

Tab 1	SB 14 by Artiles; (Identical to H 06529) Relief of Lillian Beauchamp by the St. Lucie County School Board					
Tab 2	SB 24 by Flores; Relief of Altavious Carter by the Palm Beach County School Board					
816866	A	S	JU, Flores	Delete L.67 - 68:	03/06 04:00 PM	
Tab 3	SB 30 by Simmons; (Identical to H 06543) Relief of Erin Joynt by Volusia County					
115586	A	S	JU, Simmons	Delete L.61 - 69:	03/06 04:00 PM	
Tab 4	SB 898 by Simmons (CO-INTRODUCERS) Artiles; (Identical to H 00065) Civil Remedies for Terrorism					
Tab 5	SB 494 by Bradley; (Identical to H 00393) Compensation of Victims of Wrongful Incarceration					
230448	A	S	JU, Bradley	Delete L.64 - 75:	03/06 03:59 PM	
Tab 6	SB 878 by Lee; (Identical to H 00301) Supreme Court Reporting Requirements					
Tab 7	SJR 910 by Baxley; (Identical to H 00291) Exempting Law Enforcement Officers from the Waiting Period for Handgun Purchases					
Tab 8	SB 912 by Baxley; (Identical to H 00673) Exceptions to Requirements for the Purchase and Sale of Firearms					
Tab 9	CS/SB 550 by CJ, Bracy; (Similar to CS/H 00111) Public Records/Murder Witness					
150986	A	S	JU, Bracy	btw L.65 - 66:	03/06 04:00 PM	
Tab 10	SB 262 by Steube; (Identical to H 00675) Health Insurance					
Tab 11	SB 616 by Steube; Concealed Weapons or Firearms					
Tab 12	SB 646 by Steube; (Identical to H 00779) Weapons and Firearms					
112386	A	S	JU, Steube	Delete L.47 - 127:	03/06 04:01 PM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Steube, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Tuesday, March 7, 2017
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Steube, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Flores, Garcia, Gibson, Mayfield, Powell, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 14 Artiles (Identical H 6529)	Relief of Lillian Beauchamp by the St. Lucie County School Board; Providing for the relief of Lillian Beauchamp, as the personal representative of the estate of Aaron Beauchamp, by the St. Lucie County School Board; providing for an appropriation to compensate the estate of Aaron Beauchamp for his wrongful death as a result of the negligence of the St. Lucie County School District, etc.	SM JU 03/07/2017 CA RC
2	SB 24 Flores	Relief of Altavious Carter by the Palm Beach County School Board; Providing for the relief of Altavious Carter by the Palm Beach County School Board; providing an appropriation to compensate Mr. Carter for injuries sustained as a result of the negligence of a bus driver of the Palm Beach County School District, etc.	SM JU 03/07/2017 CA RC
3	SB 30 Simmons	Relief of Erin Joynt by Volusia County ; Providing for the relief of Erin Joynt by Volusia County; providing for an appropriation to compensate Erin Joynt for injuries sustained as a result of the negligence of an employee of Volusia County; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act, etc.	SM JU 03/07/2017 CA RC

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 7, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 898 Simmons (Identical H 65)	Civil Remedies for Terrorism; Creating a cause of action relating to terrorism; specifying a measure of damages; prohibiting claims by specified individuals, etc. JU 03/07/2017 ACJ RC	
5	SB 494 Bradley (Identical H 393, S 556)	Compensation of Victims of Wrongful Incarceration; Revising the circumstances under which a wrongfully incarcerated person is not eligible for compensation under the Victims of Wrongful Incarceration Compensation Act; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation, etc. CJ 02/21/2017 Favorable JU 03/07/2017 AP	
6	SB 878 Lee (Identical H 301)	Supreme Court Reporting Requirements; Requiring the Supreme Court to issue an annual report regarding certain cases; specifying data to be included in such report; providing for future legislative review and repeal, etc. JU 03/07/2017 ACJ AP RC	
7	SJR 910 Baxley (Identical HJR 291, Compare H 673, Linked S 912)	Exempting Law Enforcement Officers from the Waiting Period for Handgun Purchases; Proposing amendments to the State Constitution to exempt law enforcement officers from the 3-day waiting period for handgun purchases under state law and under any county ordinance requiring a waiting period for handgun purchases, etc. JU 03/07/2017 GO RC	

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 7, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 912 Baxley (Identical H 673, Compare HJR 291, Linked SJR 910)	Exceptions to Requirements for the Purchase and Sale of Firearms; Exempting certain qualified law enforcement officers and qualified retired law enforcement officers from the 3-day waiting period for purchasing a handgun; exempting concealed weapon or concealed firearm licensees and certain current and retired law enforcement officers from certain county criminal history and waiting period requirements when purchasing a firearm, etc. JU 03/07/2017 GO RC	
9	CS/SB 550 Criminal Justice / Bracy (Similar CS/H 111)	Public Records/Murder Witness ; Providing that the personal identifying information of a witness to a murder remains confidential and exempt for a specified period; providing an exemption from public records requirements for criminal intelligence or criminal investigative information that reveals the personal identifying information of a witness to a murder for a specified period; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 02/21/2017 Fav/CS JU 03/07/2017 GO RC	
10	SB 262 Steube (Identical H 675)	Health Insurance; Deleting a provision that provides that health maintenance organizations are not vicariously liable for certain medical negligence except under certain circumstances; authorizing specified persons to bring a civil action against a health maintenance organization for certain violations; specifying a health maintenance organization's liability for such violations, etc. BI 02/21/2017 Favorable JU 03/07/2017 RC	
11	SB 616 Steube (Compare S 140)	Concealed Weapons or Firearms; Authorizing a concealed weapons or concealed firearms licensee to temporarily surrender a weapon or firearm if the licensee approaches courthouse security or management personnel upon arrival and follows their instructions, etc. JU 03/07/2017 GO RC	

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 7, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 646 Steube (Identical H 779, Compare H 803, S 908)	Weapons and Firearms; Providing that a person licensed to carry a concealed weapon or firearm who is lawfully carrying a firearm does not violate certain provisions if the firearm is temporarily and openly displayed; authorizing each member of the Florida Cabinet to carry a concealed weapon or firearm if he or she is licensed to carry a concealed weapon or firearm and does not have full-time security provided by the Department of Law Enforcement, etc.	
		JU 03/07/2017 GO RC	

Other Related Meeting Documents



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
2/28/17	SM	Fav/1 amendment
3/06/17	JU	Pre-meeting
	CA	
	RC	

February 28, 2017

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 14** – Senator Frank Artiles
HB 6529 -- Representative Cord Byrd
Relief of Lillian Beauchamp, as the personal representative of the Estate
of Aaron Beauchamp

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$8.7 MILLION AGAINST THE ST. LUCIE COUNTY SCHOOL DISTRICT FOR THE WRONGFUL DEATH OF AARON BEAUCHAMP WHICH OCCURRED WHILE HE WAS A PASSENGER IN A DISTRICT SCHOOL BUS THAT WAS STRUCK BY A TRACTOR TRAILER.

FINDINGS OF FACT:

This matter arises out of a school bus accident that occurred on March 26, 2012, in St. Lucie County, at the intersection of Okeechobee Road and Midway Road. The intersection is located on a four-lane divided highway with a speed limit of 55 mph, and it is not controlled by an overhead traffic signal. The weather at the time of the accident was clear, and there were no visual obstructions.

The Accident

At approximately 3:45 pm, Albert Hazen, a St. Lucie County School District (district) employee, was driving a school bus westbound on Okeechobee Road. The school bus had 30 student passengers from Frances K. Sweet Elementary School on board. The school bus was equipped with four

video surveillance cameras that provided various viewpoints of the crash.

Also at approximately 3:45 pm, Charles Cooper was driving a tractor trailer, owned by Cypress Trucking, in the right eastbound lane of Okeechobee Road. The tractor trailer had a flatbed semi-trailer attached and was loaded with sod.

The bus entered the left turn lane to turn left across the eastbound lanes of Okeechobee Road to reach Midway Road. As the bus turned left at the intersection, it slowed without stopping and turned in front of the tractor trailer driven by Mr. Cooper. Mr. Hazen attempted to accelerate across Okeechobee Road to avoid a collision with the tractor trailer. Mr. Cooper also attempted an evasive action by turning his steering wheel to the right prior to impact.

The front of the tractor trailer collided with the passenger side of the school bus near its rear axle. The impact caused the school bus to spin clockwise approximately 180-degrees. The accident forced the tractor trailer off of the right eastbound lane of Okeechobee Road, rolled the truck portion of the tractor trailer on its left side, and flipped the flatbed trailer upside down. The tractor trailer came to rest in the grassy area on the side of Okeechobee Road. At the time of the crash, the school bus was traveling at approximately 15 mph; whereas, the tractor trailer was traveling at 63 mph approximately 3 seconds before impact.

Mr. Hazen had been assigned an additional bus route the day of the accident, and was driving that extra route when the accident occurred. Mr. Hazen had driven this bus route ten to twelve times before. The onboard cameras captured Mr. Hazen after the crash stating, "Oh my God what I have done."

At the time of the accident, neither Mr. Hazen nor Mr. Cooper were under the influence of alcoholic beverages or narcotics. Both had valid driver licenses for the vehicles they were driving.

The accident caused one fatality and numerous injuries to the student passengers on the bus. Specifically, eight students were seriously injured, eleven students had minor injuries, and ten students were uninjured. Mr. Hazen received minor injuries and Mr. Cooper was uninjured.

Aaron Beauchamp

Aaron Beauchamp was a 9-year-old student at Frances K. Sweet Elementary School and was onboard the school bus at the time of the accident. Aaron was seated in row 10 on the driver's side of the school bus. It was determined after the accident that Aaron had been wearing his seatbelt at the time of the accident.

The accident caused Aaron to be ejected out of his seat and be thrown about the interior of the school bus. Aaron was found on the school bus floor behind the last seats of the school bus. The medical examiner determined Aaron's cause of death was multiple blunt trauma injuries, and the manner of death was an accident.

Bus Seat and Seatbelt

The National Transportation Safety Board (NTSB) investigated the crash for the limited purpose of understanding the survival factors of the student passengers in support of another ongoing NTSB investigation. The NTSB's investigation provided detailed information concerning the condition of the bus seats and seatbelts after the crash.

The bus seats were a tubular steel frame that had plyboard for the seat and the seatback. The plyboard was covered with foam and vinyl fabric. The bus seats were designed to flip up to allow for the cleaning of the floor under the seat. The front of the seat cushion was mounted to the seat frame by two steel C-shaped brackets that allowed the seat to flip up. The NTSB's investigation after the crash found that the seat cushion latch for the seat that Aaron Beauchamp was sitting in was not engaged. The two front brackets of Aaron's seat were deformed, nearly flat, and the right front bracket was missing a screw.

The seatbelt Aaron was wearing at the time of the accident was a lap seatbelt. Upon inspection, Aaron's seatbelt had a load mark, meaning it was likely in use at the time of the accident. The seatbelt's attachment points to the seat were also rotated toward the impact point of the accident.

LEGAL PROCEEDINGS:

The claimant (Lillian Beauchamp, as the Personal Representative of the Estate of Aaron Beauchamp, a deceased child) filed suit against the district, Cypress Trucking, IC BUS, and IMMI (the seatbelt manufacturer).

The claimant settled with Cypress Trucking for \$575,000. The claimant also settled with IC BUS and IMMI; however, the terms of the settlement are confidential and not disclosed to the undersigned.

The district has settled all of the claims associated with this accident except for the claimant's claim.

The claimant and the district were unable to reach a settlement agreement and proceeded to trial on September 1, 2015. The trial was held in the Nineteenth Judicial Circuit Court in St. Lucie County. The jury returned a verdict on September 8, 2015, in the favor of the claimant. The jury found that the district was 87 percent negligent in the death of Aaron Beauchamp. The jury also apportioned 13 percent of negligence to Cypress Trucking and zero percent of negligence to IC BUS, though they were not parties to the lawsuit.

The jury awarded \$10 million to the claimant, the Estate of Aaron Beauchamp, and apportioned it in the following manner: \$1 million each for Lillian and Simon Beauchamp's past mental pain and suffering caused by the wrongful death of Aaron and \$4 million each for Lillian and Simon Beauchamp's future mental pain and suffering caused by the wrongful death of Aaron.

The proportion of the jury verdict attributed to the district is \$8.7 million.

CLAIMANT'S ARGUMENTS:

The claimant agrees with the jury's apportionment of 87 percent liability to the district and agrees with the award of \$8.7 million.

RESPONDENT'S ARGUMENTS:

The district admitted negligence but disputes the amount of negligence proportioned to it by the jury. The district argues that Cypress Trucking should have received a larger portion of the negligence percentage. The district also contends that there was clear evidence of negligence by IC BUS that

contributed to the death of Aaron Beauchamp and the jury should have proportioned some liability to IC BUS.

The district is opposed to the claim bill.

CONCLUSIONS OF LAW:

The district owned the school bus driven by its employee, Mr. Hazen and is covered by the provisions of s. 768.28, F.S. Section 768.28, F.S., generally allows injured parties to sue state or local governments for damages caused by their negligence or the negligence of their employees by waiving the government's sovereign immunity from tort actions. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to \$200,000 per person and \$300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature.

The district has settled all claims associated with this accident except for the claimant's claim. In settling with the other parties, the district has exhausted the statutory cap amount of \$300,000 and its excess insurance policy in the amount of \$1 million. The claimant has not received any money from the district and will not receive the full benefit of the jury verdict unless the Legislature approves a claim bill.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damages. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010) (quoting *Jefferies v. Amery Leasing, Inc.*, 698 So. 2d 368, 370-71 (Fla. 5th DCA 1997)).

Section 768.81, F.S., Florida's comparative fault statute, allows damages in negligence cases to be apportioned against each liable party. The Florida Supreme Court has found that "in determining noneconomic damages fault must be apportioned among all responsible entities who contribute to an accident even though not all of them have been joined as defendants." *Nash v. Wells Fargo Guard Servs.*, 678 So. 2d 1262, 1263 (Fla. 1996).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993

So. 2d 585, 586 (Fla. 1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So. 2d 1312, 1316 (Fla. 1st DCA 1992).

The long-standing doctrine of *respondeat superior* provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013). Florida's dangerous instrumentality doctrine imposes "vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Motor vehicles have been considered dangerous instrumentalities under Florida law for over a century. See *Anderson v. S. Cotton Oil Co.*, 74 So. 975, 978 (Fla. 1917).

Mr. Hazen was employed by the district and was acting within the scope of his employment at the time of the accident. Accordingly, the negligence of Mr. Hazen is attributable to the district.

Mr. Cooper was employed by Cypress Trucking and was acting within the scope of his employment at the time of the accident. Accordingly, the negligence of Mr. Cooper is attributable to Cypress Trucking.

Mr. Hazen's Negligence

Section 316.122, F.S., requires drivers who are intending to turn left to yield to the right-of-way of any vehicle approaching from the opposite direction. When Mr. Hazen turned left across Okeechobee Road and failed to yield to the tractor trailer driven by Mr. Cooper, Mr. Hazen violated s. 316.122, F.S., and breached his duty to operate the school bus with reasonable care. Mr. Hazen was issued a Uniform Traffic Citation for violating s. 316.122, F.S.

Mr. Hazen's negligence and breach of duty of care caused the accident and contributed the wrongful death of Aaron Beauchamp.

Mr. Cooper's Negligence

Section 316.183(4)(a), F.S., prohibits any person from driving at a speed that is greater than reasonable and

prudent and requires the driver to appropriately reduce speed when approaching and crossing an intersection. Mr. Cooper was traveling at 63 mph at the time of the crash, 8 mph faster than the posted speed limit of 55 mph. Mr. Cooper violated s. 316.183, F.S., and breached his duty to drive with reasonable care by driving 8 mph over the 55 mph speed limit and is partially at fault for the accident.

Section 316.302(1)(a), F.S., provides that all commercial motor vehicles in Florida engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

The Florida Highway Patrol investigation of the accident found a violation of 49 C.F.R. 393.47(e), which sets the limits for clamp brakes. The investigation found that the tractor trailer's left #3 clamp-type brake was out of adjustment, with the pushrod travel measured at two and half inches. The federal regulation allows a maximum pushrod travel of two inches for clamp-type brakes.

The investigation also found a violation of 49 C.F.R. 571.121 S5.2.2(a), which requires automatic brake adjustment systems to compensate for the wear of brakes. The tractor trailer did not compensate for the wear of the brakes and thus violated 49 C.F.R. 571.121 s5.2.2(a).

Another federal regulation, 49 C.F.R. 395.8(f)(1), requires a driver to record his or her duty status. Mr. Cooper had not updated his duty status log book the day of the accident to indicate that he was on duty.

Mr. Cooper was issued three Uniform Traffic Citations after the accident. His negligence due to speeding and having faulty brakes contributed to the wrongful death of Aaron Beauchamp.

Conclusion

Florida's comparative fault statute, s. 768.81, F.S., applies to this case because Mr. Hazen and Mr. Cooper both violated Florida law in this accident.

Mr. Hazen caused the accident when he turned left across Okeechobee Road and failed to yield to the tractor trailer driven by Mr. Cooper, violating s. 316.122, F.S., and

breached his duty to operate the school bus with reasonable care.

Mr. Cooper contributed to the accident by driving 63 mph when the posted speed limit was 55 mph and by failing to keep the tractor trailer in compliance with federal rules and regulations.

IC BUS manufactured the seats of the bus. The damage to the seat brackets on Aaron's seat may have contributed to his death. However, the undersigned was presented with the same evidence as the jury at trial and finds that there is insufficient evidence to alter the jury's apportionment of no fault on IC BUS.

The jury sat through a multiple-day trial, listened to all of the evidence presented, and reached a verdict based on competent and substantial evidence. While Mr. Hazen and Mr. Cooper were partially at fault in this matter, Mr. Hazen's negligence far outweighs Mr. Cooper's negligence. Aaron Beauchamp died after suffering multiple blunt force trauma injuries. The undersigned finds there is no newly presented evidence to alter the jury verdict and finds that the damages of \$8.7 million sought by the claimant are reasonable and justly apportionable to the district as a result of Mr. Hazen's negligence.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate in this matter.

ATTORNEYS FEES:

The claimant's attorney has agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. The bill provides that the total amount paid for lobbying fees, costs, and other similar expenses relating to the claim are included in the 25 percent limit. However, the limits on lobbying fees, costs, and other similar expenses should be removed to conform to a recent opinion of the Florida Supreme Court. See *Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 42 Fla. L. Weekly S92 (Fla. 2016).

FISCAL IMPACT:

The district is self-insured through a self-insured consortium for the statutory cap amount of \$300,000. The district also maintained an insurance policy for excess coverage in the amount of \$1 million. The statutory cap amount and the district's insurance funds have been consumed by other claims arising out of the bus accident. If the bill is approved,

the district will have to pay the claim from its general operating funds.

SPECIAL ISSUES

The bill refers to the school district as the *St. Lucie School Board*. The proper name for the school district is the St. Lucie School District. The undersigned recommends the bill is amended to correct this error.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 14 (2017) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Lauren Jones
Senate Special Master

cc: Secretary of the Senate

Attachment



310158

LEGISLATIVE ACTION

Senate

House

.
. .
. .
. .
. .
. .

The Special Master on Claim Bills recommended the following:

1 **Senate Amendment (with title amendment)**

2

3 Delete lines 86 - 98

4 and insert:

5 Section 2. The St. Lucie County School District is
6 authorized and directed to appropriate from its funds not
7 otherwise encumbered and to draw a warrant in the amount of \$8.7
8 million payable to Lillian Beauchamp, as the personal
9 representative of the estate of Aaron Beauchamp, as compensation
10 for damages sustained in connection with his wrongful death.

11 Section 3. The amount awarded under this act is intended to
12 provide the sole compensation for all present and future claims



310158

13 arising out of the factual situation described in this act which
14 resulted in the wrongful death of Aaron Beauchamp. The total
15 amount paid for attorney fees relating to this claim may not
16 exceed 25 percent of the amount awarded under this act.

17

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

19 And the title is amended as follows:

20 Delete lines 4 - 9

21 and insert:

22 Beauchamp, by the St. Lucie County School District;
23 providing for an appropriation to compensate the
24 estate of Aaron Beauchamp for his wrongful death as a
25 result of the negligence of the St. Lucie County
26 School District; providing a limitation on the payment
27 of attorney fees; providing an
28



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
2/28/17	SM	Fav/1 amendment
3/06/17	JU	Pre-meeting
	CA	
	RC	

February 28, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 24** – Senator Anitere Flores
Relief of Altavious Carter

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$1,040,864.42 BASED ON A JURY AWARD FOR ALTAVIOUS CARTER (CLAIMANT) AGAINST THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, TO COMPENSATE CLAIMANT FOR DAMAGES HE SUSTAINED WHEN A SCHOOL BUS CRASHED INTO THE REAR END OF A VAN IN WHICH HE WAS A PASSENGER.

CURRENT STATUS:

On February 3, 2011, 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 26 (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. That report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Jason Hand. 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 parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report, including the recommendation in the “Other Issues” section of the original report, which recommended that the claim bill be amended to add the August 4, 2010, Final Cost Judgment costs of \$50,394.52 (in response to Plaintiff’s Motion to Tax Costs).

However, it appears the claim bill inadvertently identifies the amount of the Final Cost Judgment as \$46,830.11; therefore, I recommend amending the claim bill to include the correct amount of the Final Cost Judgment (\$50,394.52). This change would raise the total amount of the claim bill from \$1,040,864.41 to \$1,044,428.82. Based on the foregoing, I recommend that SB 24 be recommended favorably, as amended.

Additionally, and except for the inclusion of the Final Cost Judgment, the prior claim bills, SB 26 (2012)(died in Special Master on Claims Bills), SB 30 (2013)(died in Judiciary Committee), SB 38 (2014)(withdrawn), and SB 72 (2015)(died in Appropriations Committee) and SB 50 (2016)(died in Appropriations Committee) are effectively identical to the claim bill filed for the 2016 Legislative Session.

Respectfully submitted,

Jason Hand
Senate Special Master

cc: Secretary of the Senate



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
12/02/11	SM	Fav/1 amendment

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 26 (2012)** – Senator Ellyn Setnor Bogdanoff
Relief of Altavious Carter

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$944,034.30 BASED ON A JURY AWARD FOR ALTAVIOUS CARTER (CLAIMANT) AGAINST THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, TO COMPENSATE CLAIMANT FOR DAMAGES HE SUSTAINED WHEN A SCHOOL BUS CRASHED INTO THE REAR END OF A VAN IN WHICH HE WAS A PASSENGER.

FINDINGS OF FACT:

Following a four-day trial in the Palm Beach County Circuit Court a jury found that Claimant had sustained a permanent injury in an accident that occurred December 15, 2005, and awarded him the following damages with the amount of the award in parentheses: past medical expenses (\$96,475.64); future medical expenses (\$175,892.00); past pain and suffering (\$478,333.33); and future pain and suffering (\$343,333.33). The award of damages totaled \$1,094,034.30. The verdict was dated February 12, 2010.

On February 25, 2010, Judge Thomas H. Barkdull entered final judgment for Claimant as follows: "Pursuant to the Jury Verdict rendered in this action, IT IS ADJUDGED: That [Claimant] recover from [the School Board] the sum of [\$1,094,034.30] that shall bear interest annually at the

statutory rate and for which let execution issue for the first One Hundred Thousand Dollars (\$100,000.00) of this judgment and that portion of the judgment that exceeds [\$100,000] may be reported to the legislature, but may not be paid in part or in whole except by further act of the legislature further [sic] to 768.28."

The court retained jurisdiction to determine taxable costs as well as to determine set offs, if any. On August 4, 2010, Judge Barkdull entered a "Final Cost Judgment" in the amount of \$50,394.52 with interest at the statutory rate with the following provision: "but for which execution shall not issue, but this judgment may be reported to the legislature, but may not be paid in part or in whole except by further act of the legislature pursuant to 768.28."

On April 14, 2010, the School Board paid to Claimant the sum of \$100,000.00 in partial satisfaction of the Final Judgment.

At the trial and in this claims proceeding, the School Board stipulated that it is liable for Claimant's damages.

In this claims proceeding, the School Board does not contest the award for Claimant's past medical expenses or the award for Claimant's past pain and suffering. The School Board asserts that the awards for future medical expenses and future pain and suffering are excessive.

Claimant, a male, born September 7, 1991, is a basketball player who currently plays for Santa Fe College. On December 15, 2005, Claimant was being transported from basketball practice to his home in a van being driven by Vincent Merriweather, a volunteer coach for Claimant's team. Mr. Merriweather served as a mentor to Claimant.

On that date Mr. Merriweather's van was stopped at a red light in a westbound lane at the intersection of Forest Hills Boulevard and Olympia Boulevard in Palm Beach County when a school bus owned and operated by the Palm Beach County School District rear-ended the van. It was estimated that the bus was traveling in excess of 45 MPH when it hit the van, and there was no credible evidence that the driver applied his brakes at any point before the accident.

The negligence of the school bus driver was the cause of the accident and was the proximate cause of the damages suffered by Claimant.

Mr. Merriweather was also injured in the accident and suffered damages in excess of \$100,000.00. Mr. Merriweather was granted compensation for his excess damages by Chapter 2009-247, Laws of Florida.

Claimant was wearing a seat belt at the time of the crash. Claimant's seat failed as a result to the force of the impact, and he was thrown into the back of the van and briefly lost consciousness. When he regained consciousness, he began yelling for Mr. Merriweather, who was unable to respond. Claimant was able to exit the van, but he immediately experienced pain in his neck. An unidentified person assisted Claimant by helping him to lie down on the pavement. A person identified as a school nurse told Claimant to be still until emergency services arrived and advised him to stay still.

Emergency responders arrived on the scene in a timely fashion, stabilized Claimant's head and neck, and transported him to Wellington Regional Hospital.

Diagnostic testing at Wellington Regional Hospital reflected that Claimant had suffered a cervical fracture in the region of the neck referred to as C6-C7. The cervical area of the neck, consisting of seven vertebrae, is immediately above the thoracic region. The designation C6-7 (or C6-C7) indicates the area where the sixth cervical vertebrae and the seventh cervical vertebrae are located. Between the two vertebrae is a disc, which serves several purposes, including acting as a shock absorber between the two vertebrae. The spinal cord runs through the vertebrae of the cervical and thoracic regions.

Due to the severity of the injury, which included a risk of paralysis, Wellington Regional Hospital transferred Claimant to the trauma center at St. Mary's Hospital.

At St. Mary's, Claimant was placed in cervical traction consisting of immobilizing hardware being screwed into his skull and being strapped to a bed where he was unable to move.

Dr. Bret Baynham, a certified pediatric orthopedic surgeon, performed the following procedures on Claimant: Open Reduction C6-7 Fracture-Dislocation; Anterior Cervical Discectomy C6-7; Anterior Cervical Decompression, C6-7; Anterior Cervical Interbody Fusion Device C6-7; and Anterior Cervical Fusion C6-7.

In layman's terms, Dr. Baynham fused Claimant's C6-C7 vertebrae. He removed the disc between C6-C7. In the area from which the disc had been removed, he inserted a hollowed metallic dowel, referred to as a cage, filled with particles of bones that were designed to allow the two vertebrae to eventually grow together. He then affixed a metal plate to stabilize C6-C7 using special bone screws. The metal plate is intended to be permanent.

Dr. Baynham provided Claimant excellent care.

Post-surgery, Claimant underwent a grueling rehabilitation. Claimant worked hard during rehabilitation and cooperated fully with his therapists and other treatment providers.

Dr. Baynham continued to follow Claimant's recovery post-surgery. On July 27, 2006, Dr. Baynham found Claimant to be pain free and gradually returning to normal activities. Dr. Baynham's office notes reflect the following recommendation: "At this point we are going to allow [Claimant] to return to full activity. Based on his clinical and radiographic findings he is found to have a stable healed injury without any evidence of any residual instability or neurologic compromise. If he should have any problems as we move forward he is to refrain from activity and contact us immediately. This would include pain recurrence or any signs or symptoms associated with spinal cord or nerve root irritation. Otherwise if he remains well we would like to have him follow up in six months for re-evaluation including radiographs if indicated."

After July 27, 2006, Claimant resumed playing basketball and became a star high school player and a full-scholarship player at Santa Fe College in Gainesville. Claimant has been cleared to play basketball without any medical restrictions attributable to the injuries he received in the 2005 accident.

At present, Claimant experiences periodic neck pain.

Adjacent disc disease (also referred to in the record as "adjacent segment disease") can be a consequence of fusing two vertebrae. When two discs are fused, greater mechanical loading or stress is placed on the vertebrae above or below the fused discs, which may or may not cause disc degeneration and require further intervention. While adjacent disc disease may be discernable by a MRI relatively soon after the fusion, symptoms from the disease typically come later in life, but may not come at all.

Claimant was seen by Dr. Baynham on follow-up on November 27, 2007. His impression was that Claimant was stable with no residual neurologic impairment, no pain in the neck, and no functional loss of motion. His recommendation was that "Based on the clinical and radiographic findings [Claimant] is found to have a stable healed injury without evidence of any residual instability or neurologic compromise. No further treatment is indicated at this time. No restrictions to athletic participation. Follow up prn."

Claimant experienced neck and back pain in 2009 and returned to Dr. Baynham in January and June of that year. In June 2009, Dr. Baynham ordered an MRI for Claimant. Dr. Baynham observed changes in C7-T1 (T1 is the first thoracic vertebrae). Dr. Baynham testified that the changes could be the delayed manifestation of injuries from the initial injury. He also testified that the changes could be the result of adjacent segment disease phenomenon. Dr. Baynham testified that the changes "are certainly consistent with not only the zone of initial injury, but also some additional changes that are probably the result of this adjacent segment disease phenomenon, as best we know."

Dr. Baynham further testified that "based on his young age and his life expectancy and based on the current state of understanding of this phenomenon of the adjacent level disc disease, I think it is probable, most probable that he will continue to experience changes there. And it will, in time, probably rise to the level of becoming clinically significant, meaning a source of pain and potentially a source requiring additional treatment."

Dr. Craig H. Lichtblau is a physiatrist who specializes in physical medicine, rehabilitation, and evaluation. Dr. Lichtblau was retained by Claimant to conduct a Comprehensive Rehabilitation Evaluation of Claimant, give an impairment rating of Claimant, and provide a Continuation of Care plan for Claimant

Dr. Lichtblau assigned Claimant a 4 percent permanent partial impairment of the whole person.

Dr. Lichtblau's Continuation of Care plan included the services that Dr. Lichtblau believed Claimant would or may need in the future. Dr. Lichtblau's plan included future epidural steroid injections and surgical intervention. Dr. Baynham testified that including epidural steroid injections is reasonable. Dr. Baynham also testified that Claimant is at an increased risk of future surgical intervention.

Bernard E. Pettingill, Jr., Ph.D. is a consulting economist who, on February 12, 2009, prepared an analysis entitled "The Present Value Analysis of the Future Medical Care Costs of [Claimant]". At the time of the analysis, Claimant's life expectancy was projected to be 53.6 years beyond the date of the report.

Claimant represented in his "Summary of Case" that the parties stipulated that Claimant's past medical expenses for purposes of trial were \$96,475.64.

Dr. Pettingill used Dr. Lichtblau's Continuation of Care plan to compute the present value of Claimant's "Total Economic Loss, Period II, Future Loss, After Trial Date". Claimant presented evidence to the jury that the correct total economic loss for the post-trial period, as computed by Dr. Pettingill, was \$363,487.00.

Claimant was examined by Dr. Jordan Grabel, a neurological surgeon, on July 17, 2008, at the request of the School Board. Dr. Grabel reviewed Claimant's medical records and took histories from Claimant and Claimant's mother. Dr. Grabel found that Claimant's surgery had healed and that there were no other abnormalities that could be associated with the accident. Dr. Grabel opined that there was a 50-50

chance that the onset of adjacent segment disease will be discernable by X-ray in future years. He further opined that there is no way to determine whether Claimant will become symptomatic or need future surgical treatment. Dr. Grabel was of the opinion that the Continuation of Care plan prepared by Dr. Lichtblau included non-invasive follow-up treatment that was unnecessary.

The School Board did not have a consulting economist estimate the present value of Claimant's future economic loss based on the services Dr. Grabel believed Claimant would need.

Dr. Mark Rubenstein conducted a compulsory medical examination of Claimant on August 11, 2008. Dr. Rubenstein's evaluation included a physical examination and a review of Claimant's medical records. Dr. Rubenstein's report reflects his opinion that Claimant's future medical care will be limited to physician visits on an as-needed basis and that Claimant will require future MRI studies and X-rays. Although he acknowledged the possibility of adjacent disc disease, he did not believe that intervention was medically probable. Dr. Rubenstein's report reflects the opinion that Claimant's future pain management will be limited to the use of anti-inflammatory medications.

In its position statement, the School Board represents that Dr. Rubenstein is a physiatrist retained by the School Board and that he believed that Claimant's future care not including surgery for adjacent segment disease would be approximately \$25,000.00. The undersigned did not find that figure in Dr. Rubenstein's report.

CLAIMANT'S POSITION:

1. The negligence of the school bus driver was the sole and proximate cause of the injuries and damages sustained by Claimant.
2. Claimant's future damages are not speculative, and the jury's verdict is supported by the evidence.

SCHOOL BOARD'S POSITION:

1. School Board stipulated that it is liable for Claimant's damages.
2. School Board does not dispute the jury award for past medical expenses or for past pain and suffering.

3. School Board asserts that Claimant has healed and has become a star basketball player.
4. School Board contends that awards for future medical expenses and future pain and suffering are excessive and speculative.
5. School Board argues that \$25,000.00 would suffice for future medical expenses and that \$50,000.00 would suffice for future pain and suffering.
6. School Board is self-insured and is experiencing a bleak fiscal year with expected shortfalls of over \$54,000,000.00.

CONCLUSIONS OF LAW:

The bus driver had a duty to exercise reasonable care in the operation of the bus. See generally s. 316.183(1), Fla. Stat. He breached this duty by crashing into the back of Mr. Merriweather's stopped van. See Eppler v. Tarmac America, Inc., 752 So. 2d 592 (Fla. 2000) (rear driver is presumed to be negligent in rear-end collision case absent evidence of a sudden and unexpected stop by the front driver).

The school bus driver was an employee of the School Board acting within the course and scope of his employment at the time of the accident. As a result, the driver's negligence is attributable to the School Board.

Consistent with the School Board's stipulation as to its liability, it is concluded that the bus driver's negligence was the sole and proximate cause of the injuries and damages sustained by Claimant, and that the driver's negligence is attributable to the School Board.

The jury based its verdict on competent, substantial evidence.

LEGISLATIVE HISTORY:

This is the second year that this claim has been presented to the Legislature.

ATTORNEYS FEES:

Claimant's attorney filed an affidavit stating that attorney's fees will be capped at 25 percent in accordance with s. 768.28(8), Florida Statutes. Lobbyist fees are incorporated into the attorney's fees cap.

The Legislature is free to limit those amounts as it sees fit. See Gamble v. Wells, 450 So. 2d 850 (Fla. 1984); Noel v. Schlesinger, 984 So. 2d 1265 (Fla. 4th DCA 2008). The bill provides that the total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

FISCAL IMPACT:

The School Board is self-insured and has no liability insurance applicable to this claim. The School Board expects to face a substantial budgetary shortfall and the passage of this claim bill will add to its budgetary difficulties.

OTHER ISSUES:

The bill, as filed, does not include the sum of \$50,394.52, which is the amount of the "Final Cost Judgment" entered by Judge Barkdull on August 4, 2010. The bill should be amended to add costs in the sum of \$50,394.52, so that the total amount of the award will be increased from the sum of \$994,034.30 to the sum of \$1,044,428.82.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that Senate Bill 26 be reported FAVORABLY, as amended.

Respectfully submitted,



Claude B. Arrington
Senate Special Master

cc: Senator Ellyn Setnor Bogdanoff
Debbie Brown, Interim Secretary of the Senate
Counsel of Record



816866

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete lines 67 - 68

and insert:

on the payment of attorney fees; providing an

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

And the title is amended as follows:

Delete line 7

and insert:

Mr. Carter. The total amount paid for attorney fees



816866

12

relating to this claim



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
3/6/17	SM	Favorable
3/06/17	JU	Pre-meeting
	CA	
	RC	

March 6, 2017 (Rev. March 6, 2017)

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 30** – Senator David Simmons
Relief of Erin Joynt by Volusia County

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM IN THE AMOUNT OF \$1,895,000 BASED ON A JURY TRIAL AWARD TO COMPENSATE ERIN JOYNT FOR INJURIES SUSTAINED WHEN SHE WAS RUN OVER WHILE SUNBATHING BY A VOLUSIA COUNTY BEACH PATROL VEHICLE.

FINDINGS OF FACT:

The Accident

On July 31, 2011, the Claimant, Erin Joynt, her husband, and two children were vacationing beachgoers at Atlantic Ocean Beach in Daytona Beach Shores. They traveled from their home of Wichita, Kansas and stopped at Daytona Beach Shores. They were planning to go to Walt Disney World afterwards.

At the time of the accident, the Claimant was lying face down on a towel sunbathing on the beach while her husband and two children were frolicking in the surf. At the same time, in the regular course of his employment duties, Thomas Moderie, an employee of the Volusia County Beach Patrol, was driving a 2005 Ford F-150 pickup truck owned by Volusia County northbound in the designated travel lanes along the beach in the vicinity of the Claimant.

Moderie was flagged down by a pedestrian who informed Moderie that there was broken glass on the beach sand in an area south of their location. Moderie then decided to turn his vehicle around but did not exit his vehicle to check the turnaround area for tourists as he was taught.

As Moderie made the right hand U-turn, he ran over the Claimant as she lay sunbathing on the beach. The truck's tire rolled over the Claimant's head, neck, and torso.

The right hand U-turn was against Volusia County's policies and procedures. These procedures required beach patrol employees to make U-turns to the left while remaining within the designated travel lanes.

Injuries

The Claimant was severely injured as a result of the accident. Her injuries included including multiple cranial and facial fractures, rib fractures, permanent facial injuries, memory loss, back pain, and damage to her left ear and additional hearing loss in this ear.

Medical Care

The Claimant was hospitalized from July 31, 2011, through August 5, 2011, at the Halifax Medical Center in Daytona Beach. Thereafter, the Claimant returned home to Wichita, Kansas. However, she continued to receive medical treatment for her injuries.

In September 2011, the Claimant had a gold weight surgically inserted into her left eyelid to help her blink/close her eyes. She has undergone multiple left ear pressure equalization tube placements and removals to assist with fluid drainage. In 2012, the Claimant had a left ear tympanoplasty with ossicular chain reconstruction surgery. Her left eardrum has a permanent perforation, along with hearing loss.

Education and Employment

In 2013, the Claimant completed her college degree in education at Southwestern College in Wichita, Kansas. The Claimant is currently employed as a paraprofessional at an elementary school in Wichita where she assists children who are struggling to read.

Impact of Accident on Daily Living

The injuries the Claimant sustained during the accident have been life-changing.

Prior to the accident, the Claimant led an active lifestyle with her family, including riding and racing motorcycles, boating, swimming, and playing softball. She was also proud of her diction and eloquence. Since the accident, it is too painful for her to enjoy the aforementioned activities. Additionally, the Claimant is unable to make certain sounds and sometimes has difficulty in finding the right word to express herself.

At the time of the claim bill hearing (January 5, 2017), the Claimant continued to suffer as a result of the impact of the truck operated by Moderie. The Claimant is unable to blink her right eye without the assistance of the gold weight that was sewn into her eyelid. The Claimant has a perforated eardrum and resulting hearing loss in her left ear. When listening to someone talk, she must turn in the direction of the speaker and rely on her right ear.

The Claimant has permanent facial paralysis on the left side of her face, has speech and neurological deficits, and chronic pain. The Claimant has an inability to enunciate certain sounds; she cannot eat with a spoon or rinse out her mouth without holding it closed. The Claimant cannot drink out of a bottle of water; she must have a cup or straw. The Claimant can only feel half of her husband's kiss, and she continues to have daily pain associated with her injury. Sitting or standing too long hurts.

The Claimant takes the following medications as a result of the accident: Trazadone (anti-depressant), Duloxetine (anti-depressant and nerve pain reliever), Tramadol (pain medication), Meloxicam (anti-inflammatory and pain medication), and Lidocaine (pain medication).

In addition to the physical changes and changes to her lifestyle resulting from the accident, the accident has affected the Claimant's personality. She is not as outgoing as she used to be and has become moody and irritable. When the Claimant is upset, she is not able to produce tears. The Claimant is very self-conscious about smiling or laughing; she is unable to smile as half her face is partially paralyzed.

PROCEDURAL HISTORY:

On April 5, 2012, the Claimant filed suit for negligence against Volusia County in the Circuit Court, Seventh Judicial Circuit, In and For Volusia County, Florida.

In June 2014, a 4-day trial was held. Volusia County admitted negligence, and the jury determined damages. On June 27, 2014, the jury found Volusia County liable for the Claimant's injuries and awarded her \$2.6 million in compensatory damages. The compensatory damages consisted of:

- \$100,000 for Future Medical Costs;
- \$500,000 for Future Lost Earnings;
- \$500,000 for Past Pain and Suffering; and
- \$1.5 million for Future Pain and Suffering.

On July 14, 2014, the Claimant filed a Motion for Attorneys' Fees and Costs. To date, the trial court has not ruled on this motion.

On August 18, 2014, judgment was entered pursuant to the jury's verdict. Thereafter, an Amended Final Judgment was entered on August 19, 2014.

On September 17, 2014, Volusia County appealed the Amended Final Judgment challenging the portions of the judgment awarding damages for lost earning capacity (\$500,000) and future medical expenses (\$100,000) to the District Court of Appeals of Florida, Fifth District. Volusia County did not challenge the portion of the judgment awarding damages for past pain and suffering (\$500,000) and future pain and suffering (\$1.5 million)

On November 13, 2015, the Fifth District Court of Appeal concluded there was no reasonable evidence submitted on which the jury could predicate a verdict in favor of the Claimant on the claims of lost earning capacity and future medical expenses. The Fifth District Court of Appeal reversed the jury's award for these claims and remanded the case to the trial court to strike same from the final judgment. See *Volusia Cty. v. Joynt*, 179 So. 3d 448 (Fla. 5th DCA 2015).

On January 12, 2016, The Second Amended Final Judgment for Plaintiff (Joynt) in the amount of \$2 million was entered against Volusia County by the trial court in accordance with the mandate from the Fifth District Court of Appeal. The Second Amended Final Judgment noted that the trial court

retained jurisdiction to determine and award taxable costs, and to determine entitlement, and if necessary, the amount of attorney's fees.

In accordance with s. 768.28, F.S., Volusia County paid the sovereign immunity limit amount of \$200,000 for this accident. Of the \$200,000 sovereign immunity limit, \$100,000 was paid to the Claimant's husband for loss of consortium, and \$15,000 was paid to Joynt's two children (\$7,500 per child) for loss of consortium prior to trial pursuant to a settlement agreement. The remaining \$85,000 was paid to the Claimant following entry of final judgment.

After the accident, Moderie's personal automobile insurance carrier, Allstate Insurance, paid the Claimant \$20,000. Star Insurance Company, Volusia County's excess insurer, paid \$34,000 to the Claimant's husband pursuant to a settlement agreement prior to trial.

To the extent Claimant's damages caused by Volusia County total \$2 million as reflected in the Second Amended Final Judgment, the Claimant has received a total amount of \$105,000, including \$85,000 from Volusia County and \$20,000 from Moderie. Volusia County is entitled to a setoff of the settlement amount paid by Moderie. See s. 768.041(2), F.S.; *Honeywell Int'l, Inc. v. Guilder*, 23 So. 3d 867, 871 (Fla. 3d DCA 2009). The remaining balance for the claim bill is \$1,895,000.

On April 20, 2016, the Claimant filed a Complaint for Declaratory Judgment against Volusia County and Star Insurance Company in the Circuit Court, Seventh Judicial Circuit, In and For Volusia County, Florida. The issue is whether Star Insurance Company is obligated to pay the judgment for the Claimant without the passage of a claim bill under s. 768.28(5), F.S. On May 27, 2016, the case was removed to the U.S. District Court, Middle District of Florida, Orlando Division. The Claimant filed a Motion for Stay of Proceedings Until Legislative Session Is Complete on January 18, 2017. The Declaratory Judgment case remains pending.

CLAIMANT'S POSITION:

The Claimant maintains the claims bill should be approved to uphold the reduced jury verdict of \$2 million, less \$105,000 already received by the Claimant.

Volusia County did not challenge the jury award of past pain and suffering (\$500,000) and future pain and suffering (\$1.5 million) in its appeal to Florida Fifth District Court of Appeal.

No funds from Volusia County will be used to pay the claims bill. Volusia County previously purchased insurance coverage from Star Insurance Company. Payment of the claims bill will come from this insurance coverage.

THE COUNTY'S POSITION:

Volusia County maintains that the claim bill is not ripe for consideration by the Legislature since the Claimant has not exhausted all available administrative and judicial remedies pursuant to Senate Rule 4.81(6). Plaintiff's Motion for Attorney's Fees and Costs is still pending in the underlying civil action and the Complaint for Declaratory Judgment filed against Volusia County and Star Insurance Company is pending in U.S. District Court, Middle District of Florida.

Volusia County further maintains that the amount of the claims bill is excessive under the facts and circumstances of the underlying claim.

Although Volusia County recognizes that the Claimant suffered real and substantial injuries, including partial facial paralysis, the county contends that the \$2 million jury verdict for non-economic damages (\$500,000 for past pain and suffering and \$1.5 million for future pain and suffering) is excessive.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether Volusia County is liable in negligence for damages suffered by the Claimant and, if so, whether the amount of the claim is reasonable. This report is based on the evidence presented to the Special Master prior to, during, and after the hearing.

The duty to use care in driving a motor vehicle has been established by statute and case law. Section 316.1925(1), F.S., provides:

Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, curves, corners, traffic, and all other attendant

circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.

Although this statute is limited on its face to streets and highways, the same duty of care should apply to persons who drive on a beach where sunbathers are present.

According to case law, motor vehicle drivers have a duty to avoid pedestrians on and off roadways. See, e.g., *City of Tallahassee v. Kaufman*, 87 Fla. 119 (1924) (imposing liability on the City of Tallahassee for damages caused by a trailer pulled behind a fire truck that swept across a street corner and injured a pedestrian).

Moderie had a duty to operate the Volusia County beach patrol vehicle in consideration of the safety of sunbathers and other patrons of the beach and in compliance with Volusia County Beach Patrol policies and procedures. It was entirely foreseeable that severe injuries to sunbathers, such as the Claimant, could occur when Moderie violated these duties.

By failing to look for and avoid sunbathers as he drove on the soft sand area of the beach and by failing to turn the vehicle around in the direction away from sunbathers in violation of county policies and procedures, Moderie breached his duty of care, and the breach was the proximate cause of the severe injuries to the Claimant.

Moderie was acting within the course and scope of his employment with Volusia County at the time he ran over the Claimant. Volusia County, as Moderie's employer, is liable for the damages caused by its employee's negligent act. *Mercury Motors Express v. Smith*, 393 So. 2d 545, 549 (Fla. 1981) (holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment); *Stinson v. Prevatt*, 84 Fla. 416 (1922).

In its Post-Hearing Memorandum, Volusia County cites to Senate Rule 4.81(6) and maintains that the instant claims bill should proceed no further. Senate Rule 4.81(6) provides, in part, that a claims bill is not ripe for hearing until all "available administrative and judicial remedies have been exhausted."

The Complaint for Declaratory Judgment that is pending in U.S. District Court, Middle District, Florida, should be considered a collateral appeal. However, the declaratory judgment action is not appealing the validity nor the amount of the reduced jury verdict that has been finalized on appeal to the Florida Fifth District Court of Appeal, but rather the issue is whether Volusia County and its insurer may settle/pay the judgment without the passage of a claims bill by the Legislature. Further, the outstanding Motion for Attorney's Fees and Costs will be moot, if this claims bill is passed by the Legislature. Therefore, I conclude that Senate Rule 4.81(6) does not prevent the claims bill from proceeding forward.

After considering all of the factors in this case, I conclude that the \$1,895,000 amount of this claims bill is appropriate.

FISCAL IMPACT:

Volusia County has insurance coverage through Star Insurance Company for the period of October 1, 2010 to October 1, 2011. The policy provided excess automobile coverage for vehicles insured under the policy owned by Volusia County, including the vehicle driven by Moderie and involved in the July 31, 2011 accident. This policy provides coverage of \$5 million per accident or occurrence (with a \$15 million policy aggregate limit) and includes a self-insured retention of \$100,000 per person for liability for claims pursuant to s. 768.28, F.S. Volusia County previously paid an advanced premium of \$520,000 for this policy. No county funds will be required to pay the claim bill.

RELATED ISSUES:

An amendment to the instant claim bill is needed to clarify facts regarding the Claimant's injuries, the amount of the judgment paid to the Claimant by Volusia County, and the positions of Star Insurance Company and Volusia County on the claim bill.

ATTORNEYS FEES:

The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), Florida Statutes. No lobbyist fees will be paid.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 30 be reported FAVORABLY, AS AMENDED.

SPECIAL MASTER'S FINAL REPORT – SB 30

March 6, 2017 (Rev. March 6, 2017)

Page 9

Respectfully submitted,

John Ashley Peacock
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

Attachment



304628

LEGISLATIVE ACTION

Senate

House

.
. .
. .
. .
. .
. .

The Special Master on Claim Bills recommended the following:

1 **Senate Amendment (with title amendment)**

2

3 Delete lines 61 - 69

4 and insert:

5 warrant in the sum of \$1,895,000, payable to Erin Joynt as
6 compensation for injuries and damages sustained.

7 Section 3. The amount paid by Volusia County pursuant to s.
8 768.28, Florida Statutes, and the amount awarded under this act
9 are intended to provide the sole compensation for all present
10 and future claims arising out of the factual situation described
11 in this act which resulted in injuries and damages to Erin
12 Joynt. The total amount paid for attorney fees relating to this



304628

13 claim may not

14

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

16 And the title is amended as follows:

17 Delete lines 9 - 52

18 and insert:

19 attorney fees; providing an effective date.

20

21 WHEREAS, on July 31, 2011, Erin Joynt, her husband, and two
22 children were vacationing beachgoers on Daytona Beach as they
23 journeyed from their native Wichita, Kansas, to their planned
24 destination of Walt Disney World, and

25 WHEREAS, at the same time, in the regular course of his
26 employment duties, Thomas Moderie, an employee of the Volusia
27 County Beach Patrol, was driving a Ford F-150 pickup truck owned
28 by the county along the beach, and

29 WHEREAS, Mr. Moderie negligently operated the truck,
30 running over Mrs. Joynt while she was sunbathing on the beach,
31 and

32 WHEREAS, as a result of the impact with the truck, Mrs.
33 Joynt sustained severe injuries, including, but not limited to,
34 multiple cranial and facial fractures, rib fractures, permanent
35 facial injuries, and chronic back pain, and

36 WHEREAS, Mrs. Joynt continues to suffer as a result of the
37 impact and is unable to blink her right eye without the
38 assistance of a gold weight sewn into her eyelid and has a
39 perforated eardrum and additional hearing loss, permanent facial
40 paralysis, speech and neurological deficits, and chronic pain,
41 and



304628

42 WHEREAS, after a 4-day trial in June 2014 at which Volusia
43 County acknowledged the negligence of Mr. Moderie, a jury found
44 the county liable for Mrs. Joynt's injuries and awarded her
45 compensatory damages in the amount of \$2.6 million, and

46 WHEREAS, on January 12, 2016, following resolution of an
47 appeal initiated by the county, a final judgment in the amount
48 of \$2 million was entered against Volusia County by the trial
49 court, and

50 WHEREAS, Volusia County is insured for Mrs. Joynt's claim
51 for damages through an excess liability insurance policy
52 underwritten by Star Insurance Company, and

53 WHEREAS, Volusia County has already paid \$85,000 of the
54 judgment pursuant to the statutory limits of liability set forth
55 in s. 768.28, Florida Statutes, which were in effect at the time
56 that Mrs. Joynt's claim arose, NOW, THEREFORE,
57



115586

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 61 - 69

and insert:

warrant in the sum of \$1,895,000, payable to Erin Joynt as compensation for injuries and damages sustained.

Section 3. The amount paid by Volusia County pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Erin



115586

12 Joynt. The total amount paid for attorney fees relating to this
13 claim may not

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

16 And the title is amended as follows:

17 Delete lines 9 - 52

18 and insert:

19 attorney fees; providing an effective date.

20

21 WHEREAS, on July 31, 2011, Erin Joynt, her husband, and two
22 children were vacationing beachgoers on Daytona Beach as they
23 journeyed from their native Wichita, Kansas, to their planned
24 destination of Walt Disney World, and

25 WHEREAS, at the same time, in the regular course of his
26 employment duties, Thomas Moderie, an employee of the Volusia
27 County Beach Patrol, was driving a Ford F-150 pickup truck owned
28 by the county along the beach, and

29 WHEREAS, Mr. Moderie negligently operated the truck,
30 running over Mrs. Joynt while she was sunbathing on the beach,
31 and

32 WHEREAS, as a result of the impact with the truck, Mrs.
33 Joynt sustained severe injuries, including, but not limited to,
34 multiple cranial and facial fractures, rib fractures, permanent
35 facial injuries, and chronic back pain, and

36 WHEREAS, Mrs. Joynt continues to suffer as a result of the
37 impact and is unable to blink her right eye without the
38 assistance of a gold weight sewn into her eyelid and has a
39 perforated eardrum and additional hearing loss, permanent facial
40 paralysis, speech and neurological deficits, and chronic pain,



115586

41 and

42 WHEREAS, after a 4-day trial in June 2014, at which Volusia
43 County acknowledged the negligence of Mr. Moderie, a jury found
44 the county liable for Mrs. Joynt's injuries and awarded her
45 compensatory damages in the amount of \$2.6 million, and

46 WHEREAS, on January 12, 2016, following resolution of an
47 appeal initiated by the county, a final judgment in the amount
48 of \$2 million was entered against Volusia County by the trial
49 court, and

50 WHEREAS, Volusia County is insured for Mrs. Joynt's claim
51 for damages through an excess liability insurance policy
52 underwritten by Star Insurance Company, and

53 WHEREAS, Volusia County has already paid \$85,000 of the
54 judgment to Mrs. Joynt pursuant to the statutory limits of
55 liability set forth in s. 768.28, Florida Statutes, which were
56 in effect at the time that Mrs. Joynt's claim arose, NOW,
57 THEREFORE,

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 898

INTRODUCER: Senator Simmons

SUBJECT: Civil Remedies for Terrorism

DATE: March 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			ACJ	
3.			RC	

I. Summary:

SB 898 creates a civil cause of action for a person who is injured by either an act of terrorism or a violation of a law that facilitates or furthers an act of terrorism. A successful plaintiff is entitled to a minimum of \$1,000 in damages or three times the actual damages sustained and reasonable attorney fees and court costs at the trial and appellate levels. In contrast, a defendant is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that is not supported factually or legally.

When a court awards attorney fees and costs under the bill, it may not consider whether the opposing party is able to pay the fees and costs. The bill does not limit any other right to recover attorney fees or costs established in any other provision of law.

The cause of action authorized under the bill does not apply to a person who is injured while participating in an act of terrorism.

II. Present Situation:

Torts

A tort is an injury or civil wrong for which a harmed person may seek a remedy, generally in the form of damages. The basic purpose of tort law is to compensate the wronged person for his or her injury by the person responsible for the wrong. The loss is generally shifted from the injured person to the one who is at fault. While some acts may, at the same time, be both a crime and a tort, a crime is committed against the public and redress is pursued by the state. A tort, however, is a private injury and redress is pursued by the injured party in a civil suit.¹

¹ 55 FLA. JUR 2D TORTS s. 1 (2017).

An intentional tort is committed by a person who acts with general or specific intent to harm someone² or engages in conduct that is substantially certain to bring about injury or death.³ Some general examples of intentional torts are assault, battery, false imprisonment, fraud, intentional infliction of emotional distress, and invasion of privacy. Beyond the usual economic and non-economic damages, a defendant may also be held liable for punitive damages if there is a finding that the defendant was personally guilty of intentional misconduct or gross negligence.⁴

While the statutes do not provide a specific cause of action for someone in Florida to recover for injuries sustained by terrorism, it is arguable that damages could be recovered through a cause of action for battery.

Civil Remedies for Criminal Practices in Chapter 772

Civil remedies are provided as redress for certain criminal practices enumerated in chapter 772, F.S. For example, a civil cause of action is provided for any person who proves by clear and convincing evidence that he or she has been injured by someone who has received proceeds derived from a pattern of criminal activity.⁵ The criminal activity referred to includes offenses relating to the manufacture, distribution, and use of explosives, homicide, assault and battery, kidnapping, weapons and firearms, arson, computer-related crimes, bribery, and the obstruction of justice.⁶

While punitive damages are not generally recoverable for claims arising under chapter 772, F.S., a prevailing plaintiff may recover threefold, or treble, the actual damages and a minimum of \$200 in damages, or \$1,000 under the Drug Dealer Liability Act, as well as attorney fees and court costs at trial and on appeal.⁷ A defendant, however, is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that was without substantial fact or legal support. The court is precluded from considering whether the opposing party is able to pay fees and costs.⁸

If a civil remedy is applied under chapter 772, it does not preclude the application of any other remedy, whether civil or criminal, under any other provision of law.⁹ Additionally, if a defendant has been found guilty or pled guilty or nolo contendere to the same criminal act that is the basis of the plaintiff's civil cause of action under chapter 772, F.S., the defendant is estopped as if the plaintiff had been a party in the state's criminal action.¹⁰

² BLACK'S LAW DICTIONARY (14th ed. 2014).

³ 55 FLA. JUR 2D TORTS s. 6 (2017).

⁴ Section 768.72(2), F.S.

⁵ Sections 772.103(1) and 772.104, F.S.

⁶ Section 772.102(1), F.S. By definition, "criminal activity" means to commit, attempt to commit, conspire to commit, or solicit, coerce, or intimidate another person to commit the list of crimes in s. 772.102(1)(a).

⁷ Sections 772.104(1), 772.11(1), and 772.12, F.S.

⁸ Sections 772.104(3) and 772.11, F.S.

⁹ Section 772.18, F.S.

¹⁰ Section 772.14, F.S.

Terrorism

Terrorism is defined in the Florida Criminal Code as an activity that involves a violent act or an act dangerous to human life which is a violation of the criminal laws of the state or of the United States or involves a violation of s. 815.06, F.S., relating to offenses against users of computers and electronic devices, and is intended to:

- Intimidate, injure, or coerce a civilian population;
- Influence the policy of a government by intimidation or coercion; or
- Affect the conduct of government through the destruction of property, assassination, murder, kidnapping, or aircraft piracy.¹¹

Terrorism is not an independent crime in the statutes but is a qualifying offense for the crime of capital murder. For example, if a person unlawfully kills someone during the commission of a felony act of terrorism, the perpetrator can be prosecuted for first degree murder, a capital felony.¹²

If someone is convicted of committing a felony or misdemeanor that facilitated or furthered an act of terrorism, the court is required to reclassify the felony or misdemeanor to the next higher degree.¹³ Additionally, if the underlying crime is a first-degree misdemeanor or greater, the offense severity ranking is increased, thereby increasing the defendant's potential sentence.¹⁴

Federal Terrorism Statute

SB 898 is structured similarly to the federal Antiterrorism Act of 1990.¹⁵ The federal legislation also provides for the recovery of treble damages, cost of the suit, and attorney fees, but differs in that the injury sustained by the claimant must be for an act of international terrorism.¹⁶ The international provision requires that the act "occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished"¹⁷

Liability for Intentional Torts

Under the doctrine of joint and several liability, all of the defendants at fault for a plaintiff's damages are responsible for the total of each defendant's fault.¹⁸ With a few exceptions, s. 768.81, F.S., generally abolished the application of the doctrine. One of the exceptions allows the doctrine of joint and several liability to apply to "any action based upon an intentional tort."¹⁹

¹¹ Section 775.30, F.S.

¹² Section 782.04(1)(a)2.r., (3)r., and (4)s., F.S.

¹³ Section 775.31(1), F.S.

¹⁴ Section 775.31(2), F.S.

¹⁵ 18 U.S.C. s. 2331 *et. seq.*

¹⁶ 18 U.S.C. s. 2333(a).

¹⁷ 18 U.S.C. s. 2331(1)(C).

¹⁸ *Louisville & N. R. Co. v. Allen*, 65 So. 8 (Fla. 1914).

¹⁹ Section 768.81(4), F.S.

Attorney Fees and Sanctions for Raising Unsupported Claims or Defenses

Section 57.105, F.S., generally authorizes a court to award reasonable attorney fees, including prejudgment interest to the prevailing party from the losing party and the losing party's attorney for unsupported claims and defenses presented to the court. The statute further provides that its remedies are supplemental to other sanctions available under law or court rules.²⁰

Similar Legislation in Other States

Private William "Andy" Long, U.S. Army, was killed in uniform outside of an Arkansas Army recruiting office on June 1, 2009. Another soldier was wounded in the shooting but survived. The defendant in the case claimed to be a terrorist and had traveled to Yemen. In 2011, he pleaded guilty to capital murder and attempted capital murder and received a life sentence with no possibility of parole.²¹ Because of this incident, legislation has been enacted in Louisiana, Arkansas, Kansas, Tennessee, and North Carolina that permits victims of terrorist acts to recover damages as proposed in this legislation.²²

III. Effect of Proposed Changes:

SB 898 creates a civil cause of action for a person who is injured by an act of terrorism or by a violation of a law that facilitates or furthers an act of terrorism. A successful plaintiff is entitled to a minimum of \$1,000 or three times the actual damages sustained and reasonable attorney fees and court costs at the trial and appellate levels. The cause of action created by the bill does not apply to a person who is injured while participating in an act of terrorism.

A defendant is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that is not supported factually or legally.

When a court awards attorney fees and costs under the bill, it may not consider whether the opposing party is able to pay the fees and costs. This new remedy does not limit any other right to recover attorney fees or costs established in any other provisions of law.

Because terrorism is an intentional tort and because the doctrine of joint and several liability applies to actions based on an intentional tort, a defendant who was a minor participant in an act of terrorism may be liable for all of a plaintiff's damages.²³

The bill takes effect July 1, 2017.

²⁰ Section 57.105(6), F.S.

²¹ See *Recruitment Shooting Suspect Doesn't Think Killing was Murder*, ASSOCIATED PRESS, Jun. 9, 2009, <http://www.foxnews.com/story/2009/06/09/recruitment-shooting-suspect-doesnt-think-killing-was-murder.html>; *Family seeks recognition for soldier slain in Ark.*, ASSOCIATED PRESS, Jul. 26, 2011, <http://www.cbs8.com/story/15152640/family-seeks-recognition-for-soldier-slain-in-ark>.

²² Center for Security Policy, *Andy's Law Signed by Governor McCrory in North Carolina*, (Aug. 24, 2015) available at <https://www.centerforsecuritypolicy.org/2015/08/24/andys-law-signed-by-governor-mccrory-in-north-carolina/>.

²³ See s. 768.81(4), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may provide a remedy for damages caused by terrorism when an international component does not exist. An international component is required for lawsuits for damages for terrorism under federal law. Additionally, by authorizing treble damages for injuries caused by acts of terrorism, the bill authorizes more compensation than that available under existing causes of action.

C. Government Sector Impact:

The Office of the State Courts Administrator has not yet provided a Judicial Impact Statement for SB 898. However, in an analysis of a similar bill from 2016, the Office of the State Courts Administrator noted that the fiscal impact of the legislation could not be accurately determined due to the unavailability of data needed to establish the effects on judicial time and workload resulting from the bill's provisions.²⁴ It appears unlikely that the bill will result in significant workload to the court system.

VI. Technical Deficiencies:

It is not clear in subsection (1) whether there must first be a conviction for an act of terrorism before a plaintiff may bring civil charges under this act. Similar sections in chapter 772, F.S., Civil Remedies for Criminal Practices, provide that a person need only prove by clear and convincing evidence that he or she has been injured by the underlying crime before proceeding with a civil suit. Perhaps the Legislature might consider adding similar language to this subsection to clarify that there does not need to be a conviction for an act of terrorism before a plaintiff may bring a civil suit for damages.

²⁴ Office of the State Court Administrator, *2016 Judicial Impact Statement for SB 996* (Jan. 26, 2016) (on file with the Senate Committee on Judiciary).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 772.13, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Simmons

9-00739-17

2017898__

1 A bill to be entitled
 2 An act relating to civil remedies for terrorism;
 3 creating s. 772.13, F.S.; creating a cause of action
 4 relating to terrorism; specifying a measure of
 5 damages; prohibiting claims by specified individuals;
 6 providing for attorney fees and court costs; providing
 7 construction; providing an effective date.
 8

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

10 Section 1. Section 772.13, Florida Statutes, is created to
 11 read:

12 772.13 Civil remedy for terrorism or facilitating or
 13 furthering terrorism.-

14 (1) A person who is injured by an act of terrorism as
 15 defined in s. 775.30 or a violation of a law for which the
 16 penalty is increased pursuant to s. 775.31 for facilitating or
 17 furthering terrorism has a cause of action for threefold the
 18 actual damages sustained and, in any such action, is entitled to
 19 minimum damages in the amount of \$1,000 and reasonable attorney
 20 fees and court costs in the trial and appellate courts.

21 (2) A person injured by reason of his or her participation
 22 in the same act or transaction that resulted in the act of
 23 terrorism or resulted in the defendant's penalty increase
 24 pursuant to s. 775.31 may not bring a claim under this section.

25 (3) The defendant is entitled to recover reasonable
 26 attorney fees and court costs in the trial and appellate courts
 27 upon a finding that the claimant raised a claim that was without
 28 support in fact or law.
 29

Page 1 of 2

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

9-00739-17

2017898__

30 (4) In awarding attorney fees and court costs under this
 31 section, the court may not consider the ability of the opposing
 32 party to pay such fees and court costs.

33 (5) This section does not limit a right to recover attorney
 34 fees or costs under other provisions of law.

35 Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 494

INTRODUCER: Senator Bradley

SUBJECT: Compensation of Victims of Wrongful Incarceration

DATE: March 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 494 amends chapter 961, Florida Statutes, which establishes an administrative process for compensation for a person who has been wrongfully incarcerated.

Under current law, a person is not eligible for compensation for wrongful incarceration if he or she has a criminal history that includes any felony.¹ This is commonly known as the “clean hands” provision of Florida’s wrongful incarceration compensation law. The bill narrows the list of felony offenses that disqualify a person from compensation from all felonies to violent felonies. What constitutes a violent felony is defined in the bill. By narrowing the types of disqualifying felonies, the bill expands the pool of potential applicants for compensation through the administrative process.

This bill has an indeterminate fiscal impact because it is unknown how many applicants would be eligible under the expanded criteria.

II. Present Situation:

The Victims of Wrongful Incarceration Compensation Act has been in effect since July 1, 2008.² The law establishes an administrative process for a person to petition the original sentencing court for an order finding the petitioner to have been wrongfully incarcerated and eligible for compensation.

The Department of Legal Affairs administers the eligible person’s application process and verifies the validity of the claim.³ The Chief Financial Officer arranges for payment of the claim

¹ Section 961.04, F.S.

² Chapter 961, F.S. (ch. 2008-39, L.O.F.).

³ Section 961.05(2), F.S.

by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.⁴

“Clean Hands” Provision of the Act – Section 961.04, Florida Statutes

In cases in which sufficient evidence of actual innocence can be shown, the person is still ineligible for compensation if:

- Before the person’s wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense, or a crime committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- During the person’s wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense; or
- During the person’s wrongful incarceration, the person was also serving a concurrent sentence for another felony for which the person was not wrongfully convicted.⁵

Of the 30 states that have statutes that provide for compensation for wrongfully incarcerated persons, Florida is the only state with a “clean hands” provision.⁶

Wrongfully Incarcerated - Placed on Parole or Community Supervision for the Offense

A person convicted of a felony may be sentenced to a split sentence, which is a sentence including both incarceration and release under supervision. Alternatively, a person could be granted parole if he or she meets the statutory criteria.⁷ Therefore, a person could potentially be wrongfully incarcerated for a crime and then placed on parole or community supervision as part of the sentence. If a person violates a condition of parole or community supervision, he or she may have parole or community supervision revoked. The basis for revocation of parole or community supervision may affect eligibility for compensation for wrongful incarceration.

⁴ Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any Florida College System Institution as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets and maintains the regular admission requirements; remains registered; and makes satisfactory academic progress as defined by the educational institution in which the claimant is enrolled. The wrongfully incarcerated person is also entitled to reimbursement of the amount of any fine, penalty, or court costs paid, and the amount of any reasonable attorney’s fees and expenses incurred for all criminal proceedings and appeals regarding the wrongful conviction, to be calculated by the department based upon supporting documentation submitted as specified in s. 961.05, F.S.. Finally, the wrongfully incarcerated person is entitled to immediate administrative expunction of the person’s criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. s. 961.06, F.S.

⁵ Section 961.04, F.S.

⁶ *Making Up for Lost Time*, page 19, The Innocence Project, Benjamin N. Cardozo School of Law, www.innocenceproject.org; (“Clean hands” meaning that a person is ineligible for compensation if he or she has prior felony offenses to the one for which compensation is being sought.). Other states generally take these matters up by “personal bills,” a process much like Florida’s claim bill process.

⁷ Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines which was October 1, 1983, and only if they meet the statutory criteria. Ch. 82-171, Laws of Florida; s. 947.16, F.S. The term “community supervision” as used in s. 961.06(2), F.S., could include controlled release, conditional medical or conditional release under the authority of the Commission on Offender Review (ch. 947, F.S.) or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

Under s. 961.06(2), F.S., if a person commits a misdemeanor or a technical violation while under supervision which results in revocation of the community supervision or parole, the person remains eligible for compensation. If, however, a felony law violation results in revocation, the person is no longer eligible for compensation.⁸ Ineligibility based on a felony violation applies to any felony.

Wrongful Incarceration Claims

To date, four persons have been compensated under the administrative process for a total of \$4,276,901. Six other claimants had their claims denied, based on either ineligibility or incomplete applications.⁹

III. Effect of Proposed Changes:

The bill amends ch. 961, F.S., the Victims of Wrongful Incarceration Compensation Act. Chapter 961, F.S., currently provides an administrative process for a person who has been wrongfully incarcerated for a felony conviction to seek a court order finding the person to be eligible for compensation. Current law disqualifies a person who is otherwise eligible for compensation if he or she has a record of any prior felony, a felony committed while wrongfully incarcerated, or a felony committed while on parole or community supervision.

The bill limits disqualifying felonies to violent felonies. In other words, the bill provides that in order to be found ineligible for compensation based on other crimes, the person must have committed a violent felony, not a simple felony. Specifically:

- Before the person's wrongful incarceration, he or she committed a violent felony;¹⁰
- During the person's wrongful incarceration, he or she committed a violent felony;¹¹ or
- During a period of parole or community supervision on the sentence that led to his or her wrongful incarceration, the person committed a violent felony that resulted in the revocation of the parole or community supervision.¹²

A violent felony is defined in the bill by a cross-reference to ss. 775.084(1)(c)1. and 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar.

Violent felony offenses which would preclude a wrongfully incarcerated person from being eligible for compensation under the bill are:

⁸ Section 961.06(2), F.S.

⁹ Email correspondence with the Office of the Attorney General (Jan. 14, 2016 and March 1, 2017) (on file with the Senate Committee on Judiciary). Persons whose claims have been successful are Leroy McGee (2010), James Bain (2011), Luis Diaz (2012), and James Richardson (2015). Jarvis McBride's claim was denied (2012). Three persons had their claims rejected based on incomplete applications. These are Robert Lewis (2011), Edwin Lampkin (2012), and Robert Glenn Mosley (2014). Two other claimants were determined to be ineligible for compensation (Ricardo Johnson (2013) and Joseph McGowan (2015)).

¹⁰ Section 961.04(1), F.S.

¹¹ Section 961.04(2), F.S.

¹² Section 961.06(2), F.S.

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;
- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

In limiting disqualifying felonies to violent felonies, the pool of potential persons eligible for compensation due to wrongful incarceration may increase.

The bill takes effect October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

More persons are potentially eligible for compensation under the provisions of SB 494. A person who is entitled to compensation based on wrongful incarceration would be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million.¹³

Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to s. 961.07, F.S.

Although statutory limits on compensation under the Act are clear, the fiscal impact of SB 494 is unquantifiable. The possibility that a person would be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future. Four successful claims since the Act became effective total \$4,276,901.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 961.02, 961.04, and 961.06.

This bill reenacts the following sections of the Florida Statutes: 961.03, 961.05, 961.055, and 961.056.

¹³ The Chief Financial Officer may adjust the annual rate of compensation for inflation for persons found to be wrongfully incarcerated after December 31, 2008. Section 961.06(1)(a), F.S.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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



230448

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment

Delete lines 64 - 75

and insert:

~~(1) Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any violent felony offense, or a crime committed in another jurisdiction the elements of which would constitute a violent felony in this state, or a crime committed against the United States which is designated a violent felony, excluding any delinquency~~



230448

12 ~~disposition;~~

13 (1)~~(2)~~ During the person's wrongful incarceration, the
14 person was convicted of, or pled guilty or nolo contendere to,
15 regardless of adjudication, any violent felony ~~offense~~; or

16 (2)~~(3)~~ During the person's wrongful incarceration, the
17 person

By Senator Bradley

5-00262-17

2017494__

A bill to be entitled

An act relating to compensation of victims of wrongful incarceration; reordering and amending s. 961.02, F.S.; making technical changes; defining the term "violent felony"; amending s. 961.04, F.S.; revising the circumstances under which a wrongfully incarcerated person is not eligible for compensation under the Victims of Wrongful Incarceration Compensation Act; amending s. 961.06, F.S.; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation; reenacting s. 961.03(1)(a), (2), (3), and (4), F.S., relating to determination of status as a wrongfully incarcerated person and of eligibility for compensation, to incorporate the amendment made to s. 961.04, F.S., in references thereto; reenacting ss. 961.05(6), 961.055(1), and 961.056(4), F.S., relating to determination of entitlement to compensation, application for compensation for a wrongfully incarcerated person, and an alternative application for compensation for a wrongfully incarcerated person, respectively, to incorporate the amendment made to s. 961.06, F.S., in references thereto; providing an effective date.

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

Section 1. Section 961.02, Florida Statutes, is reordered and amended to read:

961.02 Definitions.—As used in ss. 961.01-961.07, the term:

Page 1 of 7

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

5-00262-17

2017494__

(1) "Act" means the Victims of Wrongful Incarceration Compensation Act.

(2) "Department" means the Department of Legal Affairs.

(3) "Division" means the Division of Administrative Hearings.

~~(7)(4)~~ "Wrongfully incarcerated person" means a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and who is the subject of an order issued by the original sentencing court pursuant to s. 961.03, with respect to whom pursuant to the requirements of s. 961.03, the original sentencing court has issued its order finding that the person did not commit ~~neither committed~~ the act or nor the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.

~~(4)(5)~~ "Eligible for compensation" means that a person meets the definition of the term "wrongfully incarcerated person" and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04.

~~(5)(6)~~ "Entitled to compensation" means that a person meets the definition of the term "eligible for compensation" and satisfies the application requirements prescribed in s. 961.05, and may receive compensation pursuant to s. 961.06.

~~(6)~~ "Violent felony" means a felony listed in s. 775.084(1)(c)1. or s. 948.06(8)(c).

Section 2. Section 961.04, Florida Statutes, is amended to read:

961.04 Eligibility for compensation for wrongful

Page 2 of 7

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

5-00262-17

2017494__

62 incarceration.—A wrongfully incarcerated person is not eligible
63 for compensation under the act if:

64 (1) Before the person's wrongful conviction and
65 incarceration, the person was convicted of, or pled guilty or
66 nolo contendere to, regardless of adjudication, any violent
67 felony ~~offense~~, or a crime committed in another jurisdiction the
68 elements of which would constitute a violent felony in this
69 state, or a crime committed against the United States which is
70 designated a violent felony, excluding any delinquency
71 disposition;

72 (2) During the person's wrongful incarceration, the person
73 was convicted of, or pled guilty or nolo contendere to,
74 regardless of adjudication, any violent felony ~~offense~~; or

75 (3) During the person's wrongful incarceration, the person
76 was also serving a concurrent sentence for another felony for
77 which the person was not wrongfully convicted.

78 Section 3. Subsection (2) of section 961.06, Florida
79 Statutes, is amended to read:

80 961.06 Compensation for wrongful incarceration.—

81 (2) In calculating monetary compensation under paragraph
82 (1) (a), a wrongfully incarcerated person who is placed on parole
83 or community supervision while serving the sentence resulting
84 from the wrongful conviction and who commits anything less than
85 a violent felony ~~law violation~~ that results in revocation of the
86 parole or community supervision is eligible for compensation for
87 the total number of years incarcerated. A wrongfully
88 incarcerated person who commits a violent felony ~~law violation~~
89 that results in revocation of the parole or community
90 supervision is ineligible for any compensation under subsection

Page 3 of 7

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

5-00262-17

2017494__

91 (1).

92 Section 4. For the purpose of incorporating the amendment
93 made by this act to section 961.04, Florida Statutes, in
94 references thereto, paragraph (a) of subsection (1) and
95 subsections (2), (3), and (4) of section 961.03, Florida
96 Statutes, are reenacted to read:

97 961.03 Determination of status as a wrongfully incarcerated
98 person; determination of eligibility for compensation.—

99 (1) (a) In order to meet the definition of a "wrongfully
100 incarcerated person" and "eligible for compensation," upon entry
101 of an order, based upon exonerating evidence, vacating a
102 conviction and sentence, a person must set forth the claim of
103 wrongful incarceration under oath and with particularity by
104 filing a petition with the original sentencing court, with a
105 copy of the petition and proper notice to the prosecuting
106 authority in the underlying felony for which the person was
107 incarcerated. At a minimum, the petition must:

108 1. State that verifiable and substantial evidence of actual
109 innocence exists and state with particularity the nature and
110 significance of the verifiable and substantial evidence of
111 actual innocence; and

112 2. State that the person is not disqualified, under the
113 provisions of s. 961.04, from seeking compensation under this
114 act.

115 (2) The prosecuting authority must respond to the petition
116 within 30 days. The prosecuting authority may respond:

117 (a) By certifying to the court that, based upon the
118 petition and verifiable and substantial evidence of actual
119 innocence, no further criminal proceedings in the case at bar

Page 4 of 7

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

5-00262-17

2017494

120 can or will be initiated by the prosecuting authority, that no
 121 questions of fact remain as to the petitioner's wrongful
 122 incarceration, and that the petitioner is not ineligible from
 123 seeking compensation under the provisions of s. 961.04; or

124 (b) By contesting the nature, significance, or effect of
 125 the evidence of actual innocence, the facts related to the
 126 petitioner's alleged wrongful incarceration, or whether the
 127 petitioner is ineligible from seeking compensation under the
 128 provisions of s. 961.04.

129 (3) If the prosecuting authority responds as set forth in
 130 paragraph (2) (a), the original sentencing court, based upon the
 131 evidence of actual innocence, the prosecuting authority's
 132 certification, and upon the court's finding that the petitioner
 133 has presented clear and convincing evidence that the petitioner
 134 committed neither the act nor the offense that served as the
 135 basis for the conviction and incarceration, and that the
 136 petitioner did not aid, abet, or act as an accomplice to a
 137 person who committed the act or offense, shall certify to the
 138 department that the petitioner is a wrongfully incarcerated
 139 person as defined by this act. Based upon the prosecuting
 140 authority's certification, the court shall also certify to the
 141 department that the petitioner is eligible for compensation
 142 under the provisions of s. 961.04.

143 (4) (a) If the prosecuting authority responds as set forth
 144 in paragraph (2) (b), the original sentencing court shall make a
 145 determination from the pleadings and supporting documentation
 146 whether, by a preponderance of the evidence, the petitioner is
 147 ineligible for compensation under the provisions of s. 961.04,
 148 regardless of his or her claim of wrongful incarceration. If the

5-00262-17

2017494

149 court finds the petitioner ineligible under the provisions of s.
 150 961.04, it shall dismiss the petition.

151 (b) If the prosecuting authority responds as set forth in
 152 paragraph (2) (b), and the court determines that the petitioner
 153 is eligible under the provisions of s. 961.04, but the
 154 prosecuting authority contests the nature, significance or
 155 effect of the evidence of actual innocence, or the facts related
 156 to the petitioner's alleged wrongful incarceration, the court
 157 shall set forth its findings and transfer the petition by
 158 electronic means through the division's website to the division
 159 for findings of fact and a recommended determination of whether
 160 the petitioner has established that he or she is a wrongfully
 161 incarcerated person who is eligible for compensation under this
 162 act.

163 Section 5. For the purpose of incorporating the amendment
 164 made by this act to section 961.06, Florida Statutes, in a
 165 reference thereto, subsection (6) of section 961.05, Florida
 166 Statutes, is reenacted to read:

167 961.05 Application for compensation for wrongful
 168 incarceration; administrative expunction; determination of
 169 entitlement to compensation.—

170 (6) If the department determines that a claimant meets the
 171 requirements of this act, the wrongfully incarcerated person who
 172 is the subject of the claim becomes entitled to compensation,
 173 subject to the provisions in s. 961.06.

174 Section 6. For the purpose of incorporating the amendment
 175 made by this act to section 961.06, Florida Statutes, in a
 176 reference thereto, subsection (1) of section 961.055, Florida
 177 Statutes, is reenacted to read:

5-00262-17

2017494__

178 961.055 Application for compensation for a wrongfully
179 incarcerated person; exemption from application by nolle
180 prosequi.-

181 (1) A person alleged to be a wrongfully incarcerated person
182 who was convicted and sentenced to death on or before December
183 31, 1979, is exempt from the application provisions of ss.
184 961.03, 961.04, and 961.05 in the determination of wrongful
185 incarceration and eligibility to receive compensation pursuant
186 to s. 961.06 if:

187 (a) The Governor issues an executive order appointing a
188 special prosecutor to review the defendant's conviction; and

189 (b) The special prosecutor thereafter enters a nolle
190 prosequi for the charges for which the defendant was convicted
191 and sentenced to death.

192 Section 7. For the purpose of incorporating the amendment
193 made by this act to section 961.06, Florida Statutes, in a
194 reference thereto, subsection (4) of section 961.056, Florida
195 Statutes, is reenacted to read:

196 961.056 Alternative application for compensation for a
197 wrongfully incarcerated person.-

198 (4) If the department determines that a claimant making
199 application under this section meets the requirements of this
200 chapter, the wrongfully incarcerated person is entitled to
201 compensation under s. 961.06.

202 Section 8. This act shall take effect October 1, 2017.

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 878

INTRODUCER: Senator Lee

SUBJECT: Supreme Court Reporting Requirements

DATE: March 6, 2017

REVISED: _____

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

I. Summary:

SB 878 requires the Supreme Court to annually prepare a status report on cases that are taking or have taken a long time to resolve.

For cases that are unresolved within 180 days after oral argument or the date of submission to the panel without oral argument, the report must, among other things:

- Identify the case type.
- Specify the number of days that have elapsed since the oral argument or the date the case was submitted to the panel for a decision.
- Explain why the Court failed to render a decision within the 180-day time period.
- State when the Court expects to render a decision or dispose of the case.

The report must also include data on cases resolved during the year preceding the date of the report that took longer than 180 days to resolve. This data, among other things, must identify the case type of each case and the number of days that elapsed between the oral argument or date the case was submitted to the panel and the date of the decision or disposition.

The report must be prepared in an electronic spreadsheet format that can be sorted and filtered based on the required elements of the report. The Court must submit the report between October 1 and October 15 of each year to the Governor, Attorney General, President of the Senate, and the Speaker of the House of Representatives.

The bill takes effect July 1, 2017 and is repealed July 1, 2022, unless reviewed and reenacted before that date.

II. Present Situation:

Statutory Reporting Requirements

Pursuant to section 25.075, F.S., the Supreme Court must develop a uniform case reporting system. The system includes a uniform means of reporting categories of cases, the time taken to dispose of the cases, and the outcome of the cases.¹

Specific to negligence cases, the clerk of court must report to the Office of the State Courts Administrator information on cases resolved by settlement, jury verdict and final judgment upon request of the President of the Senate and the Speaker of the House of Representatives.² Information required includes the name of each plaintiff and defendant, the verdict, the percentage of fault of each, information on economic and noneconomic damages awarded to each plaintiff, and the amount of punitive damages awarded.³

Reporting Requirements under Court Rules

The Florida Rules of Judicial Administration provide time standards for the resolution of trial and appellate cases based on what the Court considers a presumptively reasonable time period. Accordingly, the court rules contemplate that most cases should be completed within the specified time periods.

In trial courts, cases generally should be resolved within these time periods:

- Criminal (arrest to final disposition): Felony (180 days); Misdemeanor (90 days);
- Civil (filing to final disposition): Jury cases (18 months); Non-jury cases (12 months); Small claims (95 days);
- Domestic Relations (filing to final disposition): Uncontested (90 days); Contested (180 days);
- Probate: Uncontested, no federal estate tax return (12 months from issuance of letters of administration to final discharge); Uncontested, with federal estate tax return (12 months from the return's due date to final discharge); Contested (24 months from filing to final discharge);
- Juvenile Delinquency: Disposition hearing for a child not detained (120 days from filing of petition or from a child being taken into custody to hearing); for a child detained (36 days from date of detention to hearing);
- Juvenile Dependency: Disposition hearing for a child not sheltered (120 days from filing of petition for dependency to hearing); for a child sheltered (88 days from shelter hearing to disposition);
- Permanency Proceedings: Permanency hearing within 12 months of the date the child is sheltered to the date of the hearing.⁴

In addition to time standards applicable to trial courts, the court rules specify standards for:

¹ Section 25.075(1), F.S.

² Section 25.077, F.S.

³ *Id.*

⁴ Fla. R. Jud. Admin. 2.250(a)(I).

- Supreme Court and District Courts of Appeal: Rendering a decision within 180 days after oral argument or the submission of the case to the court panel for a decision without oral argument; for juvenile dependency or termination of parental rights cases, and within 60 days after either oral argument or the submission of the case to the court panel for a decision without oral argument.
- Florida Bar Referee:⁵ Report of referee within 180 days after being assigned to hear the case;
- Circuit Court acting as Appellate Court: 90 days after submission of the case to the judge for review.⁶

Any pending case exceeding the time standards must be detailed separately and listed in a report, submitted quarterly to the Chief Justice of the Supreme Court. The report must include for each case:

- The case number;
- The type of case;
- The case status;
- The date of arrest in criminal cases; and
- The original filing date in civil cases.

The court rules require the Office of the State Courts Administrator to provide the forms for submission of this information.⁷

III. Effect of Proposed Changes:

This bill requires the Supreme Court to prepare an annual status report on cases that are unresolved for more than 180 days after the oral argument or the date that the case is submitted to the panel for a decision or disposition. The report must also provide data on resolved cases in the year preceding the report which took longer than 180 days to resolve. The Court must submit the report to the Governor, Attorney General, President of the Senate, and the Speaker of the House of Representatives between October 1 and October 15 of each year.

Part I of the report must include the following information on each case:

- The case name and number;
- The case type, which must include civil, criminal not seeking the death penalty, criminal seeking the death penalty, court rules, bar discipline, and judicial discipline;
- A brief description of the case;
- The date the case was added to the docket;
- The date of oral argument or the date the case was submitted to the court panel for a decision without oral argument;

⁵ Art. V., Sec. 15 of the Fla. Const. gives the Supreme Court exclusive jurisdiction to regulate the admission to practice and discipline of attorneys. The Court's regulation of the Bar is provided through the Rules Regulating The Florida Bar, which establish The Florida Bar as an official arm of the Court. The referee, or judge who hears a grievance case against a member of the Bar, is a county or circuit judge, appointed by the circuit court's chief judge. The Florida Bar, *The Florida Bar: Referee Manual* (July 2015), http://www.floridasupremecourt.org/clerk/Referee_Manual_2015.pdf.

⁶ Fla. R. Jud. Admin. 2.250(a)(II).

⁷ Fla. R. Jud. Admin. 2.250(b).

- The number of days that have elapsed since the date of oral argument was heard or the date the case was submitted to the court panel for a decision without oral argument;
- A detailed explanation of why the court failed to render a decision or disposition within 180 days after the court heard oral argument or after the date the case was submitted to the court panel for a decision without oral argument; and
- The date or time period within which the court expects to render a decision or disposition.

Information in Part I is required for those cases remaining on the court's docket as of September 30 of the current year after 180 days have passed from the date of oral argument, or absent oral argument, from the date the case is submitted to a court panel for a decision.

Part II of the report must include:

- The case name and number;
- The case type;
- A brief description of the case;
- The date the case was added to the docket;
- The date of oral argument or the date the case was submitted to the court panel for a decision without oral argument;
- The date that a decision or disposition was issued; and
- The number of days that elapsed between the date oral argument was heard or the date the case was submitted to the court panel for a decision without oral argument and the date on which a decision or disposition was issued.

Information in Part II is required for each case that has been decided or disposed of between October 1 of the prior year and September 30 of the current year, for which the decision or disposition was not rendered within 180 days after oral argument or submission to the court panel in the absence of oral argument.

The bill requires the court to electronically submit the report in a spreadsheet format. The report must be created so that it can be sorted and filtered by case number, case type, date on which the case was added to the docket; the date of oral argument or the date the case was submitted to the court panel for decision without oral argument; the number of days since the date oral argument was heard or submitted to the court panel for a decision without oral argument, and the date of the decision or disposition.

The bill takes effect July 1, 2017 and is repealed July 1, 2022, unless it is reviewed and reenacted before that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Many different activities are placed on hold and opportunities are lost while a case remains unresolved in the judicial system. To the extent that the bill encourages the expeditious resolution of cases, the bill will minimize delays in productive activities and minimize lost opportunities.

C. Government Sector Impact:

The reporting requirements in the bill may highlight shortcomings and encourage the Supreme Court and the Legislature to identify changes that may help the Court timely and efficiently resolve cases.

The Office of the State Courts Administrator (OSCA) expects an indeterminate impact from the bill. Although the Supreme Court currently collects some of the information that must be collected under the bill, the bill may increase the workload of the Court as it collects and reports the required data.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 25.052, 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.

⁸ Office of the State Courts Administrator, *2017 Judicial Impact Statement* (Feb. 2, 2017).

B. Amendments:

None.

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

By Senator Lee

20-00914-17

2017878__

1 A bill to be entitled
 2 An act relating to Supreme Court reporting
 3 requirements; creating s. 25.052, F.S.; requiring the
 4 Supreme Court to issue an annual report regarding
 5 certain cases; specifying data to be included in such
 6 report; providing for future legislative review and
 7 repeal; providing an effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Section 25.052, Florida Statutes, is created to
 12 read:
 13 25.052 Annual report.-
 14 (1) Between October 1 and October 15 of each year, the
 15 Supreme Court shall provide a report with data as of September
 16 30 of that year, to the Governor, the Attorney General, the
 17 President of the Senate, and the Speaker of the House of
 18 Representatives consisting of two parts.
 19 (a) In part I of the report, the court shall provide the
 20 following information regarding each case on the court's docket
 21 as of September 30 of the current year, for which a decision or
 22 disposition has not been rendered within 180 days after oral
 23 argument was heard or after the date on which the case was
 24 submitted to the court panel for a decision without oral
 25 argument:
 26 1. The case name and number.
 27 2. The case type.
 28 3. A brief description of the case.
 29 4. The date on which the case was added to the court's
 30 docket.
 31 5. The date of oral argument or the date the case was
 32 submitted to the court panel for decision without oral argument.

Page 1 of 3

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

20-00914-17

2017878__

33 6. The number of days that have elapsed since the date the
 34 oral argument was heard or the date the case was submitted to
 35 the court panel for a decision without oral argument.
 36 7. A detailed explanation of the court's failure to render
 37 a decision or disposition within 180 days after oral argument
 38 was heard or after the date on which the case was submitted to
 39 the court panel for a decision without oral argument.
 40 8. The date on which, or the time period within which, the
 41 court expects to render a decision or disposition.
 42 (b) In part II of the report, the court shall provide the
 43 following information regarding each case decided or disposed of
 44 by the court between October 1 of the prior year and September
 45 30 of the current year, for which the decision or disposition
 46 was not rendered within 180 days after oral argument was heard
 47 or after the date on which the case was submitted to the court
 48 panel for a decision without oral argument:
 49 1. The information required in subparagraphs (a)1.-5. and
 50 7.
 51 2. The date that a decision or disposition was issued.
 52 3. The number of days that had elapsed between the date
 53 oral argument was heard or the date the case was submitted to
 54 the court panel for a decision without oral argument and the
 55 date on which a decision or disposition was issued.
 56 (2) The report shall be submitted in an electronic
 57 spreadsheet format capable of being sorted and filtered by the
 58 following elements:
 59 (a) The case number.
 60 (b) The case type.
 61 (c) The date on which the case was added to the court's

Page 2 of 3

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

20-00914-17

2017878__

62 docket.63 (d) The date of oral argument or the date the case was
64 submitted to the court panel for decision without oral argument.65 (e) The number of days that elapsed since the date oral
66 argument was heard or the date the case was submitted to the
67 court panel for a decision without oral argument.68 (f) The date of decision or disposition.69 (3) The case type of each case reported shall include
70 civil, criminal not seeking the death penalty, criminal seeking
71 the death penalty, court rules, bar discipline, or judicial
72 discipline.73 Section 2. This act is repealed July 1, 2022, unless
74 reviewed and reenacted by the Legislature before that date.75 Section 3. This act shall take effect July 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SJR 910

INTRODUCER: Senator Baxley

SUBJECT: Exempting Law Enforcement Officers from the Waiting Period for Handgun Purchases

DATE: March 6, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	<u> </u>	<u> </u>	<u>GO</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SJR 910 creates a constitutional amendment that exempts qualifying current and retired law enforcement officers from waiting periods and criminal history records checks that apply to certain firearm purchases.

The State Constitution currently imposes a 3-day waiting period on a retailer and a purchaser on a sale of a handgun. The Constitution also authorizes counties to impose a 3 to 5 day waiting period on the sale of any firearm which occurs at least in part on property controlled by a government entity along with criminal history record checks. Currently, only holders of concealed carry permits are exempt from these requirements.

The joint resolution, if passed on a 3/5ths vote of each house of the Legislature, will be voted on at the general election in November 2018. SJR 910 is linked to SB 912, which implements the exemption in statute.

II. Present Situation:

Waiting Period for Handguns

In 1990, voters approved a constitutional amendment imposing a mandatory 3-day waiting period on handgun purchases.¹ The amendment, in Art. I, s. 8, of the State Constitution provides:

There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, “purchase” means the transfer of money or other valuable consideration to the retailer, and “handgun” means a firearm capable of being carried and used by one hand,

¹ The Legislature proposed the amendment.

such as a pistol or revolver. Holders of a concealed weapon permit ... shall not be subject to the provisions of this paragraph.²

An exception to the waiting period applies to transactions involving the trade in of another handgun.³

The amendment required the Legislature to implement the waiting period in statute and provide that a person who violates the provision commits a felony.⁴

Statutory Implementation

The Legislature implemented the 3-day waiting period on handgun transactions in 1991.⁵ Section 790.0655(1)(a), F.S., which implements the waiting period, largely mirrors the constitutional amendment. The section requires a purchaser of a handgun to wait 3 days after purchasing a handgun from a retailer to receive the handgun purchased. The 3-day wait excludes weekends and legal holidays.

A handgun is a firearm capable of being carried and used by one hand, such as a pistol or a revolver.⁶ A retailer is a person who is engaged in the business of making sales at retail or for distribution, use or consumption, or storage to be used or consumed in the state.⁷

The waiting period does not apply when a handgun is being purchased by a holder of a concealed weapons permit, or if the purchaser and retailer are actually engaged in a trade-in of another handgun.⁸

If a retailer, or an employee or agent of the retailer, fails to comply with the waiting period, he or she commits a third-degree felony, punishable by up to 5 years in prison and up to a \$5,000 fine.⁹ A purchaser who receives the handgun using fraud, false pretense, or false representation faces the same penalty.¹⁰

Local Option for Criminal History Records Checks and a Waiting Period for Firearm Sales

In 1998, voters approved an amendment to Art. VIII, s. 5(b), of the State Constitution, authorizing counties to enact a criminal history records check and a 3 to 5 day waiting period for the sale of firearms, excluding weekends and legal holidays.¹¹ A sale of a firearm is defined in the amendment as the transfer of money or other consideration for a firearm when any part of the

² Art. I, sec. 8(b), FLA. CONST.

³ Art. I, Sec. 8(b) and (d), FLA. CONST.

⁴ Art. I, Sec. 8(c), FLA. CONST.

⁵ Ch. 91-24, L.O.F.

⁶ *Id.*

⁷ Section 212.02(13), F.S.

⁸ Section 790.0655(2), F.S.

⁹ Sections 790.0655(3)(a), F.S.

¹⁰ Section 790.0655(3)(b), F.S.

¹¹ The Constitution Revision Commission proposed the amendment.

transaction takes place on property accessible to the public. Property accessible to the public likely includes county fairgrounds or convention centers where gun shows often occur.

III. Effect of Proposed Changes:

SJR 910 proposes an amendment to the State Constitution to exempt qualifying current and retired law enforcement officers from waiting periods and criminal history record checks that apply to the purchase of a handgun or other firearms. Currently, only holders of concealed weapon permits are exempt from the waiting periods and background checks required or authorized by the State Constitution.

Specifically, the joint resolution exempts qualifying current and retired law enforcement officers from:

- Art. I, s. 8 of the State Constitution, which requires a 3-day waiting period between the time of the purchase and delivery of a handgun; and
- Art. VIII, s. 5 of the State Constitution, which authorizes a local option of a 3 to 5 day waiting period on firearms and criminal records checks on purchasers of firearms.

The joint resolution, if passed on a 3/5ths vote of each house of the Legislature, will be voted on at the general election in November of 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The restrictions in the State Constitution on the authority of the Legislature to impose mandates on counties and municipalities do not apply to joint resolutions.¹²

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

A joint resolution must be passed by 3/5 of the membership of both houses of the Legislature.¹³ If passed, it must be submitted to the electors at the next general election held more than 90 days after the resolution is filed with the Secretary of State.¹⁴

¹² See Art. VII, FLA. CONST.

¹³ Art. XI, s. 5(a), FLA. CONST.

¹⁴ *Id.* If the resolution comprises one amendment or revision, it can voted on at an earlier special election, but this resolution has multiple revisions, making it ineligible.

A proposed constitutional amendment must be approved by vote of at least 60 percent of the electors voting on the measure.¹⁵ If passed, this amendment becomes effective on January 8, 2019.¹⁶

Art. XI, s. 5(d) of the State Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county in which a newspaper is published. The amendment or revision must be published once in the 10th week and again in the 6th week immediately preceding the week the election is held.

Based on 2014 costs, the Department of State estimates that the costs for advertising the proposed constitutional amendment will be approximately \$136 per word with a minimum total publishing cost of \$7,752.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If implemented, the joint resolution may enable qualifying current and former law enforcement officers to avoid the time and expense necessary to obtain a concealed carry permit.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Legislature may wish to revise the bill to clarify the steps a firearms dealer must take to verify that a person is exempt from the waiting periods.

VIII. Statutes Affected:

This joint resolution substantially amends Article I, Article VIII of the State Constitution.

¹⁵ Art. XI, s. 5(e), FLA. CONST.

¹⁶ *Id.*

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Baxley

12-01284-17

2017910__

Senate Joint Resolution

A joint resolution proposing amendments to Section 8 of Article I and Section 5 of Article VIII of the State Constitution to exempt law enforcement officers from the 3-day waiting period for handgun purchases under state law and under any county ordinance requiring a waiting period for handgun purchases.

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

That the following amendments to Section 8 of Article I and Section 5 of Article VIII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 8. Right to bear arms.—

(a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a

Page 1 of 3

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

12-01284-17

2017910__

pistol or revolver. Holders of a concealed weapon permit and law enforcement officers as prescribed in Florida law shall not be subject to the provisions of this paragraph.

(c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.

(d) This restriction shall not apply to a trade in of another handgun.

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 5. Local option.—

(a) Local option on the legality or prohibition of the sale of intoxicating liquors, wines or beers shall be preserved to each county. The status of a county with respect thereto shall be changed only by vote of the electors in a special election called upon the petition of twenty-five per cent of the electors of the county, and not sooner than two years after an earlier election on the same question. Where legal, the sale of intoxicating liquors, wines and beers shall be regulated by law.

(b) Each county shall have the authority to require a criminal history records check and a 3 to 5-day waiting period, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within such county. For purposes of this subsection, the term "sale" means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access. Holders of a concealed weapons permit and law enforcement officers as prescribed by general law shall not

Page 2 of 3

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

12-01284-17

2017910__

59 be subject to the provisions of this subsection when purchasing
60 a firearm.

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

63 CONSTITUTIONAL AMENDMENT

64 ARTICLE I, SECTION 8

65 ARTICLE VIII, SECTION 5

66 EXEMPTION FROM WAITING PERIOD FOR HANDGUN PURCHASES.—
67 Proposing an amendment to the State Constitution to exempt law
68 enforcement officers, as prescribed in Florida law, from the 3-
69 day waiting period for handgun purchases under state law and
70 under any county ordinance requiring a waiting period for
71 handgun purchases.

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 912

INTRODUCER: Senator Baxley

SUBJECT: Exceptions to Requirements for the Purchase and Sale of Firearms

DATE: March 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 912 is linked to SJR 910, which exempts qualified law enforcement officers and retired law enforcement officers who purchase personal firearms from waiting periods and criminal history record checks required or authorized by the State Constitution. This bill implements the constitutional amendment in statute. As implemented, a qualified law enforcement officer or a qualified retired law enforcement officer who holds a firearms proficiency card is exempt from the waiting periods and the local-option criminal history record checks that apply to most other sales of firearms to individuals. Currently, only concealed weapon permit holders are exempt from the waiting periods and the local-option criminal history record check.

The bill takes effect on January 8, 2019 if SJR 910 is approved by the voters at the general election in November 2018.

II. Present Situation:

General 3-Day Waiting Period

In 1990, voters approved a constitutional amendment imposing a mandatory 3-day waiting period on handgun purchases.¹ The amendment, in Art. I, s. 8, of the State Constitution provides:

There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, “purchase” means the transfer of money or other valuable consideration to the retailer, and “handgun” means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit ... shall not be subject to the provisions of this paragraph.²

¹ The Legislature proposed the amendment.

² Art. I, sec. 8(b), FLA. CONST.

An exception to the waiting period applies to transactions involving the trade in of another handgun.³

The amendment required the Legislature to implement the waiting period in statute and provide that a person who violates the provision commits a felony.⁴

Statutory Implementation

The Legislature implemented the 3-day waiting period on handgun transactions in 1991.⁵ Section 790.0655(1)(a), F.S., which implements the waiting period, largely mirrors the constitutional amendment. The section requires a purchaser of a handgun to wait 3 days after purchasing a handgun from a retailer to receive the handgun purchased. The 3-day wait excludes weekends and legal holidays.

A handgun is a firearm capable of being carried and used by one hand, such as a pistol or a revolver.⁶ A retailer is a person who is engaged in the business of making sales at retail or for distribution, use or consumption, or storage to be used or consumed in the state.⁷

The waiting period does not apply when a handgun is being purchased by a holder of a concealed weapons permit, or if the purchaser and retailer are actually engaged in a trade-in of another handgun.⁸

If a retailer, or an employee or agent of the retailer, fails to comply with the waiting period, he or she commits a third-degree felony, punishable by up to 5 years in prison and up to a \$5,000 fine.⁹ A purchaser who receives the handgun using fraud, false pretense, or false representation faces the same penalty.¹⁰

Local Option for Criminal History Records Checks and a Waiting Period for Firearm Sales

In 1998, voters approved an amendment to Art. VIII, s. 5(b), of the State Constitution, authorizing counties to enact a criminal history records check and a 3 to 5 day waiting period for the sale of firearms, excluding weekends and legal holidays.¹¹ A sale of a firearm is defined in the amendment as the transfer of money or other consideration for a firearm when any part of the transaction takes place on property accessible to the public. Property accessible to the public likely includes county fairgrounds or convention centers where gun shows often occur.

³ Art. I, Sec. 8(b) and (d), FLA. CONST.

⁴ Art. I, Sec. 8(c), FLA. CONST.

⁵ Ch. 91-24, L.O.F.

⁶ *Id.*

⁷ Section 212.02(13), F.S.

⁸ Section 790.0655(2), F.S.

⁹ Sections 790.0655(3)(a), F.S.

¹⁰ Section 790.0655(3)(b), F.S.

¹¹ The Constitution Revision Commission proposed the amendment.

Federal Law on the Carrying of Concealed Firearms by Law Enforcement Officers

The Federal Law Enforcement Officers Safety Act of 2004 authorizes a qualified law enforcement officer to carry a concealed firearm when the officer carries a card identifying himself or herself as a police officer or law enforcement officer of the agency issuing the identification card.¹² In addition to possessing the identification card, to qualify, the officer must meet other criteria, such as not being the subject of disciplinary action by the agency which could result in a suspension or firing or being under the influence of alcohol or other substances.¹³

To carry a concealed firearm as a retired law enforcement officer, however, the officer must possess and carry a specific card issued by the state law enforcement agency. The identification card must identify the person as having been previously employed as a police or law enforcement officer and show that the person has been tested in firearm proficiency training or otherwise been found to meet active duty training standards within the past year.¹⁴ The retired officer must also not have been found to be mentally unfit or under the influence of alcohol or other substances.¹⁵

The Criminal Justice Standards and Training Commission, established within the Department of Law Enforcement,¹⁶ is responsible for implementing the federal law requiring the issuance of a uniform firearms proficiency verification cards for qualifying law enforcement officers and qualified retired law enforcement officers.¹⁷

III. Effect of Proposed Changes:

SB 912 implements the constitutional amendment in SJR 910 which exempts qualified law enforcement officers and qualified retired law enforcement officers from waiting periods and local-option background checks for the purchase of a personal firearm. The waiting periods and the local-option criminal history record checks are currently required or authorized by the State Constitution. Currently, only concealed weapon permit holders are exempt from the requirements.

The current and retired law enforcement officers who are exempt from the waiting periods and local-option criminal history record checks are those who have a valid firearms proficiency verification card. Although the bill eliminates requirements for local-option criminal history

¹² 18 U.S.C. s. 926B(a) and (d).

¹³ 18 U.S.C. s. 926B(c)(3) and (5).

¹⁴ 18 U.S.C. s. 926C(d).

¹⁵ 18 U.S.C. s. 926C(b)(5) and (6).

¹⁶ Section 943.11, F.S., provides for the creation of the 19-member Commission, composed of the Secretary of Corrections or a designee, the Attorney General or a designee, the Director of the Division of the Florida Highway Patrol, and the 16 remaining members appointed by the Governor of members who work in criminal justice (sheriffs, chiefs of police, law enforcement officers, correctional officers, training center director), and 1 state citizen.

¹⁷ Section 943.132(1), F.S. Rule 11B-27.014, F.A.C., implements the Federal Law Enforcement Officers Safety Act of 2004. The rule provides, in relevant part, for a range master, an active Commission-certified firearms instructor, to conduct the firearms proficiency course for a qualified retired law enforcement officer. Upon successful completion, the retiree will receive a Commission-approved Firearms Proficiency Verification Card, issued by the range master, on form CJSTC-600. Rule 11B-27.014(1)(a) and (2), F.A.C.

checks on the sale of a firearm, the state required criminal history record checks for the retail sale of a firearm still apply.

The bill takes effect on January 8, 2019 if SJR 910 is approved by the voters in the general election in November 2018, unless the state holds an earlier special election.¹⁸

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If implemented, the joint resolution may enable qualifying current and former law enforcement officers to avoid the time and expense necessary to obtain a concealed carry permit.

C. Government Sector Impact:

The Florida Department of Law Enforcement (FDLE) does not anticipate a fiscal impact from the bill, as the FDLE will still have to conduct a background check on the firearm purchase for the current or retired law enforcement officer.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁸ Art. XI, s. 5, of the FLA. CONST., authorizes an earlier special election only if, pursuant to law, the proposed amendment is enacted by vote of three-fourths of the membership of each house of the Legislature.

¹⁹ Florida Department of Law Enforcement (FDLE), *2017 FDLE Legislative Bill Analysis* (Feb. 24, 2017) (on file with the Senate Judiciary Committee).

VIII. Statutes Affected:

This bill amends section 790.0655 of the Florida Statutes.
This bill creates section 790.0656 of the Florida Statutes.

IX. Additional Information:

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

None.

B. **Amendments:**

None.

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

By Senator Baxley

12-01322-17

2017912__

A bill to be entitled

An act relating to exceptions to requirements for the purchase and sale of firearms; amending s. 790.0655, F.S.; exempting certain qualified law enforcement officers and qualified retired law enforcement officers from the 3-day waiting period for purchasing a handgun; creating s. 790.0656, F.S.; exempting concealed weapon or concealed firearm licensees and certain current and retired law enforcement officers from certain county criminal history and waiting period requirements when purchasing a firearm; providing a contingent effective date.

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

Section 1. Section 790.0655, Florida Statutes, is amended to read:

790.0655 Purchase and delivery of handguns; mandatory waiting period; exceptions; penalties.—

(1) (a) There shall be a mandatory 3-day waiting period, which shall be 3 days, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun. "Purchase" means the transfer of money or other valuable consideration to the retailer. "Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. "Retailer" means and includes every person engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13).

Page 1 of 3

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

12-01322-17

2017912__

(b) Records of handgun sales must be available for inspection by any law enforcement agency, as defined in s. 934.02, during normal business hours.

(2) The 3-day waiting period ~~does shall~~ not apply in the following circumstances:

(a) When a handgun is being purchased by a holder of a license to carry a concealed weapon or firearm weapons permit as under defined in s. 790.06 or by a qualified law enforcement officer or qualified retired law enforcement officer who has a firearms proficiency verification card under s. 943.132.

(b) To a trade-in of another handgun.

(3) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) For any retailer, or any employee or agent of a retailer, to deliver a handgun before the expiration of the 3-day waiting period, subject to the exceptions provided in subsection (2).

(b) For a purchaser to obtain delivery of a handgun by fraud, false pretense, or false representation.

Section 2. Section 790.0656, Florida Statutes, is created to read:

790.0656 Sale of firearms; county requirements; exceptions.—Criminal history records checks or waiting period requirements adopted by a county pursuant to s. 5(b), Art. VIII of the State Constitution in connection with the sale of a firearm occurring within the county do not apply if the firearm is being purchased by a holder of a license to carry a concealed weapon or concealed firearm under s. 790.06 or by a qualified law enforcement officer or qualified retired law enforcement

Page 2 of 3

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

12-01322-17

2017912__

59 officer who has a firearms proficiency verification card under
60 s. 943.132.

61 Section 3. This act shall take effect on the effective date
62 of the amendment to the State Constitution proposed in SJR ____
63 or a similar joint resolution, if approved by a vote of the
64 electors in the general election held in November 2018 or at an
65 earlier special election specifically authorized by law for such
66 purpose.

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 Criminal Justice

BILL: CS/SB 550

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Public Records/Murder Witness

DATE: March 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 550 modifies the authority of a state agency to grant access to or disclose criminal intelligence or investigative information that reveals the personal identifying information of a murder witness. Currently, if this information is held by a state agency, then it is a public record and is accessible by every person. The bill designates this information as confidential and exempt from access or disclosure, thus requiring state entities to deny public records requests for the information. The confidentiality and exemption apply to each witness for a period of 2 years after the commission of the murder observed by the witness.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

II. Present Situation:

Overview

Florida law expressly requires each branch of this state's government to grant every person access to records held by the government. However, several types of these records are exempt from these access and disclosure requirements. Thus, when a member of the public seeks access to exempt records in a request made pursuant to the public records laws, the government is not required to grant the request.

In addition to being exempt, some records are confidential. Even if a state agency wants to grant access to or produce these records, it may not do so and the records may be disclosed only to the persons or organizations designated in statute. Records that are currently exempt, or confidential and exempt, include several types of criminal intelligence or criminal investigative records, such as the names of confidential informants and victims of certain crimes. However, the personal identifying information of a murder witness is not currently confidential or exempt.

Florida Public Records Law

The Florida Constitution guarantees the right of every person to inspect or copy any public record¹ made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.² The right to access public records specifically includes records of the legislative, executive, and judicial branches.³

The Constitution's guarantee of access to records is implemented by the Public Records Act, set forth at ch. 119, F.S. This act provides that every person has the right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the public record.⁴

Only the Legislature may designate a government record as exempt or confidential.⁵ These designations must be made by general law and must specifically state the public necessity justifying the designations.⁶ Furthermore, the exemption or confidentiality must be no broader than necessary to accomplish the stated purpose of the law.

But even confidential and exempt records may be accessed or disclosed under certain circumstances.⁷ If the Legislature designates a record as confidential and exempt, the record may be released to the persons or entities specifically designated in the statutory exemption.⁸

¹ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992).

² FLA. CONST., art. I, s. 24(a).

³ *Id.*

⁴ Section 119.07(1)(a), F.S.

⁵ FLA. CONST., art. I, s. 24(c).

⁶ *Id.*

⁷ *See, WFTV, Inc. v. School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

⁸ *WFTV, Inc. v. School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004); *Wait v. Florida Power and Light Co.*, 372 So. 2d 420 (Fla. 1979).

Lastly, a bill enacting an exemption may not contain other substantive provisions⁹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁰

Public Records Exemptions for Certain Investigative Information

Currently, s. 119.071(2), F.S., in relevant part, designates several types of personal information related to criminal intelligence or criminal investigations as confidential or exempt. Some types of information that are currently confidential or exempt include information revealing the identity of a confidential informant or a confidential source (exempt),¹¹ information revealing the identity of a victim of a child abuse offense (confidential and exempt),¹² and information revealing the identity of a victim of any sexual offense (confidential and exempt).¹³ The personal identifying information of a witness to a murder is not currently confidential or exempt.¹⁴

Limited Effect of a “Confidential” or “Exempt” Designation

The designation of a record as exempt, or as confidential and exempt, is effective only as to a public records request brought under Florida’s public records laws. Therefore, these exemptions and confidentiality do not block access to government documents if there is an independent basis for that access.¹⁵

One such basis is a discovery request in a criminal case. The Florida Rules of Criminal Procedure require a prosecutor to disclose information about witnesses in discovery.¹⁶ And this requirement, at least in principle if not in a strict legal sense, is rooted in the “confrontation clause” of the United States Constitution.¹⁷ The confrontation clause preserves a defendant’s right to confront a witness against him or her and to bring forward information that aids the jury in determining the truthfulness and reliability of the witness.¹⁸ For example, the defendant might expose a witness’s prejudice, bias, or ulterior motivation to lie; expose lies; test a witness’s ability to perceive and remember; or expose weaknesses in the witness’s testimony. This right to confront a witness “minimizes the risk that a judgment will be predicated on incomplete, misleading, or even deliberately fabricated testimony.”¹⁹

⁹ However, the bill may contain multiple exemptions that relate to one subject.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ Section 119.071(2)(f), F.S.

¹² Section 119.071(2)(h)1.a., F.S.

¹³ Section 119.071(2)(h)1.b., F.S.

¹⁴ However, section 119.011(3)(c)5., F.S., states that, “the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would . . . jeopardize the safety of such victim or witness”

¹⁵ Also, any confidentiality or exemption is eliminated by a record’s entering a court file. However, certain records remain confidential or exempt even if they enter a court file. *See* section 119.0714(1), F.S.

¹⁶ Fla. R. Crim. P. 3.220(b) (Discovery: Prosecutor’s Discovery Obligation). Section 119.07(8), F.S., addresses the relationship between discovery obligations and public records. However, the rules allow a court, on its own initiative or upon a motion of counsel, to restrict disclosure if the court finds that “there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from the disclosure, that outweighs any usefulness of the disclosure to either party.” Fla. R. Crim. P. 3.220(e) (Discovery: Restricting Disclosure).

¹⁷ Sixth Amendment, U.S. Constitution.

¹⁸ *Id.*

¹⁹ Judge Joan Comporet-Cassani, *Balancing the Anonymity of Threatened Witnesses Versus a Defendant’s Right of Confrontation: The Waiver Doctrine After Alvarado*, 39 SAN DIEGO L. REV. 1165 (Fall, 2002).

The Problem of Witness Fear, Intimidation, and Murder

According to one law professor, “[a] witness’s fear is perhaps the greatest threat to the criminal justice system’s ability to prosecute cases.”²⁰ Whether or not this fear is indeed the *greatest* threat to the criminal justice system’s ability to prosecute cases, it is common knowledge that it is a very serious problem. A witness’s intimidation may cause him or her to decide not to come forward and provide crucial evidence to police or to refuse to testify in a case. As one judge observed,

[I]nstances of witness intimidation create the perception that the law cannot protect its citizens and thereby undermines public confidence in the police and government. If individuals believe that they cannot be adequately protected, they are less likely to cooperate with the police, which in turn impedes the ability of the police to gather evidence in an attempt to stop criminal behavior.²¹

Providing anecdotal evidence of the threat to witnesses, news articles have recently reported on several homicides that occurred in 2015 in the Tampa area that remain unsolved.²² The victim of one of the unsolved murders was Edward Harris, a 14-year-old boy who was murdered in a park.²³ A spokeswoman for the Tampa Police Department stated that between October 2014 and April 2015, Mr. Harris was the witness to multiple crimes that resulted in arrests.²⁴ Mr. Harris’s family members have indicated that they believe he was murdered as a result of talking to police.²⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created public records exemptions.²⁶ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²⁷

²⁰ Lisa I. Karsai, *You Can’t Give My Name: Rethinking Witness Anonymity In Light of the United States and British Experience*, 79 TENN. L. REV. 29 (Fall, 2011).

²¹ Judge Joan Comparet-Cassani, *Balancing the Anonymity of Threatened Witnesses Versus a Defendant’s Right of Confrontation: The Waiver Doctrine After Alvarado*, 39 SAN DIEGO L. REV. 1165 (Fall, 2002) (“Even though the United States Department of Justice has conducted surveys about witness intimidation, the results of which indicate that it is increasing and widespread, the Department acknowledged that the exact extent of intimidation is unknown.”).

²² Dan Sullivan, *Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders*, TAMPA BAY TIMES, Oct. 29, 2015, <http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784>; Sue Carlton, *Solutions to street violence elusive amid anti-snitching culture*, TAMPA BAY TIMES, Jun. 2, 2015, <http://www.tampabay.com/news/publicsafety/crime/carlton-no-snitching-no-answers/2232047>.

²³ Stephanie Slifer, *Dad believes son was killed in Tampa drive-by shooting for talking to cops*, CBS NEWS, Jun. 2, 2015, <http://www.cbsnews.com/news/dad-believes-son-was-killed-in-tampa-drive-by-shooting-for-talking-to-cops/>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

²⁷ Section 119.15(3), F.S.

The OGSR provides that a public records exemption may be created only if it serves an identifiable public purpose and is no broader than necessary.²⁸ An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.²⁹

In addition, the Legislature must find that the identifiable public purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.³⁰

The OGSR also requires specified questions to be considered during the review process.³¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. These specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?³²

To enact an exemption, the Legislature must pass a bill by a two-thirds vote and the bill must explain the public necessity justifying the exemption.³³

III. Effect of Proposed Changes:

Current Florida law expressly requires each branch of this state's government to grant every person access to government records. However, several types of government records are exempt from this requirement. Thus, when a member of the public seeks access to exempt records by submitting a request pursuant to this state's public records laws, the government is not required

²⁸ Section 119.15(6)(b), F.S.

²⁹ Section 119.15(6)(b)1.-3., F.S.

³⁰ Section 119.15(6), F.S.

³¹ Section 119.15(6)(a), F.S.

³² Section 119.15(6)(a)1.-6., F.S.

³³ Section 119.15(7), F.S.

to grant the request. In addition to being exempt, some records are confidential. These confidential records may not be inspected by the public and may only be disclosed to the persons or organizations designated in statute. Records that are currently exempt, or confidential and exempt, include several types of criminal investigative records, such as the names of confidential informants and victims of certain crimes. However, the personal identifying information of a murder witness is not currently confidential or exempt; the bill changes this, as set forth below.

Personal Identifying Information of a Murder Witness is Confidential and Exempt

The bill designates “criminal intelligence or investigative information that reveals the personal identifying information of a witness to a murder” as confidential and exempt from the disclosure requirements under the public records laws. Therefore, if a person submits a public records request for records containing this information to a state agency, the agency may not provide access to or disclose the information. And this confidentiality survives the information entering a court file. The confidential and exempt status of these records applies for a period of 2 years following the commission of the murder observed by the witness.

Exceptions to the Confidentiality and Exemption of Murder Witness Information

As exceptions to the general prohibition on disclosing these murder witness records, a state agency may disclose these records:

- In the furtherance of its official duties and responsibilities;
- To assist in locating or identifying the witness if the witness is believed to be missing or endangered; or
- To another governmental agency for use in the performance of its official duties and responsibilities.

The Limited Nature of Every Public Records Exemption and Confidentiality Provision

Because a public records exemption generally applies only to public records requests, the bill does not prevent disclosure of information through discovery under the Rules of Criminal Procedure. Accordingly, for example, the defendant in a murder case will be able to access this information through discovery and potentially pass it on to others. With or without the bill, however, if a witness testifies at trial, his or her identity would be revealed to the defendant and anyone else in the courtroom.

Sunset Provision

The confidentiality and exemption created by the bill is subject to the Open Government Sunset Review Act, and therefore stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.³⁴

The bill also provides a statement of public necessity as required by the Florida Constitution.³⁵ This statement includes the following findings:

- The judicial system cannot function without the participation of witnesses.

³⁴ See s. 119.15(3), F.S.

³⁵ FLA. CONST., art. I, s. 24(c).

- Complete cooperation and truthful testimony of witnesses are essential to the determination of the facts of a case.
- The public disclosure of personal identifying information of a witness to a murder could have a chilling effect on persons stepping forward and providing their accounts of a murder that has been witnessed.
- A witness to a murder may be unwilling to cooperate fully with law enforcement officers if the witness knows his or her personal identifying information can be made publicly available.
- A witness may be less likely to call a law enforcement officer and report a murder if his or her personal identifying information is made available in connection with the murder that is being reported or under investigation.
- A witness could become the subject of intimidation tactics or threats by the perpetrator of the murder³⁶ if the witness's personal identifying information is publicly available.

The bill takes effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates a public record exemption and includes a public necessity statement.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, the bill does not appear to be in conflict with this constitutional requirement.

C. Trust Funds Restrictions:

None.

³⁶ Murder is defined by reference to s. 782.04, F.S., which is the murder statute.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.011, 119.071, and 119.0714.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on February 21, 2017:

The CS:

- Amends s. 119.011(3)(c), F.S., to include a cross reference to the newly created s. 119.071(2)(m), F.S.
- Makes *criminal intelligence information or criminal investigative information that reveals* the personal identifying information of a witness to a murder confidential and exempt for 2 years after the date on which the murder is observed by the witness in s. 119.071(2)(m), F.S.; provides for disclosure of that information under limited circumstances.
- Eliminates the creation of s. 119.0714(1)(k), F.S., and instead amends s. 119.0714(1)(h), F.S., to create a cross reference to s. 119.071(2)(m), F.S.

B. Amendments:

None.



150986

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Bracy) recommended the following:

Senate Amendment

Between lines 65 and 66

insert:

d. To the parties in a pending criminal prosecution as
required by law.

By the Committee on Criminal Justice; and Senator Bracy

591-01914-17

2017550c1

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.011, F.S.; providing that the personal identifying
 4 information of a witness to a murder remains
 5 confidential and exempt for a specified period;
 6 amending s. 119.071, F.S.; providing an exemption from
 7 public records requirements for criminal intelligence
 8 or criminal investigative information that reveals the
 9 personal identifying information of a witness to a
 10 murder for a specified period; authorizing specified
 11 entities to receive the information; providing for
 12 future legislative review and repeal of the exemption;
 13 amending s. 119.0714, F.S.; providing that the public
 14 records exemption applies to personal identifying
 15 information of a witness to a murder that is made part
 16 of a court file; providing a statement of public
 17 necessity; providing an effective date.
 18
 19 Be It Enacted by the Legislature of the State of Florida:
 20
 21 Section 1. Paragraph (c) of subsection (3) of section
 22 119.011, Florida Statutes, is amended to read:
 23 119.011 Definitions.—As used in this chapter, the term:
 24 (3)
 25 (c) "Criminal intelligence information" and "criminal
 26 investigative information" shall not include:
 27 1. The time, date, location, and nature of a reported
 28 crime.
 29 2. The name, sex, age, and address of a person arrested or

Page 1 of 4

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

591-01914-17

2017550c1

30 of the victim of a crime except as provided in s. 119.071(2)(h).
 31 3. The time, date, and location of the incident and of the
 32 arrest.
 33 4. The crime charged.
 34 5. Documents given or required by law or agency rule to be
 35 given to the person arrested, except as provided in s.
 36 119.071(2)(h) or (2)(m), and, except that the court in a
 37 criminal case may order that certain information required by law
 38 or agency rule to be given to the person arrested be maintained
 39 in a confidential manner and exempt from the provisions of s.
 40 119.07(1) until released at trial if it is found that the
 41 release of such information would:
 42 a. Be defamatory to the good name of a victim or witness or
 43 would jeopardize the safety of such victim or witness; and
 44 b. Impair the ability of a state attorney to locate or
 45 prosecute a codefendant.
 46 6. Informations and indictments except as provided in s.
 47 905.26.
 48 Section 2. Paragraph (m) is added to subsection (2) of
 49 section 119.071, Florida Statutes, to read:
 50 119.071 General exemptions from inspection or copying of
 51 public records.—
 52 (2) AGENCY INVESTIGATIONS.—
 53 (m)1. Criminal intelligence information or criminal
 54 investigative information that reveals the personal identifying
 55 information of a witness to a murder, as described in s. 782.04,
 56 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 57 I of the State Constitution for 2 years after the date on which
 58 the murder is observed by the witness. A criminal justice agency

Page 2 of 4

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

591-01914-17

2017550c1

59 may disclose such information:

60 a. In the furtherance of its official duties and
61 responsibilities.

62 b. To assist in locating or identifying the witness if the
63 agency believes the witness to be missing or endangered.

64 c. To another governmental agency for use in the
65 performance of its official duties and responsibilities.

66 2. This paragraph is subject to the Open Government Sunset
67 Review Act in accordance with s. 119.15 and shall stand repealed
68 on October 2, 2022, unless reviewed and saved from repeal
69 through reenactment by the Legislature.

70 Section 3. Paragraph (h) of subsection (1) of section
71 119.0714, Florida Statutes, is amended to read:

72 119.0714 Court files; court records; official records.—

73 (1) COURT FILES.—Nothing in this chapter shall be construed
74 to exempt from s. 119.07(1) a public record that was made a part
75 of a court file and that is not specifically closed by order of
76 court, except:

77 (h) Criminal intelligence information or criminal
78 investigative information that is confidential and exempt as
79 provided in s. 119.071(2)(h) or (2)(m).

80 Section 4. The Legislature finds that it is a public
81 necessity that personal identifying information of a witness to
82 a murder, as described in s. 782.04, Florida Statutes, be made
83 confidential and exempt from s. 119.07(1), Florida Statutes, and
84 s. 24(a), Article I of the State Constitution for 2 years after
85 the date on which the murder is observed by the witness. The
86 judicial system cannot function without the participation of
87 witnesses. Complete cooperation and truthful testimony of

591-01914-17

2017550c1

88 witnesses is essential to the determination of the facts of a
89 case. The public disclosure of personal identifying information
90 of a witness to a murder could have an undesirable chilling
91 effect on witnesses stepping forward and providing their
92 eyewitness accounts of murders. A witness to a murder may be
93 unwilling to cooperate fully with law enforcement officers if
94 the witness knows his or her personal identifying information
95 can be made publicly available. A witness may be less likely to
96 call a law enforcement officer and report a murder if his or her
97 personal identifying information is made available in connection
98 with the murder that is being reported or under investigation.
99 The Legislature further finds that a witness could become the
100 subject of intimidation tactics or threats by the perpetrator of
101 the murder if the witness's personal identifying information is
102 publicly available. For these reasons, the Legislature finds
103 that it is a public necessity that the personal identifying
104 information of a witness to a murder, as described in s. 782.04,
105 Florida Statutes, be made confidential and exempt from public
106 record requirements.

107 Section 5. This act shall take effect July 1, 2017.

FThe 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 262

INTRODUCER: Senator Steube

SUBJECT: Health Insurance

DATE: March 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 262 increases the liability exposure of Health Maintenance Organizations for the negligence of health care providers who are not employees of the HMO and creates causes of action for other misconduct by an HMO.

The bill repeals several provisions of statute which expressly provide that HMOs, health insurers, prepaid health clinics, and prepaid health service organizations are not vicariously liable for the negligence non-employee health care providers. As a result, these organizations may be liable for the negligence of non-employee health care providers under theories of agency or apparent agency.

Additionally, the bill amends the Health Maintenance Organization Act to provide civil causes of action against HMOs for violations of the act and for acting in bad faith when failing to provide a covered service. The bill provides that any person may bring a civil action against a health maintenance organization if the HMO fails to provide a covered service when the HMO in good faith should have provided the service had it acted fairly and reasonably toward the person and with due regard for his or her interests. The covered service must be medically reasonable or necessary in the independent medical judgment of the treating physician.

The bill creates individual causes of action against HMOs for violations of specified provisions of the HMO Act such as the prompt pay statute, statutes relating to unfair trade practices, and statutes relating to quality assurance.

II. Present Situation:

Health maintenance organizations (“HMOs”) provide, either directly or through arrangements with other persons, comprehensive health care services that subscribers are entitled to receive pursuant to a contract. Services may include emergency care, inpatient hospital services,

physician care, ambulatory diagnostic treatment, and preventive health care services. Service providers, such as physicians, may be employees or partners in the HMO or they may contract with the HMO to provide services.¹ HMOs are regulated by parts I and III of chapter 641, F.S.²

Civil Liability of HMOs

Civil Remedies Against Insurers

Section 624.155, F.S., authorizes various individual causes of action against insurers, including health insurers. It provides that any person may bring an action against an insurer when the person is damaged when the insurer does not attempt “in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests.”³ However, s. 641.201, F.S., which broadly exempts HMOs from many provisions of the Florida Insurance Code, effectively exempts HMOs from the requirement under s. 624.155, F.S., to act in good faith.

Legislative History

In the late 1990s and early 2000s, the Legislature considered creating individual causes of actions for misconduct by HMOs similar to the causes of action that may be brought against insurers under s. 624.155, F.S. Specifically, in 1996, the Legislature passed CS/HB 1853, which created civil causes of action against HMOs, created a bad faith cause of action similar to the cause of action for bad faith against insurers in s. 624.155, F.S., and provided for plaintiff attorney fees in certain situations. The Governor vetoed that bill. The Legislature considered similar bills providing for causes of action against HMOs in 1997-2001 but those bills did not pass.⁴

Litigation History

In *Greene v. Well Care HMO, Inc.*,⁵ the court considered whether a patient could bring an action against her HMO under the HMO Act⁶ and whether a patient could bring a bad faith action. In that case, the patient’s physician recommended treatment, but the HMO denied coverage. The patient sought a second opinion and that physician agreed with the first doctor’s recommendation. The HMO denied coverage in violation of the policy terms.⁷ The court held that the HMO Act did not provide for a private cause of action against an HMO. The court also held that s. 624.155, F.S., which generally authorizes private causes of actions against insurers who engage in prohibited practices, did not apply to HMOs.⁸

¹ Section 641.19(12), F.S.

² Section 641.201, F.S.

³ Section 624.155(1)(b)1., F.S.

⁴ *See, e.g.*, HB 1547 (1997 Regular Session), SB 490 (1998 Regular Session), SB 216 (1999 Regular Session), SB 2154 (2000), and SB 2292 (2001 Regular Session).

⁵ *Greene v. Well Care HMO, Inc.*, 778 So. 2d 1037 (Fla. 4th DCA 2001).

⁶ Section 641.17, F.S., names part I of ch. 641, F.S., the “Health Maintenance Organization Act.”

⁷ *Greene*, 778 So. 2d at 1039.

⁸ *Id.* at 1039-1041.

In 2003, the Florida Supreme Court issued a decision in *Villazon v. Prudential Helath Care Plan*,⁹ and agreed with the *Greene* court. The Court held that the HMO Act does not provide a private cause of action for violation of the Act's requirements. However, the Court held that the fact that there is no statutory cause of action does not preclude a common law negligence claim based on the same facts.¹⁰ In *Villazon*, the plaintiff alleged that the physicians who had contracted with the HMO were agents or apparent agents of the HMO and, therefore, the HMO was responsible for the physicians' negligence and vicariously liable¹¹ for the death of his wife.¹² The Court held that the existence of an agency relationship is generally a question to be determined by the trier of fact.¹³ As a result, the Court reversed the lower court's summary judgment that the HMO was not vicariously liable for the negligence of the plaintiff's treating physician.

Legislative Response

In response to *Villazon*, the Legislature amended ss. 641.19 and 641.51, F.S., to provide that the HMO is not vicariously liable for the negligence of health care providers unless the provider is an employee of the HMO. The statutory amendments prohibited causes of action based on agency or apparent agency relationships.¹⁴ The Legislature also created s. 768.0981, F.S., which provides:

An entity licensed or certified under chapter 624, chapter 636, or chapter 641 shall not be liable for the medical negligence of a health care provider with whom the licensed or certified entity has entered into a contract, other than an employee of such licensed or certified entity, unless the licensed or certified entity expressly directs or exercises actual control over the specific conduct that caused injury.¹⁵

ERISA Preemption

The Employee Retirement Income Security Act of 1974 (ERISA), limits the remedies available to persons covered under private sector employer plans and preempts certain state laws. ERISA may preempt civil remedies in state courts, whether pursued under common law theories of liability or pursuant to a statutory cause of action.

Most employer-sponsored health insurance and HMO plans are ERISA plans. However, ERISA does not apply to governmental plans and church plans and has no application to individual health insurance plans. ERISA has a civil enforcement clause that provides a remedy in federal court for denied employee benefits. Employees and enrollees have a federal cause of action to either obtain the actual benefit that was denied, payment for the benefit, or a decree granting the

⁹ *Villazon v. Prudential Health Care Plan*, 843 So. 2d 842, 852 (Fla. 2003).

¹⁰ *Id.* at 852.

¹¹ Vicarious liability occurs when one person, although entirely innocent of any wrongdoing, is held responsible for the wrongful act of another. See 38 Florida Jurisprudence 2d s. 101. For example, an employer can be held vicariously liable for a tort committed by an employee.

¹² *Villazon*, 843 So. 2d at 845.

¹³ *Id.*, at 853.

¹⁴ See 2003-416, Laws of Fla.

¹⁵ Chapter 624 is the Insurance Code, chapter 636 pertains to prepaid limited health service organizations and discount medical plan organizations, and chapter 641 pertains to health care service programs.

administration of future benefits.¹⁶ State tort remedies, on the other hand, allow for the recovery of pain and suffering, lost wages, and cost of future medical services.

In *Villazon*, the Florida Supreme Court held that ERISA did not preempt an action against an HMO alleging common law negligence and violations of the HMO Act.¹⁷ A year after *Villazon*, the United States Supreme Court considered whether a Texas statute imposing liability on HMOs for failure to exercise ordinary care in making coverage decision was preempted by ERISA.¹⁸ The court held that federal preemption applied and the remedies were limited to federal remedies.

Whether a claim against an ERISA plan is preempted is a fact-specific question. In *Badal v. Hinsdale Mem. Hosp.*,¹⁹ the court held that the claim was not preempted when the HMO was a defendant in the case under a theory of vicarious liability where the plaintiff alleged the HMO was responsible for the acts of its employees or agent. In determining whether ERISA preemption applies in medical malpractice cases, courts seem to look to see whether the malpractice is based on actions of a treating physician versus whether the injury was caused by a denial of coverage. In *Land v. Cigna Healthcare of Fla.*,²⁰ the court found ERISA preemption in a case where the treating physician ordered hospital admission for a patient, but the HMO nurse did not approve a hospital stay.

III. Effect of Proposed Changes:

Vicarious Liability

The bill repeals provisions in ss. 641.19 and 641.51, F.S., providing that an HMO arranging the provision of health care services does not create an actual agency, apparent agency, or employer-employee relationship for purposes of vicarious liability except when the provider is an actual employee of the HMO.

The bill also repeals s. 768.0981, F.S. That statute provides that an entity such as an insurer, prepaid limited health service organization, HMO, or prepaid health clinic²¹ is not liable for the medical negligence of a health care provider with whom the entity has entered into a contract unless the entity expressly directs or exercises actual control over the specific conduct that caused injury.

As a result repeal of provisions limiting actions based on theories of vicarious liability, an HMO will be liable for the negligence of a treating physician who is not an employee of the HMO if the specific facts of the case show that an actual agency or apparent agency relationship existed between the HMO and the treating physician.

¹⁶ 29 U.S.C. s. 1132(a)(1).

¹⁷ *Villazon*, 843 So. 2d at 850-851.

¹⁸ *Aetna Health v. Davila*, 542 U.S. 200 (2004).

¹⁹ *Badal v. Hinsdale Mem. Hosp.*, 2007 U.S. Dist. LEXIS 34713 (N.D. Ill. May 8, 2007).

²⁰ *Land v. Cigna Health Care of Fla.*, 381 F.3d 1274 (11th Cir. 2004).

²¹ Section 768.0981, F.S., specifically refers to entities licensed or certified under ch. 624, F.S., ch. 636, F.S., or ch. 641, F.S.

In effect, the bill revives the effect of the Florida Supreme Court's opinion in *Villazon v. Prudential Health Care Plan*, which was superseded by statute. Contracts between an HMO and a treating physician which label the physician as an independent contractor will not be sufficient to make an HMO immune from liability for the physician's negligence. The nature of the relationship and the HMO's liability will be based on whether the HMO had the right to control the activities of the physician in light of the totality of the circumstances.

HMO Bad Faith Liability

The bill creates a cause of action for bad faith against HMOs in specified situations. Specifically, it provides that a person may bring a civil action against an HMO if a person to whom a duty is owed suffers damage because of an HMO's failure to provide a covered service. The covered service must be one that the HMO should have been provided had the HMO acted in good faith and had acted fairly and reasonably toward the person with due regard for his or her interests. The service must have been medically reasonable or necessary in the independent medical judgment of a treating physician under contract with, or another physician authorized by, the HMO.

The court may award damages, including damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages. In a bad faith action brought pursuant to the provisions of this bill, the court must award a prevailing plaintiff reasonable attorney fees as part of the costs.

Causes of Action for Violations of the HMO Act

The bill creates an individual cause of action against an HMO if a person to whom a duty is owed suffers damage as a result of an HMO's violation of specified statutes: s. 641.3155, s. 641.3903(5), (10), (12), (13), or (14), and s. 641.51, F.S. In an action alleging violations of these statutes, the court must award a prevailing plaintiff reasonable attorney fees as part of the costs.

Section 641.3155, F.S., is known as the "prompt pay" law. It requires the HMO to provide notice of receipt of provider claims within specified times, to deny or contest provider claims within specified times, and to pay provider claims within specified times.

Subsection 641.3903(5), F.S., prohibits certain unfair claim settlement practices by HMOs. An HMO may not:

- Attempt to settle claims on the basis of an application or any other material document which was altered without notice to, or knowledge or consent of, the subscriber or group of subscribers to a health maintenance organization; or
- Make a material misrepresentation to the subscriber for the purpose and with the intent of effecting settlement of claims, loss, or damage under a health maintenance contract on less favorable terms than those provided in, and contemplated by, the contract.
- Engage in the practices below with such frequency as to indicate a general business practice of engaging in a unfair settlement practice:
 - Failing to adopt and implement standards for the proper investigation of claims;
 - Misrepresenting pertinent facts or contract provisions relating to coverage at issue;

- Failing to acknowledge and act promptly upon communications with respect to claims;
- Denying claims without conducting reasonable investigations based upon available information;
- Failing to affirm or deny coverage of claims upon written request of the subscriber within a reasonable time not to exceed 30 days after a claim or proof-of-loss statements have been completed and documents pertinent to the claim have been requested in a timely manner and received by the health maintenance organization;
- Failing to promptly provide a reasonable explanation in writing to the subscriber of the basis in the health maintenance contract in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;
- Failing to provide, upon written request of a subscriber, itemized statements verifying that services and supplies were furnished, where such statement is necessary for the submission of other insurance claims covered by individual specified disease or limited benefit policies;
- Failing to provide any subscriber with services, care, or treatment contracted for pursuant to any health maintenance contract without a reasonable basis to believe that a legitimate defense exists for not providing such services, care, or treatment; or
- Engaging in systematic down coding with the intent to deny reimbursement otherwise due.

Subsection 641.3903(10), F.S., prohibits an HMO from knowingly collecting any sum as a premium or charge for health maintenance coverage, which is not then provided or is not in due course to be provided. An HMO may not knowingly collect as a premium or charge for health maintenance coverage any sum in excess of or less than the premium or charge applicable to health maintenance coverage, in accordance with the applicable classifications and rates as filed with the Office of Insurance Regulation.

Subsection 641.3903(12), F.S., prohibits an HMO from engaging in or attempting to engage in discriminatory practices that discourage participation on the basis of the actual or perceived health status of Medicaid recipients. The statute also prohibits an HMO from refusing to provide services or care to a subscriber solely because medical services may be or have been sought for injuries resulting from an assault, battery, sexual assault, sexual battery, or any other offense by a family or household member or by another who is or was residing in the same dwelling unit.

Subsection 641.3903(13), F.S., prohibits an HMO from knowingly misleading potential enrollees as to the availability of providers.

Subsection 641.3903(14), F.S., prohibits any retaliatory action by an HMO against a contracted provider on the basis that the provider communicated information to the provider's patient regarding care or treatment options when the provider deems knowledge of such information by the patient to be in the best interest of the patient.

Section 641.51, F.S., requires an HMO to establish a quality assurance program and creates a requirement for second medical opinions in some cases. The HMO:

- Shall ensure that the health care services provided to subscribers shall be rendered under reasonable standards of quality of care consistent with the prevailing standards of medical practice in the community;

- Shall have an ongoing internal quality assurance program for its health care services;
- Shall not have the right to control the professional judgment of a physician;
- Shall ensure that only a physician holding an active, unencumbered license may render an adverse determination regarding a service provided by a physician licensed in Florida;
- Shall give the subscriber the right to a second medical opinion in any instance in which the subscriber disputes the organization's or the physician's opinion of the reasonableness or necessity of surgical procedures or is subject to a serious injury or illness;
- Shall develop and maintain a policy to determine when exceptional referrals to out-of-network specially qualified providers should be provided to address the unique medical needs of a subscriber;
- Shall develop and maintain written policies and procedures for the provision of standing referrals to subscribers with chronic and disabling conditions which require ongoing specialty care;
- Shall allow subscribers undergoing active treatment to continue coverage and care when medically necessary, through completion of treatment of a condition for which the subscriber was receiving care at the time of the termination of a provider contract;
- Release specified data to the Agency for Health Care Administration;
- Adopt recommendations for preventive pediatric health care which are consistent with the requirements for health checkups for children developed for the Medicaid program;
- Allow, without prior authorization, a female subscriber, to visit a contracted obstetrician/gynecologist for one annual visit and for medically necessary follow-up care; and
- Allow a contracted primary care physician to send a subscriber to a contracted licensed ophthalmologist under specified circumstances.

The bill provides that a person bringing an action for these violations of the HMO Act need not prove that the violation was committed with such frequency as to indicate a general business practice.

The bill provides that an HMO is liable for all of the claimant's damages or \$500 per violation, whichever is greater, for violations of the above-cited statutes. The court may award damages, including damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages.

ERISA Preemption

Federal preemption may limit this bill's application in situations where an ERISA plan makes a decision to deny coverage. As discussed in *Davila* and subsequent cases, courts will have to review the facts of each case to determine whether preemption applies in cases related to coverage decisions. In addition to cases related to denial of coverage, courts have found ERISA preemption in cases related to a prompt pay law²² and related to payment to medical providers.²³

The provisions of the bill will apply to non-ERISA plans. It is not known how many persons covered under HMO plans are covered under plans that would be excluded from portions of this

²² *America's Health Ins. v. Hudgens*, 742 F.3d 1319 (11th Cir. 2014).

²³ *Gables Ins. Recovery, Inc. v. Blue Cross & Blue Shield of Fla., Inc.*, 813 F.3d 1333 (11th Cir. 2015).

bill and how many persons are covered under plans that would be subject to all the provisions of the bill. A court noted that there is a trend in Georgia for employers to provide self-funded ERISA plans to their employees.²⁴ Subsequent to *Davila*, Texas passed a law to specifically exclude ERISA plans from the Texas Health Care Liability Act.²⁵ A 2005 bill analysis of the Texas legislation noted that there are only a few non-ERISA group health plans offered in Texas.²⁶

Effective Date

The bill has an effective date of October 1, 2017.

Retroactivity

This bill provides that the repeal of s. 768.0981, F.S., and amendments to ss. 641.19, 641.51, and 641.3917, F.S., apply to causes of action accruing on or after October 1, 2017. The bill is not retroactive and does not apply to ongoing litigation or to causes of action accruing before October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Office of Insurance Regulation, the bill increases the exposure to lawsuits for health insurers, HMOs, prepaid health clinics, and prepaid limited health service organizations. This increased exposure may lead to more expensive premiums for consumers.²⁷

²⁴ *America's Health Ins. v. Hudgens*, 742 F.3d at 1324-1325.

²⁵ Texas Civil Practice and Remedies Code s. 88.0015.

²⁶ SB 554 Bill Analysis, Texas, March 17, 2005 (on file with the Committee on Banking and Insurance).

²⁷ Office of Insurance Regulation, *2017 Agency Legislative Bill Analysis for SB 262*, (Feb. 17, 2017) (on file with the Senate Committee on Judiciary).

C. Government Sector Impact:

According to the Office of Insurance Regulation, the increased exposure to the above mentioned groups may lead to higher premiums under the state group health insurance plan.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 641.19, 641.51, and 641.3917, Florida Statutes. This bill repeals section 768.0981, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

²⁸ *Id.*

By Senator Steube

23-00399B-17

2017262__

1 A bill to be entitled
 2 An act relating to health insurance; amending s.
 3 641.19, F.S.; revising definitions; amending s.
 4 641.51, F.S.; deleting a provision that provides that
 5 health maintenance organizations are not vicariously
 6 liable for certain medical negligence except under
 7 certain circumstances; amending s. 641.3917, F.S.;
 8 authorizing specified persons to bring a civil action
 9 against a health maintenance organization for certain
 10 violations; providing for construction; specifying a
 11 health maintenance organization's liability for such
 12 violations; repealing s. 768.0981, F.S., relating to a
 13 limitation on actions against insurers, prepaid
 14 limited health service organizations, health
 15 maintenance organizations, or prepaid health clinics;
 16 providing applicability; providing an effective date.

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

18 Section 1. Subsections (11), (12), and (18) of section
 19 641.19, Florida Statutes, are amended to read:

20 641.19 Definitions.—As used in this part, the term:

21 (11) "Health maintenance contract" means any contract
 22 entered into by a health maintenance organization with a
 23 subscriber or group of subscribers to provide ~~coverage for~~
 24 comprehensive health care services in exchange for a prepaid per
 25 capita or prepaid aggregate fixed sum.

26 (12) "Health maintenance organization" means any
 27 organization authorized under this part which:

28 (a) Provides, ~~through arrangements with other persons,~~
 29 emergency care; ~~inpatient hospital services;~~ physician care,
 30 including care provided by physicians licensed under chapters
 31
 32

Page 1 of 5

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

23-00399B-17

2017262__

33 458, 459, 460, and 461; and ambulatory diagnostic treatment; and
 34 preventive health care services.

35 (b) Provides, either directly or through arrangements with
 36 other persons, health care services to persons enrolled with
 37 such organization, on a prepaid per capita or prepaid aggregate
 38 fixed-sum basis.

39 (c) Provides, either directly or through arrangements with
 40 other persons, comprehensive health care services which
 41 subscribers are entitled to receive pursuant to a contract.

42 (d) Provides physician services, by physicians licensed
 43 under chapters 458, 459, 460, and 461, directly through
 44 physicians who are either employees or partners of such
 45 organization or under arrangements with a physician or any group
 46 of physicians.

47 (e) If offering services through a managed care system, has
 48 a system in which a primary physician licensed under chapter
 49 458, chapter 459, chapter 460, or chapter 461 is designated for
 50 each subscriber upon request of a subscriber requesting service
 51 by a physician licensed under any of those chapters, and is
 52 responsible for coordinating the health care of the subscriber
 53 of the respectively requested service and for referring the
 54 subscriber to other providers of the same discipline when
 55 necessary. Each female subscriber may select as her primary
 56 physician an obstetrician/gynecologist who has agreed to serve
 57 as a primary physician and is in the health maintenance
 58 organization's provider network.

59
 60 ~~Except in cases in which the health care provider is an employee~~
 61 ~~of the health maintenance organization, the fact that the health~~

Page 2 of 5

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

23-00399B-17

2017262__

62 ~~maintenance organization arranges for the provision of health~~
 63 ~~care services under this chapter does not create an actual~~
 64 ~~agency, apparent agency, or employer-employee relationship~~
 65 ~~between the health care provider and the health maintenance~~
 66 ~~organization for purposes of vicarious liability for the medical~~
 67 ~~negligence of the health care provider.~~

68 (18) "Subscriber" means an entity or individual who has
 69 contracted, or on whose behalf a contract has been entered into,
 70 with a health maintenance organization for health care services
 71 coverage or other persons who also receive health care services
 72 coverage as a result of the contract.

73 Section 2. Subsection (3) of section 641.51, Florida
 74 Statutes, is amended to read:

75 641.51 Quality assurance program; second medical opinion
 76 requirement.—

77 (3) The health maintenance organization shall not have the
 78 right to control the professional judgment of a physician
 79 licensed under chapter 458, chapter 459, chapter 460, or chapter
 80 461 concerning the proper course of treatment of a subscriber.
 81 However, this subsection shall not be considered to restrict a
 82 utilization management program established by an organization or
 83 to affect an organization's decision as to payment for covered
 84 services. ~~Except in cases in which the health care provider is~~
 85 ~~an employee of the health maintenance organization, the health~~
 86 ~~maintenance organization shall not be vicariously liable for the~~
 87 ~~medical negligence of the health care provider, whether such~~
 88 ~~claim is alleged under a theory of actual agency, apparent~~
 89 ~~agency, or employer-employee relationship.~~

90 Section 3. Section 641.3917, Florida Statutes, is amended

Page 3 of 5

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

23-00399B-17

2017262__

91 to read:

92 641.3917 Civil liability.—

93 (1) The provisions of this part are cumulative to rights
 94 under the general civil and common law, and no action of the
 95 department or office shall abrogate such rights to damage or
 96 other relief in any court.

97 (2) Any person to whom a duty is owed may bring a civil
 98 action against a health maintenance organization when such
 99 person suffers damages as a result of the health maintenance
 100 organization's:

101 (a) Violation of s. 641.3155, s. 641.3903(5), (10), (12),
 102 (13), or (14), or s. 641.51; or

103 (b) Failure to provide a covered service, when the health
 104 maintenance organization in good faith should have provided such
 105 service had it acted fairly and reasonably toward the subscriber
 106 or enrollee and with due regard for his or her interests, and
 107 such service is medically reasonable or necessary in the
 108 independent medical judgment of a treating physician under
 109 contract with, or another physician authorized by, the health
 110 maintenance organization.

111
 112 A person bringing an action under this subsection need not prove
 113 that such act was committed or performed with such frequency as
 114 to indicate a general business practice.

115 (3) The health maintenance organization is liable for all
 116 of the claimant's damages or \$500 per violation, whichever is
 117 greater. The court may also award compensatory damages,
 118 including, but not limited to, damages for mental anguish, loss
 119 of dignity, and any other intangible injuries, and punitive

Page 4 of 5

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

23-00399B-17

2017262__

120 damages. In an action or proceeding brought under this
121 subsection, the court shall award a prevailing plaintiff
122 reasonable attorney fees as part of the costs.

123 Section 4. Section 768.0981, Florida Statutes, is repealed.

124 Section 5. The amendments to ss. 641.19, 641.51, and
125 641.3917, Florida Statutes, made by this act and the repeal of
126 s. 768.0981, Florida Statutes, by this act apply to causes of
127 action accruing on or after the effective date of this act.

128 Section 6. This act shall take effect October 1, 2017.

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 616

INTRODUCER: Senator Steube

SUBJECT: Concealed Weapons or Firearms

DATE: March 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Pre-meeting
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____

I. Summary:

SB 616 authorizes a person who has a concealed weapons and firearms license to carry a concealed weapon or firearm into a courthouse for as long as it takes him or her to report to courthouse security or management. Then, the licensee must follow security or management personnel's instructions for removing, securing, and storing the item, or the licensee must surrender the item until the licensee is leaving the courthouse.

As such, the bill does not permit anyone to carry a concealed weapon or firearm throughout a courthouse or into a courtroom.

II. Present Situation:

Concealed Carry of Firearms, Weapons, or Electric Weapons or Devices

Lawful Concealed Carry of Weapons or Firearms

Chapter 790, F.S., regulates who can carry weapons and firearms and where and how a person may carry them. In general, this chapter prohibits a person from carrying a concealed firearm unless the person has a concealed weapon or firearm license.¹

¹ See ss. 790.01 and 790.06, F.S.; but see s.790.025(3), F.S., which provides that the prohibition against carrying a concealed weapon and the licensure requirement do not apply in certain circumstances.

Florida's concealed carry licensing scheme is set forth at s. 790.06, F.S. The license only permits the concealed carry of handguns and certain non-firearm weapons.² Currently, there are roughly 1.7 million Floridians holding a standard concealed carry license.³

To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services. And the Department *must* grant the license to each applicant who:⁴

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm;⁵
- Has not been adjudicated an incapacitated person in a guardianship proceeding, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years before the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

² "For the purposes of this section, concealed firearms and concealed weapons are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined" elsewhere in statute. Section 790.06(1), F.S.

³ As of February 28, 2017, 1,721,862 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited March 2, 2017)

⁴ Section 790.06(2), F.S. Accordingly, Florida is referred to as a "shall-issue" state, as opposed to a "may-issue" state. Also, the Department must deny a license to an applicant who meets criteria set forth in s. 790.06(3), F.S.

⁵ See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.

The licensing statute strongly implies that licensees may carry concealed throughout Florida, as a general matter.⁶ However, the statute also expressly states that the license does not permit a licensee to carry a concealed weapon or firearm into any:⁷

- *Courthouse*;
- *Courtroom*;⁸
- Place of nuisance, such as a brothel or place where criminal gang activity takes place repeatedly;
- Police, sheriff, or highway patrol station;
- Detention facility, prison, or jail;
- Polling place;
- Meeting of the governing body of a county, public school district, municipality, or special district;
- Meeting of the Legislature or a committee of the Legislature;
- School, college, or professional athletic event not related to firearms;
- Elementary or secondary school facility or administration building;
- Career center;
- Portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- College or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
- Airport's passenger terminal and sterile area, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
- Place where the carrying of firearms is prohibited by federal law.

III. Effect of Proposed Changes:

Currently, a person who has a license to carry a concealed weapon or firearm apparently may carry a concealed weapon or firearm throughout the state, as a general matter. The license, however, does not authorize the carrying of a concealed weapon or firearm into several places listed in the licensing statute, including courthouses. As a result, a licensee who carries a concealed weapon or firearm into a courthouse or other prohibited place commits a second degree misdemeanor, which is punishable by up to 60 days in jail and a fine not to exceed \$500.

Under the bill, a licensee may carry a concealed weapon or firearm into a courthouse if the licensee approaches security or management personnel upon arrival at a courthouse and notifies them of the presence of the weapon or firearm. Then, the licensee must:

⁶ The licensing statute expressly states that licensees are not subject to the statute that criminalizes concealed carry. The licensing statute also expressly states that the license does not authorize carrying into a list of places. Thus the licensing statute strongly implies, though nowhere expressly states, that licensees may carry generally throughout Florida.

⁷ Section 790.06(12)(a), F.S. (Emphasis added)

⁸ "Except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom." Section 790.06(12)(a)5., F.S. Note that this provision does not refer to *firearms*, but only *weapons*.

- Follow the security or management personnel's direction for removing, securing, and storing such weapon or firearm, or
- Temporarily surrender the weapon or firearm to the security or management personnel, who shall store the weapon or firearm in a locker, safe, or other secure location and return the weapon or firearm to the licensee when he or she is exiting the courthouse.

As such, the bill apparently does not permit carrying a firearm past the entryway of most courthouses.⁹ Also, the bill clearly does not authorize a licensee to carry into any courtroom.

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:

None.

C. Government Sector Impact:

Courthouses may need to purchase lockers to store handguns for persons who have a concealed weapon or firearm license.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁹ However, some courthouses have no security checkpoints at their entrances.

VIII. Statutes Affected:

This bill substantially amends section 790.06, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Steube

23-00694-17

2017616__

1 A bill to be entitled
 2 An act relating to concealed weapons or firearms;
 3 amending s. 790.06, F.S.; authorizing a concealed
 4 weapons or concealed firearms licensee to temporarily
 5 surrender a weapon or firearm if the licensee
 6 approaches courthouse security or management personnel
 7 upon arrival and follows their instructions; providing
 8 an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Paragraph (a) of subsection (12) of section
 13 790.06, Florida Statutes, is amended to read:
 14 790.06 License to carry concealed weapon or firearm.—
 15 (12) (a) A license issued under this section does not
 16 authorize any person to openly carry a handgun or carry a
 17 concealed weapon or firearm into:
 18 1. Any place of nuisance as defined in s. 823.05;
 19 2. Any police, sheriff, or highway patrol station;
 20 3. Any detention facility, prison, or jail;
 21 4. Any courthouse, except when a licensee approaches
 22 security or management personnel upon arrival at a courthouse
 23 and notifies them of the presence of the weapon or firearm and
 24 follows the security or management personnel's instructions for
 25 removing, securing, and storing such weapon or firearm, or when
 26 the licensee temporarily surrenders such weapon or firearm to
 27 the security or management personnel, who shall store the weapon
 28 or firearm in a locker, safe, or other secure location and
 29 return the weapon or firearm to the licensee when he or she is
 30 exiting the courthouse;
 31 5. Any courtroom, except that nothing in this section would
 32 preclude a judge from carrying a concealed weapon or determining

Page 1 of 2

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

23-00694-17

2017616__

33 who will carry a concealed weapon in his or her courtroom;
 34 6. Any polling place;
 35 7. Any meeting of the governing body of a county, public
 36 school district, municipality, or special district;
 37 8. Any meeting of the Legislature or a committee thereof;
 38 9. Any school, college, or professional athletic event not
 39 related to firearms;
 40 10. Any elementary or secondary school facility or
 41 administration building;
 42 11. Any career center;
 43 12. Any portion of an establishment licensed to dispense
 44 alcoholic beverages for consumption on the premises, which
 45 portion of the establishment is primarily devoted to such
 46 purpose;
 47 13. Any college or university facility unless the licensee
 48 is a registered student, employee, or faculty member of such
 49 college or university and the weapon is a stun gun or nonlethal
 50 electric weapon or device designed solely for defensive purposes
 51 and the weapon does not fire a dart or projectile;
 52 14. The inside of the passenger terminal and sterile area
 53 of any airport, provided that no person shall be prohibited from
 54 carrying any legal firearm into the terminal, which firearm is
 55 encased for shipment for purposes of checking such firearm as
 56 baggage to be lawfully transported on any aircraft; or
 57 15. Any place where the carrying of firearms is prohibited
 58 by federal law.
 59 Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 646

INTRODUCER: Senator Steube

SUBJECT: Weapons and Firearms

DATE: March 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Pre-meeting
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____

I. Summary:

SB 646 revises several statutes in chapter 790, F.S., that regulate concealed weapons and firearms.

Two of these revisions reduce the penalties for two non-violent offenses involving a firearm or weapon to a noncriminal offense with a \$25 penalty. One offense to which the reduced penalty applies is the unlawful and open carry of a firearm. The other offense is the knowing and willful carry of a concealed weapon by a concealed weapon or firearm licensee into a place prohibited by statute. Currently, these offenses are second degree misdemeanors, punishable by up to 60 days in jail and a fine not to exceed \$500.

Also, the bill expands the authority under a concealed weapon or firearm license that is held by a member of the Florida Cabinet who does not have full-time security provided by the Department of Law Enforcement. These Cabinet members are authorized to carry a concealed weapon anywhere not prohibited by federal law.

Finally, relating to the general ban on openly carrying firearms, the bill revises the exemption from this ban for a concealed carry licensee who briefly displays a firearm. The language of this exemption in current law does not clearly indicate whether the exemption applies to inadvertent displays or only to only displays that are necessary for self-defense. The bill deletes language in current law that implies that the protections from prosecution apply only to displays made in self-defense.

II. Present Situation:

Open Carry of Firearms

Open Carry Generally Prohibited

As a general matter, carrying a firearm openly is a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500.¹

Lawful for Concealed Carry Licensee to Briefly and Openly Display Firearm

The statute banning open carry of firearms exempts a concealed carry licensee who is lawfully carrying concealed if he or she “briefly and openly displays the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.”²

The language of the exemption is not completely clear. It does not indicate how long a *brief* display of a firearm may be. Also, this language might be read to require that a display of a firearm be in necessary self-defense. As a result of this narrow reading, the inadvertent display of a concealed firearm might subject a person to arrest for violating the open carry ban.

Concealed Carry of Weapons and Firearms

Concealed Carry Generally Prohibited

As a general matter, the unlicensed carrying of a concealed weapon, or electric weapon or device, is a first degree misdemeanor³ and the carrying of a concealed firearm is a third degree felony.⁴ This prohibition on persons carrying concealed weapons or firearms is subject to exceptions, including this state’s concealed carry licensing scheme.⁵

¹ Sections 775.082(4)(b) and 775.083(1)(e), F.S. Neither “openly carrying,” “open carry,” nor any derivation of these terms is defined in the Florida Statutes. The ban on open carrying of firearms is subject to exceptions. Specifically, s. 790.25(3), F.S. sets forth a long and diverse list of persons who are not subject to the ban on openly carrying a firearm, including on-duty law enforcement officers, persons who are hunting, fishing or camping, and investigators of a public defender or state attorney, just to name a few.

² Section 790.053(1), F.S. To be precise, this provision does not affirmatively state that this conduct is legal, just that it does not violate s. 790.053, F.S. Also, this is the extent to which a concealed carry license permits a licensee to carry a firearm openly, and there is no provision for an open carry license in the Florida Statutes.

³ A first degree misdemeanor is punishable by a jail sentence not to exceed 1 year and a \$1,000 fine. Sections 775.082(4)(a), 775.083(1)(d), F.S.

⁴ A third degree felony is punishable by a prison sentence not to exceed 5 years and a \$5,000 fine. Sections 775.082(9)(a)3.d., 775.083(1)(c), F.S. Section 790.02, F.S., provides that the carrying of a concealed firearm in violation of section 790.01, F.S., constitutes a breach of peace, for which an officer may make a warrantless arrest if the officer has “reasonable grounds or probable cause to believe that the offense of carrying a concealed weapon is being committed.”

⁵ Section 790.25(3), F.S., sets forth a long and diverse list of persons who are not subject to the licensing scheme, and who apparently may carry concealed without a license, including on-duty law enforcement officers, persons who are hunting, fishing or camping, and investigators of a public defender or state attorney, just to name a few.

Licensed Concealed Carry

Florida's concealed carry licensing scheme is set forth at s. 790.06, F.S. The license only permits the concealed carry of handguns and certain non-firearm weapons.⁶ Currently, there are roughly 1.7 million Floridians holding a standard concealed carry license.⁷

To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services. The Department *must* grant this license to each applicant who:⁸

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm;⁹
- Has not been adjudicated an incapacitated person in a guardianship proceeding, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years before the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and

⁶ "For the purposes of this section, concealed firearms and concealed weapons are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined" elsewhere in statute. Section 790.06(1), F.S.

⁷ As of February 28, 2017, 1,721,862 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited March 2, 2017).

⁸ Section 790.06(2), F.S. Accordingly, Florida is referred to as a "shall-issue" state, as opposed to a "may-issue" state. Also, the Department must deny a license to an applicant who meets criteria set forth in s. 790.06(3), F.S.

⁹ See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to the provision.

- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

The licensing statute states that a “person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding the [ban on carrying concealed weapons].”¹⁰ As a result, the statute suggests that licensees may carry concealed weapons and firearms throughout the state, as a general matter.

However, the statute also expressly states that the license does not permit a licensee to carry into any of a long list of places set forth in the statute, including K-12 facilities, college or university facilities, courthouses, bars, airport terminals, several types of government meetings, and any place prohibited by federal law.¹¹ And if a licensee carries into any of these places without independent justification,¹² he or she commits a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500.¹³

III. Effect of Proposed Changes:

Violation of the Prohibition on Open Carry of Firearms is Non-Criminal

Under current law, as a general matter, carrying a firearm openly is a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500.¹⁴

The bill modifies the nature and consequence of violating the statute prohibiting open carry of firearms. Specifically, the bill changes this violation to a non-criminal offense, punishable by a \$25 fine payable to the clerk of the court.

Carrying Firearms into Prohibited Places by Concealed Carry Licensees is Non-Criminal

In short, the bill changes the nature and consequence of the offense of a concealed weapons and firearms licensee carrying a concealed weapon or firearm into a place prohibited by the licensing statute. Specifically, the bill changes this violation from a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500, to a non-criminal violation, punishable by a \$25 fine payable to the clerk of the court.

¹⁰ Section 790.06(1), F.S.

¹¹ Section 790.06(12)(a), F.S.

¹² For example, s. 790.25(3), F.S. authorizes the persons there listed to carry concealed without a license, and expressly exempts these persons from the licensing statute. Therefore, apparently a licensee who is also one of the persons listed at section 790.25(3), F.S. could carry into the places listed in the licensing statute as place into which a license not authorize carrying a weapon or firearm.

¹³ Note that this does not appear to be the type of crime that would be grounds for the revocation of the license pursuant to s. 790.06(3), F.S.

¹⁴ Sections 775.082(4)(b), 775.083(1)(e), F.S. Neither “openly carrying,” “open carry,” nor any derivation of these terms is defined in the Florida Statutes.

Lawful Temporary and Open Display of Firearm by Concealed Carry Licensees

The bill, like current law, specifies that a concealed carry licensee who is lawfully carrying concealed, then briefly displays a firearm, does not violate the statute banning the open carry of firearms. However, the bill modifies this exemption from the open carry ban in several ways.

First, in current law, this provision prohibits displaying the firearm in an “angry or threatening manner.” The bill removes this language. However, this change does not necessarily mean that, under the bill, a licensee may display his or her weapon in any manner he or she chooses. For instance, by displaying a firearm in an angry and threatening manner, one may commit an aggravated assault. Indeed, “displaying a firearm in an angry or threatening manner” is a fair, plain-language description of a type of aggravated assault.¹⁵

Second, the bill clarifies that the brief display of a firearm by a licensee no longer needs to be in self-defense. Thus, licensees will be free of fear that their inadvertent, short, non-self-defense display of their firearms will result in an arrest or a criminal penalty.

Carry Rights for Licensees Who Are Members of the Florida Cabinet

Article IV, Section 4 of the Florida Constitution states that the Florida Cabinet is comprised of the Commissioner of Agriculture, the Attorney General, and the Chief Financial Officer. The bill authorizes any member of the Cabinet who is a licensee and who does not have full-time security provided by the Florida Department of Law Enforcement to carry a concealed weapon or firearm anywhere not prohibited by federal law.

Effective Date

The bill takes effect July 1, 2017.

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.

¹⁵ See ss. 784.011 and 784.021, F.S.

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

None.

B. Private Sector Impact:

The bill reduces penalties for certain non-violent offenses with a firearm from a second degree misdemeanor to a non-criminal offense, punishable by a \$25 fine.

C. Government Sector Impact:

By reducing penalties for non-violent offences with a firearm, the bill may reduce burden on the court system, as well as on prosecutors and public defenders.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 790.053 and 790.06 of the Florida Statutes.

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

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

None.

B. Amendments:

None.



112386

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete lines 47 - 127

and insert:

(3) A Any person who violates ~~violating~~ this section:

(a) °For a first violation, commits a noncriminal violation
with a penalty of \$25, payable to the clerk of the court.

(b) For a second violation, commits a noncriminal violation
with a penalty of \$500, payable to the clerk of court.

(c) For a third or subsequent violation, commits a
misdemeanor of the second degree, punishable as provided in s.



112386

12 775.082 or s. 775.083.

13 Section 2. Subsections (1) and (12) of section 790.06,
14 Florida Statutes, are amended to read:

15 790.06 License to carry concealed weapon or firearm.—

16 (1) The Department of Agriculture and Consumer Services is
17 authorized to issue licenses to carry concealed weapons or
18 concealed firearms to persons qualified as provided in this
19 section. Each such license must bear a color photograph of the
20 licensee. For the purposes of this section, concealed weapons or
21 concealed firearms are defined as a handgun, electronic weapon
22 or device, tear gas gun, knife, or billie, but the term does not
23 include a machine gun as defined in s. 790.001(9). Such licenses
24 shall be valid throughout the state for a period of 7 years from
25 the date of issuance. Any person in compliance with the terms of
26 such license may carry a concealed weapon or concealed firearm
27 notwithstanding the provisions of s. 790.01. The licensee must
28 carry the license, together with valid identification, at all
29 times in which the licensee is in actual possession of a
30 concealed weapon or firearm and must display both the license
31 and proper identification upon demand by a law enforcement
32 officer. A person licensed to carry a concealed firearm under
33 this section who is lawfully carrying a firearm in a concealed
34 manner and whose firearm is briefly or inadvertently displayed
35 to the ordinary sight of another person does not violate s.
36 790.053 and may not be arrested or charged with a crime.
37 Violations of the provisions of this subsection shall constitute
38 a noncriminal violation with a penalty of \$25, payable to the
39 clerk of the court. Notwithstanding any other provision of this
40 section, an elected constitutional officer identified in Art.



112386

41 III or Art. IV of the State Constitution who is licensed to
42 carry a concealed weapon or firearm and who does not have full-
43 time security provided by the Department of Law Enforcement may
44 carry a concealed weapon or firearm anywhere they are not
45 prohibited by federal law.

46 (12) (a) A license issued under this section does not
47 authorize any person to openly carry a handgun or carry a
48 concealed weapon or firearm into:

- 49 1. Any place of nuisance as defined in s. 823.05;
- 50 2. Any police, sheriff, or highway patrol station;
- 51 3. Any detention facility, prison, or jail;
- 52 4. Any courthouse;
- 53 5. Any courtroom, except that nothing in this section would
54 preclude a judge from carrying a concealed weapon or determining
55 who will carry a concealed weapon in his or her courtroom;
- 56 6. Any polling place;
- 57 7. Any meeting of the governing body of a county, public
58 school district, municipality, or special district;
- 59 8. Any meeting of the Legislature or a committee thereof;
- 60 9. Any school, college, or professional athletic event not
61 related to firearms;
- 62 10. Any elementary or secondary school facility or
63 administration building;
- 64 11. Any career center;
- 65 12. Any portion of an establishment licensed to dispense
66 alcoholic beverages for consumption on the premises, which
67 portion of the establishment is primarily devoted to such
68 purpose;
- 69 13. Any college or university facility unless the licensee



112386

70 is a registered student, employee, or faculty member of such
71 college or university and the weapon is a stun gun or nonlethal
72 electric weapon or device designed solely for defensive purposes
73 and the weapon does not fire a dart or projectile;

74 14. The inside of the passenger terminal and sterile area
75 of any airport, provided that no person shall be prohibited from
76 carrying any legal firearm into the terminal, which firearm is
77 encased for shipment for purposes of checking such firearm as
78 baggage to be lawfully transported on any aircraft; or

79 15. Any place where the carrying of firearms is prohibited
80 by federal law.

81 (b) A person licensed under this section may ~~shall~~ not be
82 prohibited from carrying or storing a firearm in a vehicle for
83 lawful purposes.

84 (c) This section does not modify the terms or conditions of
85 s. 790.251(7).

86 (d) Any person who knowingly and willfully violates any
87 provision of this subsection:

88 1. For a first violation, commits a noncriminal violation
89 with a penalty of \$25, payable to the clerk of the court.

90 2. For a second violation, commits a noncriminal violation
91 with a penalty of \$500, payable to the clerk of court.

92 3. For a third or subsequent violation, commits a
93 misdemeanor of the second degree, punishable as provided in s.
94 775.082 or s. 775.083.

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

96 And the title is amended as follows:

97 Delete lines 5 - 17

98 and insert:



112386

99 or firearm; revising the penalty for a violation of
100 specified provisions relating to openly carrying
101 weapons; making a fine payable to the clerk of the
102 court; amending s. 790.06, F.S.; providing that a
103 person licensed to carry a concealed weapon or firearm
104 who is lawfully carrying a firearm does not violate
105 certain provisions if the firearm is briefly or
106 inadvertently displayed; authorizing certain elected
107 constitutional officers to carry a concealed weapon or
108 firearm if he or she is licensed to carry a concealed
109 weapon or firearm and does not have full-time security
110 provided by the Department of Law Enforcement;
111 revising the penalty for a violation of specified

By Senator Steube

23-00719-17

2017646__

A bill to be entitled

An act relating to weapons and firearms; amending s. 790.053, F.S.; deleting a statement of applicability relating to violations of carrying a concealed weapon or firearm; reducing the penalty for a violation of specified provisions relating to openly carrying weapons; making a fine payable to the clerk of the court; amending s. 790.06, F.S.; providing that a person licensed to carry a concealed weapon or firearm who is lawfully carrying a firearm does not violate certain provisions if the firearm is temporarily and openly displayed; authorizing each member of the Florida Cabinet to carry a concealed weapon or firearm if he or she is licensed to carry a concealed weapon or firearm and does not have full-time security provided by the Department of Law Enforcement; reducing the penalty for a violation of specified provisions relating to carrying concealed weapons or firearms in prohibited places; making a fine payable to the clerk of the court; reenacting ss. 943.051(3)(b) and 985.11(1)(b), F.S., both relating to fingerprinting of a minor for violating specified provisions, to incorporate the amendment made to s. 790.053, F.S., in references thereto; providing an effective date.

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

Section 1. Section 790.053, Florida Statutes, is amended to read:

790.053 Open carrying of weapons.—

(1) Except as otherwise provided by law and in subsection

Page 1 of 8

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

23-00719-17

2017646__

(2), it is unlawful for any person to openly carry on or about his or her person any firearm or electric weapon or device. ~~It is not a violation of this section for a person licensed to carry a concealed firearm as provided in s. 790.06(1), and who is lawfully carrying a firearm in a concealed manner, to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.~~

(2) A person may openly carry, for purposes of lawful self-defense:

(a) A self-defense chemical spray.

(b) A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

(3) A ~~Any~~ person who violates ~~violating~~ this section commits a noncriminal violation with a penalty of \$25, payable to the clerk of the court ~~misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 2. Subsections (1) and (12) of section 790.06, Florida Statutes, are amended to read:

790.06 License to carry concealed weapon or firearm.—

(1) The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or concealed firearms to persons qualified as provided in this section. Each such license must bear a color photograph of the licensee. For the purposes of this section, concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9). Such licenses

Page 2 of 8

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

23-00719-17 2017646__

62 shall be valid throughout the state for a period of 7 years from
 63 the date of issuance. Any person in compliance with the terms of
 64 such license may carry a concealed weapon or concealed firearm
 65 notwithstanding the provisions of s. 790.01. The licensee must
 66 carry the license, together with valid identification, at all
 67 times in which the licensee is in actual possession of a
 68 concealed weapon or firearm and must display both the license
 69 and proper identification upon demand by a law enforcement
 70 officer. A person licensed to carry a concealed firearm under
 71 this section who is lawfully carrying a firearm in a concealed
 72 manner and whose firearm is temporarily and openly displayed to
 73 the ordinary sight of another person does not violate s. 790.053
 74 and may not be arrested or charged with a crime. Violations of
 75 the provisions of this subsection shall constitute a noncriminal
 76 violation with a penalty of \$25, payable to the clerk of the
 77 court. Notwithstanding any other provision of this section, a
 78 member of the Florida Cabinet who is licensed to carry a
 79 concealed weapon or firearm and who does not have full-time
 80 security provided by the Department of Law Enforcement may carry
 81 a concealed weapon or firearm anywhere they are not prohibited
 82 by federal law.

83 (12) (a) A license issued under this section does not
 84 authorize any person to openly carry a handgun or carry a
 85 concealed weapon or firearm into:

- 86 1. Any place of nuisance as defined in s. 823.05;
- 87 2. Any police, sheriff, or highway patrol station;
- 88 3. Any detention facility, prison, or jail;
- 89 4. Any courthouse;
- 90 5. Any courtroom, except that nothing in this section would

23-00719-17 2017646__

91 preclude a judge from carrying a concealed weapon or determining
 92 who will carry a concealed weapon in his or her courtroom;
 93 6. Any polling place;
 94 7. Any meeting of the governing body of a county, public
 95 school district, municipality, or special district;
 96 8. Any meeting of the Legislature or a committee thereof;
 97 9. Any school, college, or professional athletic event not
 98 related to firearms;
 99 10. Any elementary or secondary school facility or
 100 administration building;
 101 11. Any career center;
 102 12. Any portion of an establishment licensed to dispense
 103 alcoholic beverages for consumption on the premises, which
 104 portion of the establishment is primarily devoted to such
 105 purpose;
 106 13. Any college or university facility unless the licensee
 107 is a registered student, employee, or faculty member of such
 108 college or university and the weapon is a stun gun or nonlethal
 109 electric weapon or device designed solely for defensive purposes
 110 and the weapon does not fire a dart or projectile;
 111 14. The inside of the passenger terminal and sterile area
 112 of any airport, provided that no person shall be prohibited from
 113 carrying any legal firearm into the terminal, which firearm is
 114 encased for shipment for purposes of checking such firearm as
 115 baggage to be lawfully transported on any aircraft; or
 116 15. Any place where the carrying of firearms is prohibited
 117 by federal law.
 118 (b) A person licensed under this section may shall not be
 119 prohibited from carrying or storing a firearm in a vehicle for

23-00719-17

2017646__

120 lawful purposes.

121 (c) This section does not modify the terms or conditions of
122 s. 790.251(7).

123 (d) Any person who knowingly and willfully violates any
124 provision of this subsection commits a noncriminal violation
125 with a penalty of \$25, payable to the clerk of the court
126 ~~misdemeanor of the second degree, punishable as provided in s.~~
127 ~~775.082 or s. 775.083.~~

128 Section 3. For the purpose of incorporating the amendment
129 made by this act to section 790.053, Florida Statutes, in a
130 reference thereto, paragraph (b) of subsection (3) of section
131 943.051, Florida Statutes, is reenacted to read:

132 943.051 Criminal justice information; collection and
133 storage; fingerprinting.—

134 (3)

135 (b) A minor who is charged with or found to have committed
136 the following offenses shall be fingerprinted and the
137 fingerprints shall be submitted electronically to the
138 department, unless the minor is issued a civil citation pursuant
139 to s. 985.12:

- 140 1. Assault, as defined in s. 784.011.
- 141 2. Battery, as defined in s. 784.03.
- 142 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 143 4. Unlawful use of destructive devices or bombs, as defined
144 in s. 790.1615(1).
- 145 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 146 6. Assault or battery on a law enforcement officer, a
147 firefighter, or other specified officers, as defined in s.
148 784.07(2)(a) and (b).

Page 5 of 8

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

23-00719-17

2017646__

149 7. Open carrying of a weapon, as defined in s. 790.053.

150 8. Exposure of sexual organs, as defined in s. 800.03.

151 9. Unlawful possession of a firearm, as defined in s.

152 790.22(5).

153 10. Petit theft, as defined in s. 812.014(3).

154 11. Cruelty to animals, as defined in s. 828.12(1).

155 12. Arson, as defined in s. 806.031(1).

156 13. Unlawful possession or discharge of a weapon or firearm
157 at a school-sponsored event or on school property, as provided
158 in s. 790.115.

159 Section 4. For the purpose of incorporating the amendment
160 made by this act to section 790.053, Florida Statutes, in a
161 reference thereto, paragraph (b) of subsection (1) of section
162 985.11, Florida Statutes, is reenacted to read:

163 985.11 Fingerprinting and photographing.—

164 (1)

165 (b) Unless the child is issued a civil citation or is
166 participating in a similar diversion program pursuant to s.
167 985.12, a child who is charged with or found to have committed
168 one of the following offenses shall be fingerprinted, and the
169 fingerprints shall be submitted to the Department of Law
170 Enforcement as provided in s. 943.051(3)(b):

- 171 1. Assault, as defined in s. 784.011.
- 172 2. Battery, as defined in s. 784.03.
- 173 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 174 4. Unlawful use of destructive devices or bombs, as defined
175 in s. 790.1615(1).
- 176 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 177 6. Assault on a law enforcement officer, a firefighter, or

Page 6 of 8

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

23-00719-17 2017646__

178 other specified officers, as defined in s. 784.07(2)(a).
 179 7. Open carrying of a weapon, as defined in s. 790.053.
 180 8. Exposure of sexual organs, as defined in s. 800.03.
 181 9. Unlawful possession of a firearm, as defined in s.
 182 790.22(5).
 183 10. Petit theft, as defined in s. 812.014.
 184 11. Cruelty to animals, as defined in s. 828.12(1).
 185 12. Arson, resulting in bodily harm to a firefighter, as
 186 defined in s. 806.031(1).
 187 13. Unlawful possession or discharge of a weapon or firearm
 188 at a school-sponsored event or on school property as defined in
 189 s. 790.115.
 190
 191 A law enforcement agency may fingerprint and photograph a child
 192 taken into custody upon probable cause that such child has
 193 committed any other violation of law, as the agency deems
 194 appropriate. Such fingerprint records and photographs shall be
 195 retained by the law enforcement agency in a separate file, and
 196 these records and all copies thereof must be marked "Juvenile
 197 Confidential." These records are not available for public
 198 disclosure and inspection under s. 119.07(1) except as provided
 199 in ss. 943.053 and 985.04(2), but shall be available to other
 200 law enforcement agencies, criminal justice agencies, state
 201 attorneys, the courts, the child, the parents or legal
 202 custodians of the child, their attorneys, and any other person
 203 authorized by the court to have access to such records. In
 204 addition, such records may be submitted to the Department of Law
 205 Enforcement for inclusion in the state criminal history records
 206 and used by criminal justice agencies for criminal justice

Page 7 of 8

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

23-00719-17 2017646__

207 purposes. These records may, in the discretion of the court, be
 208 open to inspection by anyone upon a showing of cause. The
 209 fingerprint and photograph records shall be produced in the
 210 court whenever directed by the court. Any photograph taken
 211 pursuant to this section may be shown by a law enforcement
 212 officer to any victim or witness of a crime for the purpose of
 213 identifying the person who committed such crime.
 214 Section 5. This act shall take effect July 1, 2017.

Page 8 of 8

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