....</u>
610	
611 <u>TOTAL OUTSTANDING</u>	<u>\$....</u>

612

613 *Interest accrues at the rate of \$.... per day.

614 (b) Be sent by registered or certified mail, return receipt
615 requested, and by first-class United States mail to the parcel
616 owner at his or her last address as reflected in the records of
617 the association, if the address is within the United States, and
618 to the parcel owner subject to the demand at the address of the
619 parcel if the owner's address as reflected in the records of the
620 association is not the parcel address. If the address reflected



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621 in the records is outside the United States, then sending the
622 notice to that address and to the parcel address by first-class
623 United States mail is sufficient.

624 (5) The association may bring an action in its name to
625 foreclose a lien for unpaid assessments secured by a lien in the
626 same manner that a mortgage of real property is foreclosed and
627 may also bring an action to recover a money judgment for the
628 unpaid assessments without waiving any claim of lien. The action
629 to foreclose the lien may not be brought until 45 days after the
630 parcel owner has been provided notice of the association's
631 intent to foreclose and collect the unpaid amount. The notice
632 must be given in the manner provided in paragraph (4) (b), and
633 the notice may not be provided until the passage of the 45 days
634 required in paragraph (4) (a). The notice must be in
635 substantially the following form:

636
637 DELINQUENT ASSESSMENT
638

639 This letter is to inform you a Claim of Lien has been filed
640 against your property because you have not paid the
641 assessment to Association. The Association intends to
642 foreclose the lien and collect the unpaid amount within 45 days
643 of this letter being provided to you.

644
645 You owe the interest accruing from (month/year) to the present.
646 As of the date of this letter, the total amount due with
647 interest is \$..... All costs of any action and interest from
648 this day forward will also be charged to your account.
649



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650 Any questions concerning this matter should be directed to
651 ...(insert name, addresses and telephone numbers of Association
652 representative)....

653 (a) The association may recover any interest, late charges,
654 costs, and reasonable attorney's fees incurred in a lien
655 foreclosure action or in an action to recover a money judgment
656 for the unpaid assessments.

657 (b) The time limitations in this subsection do not apply if
658 the parcel is subject to a foreclosure action or forced sale of
659 another party, or if an owner of the parcel is a debtor in a
660 bankruptcy proceeding.

661 Section 7. This act shall take effect July 1, 2014.

662
663 ===== T I T L E A M E N D M E N T =====

664 And the title is amended as follows:

665 Delete everything before the enacting clause
666 and insert:

667 A bill to be entitled
668 An act relating to residential communities; amending
669 s. 468.431, F.S.; revising the term "community
670 association management"; creating s. 468.4334, F.S.;
671 providing that a community association manager is
672 liable to the same extent as an officer or director;
673 amending s. 718.116, F.S.; allowing for reasonable
674 charges to be imposed for collection of a delinquent
675 assessment; requiring a release of lien to be in a
676 specific form; requiring a preforeclosure notice to be
677 in a specific form; amending s. 718.121, F.S.;
678 requiring a prelien notice to be in a specific form;



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679 amending s. 719.108, F.S.; allowing for reasonable
680 charges to be imposed for collection of a delinquent
681 assessment; deleting a provision providing for the
682 expiration of certain liens; revising notice
683 requirements; requiring a prelien notice to be in a
684 specific form; providing for the content of a
685 recording notice; requiring a release of lien to be in
686 a specific form; amending s. 720.3085, F.S.; requiring
687 a release of lien to be in a specific form; allowing
688 for reasonable charges to be imposed for collection of
689 a delinquent assessment; requiring a prelien notice to
690 be in a specific form; requiring a preforeclosure
691 notice to be in a specific form; providing an
692 effective date.



158188

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Lee) recommended the following:

1 **Senate Amendment to Amendment (730906) (with title**
2 **amendment)**

3
4 Delete lines 41 - 69

5 and insert:

6 Section 2. Section 468.4334, Florida Statutes, is created
7 to read:

8 468.4334 Liability.—A community association manager and a
9 community association management firm shall be liable for
10 monetary damages to the same extent as an officer or director as
11 provided in s. 617.0834 if the community association manager or



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12 community association management firm breached or failed to
13 perform his, her, or its duties and the breach of, or failure to
14 perform, his, her, or its duties:

15 (1) Constitutes a violation of criminal law as provided in
16 s. 617.0834(1)(b)1.;

17 (2) Constitutes a transaction from which the community
18 association manager or community association management firm
19 derived an improper personal benefit, either directly or
20 indirectly; or

21 (3) Constitutes recklessness or an act or omission that was
22 in bad faith, with malicious purpose, or in a manner exhibiting
23 wanton and willful disregard of human rights, safety, or
24 property.

25
26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 Delete lines 671 - 672

29 and insert:

30 providing that a community association manager and a
31 community association management firm are liable for
32 monetary damages to the same extent as an officer or
33 director under certain circumstances;

By the Committee on Regulated Industries; and Senators Lee and Evers

580-03264-14

20141466c1

1 A bill to be entitled
 2 An act relating to residential communities; amending
 3 s. 468.431, F.S.; revising the term "community
 4 association management"; amending s. 718.116, F.S.;
 5 allowing for reasonable charges to be imposed for
 6 collection of a delinquent assessment; requiring a
 7 claim of lien on a condominium parcel to be in a
 8 specific form; requiring a release of lien to be in a
 9 specific form; requiring a preforeclosure notice to be
 10 in a specific form; amending s. 718.121, F.S.;
 11 requiring a prelien notice to be in a specific form;
 12 amending s. 719.108, F.S.; allowing for reasonable
 13 charges to be imposed for collection of a delinquent
 14 assessment; deleting a provision providing for the
 15 expiration of certain liens; revising notice
 16 requirements; requiring a prelien notice to be in a
 17 specific form; requiring a claim of lien on a
 18 cooperative parcel to be in a specific form; providing
 19 for the content of a recording notice; requiring a
 20 release of lien to be in a specific form; amending s.
 21 720.3085, F.S.; requiring a claim of lien on a parcel
 22 within a homeowners' association to be in a specific
 23 form; requiring a release of lien to be in a specific
 24 form; allowing for reasonable charges to be imposed
 25 for collection of a delinquent assessment; requiring a
 26 prelien notice to be in a specific form; requiring a
 27 preforeclosure notice to be in a specific form;
 28 providing an effective date.
 29

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20141466c1

30 Be It Enacted by the Legislature of the State of Florida:
 31
 32 Section 1. Subsection (2) of section 468.431, Florida
 33 Statutes, is amended to read:
 34 468.431 Definitions.—As used in this part:
 35 (2) "Community association management" means any of the
 36 following practices requiring substantial specialized knowledge,
 37 judgment, and managerial skill when done for remuneration and
 38 when the association or associations served contain more than 10
 39 units or have an annual budget or budgets in excess of \$100,000:
 40 controlling or disbursing funds of a community association,
 41 preparing budgets or other financial documents for a community
 42 association, assisting in the noticing or conduct of community
 43 association meetings, determining the number of days required
 44 for statutory notices, determining amounts due to the
 45 association, collecting amounts due to the association before
 46 filing of a civil action, calculating the votes required for a
 47 quorum or to approve a proposition or amendment, completing
 48 forms related to the management of a community association that
 49 have been created by statute or by a state agency, drafting
 50 meeting notices and agendas, calculating and preparing
 51 certificates of assessment and estoppel certificates, responding
 52 to requests for certificates of assessment and estoppel
 53 certificates, negotiating monetary or performance terms of a
 54 contract subject to approval by an association, drafting
 55 prearbitration demands, coordinating or performing maintenance
 56 for real or personal property and other related routine services
 57 involved in the operation of a community association, and
 58 complying with the association's governing documents and the

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59 ~~requirements of law as necessary to perform such practices and~~
 60 ~~coordinating maintenance for the residential development and~~
 61 ~~other day-to-day services involved with the operation of a~~
 62 ~~community association.~~ A person who performs clerical or
 63 ministerial functions under the direct supervision and control
 64 of a licensed manager or who is charged only with performing the
 65 maintenance of a community association and who does not assist
 66 in any of the management services described in this subsection
 67 is not required to be licensed under this part.

68 Section 2. Subsections (3), (5), and (6) of section
 69 718.116, Florida Statutes, are amended to read:

70 718.116 Assessments; liability; lien and priority;
 71 interest; collection.-

72 (3) Assessments and installments on assessments which are
 73 not paid when due bear interest at the rate provided in the
 74 declaration, from the due date until paid. The rate may not
 75 exceed the rate allowed by law, and, if no rate is provided in
 76 the declaration, interest accrues at the rate of 18 percent per
 77 year. If provided by the declaration or bylaws, the association
 78 may, in addition to such interest, charge an administrative late
 79 fee of up to the greater of \$25 or 5 percent of each delinquent
 80 installment for which the payment is late. The association may
 81 also recover from the unit owner any reasonable charges imposed
 82 upon the association under a contract with its management or
 83 bookkeeping company, or collection agent, incurred in connection
 84 with collecting a delinquent assessment. Any payment received by
 85 an association must be applied first to any interest accrued by
 86 the association, then to any administrative late fee, then to
 87 any costs and reasonable attorney ~~attorney's~~ fees incurred in

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88 collection, then to any reasonable costs for collection services
 89 contracted by the association, and then to the delinquent
 90 assessment. The foregoing is applicable notwithstanding any
 91 restrictive endorsement, designation, or instruction placed on
 92 or accompanying a payment. A late fee is not subject to chapter
 93 687 or s. 718.303(4).

94 (5) (a) The association has a lien on each condominium
 95 parcel to secure the payment of assessments. Except as otherwise
 96 provided in subsection (1) and as set forth below, the lien is
 97 effective from and shall relate back to the recording of the
 98 original declaration of condominium, or, in the case of lien on
 99 a parcel located in a phase condominium, the last to occur of
 100 the recording of the original declaration or amendment thereto
 101 creating the parcel. However, as to first mortgages of record,
 102 the lien is effective from and after recording of a claim of
 103 lien in the public records of the county in which the
 104 condominium parcel is located. Nothing in this subsection shall
 105 be construed to bestow upon any lien, mortgage, or certified
 106 judgment of record on April 1, 1992, including the lien for
 107 unpaid assessments created herein, a priority which, by law, the
 108 lien, mortgage, or judgment did not have before that date.

109 (b) ~~To be valid,~~ A claim of lien must be in substantially
 110 the following form:

111
 112 CLAIM OF LIEN

113
 114 Before me, the undersigned notary public, personally appeared
 115 ...(name)..., who was duly sworn and says that he/she is the
 116 authorized agent of the lienor, ...(name of association)...,

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117 whose address is ...(address)..., and that in accordance with
 118 the Condominium Act and the declaration of ...(name of
 119 condominium)..., a condominium, and the articles of
 120 incorporation and bylaws of the association, the association
 121 makes this claim of lien for ...(basis for claim of lien and
 122 date(s) of delinquency)..., for the following described real
 123 property upon which the association asserts this lien:

124
 125 UNIT NO. OF ...(NAME OF CONDOMINIUM)..., A
 126 CONDOMINIUM AS SET FORTH IN THE DECLARATION OF
 127 CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND
 128 FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS
 129 BOOK, PAGE, OF THE PUBLIC RECORDS OF
 130 COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT
 131 IS NOT LIMITED TO, ALL APPURTENANCES TO THE
 132 CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE
 133 UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID
 134 CONDOMINIUM.

135
 136 The property is owned by ...(name of debtor)..., Debtor. There
 137 remains unpaid to the association, the sum of \$..... This lien
 138 secures these amounts, as well as any unpaid assessments and
 139 monetary obligations, interest thereon, and costs of collection
 140 that may accrue in the future and any other amounts that a lien
 141 may secure pursuant to Chapter 718, Florida Statutes.

142
 143 ...(signature of witness)... ...(signature of authorized
 144 agent)...
 145 Print name: Print name:

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146
 147 ...(signature of witness)...
 148 Print name:
 149
 150 Sworn to (or affirmed) and subscribed before me this day of
 151, ...(year)..., by ...(name of person making statement)....
 152 ...(Signature of Notary Public)...
 153 ...(Print, type, or stamp commissioned name of Notary Public)...
 154 Personally Known... OR Produced... as identification.
 155
 156 ~~must state the description of the condominium parcel, the name~~
 157 ~~of the record owner, the name and address of the association,~~
 158 ~~the amount due, and the due dates. It must be executed and~~
 159 ~~acknowledged by an officer or authorized agent of the~~
 160 ~~association. The lien is not effective 1 year after the claim of~~
 161 ~~lien was recorded unless, within that time, an action to enforce~~
 162 ~~the lien is commenced. The 1-year period is automatically~~
 163 ~~extended for any length of time during which the association is~~
 164 ~~prevented from filing a foreclosure action by an automatic stay~~
 165 ~~resulting from a bankruptcy petition filed by the parcel owner~~
 166 ~~or any other person claiming an interest in the parcel. The~~
 167 ~~claim of lien secures all unpaid assessments that are due and~~
 168 ~~that may accrue after the claim of lien is recorded and through~~
 169 ~~the entry of a final judgment, as well as interest, authorized~~
 170 ~~administrative late fees, and all reasonable costs and attorney~~
 171 ~~attorney's fees incurred by the association incident to the~~
 172 ~~collection process, including, but not limited to, any~~
 173 ~~reasonable costs for collection services contracted by the~~
 174 ~~association. Upon payment in full, the person making the payment~~

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175 is entitled to a satisfaction of the lien.

176 (c) By recording a notice in substantially the following
177 form, a unit owner or the unit owner's agent or attorney may
178 require the association to enforce a recorded claim of lien
179 against his or her condominium parcel:

180
181 NOTICE OF CONTEST OF LIEN
182

183 TO: ...(Name and address of association)... You are
184 notified that the undersigned contests the claim of lien filed
185 by you on, ...(year)..., and recorded in Official Records
186 Book at Page, of the public records of County,
187 Florida, and that the time within which you may file suit to
188 enforce your lien is limited to 90 days from the date of service
189 of this notice. Executed this day of, ...(year)....

190 Signed: ...(Owner or Attorney)...

191
192 After notice of contest of lien has been recorded, the clerk of
193 the circuit court shall mail a copy of the recorded notice to
194 the association by certified mail, return receipt requested, at
195 the address shown in the claim of lien or most recent amendment
196 to it and shall certify to the service on the face of the
197 notice. Service is complete upon mailing. After service, the
198 association has 90 days in which to file an action to enforce
199 the lien; and, if the action is not filed within the 90-day
200 period, the lien is void. However, the 90-day period shall be
201 extended for any length of time during which the association is
202 prevented from filing its action because of an automatic stay
203 resulting from the filing of a bankruptcy petition by the unit

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204 owner or by any other person claiming an interest in the parcel.

205 (d) A release of lien must be in substantially the
206 following form:

207
208 RELEASE OF LIEN
209

210 The undersigned lienor, in consideration of the final payment in
211 the amount of \$...., hereby waives and releases its lien and
212 right to claim a lien for unpaid assessments through,
213 ...(year)..., recorded in Official Records Book at Page
214, of the public records of County, Florida, for the
215 following described real property:

216
217 UNIT NO. OF ...(NAME OF CONDOMINIUM)..., A
218 CONDOMINIUM AS SET FORTH IN THE DECLARATION OF
219 CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND
220 FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS
221 BOOK, PAGE, OF THE PUBLIC RECORDS OF
222 COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT
223 IS NOT LIMITED TO, ALL APPURTENANCES TO THE
224 CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE
225 UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID
226 CONDOMINIUM.

227
228 ...(signature of witness)... ...(signature of authorized
229 agent)...

230 Print name: Print name:

231
232 ...(signature of witness)...

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233 Print name:
 234
 235 Sworn to (or affirmed) and subscribed before me this day of
 236 ..., ...(year)..., by ...(name of person making statement)...
 237 ...(Signature of Notary Public)...
 238 ...(Print, type, or stamp commissioned name of Notary Public)...
 239 Personally Known.... OR Produced.... as identification.

240
 241 (6) (a) The association may bring an action in its name to
 242 foreclose a lien for assessments in the manner a mortgage of
 243 real property is foreclosed and may also bring an action to
 244 recover a money judgment for the unpaid assessments without
 245 waiving any claim of lien. The association is entitled to
 246 recover its reasonable attorney's fees incurred in either a lien
 247 foreclosure action or an action to recover a money judgment for
 248 unpaid assessments.

249 (b) No foreclosure judgment may be entered until at least
 250 30 days after the association gives written notice to the unit
 251 owner of its intention to foreclose its lien to collect the
 252 unpaid assessments. The notice must be in substantially the
 253 following form:

254 DELINQUENT ASSESSMENT

255
 256
 257 This letter is to inform you a claim of lien has been filed
 258 against your property because you have not paid the ...
 259 assessment to ... Association. The Association intends to
 260 foreclose the lien and collect the unpaid amount within 30 days
 261 of this letter being provided to you.

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262
 263 You owe the interest accruing from (month/year) to the present.
 264 As of the date of this letter, the total amount due with
 265 interest is \$.... All costs of any action and interest from
 266 this day forward will also be charged to your account.

267
 268 Any questions concerning this matter should be directed to
 269 ...(insert name, addresses and phone numbers of Association
 270 representative)....

271
 272 If this notice is not given at least 30 days before the
 273 foreclosure action is filed, and if the unpaid assessments,
 274 including those coming due after the claim of lien is recorded,
 275 are paid before the entry of a final judgment of foreclosure,
 276 the association shall not recover attorney's fees or costs. The
 277 notice must be given by delivery of a copy of it to the unit
 278 owner or by certified or registered mail, return receipt
 279 requested, addressed to the unit owner at his or her last known
 280 address; and, upon such mailing, the notice shall be deemed to
 281 have been given, and the court shall proceed with the
 282 foreclosure action and may award attorney's fees and costs as
 283 permitted by law. The notice requirements of this subsection are
 284 satisfied if the unit owner records a notice of contest of lien
 285 as provided in subsection (5). The notice requirements of this
 286 subsection do not apply if an action to foreclose a mortgage on
 287 the condominium unit is pending before any court; if the rights
 288 of the association would be affected by such foreclosure; and if
 289 actual, constructive, or substitute service of process has been
 290 made on the unit owner.

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291 (c) If the unit owner remains in possession of the unit
 292 after a foreclosure judgment has been entered, the court, in its
 293 discretion, may require the unit owner to pay a reasonable
 294 rental for the unit. If the unit is rented or leased during the
 295 pendency of the foreclosure action, the association is entitled
 296 to the appointment of a receiver to collect the rent. The
 297 expenses of the receiver shall be paid by the party which does
 298 not prevail in the foreclosure action.

299 (d) The association has the power to purchase the
 300 condominium parcel at the foreclosure sale and to hold, lease,
 301 mortgage, or convey it.

302 Section 3. Subsection (4) of section 718.121, Florida
 303 Statutes, is amended to read:

304 718.121 Liens.—

305 (4) Except as otherwise provided in this chapter, no lien
 306 may be filed by the association against a condominium unit until
 307 30 days after the date on which a notice of intent to file a
 308 lien has been delivered to the owner by registered or certified
 309 mail, return receipt requested, and by first-class United States
 310 mail to the owner at his or her last address as reflected in the
 311 records of the association, if the address is within the United
 312 States, and delivered to the owner at the address of the unit if
 313 the owner's address as reflected in the records of the
 314 association is not the unit address. If the address reflected in
 315 the records is outside the United States, sending the notice to
 316 that address and to the unit address by first-class United
 317 States mail is sufficient. Delivery of the notice shall be
 318 deemed given upon mailing as required by this subsection. The
 319 notice must be in substantially the following form:

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320
 321 NOTICE OF INTENT TO RECORD A CLAIM OF LIEN
 322

323 Re: Unit ... of ... (name of association)...
 324

325 The following amounts are currently due on your account to
 326 Association and must be paid within thirty (30) days after your
 327 receipt of this letter. This letter shall serve as the
 328 Association's notice of intent to record a claim of lien against
 329 your property after thirty (30) days from your receipt of this
 330 letter, unless you pay in full the amounts set forth below:

331	Maintenance due ... (dates)...	\$....
332	Late fee, if applicable	\$....
333	Interest through *	\$....
334	Certified mail charges	\$....
335	Other costs	\$....
336		
337		
338	<u>TOTAL OUTSTANDING</u>	<u>\$....</u>

339
 340 *Interest accrues at the rate of \$.... per day.

341 Section 4. Subsections (3) and (4) of section 719.108,
 342 Florida Statutes, are amended to read:

343 719.108 Rents and assessments; liability; lien and
 344 priority; interest; collection; cooperative ownership.—

345 (3) Rents and assessments, and installments on them, not
 346 paid when due bear interest at the rate provided in the
 347 cooperative documents from the date due until paid. This rate
 348 may not exceed the rate allowed by law and, if a rate is not

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349 provided in the cooperative documents, accrues at 18 percent per
 350 annum. If the cooperative documents or bylaws so provide, the
 351 association may charge an administrative late fee in addition to
 352 such interest, not to exceed the greater of \$25 or 5 percent of
 353 each installment of the assessment for each delinquent
 354 installment that the payment is late. The association may also
 355 recover from the unit owner any reasonable charges imposed upon
 356 the association under a contract with its management or
 357 bookkeeping company, or collection agent, incurred in connection
 358 with collecting a delinquent assessment. Any payment received by
 359 an association must be applied first to any interest accrued by
 360 the association, then to any administrative late fee, then to
 361 any costs and reasonable ~~attorney~~ attorney's fees incurred in
 362 collection, then to any reasonable costs for collection services
 363 contracted for by the association, and then to the delinquent
 364 assessment. The foregoing applies notwithstanding any
 365 restrictive endorsement, designation, or instruction placed on
 366 or accompanying a payment. A late fee is not subject to chapter
 367 687 or s. 719.303(4).

368 (4) The association has a lien on each cooperative parcel
 369 for any unpaid rents and assessments, plus interest, any
 370 reasonable costs for collection services contracted for by the
 371 association, and any authorized administrative late fees. If
 372 authorized by the cooperative documents, the lien also secures
 373 reasonable ~~attorney~~ attorney's fees incurred by the association
 374 and all reasonable collection costs incident to the collection
 375 of the rents and assessments or enforcement of such lien. The
 376 lien is effective from and after recording a claim of lien in
 377 the public records in the county in which the cooperative parcel

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378 is located which states the description of the cooperative
 379 parcel, the name of the unit owner, the amount due, and the due
 380 dates. ~~The lien expires if a claim of lien is not filed within 1~~
 381 ~~year after the date the assessment was due, and the lien does~~
 382 ~~not continue for longer than 1 year after the claim of lien has~~
 383 ~~been recorded unless, within that time, an action to enforce the~~
 384 ~~lien is commenced.~~ Except as otherwise provided in this chapter,
 385 a lien may not be filed by the association against a cooperative
 386 parcel until 30 days after the date on which a notice of intent
 387 to file a lien has been delivered to the owner.

388 (a) The notice must be sent to the unit owner at the
 389 address of the unit by first-class United States mail, and the
 390 notice must be in substantially the following form:

391

392 NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

393

394 Re: Unit of ... (name of cooperative)...

395

396 The following amounts are currently due on your account to ...
 397 Association and must be paid within thirty (30) days after your
 398 receipt of this letter. This letter shall serve as the
 399 Association's notice of intent to record a claim of lien against
 400 your property after thirty (30) days from your receipt of this
 401 letter, unless you pay in full the amounts set forth below:

402

403 <u>Maintenance due ... (dates)...</u>	<u>\$....</u>
404 <u>Late fee, if applicable</u>	<u>\$....</u>
405 <u>Interest through *</u>	<u>\$....</u>
406 <u>Certified mail charges</u>	<u>\$....</u>

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407 Other costs \$....

408
409 TOTAL OUTSTANDING \$....

410
411 *Interest accrues at the rate of \$.... per day

412 1. If the most recent address of the unit owner on the
413 records of the association is the address of the unit, the
414 notice must be sent by ~~registered or~~ certified mail, return
415 receipt requested, to the unit owner at the address of the unit.

416 2. If the most recent address of the unit owner on the
417 records of the association is in the United States, but is not
418 the address of the unit, the notice must be sent by ~~registered~~
419 ~~or~~ certified mail, return receipt requested, to the unit owner
420 at his or her most recent address.

421 3. If the most recent address of the unit owner on the
422 records of the association is not in the United States, the
423 notice must be sent by first-class United States mail to the
424 unit owner at his or her most recent address.

425 ~~(b)~~
426 A notice that is sent pursuant to this paragraph subsection is
427 deemed delivered upon mailing.

428 (b) A claim of lien must be in substantially the following
429 form:

430
431 CLAIM OF LIEN

432
433 Before me, the undersigned notary public, personally appeared
434 ...(name)... who was duly sworn and says that he/she is the
435 authorized agent of the lienor, ...(name of association)...,

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436 whose address is ...(address)..., and that in accordance with
437 the Cooperative Act and the cooperative documents of ...(name of
438 cooperative)..., a cooperative, and the articles of
439 incorporation and bylaws of the association, the association
440 makes this claim of lien for ...(basis for claim of lien and
441 date(s) of delinquency)..., for the following described property
442 upon which the association asserts this lien:

443
444 THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO.
445 OF ...(NAME OF COOPERATIVE)..., A COOPERATIVE AS SET
446 FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS
447 ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED
448 IN OFFICIAL RECORDS BOOK, PAGE, OF THE
449 PUBLIC RECORDS OF COUNTY, FLORIDA.

450
451 The cooperative parcel is owned by ...(name of debtor)...,
452 Debtor. There remains unpaid to the association the sum of
453 \$..... This lien secures these amounts, as well as any other
454 amounts that a lien may secure pursuant to Chapter 719, Florida
455 Statutes.

456
457 ...(signature of witness)... ...(signature of authorized
458 agent)...

459 Print name: Print name:

460
461 ...(signature of witness)...

462 Print name:

463
464 Sworn to (or affirmed) and subscribed before me this day of

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465, ... (year) ..., by ... (name of person making statement) ...
 466 ... (Signature of Notary Public) ...
 467 ... (Print, type, or stamp commissioned name of Notary Public) ...
 468 Personally Known... OR Produced... as identification.

469 The claim must be executed and acknowledged by an officer or
 470 authorized agent of the association. The lien is not effective 1
 471 year after the claim of lien was recorded unless, within that
 472 time, an action to enforce the lien is commenced. The 1-year
 473 period is automatically extended for any length of time during
 474 which the association is prevented from filing a foreclosure
 475 action by an automatic stay resulting from a bankruptcy petition
 476 filed by the parcel owner or any other person claiming an
 477 interest in the parcel. The claim of lien secures all unpaid
 478 rents and assessments that are due and that may accrue after the
 479 claim of lien is recorded and through the entry of a final
 480 judgment, as well as interest and all reasonable costs and
 481 attorney fees incurred by the association incident to the
 482 collection process. Upon payment in full, the person making the
 483 payment is entitled to a satisfaction of the lien.

484 (c) By recording a notice in substantially the following
 485 form, a unit owner or the unit owner's agent or attorney may
 486 require the association to enforce a recorded claim of lien
 487 against his or her cooperative parcel:

488 NOTICE OF CONTEST OF LIEN

489
 490
 491
 492 TO: ... (Name and address of association) ... You are
 493 notified that the undersigned contests the claim of lien filed

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494 by you on, ... (year) ..., and recorded in Official Records
 495 Book ... at Page ..., of the public records of ... County,
 496 Florida, and that the time within which you may file suit to
 497 enforce your lien is limited to 90 days from the date of service
 498 of this notice. Executed this ... day of ..., ... (year) ...
 499 Signed: ... (Owner or Attorney) ...

500
 501 After notice of contest of lien has been recorded, the clerk of
 502 the circuit court shall mail a copy of the recorded notice to
 503 the association by certified mail, return receipt requested, at
 504 the address shown in the claim of lien or most recent amendment
 505 to it and shall certify to the service on the face of the
 506 notice. Service is complete upon mailing. After service, the
 507 association has 90 days in which to file an action to enforce
 508 the lien, and, if the action is not filed within the 90-day
 509 period, the lien is void. However, the 90-day period shall be
 510 extended for any length of time during which the association is
 511 prevented from filing its action because of an automatic stay
 512 resulting from the filing of a bankruptcy petition by the unit
 513 owner or by any other person claiming an interest in the parcel.

514 (d) A release of lien must be in substantially the
 515 following form:

516
 517 RELEASE OF LIEN

518
 519 The undersigned lienor, in consideration of the final payment in
 520 the amount of \$..., hereby waives and releases its lien and
 521 right to claim a lien for unpaid assessments through ...,
 522 ... (year) ..., recorded in Official Records Book ... at Page

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523 ..., of the public records of ... County, Florida, for the
 524 following described real property:
 525
 526 THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO.
 527 OF ... (NAME OF COOPERATIVE) ..., A COOPERATIVE AS SET
 528 FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS
 529 ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED
 530 IN OFFICIAL RECORDS BOOK ..., PAGE ..., OF THE
 531 PUBLIC RECORDS OF ... COUNTY, FLORIDA.
 532
 533 ...(signature of witness)... ...(signature of authorized
 534 agent)...
 535 Print name: ... Print name: ...
 536
 537 ...(signature of witness)...
 538 Print name: ...
 539
 540 Sworn to (or affirmed) and subscribed before me this ... day of
 541 ..., ... (year) ..., by ... (name of person making statement)...
 542 ... (Signature of Notary Public)...
 543 ... (Print, type, or stamp commissioned name of Notary Public)...
 544 Personally Known... OR Produced... as identification.
 545 Section 5. Subsections (1), (3), (4), and (5) of section
 546 720.3085, Florida Statutes, are amended to read:
 547 720.3085 Payment for assessments; lien claims.—
 548 (1) When authorized by the governing documents, the
 549 association has a lien on each parcel to secure the payment of
 550 assessments and other amounts provided for by this section.
 551 Except as otherwise set forth in this section, the lien is

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552 effective from and shall relate back to the date on which the
 553 original declaration of the community was recorded. However, as
 554 to first mortgages of record, the lien is effective from and
 555 after recording of a claim of lien in the public records of the
 556 county in which the parcel is located. This subsection does not
 557 bestow upon any lien, mortgage, or certified judgment of record
 558 on July 1, 2008, including the lien for unpaid assessments
 559 created in this section, a priority that, by law, the lien,
 560 mortgage, or judgment did not have before July 1, 2008.
 561 (a) ~~To be valid,~~ A claim of lien must be in substantially
 562 the following form:
 563
 564 CLAIM OF LIEN
 565
 566 Before me, the undersigned notary public, personally appeared
 567 ...(name) ... who was duly sworn and says that he/she is the
 568 authorized agent of the lienor, ... (name of association) ...,
 569 whose address is ... (address) ..., and that in accordance with
 570 Chapter 720, Florida Statutes, and the governing documents of
 571 ...(name of association) ..., a homeowners' association, the
 572 association makes this claim of lien for ... (basis for claim of
 573 lien and date(s) of delinquency) ..., for the following described
 574 real property upon which the association asserts this lien:
 575
 576 ...(PARCEL NO. OR LOT AND BLOCK) ... OF
 577 SUBDIVISION AS SHOWN IN THE PLAT THEREOF, RECORDED AT
 578 PLAT BOOK ..., PAGE ..., OF THE OFFICIAL RECORDS OF
 579 ... COUNTY, FLORIDA.
 580

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581 ...(or insert appropriate metes and bounds description
 582 here)...
 583
 584 The property is owned by ...(name of debtor)..., Debtor. There
 585 remains unpaid to the association the sum of \$.... This lien
 586 secures these amounts, as well as any other amounts that a lien
 587 may secure pursuant to Chapter 720, Florida Statutes.
 588
 589 ...(signature of witness)... ...(signature of authorized
 590 agent)...
 591 Print name: Print name:
 592
 593 ...(signature of witness)...
 594 Print name:
 595
 596 Sworn to (or affirmed) and subscribed before me this day of
 597, ...(year)...., by ...(name of person making statement)....
 598 ...(Signature of Notary Public)...
 599 ...(Print, type, or stamp commissioned name of Notary Public)...
 600 Personally Known.... OR Produced.... as identification.
 601
 602 ~~must state the description of the parcel, the name of the record~~
 603 ~~owner, the name and address of the association, the assessment~~
 604 ~~amount due, and the due date. The claim of lien secures all~~
 605 ~~unpaid assessments that are due and that may accrue subsequent~~
 606 ~~to the recording of the claim of lien and before entry of a~~
 607 ~~certificate of title, as well as interest, late charges, and~~
 608 ~~reasonable collection costs and attorney ~~attorney's~~ fees~~
 609 ~~incurred by the association incident to the collection process.~~

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610 The person making payment is entitled to a satisfaction of the
 611 lien upon payment in full.
 612 (b) By recording a notice in substantially the following
 613 form, a parcel owner or the parcel owner's agent or attorney may
 614 require the association to enforce a recorded claim of lien
 615 against his or her parcel:
 616
 617 NOTICE OF CONTEST OF LIEN
 618
 619 TO: ...(Name and address of association)..
 620 You are notified that the undersigned contests the claim of lien
 621 filed by you on, ...(year)...., and recorded in Official
 622 Records Book at page, of the public records of
 623 County, Florida, and that the time within which you may file
 624 suit to enforce your lien is limited to 90 days following the
 625 date of service of this notice. Executed this day of,
 626 ...(year)....
 627 Signed: ...(Owner or Attorney)..
 628
 629 After the notice of a contest of lien has been recorded, the
 630 clerk of the circuit court shall mail a copy of the recorded
 631 notice to the association by certified mail, return receipt
 632 requested, at the address shown in the claim of lien or the most
 633 recent amendment to it and shall certify to the service on the
 634 face of the notice. Service is complete upon mailing. After
 635 service, the association has 90 days in which to file an action
 636 to enforce the lien and, if the action is not filed within the
 637 90-day period, the lien is void. However, the 90-day period
 638 shall be extended for any length of time that the association is

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639 prevented from filing its action because of an automatic stay
 640 resulting from the filing of a bankruptcy petition by the parcel
 641 owner or by any other person claiming an interest in the parcel.

642 (c) The association may bring an action in its name to
 643 foreclose a lien for assessments in the same manner in which a
 644 mortgage of real property is foreclosed and may also bring an
 645 action to recover a money judgment for the unpaid assessments
 646 without waiving any claim of lien. The association is entitled
 647 to recover its reasonable attorney's fees incurred in an action
 648 to foreclose a lien or an action to recover a money judgment for
 649 unpaid assessments.

650 (d) A release of lien must be in substantially the
 651 following form:

652 RELEASE OF LIEN

653 The undersigned lienor, in consideration of the final payment in
 654 the amount of \$...., hereby waives and releases its lien and
 655 right to claim a lien for unpaid assessments through,
 656 ...(year)..., recorded in Official Records Book ... at Page
 657, of the public records of County, Florida, for the
 658 following described real property:

661 ...(PARCEL NO. OR LOT AND BLOCK)... OF
 662 SUBDIVISION AS SHOWN IN THE PLAT THEREOF, RECORDED AT
 663 PLAT BOOK, PAGE, OF THE OFFICIAL RECORDS OF
 664 COUNTY, FLORIDA.

665 ...(or insert appropriate metes and bounds description
 666
 667

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668 here)...

669
 670 ...(signature of witness)... ..(signature of authorized
 671 agent)...

672
 673 ...(signature of witness)...

674
 675 Sworn to (or affirmed) and subscribed before me this day of
 676, ...(year)..., by ...(name of person making statement)...
 677 ...(Signature of Notary Public)...
 678 ...(Print, type, or stamp commissioned name of Notary Public)...
 679 Personally Known.... OR Produced.... as identification.

680
 681 (e)(d) If the parcel owner remains in possession of the
 682 parcel after a foreclosure judgment has been entered, the court
 683 may require the parcel owner to pay a reasonable rent for the
 684 parcel. If the parcel is rented or leased during the pendency of
 685 the foreclosure action, the association is entitled to the
 686 appointment of a receiver to collect the rent. The expenses of
 687 the receiver must be paid by the party who does not prevail in
 688 the foreclosure action.

689 (f)(e) The association may purchase the parcel at the
 690 foreclosure sale and hold, lease, mortgage, or convey the
 691 parcel.

692 (3) Assessments and installments on assessments that are
 693 not paid when due bear interest from the due date until paid at
 694 the rate provided in the declaration of covenants or the bylaws
 695 of the association, which rate may not exceed the rate allowed
 696 by law. If no rate is provided in the declaration or bylaws,

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697 interest accrues at the rate of 18 percent per year.
 698 (a) If the declaration or bylaws so provide, the
 699 association may also charge an administrative late fee not to
 700 exceed the greater of \$25 or 5 percent of the amount of each
 701 installment that is paid past the due date. The association may
 702 also recover from the parcel owner any reasonable charges
 703 imposed upon the association under a contract with its
 704 management or bookkeeping company, or collection agent, incurred
 705 in connection with collecting a delinquent assessment.
 706 (b) Any payment received by an association and accepted
 707 shall be applied first to any interest accrued, then to any
 708 administrative late fee, then to any costs and reasonable
 709 attorney attorney's fees incurred in collection, then to any
 710 reasonable costs for collection services contracted for by the
 711 association, and then to the delinquent assessment. This
 712 paragraph applies notwithstanding any restrictive endorsement,
 713 designation, or instruction placed on or accompanying a payment.
 714 A late fee is not subject to the provisions of chapter 687 and
 715 is not a fine.
 716 (4) A homeowners' association may not file a record of lien
 717 against a parcel for unpaid assessments unless a written notice
 718 or demand for past due assessments as well as any other amounts
 719 owed to the association pursuant to its governing documents has
 720 been made by the association. The written notice or demand must:
 721 (a) Provide the owner with 45 days following the date the
 722 notice is deposited in the mail to make payment for all amounts
 723 due, including, but not limited to, any attorney's fees and
 724 actual costs associated with the preparation and delivery of the
 725 written demand. The notice must be in substantially the

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726 following form:
 727
 728 NOTICE OF INTENT TO RECORD A CLAIM OF LIEN
 729
 730 Re: Parcel or (lot/block) of ...(name of association)...
 731
 732 The following amounts are currently due on your account to
 733 Association, and must be paid within forty-five (45) days after
 734 your receipt of this letter. This letter shall serve as the
 735 Association's notice of intent to record a claim of lien against
 736 your property after forty-five (45) days from your receipt of
 737 this letter, unless you pay in full the amounts set forth below:
 738
 739 Maintenance due ... (dates) ... \$....
 740 Late fee, if applicable \$....
 741 Interest through * \$....
 742 Certified mail charges \$....
 743 Other costs \$....
 744
 745 TOTAL OUTSTANDING \$....
 746
 747 *Interest accrues at the rate of \$.... per day.
 748 (b) Be sent by registered or certified mail, return receipt
 749 requested, and by first-class United States mail to the parcel
 750 owner at his or her last address as reflected in the records of
 751 the association, if the address is within the United States, and
 752 to the parcel owner subject to the demand at the address of the
 753 parcel if the owner's address as reflected in the records of the
 754 association is not the parcel address. If the address reflected

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755 in the records is outside the United States, then sending the
756 notice to that address and to the parcel address by first-class
757 United States mail is sufficient.

758 (5) The association may bring an action in its name to
759 foreclose a lien for unpaid assessments secured by a lien in the
760 same manner that a mortgage of real property is foreclosed and
761 may also bring an action to recover a money judgment for the
762 unpaid assessments without waiving any claim of lien. The action
763 to foreclose the lien may not be brought until 45 days after the
764 parcel owner has been provided notice of the association's
765 intent to foreclose and collect the unpaid amount. The notice
766 must be given in the manner provided in paragraph (4)(b), and
767 the notice may not be provided until the passage of the 45 days
768 required in paragraph (4)(a). The notice must be in
769 substantially the following form:

770
771 DELINQUENT ASSESSMENT
772

773 This letter is to inform you a claim of lien has been filed
774 against your property because you have not paid the ...
775 assessment to ... Association. The Association intends to
776 foreclose the lien and collect the unpaid amount within 45 days
777 of this letter being provided to you.

778
779 You owe the interest accruing from (month/year) to the present.
780 As of the date of this letter, the total amount due with
781 interest is \$.... All costs of any action and interest from
782 this day forward will also be charged to your account.
783

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784 Any questions concerning this matter should be directed to
785 ...(insert name, addresses and phone numbers of Association
786 representative)....

787 (a) The association may recover any interest, late charges,
788 costs, and reasonable ~~attorney~~ ~~attorney's~~ fees incurred in a
789 lien foreclosure action or in an action to recover a money
790 judgment for the unpaid assessments.

791 (b) The time limitations in this subsection do not apply if
792 the parcel is subject to a foreclosure action or forced sale of
793 another party, or if an owner of the parcel is a debtor in a
794 bankruptcy proceeding.

795 Section 6. This act shall take effect July 1, 2014.

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