

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**JUDICIARY**  
**Senator Diaz de la Portilla, Chair**  
**Senator Ring, Vice Chair**

**MEETING DATE:** Tuesday, February 17, 2015  
**TIME:** 2:00 —4:00 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Diaz de la Portilla, Chair; Senator Ring, Vice Chair; Senators Bean, Benacquisto, Brandes, Joyner, Simmons, Simpson, Soto, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 42</b> Braynon	Relief of Javier Soria by Palm Beach County; Providing for the relief of Javier Soria by Palm Beach County; providing for an appropriation to compensate him for injuries sustained as a result of negligence by an employee of Palm Beach County; providing a limitation on the payment of fees and cost, etc.  SM     02/09/2015 Recommendation: Fav/2 Amendments JU     02/17/2015 Fav/CS CA FP	Fav/CS Yeas 8 Nays 1
2	<b>SB 24</b> Soto (Identical H 3503)	Relief of J.D.S. by the Agency for Persons with Disabilities; Providing for the relief of J.D.S. by the Agency for Persons with Disabilities; providing an appropriation from the General Revenue Fund to compensate J.D.S. for injuries and damages sustained as a result of negligence by the Agency for Persons with Disabilities, as successor agency of the Department of Children and Family Services; providing a limitation on the payment of fees and costs, etc.  SM     02/09/2015 Recommendation: Favorable JU     02/17/2015 Favorable AHS AP	Favorable Yeas 9 Nays 0
3	<b>SB 40</b> Ring	Relief of L.T. by the Department of Children and Families; Providing for the relief of L.T.; providing an appropriation to compensate L.T. for injuries and damages sustained as a result of the negligence of employees of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing a limitation on the payment of fees and costs, etc.  SM     02/09/2015 Recommendation: Favorable JU     02/17/2015 Fav/CS AHS AP	Fav/CS Yeas 10 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Tuesday, February 17, 2015, 2:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 60</b> Simpson	Relief of Roy Wright and Ashley Wright by the North Brevard County Hospital District; Providing for an appropriation to compensate Roy Wright and Ashley Wright, individually and as guardians of Tucker Wright, for injuries and damages sustained by Tucker Wright as a result of the negligence of an employee of Parrish Medical Center; providing a limitation on the payment of fees and costs; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act, etc.  SM 02/09/2015 Recommendation: Fav/1 Amendment JU 02/17/2015 Fav/CS CA AP	Fav/CS Yeas 9 Nays 1
5	<b>SB 362</b> Lee (Similar H 459)	Powers of Attorney; Revising the qualifications of an agent in the execution of power of attorney to include certain not-for-profit corporations, etc.  JU 02/17/2015 Fav/CS CF RC	Fav/CS Yeas 9 Nays 1
6	<b>SB 390</b> Richter (Similar CS/H 157)	Fraud; Providing for restitution to victims for certain victim out-of-pocket costs; requiring business entities to provide copies of business records of fraudulent transactions involving identity theft to victims and law enforcement agencies in certain circumstances; specifying that certain false statements made through electronic means are prohibited; expanding specified identity theft offenses to include all persons rather than being limited to natural persons, etc.  JU 02/17/2015 Fav/CS CJ ACJ FP	Fav/CS Yeas 10 Nays 0
7	<b>SB 342</b> Simmons (Identical H 717)	No Contact Orders; Providing for the effect and enforceability of orders of no contact as a part of pretrial release; specifying acts prohibited by a no contact order, etc.  JU 02/17/2015 Fav/CS CJ RC	Fav/CS Yeas 10 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Tuesday, February 17, 2015, 2:00 —4:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 408</b> Simmons (Identical H 365)	Designated Areas for Skateboarding, Inline Skating, Paintball, or Freestyle or Mountain and Off-roading Bicycling; Deleting the requirement that a governmental entity that provides a designated area for skateboarding, inline skating, or freestyle bicycling obtain the written consent of the parent or legal guardian of a child under a certain age before allowing the child to participate in these activities in such area; requiring the governmental entity to post a rule indicating that consent forms are required for children under a certain age before participation in paintball or mountain and off-road bicycling, etc.	Favorable Yeas 8 Nays 0
		JU 02/17/2015 Favorable CA FP	

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Other Related Meeting Documents

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## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

**Location**  
302 Capitol Building

**Mailing Address**  
404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5237

DATE	COMM	ACTION
12/3/14	SM	Fav/2 amendments
02/17/15	JU	Fav/CS
	CA	
	FP	

December 3, 2014

The Honorable Andy Gardiner  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **CS/SB 42** – Judiciary Committee and Senator Oscar Braynon, II  
Relief of Javier Soria

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$100,000 BASED ON A SETTLEMENT AGREEMENT BETWEEN JAVIER SORIA, ET. AL., AND PALM BEACH COUNTY, WHICH RESOLVED A CIVIL ACTION THAT AROSE FROM THE NEGLIGENT OPERATION OF A COUNTY TRUCK THAT CAUSED SERIOUS BODILY INJURY TO JAVIER SORIA.

#### FINDINGS OF FACT:

On April 17, 2007, Javier Soria was traveling on his motorcycle northbound on SR 807 (near the 200 block of S. Congress Avenue) in Delray Beach, Palm Beach County, Florida. According to the police report prepared by the Delray Beach Police Department and an eye witness, Mr. Soria was traveling approximately 35-40 miles per hour in a 45 mph posted speed zone in the center of three lanes of northbound traffic. The eye witness was driving an automobile in the right lane of northbound traffic, alongside Mr. Soria, prior to her attempt to make a right turn into the Palm Beach County Complex at or near 225 S. Congress Avenue.

Mr. Juan Sepeda Casas, an employee of Palm Beach County, was driving a Ford dump truck with a utility trailer in tow that is owned by Palm Beach County. Mr. Casas exited the Palm Beach County complex, at or near 225 S. Congress Avenue,

from the east, which is controlled by a stop sign. Mr. Casas traveled westbound crossing the northbound lanes, violating Mr. Soria's right-of-way and causing Mr. Soria to strike the door of the county dump truck. Mr. Casas continued forward, dragging Mr. Soria who was still on his motorcycle underneath the dump truck, approximately 12 feet. The initial impact occurred in the left lane of northbound traffic as Mr. Soria attempted to avoid the collision.

The accident occurred at approximately 8:06 a.m., on a clear, dry day. Mr. Casas was charged with the accident for failure to yield the right-of-way. Mr. Soria was not cited in the police report as a contributing cause of the accident.

As a result of the collision, Mr. Soria suffered serious injuries, despite wearing a helmet. These injuries include: head trauma including a subarachnoid hemorrhage; right elbow fracture which required irrigation debridement with surgical placement of a temporary external fixator across the elbow joint, subsequent removal of the external fixator, and open reduction internal ulnar fixation; right arm swelling and deep lacerations requiring wound debridement; multiple abrasions to his face, hands, legs, and arms; upper back pain; aggravated disc herniation in lower back at L5-S1,<sup>1</sup> left hip pain; right wrist pain; right shoulder pain; right knee medial meniscus tear and articular cartilage damage; and cognitive impairments.

Delray Beach Fire-Rescue responded and provided emergency treatment to Mr. Soria at the scene, then transported him to Delray Medical Center, where he was admitted to trauma ICU. Mr. Soria remained in Delray Medical Center from April 17, until April 26, 2007. During that time he received a series of diagnostic and surgical procedures, including CT scans of his brain and other body parts, additional radiological imaging, and multiple operations to address the right elbow fracture. Medical expenses through discharge totaled \$171,900.

Subsequent medical expenses through November 13, 2009, totaled \$28,354. These expenses primarily arise from orthopedic medical care relating to post-operative treatment on the right elbow; physical therapy; pain in the lower lumbar, thoracic spine, right elbow, right shoulder, right arm, right wrist, right knee, and right leg; and neurological treatment for

the after-effects of the accident and concussion, including mental health counseling for nightmares, flashbacks, hypervigilance, depression, anxiety, insomnia, headaches, panic attacks, ringing in ears, difficulty coping with physical limitations, irritability, and memory loss.

Overall, counsel for Mr. Soria documented medical expenses in Florida totaling \$200,254. According to counsel for Mr. Soria, these medical expenses have been satisfied, and no further medical bills have been incurred in Florida.

Three of Mr. Soria's medical doctors assessed his injury-related disabilities as between 30% - 39% whole person impairment. The physician retained by Palm Beach County assessed Mr. Soria's physical disabilities at 39% whole person impairment, which is consistent with the assessments of the claimant's orthopedist. Mr. Soria's neurologist assessed Mr. Soria's neurological impairment (headaches, lumbar radiculopathy, insomnia, and anxiety) based on the combined values chart of the American Medical Association Guides to the Evaluation of Permanent Impairment as a 31 percent impairment to the body as a direct result of this accident.

Future medical care, with which the County's orthopedic physician concurs, is likely to include, among other things: surgery to address carpal tunnel syndrome in the right wrist, fusion or total elbow replacement in the right elbow, surgery on the lumbar spine, total knee replacement on the right knee, knee and shoulder arthroscopy, physical therapy, and medications for each of these joints.

A professional disability management specialist prepared a Life Care Plan based on a review of reports of the orthopedic and neurological medical specialists who had treated Mr. Soria, and concluded future medical expenses to be approximately \$641,905.

The disability management specialist also assessed Mr. Soria in order to perform a Vocational / Earning Capacity Assessment. She determined that his earning capacity had diminished by more than 50 percent as a result of his injuries and projected a loss of earning capacity of between \$474,104 and \$478,503 to age 67.

Mr. Soria is currently living in Argentina, his homeland, and receives minimal governmental medical care in Argentina. He is in the process of applying for more extensive state benefits due to his disability arising from this collision. However, according to counsel's representation, there are no assurances that Mr. Soria will obtain these additional benefits and he has not been provided with a definitive time frame on whether he will qualify for the supplemental medical coverage.

At the time of the accident, Mr. Soria was 36 years of age. Prior to the accident, Mr. Soria was employed in various manual-labor, physically demanding jobs, primarily as a construction worker. He was physically fit, having achieved the status of a master in taekwondo, enjoyed spending time with his children, and teaching them and others the art of taekwondo. Subsequent to the accident, he has not been able to resume these physical activities due to the injuries he suffered from the collision. Additionally, Mr. Soria is permanently cognitively impaired as a result of the accident.

Mr. Soria has three children. At the time of the accident, his eldest daughter was 17 years of age, less than one month from turning 18; his son was 13; and his youngest daughter was 7 years of age.

The third amended complaint, filed on March 23, 2009, alleged that Palm Beach County was vicariously liable for the negligence of its employee, Mr. Casas, in the operation of the county's truck; that Palm Beach County negligently retained Mr. Casas, and that Palm Beach County negligently supervised Mr. Casas. Mr. Casas had been involved in a series of prior motor vehicle accidents with county vehicles while employed with Palm Beach County as follows:

- August 28, 1989 – Palm Beach County determined the accident to be avoidable and serious. No specific facts of the accident were available.
- May 17, 1996 – Palm Beach County determined the accident to be avoidable. Mr. Casas had not thoroughly secured the trailer hitch onto the hitch ball. The trailer separated as equipment was loaded and the trailer struck the tailgate of the pick-up truck.
- July 7, 1997 – Palm Beach County determined the accident to be avoidable and a minor violation. The county truck Mr. Casas was driving struck a fixed object. No further details of the incident were provided.

- April 3, 2002 – Palm Beach County determined the accident to be avoidable and a minor violation. Mr. Casas was operating a loader, placing shellrock along the sidewalk and water's edge. He backed into an above ground hose bib.
- May 8, 2002 – Palm Beach County determined the accident to be avoidable. Mr. Casas struck a park entrance sign while backing a dump truck into a plant bed to dump mulch.

The complaint further alleged that in addition to the monetary damages suffered by Mr. Soria, as dependent children of Mr. Soria, the three children were deprived of the services, support, comfort, society, companionship and attention of their father as a result of the negligence of Mr. Casas.

Prior to the case proceeding to trial the parties agreed to settle the matter. Staff of the Palm Beach County Board of County Commissioners recommended that the board approve the settlement agreement, inclusive of attorney fees and costs, in the total amount of \$300,000. Justification to support this recommendation noted that the County's medical experts agreed that Mr. Soria sustained multiple orthopedic injuries and the County's neurologist diagnosed a permanent nerve injury to Mr. Soria's right brachial plexus, which innervates his right upper extremity. Furthermore, the justification noted, "Based upon the totality of Mr. Soria's injuries, medical bills, potential future medical care, pain and suffering, as well as the consortium claims of his three (3) children, exposure from a jury verdict could exceed \$1,000,000." The justification also acknowledged that settlement would save the County a significant amount of money in terms of litigation costs, and the County would only be required to pay its sovereign immunity limit of \$200,000 absent the Florida Legislature passing a claim bill in favor of the Plaintiffs for the additional sum of \$101,800. On August 17, 2010, the Palm Beach County Board of County Commissioners approved the settlement agreement in the amount of \$300,000.

In the Settlement Agreement and Release, Plaintiffs Javier Soria, Pamela Soria (eldest daughter who had reached majority at the time of the settlement agreement), Lucas Soria, a minor, by and through his father and next friend, and Agustina Soria, a minor, by and through her father and next

friend, and Defendant Palm Beach County agreed to entry of a Consent Final Judgment in the amount of \$300,000.

The settlement agreement indicated that Palm Beach County had already paid Javier Soria the sum of \$1,800 in full and final satisfaction of the property damage claim and that Palm Beach County would pay a total sum of \$198,200, subject to satisfaction of any liens, under the settlement agreement as follows:

- \$100,000 to Javier Soria
- \$ 39,280 to Pamela Soria, adult daughter
- \$ 29,460 to Lucas Soria, minor son
- \$ 29,460 to Agustina Soria, minor daughter.

Prior to distributing the \$198,200, Palm Beach County would pay the outstanding liens of the Palm Beach County Health Care District (lien amount of \$11,015.12, resolved for \$5,948.11) and an attorney lien (\$3,000) asserted by the plaintiff's prior attorney. The County would allocate satisfaction of the liens on a pro-rata basis among the plaintiffs based on the above allocation.

Finally, the settlement agreement provided that in order for the plaintiffs to be entitled to receive the remaining sum of \$101,800, the plaintiffs must obtain a claim bill from the Florida Legislature. Palm Beach County agreed not to oppose a claim bill seeking \$101,800.

Accordingly, Palm Beach County does not oppose the claim bill in an amount up to \$101,800 and has a self-insured retention of \$500,000 on this claim in the Casualty and Property Self-Insurance Fund from which the claim bill, if enacted, will be paid.

#### **Recommended Amendments**

As previously noted, the settlement agreement for \$300,000 was in addition to the \$1,800 property claim previously paid by Palm Beach County.<sup>2</sup> Accordingly, the settlement agreement provided for \$101,800 to be paid through a claim bill. Senate Bill 42 as filed, provides for Palm Beach County to pay \$100,000. Claimant's counsel has indicated a willingness to stipulate to the amount in the claim bill as filed.

Under the settlement agreement, all four plaintiffs are defined as the "First Party". The settlement agreement provides, "In

order for First Party to be entitled to receive the remaining sum of \$101,800, First Party shall be required to ... obtain a claim bill from the Florida Legislature. Further, the Consent Final Judgment refers to plaintiffs (in the plural) when providing for the claim bill in the amount of \$101,800. One of the whereas clauses in Senate Bill 42 refers to the right of action for loss of consortium for Mr. Soria's three children. Another whereas clause refers to the settlement agreement reached between Mr. Soria only and Palm Beach County. Senate Bill 42 also refers to payment under the claim bill to Mr. Soria only. According to counsel for all four plaintiffs, the consortium claims of the three children were fully satisfied in the settlement agreement prior to the claim bill and that the compensation under the claim bill is to be directed to Mr. Soria only. In order to eliminate any ambiguity between the settlement agreement, consent final order, and the claim bill, the whereas clauses in the claim bill should be amended to reflect the fact that the three children were a party to the settlement agreement and that their claims have been fully compensated by Palm Beach County from the \$200,000 paid under the waiver of sovereign immunity limit.

The first whereas clause in SB 42 indicates that Mr. Soria was traveling on SR 807 in West Palm Beach. The accident occurred in Delray Beach and the claim bill should be amended to correct this fact. Other technical corrections are necessary to conform the facts in the whereas clauses to the evidence presented to the Special Master.

CONCLUSIONS OF LAW:

Section 316.123, F.S., requires a driver of a vehicle approaching a stop intersection indicated by a stop sign to stop before entering the intersection. After stopping, the driver is to yield the right-of-way to any vehicle which ... is approaching so closely on the highway as to constitute an immediate hazard during the time when the driver is moving across or within the intersection. Mr. Casas had a statutory duty to yield the right-of-way to Mr. Soria's vehicle, which he negligently failed to do. This breach was the direct cause of the collision between the two vehicles and the serious bodily injuries suffered by Mr. Soria as a result of the collision. Furthermore, the serious bodily injuries suffered by Mr. Soria as a result of the collision, support the claim for loss of consortium by Mr. Soria's three children pursuant to s. 768.0415, F.S.

Under the doctrine of respondeat superior, Palm Beach County is vicariously liable for the negligence of its agents and employees, when such acts are within the course and scope of the agency or employment. See Mallory v. O'Neil, 69 So.2d 313 (Fla.1954), and s. 768.28, F.S. At the time of the accident, Mr. Casas was an employee of Palm Beach County who was acting within the course and scope of his employment and operating a county vehicle which caused the collision and resulting injuries. Accordingly, the negligence of Mr. Casas is attributable to Palm Beach County.

This Special Master is not persuaded that the evidence supports the remaining two counts, relating to Palm Beach County negligently retaining and supervising Mr. Casas. Nevertheless, the evidence does support a claim upon which relief may be granted as discussed above and the parties have reasonably and thoughtfully executed a settlement agreement to resolve the matter.

Palm Beach County, as respondeat superior, is 100 percent responsible for the damages suffered by Mr. Soria and his three children. The sum of \$300,000 in the settlement agreement, which was agreed to prior to lengthy litigation, is a reasonable and responsible resolution for all parties given the medical expenses incurred prior to settlement and the probable medical expenses and other financial exposure the county might face upon an adverse trial verdict and judgment.

As provided in s. 768.28, F.S. (2010), when the settlement agreement was executed, sovereign immunity shields Palm Beach County against tort liability in excess of \$200,000 per occurrence, absent Legislative enactment of a claim bill. Unless a claim bill is enacted, Mr. Soria will not be able to realize the full benefit of the settlement agreement.

ATTORNEYS FEES:

Section 768.28(8), F.S., states that no attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment or settlement. Claimant's counsel, Diana Santa Maria, Esq., has submitted an affidavit that her fees, as well as the lobbying fees, costs, and other similar expenses relating to this claim will not exceed 25 percent of the total amount awarded under the claim bill.

RECOMMENDATIONS: Based upon the foregoing, I recommend that Senate Bill 42 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Sandra R. Stovall  
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

**CS by Judiciary on February 17, 2015:**

The committee substitute corrects several factual errors in the “whereas clauses” of the original bill based on information presented to the special master. Specifically, the committee substitute:

- Corrects the location of the accident, which occurred in Delray Beach, not West Palm Beach.
- Corrects the claimant’s disability impairment ratings.
- Clarifies that the consortium claims of the claimant’s three children have been fully satisfied and that the claim bill is for the relief of Javier Soria only.

The committee substitute also increases the amount of the appropriation in the underlying claim bill by \$1,800 for a total appropriation of \$101,800. According to the special master, the increased amount reflects the full amount of the settlement between the claimant and Palm Beach County.

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<sup>1</sup> Mr. Soria had a pre-existing L5-S1 injury due to a motor vehicle accident (not a motorcycle) that occurred approximately one year earlier. According to counsel, Mr. Soria had sought chiropractic care and was doing well at the time of this accident.

<sup>2</sup> All payments made by Palm Beach County, prior to a Legislatively enacted claim bill, totaled \$200,000, in accordance with the waiver of sovereign immunity limit per occurrence.



235202

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2015	.	
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The Committee on Judiciary (Joyner) recommended the following:

**Senate Amendment (with title amendment)**

1  
2  
3 Delete line 99  
4 and insert:  
5 and to draw a warrant in the sum of \$101,800, payable to Javier

6  
7  
8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 Delete line 90



235202

11 and insert:  
12 support for a claim bill in the amount of \$101,800, NOW,  
13



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2015	.	
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The Committee on Judiciary (Joyner) recommended the following:

**Senate Amendment**

In title, delete lines 9 - 88  
and insert:

WHEREAS, on April 17, 2007, 36-year-old Javier Soria was lawfully traveling on his motorcycle northbound in the center lane on SR 807 in Delray Beach in the 200 block of South Congress Avenue, and

WHEREAS, at the same time, an employee of Palm Beach County, Juan Sepeda Casas, was driving a Palm Beach County dump



11 truck with a utility trailer in tow, and

12 WHEREAS, as Mr. Casas exited the Palm Beach County  
13 maintenance complex, he failed to stop at a stop sign, pulling  
14 out into the path of Mr. Soria and causing a violent collision  
15 between the two vehicles, and

16 WHEREAS, the Palm Beach County truck continued forward,  
17 dragging Mr. Soria and the motorcycle under the dump truck for  
18 approximately 12 feet, and

19 WHEREAS, Mr. Casas was charged in the accident by the  
20 investigating law enforcement agency, the Delray Beach Police  
21 Department, and

22 WHEREAS, as a result of the collision, Mr. Soria sustained  
23 severe head trauma, including a subarachnoid hemorrhage, a  
24 right-elbow fracture, deep lacerations requiring wound  
25 debridement, multiple abrasions to his face, hands, legs, and  
26 arms, upper-back pain, low-back disc herniation, left-hip pain,  
27 right-wrist pain, right-shoulder pain, and a right-knee linear  
28 tear that required bracing, physical therapy, and surgery, and

29 WHEREAS, Mr. Soria has undergone numerous surgical  
30 procedures, including irrigation debridement with placement of a  
31 temporary external fixator across the elbow joint, subsequent  
32 removal of the external fixator, and open reduction internal  
33 fixation on ulnar fractures, and

34 WHEREAS, Mr. Soria needs additional surgery to his right  
35 elbow, including elbow fusion or total elbow replacement;  
36 surgeries to his right wrist and shoulder; and arthroscopic  
37 surgery to his right knee; and is a candidate for total knee  
38 replacement in the future, and

39 WHEREAS, Mr. Soria suffers from multiple neurological



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40 injuries that cause chronic headaches, low-back pain, vision  
41 problems, sleep disturbance, depression, memory loss, anxiety,  
42 dizziness, tiredness, buzzing in the ears, numbness, tingling,  
43 and knee pain, which limit his routine daily activities, and

44 WHEREAS, according to American Medical Association  
45 guidelines, Mr. Soria's treating neurologist, Dr. Waden Emery,  
46 has assigned him a 31 percent impairment rating with 5 percent  
47 for headaches, 14 percent for lumbar radiculopathy, 5 percent  
48 for insomnia, and 10 percent for anxiety, and

49 WHEREAS, Mr. Soria's treating orthopedist, Dr. Fernando  
50 Moya, has assigned him a 39 percent whole person orthopedic  
51 disability impairment rating, which includes 36 percent for  
52 injuries to the right elbow, 6 percent for injuries to the right  
53 knee, 6 percent for injuries to the lumbar spine, and 5 percent  
54 for injuries to the right wrist, and

55 WHEREAS, Mr. Soria's medical expenses have totaled  
56 approximately \$200,254, and experts in life care planning and  
57 economics have determined that his future medical expenses are  
58 approximately \$640,000, and past and future lost earnings total  
59 approximately \$478,000, with total economic damages exceeding  
60 \$1.3 million, and

61 WHEREAS, Mr. Soria's injuries resulted in permanent  
62 cognitive impairment, with the neuropsychological assessment of  
63 Dr. Robert Brick concluding that Mr. Soria suffers from post-  
64 traumatic stress disorder, memory loss, poor management and  
65 organizational skills, mood swings, daily headaches, constant  
66 ringing in his ears, insomnia, panic attacks, and amnesia that  
67 require cognitive therapy, and

68 WHEREAS, Mr. Soria continues to suffer from pain and



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69 instability in his head, neck, back, body, and limbs and, in  
70 addition, continues to suffer from severe depression brought  
71 about by his pain, suffering, disability, and limitations, all  
72 of which are a direct result of the accident, and

73 WHEREAS, before the accident, Mr. Soria was in excellent  
74 physical condition and had dreams of one day opening his own  
75 martial arts studio and becoming a certified martial arts  
76 instructor, and

77 WHEREAS, Mr. Soria's three children have a corresponding  
78 right of action and claim given that Mr. Soria is now  
79 permanently disabled with physical limitations and injuries and  
80 cognitive restrictions and depression that limit his ability to  
81 provide the companionship and support that he was once capable  
82 of providing his family, and

83 WHEREAS, a settlement was reached between Mr. Soria, his  
84 three children, and Palm Beach County in the amount of \$300,000,  
85 which is in addition to an \$1,800 property damage claim  
86 previously paid by Palm Beach County related to the accident,  
87 and

88 WHEREAS, Palm Beach County paid the claimants a total of  
89 \$200,000 under the statutory limits of liability per occurrence  
90 set forth in s. 768.28, Florida Statutes, which fully satisfied  
91 the loss of consortium claims of each of the three children, and  
92

By Senator Braynon

36-00011-15

201542\_\_

1                                   A bill to be entitled  
2       An act for the relief of Javier Soria by Palm Beach  
3       County; providing for an appropriation to compensate  
4       him for injuries sustained as a result of negligence  
5       by an employee of Palm Beach County; providing a  
6       limitation on the payment of fees and costs; providing  
7       an effective date.

8  
9       WHEREAS, on April 17, 2007, 36-year-old Javier Soria was  
10      lawfully traveling on his motorcycle northbound in the center  
11      lane on SR 807 in West Palm Beach in the 220 block of South  
12      Congress Avenue, and

13      WHEREAS, at the same time, an employee of Palm Beach  
14      County, Juan Sepeda Casas, was driving a Palm Beach County dump  
15      truck with a utility trailer in tow, and

16      WHEREAS, as Mr. Casas exited the Palm Beach County  
17      maintenance complex, he failed to stop at a stop sign, pulling  
18      out into the path of Mr. Soria and causing a violent collision  
19      between the two vehicles, and

20      WHEREAS, the Palm Beach County truck continued forward,  
21      dragging Mr. Soria and the motorcycle under the dump truck for  
22      approximately 12 feet, and

23      WHEREAS, Mr. Casas was charged in the accident by the  
24      investigating law enforcement agency, the Delray Beach Police  
25      Department, and

26      WHEREAS, as a result of the collision, Mr. Soria sustained  
27      severe head trauma, including a subarachnoid hemorrhage, a  
28      right-elbow fracture, deep lacerations requiring wound  
29      debridement, multiple abrasions to his face, hands, legs, and

36-00011-15

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30 arms, upper-back pain, low-back disc herniation, left-hip pain,  
31 right-wrist pain, right-shoulder pain, and a right-knee linear  
32 tear that required bracing, physical therapy, and surgery, and

33 WHEREAS, Mr. Soria has undergone numerous surgical  
34 procedures, including irrigation debridement with placement of a  
35 temporary external fixator across the elbow joint, subsequent  
36 removal of the external fixator, and open reduction internal  
37 fixation on ulnar fractures, and

38 WHEREAS, Mr. Soria needs additional surgery to his right  
39 elbow, including elbow fusion or total elbow replacement;  
40 surgeries to his right wrist and shoulder; and arthroscopic  
41 surgery to his right knee; and is a candidate for total knee  
42 replacement in the future, and

43 WHEREAS, Mr. Soria suffers from multiple neurological  
44 injuries that cause chronic headaches, low-back pain, vision  
45 problems, sleep disturbance, depression, memory loss, anxiety,  
46 dizziness, tiredness, buzzing in the ears, numbness, tingling,  
47 and knee pain, which limit his routine daily activities, and

48 WHEREAS, according to American Medical Association  
49 guidelines, Mr. Soria's treating neurologist, Dr. Waden Emery,  
50 has assigned him a 34 percent impairment rating with 5 percent  
51 for headaches, 14 percent for lumbar radiculopathy, 5 percent  
52 for insomnia, and 10 percent for anxiety, and

53 WHEREAS, Mr. Soria's treating orthopedist, Dr. Fernando  
54 Moya, has assigned him a 53 percent orthopedic disability  
55 impairment rating, which includes 36 percent for injuries to the  
56 right elbow, 6 percent for injuries to the right knee, 6 percent  
57 for injuries to the lumbar spine, and 5 percent for injuries to  
58 the right wrist, and

36-00011-15

201542\_\_

59 WHEREAS, Mr. Soria's medical expenses have totaled  
60 approximately \$200,254, and experts in life care planning and  
61 economics have determined that his future medical expenses are  
62 approximately \$640,000, and past and future lost earnings total  
63 approximately \$478,000, with total economic damages exceeding  
64 \$1.3 million, and

65 WHEREAS, Mr. Soria's injuries resulted in permanent  
66 cognitive impairment, with the neuropsychological assessment of  
67 Dr. Robert Brick concluding that Mr. Soria suffers from post-  
68 traumatic stress disorder, memory loss, poor management and  
69 organizational skills, mood swings, daily headaches, constant  
70 ringing in his ears, insomnia, panic attacks, and amnesia that  
71 require cognitive therapy, and

72 WHEREAS, Mr. Soria continues to suffer from pain and  
73 instability in his head, neck, back, body, and limbs and, in  
74 addition, continues to suffer from severe depression brought  
75 about by his pain, suffering, disability, and limitations, all  
76 of which are a direct result of the accident, and

77 WHEREAS, before the accident, Mr. Soria was in excellent  
78 physical condition and had dreams of one day opening his own  
79 martial arts studio and becoming a certified martial arts  
80 instructor, and

81 WHEREAS, Mr. Soria's three children have a corresponding  
82 right of action and claim given that Mr. Soria is now  
83 permanently disabled with physical limitations and injuries and  
84 cognitive restrictions and depression that limit his ability to  
85 provide the companionship and support that he was once capable  
86 of providing his family, and

87 WHEREAS, a settlement was reached between Mr. Soria and

36-00011-15

201542\_\_

88 Palm Beach County in the amount of \$300,000, and

89 WHEREAS, Palm Beach County has agreed to and pledged its  
90 support for a claim bill in the amount of \$100,000, NOW,  
91 THEREFORE,

92

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

94

95 Section 1. The facts stated in the preamble to this act are  
96 found and declared to be true.

97 Section 2. Palm Beach County is authorized and directed to  
98 appropriate from funds of the county not otherwise appropriated  
99 and to draw a warrant in the sum of \$100,000, payable to Javier  
100 Soria as compensation for injuries and damages sustained.

101 Section 3. The amount paid by Palm Beach County pursuant to  
102 s. 768.28, Florida Statutes, and the amount awarded under this  
103 act are intended to provide the sole compensation for all  
104 present and future claims against Palm Beach County arising out  
105 of the factual situation described in this act which resulted in  
106 the injuries to Javier Soria. The total amount paid for attorney  
107 fees, lobbying fees, costs, and other similar expenses relating  
108 to this claim may not exceed 25 percent of the total amount  
109 awarded under this act.

110 Section 4. This act shall take effect upon becoming a law.





**THE FLORIDA SENATE**  
**SPECIAL MASTER ON CLAIM BILLS**

**Location**  
302 Senate Office Building

**Mailing Address**  
404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5237

DATE	COMM	ACTION
2/9/15	SM	Favorable
02/17/15	JU	Favorable

February 9, 2015

The Honorable Andy Gardiner  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 24 (2015)** – Senator Darren Soto  
Relief of J.D.S., by the Agency for Persons with Disabilities

**SPECIAL MASTER'S FINAL REPORT**

THIS IS AN UNCONTESTED CLAIM FOR \$950,000 PAYABLE TO THE AGED POOLED SPECIAL NEEDS TRUST ON BEHALF OF J.D.S., BASED ON A SETTLEMENT AGREEMENT BETWEEN PATTI R. JARRELL, AS PLENARY GUARDIAN OF J.D.S. AND THE STATE OF FLORIDA, AGENCY FOR PERSONS WITH DISABILITIES. THE CLAIM AROSE FROM THE NEGLIGENT SUPERVISION OF A GROUP HOME BY THE AGENCY.

FINDINGS OF FACT:

In 1980, J.D.S. was born with severe disabilities, including cerebral palsy, autism, and mental retardation. J.D.S. has a 31 IQ and has been nonverbal her entire life. J.D.S. was placed in the custody of the State of Florida, Department of Children and Families (DCF) and considered to be a "ward" of DCF. Due to her condition, J.D.S. was dependent upon DCF for the provision of her care, treatment, and daily needs.

At the age of 4, J.D.S., as a developmentally-disabled dependent ward of the State of Florida, was placed in the Strong Group Home. J.D.S. was totally dependent on the Strong Group Home to provide the care for her needs. She was incapable of performing even the most basic functions of life. The Strong Group Home was licensed by DCF to operate the group home, and the home was monitored through face

to face visits on a monthly basis with the exception of a short interval when, due to budget cuts, visits occurred either every other month or quarterly. The Strong Group Home was also visited monthly by the Medicaid Waiver Support Coordinator who had the responsibility of ensuring J.D.S. was receiving her care plan services. Hester Strong was the administrator/owner of the Strong Group Home and was assisted by her husband, Phillip Strong. In addition to caring for 4 - 6 developmentally disabled persons, Ms. Strong cared for her elderly parents who also resided in the home.

Beginning in late 2001 and into 2002, J.D.S.'s behavior became more aggressive. She began to resist getting into a car which had not been an exhibited behavior in the past. And, although she was previously toilet trained, she began exhibiting regular incontinence. Ms. Strong did not report these changes in J.D.S.'s behaviors, and the DCF monitoring reports of the Strong Group Home did not contain any reference to them.

In December 2002, J.D.S. became pregnant while a resident in the Strong Group Home. J.D.S. was 5 months pregnant when her doctor discovered her pregnancy.

Upon the discovery of J.D.S.'s pregnancy, DCF revoked the Strong Group Home's license and J.D.S. was moved to another group home. J.D.S. gave birth to a baby girl on August 30, 2003. The newborn was immediately removed from J.D.S. and placed for adoption. Following the birth, the Florida Department of Law Enforcement took DNA samples from Phillip Strong and the newborn. The results of the DNA testing confirmed that Phillip Strong was the biological father of the infant.

DCF was responsible for the oversight of the Strong Group Home and providing care to J.D.S. when the events related to the claim bill occurred. However, in 2004, the responsibility to oversee group homes for the disabled was transferred to the Agency for Persons with Disabilities along with DCF's related liabilities.

Based on the foregoing, the State of Florida, Agency for Persons with Disabilities, stipulated to the entry of a judgment in the amount of \$1,150,000. The Agency for Persons' with Disabilities paid \$200,000 to the AGED Pooled Special Needs

Trust on behalf of J.D.S., leaving \$950,000, which is the amount sought through this claim bill.

CLAIMANT'S POSITION:

The Agency for Persons with Disabilities is directly and vicariously liable for the rape and subsequent pregnancy of J.D.S. The claimant also alleges that the rape of J.D.S. was foreseeable by the agency. It should be noted that Mr. Strong was determined incompetent and never charged with the rape of J.D.S.

RESPONDENT'S POSITION:

The Agency for Persons with Disabilities settled this claim before a jury trial and is neutral in this proceeding and will take no action adverse to the passage of a claim bill.

CONCLUSIONS OF LAW:

As provided in s. 768.28, F.S. (2002), sovereign immunity shields the State of Florida and its agencies against tort liability in excess of \$200,000 per occurrence. The parties settled the case for \$1.15 million, and the Agency for Persons with Disabilities paid \$200,000 to the AGED Pooled Special Needs Trust on behalf of J.D.S. The claimant alleged APD is liable for the sexual molestation of J.D.S. under two separate legal precepts: vicarious liability and direct liability. The claimant alleged APD had a "non-delegable" duty to protect J.D.S. from harm and sexual assault. At all times material to this matter J.D.S. was a resident of the Strong Group Home.

APD is a governmental agency that licenses, monitors, and places clients in residential living facilities. APD does not undertake to provide direct services to any particular client. Instead, the Florida Legislature, in s. 393.066, F.S. (2002), has mandated that the day-to-day operational level duties of care and maintenance of a client are to be delegated by APD.

**Duty**

Whether there is a jury verdict or a settlement agreement, as there is in this case, every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. DCF had a duty to protect and care for J.D.S. while she was in the care of the Strong Group Home. This duty included ensuring the administrator and staff of the Strong Group Home were properly trained to detect and prevent sexual abuse of the developmentally-disabled individuals placed in their care; adequate staffing was in place at all times and the staff met training requirements; the number of placements in the home did not exceed the limit established by DCF; and the

home complied with the Bill of Rights of Persons with Developmental Disabilities as set forth under s. 393.13, F.S. (2002). Such Bill of Rights guarantees that developmentally disabled individuals have the right to be free from sexual abuse in a residential facility, the right to be free from harm, and the right to receive prompt and appropriate medical care and treatment.

The Strong Group Home administrator and staff did not meet the educational and training requirements set forth in Rule 65G-2.012, F.A.C., and s. 393.067, F.S. (2002). There was no evidence presented that the administrator met the educational requirements for licensing or that she or any staff member had received any training on how to detect, report, or prevent sexual abuse of the group home's residents and clients.

The Strong Group Home was licensed for and housed 4 - 6 developmentally disabled clients. Nevertheless, at one point while J.D.S. was in the home, DCF placed two foster children in the home. As a result of the placement of additional clients, not enough bedrooms were available and the dining room was converted into J.D.S.'s bedroom. The placement of her bed in the dining room area did not provide J.D.S. the privacy she was entitled to under the Bill of Rights of Persons with Developmental Disabilities set out in s. 393.13, F.S.

Additionally, the Strong Group Home had a duty to exercise reasonable care to protect J.D.S. from abuse and neglect, including sexual abuse; to exercise reasonable care to discover abuse and neglect, to provide J.D.S. with a reasonable, safe living environment that afforded her with privacy, and to exercise reasonable care to ensure she received prompt and appropriate medical care and treatment.

### **Breach**

A preponderance of the evidence establishes that The Strong Group Home did not meet the educational and training requirements to be licensed as a group home initially by DCF and subsequently by APD. APD and the Strong Group Home as licensed by APD, breached their duty to properly care for and protect J.D.S. Further, APD and the Strong Group Home breached their duty to J.D.S. with respect to compliance with the rights and privileges afforded the developmentally disabled pursuant to the Bill of Rights of the Developmentally Disabled.

**Causation**

The failure of the Department of Children and Families and subsequently the Agency for Persons with Disabilities to ensure the staff of the Strong Group Home was properly trained, possessed the required levels of education and credentials likely led to the rape of J.D.S.

**Damages**

The claim bill awards \$950,000 for the benefit of J.D.S. No evidence was presented or available indicating that the damages authorized by the settlement are excessive or inappropriate.

ATTORNEYS FEES:

Section 768.28(8), F.S., provides that “[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement.” The claimant’s attorneys have agreed to limit their fees to 25 percent of any amount awarded in compliance with the statutes. Lobbyists’ fees are included with the attorneys’ fees.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 24 be reported FAVORABLY.

Respectfully submitted,

Barbara M. Crosier  
Senate Special Master

By Senator Soto

14-00024-15

201524\_\_

1                                   A bill to be entitled  
2       An act for the relief of J.D.S.; providing an  
3       appropriation from the General Revenue Fund to  
4       compensate J.D.S. for injuries and damages sustained  
5       as a result of negligence by the Agency for Persons  
6       with Disabilities, as successor agency of the  
7       Department of Children and Family Services; providing  
8       a limitation on the payment of fees and costs;  
9       providing an effective date.

10  
11       WHEREAS, in December 2002, J.D.S., a 22-year-old  
12       developmentally disabled woman with autism, cerebral palsy, and  
13       mental retardation, was living at the Strong Group Home, which  
14       was owned and operated by Hester Strong and licensed and  
15       supervised by the Department of Children and Family Services,  
16       and

17       WHEREAS, in December 2002, J.D.S. was raped and impregnated  
18       by Philip Strong, husband of the owner and operator of the  
19       Strong Group Home, and

20       WHEREAS, on April 24, 2003, J.D.S.'s pregnancy was  
21       discovered by her physician, and on August 30, 2003, J.D.S. gave  
22       birth to a baby girl, known as G.V.S., who was immediately taken  
23       from J.D.S. and placed for adoption, and

24       WHEREAS, as a result of her rape and impregnation, J.D.S.  
25       sustained mental anguish and a further diminution in the quality  
26       of her life, and

27       WHEREAS, J.D.S. filed a claim in Orange County Circuit  
28       Court alleging that the department negligently supervised the  
29       Strong Group Home and that the Strong Group Home was negligently

14-00024-15

201524\_\_

30 operated, thereby allowing Philip Strong to rape J.D.S., which  
31 resulted in her impregnation, and

32 WHEREAS, J.D.S.'s claims against the department, the Strong  
33 Group Home, and other parties were based upon negligence,  
34 violations of chapter 393, Florida Statutes, and violations of  
35 the Bill of Rights of Persons with Developmental Disabilities,  
36 s. 393.13, Florida Statutes, and

37 WHEREAS, as a client of the department, as defined in s.  
38 393.063, Florida Statutes, J.D.S. had a right under s. 393.13,  
39 Florida Statutes, to "dignity, privacy, and humane care,  
40 including the right to be free from sexual abuse, neglect, and  
41 exploitation," and

42 WHEREAS, J.D.S. alleged that the department had a  
43 nondelegable duty to protect J.D.S. from foreseeable harm,  
44 including sexual abuse, and

45 WHEREAS, J.D.S. alleged that the department was liable for  
46 direct negligence relating to its oversight of the Strong Group  
47 Home and that it was vicariously liable for the negligence of  
48 the Strong Group Home under the doctrine of respondeat superior  
49 pursuant to s. 768.28(9)(a), Florida Statutes, and

50 WHEREAS, before the jury trial commenced on February 6,  
51 2012, the parties agreed to settle the case titled *Patti R.*  
52 *Jarrell, as plenary guardian of J.D.S., an incapacitated person,*  
53 *Plaintiff, v. State of Florida, Agency for Persons With*  
54 *Disabilities, as successor agency of the Department of Children*  
55 *and Family Services, for the sum of \$1.15 million, and*

56 WHEREAS, under the terms of the settlement agreement  
57 consented to by the parties, the Agency for Persons with  
58 Disabilities agreed to pay \$200,000 to J.D.S., with the

14-00024-15

201524\_\_

59 remaining \$950,000 to be paid pursuant to a stipulated claim  
60 bill, and

61 WHEREAS, the agency has agreed to request an appropriation  
62 from the Legislature in the amount of \$950,000 in its 2015-2016  
63 fiscal year budget, and

64 WHEREAS, the \$950,000 stipulated settlement is sought  
65 through the submission of a claim bill to the Legislature, NOW,  
66 THEREFORE,

67

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

69

70 Section 1. The facts stated in the preamble to this act are  
71 found and declared to be true.

72 Section 2. The sum of \$950,000 is appropriated from the  
73 General Revenue Fund to the Agency for Persons with Disabilities  
74 for the relief of J.D.S. as compensation for the injuries and  
75 damages she sustained.

76 Section 3. The Chief Financial Officer shall draw a warrant  
77 upon funds of the Agency for Persons with Disabilities in the  
78 sum of \$950,000 and shall pay such amount out of funds in the  
79 State Treasury to the AGED Pooled Special Needs Trust, which  
80 shall be managed and administered by AGED, Inc., a nonprofit  
81 trust company, on behalf of J.D.S.

82 Section 4. The amount paid by the Agency for Persons with  
83 Disabilities pursuant to s. 768.28, Florida Statutes, and the  
84 amount awarded under this act are intended to provide the sole  
85 compensation for all present and future claims arising out of  
86 the factual situation described in this act which resulted in  
87 the injuries and damages to J.D.S. The total amount paid for

14-00024-15

201524\_\_

88 attorney fees, lobbying fees, costs, and other similar expenses  
89 relating to this claim may not exceed 25 percent of the amount  
90 awarded under this act.

91 Section 5. This act shall take effect upon becoming a law.





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Rules, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Environmental Preservation and Conservation  
Finance and Tax  
Judiciary

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

### SENATOR DARREN SOTO

*Democratic Caucus Rules Chair*  
14th District

February 10, 2015

The Honorable Miguel Diaz de la Portilla  
Committee on Judiciary  
515 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Diaz de la Portilla,

I respectfully request that Senate Bill 24, Relief of J.D.S. by the Agency for Persons with Disabilities, be placed on the agenda as soon as possible. Senate Bill 24 provides an appropriation from general revenue to compensate J.D.S. for injuries and damages sustained as a result of negligence by the Agency for Persons with Disabilities.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto  
State Senator, District 14

Cc: Tom Cibula, Staff Director  
Shirley Proctor, Committee Administrative Assistant

#### REPLY TO:

- Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
- 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

*Location*  
302 Capitol Building

*Mailing Address*  
404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5237

DATE	COMM	ACTION
12/31/14	SM	Favorable
02/17/15	JU	Fav/CS
	AHS	

December 31, 2014

The Honorable Andy Gardiner  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **CS/SB 40** – Judiciary Committee and Senator Ring  
Relief of L.T.

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR \$800,000 FROM GENERAL REVENUE BASED ON A SETTLEMENT AGREEMENT BETWEEN THE LEGAL GUARDIAN OF L.T. AND THE DEPARTMENT OF CHILDREN AND FAMILIES FOR THE SEXUAL ABUSE SUFFERED BY L.T. WHEN SHE WAS LEFT BY THE DEPARTMENT IN THE FOSTER CARE OF A REGISTERED SEX OFFENDER

#### CURRENT STATUS:

On December 14, 2010, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 18 (2012). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with an amendment to correct an erroneous claim amount. (The 2012 bill failed to account for the \$200,000 that DCF had already paid; therefore, the proper claim amount was \$800,000 rather than \$1,000,000.) The 2012 report is attached as an addendum to this report. The amount claimed in SB 40 (2015) on the date of this report is \$800,000.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Mary K. Kraemer. My

responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

According to counsel for the claimant, no changes have occurred since the hearing which might have altered the findings and recommendations in the report. There was no response provided to me by the Department of Children and Families.

The provisions of SB 40 (2015) address and update the circumstances (with additional detail) upon which the claim for relief is based, but it should be noted that the prior claim bill, SB 18 (2012), sought relief sought for the relief of the claimant **as a minor**. The record reflects that the claimant is now over the age of eighteen. There are no longer references to the claimant's "Permanent Custodian." Online public records in Pasco County indicate that a Plenary Guardianship of Minor Person and Property was terminated in 2013 prior to the claimant's 19th birthday (Case No. 51-2009-GA-000006-GAAX-WS). The bill provides that the funds are to be paid to the claimant directly (Section 3, lines 127-132).

In a letter dated October 31, 2014, claimant's counsel stated that the claimant:

1. Is now 20 years old and living with her fiancée, the father of her baby;
2. Intends to attend school in Leon County, with a career goal of specializing in the psychiatric treatment and care of trauma patients;
3. Continues to have the same diagnoses; and
4. Remains on medication.

SB 40 (2015) includes language similar to the above (lines 94-99), and further indicates that the claimant is employed part-time and attending a university in Florida.

Respectfully submitted,

Mary K. Kraemer  
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

**CS by Judiciary on February 17, 2015:**

The committee substitute provides for the proceeds of the claim bill to be paid into a special needs trust, the remainder of which will revert to the claimant when she reaches 30 years of age. Under the underlying bill, the proceeds of the claim bill would have remained in the trust for the duration of the claimant's life. The committee substitute also waives any applicable medical liens held by the state.



THE FLORIDA SENATE  
SPECIAL MASTER ON CLAIM BILLS

**Location**  
402 Senate Office Building  
**Mailing Address**  
404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5237

	COMM	ACTION
12/1/11	SM	Fav/1 amendment

December 1, 2011

The Honorable Mike Haridopolos  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-110

Re: **SB 18 (2012)** Senator Jeremy Ring  
Relief of L.T., a Minor

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR \$800,000 FROM GENERAL REVENUE BASED ON A SETTLEMENT AGREEMENT BETWEEN THE LEGAL GUARDIAN OF L.T. AND THE DEPARTMENT OF CHILDREN AND FAMILIES FOR THE SEXUAL ABUSE SUFFERED BY L.T. WHEN SHE WAS LEFT BY THE DEPARTMENT IN THE FOSTER CARE OF A REGISTERED SEX OFFENDER.

FINDINGS OF FACT:

In August 1995, when LT. was less than two years old, the Department of Children and Families (DCF) removed LT. and her brother from their mother and placed them in the foster care of their great uncle, Eddie Thomas, and his wife, who lived in Gadsden County. Less than a year after the placement, Thomas was charged with sexually molesting a 13-year-old girl. He plead no contest to lewd, lascivious, or indecent assault upon a child and was sentenced to five years' probation and required to receive sex abuse counseling. He was also registered as a sex offender.

Despite the fact that DCF was aware of Thomas' conviction and his registration as a sex offender, it

decided that the risk of harm to L.T. was low and did not remove L.T. from Thomas' care and custody. DCF also terminated protective supervision of L.T., meaning that a social worker no longer visited the Thomas home from time to time to see how L.T. was doing. Protective supervision is often terminated by DCF when a child is placed with a relative and DCF is satisfied that supervision is unnecessary.

In 2004, when L.T. was 10 years old, DCF placed an adolescent girl in the foster care of the Thomases. A few months after the placement, this minor girl ran away from the house in the middle of the night, claiming that Thomas had attempted to sexually molest her. DCF removed this girl from the Thomas home, but DCF did not re-evaluate the placement of LT. with Thomas.

In March 2005, when L.T. was 11 years old (and Thomas was 44), she ran away from home and told authorities that she had been repeatedly sexually abused by Thomas. She also said that Thomas and his wife used drugs. DCF then removed L.T. from the Thomas home.

It was later revealed by L.T. that she was roughly disciplined by the Thomases and that they were verbally abusive to her, frequently calling her derogatory names and telling her that she was worthless.

L.T. is now 17 years old and in a good foster home. However, as a result of the sexual abuse she endured while living with Thomas, L.T. suffers from post-traumatic stress disorder, depression, and low self-esteem. She has occasionally attempted suicide and for 10 months was a resident of Tampa Bay Academy, a mental health facility. She is receiving psychological counseling and will likely need counseling for many years. A trial consultant projected her future lost earnings as \$540,000. Her projected future medical expenses are \$760,000 to \$11,580,000, depending on the degree of psychological therapy and supervision she might need, the higher figure reflecting the costs of institutionalization. A conservative estimate of her total future economic losses is around \$2 million.

LITIGATION HISTORY:

In 2009, a lawsuit against DCF was filed in the Second Judicial Circuit by L.T.'s aunt and legal guardian. The case was successfully mediated and the parties entered into a settlement agreement pursuant to which L.T. would receive \$1,000,000. The sovereign immunity limit of \$200,000 was paid and the balance of \$800,000 is sought through this claim bill. The court order approving the settlement agreement requires that the net proceeds to L.T. be placed in a special needs trust. After deducting legal fees and costs from the \$200,000, and accounting for a Medicaid lien, \$11,084 remained to be placed in a special needs trust for L.T.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether DCF is liable in negligence for the injuries suffered by L.T., and, if so, whether the amount of the claim is reasonable.

DCF has a duty to exercise reasonable care when it places foster children and to protect them from known dangers. DCF breached that duty when it learned that Thomas had been convicted of a sexual offense on a child, but did not remove L.T. from the Thomas home. DCF acted negligently again when it did not remove L.T. following the charge of sexual abuse against Thomas made by another foster child in 2004. DCF knew or should have known that Thomas posed a serious risk of harm to L.T. These breaches of duty were the proximate cause of the injuries that L.T. suffered.

The amount of the claim is fair and reasonable.

ATTORNEY'S FEES:

In compliance with s. 768.28(8), Florida Statutes, L.T.'s attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature.

OTHER ISSUES:

The bill erroneously states that the claim is for \$1 million, failing to account for the \$200,000 that DCF has already paid. The bill should be amended to state that the claim is for \$800,000.

SPECIAL MASTER'S FINAL REPORT- SB 18 (2012)

December 1, 2011

Page 4

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 18 (2012) be reported FAVORABLY, as amended.

Respectfully submitted



Bram D. E. Canter  
Senate Special Master

cc: Senator Ring  
Debbie Brown, Secretary of the Senate  
Counsel of Record

Bar Code  
815506  
(2012)

e

LEGISLATIVE ACTION

Senate

House

---

The Special Master on Claim Bills recommended the following:

1       **Senate Amendment**

2  
3       Delete line 147  
4       and insert:  
5       a warrant in the sum of \$800,000, payable to L.T., by and



675526

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2015	.	
	.	
	.	
	.	

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The Committee on Judiciary (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 122 - 132  
and insert:  
sustained.

Section 3. The Chief Financial Officer is directed to draw a warrant in the sum of \$800,000, payable to a special needs trust created for the exclusive use and benefit of L.T., upon funds in the State Treasury to the credit of the Department of Children and Families, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury



675526

12 not otherwise appropriated. The trust shall be administered by  
13 an institutional trustee that L.T. chooses and shall terminate  
14 upon L.T.'s 30th birthday, at which time the remaining principal  
15 shall revert to her, or if she predeceases the termination of  
16 the trust, the principal shall revert to her heirs,  
17 beneficiaries, or estate.

18       Section 4. It is the intent of the Legislature that all  
19 lien interests held by the state resulting from the treatment  
20 and care of L.T. for the occurrences described in this act are  
21 waived.

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

23 And the title is amended as follows:

24       Delete line 7

25 and insert:

26       Family Services; providing for a waiver of specified  
27       lien interests held by the state; providing a  
28       limitation on the payment

By Senator Ring

29-00072-15

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1                   A bill to be entitled  
2       An act for the relief of L.T.; providing an  
3       appropriation to compensate L.T. for injuries and  
4       damages sustained as a result of the negligence of  
5       employees of the Department of Children and Families,  
6       formerly known as the Department of Children and  
7       Family Services; providing a limitation on the payment  
8       of fees and costs; providing an effective date.

9  
10       WHEREAS, on August 15, 1995, the Department of Children and  
11       Families removed 14-month-old L.T. and her infant brother from  
12       their mother's custody because they were not receiving adequate  
13       care, and

14       WHEREAS, the Department of Children and Families  
15       temporarily placed the children into the home of the children's  
16       great aunt and uncle, Vicki and Eddie Thomas, and

17       WHEREAS, a background check that was conducted shortly  
18       after L.T. and her brother were placed in the Thomases' home  
19       indicated that Mr. Thomas had once been convicted of a  
20       misdemeanor and possession of narcotics equipment, and

21       WHEREAS, the background check also revealed that Ms. Thomas  
22       had been charged with, but apparently not convicted of, larceny,  
23       and

24       WHEREAS, the background check did not reveal any prior  
25       history of violence, sex offenses, or child abuse, and

26       WHEREAS, the Department of Children and Families conducted  
27       a home study, interviews, and an investigation, concluded that  
28       the Thomases were capable of providing a safe and loving home  
29       for L.T. and her brother, and approved the placement, and

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30 WHEREAS, on August 21, 1996, approximately 1 year after  
31 L.T. and her brother had been placed in the Thomases' home, Mr.  
32 Thomas was charged with committing a lewd and lascivious act on  
33 a child under the age of 16, and

34 WHEREAS, the alleged victim was the 13-year-old daughter of  
35 a woman with whom Mr. Thomas was having an extramarital affair,  
36 and the state later amended the charge to add a count for sexual  
37 battery on a child by a familial or custodial authority, and

38 WHEREAS, after two hung jury trials in January and March of  
39 1997, Mr. Thomas pled no contest in April 1997 to committing a  
40 lewd, lascivious, and indecent act on a child under the age of  
41 16, and

42 WHEREAS, Mr. Thomas was sentenced to 5 years' probation and  
43 required to attend sex offender classes and register as a sex  
44 offender, and

45 WHEREAS, on May 9, 1997, 1 month after Mr. Thomas entered  
46 his plea and was convicted of a child sex crime, the Department  
47 of Children and Families recommended, and the judge approved, an  
48 order allowing Mr. Thomas to return home and have unsupervised  
49 contact with the children, and

50 WHEREAS, although the policies of the Department of  
51 Children and Families barred Mr. Thomas from being able to adopt  
52 a child because of his conviction for a sex act with a child and  
53 for his sex offender status, the policies did not prohibit the  
54 continued placement of L.T. and her brother in the Thomases'  
55 home, and so the children remained with the Thomases, and

56 WHEREAS, the Department of Children and Families  
57 subsequently recommended to the court the permanent, long-term  
58 placement of L.T. and her brother in the Thomases' home and

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59 further recommended that the children be removed from protective  
60 services, with no further supervision by the department, and

61 WHEREAS, on March 3, 2000, following the recommendation of  
62 the Department of Children and Families, the court approved L.T.  
63 and her brother's long-term placement with the Thomases and  
64 removed the children from continued protective services, and

65 WHEREAS, on March 24, 2003, an abuse hotline call to the  
66 Department of Children and Families reported that L.T. was being  
67 abused by Mr. Thomas and that both Mr. and Ms. Thomas were using  
68 drugs in the children's presence, and

69 WHEREAS, the next day, a child protective investigator for  
70 the Department of Children and Families interviewed L.T. and her  
71 brother while in the presence of Ms. Thomas, and neither child  
72 was asked to be interviewed outside Ms. Thomas's presence, and

73 WHEREAS, L.T. and her brother denied the abuse allegations  
74 while Ms. Thomas watched and listened to them, and

75 WHEREAS, results from new background checks and drug  
76 screens were negative, and the Department of Children and  
77 Families concluded that L.T. and her brother were not at risk of  
78 abuse and closed the case, and

79 WHEREAS, on February 24, 2005, L.T. ran away from the  
80 Thomases' home and was found by law enforcement officers, and

81 WHEREAS, L.T. ran away from home because she had been  
82 repeatedly sexually and physically abused by Mr. Thomas and  
83 physically, verbally, and emotionally abused for years by Ms.  
84 Thomas, and

85 WHEREAS, L.T. and her brother were finally removed from the  
86 Thomases' home in 2005, and

87 WHEREAS, since then, L.T. has been the subject of repeated

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88 Baker Act proceedings and suicide attempts and has been in and  
89 out of inpatient and outpatient psychiatric facilities, and

90 WHEREAS, L.T. has been seen and treated by physicians and  
91 mental health care professionals who have diagnosed her with  
92 depression, posttraumatic stress disorder, anxiety disorder, and  
93 other disorders attributed to her trauma, and

94 WHEREAS, although L.T. struggles with the symptoms of  
95 posttraumatic stress disorder, depression, and anxiety, she is  
96 now 20 years of age, attends a university in this state, and  
97 supports herself with part-time employment as she works toward  
98 her goal of becoming a mental health care professional to help  
99 children who have been abused, neglected, or traumatized, and

100 WHEREAS, a lawsuit was brought on L.T.'s behalf in state  
101 and federal courts alleging negligence pursuant to s. 768.28,  
102 Florida Statutes, and civil rights violations pursuant to 42  
103 U.S.C. s. 1983, and

104 WHEREAS, the civil rights claims were disposed of by the  
105 trial court, but the negligence claims continued to be  
106 litigated, and a jury trial of the case was set in Leon County,  
107 and

108 WHEREAS, the parties attended a court-ordered mediation and  
109 on June 21, 2010, the parties agreed to a mediated settlement  
110 under which L.T. shall receive \$1 million, of which \$200,000 was  
111 paid and the balance of \$800,000 shall be submitted through a  
112 claim bill that the Department of Children and Families agrees  
113 to support, NOW, THEREFORE,

114

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

116

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117       Section 1. The facts stated in the preamble to this act are  
118 found and declared to be true.

119       Section 2. There is appropriated from the General Revenue  
120 Fund to the Department of Children and Families the sum of  
121 \$800,000 for the relief of L.T. for the injuries and damages she  
122 sustained. After payment of attorney fees and costs, lobbying  
123 fees, other similar expenses relating to this claim, outstanding  
124 medical liens, and other immediate needs, the remaining funds  
125 shall be placed into a special needs trust created for the  
126 exclusive use and benefit of L.T.

127       Section 3. The Chief Financial Officer is directed to draw  
128 a warrant in the sum of \$800,000, payable to L.T., upon funds in  
129 the State Treasury to the credit of the Department of Children  
130 and Families, and the Chief Financial Officer is directed to pay  
131 the same out of such funds in the State Treasury not otherwise  
132 appropriated.

133       Section 4. The amount awarded pursuant to the waiver of  
134 sovereign immunity under s. 768.28, Florida Statutes, and the  
135 amount awarded under this act are intended to provide the sole  
136 compensation for all present and future claims arising out of  
137 the factual situation described in the preamble to this act  
138 which resulted in the injuries and damages to L.T. The total  
139 amount paid for attorney fees, lobbying fees, costs, and other  
140 similar expenses relating to this claim may not exceed 25  
141 percent of the total amount awarded under this act.

142       Section 5. This act shall take effect upon becoming a law.





The Florida Senate

## Committee Agenda Request

**To:** Senator Miguel Diaz de la Portilla  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** February 3, 2015

---

I respectfully request that **Senate Bill # 40**, relating to Relief of L.T. by the Department of Children and Families, be placed on the:

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

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

---

Senator Jeremy Ring  
Florida Senate, District 29



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

**Location**  
402 Senate Office Building

**Mailing Address**  
404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5237

DATE	COMM	ACTION
01/16/15	SM	Fav/1 amendment
02/17/15	JU	Fav/CS
	CA	
	AP	

The Honorable Andy Gardiner  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **CS/SB 60** – Judiciary Committee and Senator Wilton Simpson  
Relief of Roy Wright and Ashley Wright

### SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED EXCESS JUDGMENT CLAIM FOR \$395,000. THE CLAIM SEEKS COMPENSATION FROM THE NORTH BREVARD COUNTY HOSPITAL DISTRICT D/B/A PARRISH MEDICAL CENTER FOR ALLEGED MEDICAL MALPRACTICE COMMITTED DURING THE BIRTH OF TUCKER WRIGHT.

#### FINDINGS OF FACT:

Ashley Wright was admitted to Parrish Medical Center in Titusville at approximately 10:30 p.m. on July 15, 2009, to give birth to her son, Tucker Wright. Because very little prenatal information was available on Ashley Wright, an ultrasound was ordered by Dr. Denis Perez, the admitting obstetrician, to obtain an estimated birth weight of the baby. The ultrasound projected the baby's weight to be 7 pounds and 6 ounces<sup>1</sup> at approximately 35 or 36 weeks of gestation.

Dr. Vidya Haté, an obstetrician employed by Parrish Medical Center, visited Ashley Wright the next day, at approximately 12:30 p.m. and conducted a vaginal examination. Dr. Haté asked certified nurse midwife Cara Starkey, who was attending Ashley Wright, to call her when the patient was either fully dilated or began to push. It is unclear from the available records if this call was simply to be a status update

or if Dr. Haté would leave her office and return to the hospital upon receiving the call. After the exam, Dr. Haté returned to her office, a drive of less than 3 minutes by car, to continue seeing other patients. Medical notes indicate that the patient was pushing at 3:20 p.m. and her cervix was fully dilated at 3:45 p.m., but Dr. Haté was not called at her office and advised of this status. Dr. Haté called midwife Starkey at approximately 4:00 p.m., when midwife Starkey's work shift was ending, and asked her to work until 4:30 p.m. and stated that she, Dr. Haté, would be there by 4:30 p.m.

At some undetermined time during labor, but after 4:00 p.m., the baby's head appeared outside the mother's body and then retracted, making a "turtle sign," which signals shoulder dystocia. Shoulder dystocia is an obstetric emergency in which a shoulder is trapped behind the mother's pubic bone. Midwife Starkey performed a medical procedure known as the McRoberts maneuver and additionally rotated the posterior, or lower, shoulder to release the anterior, or upper, shoulder, permitting release of the trapped shoulder and delivery of the baby. The McRoberts maneuver is accomplished by hyperflexing the mother's legs to her abdomen which tilts the pelvis more horizontally and helps facilitate delivery of the shoulder. In some instances, suprapubic pressure is simultaneously applied to the mother's abdomen to help manipulate the shoulder downward for delivery.

Midwife Starkey recruited Ms. Wright's husband, Roy, and one of her sisters to assist with the McRoberts maneuver. They were to flex Ashley's legs back against her abdomen. Midwife Starkey requested that the attending nurse, Donna Hayashi, apply suprapubic pressure to Ashley's abdomen, thereby ultimately allowing the baby's shoulder to be dislodged and the baby delivered.

The testimony describing the amount of time that elapsed during the maneuver and delivery is in conflict. According to midwife Starkey, the procedure took approximately 1 to 2 minutes from the time she noticed the shoulder dystocia until the baby was delivered. In contrast, Ashley Wright stated that the process took approximately 10 minutes, and Roy Wright stated that it took between 10 and 15 minutes.

Also, the evidence of whether the McRoberts maneuver and delivery were properly performed is in conflict. Midwife

Starkey testified in her deposition that she rotated the shoulders of Tucker Wright and performed the maneuver correctly. In contrast, the Wrights and their medical expert argue that midwife Starkey twisted Tucker's head, instead of his shoulders, while performing the McRoberts maneuver, thereby injuring their son.

After his birth, Tucker Wright was diagnosed with Erb's palsy, a limitation of the use of the arm which results from a stretching or tearing injury to the brachial plexus nerves. The brachial plexus is a group of nerves which run from the spine through the neck and into the arm and stimulate the arm and hand. Tucker underwent surgeries when he was almost 7 months old and again at 3 years of age in an attempt to repair and give him full use of his right arm. He has regularly received physical therapy. While he will experience some limitations with the use of his right arm, the surgeon's prognosis is good that Tucker will have most of the normal function of his arm.

#### LITIGATION HISTORY

The Wrights filed a medical malpractice lawsuit in 2012 against North Brevard County Medical Hospital District doing business as Parrish Medical Center. The case was resolved through mediation in 2013 and a claim bill for the excess judgment was filed in 2014.

A claim bill hearing was held on October 27, 2014, before the House and Senate special masters. Bill Ogle appeared with his clients, Roy and Ashley Wright and their son Tucker, and presented the plaintiffs' case. David Doyle, who represents the North Brevard County Hospital District, attended by Skype and was available for questions by the special masters. Because the hospital district agreed that it would not oppose the claim bill, he did not present any evidence on the hospital district's behalf. However, Mr. Doyle provided documents in response to specific requests by the special masters. The hospital district has not admitted fault in this claim.

#### CONCLUSIONS OF LAW:

Parrish Medical Center is a public, not-for-profit hospital in Titusville which is operated by the North Brevard County Hospital District. Under the legal doctrine of *respondeat superior*, the hospital district is liable for its employees' wrongful acts, or medical negligence, committed within the scope of their employment.

When a plaintiff seeks to recover damages for a personal injury and alleges that the injury resulted from the negligence of a health care provider, the plaintiff bears the legal burden of proving, by the greater weight of the evidence, that the alleged actions of the health care provider were a breach of the prevailing professional standard of care for that health care provider. The prevailing professional standard of care is defined in statute as “that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.”<sup>ii</sup>

To establish liability in a medical malpractice action, the plaintiff must prove (1) a duty by the healthcare provider to the patient, (2) a breach of that duty, (3) that the breach of that duty caused the plaintiff's injury, and (4) damages.<sup>iii</sup>

These elements as outlined below are based upon depositions, testimony, and other information provided during the special master hearing. Medical malpractice cases generally “involve a battle of expert witnesses”<sup>iv</sup> and this claim is no exception.

### **Duty**

A hospital generally has a duty to provide adequate staffing and care to its patients. In the matter of this claim bill, at least before settlement, the specific duty that the hospital owed to Ashley and Tucker Wright was in dispute. In the claimants' opinion, the hospital's duty required it to have an obstetrician participating in the delivery of Tucker Wright. Documents provided by the hospital indicated that it was prepared to argue that midwife Starkey's qualifications, including her training and experiences in performing the McRoberts maneuver, made her qualified to deliver Tucker Wright without the presence of an obstetrician.

Additionally, when medical personnel perform a medical procedure, they have a duty to perform the procedure in a non-negligent manner. Thus, when medical personnel perform a McRoberts maneuver and delivery, those personnel have a duty to properly perform the procedures. Whether the maneuver and delivery were properly performed is the primary issue that governs the hospital's liability in this matter.

### **Breach of Duty**

If this case had proceeded to trial, it would likely have been disputed whether the duty of care owed to Ashley Wright was breached. Based upon the evidence, each side had a plausible argument to support its case.

### **The Wrights' Arguments**

**Staffing and the Absence of Dr. Haté:** In addressing the issue of whether an adequate number of staff was on hand for the delivery, the Wrights enlisted Dr. Ray King, an obstetrician and gynecologist, to provide expert medical testimony. Dr. King testified that, at a minimum for a high risk patient, three hospital staff members should be in the room or immediately available, one of whom is taking notes, and the midwife or physician performing the delivery. Because only midwife Starkey and nurse Donna Hayashi were present, he concluded that the hospital district breached its duty of care in adequately staffing the delivery room.

The Wrights argue that Dr. Haté should have been present during Tucker's delivery. Dr. Haté knew that Ashley Wright's high-risk pregnancy, caused by her obesity and gestational diabetes, could result in a large baby or a complicated delivery. To support their argument, they look to Dr. Haté's deposition, which was prepared for trial, in which she asked to be called when the patient was fully dilated and pushing. Moreover, Dr. Haté was not called and informed when the shoulder dystocia was discovered. Additionally, Dr. Haté's progress notes of July 16, 2009, record that Dr. Haté discussed with Ashley the possibility of shoulder problems, among other things, in a high risk pregnancy.

To further develop their breach of care theory, the Wrights' relied on Dr. King who stated that, even though he believed that Dr. Haté was a qualified physician, he believed that she deviated from the standard of care in her treatment of Ashley and Tucker Wright. He stated that Dr. Haté did not monitor the progress of Ashley Wright's labor sufficiently to be present at the time of delivery, but left her to the care of a midwife, even though she knew that Ashley Wright was a high risk delivery due to her gestational diabetes and obesity which can produce a larger baby. He concluded that it was highly unlikely that the injury to Tucker Wright would have occurred if an experienced obstetrician had been present to deliver the baby.

Dr. King stated that, although he did not have any criticisms of midwife Starkey's training, experience, or qualifications, he did not feel that she was qualified to deliver a baby whose mother was a gestational diabetic or obese without the supervision and presence of a physician. He faulted midwife Starkey, not for performing a McRoberts maneuver with suprapubic pressure, but for allegedly rotating the baby's head on the perineum as indicated in her typed delivery notes. Dr. King found that to be a deviation from the standard of care.

### **The Hospital District's Arguments**

**Staffing and the Absence of Dr. Haté:** Based upon the evidence, the hospital was preparing to argue that it did not breach its standard of care to Ashley Wright. The hospital demonstrated that midwife Starkey was an experienced professional with sufficient training and qualifications to deliver a high-risk pregnancy unassisted. Cara Starkey has a bachelor's and master's degree in nursing and is a certified nurse midwife who had previously worked in a high-risk obstetrical unit. She testified in her deposition that she was trained in school and had participated in drills at Parrish Medical Center, using various maneuvers, to deliver babies having shoulder dystocia. She stated that she had likely performed the McRoberts maneuver 10 times or more in a year and had never had a child sustain a brachial plexus injury. Midwife Starkey testified in a deposition that she used an average, not excessive, amount of traction on Tucker to deliver him.

When asked why she did not call someone else into the delivery room to document what was happening, Ms. Starkey replied that she was focused on "getting the baby out" and believed that Dr. Haté was on her way to the delivery room, based upon the time and an earlier phone call from Dr. Haté.

In her deposition, Dr. Haté stated that she planned only to be the backup for Ashley Wright's delivery in case her help was needed. They were not expecting shoulder dystocia because, according to the ultrasound performed when Ashley was admitted for delivery, the baby's weight was projected at 7 pounds 6 ounces, not a large baby, and a size that would not suggest complications or shoulder dystocia. Dr. Haté explained in her deposition that shoulder dystocia does not become apparent until the head delivers. At that point, time is of the essence for the baby's survival and the healthcare workers cannot leave the patient to summon additional

assistance. If the baby is not quickly delivered, brain damage or death will be the result.

At one point in his deposition, Dr. King, the Wright's expert, was asked if Tucker could still have had the very same injury had Dr. Haté been present, and he acknowledged that Tucker could have.

The hospital district offered the deposition of Dr. Jordan Perlow, an obstetrician, as its expert witness. Dr. Perlow disagreed with Dr. King, the Wrights' medical expert, and said that it was not necessary nor below the standard of care for midwife Starkey to attend this particular delivery without a physician in the room. Dr. Perlow felt that the management that midwife Starkey provided was within the scope of her practice and that she had the backup support available from Dr. Haté if needed. He did note, though, that there was some lack of documentation and detail in the medical record of midwife Starkey.

Dr. Perlow testified that he looked specifically at the hospital's collaborative protocol and found it to be specifically within the scope of practice for a midwife to assess and provide management of shoulder dystocia. He further believed that midwife Starkey's actions were within the midwifery domain to deliver Ashley Wright's baby because she had a normal labor course, a normal estimated fetal weight, and a normal reassuring fetal heart rate. Midwife Starkey recognized the shoulder dystocia problem as soon as it occurred and then acted efficiently and appropriately in a timely fashion. Dr. Perlow said midwife Starkey resolved the shoulder dystocia in 1 to 2 minutes as evidenced by the fact that there was no fetal asphyxia and no fetal or neonatal death, and the Apgar scores were good at 5 minutes. His expert testimony, supported by his medical conclusions, lends credence to the theory that the amount of time that elapsed from the recognition of the shoulder dystocia to Tucker's delivery was 1 to 2 minutes, not 10 to 15 minutes as the Wrights suggest.

In assessing Ashley Wright's medical condition, Dr. Perlow noted that Ashley Wright was not medication-dependent for her gestational diabetes and was perhaps not as high-risk as others with gestational diabetes who were medication dependent.

When asked his opinion of Dr. Haté's prenatal medical care, Dr. Perlow responded that Dr. Haté's conduct was appropriate and within the standard of care. She continued to provide care to Ashley Wright when concerned about her noncompliance<sup>v</sup> and gestational diabetes, wanted her referred back to her previous obstetrician, and tried to refer her to a high-risk obstetrician. Dr. Haté remained within 3 minutes' drive from the hospital and was available to the nurse-midwife.

When the Wrights' attorney asked if Dr. Perlow believed that there were enough staff in the delivery room, he stated that he thought it met the standard of care although more staff and better notification for more people to come would have been ideal. Nevertheless, he said that in all probability, the shoulder dystocia would have likely been resolved by the time that additional staff would have arrived.

**The McRoberts Maneuver and Delivery:** Each side has a seemingly valid argument as to whether the McRoberts maneuver and delivery were properly performed.

The Wrights argue that they were not properly performed. In support of their position they look to midwife Starkey's delivery notes which state that "moderate shoulder dystocia relieved with McRoberts, suprapubic pressure and *rotation of the head on the perineum ...*" Because of this notation, the Wrights argue that midwife Starkey rotated the baby's head on the mother's perineum which should not have been undertaken because the rotation of the head would damage the fragile brachial plexus nerves that control the use of the baby's arm, and thereby cause Erb's palsy. A proper execution of the McRoberts maneuver and delivery would have only involved rotating the infant's shoulder, not his head.

The hospital district relied on midwife Starkey's deposition testimony and its medical expert, Dr. Perlow to support its position that the McRoberts maneuver was properly executed.

Midwife Starkey stated that when Tucker's head came out and retracted, she realized, based upon her training, that she had encountered shoulder dystocia and quickly needed to perform a McRoberts maneuver to help manipulate the shoulder downward for delivery. Ms. Starkey called for Donna Hayashi, the attending nurse, who came to the bed and began applying suprapubic pressure while Ashley Wright's legs were pulled back by family members. Ms. Starkey said that while she had

her hands supporting Tucker's head, she rotated the left shoulder which allowed for the release of the right shoulder and delivery of the baby. She testified that she did not pull on the baby's head in the delivery process and was able to get behind the baby's shoulder to rotate him.

Dr. Perlow, the hospital district's expert, said that midwife Starkey recognized and resolved the shoulder dystocia problem, prevented any neurologic injury from the brain, and concluded that she saved the baby's life. When asked about the seeming contradiction between the delivery notes, which said midwife Starkey rotated the baby's head versus her deposition testimony in which she said that she rotated the shoulder, Dr. Perlow felt that she wrote the note after dealing with a true obstetrical emergency and either misstated what she did or perhaps didn't accurately write what she did but that her actions were not below the standard of care.<sup>vi</sup>

### **Causation**

The Wrights argue that midwife Starkey's improper rotation of Tucker's head caused the brachial plexus injury and the resulting Erb's palsy. They also argue that if the more experienced Dr. Haté had been present to deliver Tucker, his injury would not have occurred.

Dr. John Grossman, the Wright's expert, a hand and peripheral nerve surgeon who specializes in performing brachial plexus surgeries has operated on Tucker twice. It is his opinion that the damage to the nerves was caused by traction to the brachial plexus during delivery. He did not believe that the injury could have been caused by the maternal pressure of the delivery.

In contrast, the hospital district does not believe that midwife Starkey's actions were necessarily the cause of Tucker's injury as one might assume. Dr. Perlow noted that "there can be rotation of the head to a degree in order to effect the delivery." He explained that when the baby's head comes out, he or she is "essentially looking straight down at the ground" and there has to be a process of "restitution where the head then goes 90 degrees one way or the other, depending upon the baby's position ... [and] there can be a need for some rotation to get to that point." Dr. Perlow believed that midwife Starkey also completed a technique referred to as a Rubin maneuver, which involves the rotation of the shoulder, and a resulting rotation of the head on the perineum. If, however,

midwife Starkey rotated the baby's head as opposed to rotating the baby's shoulder, he concluded that it would be a violation of the standard of care.

Dr. Perlow noted that medical literature has recognized that shoulder dystocia in itself, the stretching of the baby's neck as it continues down the birth canal with the shoulder hung up at the pubic symphysis, would be sufficient to cause the baby's injury without additional traction forces. The special master found this statement was corroborated by medical research.

The American College of Obstetricians and Gynecologists released a 2014 report entitled "Neonatal Brachial Plexus Palsy." The report stated that neonatal brachial plexus palsy, or NBPP, which includes Erb's palsy and Klumpke palsy, is a rare event and occurs only in approximately 1.5 of every 1,000 births. The report addressed the difficulty of determining which risk factors are statistically reliable predictors of NBPP. While noting that NBPP occurs more often as birth weight increases, the report concluded that the majority of NBPP cases occur with mothers who do not have diabetes and in babies who weigh less than 8.8 pounds. For women who have diabetes and an estimated baby birth weight greater than 9.92 pounds, the ability to accurately predict NBPP was only 5 percent. In addressing the issue of causation, the report stated that risk factors for shoulder dystocia are not very reliable. The report also provided that, while it was routinely believed during most of the last century that NBPP was caused by force used by the person delivering the baby, there was no clinical data supporting that conclusion. More recently, data began appearing which indicated that other forces unrelated to the injury, such as congenital and uterine abnormalities or malpositioning of the fetus within the uterus, played a role in NBPP.<sup>vii</sup>

When the hospital district deposed Dr. Andrew Price, who has assisted Dr. Grossman in Tucker's surgeries, Dr. Price testified that Tucker's injury was due to traction forces, but had no opinion as to the mechanical causes of the injury. He also noted that he had seen children with brachial plexus injuries who were delivered by Cesarean sections.

### **Damages**

Because Tucker has Erb's palsy, his doctors have testified that Tucker will have a weakness in his right arm throughout his life.

Dr. Price testified that there will be some limitations on Tucker's future activities and career opportunities. He projects that Tucker will experience muscle weakening and his right arm will be somewhat smaller, perhaps a centimeter or two smaller, than his left arm. The shoulder girdle will also be a little smaller creating an asymmetry. Tucker does not have any impairment in the function of his hand or wrist. Sports that require the use of both hands will not be easy for Tucker, but Dr. Price testified that Tucker should be able to play sports such as football, basketball, baseball, soccer, tennis, swimming, martial arts, most everything else.

Dr. Price testified that Tucker's injury should not impair his academic performance but that some careers would be difficult for him. He would not likely be able to perform many upward motion labors requiring significant strength and he would probably not be able to pursue a military career or work as a firefighter, law enforcement officer, or mechanic. But a wide range of other careers should be open to him.

Unlike the claim bill, Dr. Price declined to characterize and refer to Tucker as having "partial paralysis," but rather as having deficits of strength and flexibility.

Dr. Price noted that Tucker does not need any adaptive equipment to compensate for his injury and is not on any medications for his injury nor should he need any future medications for the injury.

#### **Final Conclusion in Light of the Evidence**

The evidence made available to the special masters indicates that the hospital district had a plausible defense to the medical malpractice claims by the Wrights. However, the Wrights claims are also at least plausible. A negligently performed McRoberts maneuver and delivery can cause Erb's palsy, but no independent verifiable evidence such as a video tape exists to prove what actually happened as Tucker Wright was being born. Similarly, one might agree with Dr. Perlow as he stated in his deposition, "I would say that the nurse, Nurse Starkey, saved this baby's life" even though Tucker was born with Erb's palsy. Thus, considering the costs of litigation and the uncertainty of juries, the settlement agreement is reasonable under the circumstances.

SETTLEMENT AGREEMENT

Per the terms of its settlement with the Wrights, the North Brevard County Hospital District did not present evidence or make any arguments during the de novo special master hearing. The district, however, did provide information or evidence in response to specific requests. Much of the information was prepared as part of its defense to the Wright's medical malpractice lawsuit. However, the information or evidence provided by the hospital district suggests that the hospital district, at least initially, intended to dispute the Wright's negligence allegations.

The Wrights initially offered to settle the claim for \$2,500,000. However, the parties settled this suit at mediation for \$595,000, of which \$200,000 has been paid. The Order Approving Settlement authorized the payment of attorney fees of 25 percent, or \$50,000, and attorney costs of \$15,790.15 from the initial \$200,000. A petition to reduce medical liens was approved and their payment authorized in two installments, with the first installment of \$28,123.20 coming from the initial allocation and the second installment being paid contingent upon passage of the claim bill. Roy and Ashley Wright received 25 percent or \$26,521.66 and the Tucker Wright Trust received 75 percent of the net balance or \$79,564.99.

Should the claim bill pass, the proceeds would be distributed first to pay attorney fees of 25 percent or \$98,750, plus costs followed by a net award of 25 percent distributed to Roy and Ashley Wright for the expenses they have incurred caring for Tucker and the remaining 75 percent to Tucker's trust. Roy and Ashley Wright were approved as co-trustees to manage the assets of Tucker until he reaches majority. The funds are restricted to his educational and healthcare needs and may be invested only in secure, conservative minimal risk investments.

The settlement release, dated December 20, 2013, states that neither the release nor payments are to be construed as an admission of liability on the part of the North Brevard County Hospital District. The Hospital District does not oppose the claim bill. The claim bill will be solely funded by a dedicated trust fund of the North Brevard County Hospital District d/b/a Parrish Medical Center because the district does not maintain professional liability insurance that applies to the claim.

Because the settlement amount exceeds \$50,000, the settlement agreement had to be approved by a judge who was required to appoint a guardian ad litem to represent Tucker's interests.<sup>viii</sup> Tucker's guardian ad litem, attorney Arthur W. Niergarth, Jr., reviewed the proposed settlement on behalf of Tucker and filed his recommendation with the court in support of the proposed settlement

ATTORNEYS FEES:

Section 768.28, F.S., limits the claimant's attorney fees to 25 percent of the claimant's total recovery by way of any judgment or settlement obtained pursuant to s. 768.28, F.S. The claimant's attorney has acknowledged this limitation and verified in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorney fees.

RECOMMENDATIONS:

Based upon the foregoing, the undersigned recommends that Senate Bill 60 be reported FAVORABLY.

Respectfully submitted,

Eva M. Davis  
Senate Special Master

**CS by Judiciary on February 17, 2015:**

The committee substitute corrects the spelling of midwife Starkey, clarifies that the McRoberts maneuver does not involve the rotation of an infant's head during delivery, states that an additional procedure was performed to deliver the baby, deletes a reference to the infant's arm being paralyzed, and removes references to the negligence of "an employee of" the Parrish Medical Center.

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<sup>i</sup> When Tucker was born, he actually weighed over a pound more than what the sonogram projected. Even at that birth weight, however, he did not meet the definition of "macrosomic" or excessively large baby.

<sup>ii</sup> Section 766.102(1), F.S.

<sup>iii</sup> *Saunders v. Dickens*, No. SC12-2314, 2014 WL 3361813, at \*6 (Fla. July 10, 2014).

<sup>iv</sup> *Id.*, at \*7.

<sup>v</sup> In her progress notes on the date of the delivery, Dr. Haté described Ashley Wright as being noncompliant. She stated that Ashley Wright left her first obstetrician late in the pregnancy and refused to return to that obstetrician's care when encouraged to do so. Ashley chose to discontinue taking insulin to treat her gestational diabetes, and did not keep her high risk appointment when referred to a high risk specialist. The facts are in dispute as to why she did not keep the appointment.

<sup>vi</sup> Dr. Perlow indicates that he believed that midwife Starkey might have actually performed a Rubin maneuver in addition to a McRoberts maneuver. The Rubin maneuver involves reaching in and rotating a shoulder of the baby to help dislodge it.

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vii American College of Obstetricians and Gynecologists, Task Force on Neonatal Brachial Plexus Palsy, *Neonatal Brachial Plexus Palsy*, 2014.

viii Sections 744.3025 and 744.387, F.S.



458446

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2015	.	
	.	
	.	
	.	

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The Committee on Judiciary (Simpson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. The facts stated in the preamble to this act are  
found and declared to be true.

Section 2. The North Brevard County Hospital District is  
authorized and directed to appropriate from funds of the  
district not otherwise appropriated and to draw a warrant,  
payable to Roy Wright and Ashley Wright, individually and as  
guardians for Tucker Wright, for the total amount of \$395,000 as



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12 compensation for injuries and damages sustained by Tucker Wright  
13 as a result of the negligence of Parrish Medical Center.

14 Section 3. The total amount paid for attorney fees,  
15 lobbying fees, costs, and other similar expenses relating to  
16 this claim may not exceed 25 percent of the amount awarded under  
17 this act.

18 Section 4. The amount paid by the North Brevard County  
19 Hospital District pursuant to s. 768.28, Florida Statutes, and  
20 the amount awarded under this act are intended to provide the  
21 sole compensation for all present and future claims arising out  
22 of the factual situation described in this act which resulted in  
23 the injuries to Tucker Wright.

24 Section 5. This act shall take effect upon becoming a law.

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 everything before the enacting clause  
29 and insert:

30 A bill to be entitled  
31 An act for the relief of Roy Wright and Ashley Wright  
32 by the North Brevard County Hospital District;  
33 providing for an appropriation to compensate Roy  
34 Wright and Ashley Wright, individually and as  
35 guardians of Tucker Wright, for injuries and damages  
36 sustained by Tucker Wright as a result of the  
37 negligence of Parrish Medical Center; providing a  
38 limitation on the payment of fees and costs; providing  
39 that certain payments and the appropriation satisfy  
40 all present and future claims related to the negligent



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41 act; providing an effective date.

42

43 WHEREAS, on July 15, 2009, Ashley Wright, suffering from  
44 gestational diabetes, was admitted as a high-risk obstetrical  
45 patient at Parrish Medical Center, operated by the North Brevard  
46 County Hospital District, in Titusville, Florida, and

47 WHEREAS, mothers with gestational diabetes are classified  
48 as high-risk obstetrical patients because their fetuses tend to  
49 be larger than normal and large fetuses are at risk for  
50 complications during the birth process, and

51 WHEREAS, Ashley Wright's care at Parrish Medical Center was  
52 provided by Vidya Hate, M.D., an obstetrician, and Cara Starkey,  
53 R.N., a midwife, both employees of Parrish Medical Center, and

54 WHEREAS, on July 16, 2009, Ashley Wright was in labor with  
55 her unborn child, Tucker Wright, and Nurse Starkey failed to  
56 notify Dr. Hate of the impending delivery as previously  
57 instructed and delivered Tucker Wright herself without the  
58 presence, supervision, or assistance of Dr. Hate, and

59 WHEREAS, complications arose during the delivery, and  
60 Tucker Wright developed shoulder dystocia, a condition in which  
61 the shoulder of a fetus becomes wedged on the mother's pelvic  
62 bone as the fetus transits the birth canal, which condition is a  
63 known and recognized risk for mothers with gestational diabetes,  
64 and

65 WHEREAS, Nurse Starkey attempted to resolve the shoulder  
66 dystocia by performing a McRoberts maneuver and a procedure in  
67 which the shoulders of a fetus are gently rotated by hand  
68 underneath the shoulders, allowing the shoulders to pass  
69 underneath the pelvic bone and out through the birth canal, and



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70           WHEREAS, Nurse Starkey negligently rotated the head of the  
71 fetus on the perineum, causing a brachial plexus injury to  
72 Tucker Wright which injured his right arm and will limit his  
73 activities and future career options, and

74           WHEREAS, all parties to this claim agree that rotation of  
75 the head of a fetus on the perineum is an improper maneuver  
76 because rotation of the head with pressure can stretch and  
77 damage the nerves in a fetus's neck which control the use of  
78 muscles in the arm, and

79           WHEREAS, Tucker Wright has undergone two surgeries on his  
80 right shoulder and regained some use of his right arm but  
81 continues to be challenged with functional deficits that may be  
82 permanent, and

83           WHEREAS, Roy Wright and Ashley Wright have incurred medical  
84 expenses on behalf of Tucker Wright in the amount of \$320,016.91  
85 due to the injury caused by the negligence of Parrish Medical  
86 Center, and may incur additional expenses for surgeries needed  
87 as Tucker Wright grows older, and

88           WHEREAS, on January 11, 2012, Roy Wright and Ashley Wright,  
89 individually and as guardians of Tucker Wright, filed suit  
90 against the North Brevard County Hospital District in the  
91 Circuit Court for Brevard County, Case No. 05-2012-CA-024060, to  
92 recover damages for the injuries sustained by Tucker Wright as a  
93 result of the negligence of Parrish Medical Center, and

94           WHEREAS, the North Brevard County Hospital District, Roy  
95 Wright, and Ashley Wright agreed to settle the lawsuit for  
96 \$595,000, and

97           WHEREAS, the North Brevard County Hospital District paid  
98 \$200,000 of the settlement pursuant to the statutory limits of



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99 liability set forth in s. 768.28, Florida Statutes, and there  
100 remains \$395,000 of the settlement unsatisfied, and

101 WHEREAS, the North Brevard County Hospital District does  
102 not oppose passage of this claim bill, NOW, THEREFORE,

By Senator Simpson

18-00038-15

201560\_\_

1                   A bill to be entitled  
2       An act for the relief of Roy Wright and Ashley Wright  
3       by the North Brevard County Hospital District;  
4       providing for an appropriation to compensate Roy  
5       Wright and Ashley Wright, individually and as  
6       guardians of Tucker Wright, for injuries and damages  
7       sustained by Tucker Wright as a result of the  
8       negligence of an employee of Parrish Medical Center;  
9       providing a limitation on the payment of fees and  
10      costs; providing that certain payments and the  
11      appropriation satisfy all present and future claims  
12      related to the negligent act; providing an effective  
13      date.

14  
15       WHEREAS, on July 15, 2009, Ashley Wright, suffering from  
16      gestational diabetes, was admitted as a high-risk obstetrical  
17      patient at Parrish Medical Center, operated by the North Brevard  
18      County Hospital District, in Titusville, Florida, and

19       WHEREAS, mothers with gestational diabetes are classified  
20      as high-risk obstetrical patients because their fetuses tend to  
21      be larger than normal and large fetuses are at risk for  
22      complications during the birth process, and

23       WHEREAS, Ashley Wright's care at Parrish Medical Center was  
24      provided by Vidya Hate, M.D., an obstetrician, and Cara Starky,  
25      R.N., a midwife, both employees of Parrish Medical Center, and

26       WHEREAS, on July 16, 2009, Ashley Wright was in labor with  
27      her unborn child, Tucker Wright, and Nurse Starky failed to  
28      notify Dr. Hate of the impending delivery as previously  
29      instructed and delivered Tucker Wright herself without the

18-00038-15

201560\_\_

30 presence, supervision, or assistance of Dr. Hate, and

31 WHEREAS, complications arose during the delivery, and  
32 Tucker Wright developed shoulder dystocia, a condition in which  
33 the shoulder of a fetus becomes wedged on the mother's pelvic  
34 bone as the fetus transits the birth canal, which condition is a  
35 known and recognized risk for mothers with gestational diabetes,  
36 and

37 WHEREAS, Nurse Starky attempted to resolve the shoulder  
38 dystocia by performing McRoberts maneuver, a procedure in which  
39 the shoulders of a fetus are gently rotated by hand underneath  
40 the shoulders, allowing the shoulders to pass the pelvic bone  
41 and out through the birth canal, and

42 WHEREAS, Nurse Starky negligently performed McRoberts  
43 maneuver by also rotating the head of the fetus on the perineum,  
44 causing a brachial plexus injury to Tucker Wright which left his  
45 right arm paralyzed, and

46 WHEREAS, all parties to this claim agree that rotation of  
47 the head of a fetus on the perineum is an improper method of  
48 performing McRoberts maneuver because rotation of the head with  
49 pressure can stretch and damage the nerves in a fetus's neck  
50 which control the use of muscles in the arm, and

51 WHEREAS, Tucker Wright has undergone two surgeries on his  
52 right shoulder and regained some use of his right arm but  
53 continues to be challenged with functional deficits that may be  
54 permanent, and

55 WHEREAS, Roy Wright and Ashley Wright have incurred medical  
56 expenses on behalf of Tucker Wright in the amount of \$320,016.91  
57 due to the injury caused by the negligence of an employee of  
58 Parrish Medical Center, and may incur additional expenses for

18-00038-15

201560\_\_

59 surgeries needed as Tucker Wright grows older, and

60 WHEREAS, on January 11, 2012, Roy Wright and Ashley Wright,  
61 individually and as guardians of Tucker Wright, filed suit  
62 against the North Brevard County Hospital District in the  
63 Circuit Court for Brevard County, Case No. 05-2012-CA-024060, to  
64 recover damages for the injuries sustained by Tucker Wright as a  
65 result of the negligence of an employee of Parrish Medical  
66 Center, and

67 WHEREAS, the North Brevard County Hospital District, Roy  
68 Wright, and Ashley Wright agreed to settle the lawsuit for  
69 \$595,000, and

70 WHEREAS, the North Brevard County Hospital District paid  
71 \$200,000 of the settlement pursuant to the statutory limits of  
72 liability set forth in s. 768.28, Florida Statutes, and there  
73 remains \$395,000 of the settlement unsatisfied, and

74 WHEREAS, the North Brevard County Hospital District does  
75 not oppose passage of this claim bill, NOW, THEREFORE,

76

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

78

79 Section 1. The facts stated in the preamble to this act are  
80 found and declared to be true.

81 Section 2. The North Brevard County Hospital District is  
82 authorized and directed to appropriate from funds of the  
83 district not otherwise appropriated and to draw a warrant,  
84 payable to Roy Wright and Ashley Wright, individually and as  
85 guardians for Tucker Wright, for the total amount of \$395,000 as  
86 compensation for injuries and damages sustained by Tucker Wright  
87 as a result of the negligence of an employee of Parrish Medical

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88 Center.

89 Section 3. The total amount paid for attorney fees,  
90 lobbying fees, costs, and other similar expenses relating to  
91 this claim may not exceed 25 percent of the amount awarded under  
92 this act.

93 Section 4. The amount paid by the North Brevard County  
94 Hospital District pursuant to s. 768.28, Florida Statutes, and  
95 the amount awarded under this act are intended to provide the  
96 sole compensation for all present and future claims arising out  
97 of the factual situation described in this act which resulted in  
98 the injuries to Tucker Wright.

99 Section 5. This act shall take effect upon becoming a law.





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Community Affairs, *Chair*  
Environmental Preservation and Conservation,  
*Vice Chair*  
Appropriations Subcommittee on General Government  
Finance and Tax  
Judiciary  
Transportation

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

**SENATOR WILTON SIMPSON**

18th District

January 15, 2015

Senator Miguel Diaz de la Portilla  
Committee on Judiciary  
515 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chairman Diaz de la Portilla,

Please place Senate Bill 60 relating to a claim for relief of Roy Wright and Ashley Wright by the North Brevard County Hospital District, on the next Committee on Judiciary agenda.

Please contact my office with any questions. Thank you.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson

Senator, 18<sup>th</sup> District

CC: Tom Cibula, Staff Director

### REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/15

Meeting Date

SB 60

Bill Number (if applicable)

Topic SB 60 - Relief of Roy Wright and Ashley Wright

Amendment Barcode (if applicable)

Name Parama Liberman

Job Title Attorney

Address 1927 NW 13th St

Street

Phone (352) 338-7900

Gainesville

City

FL

State

32609

Zip

Email pliberman@gmail.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Tucker Wright

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 362

INTRODUCER: Judiciary Committee and Senator Lee

SUBJECT: Powers of Attorney

DATE: February 18, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	<b>Fav/CS</b>
2.			CF	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

**I. Summary:**

CS/SB 362 authorizes certain not-for-profit corporations to serve as an agent for a principal under a power of attorney. A not-for-profit corporation may serve as an agent if, among other things, the corporation was qualified as a court appointed guardian before 1996 and if the corporation:

- Maintains a fiduciary bond in the amount of \$250,000 which covers the acts or omissions of each agent or employee of the corporation who has direct contact with the principal or access to the principal's assets;
- Maintains a liability insurance policy in the amount of \$250,000 which covers any losses sustained by the principal caused by errors, omissions, or intentional misconduct committed by the corporation's officers or directors; or
- Discloses that the principal will have limited recourse against the corporation for losses caused by errors, omissions, or intentional misconduct of an employee or agent of the corporation.

**II. Present Situation:**

**Powers of Attorney**

A power of attorney is a writing in which a person, called a principal, authorizes an agent (formerly known as an attorney in fact) to act on the person's behalf.<sup>1</sup> A power of attorney that continues after the principal's incapacity is a durable power of attorney.<sup>2</sup> Powers of attorney are

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<sup>1</sup> Section 709.2102(9), F.S.

<sup>2</sup> Section 709.2014, F.S.

often used by elderly persons to designate someone to handle their financial matters in anticipation of becoming incapacitated.<sup>3</sup> A power of attorney is a low cost alternative to guardianship.

### **Qualifications of Agents**

Chapter 709, F.S., governs the creation and use of powers of attorney. Who the chapter has authorized to serve as an agent has changed over time. Before 1995, chapter 709, F.S., did not expressly limit who could serve as an agent. After the chapter was amended in 1990, agents were limited to natural persons who were at least 18 years of age and certain financial institutions having trust powers.<sup>4</sup> In 1997, the chapter was amended to authorize a narrow category of not-for-profit corporations to serve as agents. The specific 1997 authorization stated:

A not-for-profit corporation, organized for charitable or religious purposes in this state, which has qualified as a court-appointed guardian prior to January 1, 1996, and which is a tax-exempt organization under 26 U.S.C. s. 501(c)(3), may also act as an attorney in fact. Notwithstanding any contrary clause in the written power of attorney, no assets of the principal may be used for the benefit of the corporate attorney in fact,<sup>5</sup> or its officers or directors.<sup>6</sup>

In 2011, Florida's power of attorney law was rewritten and largely conformed to the Uniform Power of Attorney Act by the National Conference of Commissioners on Uniform State Laws.<sup>7</sup> As adopted in Florida, the new power of attorney law did not carry forward the provision that authorized not-for-profit corporations to serve as agents. The 2011 law, which to date remains substantially unchanged, limited those who may serve as an agent to natural persons and financial institutions. This limitation was a deviation from the uniform act, which places no limits on who may serve as an agent. However, the 2011 law allowed preexisting powers of attorney to continue in effect.<sup>8</sup> As such, not-for-profit corporations may continue to serve as agents under powers of attorney executed before the October 1, 2011, effective date of the 2011 law.

### **Power of Attorney v. Guardianship**

Under current law, not-for-profit corporations that wish to manage a person's finances must be appointed as a guardian to handle a person's financial matters. A guardianship provides for supervision of the actions of a guardian by a court. But the additional oversight comes with additional costs. The additional costs may result from attorney fees for making court filings and fees to prepare annual accountings and annual guardianship plans.<sup>9</sup>

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<sup>3</sup> Donna Fuscaldo, *Why You Need a Financial Power of Attorney*, Fox Bus. News, (Jul. 16, 2013)

<http://www.foxbusiness.com/personal-finance/2013/07/16/why-need-financial-power-attorney/>.

<sup>4</sup> Section 708.08(2), F.S. (1995).

<sup>5</sup> Under current law, attorneys in fact are known as agents.

<sup>6</sup> Chapter 97-240, s. 2, Laws of Fla.

<sup>7</sup> Comm. on Judiciary, The Florida Senate, *Bill Analysis and Fiscal Impact Statement for CS/SB 670* (Mar. 6, 2011), available at <http://www.flsenate.gov/Session/Bill/2011/0670/Analyses/2011s0670.ju.PDF>.

<sup>8</sup> Section 709.2106(2), F.S.

<sup>9</sup> See s. 744.108, F.S.

The major similarities and differences between a power of attorney and a guardianship are shown in the table below.

<b>Power of Attorney</b>	<b>Guardianship</b>
The principal selects an agent. <sup>10</sup>	A court appoints a guardian. <sup>11</sup>
No similar requirement.	A guardian must pass a background check. <sup>12</sup>
No similar requirement.	A guardian must have several hours of training. <sup>13</sup>
An agent has fiduciary obligations to the principal. <sup>14</sup>	A guardian has fiduciary responsibilities to a ward. <sup>15</sup>
Unless otherwise provided in a power of attorney, an agent who is a “qualified agent” is entitled to reasonable compensation and reimbursement for reasonable expenses. <sup>16</sup>	Fees for a guardian or attorney must be approved by a court. <sup>17</sup>
An agent must: <ul style="list-style-type: none"> <li>• Keep a record of all receipts, disbursements, and transactions; and</li> <li>• Maintain an inventory of the principal’s safe-deposit box.<sup>18</sup></li> </ul>	A guardian must prepare: <ul style="list-style-type: none"> <li>• An inventory of a ward’s property;<sup>19</sup></li> <li>• Annual guardianship plans;<sup>20</sup> and</li> <li>• Annual accountings of a ward’s property.<sup>21</sup></li> </ul>
The actions of an agent will not be reviewed by a court unless a person petitions a court for review of the agent’s actions. <sup>22</sup>	The actions of a guardian will be reviewed by a court or clerk at least on an annual basis. <sup>23</sup>
An agent is liable for the misuse of a principal’s property, <sup>24</sup> but agents are not required to maintain a bond.	A guardian generally must maintain a bond to ensure the faithful performance of his or her duties. <sup>25</sup>

<sup>10</sup> Section 709.2102(11), F.S.

<sup>11</sup> Sections 744.3031 and 744.334, F.S.

<sup>12</sup> Section 744.3135, F.S.

<sup>13</sup> Sections 744.1085 and 744.3145, F.S.

<sup>14</sup> Section 709.2114(1), F.S.

<sup>15</sup> Section 744.446, F.S.

<sup>16</sup> Section 709.2112, F.S. A qualified agent is an agent who is the principal’s spouse, or heir, a financial institution, a certified public accountant, or a natural person who has never served as an agent for more than three principals at the same time.

<sup>17</sup> Section 744.108, F.S.

<sup>18</sup> Section 709.2114(1)(c) and (d), F.S.

<sup>19</sup> Section 744.362(1), F.S.

<sup>20</sup> Section 744.367, F.S.

<sup>21</sup> Section 744.367, F.S.

<sup>22</sup> Section 709.2116, F.S.

<sup>23</sup> Sections 744.3125(1), 744.367, and 744.3678, F.S.

<sup>24</sup> Section 709.2117, F.S.

<sup>25</sup> Sections 744.1085 and 744.351, F.S.

### III. Effect of Proposed Changes:

The bill essentially reinstates the authority that certain not-for-profit corporations had to serve as agents under a power of attorney before the power of attorney laws were rewritten in 2011.

Under the bill, certain not-for-profit corporations may serve as an agent for a principal under a power of attorney. A not-for-profit corporation may serve as an agent if, most significantly, the corporation was qualified as a court appointed guardian before 1996 and if the corporation:

- Maintains a fiduciary bond in the amount of \$250,000 which covers the acts or omissions of each agent or employee of the corporation who has direct contact with the principal or access to the principal's assets;
- Maintains a liability insurance policy in the amount of \$250,000 which covers any losses sustained by the principal caused by errors, omissions, or intentional misconduct committed by the corporation's officers or directors; or
- Discloses that the principal will have limited recourse against the corporation for losses caused by errors, omissions, or intentional misconduct of an employee or agent of the corporation.

The disclosure of the limited recourse available is accomplished by the principal signing a statement mandated by the bill which must be written in 14-point uppercase type. In detail, the disclosure statement advises that:

- The officers of the not-for-profit corporation are not liable for the acts of the corporation.
- The corporation does not maintain insurance or a bond to cover any losses incurred by the principle.
- The assets of the corporation may not be sufficient to cover any of the principal's losses resulting from an error, omission, or intentional misconduct by an employee or agent of the corporation.

The bill further provides that if a not-for-profit corporation acting as an agent fails to maintain insurance or a bond or fails to make the required disclosure, the officers of the corporation are jointly and severally liable with the corporation for acts and omissions under a power of attorney. However, the bill does not provide liability protection to an individual who is directly responsible for an error, omission, or intentional misconduct.

By operation of existing s. 709.2112, F.S., a not-for-profit corporation that qualifies as an agent under this bill is not entitled to compensation for serving as an agent.<sup>26</sup>

The bill takes effect July 1, 2015.

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<sup>26</sup> See note 16.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

This bill makes powers of attorney, a low cost alternative to guardianship, available to more people.

**C. Government Sector Impact:**

The Office of the State Courts Administrator anticipates that this bill will have little or no impact on the courts.<sup>27</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 709.2105 and 709.2202.

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<sup>27</sup> Office of the State Courts Administrator, *2015 Judicial Impact Statement* (Feb. 16, 2015) (on file with the Senate Committee on Judiciary).

**IX. Additional Information:**

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

**CS by Judiciary on February 17, 2015:**

The committee substitute corrects a technical drafting error in the bill by moving a concept in subsection (2) of s. 709.2105, F.S., into sub-subparagraph d. of s. 709.2105(1)(c)3., F.S. Because the correction eliminates the need to conform a cross-reference to s. 709.2105, F.S., in section 2 of the original bill, the committee substitute no longer includes section 2 of the original bill.

- B. **Amendments:**

None.



752902

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2015	.	
	.	
	.	
	.	

---

The Committee on Judiciary (Stargel) recommended the following:

**Senate Amendment**

Delete lines 47 - 88

and insert:

agent under this chapter.

b. Maintenance by the corporation of a liability insurance policy that covers any losses sustained by the principal caused by errors, omissions, or any intentional misconduct committed by the corporation's officers or agents. The policy must cover all principals for whom the corporation is acting as an agent for losses up to \$250,000. The terms of the policy must cover acts



752902

12 or omissions of each agent or employee of the corporation who  
13 has direct contact with the principal or access to the  
14 principal's assets.

15 c. Signing by the principal of a separate written  
16 instrument containing the following language in 14-point  
17 uppercase type:

18  
19 I HAVE BEEN ADVISED THAT OFFICERS OF THE NOT-FOR-PROFIT  
20 CORPORATION HAVE DECLINED TO AGREE TO BE JOINTLY AND SEVERALLY  
21 LIABLE WITH THE NOT-FOR-PROFIT CORPORATION FOR ACTS OR OMISSIONS  
22 OCCURRING IN THE EXERCISE OF THE POWER OF ATTORNEY EXECUTED  
23 UNDER CHAPTER 709, FLORIDA STATUTES.

24  
25 I HAVE ALSO BEEN ADVISED THAT THE NOT-FOR-PROFIT CORPORATION  
26 THAT I HAVE NAMED AS MY AGENT UNDER MY POWER OF ATTORNEY HAS  
27 ELECTED NOT TO POST AND MAINTAIN A FIDUCIARY BOND OR MAINTAIN  
28 INSURANCE IN ACCORDANCE WITH SECTION 709.2105(1) (c), FLORIDA  
29 STATUTES.

30  
31 I UNDERSTAND THAT THE ASSETS OF THE NOT-FOR-PROFIT CORPORATION  
32 MAY NOT BE SUFFICIENT TO COVER LIABILITY ARISING FROM AN ERROR,  
33 AN OMISSION, OR ANY INTENTIONAL MISCONDUCT COMMITTED BY AN  
34 EMPLOYEE OR AGENT OF THE CORPORATION.

35 d. Designation of the corporation by a principal as an  
36 agent under a power of attorney and the corporation acts as an  
37 agent for the principal. However, each officer of the  
38 corporation is jointly and severally liable with the corporation  
39 for acts and omissions under the power of attorney and this  
40 chapter which occur when there is no fiduciary bond as provided



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41 in sub-subparagraph a., liability insurance as provided in sub-  
42 subparagraph b., or signed acknowledgement as provided in sub-  
43 subparagraph c.

44 (2) A power of attorney must be signed by the principal and  
45 by two subscribing witnesses and be acknowledged by the  
46 principal before a notary public or as otherwise provided in s.  
47 695.03.

48 (3) If the principal is physically unable to sign the

By Senator Lee

24-00181C-15

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1                                   A bill to be entitled  
 2       An act relating to powers of attorney; amending s.  
 3       709.2105, F.S.; revising the qualifications of an  
 4       agent in the execution of power of attorney to include  
 5       certain not-for-profit corporations; amending s.  
 6       709.2202, F.S.; conforming a cross-reference;  
 7       providing an effective date.

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

10  
 11       Section 1. Section 709.2105, Florida Statutes, is amended  
 12       to read:

13       709.2105 Qualifications of agent; execution of power of  
 14       attorney.—

15       (1) The agent must be one of the following:

16       (a) A natural person who is 18 years of age or older. ~~or~~

17       (b) A financial institution that has trust powers and, ~~has~~  
 18       a place of business in this state, ~~7~~ and is authorized to conduct  
 19       trust business in this state.

20       (c) A not-for-profit corporation that:

21       1. Is organized for charitable or religious purposes in  
 22       this state;

23       2. Was qualified as a court-appointed guardian before  
 24       January 1, 1996; and

25       3. Is a tax-exempt organization under s. 501(c)(3) of the  
 26       Internal Revenue Code. However, this subparagraph applies only  
 27       to a corporation that acts through an individual listed in the  
 28       records of the Division of Corporations of the Department of  
 29       State as a current officer of the corporation and only upon the

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2015362\_\_

30 occurrence of any of the following events:

31 a. Posting and maintenance by the corporation of a blanket  
32 fiduciary bond of at least \$250,000 with the clerk of the  
33 circuit court in the county in which the corporation's primary  
34 place of business is located. The corporation shall provide  
35 proof of the fiduciary bond to the clerk of each additional  
36 circuit court in which the corporation is serving as agent for a  
37 resident of that circuit. The bond must cover all principals for  
38 whom the corporation has been appointed as an agent at any given  
39 time. The liability of the provider of the bond is limited to  
40 the face value of the bond, regardless of the number of  
41 principals for whom the corporation is acting as an agent. The  
42 terms of the bond must cover the acts or omissions of each agent  
43 or employee of the corporation who has direct contact with the  
44 principal or access to the principal's assets. The bond must be  
45 payable to the Governor and his or her successors in office and  
46 be conditioned on the faithful performance of all duties of an  
47 agent under this chapter;

48 b. Maintenance by the corporation of a liability insurance  
49 policy that covers any losses sustained by the principal caused  
50 by errors, omissions, or any intentional misconduct committed by  
51 the corporation's officers or agents. The policy must cover all  
52 principals for whom the corporation is acting as an agent for  
53 losses up to \$250,000. The terms of the policy must cover acts  
54 or omissions of each agent or employee of the corporation who  
55 has direct contact with the principal or access to the  
56 principal's assets; or

57 c. Signing by the principal of a separate written  
58 instrument containing the following language in 14-point

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59 uppercase type:

60

61 I HAVE BEEN ADVISED THAT OFFICERS OF THE NOT-FOR-PROFIT  
62 CORPORATION HAVE DECLINED TO AGREE TO BE JOINTLY AND SEVERALLY  
63 LIABLE WITH THE NOT-FOR-PROFIT CORPORATION FOR ACTS OR OMISSIONS  
64 OCCURRING IN THE EXERCISE OF THE POWER OF ATTORNEY EXECUTED  
65 UNDER CHAPTER 709, FLORIDA STATUTES.

66

67 I HAVE ALSO BEEN ADVISED THAT THE NOT-FOR-PROFIT CORPORATION  
68 THAT I HAVE NAMED AS MY AGENT UNDER MY POWER OF ATTORNEY HAS  
69 ELECTED NOT TO POST AND MAINTAIN A FIDUCIARY BOND OR MAINTAIN  
70 INSURANCE IN ACCORDANCE WITH SECTION 709.2105(1)(c), FLORIDA  
71 STATUTES.

72

73 I UNDERSTAND THAT THE ASSETS OF THE NOT-FOR-PROFIT CORPORATION  
74 MAY NOT BE SUFFICIENT TO COVER LIABILITY ARISING FROM AN ERROR,  
75 AN OMISSION, OR ANY INTENTIONAL MISCONDUCT COMMITTED BY AN  
76 EMPLOYEE OR AGENT OF THE CORPORATION.

77

78 (2) If none of the requirements in sub-subparagraph  
79 (1)(c)3.a., sub-subparagraph (1)(c)3.b., or sub-subparagraph  
80 (1)(c)3.c. is satisfied, each officer of the not-for-profit  
81 corporation acting with the power of attorney is jointly and  
82 severally liable with the corporation for acts or omissions  
83 under the power of attorney and this chapter.

84

85 (3)~~(2)~~ A power of attorney must be signed by the principal  
86 and by two subscribing witnesses and be acknowledged by the  
87 principal before a notary public or as otherwise provided in s.  
88 695.03.

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88        (4)~~(3)~~ If the principal is physically unable to sign the  
89 power of attorney, the notary public before whom the principal's  
90 oath or acknowledgment is made may sign the principal's name on  
91 the power of attorney pursuant to s. 117.05(14).

92        Section 2. Subsection (2) of section 709.2202, Florida  
93 Statutes, is amended to read:

94        709.2202 Authority that requires separate signed  
95 enumeration.—

96        (2) In addition to signing the power of attorney on behalf  
97 of the principal pursuant to s. 709.2105(4) ~~s. 709.2105(3)~~, if  
98 the principal is physically unable to sign or initial next to  
99 any enumerated authority for which subsection (1) requires the  
100 principal to sign or initial, the notary public before whom the  
101 principal's oath or acknowledgment is made may sign the  
102 principal's name or initials if:

103        (a) The principal directs the notary to sign the  
104 principal's name or initials on the power of attorney next to  
105 any enumerated authority for which subsection (1) requires the  
106 principal to sign or initial;

107        (b) The signing or initialling by the notary is done in the  
108 presence of the principal and witnessed by two disinterested  
109 subscribing witnesses; and

110        (c) The notary writes the statement "Signature or initials  
111 affixed by the notary pursuant to s. 709.2202(2), Florida  
112 Statutes," below each signature or initial that the notary  
113 writes on behalf of the principal.

114

115        Only one notarial certificate in substantially the same form as  
116 those described in s. 117.05(14), which states the circumstances

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2015362\_\_

117 of all signatures and initials written by the notary public, is  
118 required to be completed by the notary public.

119 Section 3. This act shall take effect July 1, 2015.





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations, *Chair*  
Appropriations Subcommittee on General  
Government  
Banking and Insurance  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission,  
*Alternating Chair*

**SENATOR TOM LEE**  
24th District

January 28, 2015

The Honorable Miguel Diaz de la Portilla  
Senate Committee on Judiciary, Chair  
406 Senate Office Building  
404 South Monroe St.  
Tallahassee, FL 32399

Dear Chair Diaz de la Portilla,

I respectfully request that SB 362 related to *Powers of Attorney*, be placed on the Senate Committee on Judiciary agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom Lee".

Tom Lee  
Senator, District 24

Cc: Tom Cibula, Staff Director

**REPLY TO:**

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/15

Meeting Date

362

Bill Number (if applicable)

Topic Power of Attorney

Amendment Barcode (if applicable)

Name Sarah Butters

Job Title attorney

Address 315 S. Calhoun St. Suite 600

Phone 850-425-5648

Tallahassee, FL 32301

Email sarah.butters@hklaw.com

Speaking:  For  Against  Information

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

Representing Florida Bar RPPTL Section

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Judiciary

---

BILL: CS/SB 390

INTRODUCER: Judiciary Committee and Senator Richter

SUBJECT: Fraud

DATE: February 18, 2015      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	<b>Fav/CS</b>
2.	_____	_____	CJ	_____
3.	_____	_____	ACJ	_____
4.	_____	_____	FP	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 390 amends and updates multiple provisions in chapter 817, F.S., which defines and provides penalties for crimes involving fraudulent practices. The most significant provisions of the bill:

- Prohibit a person from falsely personating or representing another person in a manner that causes damage to the other person's credit history or rating;
- Authorize a sentencing court to order restitution for costs and fees an identity theft victim incurs in clearing his or her credit history or rating or similar costs and establishes a civil cause of action against the defendant who has harmed the victim;
- Provide a process for an identity theft victim to obtain documentation of an alleged fraudulent transaction from a business entity and makes the business entity immune from liability for disclosures made in good faith;
- Replace the terms "corporation" with the term "business entity" to ensure that all businesses, regardless of their form, have the same protections against fraud;
- Prohibit the fraudulent transfer or issuance of a membership interest in a limited liability company;
- Increase the criminal penalty for fraudulently obtaining goods or services from a health care provider;
- Make existing laws prohibiting the fraudulent use of an individual's personal identification information also applicable to the fraudulent use of a business' identification information;

- Specify criminal penalties for the fraudulent use or intent to use the identification information of a dissolved business entity; and
- Specify criminal penalties for knowingly providing false information in a public record to facilitate the commission of another crime.

## II. Present Situation:

Chapter 817, F.S., Fraudulent Practices, contains a collection of criminal offenses that involve the use of fraud. In general terms, fraud is the willful act of misrepresenting the truth to someone or concealing an important fact from them for the purpose of inducing that person to act to his or her detriment.<sup>1</sup> Identity fraud, which is also known as identity theft, is a criminal act that occurs when a person illegally obtains someone else's personal information and uses that information to commit fraud or theft.<sup>2</sup> Identity thieves often take names, Social Security numbers coupled with birth dates, birth and death certificates, bank account and credit card numbers, and passwords<sup>3</sup> to obtain credit and credit cards, drain money from bank accounts, establish new accounts, apply for loans using the victims' names, and commit other crimes to enrich themselves.<sup>4</sup> Operating under anonymity and hidden from view, identity thieves often ruin someone's finances and credit long before they are discovered.

### Individual or Consumer Identity Theft

An unsuspecting person might not realize that he or she has been the victim of an identity theft until months, or sometimes even years, after the fraud has occurred. The loss of personal identification information<sup>5</sup> can have devastating effects. Reconstructing the events and obtaining records of the fraud is often a very difficult task. The *Florida Statutes* do not appear to specifically require businesses to give victims of identity theft or law enforcement officers documents related to the alleged fraudulent use of the victim's identity. Accordingly, it can be a difficult task for victims to collect the necessary documents to restore their identity and credit history.

<sup>1</sup> BLACK'S LAW DICTIONARY 731 (9th ed. 2009).

<sup>2</sup> The Federal Bureau of Investigation, *Identity Theft Overview*, [http://www.fbi.gov/about-us/investigate/cyber/identity\\_theft/identity-theft-overview](http://www.fbi.gov/about-us/investigate/cyber/identity_theft/identity-theft-overview) (last visited Feb. 9, 2015).

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

<sup>4</sup> Florida Office of the Attorney General, *About Identity Theft Crimes*, <http://myfloridalegal.com/pages.nsf/Main/932BC47213C29D3385256DBB0048479D?OpenDocument> (last visited Feb. 9, 2015).

<sup>5</sup> Section 817.568(1)(f), F.S., states that "personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
3. Unique electronic identification number, address, or routing code;
4. Medical records;
5. Telecommunication identifying information or access device; or
6. Other number or information that can be used to access a person's financial resources.

## **Business Identity Theft**

The crime of business identity theft is virtually the same as personal identity theft except that a business's identity is stolen. Quite often, the losses are much greater and sometimes involve a more sophisticated network of thieves. Some thieves have also resorted to taking the identity of businesses that are dissolved and using that identity to commit fraud. Because several of the fraud statutes in chapter 817, F.S., apply only to "individuals" and not to persons or business entities, some businesses do not currently enjoy the same protections against fraud that individuals do under the chapter.

## **Additional Fraud Provisions in Chapter 817**

Many of the provisions in chapter 817, F.S., have not been substantially revised since they were enacted decades ago. As a result, some of these statutes do not reflect more modern methods of advertising and manufacturing, the use of public records, the occurrence of electronic transactions over the Internet, and the different forms of business entities that are currently authorized by law.

### **III. Effect of Proposed Changes:**

The bill amends chapter 817, F.S., to allow individuals and businesses greater protections against identity theft. In general terms, these changes affect individuals by allowing them to better identify when identity theft has been committed against them and by removing barriers to restoring their identity and credit after the crime has occurred. Additional forms of restitution are provided which might allow the victims additional methods of recovering their financial losses. For business entities,<sup>6</sup> the bill provides greater protections against fraud and identity theft. The bill also amends a number of miscellaneous provisions in chapter 817, F.S., to update them to reflect modern terminology, currently authorized business structures, and current business practices.

## **Identity Theft Committed Against Individuals (Section 2)**

### ***Obtaining Property by False Personation***

The crime of obtaining property by false personation is expanded to address falsely personating or representing another person in a manner that damages the credit history or credit rating, or otherwise causes harm to the other person. A person who commits this crime is subject to the criminal penalties for larceny.<sup>7</sup> This new provision does not apply to crimes defined in s. 817.568, F.S., which prohibits the fraudulent uses of another's personal identification information.

---

<sup>6</sup> The bill defines the term "business entity" for purposes of chapter 817, F.S., and replaces current references to "corporation" or "firm" throughout the chapter with "business entity." A business entity is defined to mean any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

<sup>7</sup> Larceny is not currently defined in statute. Acts that were previously referred to as larceny are now prosecuted as theft crimes under s. 812.014, F.S. The punishments are commensurate with the monetary value involved in the crime.

### **Additional Restitution for Victims**

This section is further amended to allow a court, when sentencing a defendant under this section, to order restitution<sup>8</sup> for the victim's out-of-pocket costs, including attorney fees and fees associated with certified public accountant services that the victim incurred clearing his or her credit history or credit rating, or costs incurred with a civil or administrative proceeding to satisfy a debt, lien, or other obligation that arises from the defendant's actions. The sentencing court may also issue orders necessary to correct any public record that contains false information given in violation of s. 817.02, F.S. This section also creates a civil cause of action against a person who violates this section as provided in s. 772.11, F.S., which creates a civil remedy for a victim of theft or exploitation.

### **Information Made Available to Identity Theft Victims (Section 3)**

Section 817.032, F.S., is newly created and establishes procedures for victims<sup>9</sup> of identity theft to obtain documentation of fraudulent applications submitted or fraudulent transactions by perpetrators of identity theft.

#### **The Process**

Within 30 days after a victim's request, and subject to verification of the victim's identity and identity theft claim, a business entity that has entered into an alleged fraudulent transaction or accepted a fraudulent application must provide a copy of the application and business transaction records, which evidence a transaction of alleged identity theft, to:

- The victim;
- A law enforcement agency or officer designated by the victim in the request; or
- A law enforcement agency investigating the identity theft who is authorized by the victim to receive those records.

#### **Identifying Information**

Before the business entity is required to provide the requested application or transaction records, the victim must provide certain forms of identifying information to the business, unless the business has a high degree of confidence that it knows the identity of the victim making the records request. The victim must also provide to the business a proof of a claim of the identity theft, which includes a copy of the police report of the claim or an affidavit of fact.

#### **Request Requirements**

The request to the business must be in writing, mailed or delivered to an address specified by the business. If the business entity so requests, the victim must include relevant information about

---

<sup>8</sup> The sentencing court may order restitution under this section that is in addition to restitution permitted under s. 775.089, F.S. Under that provision, a judge is required to order the defendant to make restitution to the victim for damage or loss caused by the defendant's offense and damage or loss that is related to the defendant's criminal episode, unless the court finds clear and compelling reasons not to order the restitution. The restitution may be monetary or nonmonetary.

<sup>9</sup> A victim is defined in this section as a person whose identification or financial information is used or transferred or alleged to be used or transferred without his or her consent with the intent to commit, aid, or abet an identity theft or similar crime.

the alleged transaction including the date of the application or transaction if that is known or readily obtainable by the victim and any other identifying information such as an account number or transaction number. The information required to be provided to the victim must be provided at no charge to the victim.

### **Authority to Decline a Request**

A business entity may decline to provide the information requested by the victim if the business, in exercising good faith, determines that:

- This provision of law does not require disclosure of the requested information;
- After reviewing the victim's identification materials and alleged claim, the business does not have a high degree of confidence that it knows the true identity of the person requesting the information;
- The request is based upon a misrepresentation of fact by the requestor; or
- The information requested is Internet navigational data or similar information involving a person's visit to a website or online service.

### **Civil Liability, Recordkeeping Requirement, Affirmative Defense**

A business entity is shielded from civil liability for disclosing information under this section if the disclosure is made in good faith and in accordance with the provisions of this section. The bill expressly does not impose any recordkeeping obligations on business entities. If a civil action is brought for the purpose of enforcing a person's right to a business entity's records, it is an affirmative defense for a business entity to file an affidavit or answer which states that the entity has made a reasonably diligent search of its available business records and the records that have been requested do not exist or are not reasonably available.

### **Identity Theft Committed Against Businesses (Section 16)**

#### ***The Criminal Use of Personal Identification Information***

Existing s. 817.568, F.S., sets forth criminal offenses involving the use of another's personal identification information. In particular, ss 817.568(2), (4), and (9), F.S., establish several criminal offenses that involve the illegal use of an individual's personal identification information.<sup>10</sup> Because the section defines an "individual" in s. 817.568(1)(d), F.S., as "a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity," ss (2), (4), and (9) *only apply to individuals*, not

---

<sup>10</sup> Section 817.568(1)(f), F.S., states that "personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
3. Unique electronic identification number, address, or routing code;
4. Medical records;
5. Telecommunication identifying information or access device; or
6. Other number or information that can be used to access a person's financial resources.

business entities. Therefore, if a person uses the personal identification information of a business, that person is not subject to the penalties set forth in the statute.

The bill amends s. 817.568, F.S., by replacing references to “individual” with “person.” “Person” is defined in s. 817.568(1)(e), F.S., as having the same definition found in s. 1.01(3), F.S., which “includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.” Accordingly, the bill makes the criminal penalties in s. 817.568, F.S., applicable to include those who unlawfully use the personal identification information of a business entity to commit certain fraudulent acts.

As under existing s. 816.568(2), F.S., the penalties for the fraudulent use of identification information, which under the bill includes the fraudulent use of a business’ identification information, increase with the magnitude of the fraud. At a minimum, the crime is a third degree felony.<sup>11</sup> Whoever fraudulently uses personal identification information:

- Commits a second degree felony<sup>12</sup> if the financial amount involved is equal to or greater than \$5,000 or the thief fraudulently uses the personal identification of 10 to 19 individuals, without their consent. The court must then sentence the defendant to a mandatory minimum sentence of 3 years. (s. 816.568(2)(b), F.S.)
- Commits a first degree felony<sup>13</sup> if the financial amount involved is \$50,000 or more or the personal identification of 20 to 29 individuals is used without their consent. The accompanying mandatory minimum sentence is 5 years. (s. 816.568(2)(c), F.S.)
- Commits a first degree felony if the financial amount involved is \$100,000 or more or the personal identification information of 30 or more people is used without their consent. The mandatory minimum sentence is 10 years. (s. 816.568(2)(c), F.S.)

### **Harassment by Use of Personal Identification Information**

Existing s. 817.568(4), F.S., provides a first degree misdemeanor<sup>14</sup> penalty when someone willfully and without authorization possesses, uses, or attempts to use an individual’s personal identification information without his or her consent and does so to harass that person. The bill replaces the term “individual” with the term “person.” This change expands the application of this statute to include someone who unlawfully uses the personal identification information of a business entity to harass someone.

### **Prohibited Use of Counterfeit or Fictitious Personal Identification Information**

Existing s. 817.568(9), F.S., provides a third degree felony penalty for a person who willfully and fraudulently creates or uses, or possesses with the intent to fraudulently use, counterfeit or

<sup>11</sup> A third degree felony is punishable by up to 5 years imprisonment and a fine of up to \$5,000, pursuant to ss. 775.082 and 775.083, F.S.

<sup>12</sup> A second degree felony is punishable by up to 15 years imprisonment and a fine of up to \$10,000, pursuant to ss. 775.082 and 775.083, F.S.

<sup>13</sup> A first degree felony is punishable by up to 30 years imprisonment and a fine of up to \$10,000, pursuant to ss. 775.082 and 775.083, F.S.

<sup>14</sup> A first degree misdemeanor is punishable by a term not to exceed 1 year imprisonment and a fine of up to \$1,000, pursuant to ss. 775.082 and 775.083, F.S.

fictitious personal identification information concerning a fictitious individual, or concerning a real individual without that real individual's consent with the intent to commit or facilitate a fraud on another person. The bill replaces the term "individual" with the term "person." This change expands the application of the statute to include a person who unlawfully uses the personal identification information of a business entity.

### **Using the Personal Identification Information of Deceased Individuals or Dissolved Business Entities**

Existing s. 817.568(8), F.S., currently prohibits the fraudulent use of a deceased individual's personal identification information. This bill expands that section to include and prohibit the fraudulent use of a dissolved business entity's personal identification information. The severity of the offense, as discussed below, depends on the monetary amount and the number of individuals or business entities involved.

Section 817.568(8)(a) F.S., is amended and creates a third degree felony penalty for a person who willfully and fraudulently uses, or possesses with the intent to fraudulently use, the personal identification information of a deceased individual or a dissolved business entity. Whoever fraudulently uses the personal identification information of a deceased individual or a dissolved business entity:

- Commits a second degree felony, if the monetary amount involved is \$5,000 or more or the person uses the personal identification information of 10 to 19 deceased individuals or dissolved business entities. The mandatory minimum sentence is 3 years. (s. 817.658(8)(b), F.S.)
- Commits a first degree felony, the crime of aggravated fraudulent use of the personal identification information of multiple deceased individuals or dissolved business entities, if the monetary amount is \$50,000 or more, or the perpetrator fraudulently uses the personal identification of 20 to 29 deceased individuals or dissolved business entities. The accompanying mandatory minimum sentence is 5 years of imprisonment. If the monetary amount involved is \$100,000 or more, or the person fraudulently uses the personal identification information of 30 or more deceased individuals or business entities, the mandatory minimum sentence is 10 years. (s. 817.568(8)(c), F.S.)

### **Replacing the term "Corporation" with the Term "Business Entity" (Sections 1, 6, 10, and 12)**

The first section of the bill defines a "business entity" for purposes of chapter 817, F.S., to mean "any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state." In section 6, which involves false entries in the books of a business entity; section 10, which involves simulated forms involving the official seal or stationery of a state agency or fictitious state agency; and section 12, which involves false information and advertising; references to a "corporation" have been replaced with the word "business entity." Therefore, a broader spectrum of business organizations are now protected by the fraud provisions of those subsections and subject to criminal penalties for violations of these laws.

**False, Misleading, and Deceptive Advertising and Sales (Section 11)**

Existing s. 817.40, F.S., contains the definitions for use in construing the statutes involving false, misleading, and deceptive advertising and sales. The bill amends the definition of “misleading advertising” in s. 817.40(5), F.S., to include statements disseminated in “electronic” form.

**False Information and Advertising (Section 12)**

Existing s. 817.411, F.S., prohibits false advertisements, announcements, or statements regarding certain items of value being covered by insurance guaranties where there is no insurance or the insurance does not insure against the risks covered. The statute lists a variety of methods used to disseminate this information before the public. The bill amends this section to cover the electronic dissemination of those false claims.

**Sale of Used Goods as New (Section 13)**

Section 817.412, F.S., currently establishes a first degree misdemeanor penalty for a person who sells goods that exceed \$100 and misrepresents them as being new or original when they are used, repossessed, or have been used for a sales demonstration. The bill amends this section to include goods that are misrepresented using an electronic medium.

**Fraudulently Obtaining Goods or Services from a Health Care Provider (Section 15)**

Section 817.50, F.S., currently provides a second degree misdemeanor penalty for anyone to willfully and with intent to defraud, obtain or attempt to obtain goods, products, merchandise, or services from a health care provider in this state. The bill increases the penalty level of this crime to a third degree felony.

**Criminal Use of a Public Record or of Public Records Information (Section 17)**

Section 817.569, F.S., currently makes it a first degree misdemeanor for a person to knowingly use a public record or knowingly use information obtainable only through that public record to commit or further the commission of a first degree misdemeanor. If a person uses the record to commit a felony, the crime becomes a third degree felony. The bill amends this statute to prohibit a person from knowingly providing false information that becomes part of a public record. If the false information that becomes part of the public record facilitates or furthers the commission of a first degree misdemeanor, the penalty is a first degree misdemeanor. Similar, if a felony is involved, the punishment is a third degree felony.

**Wrongful Use of a City Name and Wrongful Stamping, Marking, of a City Name (Sections 7 and 8)**

Existing s. 817.17, F.S., prohibits a manufacturer in the state from marking certain articles or packages for the manufactured articles as though they originated in a certain “city” when they did not. The section does not prohibit the sale of those articles if there “be no manufactory of similar goods in the city.” The statute does not contain a criminal penalty for its violation.

The bill amends the s. 817.17, F.S., to also prohibit falsely attributing the origin of a product to any “county or other political subdivision of the state.” The bill also provides that a person who violates the statute commits a second degree misdemeanor.<sup>15</sup>

Section 817.18, F.S., provides a second degree misdemeanor penalty for anyone who knowingly sells or offers for sale, within the state, manufactured articles that have printed, stamped, marked, engraved, or branded upon them or their packaging, the name of any city other than where the articles are manufactured. If there is no “manufactory of similar goods in the city,” then the section does not apply. This section is similarly amended to include the name of any “county or other political subdivision” of the state.

### **Fraudulent Issue of Stock Certificate of Indicia of Membership Interest (Section 9)**

Section 817.19, F.S., provides a third degree felony penalty for an officer, agent, clerk, or servant of a corporation or other person to fraudulently:

- Issue or transfer a certificate of stock of a corporation to a person not entitled to that stock; or
- Sign the certificate with the intent that it will be so issued or transferred.

This section is amended and expanded to include the fraudulent issue or transfer of any indicia of a membership interest in a limited liability company.

### **Criminal Punishment Code (Section 18)**

The Criminal Punishment Code, Offense Severity Ranking Chart, is amended to reflect the changes made in the titles of s. 817.569(2), and s. 817.568(2)(b), F.S., under this bill.

### **Effective Date (Section 19)**

The bill takes effect October 1, 2015.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

This bill does not appear to affect the spending, revenues, or tax authority of cities or counties and the bill relates to criminal law. As such, the bill does not appear to be a mandate.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>15</sup> A second degree misdemeanor is punishable by a term of imprisonment not to exceed 60 days and by a fine not to exceed \$500, according to ss. 775.082 and 775.083, F.S.

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

None.

**B. Private Sector Impact:**

The requirement that businesses provide victims of identity theft with records involving their theft might actually allow victims to recover economic losses and have a positive fiscal impact on those who have been the victims of identity theft. The restitution provisions in this bill, assuming that the perpetrators of identity theft have any assets, might also allow victims of identity theft to recover expenses incurred in trying to resolve issues involved in the identity theft.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference has not determined the fiscal impact of this bill. However, by creating new crimes and increasing the penalties for existing crimes, this bill will likely have a negative impact on prison beds at the Florida Department of Corrections.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 817.02, 817.11, 817.14, 817.15, 817.17, 817.18, 817.19, 817.39, 817.40, 817.411, 817.412, 817.481, 817.50, 817.568, 817.569, and 921.0022.

This bill creates the following sections of the Florida Statutes: 817.011 and 817.032.

This bill transfers and renumbers the following sections of the Florida Statutes: 817.12 and 817.13.

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

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

**CS by Judiciary on February 17, 2015:**

The committee substitute makes several changes to the bill, most of which are technical changes that do not affect the meaning of the bill. One substantive change allows a sentencing court the discretion to order restitution for a victim's out-of-pocket costs

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incurred by his or her certified public accountant in restoring the victim's credit or to rectify other wrongs associated with identity theft. An additional substantive change is a change of the word "consumer" to "person." This change may entitle businesses that are identity theft victims to obtain records of a fraudulent transaction from other businesses.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2015	.	
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	.	
	.	

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The Committee on Judiciary (Benacquisto) recommended the following:

**Senate Amendment**

Delete lines 90 - 187  
and insert:  
out-of-pocket costs, including attorney fees and fees associated  
with services provided by certified public accountants licensed  
under chapter 473, incurred by the victim in clearing the  
victim's credit history or credit rating, or costs incurred in  
connection with a civil or administrative proceeding to satisfy  
a debt, lien, or other obligation of the victim arising as a



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11 result of the actions of the defendant.

12 (b) The sentencing court may issue such orders as are  
13 necessary to correct a public record that contains false  
14 information given in violation of this section.

15 (3) (a) A victim of the conduct subject to this section  
16 shall have a civil cause of action against a person who has  
17 engaged in the conduct prohibited by this section as provided in  
18 s. 772.11.

19 (b) For purposes of this subsection, the term "victim"  
20 includes, to the extent not already included within s. 817.568,  
21 a person whose identity was falsely personated or who suffers a  
22 loss of property as a result of the false personation.

23 Section 3. Section 817.032, Florida Statutes, is created to  
24 read:

25 817.032 Information available to identity theft victims.—

26 (1) DEFINITION.—As used in this section, the term "victim"  
27 means a person whose means of identification or financial  
28 information is used or transferred or is alleged to be used or  
29 transferred without the authority of that person with the intent  
30 to commit or to aid or abet an identity theft or a similar  
31 crime.

32 (2) GENERALLY.—For the purpose of documenting fraudulent  
33 transactions resulting from identity theft, within 30 days after  
34 the date of receipt of a request from a victim in accordance  
35 with subsection (4), and subject to verification of the identity  
36 of the victim and the claim of identity theft in accordance with  
37 subsection (3), a business entity that has provided credit to;  
38 provided for consideration products, goods, or services to;  
39 accepted payment from; or otherwise entered into a commercial



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40 transaction for consideration with, a person who has allegedly  
41 made unauthorized use of the means of identification of the  
42 victim, shall provide a copy of the application and business  
43 transaction records in the control of the business entity,  
44 whether maintained by the business entity or by another person  
45 on behalf of the business entity, evidencing any transaction  
46 alleged to be a result of identity theft to:

47 (a) The victim;

48 (b) A federal, state, or local government law enforcement  
49 agency or officer specified by the victim in such a request; or

50 (c) A law enforcement agency investigating the identity  
51 theft and authorized by the victim to take receipt of records  
52 provided under this section.

53 (3) VERIFICATION OF IDENTITY AND CLAIM.—Before a business  
54 entity provides any information under subsection (2), unless the  
55 business entity, at its discretion, has a high degree of  
56 confidence that it knows the identity of the victim making a  
57 request under subsection (2), the victim shall provide to the  
58 business entity:

59 (a) As proof of positive identification of the victim, at  
60 the election of the business entity:

61 1. The presentation of a government-issued identification  
62 card;

63 2. Personal identifying information of the same type as  
64 provided to the business entity by the unauthorized person; or

65 3. Personal identifying information that the business  
66 entity typically requests from new applicants or for new  
67 transactions, at the time of the victim's request for  
68 information, including any documentation described in



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69 subparagraphs 1. and 2.

70 (b) As proof of a claim of identity theft, at the election  
71 of the business entity:

72 1. A copy of a police report evidencing the claim of the  
73 victim of identity theft; or

74 2. A properly completed affidavit of fact which is  
75 acceptable to the business entity for that purpose.

76 (4) PROCEDURES.—The request of a victim under subsection  
77 (2) must:

78 (a) Be in writing;

79 (b) Be mailed or delivered to an address specified by the  
80 business entity, if any; and

81 (c) If asked by the business entity, include relevant  
82 information about any transaction alleged to be a result of  
83 identity theft to facilitate compliance with this section,  
84 including:

85 1. If known by the victim or readily obtainable by the  
86 victim, the date of the application or transaction.

87 2. If known by the victim or readily obtainable by the  
88 victim, any other identifying information such as an account  
89 number or transaction number.

90 (5) NO CHARGE TO VICTIM.—Information required to be  
91 provided under subsection (2) shall be provided without charge.

92 (6) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business  
93 entity may decline to provide information under subsection (2)  
94 if, in the exercise of good faith, the business entity  
95 determines that:

96 (a) This section does not require disclosure of the  
97 information;



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98           (b) After reviewing the information provided pursuant to  
99 subsection (3), the business entity does not have a high degree  
100 of confidence in knowing the true identity of the individual  
101 requesting the information;

102           (c) The request for the information is based on a  
103 misrepresentation of fact by the individual requesting the  
104 information; or

By Senator Richter

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1                                   A bill to be entitled  
2       An act relating to fraud; creating s. 817.011, F.S.;  
3       defining the term "business entity"; amending s.  
4       817.02, F.S.; providing for restitution to victims for  
5       certain victim out-of-pocket costs; providing for a  
6       civil cause of action for certain victims; creating s.  
7       817.032, F.S.; defining the term "victim"; requiring  
8       business entities to provide copies of business  
9       records of fraudulent transactions involving identity  
10      theft to victims and law enforcement agencies in  
11      certain circumstances; providing for verification of a  
12      victim's identity and claim; providing procedures for  
13      claims; requiring that certain information be provided  
14      to victims without charge; specifying circumstances in  
15      which business entities may decline to provide  
16      information; providing a limitation on civil liability  
17      for business entities that provide information;  
18      specifying that no new record retention is required;  
19      providing an affirmative defense to business entities  
20      in actions seeking enforcement of provisions; amending  
21      s. 817.11, F.S.; making editorial changes;  
22      transferring, renumbering, and amending ss. 817.12 and  
23      817.13, F.S.; combining offense, penalty, and evidence  
24      provisions and transferring such provisions to s.  
25      817.11, F.S.; amending s. 817.14, F.S.; clarifying  
26      provisions; amending s. 817.15, F.S.; substituting the  
27      term "business entity" for the term "corporation";  
28      amending ss. 817.17 and 817.18, F.S.; including  
29      counties and other political subdivisions in

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30 provisions prohibiting the false marking of goods or  
31 packaging with a location of origin; reorganizing  
32 penalty provisions; amending s. 817.19, F.S.;  
33 prohibiting fraudulent issuance of indicia of  
34 membership interest in a limited liability company;  
35 amending s. 817.39, F.S.; substituting the term  
36 "business entity" for the term "corporation"; amending  
37 s. 817.40, F.S.; specifying that the term "misleading  
38 advertising" includes electronic forms of  
39 dissemination; amending s. 817.411, F.S.; substituting  
40 the term "business entity" for the term "corporation";  
41 specifying that certain false statements made through  
42 electronic means are prohibited; amending s. 817.412,  
43 F.S.; specifying that electronic statements are  
44 included in provisions prohibiting false  
45 representations of used goods as new; amending s.  
46 817.481, F.S.; clarifying provisions; amending s.  
47 817.50, F.S.; revising criminal penalties for  
48 fraudulently obtaining goods or services from a health  
49 care provider; amending s. 817.568, F.S.; expanding  
50 specified identity theft offenses to include all  
51 persons rather than being limited to natural persons;  
52 including dissolved business entities within certain  
53 offenses involving fraudulent use of personal  
54 identification information of deceased persons;  
55 amending s. 817.569, F.S.; prohibiting a person from  
56 knowingly providing false information that becomes  
57 part of a public record to facilitate or further the  
58 commission of certain offenses; providing criminal

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59 penalties; amending s. 921.0022, F.S.; conforming  
60 provisions to changes made by the act; providing an  
61 effective date.

62  
63 Be It Enacted by the Legislature of the State of Florida:

64  
65 Section 1. Section 817.011, Florida Statutes, is created to  
66 read:

67 817.011 Definition.—As used in this chapter, the term  
68 “business entity” means any corporation, partnership, limited  
69 partnership, company, limited liability company, proprietorship,  
70 firm, enterprise, franchise, association, self-employed  
71 individual, or trust, whether fictitiously named or not, doing  
72 business in this state.

73 Section 2. Section 817.02, Florida Statutes, is amended to  
74 read:

75 817.02 Obtaining property by false personation.—

76 (1) Whoever falsely personates or represents another  
77 person, and in such assumed character:

78 (a) Receives any property intended to be delivered to that  
79 person ~~the party so personated~~, with intent to convert the same  
80 to his or her own use; or

81 (b) To the extent not subject to s. 817.568, damages the  
82 credit history or rating of, or otherwise causes harm to, the  
83 person whose identity has been assumed through the taking of  
84 property from any person,

85  
86 shall be punished as if he or she had been convicted of larceny.

87 (2) (a) In sentencing a defendant convicted of a violation

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88 of this section, in addition to restitution to the victim under  
89 s. 775.089, the court may order restitution for the victim's  
90 out-of-pocket costs, including attorney fees incurred by the  
91 victim in clearing the victim's credit history or credit rating,  
92 or costs incurred in connection with a civil or administrative  
93 proceeding to satisfy a debt, lien, or other obligation of the  
94 victim arising as a result of the actions of the defendant.

95 (b) The sentencing court may issue such orders as are  
96 necessary to correct a public record that contains false  
97 information given in violation of this section.

98 (3) (a) A victim of the conduct subject to this section  
99 shall have a civil cause of action against a person who has  
100 engaged in the conduct prohibited by this section as provided in  
101 s. 772.11.

102 (b) For purposes of this subsection, the term "victim"  
103 includes, to the extent not already included within s. 817.568,  
104 a person whose identity was falsely personated or who suffers a  
105 loss of property as a result of the false personation.

106 Section 3. Section 817.032, Florida Statutes, is created to  
107 read:

108 817.032 Information available to identity theft victims.—

109 (1) DEFINITION.—As used in this section, the term "victim"  
110 means a consumer whose means of identification or financial  
111 information is used or transferred or is alleged to be used or  
112 transferred without the authority of that consumer with the  
113 intent to commit or to aid or abet an identity theft or a  
114 similar crime.

115 (2) GENERALLY.—For the purpose of documenting fraudulent  
116 transactions resulting from identity theft, within 30 days after

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117 the date of receipt of a request from a victim in accordance  
118 with subsection (4), and subject to verification of the identity  
119 of the victim and the claim of identity theft in accordance with  
120 subsection (3), a business entity that has provided credit to;  
121 provided for consideration products, goods, or services to;  
122 accepted payment from; or otherwise entered into a commercial  
123 transaction for consideration with, a person who has allegedly  
124 made unauthorized use of the means of identification of the  
125 victim, shall provide a copy of the application and business  
126 transaction records in the control of the business entity,  
127 whether maintained by the business entity or by another person  
128 on behalf of the business entity, evidencing any transaction  
129 alleged to be a result of identity theft to:

130 (a) The victim;

131 (b) A federal, state, or local government law enforcement  
132 agency, or officer specified by the victim in such a request; or

133 (c) A law enforcement agency investigating the identity  
134 theft and authorized by the victim to take receipt of records  
135 provided under this section.

136 (3) VERIFICATION OF IDENTITY AND CLAIM.—Before a business  
137 entity provides any information under subsection (2), unless the  
138 business entity, at its discretion, otherwise has a high degree  
139 of confidence that it knows the identity of the victim making a  
140 request under subsection (2), the victim shall provide to the  
141 business entity:

142 (a) As proof of positive identification of the victim, at  
143 the election of the business entity:

144 1. The presentation of a government-issued identification  
145 card;

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146 2. Personal identifying information of the same type as  
147 provided to the business entity by the unauthorized person; or

148 3. Personal identifying information that the business  
149 entity typically requests from new applicants or for new  
150 transactions, at the time of the victim's request for  
151 information, including any documentation described in  
152 subparagraphs 1. and 2.

153 (b) As proof of a claim of identity theft, at the election  
154 of the business entity:

155 1. A copy of a police report evidencing the claim of the  
156 victim of identity theft; or

157 2. A properly completed affidavit of fact that is  
158 acceptable to the business entity for that purpose.

159 (4) PROCEDURES.—The request of a victim under subsection  
160 (2) shall:

161 (a) Be in writing.

162 (b) Be mailed or delivered to an address specified by the  
163 business entity, if any.

164 (c) If asked by the business entity, include relevant  
165 information about any transaction alleged to be a result of  
166 identity theft to facilitate compliance with this section,  
167 including:

168 1. If known by the victim or readily obtainable by the  
169 victim, the date of the application or transaction.

170 2. If known by the victim or readily obtainable by the  
171 victim, any other identifying information such as an account  
172 number or transaction number.

173 (5) NO CHARGE TO VICTIM.—Information required to be  
174 provided under subsection (2) shall be provided without charge.

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175 (6) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business  
176 entity may decline to provide information under subsection (2)  
177 if, in the exercise of good faith, the business entity  
178 determines that:

179 (a) This section does not require disclosure of the  
180 information;

181 (b) After reviewing the information provided pursuant to  
182 subsection (3), the business entity does not have a high degree  
183 of confidence in knowing the true identity of the individual  
184 requesting the information;

185 (c) The request for the information is based on a  
186 misrepresentation of fact by the individual requesting the  
187 information relevant to the request for information; or

188 (d) The information requested is Internet navigational data  
189 or similar information about a person's visit to a website or  
190 online service.

191 (7) LIMITATION ON CIVIL LIABILITY.—A business entity may  
192 not be held civilly liable in this state for disclosure made in  
193 good faith pursuant to this section.

194 (8) NO NEW RECORDKEEPING OBLIGATION.—This section does not  
195 create an obligation on the part of a business entity to obtain,  
196 retain, or maintain information or records that are not  
197 otherwise required to be obtained, retained, or maintained in  
198 the ordinary course of its business or under other applicable  
199 law.

200 (9) AFFIRMATIVE DEFENSE.—In any civil action brought to  
201 enforce this section, it is an affirmative defense, which the  
202 defendant must establish by a preponderance of the evidence, for  
203 a business entity to file an affidavit or answer stating that:

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204       (a) The business entity has made a reasonably diligent  
205 search of its available business records.

206       (b) The records requested under this section do not exist  
207 or are not reasonably available.

208       Section 4. Section 817.11, Florida Statutes, is amended,  
209 and sections 817.12 and 817.13, Florida Statutes, are  
210 transferred and renumbered as subsections (2) and (3),  
211 respectively, of section 817.11, Florida Statutes, and amended,  
212 to read:

213       817.11 Obtaining property by fraudulent promise to furnish  
214 inside information.—

215       (1) A No person may not shall defraud or attempt to defraud  
216 any individual out of anything ~~any thing~~ of value by assuming to  
217 have or be able to obtain any secret, advance or inside  
218 information regarding any person, transaction, act or thing,  
219 whether such person, transaction, act or thing exists or not.

220       (2) ~~817.12~~ A person who violates this section commits  
221 Penalty for violation of s. 817.11. Any person guilty of  
222 violating the provisions of s. 817.11 shall be deemed guilty of  
223 a felony of the third degree, punishable as provided in s.  
224 775.082, s. 775.083, or s. 775.084.

225       (3) ~~817.13~~ Paraphernalia as evidence of violation of s.  
226 ~~817.11.~~ All paraphernalia of whatsoever kind in possession of  
227 any person and used in defrauding or attempting to defraud as  
228 specified in this section ~~s. 817.11~~ shall be held and accepted  
229 by any court of competent jurisdiction in this state as prima  
230 facie evidence of guilt.

231       Section 5. Section 817.14, Florida Statutes, is amended to  
232 read:

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233           817.14 Procuring assignments of produce upon false  
234 representations.—A Any person acting for himself or herself or  
235 another person, who shall procure any consignment of produce  
236 grown in this state, to himself or herself or such other, for  
237 sale on commission or for other compensation by any knowingly  
238 false representation as to the prevailing market price at such  
239 time for such produce at the point to which it is consigned, or  
240 as to the price which such person for whom he or she is acting  
241 is at said time paying to other consignors for like produce at  
242 said place, or as to the condition of the market for such  
243 produce at such time and place, and any such person acting for  
244 another who shall procure any consignment for sale as aforesaid  
245 by false representation of authority to him or her by such other  
246 to make a guaranteed price to the consignor, commits ~~shall be~~  
247 ~~guilty of~~ a misdemeanor of the first degree, punishable as  
248 provided in s. 775.082 or s. 775.083.

249           Section 6. Section 817.15, Florida Statutes, is amended to  
250 read:

251           817.15 ~~Making~~ False entries ~~in, etc., on~~ books of business  
252 entity corporation.—Any officer, agent, clerk or servant of a  
253 business entity corporation who makes a false entry in the books  
254 thereof, with intent to defraud, and any person whose duty it is  
255 to make in such books a record or entry of the transfer of  
256 stock, or of the issuing and canceling of certificates thereof,  
257 or of the amount of stock issued by such business entity  
258 ~~corporation~~, who omits to make a true record or entry thereof,  
259 with intent to defraud, commits ~~shall be guilty of~~ a felony of  
260 the third degree, punishable as provided in s. 775.082, s.  
261 775.083, or s. 775.084.

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262 Section 7. Section 817.17, Florida Statutes, is amended to  
263 read:

264 817.17 Wrongful use of city, county, or other political  
265 subdivision name.-

266 (1) A ~~No~~ person or persons engaged in manufacturing in this  
267 state, may not ~~shall~~ cause to be printed, stamped, marked,  
268 engraved or branded, upon any of the articles manufactured by  
269 them, or on any of the boxes, packages, or bands containing such  
270 manufactured articles, the name of any city, county, or other  
271 political subdivision of ~~in~~ the state, other than that in which  
272 said articles are manufactured; provided, that ~~nothing in~~ this  
273 section does not ~~shall~~ prohibit any person from offering for  
274 sale any goods having marked thereon the name of any city,  
275 county, or other political subdivision of the state ~~in Florida~~  
276 other than that in which said goods were manufactured, if there  
277 be no manufactory of similar goods in the city, county, or other  
278 political subdivision the name of which is used.

279 (2) A person violating this section commits a misdemeanor  
280 of the second degree, punishable as provided in s. 775.083.

281 Section 8. Section 817.18, Florida Statutes, is amended to  
282 read:

283 817.18 Wrongful marking with a city, county, or other  
284 political subdivision name ~~stamping, marking, etc.; penalty.-~~

285 (1) A ~~No~~ person may not ~~shall~~ knowingly sell or offer for  
286 sale, within the state, any manufactured articles which shall  
287 have printed, stamped, marked, engraved, or branded upon them,  
288 or upon the boxes, packages, or bands containing said  
289 manufactured articles, the name of any city, county, or other  
290 political subdivision of ~~in~~ the state, other than that in which

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291 such articles were manufactured; provided, that ~~nothing in this~~  
292 section does not ~~shall~~ prohibit any person from offering for  
293 sale any goods, having marked thereon the name of any city,  
294 county, or other political subdivision of the state ~~in Florida,~~  
295 other than that in which said goods are manufactured, if there  
296 be no manufactory of similar goods in the city, county, or other  
297 political subdivision the name of which is used.

298 (2) ~~A~~ Any person violating ~~the provisions of this or the~~  
299 ~~preceding~~ section commits ~~shall be guilty of~~ a misdemeanor of  
300 the second degree, punishable as provided in s. 775.083.

301 Section 9. Section 817.19, Florida Statutes, is amended to  
302 read:

303 817.19 Fraudulent issue of stock certificate or indicia of  
304 membership interest ~~of stock of corporation.~~—Any officer, agent,  
305 clerk or servant of a corporation, or any other person, who  
306 fraudulently issues or transfers a certificate of stock of a  
307 corporation or indicia of a membership interest in a limited  
308 liability company to any person not entitled thereto, or  
309 fraudulently signs such certificate or other indicia of  
310 membership interest, in blank or otherwise, with the intent that  
311 it shall be so issued or transferred by himself or herself or  
312 any other person, commits ~~shall be guilty of~~ a felony of the  
313 third degree, punishable as provided in s. 775.082, s. 775.083,  
314 or s. 775.084.

315 Section 10. Subsections (1) and (3) of section 817.39,  
316 Florida Statutes, are amended to read:

317 817.39 Simulated forms of court or legal process, or  
318 official seal or stationery; publication, sale or circulation  
319 unlawful; penalty.—

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320 (1) Any person, ~~firm,~~ or business entity ~~corporation~~ who  
321 prints ~~shall print,~~ for the purpose of sale or distribution and  
322 for use in the state, or who circulates, publishes, or offers  
323 ~~shall circulate, publish, or offer~~ for sale any letter, paper,  
324 document, notice of intent to bring suit, or other notice or  
325 demand, which simulates a form of court or legal process, or any  
326 person who without authority of the state prints ~~shall print,~~  
327 for the purpose of sale or distribution for use in the state, or  
328 who without authority of the state circulates, publishes, or  
329 offers ~~shall circulate, publish, use, or offer~~ for sale any  
330 letters, papers, or documents which simulate the seal of the  
331 state, or the stationery of a state agency or fictitious state  
332 agency commits ~~is guilty of~~ a misdemeanor of the second degree,  
333 punishable as provided in s. 775.082 or s. 775.083.

334 (3) ~~Nothing in~~ This section does not ~~shall~~ prevent the  
335 printing, publication, sale, or distribution of genuine legal  
336 forms for the use of attorneys or clerks of courts.

337 Section 11. Subsection (5) of section 817.40, Florida  
338 Statutes, is amended to read:

339 817.40 False, misleading and deceptive advertising and  
340 sales; definitions.—When construing ss. 817.40, 817.41, 817.43-  
341 817.47, and each and every word, phrase or part thereof, where  
342 the context will permit:

343 (5) The phrase "misleading advertising" includes any  
344 statements made, or disseminated, in oral, written, electronic,  
345 or printed form or otherwise, to or before the public, or any  
346 portion thereof, which are known, or through the exercise of  
347 reasonable care or investigation could or might have been  
348 ascertained, to be untrue or misleading, and which are or were

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349 so made or disseminated with the intent or purpose, either  
350 directly or indirectly, of selling or disposing of real or  
351 personal property, services of any nature whatever, professional  
352 or otherwise, or to induce the public to enter into any  
353 obligation relating to such property or services.

354 Section 12. Section 817.411, Florida Statutes, is amended  
355 to read:

356 817.411 False information; advertising.—A ~~No~~ person, ~~firm~~  
357 or business entity may not ~~corporation shall~~ knowingly publish,  
358 disseminate, circulate, or place before the public, or cause  
359 directly or indirectly, to be made, published, disseminated,  
360 circulated, or placed before the public, in a newspaper,  
361 magazine or other publication, or in the form of a notice,  
362 circular, pamphlet, letter or poster, or over any radio or  
363 television station, electronically, or in any other way, any  
364 advertisement, announcement, or statement containing any  
365 assertion, representation, or statement that commodities,  
366 mortgages, promissory notes, securities, or other things of  
367 value offered for sale are covered by insurance guaranties where  
368 such insurance is nonexistent or does not in fact insure against  
369 the risks covered.

370 Section 13. Section 817.412, Florida Statutes, is amended  
371 to read:

372 817.412 Sale of used goods as new; penalty.—

373 (1) It is unlawful for a seller in a transaction where the  
374 purchase price of goods exceeds \$100 to misrepresent orally, in  
375 writing, electronically, or by failure to speak that the goods  
376 are new or original when they are used or repossessed or where  
377 they have been used for sales demonstration.

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378 (2) A person who violates ~~the provisions of~~ this section  
379 commits a misdemeanor of the first degree, punishable as  
380 provided in s. 775.082 or s. 775.083.

381 Section 14. Subsection (1) of section 817.481, Florida  
382 Statutes, is amended to read:

383 817.481 Credit or purchases ~~cards~~; obtaining illicitly  
384 ~~goods by use of false, expired, etc.~~; penalty.-

385 (1) It shall be unlawful for any person knowingly to obtain  
386 or attempt to obtain credit, or to purchase or attempt to  
387 purchase any goods, property, or service, by the use of any  
388 false, fictitious, counterfeit, or expired credit card,  
389 telephone number, credit number, or other credit device, or by  
390 the use of any credit card, telephone number, credit number, or  
391 other credit device of another person without the authority of  
392 the person to whom such card, number or device was issued, or by  
393 the use of any credit card, telephone number, credit number, or  
394 other credit device in any case where such card, number or  
395 device has been revoked and notice of revocation has been given  
396 to the person to whom issued.

397 Section 15. Section 817.50, Florida Statutes, is amended to  
398 read:

399 817.50 Fraudulently obtaining goods or ~~services, etc.~~  
400 from a health care provider.-

401 (1) Whoever shall, willfully and with intent to defraud,  
402 obtain or attempt to obtain goods, products, merchandise, or  
403 services from any health care provider in this state, as defined  
404 in s. 641.19(14), commits a felony ~~misdemeanor~~ of the third  
405 ~~second~~ degree, punishable as provided in s. 775.082, ~~or~~ s.  
406 775.083, or s. 775.084.

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407 (2) If any person gives to any health care provider in this  
408 state a false or fictitious name or a false or fictitious  
409 address or assigns to any health care provider the proceeds of  
410 any health maintenance contract or insurance contract, then  
411 knowing that such contract is no longer in force, is invalid, or  
412 is void for any reason, such action shall be prima facie  
413 evidence of the intent of such person to defraud the health care  
414 provider. However, this subsection does not apply to  
415 investigative actions taken by law enforcement officers for law  
416 enforcement purposes in the course of their official duties.

417 Section 16. Paragraph (f) of subsection (1) and subsections  
418 (2), (4), (8), and (9) of section 817.568, Florida Statutes, are  
419 amended to read:

420 817.568 Criminal use of personal identification  
421 information.—

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

423 (f) "Personal identification information" means any name or  
424 number that may be used, alone or in conjunction with any other  
425 information, to identify a specific person ~~individual~~, including  
426 any:

427 1. Name, postal or electronic mail address, telephone  
428 number, social security number, date of birth, mother's maiden  
429 name, official state-issued or United States-issued driver  
430 license or identification number, alien registration number,  
431 government passport number, employer or taxpayer identification  
432 number, Medicaid or food assistance account number, bank account  
433 number, credit or debit card number, or personal identification  
434 number or code assigned to the holder of a debit card by the  
435 issuer to permit authorized electronic use of such card;

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436 2. Unique biometric data, such as fingerprint, voice print,  
437 retina or iris image, or other unique physical representation;

438 3. Unique electronic identification number, address, or  
439 routing code;

440 4. Medical records;

441 5. Telecommunication identifying information or access  
442 device; or

443 6. Other number or information that can be used to access a  
444 person's financial resources.

445 (2) (a) Any person who willfully and without authorization  
446 fraudulently uses, or possesses with intent to fraudulently use,  
447 personal identification information concerning another person an  
448 ~~individual~~ without first obtaining that person's individual's  
449 consent, commits the offense of fraudulent use of personal  
450 identification information, which is a felony of the third  
451 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
452 775.084.

453 (b) Any person who willfully and without authorization  
454 fraudulently uses personal identification information concerning  
455 a person ~~an individual~~ without first obtaining that person's  
456 ~~individual's~~ consent commits a felony of the second degree,  
457 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
458 if the pecuniary benefit, the value of the services received,  
459 the payment sought to be avoided, or the amount of the injury or  
460 fraud perpetrated is \$5,000 or more or if the person  
461 fraudulently uses the personal identification information of 10  
462 or more persons individuals, but fewer than 20 persons  
463 ~~individuals~~, without their consent. Notwithstanding any other  
464 provision of law, the court shall sentence any person convicted

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465 of committing the offense described in this paragraph to a  
466 mandatory minimum sentence of 3 years' imprisonment.

467 (c) Any person who willfully and without authorization  
468 fraudulently uses personal identification information concerning  
469 a person ~~an individual~~ without first obtaining that person's  
470 ~~individual's~~ consent commits a felony of the first degree,  
471 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
472 if the pecuniary benefit, the value of the services received,  
473 the payment sought to be avoided, or the amount of the injury or  
474 fraud perpetrated is \$50,000 or more or if the person  
475 fraudulently uses the personal identification information of 20  
476 or more persons ~~individuals~~, but fewer than 30 persons  
477 ~~individuals~~, without their consent. Notwithstanding any other  
478 provision of law, the court shall sentence any person convicted  
479 of committing the offense described in this paragraph to a  
480 mandatory minimum sentence of 5 years' imprisonment. If the  
481 pecuniary benefit, the value of the services received, the  
482 payment sought to be avoided, or the amount of the injury or  
483 fraud perpetrated is \$100,000 or more, or if the person  
484 fraudulently uses the personal identification information of 30  
485 or more persons ~~individuals~~ without their consent,  
486 notwithstanding any other provision of law, the court shall  
487 sentence any person convicted of committing the offense  
488 described in this paragraph to a mandatory minimum sentence of  
489 10 years' imprisonment.

490 (4) Any person who willfully and without authorization  
491 possesses, uses, or attempts to use personal identification  
492 information concerning a person ~~an individual~~ without first  
493 obtaining that person's ~~individual's~~ consent, and who does so

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494 for the purpose of harassing that person ~~individual~~, commits the  
495 offense of harassment by use of personal identification  
496 information, which is a misdemeanor of the first degree,  
497 punishable as provided in s. 775.082 or s. 775.083.

498 (8) (a) Any person who willfully and fraudulently uses, or  
499 possesses with intent to fraudulently use, personal  
500 identification information concerning a deceased individual or  
501 dissolved business entity commits the offense of fraudulent use  
502 or possession with intent to use personal identification  
503 information of a deceased individual or dissolved business  
504 entity, a felony of the third degree, punishable as provided in  
505 s. 775.082, s. 775.083, or s. 775.084.

506 (b) Any person who willfully and fraudulently uses personal  
507 identification information concerning a deceased individual or  
508 dissolved business entity commits a felony of the second degree,  
509 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
510 if the pecuniary benefit, the value of the services received,  
511 the payment sought to be avoided, or the amount of injury or  
512 fraud perpetrated is \$5,000 or more, or if the person  
513 fraudulently uses the personal identification information of 10  
514 or more but fewer than 20 deceased individuals or dissolved  
515 business entities. Notwithstanding any other provision of law,  
516 the court shall sentence any person convicted of committing the  
517 offense described in this paragraph to a mandatory minimum  
518 sentence of 3 years' imprisonment.

519 (c) Any person who willfully and fraudulently uses personal  
520 identification information concerning a deceased individual or  
521 dissolved business entity commits the offense of aggravated  
522 fraudulent use of the personal identification information of

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523 multiple deceased individuals or dissolved business entities, a  
524 felony of the first degree, punishable as provided in s.  
525 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,  
526 the value of the services received, the payment sought to be  
527 avoided, or the amount of injury or fraud perpetrated is \$50,000  
528 or more, or if the person fraudulently uses the personal  
529 identification information of 20 or more but fewer than 30  
530 deceased individuals or dissolved business entities.  
531 Notwithstanding any other provision of law, the court shall  
532 sentence any person convicted of the offense described in this  
533 paragraph to a minimum mandatory sentence of 5 years'  
534 imprisonment. If the pecuniary benefit, the value of the  
535 services received, the payment sought to be avoided, or the  
536 amount of the injury or fraud perpetrated is \$100,000 or more,  
537 or if the person fraudulently uses the personal identification  
538 information of 30 or more deceased individuals or dissolved  
539 business entities, notwithstanding any other provision of law,  
540 the court shall sentence any person convicted of an offense  
541 described in this paragraph to a mandatory minimum sentence of  
542 10 years' imprisonment.

543 (9) Any person who willfully and fraudulently creates or  
544 uses, or possesses with intent to fraudulently use, counterfeit  
545 or fictitious personal identification information concerning a  
546 fictitious person individual, or concerning a real person  
547 individual without first obtaining that real person's  
548 individual's consent, with intent to use such counterfeit or  
549 fictitious personal identification information for the purpose  
550 of committing or facilitating the commission of a fraud on  
551 another person, commits the offense of fraudulent creation or

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552 use, or possession with intent to fraudulently use, counterfeit  
 553 or fictitious personal identification information, a felony of  
 554 the third degree, punishable as provided in s. 775.082, s.  
 555 775.083, or s. 775.084.

556 Section 17. Section 817.569, Florida Statutes, is amended  
 557 to read:

558 817.569 Criminal use of a public record or public records  
 559 information; providing false information; penalties.—A person  
 560 who knowingly uses any public record, as defined in s. 119.011,  
 561 ~~or~~ who knowingly uses information obtainable only through such  
 562 public record, or who knowingly provides false information that  
 563 becomes part of a public record to facilitate or further the  
 564 commission of:

565 (1) A misdemeanor of the first degree, commits a  
 566 misdemeanor of the first degree, punishable as provided in s.  
 567 775.082 or s. 775.083.

568 (2) A felony, commits a felony of the third degree,  
 569 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

570 Section 18. Paragraphs (a) and (e) of subsection (3) of  
 571 section 921.0022, Florida Statutes, are amended to read:

572 921.0022 Criminal Punishment Code; offense severity ranking  
 573 chart.—

574 (3) OFFENSE SEVERITY RANKING CHART

575 (a) LEVEL 1

576

577

Florida	Felony	Description
Statute	Degree	

578

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579	24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
580	212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
581	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
582	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
583	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
584	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
585	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
585	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated

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identification.

586

322.212(4)

3rd

Supply or aid in supplying unauthorized driver license or identification card.

587

322.212(5)(a)

3rd

False application for driver license or identification card.

588

414.39(2)

3rd

Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than \$200.

589

414.39(3)(a)

3rd

Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.

590

443.071(1)

3rd

False statement or representation to obtain or increase reemployment assistance benefits.

591

509.151(1)

3rd

Defraud an innkeeper, food or lodging value greater than \$300.

592

517.302(1)

3rd

Violation of the Florida

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Securities and Investor  
Protection Act.

593

562.27(1) 3rd Possess still or still  
apparatus.

594

713.69 3rd Tenant removes property upon  
which lien has accrued, value  
more than \$50.

595

812.014(3)(c) 3rd Petit theft (3rd conviction);  
theft of any property not  
specified in subsection (2).

596

812.081(2) 3rd Unlawfully makes or causes to  
be made a reproduction of a  
trade secret.

597

815.04(5)(a) 3rd Offense against intellectual  
property (i.e., computer  
programs, data).

598

817.52(2) 3rd Hiring with intent to defraud,  
motor vehicle services.

599

817.569(2) 3rd Use of public record or public  
records information or  
providing false information to  
facilitate commission of a

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felony.

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826.01	3rd	Bigamy.
828.122 (3)	3rd	Fighting or baiting animals.
831.04 (1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31 (1) (a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041 (1)	3rd	Stopping payment with intent to defraud \$150 or more.
832.05 (2) (b) & (4) (c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
838.15 (2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.

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609	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
610	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
611	849.01	3rd	Keeping gambling house.
612	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
613	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
614	849.25(2)	3rd	Engaging in bookmaking.
615	860.08	3rd	Interfere with a railroad signal.
616	860.13(1)(a)	3rd	Operate aircraft while under the influence.
617	893.13(2)(a)2.	3rd	Purchase of cannabis.

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618 893.13(6)(a) 3rd Possession of cannabis (more  
than 20 grams).

619 934.03(1)(a) 3rd Intercepts, or procures any  
other person to intercept, any  
wire or oral communication.

619 (e) LEVEL 5  
620  
621

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny

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

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lobster trap, line, or buoy.

627

379.3671  
(2) (c) 3.

3rd

Willful molestation,  
possession, or removal of a  
commercial harvester's trap  
contents or trap gear by  
another harvester.

628

381.0041 (11) (b)

3rd

Donate blood, plasma, or organs  
knowing HIV positive.

629

440.10 (1) (g)

2nd

Failure to obtain workers'  
compensation coverage.

630

440.105 (5)

2nd

Unlawful solicitation for the  
purpose of making workers'  
compensation claims.

631

440.381 (2)

2nd

Submission of false,  
misleading, or incomplete  
information with the purpose of  
avoiding or reducing workers'  
compensation premiums.

632

624.401 (4) (b) 2.

2nd

Transacting insurance without a  
certificate or authority;  
premium collected \$20,000 or  
more but less than \$100,000.

633

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634	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
635	790.01 (2)	3rd	Carrying a concealed firearm.
636	790.162	2nd	Threat to throw or discharge destructive device.
637	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
638	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
639	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
640	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
641	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.

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806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
812.131 (2) (b)	3rd	Robbery by sudden snatching.
812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.

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817.2341(1),  
(2)(a) & (3)(a)

3rd

Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

651

817.568(2)(b)

2nd

Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons ~~individuals~~.

652

817.625(2)(b)

2nd

Second or subsequent fraudulent use of scanning device or reencoder.

653

825.1025(4)

3rd

Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

654

827.071(4)

2nd

Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a

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child.

655

827.071 (5)

3rd

Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.

656

839.13 (2) (b)

2nd

Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

657

843.01

3rd

Resist officer with violence to person; resist arrest with violence.

658

847.0135 (5) (b)

2nd

Lewd or lascivious exhibition using computer; offender 18 years or older.

659

847.0137  
(2) & (3)

3rd

Transmission of pornography by electronic device or equipment.

660

847.0138  
(2) & (3)

3rd

Transmission of material harmful to minors to a minor by electronic device or equipment.

661

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662	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
663	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
664	893.13 (1) (a) 1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs).
665	893.13 (1) (c) 2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
665	893.13 (1) (d) 1.	1st	Sell, manufacture, or deliver

23-00583-15

2015390\_\_

cocaine (or other s.  
 893.03(1) (a), (1) (b), (1) (d),  
 (2) (a), (2) (b), or (2) (c)4.  
 drugs) within 1,000 feet of  
 university.

666

893.13(1) (e)2.            2nd    Sell, manufacture, or deliver  
 cannabis or other drug  
 prohibited under s.  
 893.03(1) (c), (2) (c)1.,  
 (2) (c)2., (2) (c)3., (2) (c)5.,  
 (2) (c)6., (2) (c)7., (2) (c)8.,  
 (2) (c)9., (3), or (4) within  
 1,000 feet of property used for  
 religious services or a  
 specified business site.

667

893.13(1) (f)1.            1st    Sell, manufacture, or deliver  
 cocaine (or other s.  
 893.03(1) (a), (1) (b), (1) (d),  
 or (2) (a), (2) (b), or (2) (c)4.  
 drugs) within 1,000 feet of  
 public housing facility.

668

893.13(4) (b)            2nd    Deliver to minor cannabis (or  
 other s. 893.03(1) (c),  
 (2) (c)1., (2) (c)2., (2) (c)3.,  
 (2) (c)5., (2) (c)6., (2) (c)7.,  
 (2) (c)8., (2) (c)9., (3), or (4)

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drugs).

669

893.1351(1)

3rd

Ownership, lease, or rental for  
trafficking in or manufacturing  
of controlled substance.

670

Section 19. This act shall take effect October 1, 2015.





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Banking and Insurance, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Commerce and Tourism  
Regulated Industries  
Rules

### SENATOR GARRETT RICHTER

*President Pro Tempore*  
23rd District

February 2, 2015

The Honorable Miguel Diaz de la Portilla, Chair  
Senate Committee on Judiciary  
510 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Diaz de la Portilla:

Senate Bill 390, relating to Fraud/Business Identity Theft, has been referred to the Committee on Judiciary. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Tom Cibula, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# APPEARANCE RECORD

2-17-15

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

390

Meeting Date

Bill Number (if applicable)

323406

Amendment Barcode (if applicable)

Fraud

Topic

Name

Justin Thames

Job Title

Governmental Affairs Manager

Address

325 W. College Ave

Street

Phone

850-528-2209

Email

thamesj@fipa.org

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

Florida Institute of CPA's

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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

APPEARANCE RECORD

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

2/17/15

Meeting Date

SB 390

Bill Number (if applicable)

Topic Fraud

Amendment Barcode (if applicable)

Name Phil Archer

Job Title State Attorney - 10th Cir

Address 2725 Judge Fran Jamison Way

Phone 321-637-5575

Street

Viera

Fl.

State

32940

Zip

Email parcler@sa18.org

Speaking:  For  Against  Information

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

Representing Fla. Prosecuting Attorneys Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Judiciary

---

BILL: CS/SB 342

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: No Contact Orders

DATE: February 18, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			CJ	
3.			RC	

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 342 defines what is meant by an order of no contact in a court order granting the pretrial release of a criminal defendant.

Under current law, when a person is detained and charged with a crime, he or she is brought before the court for a bail determination. If the court sets bail, the court may impose conditions of pretrial release. One mandatory condition of pretrial release is that the defendant have no contact with the victim.

The bill provides that an order of no contact is effective immediately and enforceable for the duration of pretrial release or until the court modifies the order of no contact.

Under the bill, a defendant who is ordered to have “no contact” may not:

- Communicate orally or in writing with the victim in any manner, in person, telephonically, or electronically directly or through a third person, other than through an attorney and for lawful purposes;
- Have physical or violent contact with the victim or other person identified in the order or his or her property;
- Be within 500 feet of the victim’s or other identified person’s residence, even if the defendant and victim or other named person share the residence; and
- Be within 500 feet of the victim’s or other identified person’s vehicle, place of work, or a specified place frequented regularly by either of them.

## II. Present Situation:

### Bail Determination

The Florida Constitution creates a presumption in favor of release for a defendant charged with a crime and who is detained pending resolution of the charge. Section 14, Article I of the Florida Constitution provides, in part:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime ... shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm ..., assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

The pretrial release provision in Florida Rule of Criminal Procedure 3.131 contains language identical to that of the state constitution.

In setting reasonable conditions for pretrial release as required by the Florida Constitution, a court must set conditions:

- Ensuring the appearance of the criminal defendant in court; and
- Protecting the community from unreasonable danger.<sup>1</sup>

In determining whether to grant a pretrial release or set conditions of pretrial release, a court must consider:

- The nature and circumstances of the offense charged;
- The weight of evidence against the defendant;
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition;
- The defendant's past and present conduct, including convictions, previous flight to avoid prosecution, or failure to appear in court;
- The nature and probability of danger from release;
- The source of funds used to post bail;
- Whether the defendant is already on release for another criminal charge or on probation, parole, or other release pending completion of a sentence;
- The street value of any drug or controlled substance connected to the criminal charge;
- The nature and probability of intimidation and danger to victims;
- Whether probable cause exists that the defendant committed a new crime while on pretrial release;
- Any other facts that the court considers relevant;
- Whether the crime charged is gang-related or alleged to be subject to enhanced punishment due to gang involvement under chapter 874, F.S.;
- Whether the defendant is required to register as a sexual offender or predator; and

---

<sup>1</sup> Section 903.046(1), F.S.

- Whether a burglary is reclassified based on a person intending to cross county lines in the commission of a burglary to reduce the ability of a law enforcement officer to track stolen goods.<sup>2</sup>

When granting pretrial release the court must impose, at minimum, the statutory conditions of pretrial release. These conditions are that the defendant:

- Refrain from criminal activity of any kind;
- Refrain from any contact of any type with the victim, except through pretrial discovery; and
- Comply with all conditions of pretrial release.<sup>3</sup>

### **Injunction for Domestic Violence**

Domestic violence is any assault or aggravated assault, battery or aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one person which is caused by a family or household member.<sup>4</sup> A victim of domestic violence or a person who has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence may file a petition for an injunction for protection against domestic violence.<sup>5</sup>

Section 741.31, F.S., provides that a person who violates an injunction for protection against domestic violence commits a first degree misdemeanor. A court will consider a person to have violated a protective injunction if he or she commits any of the following acts:

- Refusing to vacate the dwelling that the parties share;
- Going to, or being within 500 feet of the victim's residence, school, employment, or a place frequented regularly by the victim and any named family or household member;
- Committing an act of domestic violence against the victim;
- Intentionally making an unlawful threat, word, or act to do violence to the victim;
- Phoning, contacting, or otherwise communicating with the victim directly or indirectly unless the order permits indirect contact;
- Knowingly and intentionally coming within 100 feet of the victim's vehicle, whether or not the vehicle is occupied;
- Defacing or destroying the victim's personal property, including a motor vehicle; or Refusing to surrender firearms or ammunition if ordered to do so by the court.<sup>6</sup>

Filing a motion for a domestic violence injunction is at the discretion of the victim. A victim of domestic violence might not pursue an injunction based on fear or other reasons. In these situations, a defendant on pretrial release is subject only to the more general "no contact" prohibition which applies to all pretrial release cases involving a victim. Whether a court or a law enforcement officer would interpret the general "no contact" prohibition to include nonphysical contact, such as harassing phone calls or other forms of intimidation is unknown.

---

<sup>2</sup> Section 903.046(2), F.S.

<sup>3</sup> Section 903.047(1), F.S.

<sup>4</sup> Section 741.28(2), F.S.

<sup>5</sup> Section 741.30(1), F.S.

<sup>6</sup> Section 741.31(4)(a), F.S.

### **III. Effect of Proposed Changes:**

When a person is detained and charged with a crime, he or she is brought before the court for a bail determination. If the court sets bail, the court may impose conditions of pretrial release. One of the conditions required by statute is that the defendant have no contact with the victim.

Although current law requires a defendant to “refrain from contact of any type with the victim,” this concept is not defined in law. The bill defines what is meant by the condition of no contact, and includes various forms of nonphysical contact in the definition. Also, the bill prohibits a defendant from contacting others named in the court order, not just the victim.

Under the bill, acts prohibited by a no contact order specifically include:

- Communicating orally or in writing with the victim in any manner, in person, telephonically, electronically or through a third person, other than through an attorney and for lawful purposes;
- Having physical or violent contact with the victim or other person named in the order or his or her property;
- Being within 500 feet of the victim’s or other named person’s residence, even if the defendant and victim or other named person share the residence; and
- Being within 500 feet of the victim’s or other named person’s vehicle, place of work, or a specified place frequented regularly by the person.

The bill does not limit the authority of the court to impose additional conditions of pretrial release or the court’s authority to modify the conditions of a no contact order when appropriate.

The way that the bill defines “no contact” is similar to the provisions that constitute a violation of an injunction for domestic violence. In instances in which a victim of domestic violence does not pursue an injunction, the defendant will still be subject to similar prohibited acts of “no contact.”

The bill provides that an order of no contact is effective immediately and enforceable for the duration of pretrial release or until the court modifies the order of no contact. By providing for immediate effect of a no contact order, a detainee, for example, would be prevented from making harassing phone calls to the victim while in jail awaiting a pretrial release.

The bill takes effect October 1, 2015.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

This bill does not affect cities or counties. Additionally, the bill relates to criminal law, specifically pretrial detention, which is exempt from the limitations on the power of the Legislature to enact mandates.

**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 Office of the State Courts Administrator (OSCA) anticipates that the bill may cause a temporary increase in the number of contempt proceedings or prosecutions for violations of conditions of release. However, OSCA cannot accurately determine the fiscal impact of the legislation due to the unavailability of data needed to determine its impact on judicial workloads. Nevertheless, OSCA anticipates that the impact of the bill will be manageable within its existing resources.<sup>7</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

To ensure that detainees and pretrial releasees have actual notice of the conduct prohibited by the bill, the Legislature may wish to require that the no contact orders identify the specific actions which constitute prohibited contact.

**VIII. Statutes Affected:**

This bill substantially amends section 903.047, Florida Statutes.

This bill reenacts sections 741.29, 784.046, and 901.15 of the Florida Statutes.

---

<sup>7</sup> Office of the State Courts Administrator, *2015 Judicial Impact Statement, SB 342* (Feb. 2, 2015); on file with the Senate Judiciary Committee.

**IX. Additional Information:**

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

**CS by Judiciary on February 17, 2015:**

Creates an exception to the list of prohibited acts in a “no contact” order to allow contact by an attorney for the defendant with a victim or other person named in the order for lawful purposes.

- B. **Amendments:**

None.

---

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

---



820216

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2015	.	
	.	
	.	
	.	

---

The Committee on Judiciary (Simmons) recommended the following:

**Senate Amendment**

Delete line 32  
and insert:  
victim or any other person named in the order. However,  
this subparagraph does not prohibit an attorney for the  
defendant, consistent with rules regulating The Florida Bar,  
from communicating with any person protected by the no contact  
order for lawful purposes.

By Senator Simmons

10-00381-15

2015342\_\_

1                   A bill to be entitled  
2       An act relating to no contact orders; amending s.  
3       903.047, F.S.; providing for the effect and  
4       enforceability of orders of no contact as a part of  
5       pretrial release; specifying acts prohibited by a no  
6       contact order; reenacting ss. 741.29(6), 784.046(13)  
7       and (15), and 901.15(13), F.S., relating to domestic  
8       violence, repeat, sexual, or dating violence, and  
9       arrest without a warrant, respectively, to incorporate  
10      the amendments made to s. 903.047, F.S., in references  
11      thereto; providing an effective date.

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

14  
15       Section 1. Section 903.047, Florida Statutes, is amended to  
16      read:

17       903.047 Conditions of pretrial release.—

18       (1) As a condition of pretrial release, whether such  
19      release is by surety bail bond or recognizance bond or in some  
20      other form, the defendant must ~~shall~~:

21       (a) Refrain from criminal activity of any kind.

22       (b) Refrain from any contact of any type with the victim,  
23      except through pretrial discovery pursuant to the Florida Rules  
24      of Criminal Procedure. An order of no contact is effective  
25      immediately and enforceable for the duration of the pretrial  
26      release or until it is modified by the court. As used in this  
27      section, unless otherwise specified by the court, the term "no  
28      contact" includes the following prohibited acts:

29       1. Communicating orally or in any written form, either in

10-00381-15

2015342\_\_

30 person, telephonically, electronically, or in any other manner,  
31 either directly or indirectly through a third person, with the  
32 victim or any other person named in the order.

33 2. Having physical or violent contact with the victim or  
34 other named person or his or her property.

35 3. Being within 500 feet of the victim's or other named  
36 person's residence, even if the defendant and the victim or  
37 other named person share the residence.

38 4. Being within 500 feet of the victim's or other named  
39 person's vehicle, place of employment, or a specified place  
40 frequented regularly by such person.

41 (c) Comply with all conditions of pretrial release.

42 (2) Upon motion by the defendant when bail is set, or upon  
43 later motion properly noticed pursuant to law, the court may  
44 modify the condition required by paragraph (1)(b) if good cause  
45 is shown and the interests of justice so require. The victim  
46 shall be permitted to be heard at any proceeding in which such  
47 modification is considered, and the state attorney shall notify  
48 the victim of the provisions of this subsection and of the  
49 pendency of any such proceeding.

50 Section 2. For the purpose of incorporating the amendment  
51 made by this act to section 903.047, Florida Statutes, in a  
52 reference thereto, subsection (6) of section 741.29, Florida  
53 Statutes, is reenacted to read:

54 741.29 Domestic violence; investigation of incidents;  
55 notice to victims of legal rights and remedies; reporting.-

56 (6) A person who willfully violates a condition of pretrial  
57 release provided in s. 903.047, when the original arrest was for  
58 an act of domestic violence as defined in s. 741.28, commits a

10-00381-15

2015342\_\_

59 misdemeanor of the first degree, punishable as provided in s.  
60 775.082 or s. 775.083, and shall be held in custody until his or  
61 her first appearance.

62 Section 3. For the purpose of incorporating the amendment  
63 made by this act to section 903.047, Florida Statutes, in a  
64 reference thereto, subsections (13) and (15) of section 784.046,  
65 Florida Statutes, are reenacted to read:

66 784.046 Action by victim of repeat violence, sexual  
67 violence, or dating violence for protective injunction; dating  
68 violence investigations, notice to victims, and reporting;  
69 pretrial release violations; public records exemption.—

70 (13) Whenever a law enforcement officer determines upon  
71 probable cause that an act of dating violence has been committed  
72 within the jurisdiction, or that a person has violated a  
73 condition of pretrial release as provided in s. 903.047 and the  
74 original arrest was for an act of dating violence, the officer  
75 may arrest the person or persons suspected of its commission and  
76 charge such person or persons with the appropriate crime. The  
77 decision to arrest and charge shall not require consent of the  
78 victim or consideration of the relationship of the parties.

79 (15) A person who willfully violates a condition of  
80 pretrial release provided in s. 903.047, when the original  
81 arrest was for an act of dating violence as defined in this  
82 section, commits a misdemeanor of the first degree, punishable  
83 as provided in s. 775.082 or s. 775.083, and shall be held in  
84 custody until his or her first appearance.

85 Section 4. For the purpose of incorporating the amendment  
86 made by this act to section 903.047, Florida Statutes, in a  
87 reference thereto, subsection (13) of section 901.15, Florida

10-00381-15

2015342\_\_

88 Statutes, is reenacted to read:

89 901.15 When arrest by officer without warrant is lawful.—A  
90 law enforcement officer may arrest a person without a warrant  
91 when:

92 (13) There is probable cause to believe that the person has  
93 committed an act that violates a condition of pretrial release  
94 provided in s. 903.047 when the original arrest was for an act  
95 of domestic violence as defined in s. 741.28, or when the  
96 original arrest was for an act of dating violence as defined in  
97 s. 784.046.

98 Section 5. This act shall take effect October 1, 2015.





The Florida Senate

## Committee Agenda Request

**To:** Senator Miguel Diaz de la Portilla, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** February 3, 2015

---

I respectfully request that **Senate Bill # 342**, relating to No Contact Orders, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

---

Senator David Simmons  
Florida Senate, District 10

# APPEARANCE RECORD

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

2/17/15

Meeting Date

342

Bill Number (if applicable)

Topic No Contact Order

Amendment Barcode (if applicable)

Name Leisa Wiseman

Job Title Director, Communications & Government Affairs

Address 425 OFFICE Plaza DR

Phone 850/425-2749

Street

Tallahassee FL 32301

City

State

Zip

Email wiseman-leisa@fadv.org

Speaking:  For  Against  Information

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

Representing Florida Coalition Against Domestic Violence

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# APPEARANCE RECORD

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

2/17/15

Meeting Date

342

Bill Number (if applicable)

Topic No Contact Orders

Amendment Barcode (if applicable)

Name Sheriff Prummell

Job Title Sheriff of Charlotte County

Address 2617 Mahan Dr.

Phone 850-877-2165

Street

Talahassee FL

32308

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/15

Meeting Date

SB 342

Bill Number (if applicable)

Topic No Contact Orders

Amendment Barcode (if applicable)

Name Phil Archer - 18th Cir.

Job Title State Attorney

Address 2725 Judge Fran Jamison Wy

Phone 321-637-5575

Street

Viera

Fl.

State

32940

Zip

Email parcler@sa18.org

Speaking:  For  Against  Information

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

Representing Fla Prosecuting Attornys Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# APPEARANCE RECORD

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

2-17-15

342

Meeting Date

Bill Number (if applicable)

Topic Contact orders

Amendment Barcode (if applicable)

Name Bob Dillinger

Job Title Public Defender - 6<sup>th</sup>

Address 14250 49<sup>th</sup> St N

Phone 727-464-6866

City Clwtr State FL Zip 33762

Email pd@wearethehope.org

Speaking:  For  Against  Information

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

Representing PD Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**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 408

INTRODUCER: Senator Simmons

SUBJECT: Designated Areas for Skateboarding, Inline Skating, Paintball, or Freestyle or Mountain and Off-roading Bicycling

DATE: February 16, 2015      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>FP</u>	_____

---

**I. Summary:**

SB 408 eliminates the requirement that a government entity obtain a consent form from the parent of a child who participates in a public skate park or area set aside for the activity of freestyle bicycling as a condition of limiting the entity's liability for damages or injuries. However, under the bill and current law, the government entity can be liable for gross negligence or for failing to guard against or warn of dangerous conditions that are not apparent.

**II. Present Situation:**

**Inherently Risky Activities on Public Property**

As skateboarding and inline skating gained in popularity in Florida, citizens called for an increase in public skate parks and other facilities. Local government officials, however, declined to create these parks and set-aside areas out of concern for liability exposure. The 1999 Legislature addressed these concerns by providing immunity from liability for governmental entities that set aside areas for skateboarding, inline skating, and freestyle bicycling.<sup>1</sup>

Today, s. 316.0085, F.S., addresses, and considers as inherently risky, the activities of skateboarding, inline skating, paintball, and bicycling, including freestyle, mountain, or off-road bicycling.<sup>2</sup> According to the statute, a governmental entity, which may include a federal, state, or local government entity, authorizes or permits a person to engage in these inherently risky activities only by posting a sign designating an area for an activity.<sup>3</sup> The government entity is

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<sup>1</sup> Chapter 99-133, L.O.F., expressly recognizes "that governmental owners or lessees of property have failed to make property available for [skateboarding, inline skating, and freestyle bicycling] because of the exposure to liability from lawsuits and the prohibitive cost of insurance, if insurance can be obtained for such activities."

<sup>2</sup> Section 316.0085(2)(b), F.S.

<sup>3</sup> Section 316.0085(2)(a) and (3), F.S.

generally immune from liability for damages or injuries to a person 17 years of age or older as a result of participating in an inherently risky activity. However, for a participant who is younger than 17 years of age, the government entity has the benefit of this limited liability only if it obtains the written consent of a parent of the child.<sup>4</sup>

Although existing law provides significant liability protections to government entities, a government entity can be held liable for damages or injuries if it:

- Fails to warn of a dangerous condition of which a participant cannot reasonably be expected to have notice; or
- Commits gross negligence that is the proximate cause of a participant's injury.<sup>5</sup>

Additionally, s. 316.0085, F.S., does not limit the liability of individuals who are negligent while participating in an inherently dangerous activity. A participant is negligent if he or she fails to:

- Act within the limits of his or her ability and the purpose and design of the equipment used;
- Remain in control of his or her equipment and himself or herself; or
- Refrain from acting in a way that may cause or contribute to death or injury of himself or herself or others.<sup>6</sup>

### **Skateboarding Injuries**

In a study on admissions of children to emergency rooms from 2002-2011, researchers found an increase in children presenting with traumatic brain injuries, such as concussions from sports activities. Activities with the highest admission rates per patient seen in the emergency room for traumatic brain injury are skiing, sledding, inline skating, and skateboarding.<sup>7</sup> Although researchers focused on a single children's hospital, the article also notes that nationally the number of children presenting with sport-related traumatic brain injuries increased 62 percent between 2001 and 2009.

### **Skate Parks**

Florida has both public and private skate parks. According to the Florida League of Cities, currently 65 city or county skate parks operate around the state.<sup>8</sup> Whether all governmental entities provide and require written consent forms is unknown. Although the Legislature left it to

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<sup>4</sup> Section 316.0085(3), F.S.

<sup>5</sup> Section 316.0085(5), F.S.

<sup>6</sup> Section 316.0085(7)(b), F.S.

<sup>7</sup> Stephen Reinberg, *Many More Kids Visiting ER for Sports Concussions, Study Finds* (Sept. 30, 2013).

<http://www.medicinenet.com/script/main/art.asp?articlekey=174050>. Researchers collected 3,900 records of children seen in the emergency department of the Cincinnati Children's Hospital Medical Center for a sports-related brain injury. Of these, 372 cases required hospital admission.

<sup>8</sup> Email correspondence with David Cruz, Florida League of Cities (Feb. 6, 2015).

governmental entities to draft the actual consent forms, questions arose regarding the format and procedure of the forms.<sup>9, 10</sup>

### **Sovereign Immunity**

Sovereign immunity originally referred to the English common law concept that the government may not be sued because “the King can do no wrong.” Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents unless the public entity expressly waives immunity.

Article X, s. 13, of the Florida Constitution recognizes sovereign immunity and authorizes the Legislature to provide a waiver of immunity. Section 768.28(1), F.S., provides a limited waiver of sovereign immunity. By law, liability is limited to \$200,000 per plaintiff or \$300,000 per incident.<sup>11</sup> Therefore, if the liability protections in s. 316.0085, F.S., do not apply, a plaintiff’s recovery will still be limited by the caps in the state’s waiver of its sovereign immunity. To exceed the caps, the claimant must request legislative approval through the claim bill process.<sup>12</sup> Whether to approve a claim bill is entirely at the discretion of the Legislature.

### **III. Effect of Proposed Changes:**

Current law in s. 316.0085, F.S., provides immunity from liability to governmental entities who set aside designated areas for skateboarding, inline skating, paintball, and freestyle or mountain or off-road bicycling. To qualify for the immunity, the governmental entities must collect written consent forms from parents of participants younger than the age of 17. The bill preserves immunity by eliminating the requirement for governmental entities to collect written consent forms for skateboarding, inline skating, and freestyle bicycling.

The bill does not change the requirement for immunity in existing law that governmental entities collect written consent forms for participation in areas designated for paintball and mountain or off-road bicycling.

The bill does not affect the liability of a government entity that authorizes paintball or mountain or off-road bicycling on its property. To limit its liability for damages or injuries to a participant younger than 17, the government must still obtain the written consent of the child’s parent.

The bill takes effect July 1, 2015.

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<sup>9</sup> Joseph G. Jarret, *Skating on Thin Concrete: The Florida Legislature’s Response to Skateboarders and Skaters*, 76 FLA. B.J.74, 76 (Nov. 2002). Questions posed at a roundtable discussion in Polk County attended by public sector attorneys and risk managers include: “In terms of waivers, who will secure the consent from the parent and what procedure will be implemented to prove that the adult is a legal guardian of the state?” and “Who will draft the consent form and will the form include the acknowledgement that the child has been cleared medically to participate in such activity?” *Id.*

<sup>10</sup> Nothing in s. 316.0085, F.S., prohibits a child from skateboarding at a skate park or engaging in inline skating without the consent of a parent. Similarly, nothing requires a government entity to collect a consent form from a child’s parent before the child may participate at a skate park. As such, the “written consent” described in s. 316.0085, F.S., appears more like a waiver or a document releasing the government entity from liability.

<sup>11</sup> Section 768.28(5), F.S.

<sup>12</sup> Section 768.28(5), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Article VII, s. 18, Fla. Const., provides that a mandate potentially exists if a law:

- Requires cities or counties to spend funds or take action requiring the expenditure of funds;
- Reduces the authority of cities or counties to raise revenues in the aggregate; or
- Reduces the percentage of a state tax shared with cities and counties in the aggregate.<sup>13</sup>

If proposed legislation meets any of these criteria, a mandates analysis is required.

As written consent forms are no longer required for the activities of skateboarding, inline skating, and freestyle bicycling on public property, the bill reduces costs for cities and counties. The bill does not impact the ability of a city or county to raise revenue. The bill also does not negatively impact the tax base of a city or county. Therefore, the bill does not appear to be a mandate.

**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 does not impact skate parks or facilities for inline skating on private property.

Whether removing the condition of written consent forms for immunity from liability will increase sports-related injuries and medical costs for participants is unknown.

**C. Government Sector Impact:**

Governmental entities that provide designated areas for skateboarding and inline skating will have no need to make available and collect written consent forms from parents of participants. Stationing a government employee at each site, providing a form, and storing the forms will no longer be necessary.

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<sup>13</sup> Article VII, s. 18 (a) through (c), Fla. Const.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 316.0085, 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 Simmons

10-00489-15

2015408\_\_

1                   A bill to be entitled  
2       An act relating to designated areas for skateboarding,  
3       inline skating, paintball, or freestyle or mountain  
4       and off-roading bicycling; amending s. 316.0085, F.S.;  
5       deleting the requirement that a governmental entity  
6       that provides a designated area for skateboarding,  
7       inline skating, or freestyle bicycling obtain the  
8       written consent of the parent or legal guardian of a  
9       child under a certain age before allowing the child to  
10      participate in these activities in such area;  
11      requiring the governmental entity to post a rule  
12      indicating that consent forms are required for  
13      children under a certain age before participation in  
14      paintball or mountain and off-road bicycling;  
15      providing an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19       Section 1. Subsection (3) and paragraph (c) of subsection  
20      (5) of section 316.0085, Florida Statutes, are amended to read:  
21       316.0085 Skateboarding; inline skating; freestyle or  
22      mountain and off-road bicycling; paintball; definitions;  
23      liability.—

24       (3) (a) This section does not grant authority or permission  
25      for a person to engage in skateboarding, inline skating,  
26      paintball, or freestyle or mountain and off-road bicycling on  
27      property owned or controlled by a governmental entity unless  
28      such governmental entity has specifically designated such area  
29      for skateboarding, inline skating, paintball, or freestyle or

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2015408\_\_

30 mountain and off-road bicycling. Each governmental entity shall  
31 post a rule in each specifically designated area that identifies  
32 all authorized activities.

33 (b) Each governmental entity shall post a rule in each  
34 specifically designated area for paintball or mountain and off-  
35 road bicycling which ~~and~~ indicates that a child under 17 years  
36 of age may not engage in such ~~any of these~~ activities until the  
37 governmental entity has obtained written consent, in a form  
38 acceptable to the governmental entity, from the child's parent  
39 or legal guardian ~~parents or legal guardians~~.

40 (5) This section does not limit liability that would  
41 otherwise exist for any of the following:

42 (c) The failure of a governmental entity that provides a  
43 designated area for ~~skateboarding, inline skating, paintball, or~~  
44 ~~freestyle~~ or mountain and off-road bicycling to obtain the  
45 written consent, in a form acceptable to the governmental  
46 entity, from the parents or legal guardians of any child under  
47 17 years of age before allowing ~~authorizing~~ such child to  
48 participate in ~~skateboarding, inline skating, paintball, or~~  
49 ~~freestyle~~ or mountain and off-road bicycling in such designated  
50 area, unless that child's participation is in violation of  
51 posted rules governing the authorized use of the designated  
52 area, except that a parent or legal guardian must demonstrate  
53 that written consent to engage in mountain or off-road bicycling  
54 in a designated area was provided to the governmental entity  
55 before entering the designated area.

56  
57 Nothing in this subsection creates a duty of care or basis of  
58 liability for death, personal injury, or damage to personal

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2015408\_\_

59 property. Nothing in this section shall be deemed to be a waiver  
60 of sovereign immunity under any circumstances.

61 Section 2. This act shall take effect July 1, 2015.





The Florida Senate

## Committee Agenda Request

**To:** Senator Miguel Diaz de la Portilla, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** January 30, 2015

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I respectfully request that **Senate Bill 408**, relating to Designated Areas for Skateboarding, Inline Skating, Paintball, or Freestyle or Mountain and Off-roading Bicycling, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

---

Senator David Simmons  
Florida Senate, District 10

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/15  
Meeting Date

SB 408  
Bill Number (if applicable)

Topic Skate Board Parks

Amendment Barcode (if applicable)

Name David Cruz

Job Title Assistant General Counsel

Address P.O. Box 1757  
Street

Phone 701-3676

Tallahassee FL 32302  
City State Zip

Email DCRUZ@FLcities.com

Speaking:  For  Against  Information

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

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# APPEARANCE RECORD

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

2/17/2015  
Meeting Date

SB 408  
HB 36  
Bill Number (if applicable)

Topic Removing the waiver clause

Amendment Barcode (if applicable)

Name Chuck Lagana

Job Title Retired

Address 402 S Lecanto Hwy  
Street  
Lecanto Florida 34460  
City State Zip

Phone 920-486-562

Email chucklagana@gmail

Speaking:  For  Against  Information

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

Representing SKATEBOARD Hall of Fame

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-17-15

Meeting Date

408

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Seth Levy

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

Address 3863 Landings Dr

Phone 305 6001471

Street

Boca Raton

City

FL

State

33496

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/15  
Meeting Date

SB408  
Bill Number (if applicable)

Topic 316.0685 Worker Clause Removal

Amendment Barcode (if applicable)

Name Tim Payne

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

Address 4661 W. Draby CT.  
Street  
Winter Springs FL 32708  
City State Zip

Phone 321-222-8185

Email CPTA site 123GAol.com

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

APPEARANCE RECORD

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

09/17/15

Meeting Date

SB 408

Bill Number (if applicable)

Topic Removal of Waiver clause

Amendment Barcode (if applicable)

Name David Cintron

Job Title Public School Educator

Address 857 Hilly Bend Dr

Phone 407-756-9502

Street

Apopka, FL 32712

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing concerned citizen

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# APPEARANCE RECORD

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

2/17/15  
Meeting Date

SB408  
Bill Number (if applicable)

Topic 316.0085

Amendment Barcode (if applicable)

Name Orlando Vazquez

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

Address 1803 Ivan Dr.

Phone (850) 591-7367

Street

City

Tallahassee FL 32303

State

Zip

Email phazquez@gmail.com

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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