

<b>Tab 1</b>	<b>CS/SB 624</b> by <b>CJ, Young</b> ; (Identical to CS/H 00471) Drones					
<b>Tab 2</b>	<b>SB 1482</b> by <b>Young</b> ; (Identical to H 00959) Motor Vehicles and Railroad Trains					
964952	D	S	L	RCS	JU, Young	Delete everything after 02/06 05:46 PM
<b>Tab 3</b>	<b>CS/SJR 792</b> by <b>EE, Lee</b> ; (Similar to H 01421) Chief Financial Officer					
<b>Tab 4</b>	<b>CS/SB 1254</b> by <b>ED, Passidomo (CO-INTRODUCERS) Book</b> ; (Similar to CS/CS/H 01091) Early Learning					
<b>Tab 5</b>	<b>SB 1316</b> by <b>Simmons</b> ; (Similar to H 00979) Uniform Voidable Transactions Act					
<b>Tab 6</b>	<b>SB 1862</b> by <b>Broxson</b> ; Physician Fee Sharing					
<b>Tab 7</b>	<b>CS/SB 590</b> by <b>CF, Garcia (CO-INTRODUCERS) Campbell</b> ; (Similar to CS/H 01435) Child Welfare					
512692	A	S	WD		JU, Steube	btw L.100 - 101: 02/06 05:46 PM
<b>Tab 8</b>	<b>CS/SB 602</b> by <b>CJ, Bracy (CO-INTRODUCERS) Torres</b> ; (Compare to H 00481) Mandatory Minimum Sentences					
<b>Tab 9</b>	<b>SB 1076</b> by <b>Steube</b> ; (Similar to H 01219) Franchises					
566792	D	S			JU, Steube	Delete everything after 02/05 01:54 PM
<b>Tab 10</b>	<b>CS/SB 1168</b> by <b>BI, Steube</b> ; (Compare to H 07015) Insurance					
566142	A	S	RS		JU, Steube	Delete L.52 - 157: 02/06 05:46 PM
289730	AA	S	RS		JU, Steube	btw L.30 - 31: 02/06 05:46 PM
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**JUDICIARY**  
**Senator Steube, Chair**  
**Senator Benacquisto, Vice Chair**

**MEETING DATE:** Tuesday, February 6, 2018  
**TIME:** 2:00—3:30 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 624</b> Criminal Justice / Young (Identical CS/H 471)	Drones; Redefining the term "critical infrastructure facility"; authorizing the use of a drone if a law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to facilitate the collection of evidence at a crime scene or traffic crash scene; authorizing the use of a drone by a local or state agency when used in the assessment of damage, flood state, wildfire, or land management, or the monitoring and collection of scientific or marketing data, etc.  CJ     01/29/2018 Fav/CS JU     02/06/2018 Favorable RC	Favorable Yeas 10 Nays 0
2	<b>SB 1482</b> Young (Identical H 959)	Motor Vehicles and Railroad Trains; Specifying that certain persons are not considered passengers for the purpose of making crash reports, etc.  TR     01/25/2018 Favorable JU     02/06/2018 Fav/CS RC	Fav/CS Yeas 10 Nays 0
3	<b>CS/SJR 792</b> Ethics and Elections / Lee (Similar HJR 1421)	Chief Financial Officer; Proposing an amendment to the State Constitution to revise the duties and responsibilities of the Chief Financial Officer, etc.  EE     01/30/2018 Fav/CS JU     02/06/2018 Favorable AP RC	Favorable Yeas 10 Nays 0
4	<b>CS/SB 1254</b> Education / Passidomo (Similar CS/H 1091)	Early Learning; Revising the duties of the Office of Early Learning; providing that failing to meet certain measures for a specified period is cause for termination of a provider; revising the required contents of the school readiness program plan each early learning coalition must submit; revising the priority criteria for participation in the school readiness program; revising school readiness provider requirements for program participation, etc.  ED     01/29/2018 Fav/CS JU     02/06/2018 Favorable AP	Favorable Yeas 10 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Tuesday, February 6, 2018, 2:00—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 1316</b> Simmons (Similar H 979)	Uniform Voidable Transactions Act; Removing conditions under which a partnership is insolvent; providing conditions under which attachments or other provisional remedies are available to creditors; revising the parties subject to judgments for recovery of a creditor's claim; providing that claims for relief are governed by specified claims law, etc.  BI 01/30/2018 Favorable JU 02/06/2018 Favorable RC	Favorable Yeas 10 Nays 0
6	<b>SB 1862</b> Broxson	Physician Fee Sharing; Revising an exemption relating to grounds for disciplinary action by the Boards of Medicine and Osteopathic Medicine and the Department of Health to authorize specified forms of payment to a physician or osteopathic physician, respectively, etc.  HP 01/30/2018 Favorable JU 02/06/2018 Favorable RC	Favorable Yeas 10 Nays 0
7	<b>CS/SB 590</b> Children, Families, and Elder Affairs / Garcia (Similar CS/H 1435)	Child Welfare; Requiring the Department of Children and Families, in collaboration with sheriffs' offices that conduct child protective investigations and community-based care lead agencies, to develop a statewide family-finding program; requiring the court to request that parents consent to providing access to additional records; requiring the department to provide financial assistance to kinship caregivers who meet certain requirements; providing requirements and procedures for referring certain children to the Early Steps Program, etc.  CF 12/04/2017 Fav/CS JU 02/06/2018 Favorable AHS AP	Favorable Yeas 10 Nays 0
8	<b>CS/SB 602</b> Criminal Justice / Bracy (Compare H 481, S 694)	Mandatory Minimum Sentences; Authorizing a court to depart from mandatory minimum terms of imprisonment for certain drug trafficking offenses if it makes specified findings, etc.  CJ 11/13/2017 Temporarily Postponed CJ 12/04/2017 Fav/CS JU 02/06/2018 Favorable AP RC	Favorable Yeas 7 Nays 3

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Tuesday, February 6, 2018, 2:00—3:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	<b>SB 1076</b> Steube (Similar H 1219)	Franchises; Designating the "Protect Florida Small Business Act"; prohibiting a franchisor from terminating or not renewing a franchise under certain circumstances; prohibiting a franchisor from denying certain persons the opportunity to participate in the ownership of a franchise for a specified period after the death of the franchisee or the death of a person controlling a majority interest in the franchise; requiring a franchisor and a franchisee to deal with each other in good faith; prohibiting waivers through certain contract provisions that would affect a person's rights to make a claim, etc.  RI 01/30/2018 Favorable JU 02/06/2018 Temporarily Postponed RC	Temporarily Postponed
10	<b>CS/SB 1168</b> Banking and Insurance / Steube (Compare H 7015, S 62, S 256, S 258)	Insurance; Providing that certain attorney fees and costs paid by property insurers may not be included in the property insurer's rate base and may not be used to justify a rate increase or rate change; providing that personal lines residential and commercial residential property insurance policies may not restrict the assignment of post-loss benefits; prohibiting specified acts by insurers relating to certain losses under homeowners' insurance policies; providing that an agreement to assign post-loss benefits of a residential homeowner's property insurance is not valid unless specified conditions are met, etc.  BI 01/16/2018 Not Considered BI 01/23/2018 Fav/CS JU 02/06/2018 Fav/CS RC	Fav/CS Yeas 7 Nays 3

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Other Related Meeting Documents

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 624

INTRODUCER: Criminal Justice Committee and Senator Young

SUBJECT: Drones

DATE: February 5, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	<b>Fav/CS</b>
2.	Farach	Cibula	JU	<b>Favorable</b>
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 624 prohibits the use of drones in close proximity to any of the following:

- A state correctional institution or a private correctional facility;
- A secure juvenile detention center or facility, a nonsecure residential facility, a high-risk residential facility, or a maximum-risk residential facility; and
- A county detention facility.

The bill also adds two exceptions to the “Freedom from Unwarranted Surveillance Act.” One exception allows a law enforcement agency to use a drone to facilitate the collection of evidence at a crime scene or traffic crash scene. The other exception allows drone use by a local or state agency in the assessment of damage, flood state, wildfire, or land management, or the monitoring and collection of scientific or marketing data.

**II. Present Situation:**

Section 934.50, F.S., defines a drone as a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.

Drones typically range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.<sup>1</sup> They may be controlled manually or through an autopilot which uses a data link to connect the drone's pilot to the drone.<sup>2</sup> Other terms for "drones" are Unmanned Aerial Systems (UAS) and Unmanned Aerial Vehicles (UAV).

### **Protection of Critical Infrastructure Facilities in Florida from Drone Traffic**

Section 330.41, F.S., protects critical infrastructure facilities by prohibiting any person from knowingly or willfully:

- Operating a drone over a critical infrastructure facility, unless the drone is in transit for commercial purposes and is in compliance with Federal Aviation Administration (FAA) regulations;
- Allowing a drone to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or
- Allowing a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

"Critical infrastructure facility" means any of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

- An electrical power generation or transmission facility, substation, switching station, or electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more. Any portion of an aboveground oil or gas pipeline.
- A wireless communications facility, including tower, antennae, support structures, and all associated ground-based equipment.

A first violation of this prohibition is a second degree misdemeanor<sup>3</sup> and a second or subsequent violation is a first degree misdemeanor.<sup>4</sup>

The prohibition does not apply to prohibited actions which are committed by:

- A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity;
- A law enforcement agency that is in compliance with s. 934.50, F.S., or a person under contract with or otherwise acting under the direction of such law enforcement agency; or

<sup>1</sup> 14 CFR Part 91, Docket No. FAA-2006-25714, 72 FR 6689, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 13, 2007.

<sup>2</sup> *Id.*

<sup>3</sup> A second degree misdemeanor is punishable by up to 60 days in jail and up to a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Section 330.41, F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000.

- An owner, operator, or occupant of the critical infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.<sup>5</sup>

Additionally, the prohibition against operating a drone over a critical infrastructure facility does not apply to a drone operating in transit for commercial purposes in compliance with FAA regulations, authorizations, or exemptions.<sup>6</sup>

### **Introduction of Contraband into State Facilities**

At least ten states have passed laws limiting drone operation near prisons.<sup>7</sup> The legislation is likely a response to incidents that have been reported across the country of drones being used to drop contraband into prison yards.<sup>8</sup>

It is a felony offense in Florida to introduce contraband into or upon the grounds of a state correctional institution, a juvenile detention facility or commitment program, or a county detention facility.<sup>9</sup>

Florida Statutes define the following state facilities:

- *State correctional institution* means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the Department of Corrections.<sup>10</sup>
- *Privatized prisons* are authorized by ch. 957, F.S. The Department of Management Services contracts with private businesses who will establish cost-effective, privately operated correctional facilities in the State of Florida.<sup>11</sup>
- *Detention center or facility* means a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used for the commitment of adjudicated delinquents shall not be considered a detention center or facility.<sup>12</sup>
- *Nonsecure residential facilities* are either environmentally secure, staff secure, or are hardware-secure with walls, fencing, or locking doors. Youth assessed and classified for

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<sup>5</sup> Section 330.41(4)(c), F.S.

<sup>6</sup> Section 330.41(4)(d), F.S.

<sup>7</sup> National Conference of State Legislatures, *2017 Unmanned Aircraft Systems (UAS) State Legislation Update*, available at <http://www.ncsl.org/research/transportation/2017-unmanned-aircraft-systems-uas-state-legislation-update.aspx> (last visited January 26, 2018).

<sup>8</sup> *Drones pose security threat at the nation's prisons and what Pa. officials want to do about it*, PennLive, July 26, 2017, available at [http://www.pennlive.com/politics/index.ssf/2017/07/drones\\_pose\\_security\\_threat\\_at.html](http://www.pennlive.com/politics/index.ssf/2017/07/drones_pose_security_threat_at.html) (last visited January 25, 2018).

<sup>9</sup> Sections 944.47, 985.711, and 951.22, F.S.

<sup>10</sup> Section 944.02(8), F.S.

<sup>11</sup> Section 957.04(1)(e), F.S. Currently there are seven private prison facilities housing approximately 10,000 inmates in operation in Florida. E-mail from the Senate Appropriations Committee staff, January 30, 2018 (on file with the Senate Committee on Criminal Justice).

<sup>12</sup> Section 985.03(19), F.S.

placement in programs at this commitment level represent a low or moderate risk to public safety and require close supervision.<sup>13</sup>

- *High-risk residential facilities* are hardware-secure with perimeter fencing and locking doors. Youth assessed and classified for this level of placement require close supervision in a structured residential setting. Placement in programs at this level is prompted by a concern for public safety that outweighs placement in programs at lower commitment levels.<sup>14</sup>
- *Maximum-risk residential facilities* are maximum-custody, hardware-secure with perimeter security fencing and locking doors. Youth assessed and classified for this level of placement require close supervision in a maximum security residential setting. Placement in a program at this level is prompted by a demonstrated need to protect the public.<sup>15</sup>
- *County detention facility* means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor.<sup>16</sup>

### **Using Drones for Traffic Crash Scene Investigations, Reconstruction**

Several jurisdictions, including the Massachusetts State Police and the Lake County, Illinois, Police, have been reported to be using drones to assist in more efficient and timely traffic crash investigations.<sup>17</sup>

The North Carolina Department of Transportation and North Carolina State Highway Patrol conducted research demonstrating the speed and accuracy with which a large traffic crash scene can be investigated and cleared, unblocking a roadway for traffic to resume sooner than other techniques.<sup>18</sup>

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<sup>13</sup> Section 985.03(44)(b), F.S.

<sup>14</sup> Section 985.03(44)(c), F.S.

<sup>15</sup> Section 985.03(44)(d), F.S.

<sup>16</sup> Section 951.23(1)(a), F.S.

<sup>17</sup> *How drones help Lake County police investigate crashes, get roads open faster*, Daily Herald, May 7, 2017, available at <http://www.dailyherald.com/news/20170506/how-drones-help-lake-county-police-investigate-crashes-get-roads-open-faster> (last visited January 25, 2014).

<sup>18</sup> Research shows that documenting a collision scene using photogrammetry and UAS can be advantageous, especially in terms of speed and cost. With a combination of advanced imaging software and the latest unmanned aircraft systems (UAS) technology, we find that the North Carolina State Highway Patrol (NCSHP) can rapidly map collision scenes and simultaneously gather more information than legacy technologies. Indeed, large scenes can be documented in less than 30 minutes. *Collision Scene Reconstruction & Investigation Using Unmanned Aircraft Systems*, Division of Aviation, UAS Program Office, N.C. Department of Transportation, August 2017, available at <https://www.ncdot.gov/aviation/download/ncshp-uas-mapping-study.pdf> (last visited January 25, 2018).



## Other Uses for Drones

Drones are being developed and used in many facets of land management including land management, forestry management, wildfire prevention and suppression, and crop analysis.

Engineers at the University of Nebraska-Lincoln designed a drone to execute and monitor prescribed burns, a common land management practice to help reduce wildfire risk by eliminating dry plant material that could fuel a wildfire.<sup>19</sup>

Researchers at Virginia Tech use a drone with sensors that capture data that will enable them to measure vegetative vigor based on chlorophyll activity differences.<sup>20</sup>

Among the responsibilities of the Florida Department of Agriculture and Consumer Services (FDACS) are the following:

- Forestry and land management which includes wildfire prevention and suppression and managing over one million acres of state forests;
- Pest and crop disease observation and analysis; and
- Crop data collection.

The FDACS suggests that many uses for drones exist that would be beneficial to the FDACS in fulfilling its non-law enforcement<sup>21</sup> missions.<sup>22</sup>

## Section 934.50, F.S. – Search and Seizure Using a Drone

Section 934.50, F.S., the “Freedom from Unwarranted Surveillance Act,” relates primarily to drone use by law enforcement agencies.<sup>23</sup>

The statute prohibits a person, state agency, or political subdivision from using a drone to record an image of either privately owned real property or a person lawfully on such property with the intent to thereby obtain information about the property or person, in violation of such person’s reasonable expectation of privacy, and without his or her written consent.<sup>24</sup>

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<sup>19</sup> Digital Trends, *Researchers are using autonomous fire-bombing drones to prevent future wildfires*, November 10, 2015, available at <https://www.digitaltrends.com/cool-tech/unl-fire-starting-drone/> (last visited January 30, 2018).

<sup>20</sup> Agency 229 Annual Report, *Sky is the limit for using drones in land management*, September 28, 2016, available at <http://news.cals.vt.edu/229-report/2016/09/28/sky-is-the-limit-for-using-drones-in-land-management/> (last visited January 30, 2018).

<sup>21</sup> The FDACS provides agricultural law enforcement throughout the state. The Florida Department of Agriculture and Consumer Services, Office of Agricultural Law Enforcement, available at <https://www.freshfromflorida.com/Divisions-Offices/Agricultural-Law-Enforcement> (last visited January 29, 2018).

<sup>22</sup> E-mail from Grace Lovett, Director, Office of Legislative Affairs, Florida Department of Agriculture and Consumer Services, January 25, 2018; (on file with the Senate Committee on Criminal Justice).

<sup>23</sup> Section 934.50(1), F.S. Section 934.50(3)(a), F.S., specifically prohibits a law enforcement agency from using a drone to gather evidence or other information unless one of the exceptions in s. 934.50(4), F.S., apply. Evidence obtained or collected in violation of the act is inadmissible as evidence in a criminal prosecution in the state courts. Section 934.50(6), F.S.

<sup>24</sup> Section 934.50(3)(b), F.S.

In addition to the exceptions specifically related to law enforcement agencies,<sup>25</sup> the statute exempts from this prohibition the following uses of drones:

- Use by a person or an entity engaged in a business or profession licensed by the state only to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license;<sup>26</sup>
- Use by a property appraiser solely for the purpose of assessing property for ad valorem taxation;
- Use to capture images by or for an electric, water, or natural gas utility: for operations, maintenance, and inspection of utility facilities including facilities used in the generation, transmission, or distribution of electricity, gas, or water, for the purpose of maintaining utility system reliability and integrity; for assessing vegetation growth for the purpose of maintaining clearances on utility rights-of-way; for utility routing, siting, and permitting for the purpose of constructing utility facilities or providing utility service; or for conducting environmental monitoring, as provided by federal, state, or local law, rule, or permit;
- Use for aerial mapping if the person or entity using a drone for this purpose is operating in compliance with FAA regulations;
- Use to deliver cargo, if the person or entity using a drone for this purpose is operating in compliance with FAA regulations;
- Use to capture images necessary for the safe operation or navigation of a drone that is being used for a purpose allowed under federal or Florida law; and
- Use by a communications service provider or a contractor for a communications service provider for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.<sup>27</sup>

Section 934.50(5), F.S., provides remedies for a violation of these prohibitions, including punitive damages.

### **Section 330.41, F.S. - Preemption and Construction**

Section 330.41(3)(a), F.S., preempts regulation of the operation of unmanned aircraft systems to the state except as provided in federal regulations, authorizations, or exemptions.<sup>28</sup> However, the statute does not limit the authority of a local government to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of unmanned aircraft systems if such laws or ordinances are not specifically related to the use of an unmanned aircraft system for those illegal acts.<sup>29</sup>

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<sup>25</sup> Section 934.50(4)(a)-(c), F.S.

<sup>26</sup> This exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons. Section 934.50(4)(d), F.S.

<sup>27</sup> Section 934.50(4)(d)-(j), F.S.

<sup>28</sup> "Except as otherwise expressly provided, a political subdivision may not enact or enforce an ordinance or resolution relating to the design, manufacture, testing, maintenance, licensing, registration, certification, or operation of an unmanned aircraft system, including airspace, altitude, flight paths, equipment or technology requirements; the purpose of operations; and pilot, operator, or observer qualifications, training, and certification." Section 330.41(3)(b), F.S.

<sup>29</sup> Section 330.41(3)(c), F.S.

Any person or governmental entity seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities that the person or governmental entity owns or operates must apply to the FAA for such designation pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016.<sup>30</sup>

Section 330.41(4), F.S., relating to protecting critical infrastructure facilities, sunsets 60 days after the FAA process for designating critical infrastructure becomes effective.<sup>31</sup> Section 330.41, F.S., must be construed in accordance with standards imposed by federal statutes, regulations, and FAA guidance on UAS.<sup>32</sup>

### III. Effect of Proposed Changes:

The bill amends s. 330.41(2)(a), F.S., to include the following structures within the definition of the term “critical infrastructure facility”:

- A state correctional institution as defined in s. 944.02, F.S., and a private prison as authorized in ch. 957, F.S.;
- A secure juvenile detention center or facility, nonsecure residential facility, high-risk residential facility, and maximum-risk residential facility as defined in s. 985.03, F.S.; and
- A county detention facility as defined in s. 951.23(1)(a), F.S.

Section 934.50(3)(a), F.S., specifically prohibits a law enforcement agency from using a drone to gather evidence or other information unless one of the exceptions in s. 934.50(4), F.S., apply. Evidence obtained or collected in violation of the act is inadmissible as evidence in a criminal prosecution in the state courts.<sup>33</sup>

The bill amends s. 934.50, F.S., to include law enforcement using a drone to facilitate the collection of evidence at a crime scene or traffic crash scene among the exceptions authorized in s. 934.50(4), F.S.

The bill creates an additional exception to allow drone use by a local or state agency when used in the assessment of damage, flood state, wildfire, or land management, or the monitoring and collection of scientific or marketing data.

The bill is effective October 1, 2018.

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<sup>30</sup> Public Law 114-190, Section 2209(b)(1)(C) (Applications for Designation); 49 USC 40101 (UAS Safety, Sec. 2209). This section provides for designation of “fixed site facilities.” Only the following can be so designated: critical infrastructure, such as energy production, transmission, and distribution facilities and equipment; oil refineries and chemical facilities; amusement parks; and other locations that warrant such restrictions. In determining whether to grant an application for designation, the FAA administrator may consider aviation safety, protection of persons and property on the ground, national security, or homeland security. In an affirmative designation, the FAA will outline the boundaries for UAS operation near the fixed site facility and such other limitations that the FAA administrator determines may be appropriate.

<sup>31</sup> Section 330.41(4)(e), F.S.

<sup>32</sup> Section 330.41(5), F.S.

<sup>33</sup> Section 934.50(6), 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:

None.

## C. Government Sector Impact:

The Florida Department of Law Enforcement 2018 Legislative Bill Analysis for SB 624 does not indicate a fiscal impact to the department.<sup>34</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 330.41 and 934.50.

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<sup>34</sup> Florida Department of Law Enforcement, *2018 Legislative Bill Analysis*, November 2, 2017; (on file with the Senate Committee on Criminal Justice).

**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 January 29, 2018:**

The Committee Substitute amends the bill as follows:

- Adds private correctional facilities, nonsecure juvenile residential facilities, high-risk juvenile residential facilities, and maximum-risk juvenile residential facilities to the structures protected by the bill from certain drone operations under s. 330.41, F.S.
- Adds correctional facilities, juvenile facilities, and county jail facilities in the existing definition of “critical infrastructure facilities” rather than creating “fixed site facilities.”
- Creates a new exception for drone use to allow a local or state agency to use a drone in the assessment of damage, flood state, wildfire, or land management, or the monitoring and collection of scientific or marketing data.

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Young

591-02584-18

2018624c1

1 A bill to be entitled  
 2 An act relating to drones; amending s. 330.41, F.S.;  
 3 redefining the term "critical infrastructure  
 4 facility"; amending s. 934.50, F.S.; authorizing the  
 5 use of a drone if a law enforcement agency possesses  
 6 reasonable suspicion that, under particular  
 7 circumstances, swift action is needed to facilitate  
 8 the collection of evidence at a crime scene or traffic  
 9 crash scene; authorizing the use of a drone by a local  
 10 or state agency when used in the assessment of damage,  
 11 flood state, wildfire, or land management, or the  
 12 monitoring and collection of scientific or marketing  
 13 data; providing an effective date.  
 14  
 15 Be It Enacted by the Legislature of the State of Florida:  
 16  
 17 Section 1. Paragraph (a) of subsection (2) of section  
 18 330.41, Florida Statutes, is amended to read:  
 19 330.41 Unmanned Aircraft Systems Act.—  
 20 (2) DEFINITIONS.—As used in this act, the term:  
 21 (a) "Critical infrastructure facility" means any of the  
 22 following, if completely enclosed by a fence or other physical  
 23 barrier that is obviously designed to exclude intruders, or if  
 24 clearly marked with a sign or signs which indicate that entry is  
 25 forbidden and which are posted on the property in a manner  
 26 reasonably likely to come to the attention of intruders:  
 27 1. An electrical power generation or transmission facility,  
 28 substation, switching station, or electrical control center.  
 29 2. A chemical or rubber manufacturing or storage facility.

Page 1 of 3

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

591-02584-18

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30 3. A mining facility.  
 31 4. A natural gas or compressed gas compressor station,  
 32 storage facility, or natural gas or compressed gas pipeline.  
 33 5. A liquid natural gas or propane gas terminal or storage  
 34 facility with a capacity of 4,000 gallons or more.  
 35 6. Any portion of an aboveground oil or gas pipeline.  
 36 7. A wireless communications facility, including the tower,  
 37 antennae, support structures, and all associated ground-based  
 38 equipment.  
 39 8. A state correctional institution as defined in s. 944.02  
 40 or a private correctional facility authorized under chapter 957.  
 41 9. A secure detention center or facility, a nonsecure  
 42 residential facility, a high-risk residential facility, or a  
 43 maximum-risk residential facility as defined in s. 985.03.  
 44 10. A county detention facility as defined in s. 951.23.  
 45 Section 2. Paragraph (c) of subsection (4) of section  
 46 934.50, Florida Statutes, is amended, and paragraph (k) is added  
 47 to that subsection, to read:  
 48 934.50 Searches and seizure using a drone.—  
 49 (4) EXCEPTIONS.—This section does not prohibit the use of a  
 50 drone:  
 51 (c) If the law enforcement agency possesses reasonable  
 52 suspicion that, under particular circumstances, swift action is  
 53 needed to prevent imminent danger to life or serious damage to  
 54 property;~~7~~ to forestall the imminent escape of a suspect or the  
 55 destruction of evidence; to facilitate the collection of  
 56 evidence at a crime scene or traffic crash scene;~~7~~ or to achieve  
 57 purposes including, but not limited to, facilitating the search  
 58 for a missing person.

Page 2 of 3

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

591-02584-18

2018624c1

59       (k) By a local or state agency when used in the assessment  
60 of damage, flood state, wildfire, or land management, or the  
61 monitoring and collection of scientific or marketing data.

62       Section 3. This act shall take effect October 1, 2018.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Health Policy, *Chair*  
Appropriations Subcommittee on Pre-K - 12  
Education, *Vice Chair*  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Regulated Industries

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

**SENATOR DANA YOUNG**  
18th District

February 1, 2018

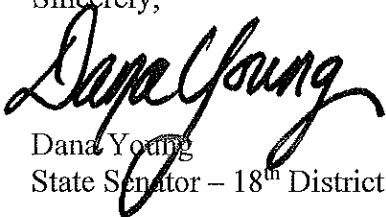
Senator Greg Steube, Chair  
Senate Judiciary Committee  
515 Knott Building  
404 S. Monroe Street  
Tallahassee, Florida 32399-1100

Dear Chair Steube,

My Senate Bill 624 relating to Drones has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Should you have any questions, please do not hesitate to reach out to me.

Sincerely,



Dana Young  
State Senator – 18<sup>th</sup> District

cc: Tom Cibula, Staff Director – Senate Judiciary Committee

**REPLY TO:**

- 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

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

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore



THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

624

Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Chief Stephan Dembinsky

Job Title Chief of Police, Daytona Beach Shores Police Department

Address 3050 S Atlantic Ave

Street

Phone 386-763-5333

Daytona Beach Shores

FL

32118

Email sdembinsky@cityofdb.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# APPEARANCE RECORD

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

2/6/18

Meeting Date

624

Bill Number (if applicable)

Topic DROINES

Amendment Barcode (if applicable)

Name LISA HURLEY

Job Title \_\_\_\_\_

Address 311 E. Paul Ave

Phone 784.5081

Street Tallahassee FL 32301

Email \_\_\_\_\_

City State Zip

Speaking:  For  Against  Information

~~Waive Speaking~~  In Support  Against

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

Representing FLORIDA ASSOC. OF COUNTIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/2018  
Meeting Date

624  
Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Jeff Branch

Job Title Legislative Advocate

Address Bronough St  
Street

Phone 701-8655

Tallahassee FL  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2.6.18

*Meeting Date*

624

*Bill Number (if applicable)*

Topic Drones

*Amendment Barcode (if applicable)*

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

*Street*

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-6-18

Meeting Date

624

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Jess McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street, Suite 2810

Phone 305-979-7110

Street

Miami

FL

33128

Email jmm2@miamidade.gov

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Miami-Dade County

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

SB 624

Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Rebecca DeLaRosa

Job Title Legislative Affairs Director

Address 301 N Olive Ave., 1101-3

Phone 850.284.7235

Street

City

State

Zip

West Palm Beach, FL 33401

Email rdelaros@pbcgov.org

Speaking:  For  Against  Information

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

Representing Palm Beach County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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

2/6/18  
Meeting Date

SB 624  
Bill Number (if applicable)

Topic SB 624- Drones

Amendment Barcode (if applicable)

Name Jared Torres

Job Title Legislative Affairs Director

Address 501 S Calhoun St

Phone 850-717-3045

Street

Tallahassee

FL

32399

City

State

Zip

Email Jared.Torres@flda.myflorida.com

Speaking:  For  Against  Information

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

Representing Florida Department of Corrections

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/6/18  
Meeting Date

627  
Bill Number (if applicable)

Topic DRONES

Amendment Barcode (if applicable)

Name DAVID DANIEL

Job Title \_\_\_\_\_

Address 311 EAST PARK AVENUE  
Street

Phone 224-5081

TUL FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing U.A.S. Association of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



**The Florida Senate**  
**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

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BILL: CS/SB 1482

INTRODUCER: Judiciary Committee and Senator Young

SUBJECT: Motor Vehicles and Railroad Trains

DATE: February 8, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Miller</u>	<u>TR</u>	<b>Favorable</b>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1482 specifies that law enforcement personnel may decide whether to collect and report the names and addresses of “parties,” “drivers,” and “passengers” involved in a vehicle crash involving a train. Law enforcement personnel, however, remain required as under existing law to collect and report the names and addresses of “witnesses.”

As such, to the extent that “witnesses” is not interpreted broadly by law enforcement personnel, the bill could assure law enforcement personnel that they are not required to gather information from every passenger on a train that is involved in a crash.

**II. Present Situation:**

**Overview**

Within 10 days after a serious motor vehicle crash, the statutes require a report to be filed with the Department of Highway Safety and Motor Vehicles (DHSMV). This report must include, among other things, the name, address, and insurance information of every passenger and the name and address of every witness. In the case of a motor vehicle crash involving a train, the statutes can be read to include every person on the train as a “passenger” and “witness” for the purposes of the report. Accordingly, initial investigations of these incidents can take many hours, while every passenger on the train is required to remain at the scene.

## The Florida Uniform Traffic Control Law

The Florida Uniform Traffic Control Law, ch. 316, F.S., is intended “to make uniform traffic laws to apply throughout the state.”<sup>1</sup> Section 316.003, F.S., defines terms used throughout the chapter.

Section 316.003(61), F.S., defines “railroad train” as “a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except a streetcar.” “Motor vehicle” is defined to exclude a vehicle that is “operated upon rails or guideway.” Similarly, “vehicle” is defined to exclude a device “used exclusively upon stationary rails or tracks.” Additionally, the terms “driver”<sup>2</sup> and “operator”<sup>3</sup> are defined as any person in actual physical control of a vehicle or motor vehicle on the highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

## Crash Reports

Law enforcement personnel must complete a report of each motor vehicle crash and provide it to the Department of Highway Safety and Motor Vehicles (DHSMV). This report must include the following information:

- The date, time, and location of the crash;
- A description of the vehicles involved;
- The names and addresses of the parties involved, including all drivers and passengers in the vehicles involved;
- The names and addresses of any witnesses;
- The name, badge number, and law enforcement agency of the officer investigating the crash; and
- The names of the insurance companies for the respective parties involved in the crash.<sup>4</sup>

A traffic crash report form must be completed and submitted to the DHSMV in the event of a traffic crash involving a motor vehicle.<sup>5</sup> A train is not considered a motor vehicle for purposes of a crash report.<sup>6</sup> According to the DHSMV, a Florida Traffic Crash Report is only completed in a train crash if the crash also involves a motor vehicle.<sup>7</sup> However, the DHSMV does not specify whether the report needs to include information regarding the train and its occupants. For example, the DHSMV does not specify whether the people who were riding the train are considered “passengers” for the purpose of the report, or whether every train passenger is considered a “witness.”

---

<sup>1</sup> Section 316.002, F.S.

<sup>2</sup> Section 316.003(19), F.S.

<sup>3</sup> Section 316.003(46), F.S.

<sup>4</sup> See ss. 316.066(1) and 316.068, F.S.

<sup>5</sup> Section 316.066(1)(a), F.S.

<sup>6</sup> See DHSMV, *Uniform Traffic Crash Report Manual* (Feb. 2018), available at <https://www.flhsmv.gov/dcl/ecrash/CrashManualComplete.pdf> at p. 98 (last visited Feb. 6, 2018) and s. 316.003(40), F.S.

<sup>7</sup> DHSMV, *Frequently Asked Questions Related to CRASH Reports*, available at <https://www.flhsmv.gov/dcl/ecrash/Crash-FAQ.pdf> at 12 (last visited Feb. 6, 2018).

### **Railroad Train Accident Reports**

Florida law does not address railroad company reporting requirements related to accident reports. However, federal regulations generally require railroad companies to submit a monthly report to the Federal Railroad Authority (FRA) of all railroad accidents or incidents that are:

- Highway-rail grade crossing accidents;
- Rail equipment accidents; and
- Death, injury, or occupational illness.<sup>8</sup>

In addition, each railroad must immediately report certain types of accidents or incidents by calling the National Response Center.<sup>9</sup> The FRA or the National Transportation Safety Board may choose to investigate such train accidents or incidents.<sup>10</sup>

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

The bill specifies that law enforcement personnel may decide whether to collect and report the names and addresses of “parties,” “drivers,” and “passengers” involved in a motor vehicle crash involving a train. Law enforcement personnel continue to be required to collect and report the names and addresses of “witnesses,” just as under existing law.

As such, to the extent that *witnesses* is not interpreted broadly, the bill could assure law enforcement personnel that they are not required to gather information from every passenger on a train that is involved in a crash.

The bill takes effect July 1, 2018.

### **IV. Constitutional Issues:**

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

None.

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

None.

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

None.

---

<sup>8</sup> 49 C.F.R. §§ 225.11 and 225.19.

<sup>9</sup> 49 C.F.R. § 225.9.

<sup>10</sup> See FRA, *FRA Investigations of Railroad Accidents*, <https://www.fra.dot.gov/Page/P0474> and NTSB, *The Investigative Process*, <https://www.ntsb.gov/investigations/process/Pages/default.aspx> (last visited Feb. 6, 2018).

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

None.

**B. Private Sector Impact:**

The bill may positively impact railroad train companies and their operations if all crew members and passengers of the train are not required to be interviewed in the event of a motor vehicle crash involving a train.

**C. Government Sector Impact:**

The bill may have a positive fiscal impact on government personnel involved in the investigation of train accidents. These persons will no longer need to get the name and address of each person on the train, unless these persons are still considered witnesses.

**VI. Technical Deficiencies:**

This bill is intended to minimize disruptions to train passengers and train schedules due to overly extensive accident investigative practices. These practices stem from a belief by some persons that existing law requires law enforcement officers to interview every passenger on a train that is involved in a crash, even passengers who have no relevant information about the cause of the crash.

The two relevant statutes, which are in chapter 316, F.S., require law enforcement officers to complete accident reports for vehicle crashes and motor vehicles crashes. But a railroad train, according to the definitions in chapter 316, F.S., is not a vehicle or motor vehicle. Nonetheless a railroad train may be involved in a crash with a vehicle or motor vehicle, arguably making those on board the train “drivers,” “passengers,” “parties,” and “witnesses” whose names and addresses need to be reported in the motor vehicle crash report or vehicle crash report.

To address the reporting requirements for train crashes, the bill amends only one of the crash reporting statutes, s. 316.068, F.S. By leaving unchanged s. 316.066, F.S., which is the other crash reporting statute, the crash reporting requirements for train crashes may remain unclear.

The bill also retains the requirement in existing law that law enforcement officers report the name and address of every “witness.” Thus, an officer could believe that he or she must report the name of every train passenger, given that these people are, in some sense, witnesses to what happened. Also, the language of the bill makes it seem as if law enforcement officers do not need to report the name of the driver or passengers of a vehicle or motor vehicle involved in a crash with a train, which was likely not intended.

As such, the Legislature may wish to further revise the bill to clarify that law enforcement personnel need not record the name and address of every person on the train as a “witness” but must continue to record the name and address of each vehicle passenger or motor vehicle passenger.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.003 and 316.068.

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

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

**CS by Judiciary on February 6, 2018:**

The underlying bill appeared intended to stop investigations of motor vehicle crashes involving trains from being protracted because of ambiguities in existing law. The bill sought to achieve this goal by repeatedly saying in two applicable statutes that people on trains are not passengers or drivers for the purposes of statutes requiring law enforcement officers to complete crash reports. However, the committee substitute attempts to achieve this goal by letting law enforcement officers decide whether to collect the names and addresses of the drivers and passengers of the train and of the motor vehicle.

**B. Amendments:**

None.



964952

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
	.	
	.	
	.	

---

The Committee on Judiciary (Young) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (61) of section 316.003, Florida  
Statutes, is amended to read:

316.003 Definitions.—The following words and phrases, when  
used in this chapter, shall have the meanings respectively  
ascribed to them in this section, except where the context  
otherwise requires:

(61) RAILROAD TRAIN.—A steam engine, electric or other



964952

12 motor, with or without cars coupled thereto, operated upon  
13 rails, except a streetcar. A railroad train is not a motor  
14 vehicle for purposes of this chapter.

15 Section 2. Subsection (2) of section 316.068, Florida  
16 Statutes, is amended to read:

17 316.068 Crash report forms.—

18 (2) Every crash report required to be made in writing must  
19 be made on the appropriate form approved by the department and  
20 must contain all the information required therein, including:

21 (a) The date, time, and location of the crash;

22 (b) A description of the vehicles involved;

23 (c) The names and addresses of the parties involved;

24 however, in the event of a crash involving a railroad train,  
25 including crashes covered by s. 316.027, s. 316.061, s. 316.065,  
26 or s. 316.066, the collection of the information specified in  
27 this paragraph shall be at the discretion of the law enforcement  
28 officer having jurisdiction to investigate the crash;

29 (d) The names and addresses of all drivers and passengers  
30 in the vehicles involved; however, in the event of a crash  
31 involving a railroad train, including crashes covered by s.  
32 316.027, s. 316.061, s. 316.065, or s. 316.066, the collection  
33 of the information specified in this paragraph shall be at the  
34 discretion of the law enforcement officer having jurisdiction to  
35 investigate the crash;

36 (e) The names and addresses of witnesses;

37 (f) The name, badge number, and law enforcement agency of  
38 the officer investigating the crash; and

39 (g) The names of the insurance companies for the respective  
40 parties involved in the crash,



964952

41  
42 unless not available. A member of a railroad train crew or a  
43 passenger on a railroad train is not a passenger for purposes of  
44 this section. The absence of information in such written crash  
45 reports regarding the existence of passengers in the vehicles  
46 involved in the crash constitutes a rebuttable presumption that  
47 no such passengers were involved in the reported crash.  
48 Notwithstanding any other provisions of this section, a crash  
49 report produced electronically by a law enforcement officer  
50 must, at a minimum, contain the same information as is called  
51 for on those forms approved by the department.

52 Section 3. This act shall take effect July 1, 2018.

53  
54 ===== T I T L E A M E N D M E N T =====

55 And the title is amended as follows:

56 Delete everything before the enacting clause  
57 and insert:

58 A bill to be entitled  
59 An act relating to motor vehicles and railroad trains;  
60 amending s. 316.003, F.S.; revising the definition of  
61 the term "railroad train"; amending s. 316.068, F.S.;  
62 requiring that, in the event of a crash involving a  
63 railroad train, the collection of certain information  
64 be at the discretion of the law enforcement officer  
65 having jurisdiction to investigate the crash;  
66 specifying that certain persons are not considered  
67 passengers for the purpose of making crash reports;  
68 providing an effective date.



By Senator Young

18-01396-18

20181482\_\_

A bill to be entitled

An act relating to motor vehicles and railroad trains; amending s. 316.003, F.S.; revising definitions; amending s. 316.068, F.S.; specifying that certain persons are not considered passengers for the purpose of making crash reports; providing an effective date.

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

Section 1. Subsections (19), (40), (46), (61), and (97) of section 316.003, Florida Statutes, are amended to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(19) DRIVER.—Any person who drives or is in actual physical control of a vehicle on a highway or who is exercising control of a vehicle or steering a vehicle being towed by a motor vehicle. A railroad train engineer operating a railroad train is not a driver for purposes of this chapter.

(40) MOTOR VEHICLE.—Except when used in s. 316.1001, a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, personal delivery device, swamp buggy, or moped. For purposes of s. 316.1001, "motor vehicle" has the same meaning as provided in s. 320.01(1)(a). A railroad train is not a motor vehicle for purposes of this chapter.

(46) OPERATOR.—Any person who is in actual physical control of a motor vehicle upon the highway or who is exercising control

Page 1 of 3

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

18-01396-18

20181482\_\_

over or steering a vehicle being towed by a motor vehicle. A railroad train engineer operating a railroad train is not an operator for purposes of this chapter.

(61) RAILROAD TRAIN.—A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except a streetcar. A railroad train is not a motor vehicle for purposes of this chapter.

(97) VEHICLE.—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except personal delivery devices and devices used exclusively upon stationary rails or tracks. A railroad train is not a vehicle for purposes of this chapter.

Section 2. Subsection (2) of section 316.068, Florida Statutes, is amended to read:

316.068 Crash report forms.—

(2) Every crash report required to be made in writing must be made on the appropriate form approved by the department and must contain all the information required therein, including:

- (a) The date, time, and location of the crash;
- (b) A description of the vehicles involved;
- (c) The names and addresses of the parties involved;
- (d) The names and addresses of all drivers and passengers in the vehicles involved;
- (e) The names and addresses of witnesses;
- (f) The name, badge number, and law enforcement agency of the officer investigating the crash; and
- (g) The names of the insurance companies for the respective parties involved in the crash,

Page 2 of 3

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

18-01396-18

20181482\_\_

59 unless not available. A member of a railroad train crew or a  
60 passenger on a railroad train is not a passenger for purposes of  
61 this section. The absence of information in such written crash  
62 reports regarding the existence of passengers in the vehicles  
63 involved in the crash constitutes a rebuttable presumption that  
64 no such passengers were involved in the reported crash.  
65 Notwithstanding any other provisions of this section, a crash  
66 report produced electronically by a law enforcement officer  
67 must, at a minimum, contain the same information as is called  
68 for on those forms approved by the department.

69 Section 3. This act shall take effect July 1, 2018.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Health Policy, *Chair*  
Appropriations Subcommittee on Pre-K - 12  
Education, *Vice Chair*  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Regulated Industries

## JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

**SENATOR DANA YOUNG**

18th District

January 26, 2018

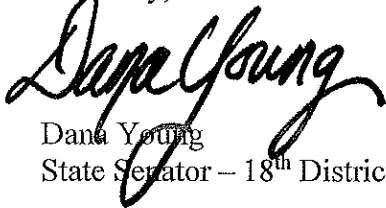
Senator Greg Steube, Chair  
Senate Judiciary Committee  
515 Knott Building  
404 S. Monroe Street  
Tallahassee, Florida 32399-1100

Dear Chair Steube,

My Senate Bill 1482 regarding Motor Vehicles and Railroad Trains has been referred to your committee. I respectfully request that this bill be placed on your next available agenda.

If you have any questions, please do not hesitate to reach out to me.

Sincerely,



Dana Young  
State Senator – 18<sup>th</sup> District

cc: Tom Cibula, Staff Director – Senate Judiciary Committee

## REPLY TO:

- 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

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

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

# APPEARANCE RECORD

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

2-6-18

Meeting Date

1482

Bill Number (if applicable)

late filed

Amendment Barcode (if applicable)

Topic Motor Vehicles and Railroad Trains

Name Kate P Kotner

Job Title Assistant County Attorney

Address 1801 27th Street

Street

Phone (772) 226-1406

Vero Beach FL 32960

City

State

Zip

Email kotner@ircgov.com

Speaking:  For  Against  Information

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

Representing Indian River County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

02.05.18

Meeting Date

1482

Bill Number (if applicable)

Topic RAILROADS

Amendment Barcode (if applicable)

Name VICKI WOODRIDGE

Job Title GOV. APPTS. MGR.

Address \_\_\_\_\_

Phone 954-213-8670

Street

POMANO BCH

FL

33064

Email WOODRIDGEV@SFRTA.FL.GOV

City

State

Zip

Speaking:  For  Against  Information

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

Representing SO. FLA. REGIONAL TRANS. AUTHORITY

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SJR 792

INTRODUCER: Ethics and Elections Committee and Senator Lee

SUBJECT: Chief Financial Officer

DATE: February 5, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	<b>Fav/CS</b>
2.	Cibula	Cibula	JU	<b>Favorable</b>
3.			RC	

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

PLEASE MAKE SELECTION

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**I. Summary:**

CS/SJR 792 is a joint resolution to amend the State Constitution which delegates additional responsibilities to the state's Chief Financial Officer. Specifically, the resolution provides that the Chief Financial Officer shall participate as a principal in consensus economic, demographic, and revenue estimating conferences. The resolution further provides the Chief Financial Officer with the authority to review and certify state contracts in excess of \$10 million before they are executed.

Each house of the Legislature must pass the joint resolution by a three-fifths vote in order for it to be placed on the ballot for approval by the electors.

**II. Present Situation:**

**Chief Financial Officer**

The Chief Financial Officer is a constitutional officer and member of the Cabinet. The CFO's duties, as described by the Florida Constitution, are to serve as the chief fiscal officer of the state, settle and approve accounts against the state, and keep all state funds and securities.<sup>1</sup> Among the CFO's many statutory responsibilities is the responsibility to "examine, audit, and settle all accounts, claims, and demands, whatsoever, against the state, arising under any law or resolution of the Legislature, and issue a warrant directing the payment out of the State Treasury of such

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<sup>1</sup> FLA. CONST. art. IV, s. 4(a) and (c).

amount as he or she allows thereon.”<sup>2</sup> The CFO must also train agency contract managers and the CFO may audit executed agency contracts.<sup>3</sup>

### **Requirement for State Contracts**

Chapter 287, F.S., Procurement of Personal Property and Services, contains most of the statutes governing contracting by state agencies. These requirements become more detailed as the value of the contracts increase. Contract documents must also contain provisions required by statute based on the value of goods and services involved or the type of contract.

In some cases, for example, an agency contract must:

- State that agency contractors and subcontractors must comply with the public records laws.<sup>4</sup>
- Include specifications that clearly establish all the tasks that a contractor is required to perform.<sup>5</sup>
- State that the government’s obligation to pay under the contract is contingent upon an annual appropriation by the Legislature, if the contract binds the state for longer than 1 fiscal year.<sup>6</sup>
- State that bills for fees or other compensation for services or expenses must be submitted in detail sufficient to allow for a proper preaudit and postaudit of the bills or fees.<sup>7</sup>
- Identify the financial consequences that the agency will apply if the contractor fails to perform the contract.<sup>8</sup>
- Address the property rights in intellectual property related to the contract and the state’s rights regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.<sup>9</sup>

### **State Planning and Budgeting Processes**

Under article III, section 19(a)(1) of the Florida Constitution, the Legislature is required to prescribe by general law “the adoption of annual state budgetary and planning processes.” These constitutionally required planning and budgetary processes are set forth in detail in chapter 216, F.S.

Under these processes, ten consensus estimating conferences are required to develop the official information within their areas of responsibility, by consensus, which is needed for purposes of the state planning and budgeting system.<sup>10</sup> Official information includes data, forecasts, estimates, analyses and studies on a particular matter, and the consensus process requires the unanimous consent of the principals of an estimating conference.<sup>11</sup> Once official information is

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<sup>2</sup> Section 17.03(1), F.S.

<sup>3</sup> Sections 287.057(14) and 287.136, F.S.

<sup>4</sup> Section 287.0571(5)(j), F.S.

<sup>5</sup> Section 287.056(1)(a), F.S.

<sup>6</sup> Section 287.0582, F.S.

<sup>7</sup> Section 287.058(1)(a), F.S.

<sup>8</sup> Section 287.058(1)(h), F.S.

<sup>9</sup> Section 287.058(1)(i), F.S.

<sup>10</sup> Section 216.134(1), F.S.

<sup>11</sup> Section 216.133, F.S.

developed by a conference, state agencies and the judicial branch must use the information in carrying out their duties under the state planning and budgetary system.<sup>12</sup>

The principals of a consensus conference include:

- Professional staff of the Executive Office of the Governor who are designated by the Governor;
- The coordinator of the Office of Economic and Demographic Research and other professional staff of EDR which are designated by the coordinator to serve as a principal; and
- Professional staff of the Senate designated by the President of the Senate, and professional staff of the House of Representatives designated by the Speaker of the House of Representatives.<sup>13</sup>

The ten consensus estimating conferences and a general description of their areas of responsibility are set forth below:

- **Economic Estimating Conference**—develops official information with respect to the national and state economies, as the conference determines is needed for the state planning and budgeting system. This information includes long-term trend forecasts.<sup>14</sup>
- **Demographic Estimating Conference**—develops official information with respect to the population of the nation and state by age, race, and sex, as the conference determines is needed for the state planning and budgeting system.<sup>15</sup>
- **Revenue Estimating Conference**—develops official information with respect to anticipated state and local government revenues, as the conference determines is needed for the state planning and budgeting system. This information may include estimates of trust fund revenues.<sup>16</sup>
- **Education Estimating Conference**—develops official information relating to the state public and private educational system, including forecasts of student enrollments, the national average of tuition and fees at public postsecondary educational institutions, the number of students qualified for state financial aid programs and for the William L. Boyd, IV, Florida Resident Access Grant Program and the appropriation required to fund the full award amounts for each program, fixed capital outlay needs, and Florida Education Finance Program formula needs, as the conference determines is needed for the state planning and budgeting system.<sup>17</sup>
- **Criminal Justice Estimating Conference**—develops official information relating to the criminal justice system, including forecasts of prison admissions and population and of supervised felony offender admissions and population, as the conference determines is needed for the state planning and budgeting system.<sup>18</sup>
- **Social Services Estimating Conference**—develops official information relating to the social services system of the state, including forecasts of social services caseloads, utilization, and expenditures, as the conference determines is needed for the state planning and budgeting

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<sup>12</sup> Section 216.135, F.S.

<sup>13</sup> Section 216.134(4)(c), F.S.

<sup>14</sup> Section 216.136(1), F.S.

<sup>15</sup> Section 216.136(2), F.S.

<sup>16</sup> Section 216.136(3), F.S.

<sup>17</sup> Section 216.136(4), F.S.

<sup>18</sup> Section 216.136(5), F.S.



system. The conference also develops information relating to the Florida Kidcare program which the conference determines is needed to plan for and project future budgets and the drawdown of federal matching funds.<sup>19</sup>

- **Workforce Estimating Conference**—develops official information on the workforce development system planning process, as it relates to the personnel needs of current, new, and emerging industries as the conference determines is needed by the state planning and budgeting system. This information must include at least: short-term and long-term forecasts of employment demand for jobs by occupation and industry; entry and average wage forecasts among those occupations; and estimates of the supply of trained and qualified individuals available or potentially available for employment in those occupations, with special focus upon those occupations and industries which require high skills and have high entry wages and experienced wage levels.<sup>20</sup>
- **Early Learning Programs Estimating Conference**—develops estimates and forecasts of the unduplicated count of children eligible for the school readiness program and of children eligible for the Voluntary Prekindergarten Education Program, as the conference determines are needed to support the state planning, budgeting, and appropriations processes.<sup>21</sup>
- **Self-Insurance Estimating Conference**—develops official information on self-insurance related issues, as the conference determines is needed by the state planning and budgeting system.<sup>22</sup>
- **Florida Retirement System Actuarial Assumption Conference**—develops official information with respect to the economic and noneconomic assumptions and funding methods of the Florida Retirement System necessary to perform the system actuarial study.<sup>23</sup>

### III. Effect of Proposed Changes:

The joint resolution amends the State Constitution to require the state Chief Financial Officer to participate as a principal in consensus economic, demographic, and revenue estimating conferences.

The joint resolution also requires the CFO to review and certify, before execution, certain state contracts proposed by or on behalf of any state agency, entity, or officer of the executive branch. This provision specifically applies only to state contracts which require a payment or aggregate payments in excess of \$10 million from appropriated funds. This \$10 million threshold will be adjusted for inflation every 4 years.

The purpose of the contract review is to ensure that contracts comply with state procurement law and contain the provisions required by statute. The CFO must also review contracts to ensure that any payments required to be made by the state agency, entity, or officer under the contract in any fiscal year do not exceed the amount appropriated for that fiscal year or the amount authorized by law for the purpose of the contract.

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<sup>19</sup> Section 216.136(6), F.S.

<sup>20</sup> Section 216.136(7), F.S.

<sup>21</sup> Section 216.136(8), F.S.

<sup>22</sup> Section 216.136(9), F.S.

<sup>23</sup> Section 216.136(10), F.S.

The joint resolution expressly requires that the processes for review and certification of contracts be established by implementing legislation. However, implementing legislation will also be required to enable the CFO to participate as a principle in the consensus economic, demographic, and revenue estimating conferences.

#### **IV. Constitutional Issues:**

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

None.

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

None.

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

None.

##### **D. Other Constitutional Issues:**

Article XI, section 1 of the Florida Constitution authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

Article XI, section 5(a) of the Florida Constitution and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts use a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”<sup>24</sup>

Article XI, section 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

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<sup>24</sup> *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

**B. Private Sector Impact:**

To the extent that the joint resolution, when implemented by law, ensures that expenditures of public funds comply with law, the public may receive more public goods and services at a lower cost.

**C. Government Sector Impact:***Impact of Contract Reviews:*

The pre-execution review of contracts exceeding \$10 million, may slow the negotiations for the contracts in some instances. Additionally, the CFO will likely need some additional staff to perform the reviews. However, the pre-execution contract reviews may lessen the staff time required for post-execution audits of the contracts.

*Advertising Costs:*

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment is to be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

According to the Division, the projected cost to advertise constitutional amendments for the 2018 primary and general election cycle was \$120.31 per word. Using those rates, the cost to advertise this amendment in newspapers and produce booklets for the 2018 general election could be \$76,396.85, at a minimum. This cost estimate is contingent on multiple amendments needing advertising, as there is an inverse relationship between the price per word and the length of the advertisements. If no other amendments need to be advertised, the price per word may be significantly higher. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known.

Total expenses related to constitutional amendment advertising for the 2018 election cycle are likely to be significant, as the 2018 ballot will include amendments placed there by the Constitutional Revision Commission (when the Commission last met in 1998, 13 amendments were placed on the ballot). Amendments can also be placed on the ballot via the initiative petition process, or by a joint resolution of the Florida Legislature. So far, four amendments will appear on the 2018 ballot.

**VI. Technical Deficiencies:**

Lines 56-57 of the joint resolution require the Legislature “to implement this paragraph.” This paragraph, however, is a reference to paragraph (c)(4) of article IV, section 4 of the Florida Constitution, which relates to the requirements for pre-execution contract reviews. Because the requirement that the Chief Financial Officer participate in the consensus economic, demographic, and revenue estimating conferences is located in paragraph (c)(3), the Legislature may wish to revise the reference to “this paragraph” to state “this subsection.” Alternatively, the

Legislature could omit the requirement for implementing legislation because the Legislature has a duty to implement all constitutional requirements.<sup>25</sup>

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This joint resolution substantially amends article IV, section 4 of the Florida Constitution.  
Additional Information:

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

**CS by Ethics and Elections on January 30, 2018:**

The Committee Substitute differs from the original bill in that it makes technical structural changes and specifically requires the Legislature to implement the changes via implementing legislation.

- B. **Amendments:**

None.

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

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<sup>25</sup> See *Dade County Classroom Teachers Ass'n, Inc. v. Legislature* 269 So. 2d 684, 688 (Fla. 1972) (stating that the Legislature must implement the constitutional right to collective bargaining by public employees within a reasonable time).

By the Committee on Ethics and Elections; and Senator Lee

582-02642-18

2018792c1

## Senate Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article IV of the State Constitution to revise the duties and responsibilities of the Chief Financial Officer.

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

That the following amendment to Section 4 of Article IV of the State Constitution is 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 IV

## EXECUTIVE

## SECTION 4. Cabinet.—

(a) There shall be a cabinet composed of an attorney general, a chief financial officer, and a commissioner of agriculture. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law. In the event of a tie vote of the governor and cabinet, the side on which the governor voted shall be deemed to prevail.

(b) The attorney general shall be the chief state legal officer. There is created in the office of the attorney general the position of statewide prosecutor. The statewide prosecutor shall have concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related

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

582-02642-18

2018792c1

transaction, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law. The statewide prosecutor shall be appointed by the attorney general from not less than three persons nominated by the judicial nominating commission for the supreme court, or as otherwise provided by general law.

(c) The chief financial officer shall serve as the chief fiscal officer of the state, and shall:

(1) Settle and approve accounts against the state;~~and shall~~

(2) Keep all state funds and securities;

(3) Participate as a principal in consensus economic, demographic, and revenue estimating conferences; and

(4) As prescribed by general law, review and certify, before execution, that each proposed contract of a state agency, entity, or officer of the executive branch requiring a payment or aggregate payments in excess of ten million dollars from funds appropriated to the state agency, entity, or officer:

a. Complies with general laws relating to procurement;

b. Includes all provisions required by general law for state agency contracts; and

c. Does not require payments by the state agency, entity, or officer in any fiscal year in excess of the amount appropriated for that fiscal year or the amount authorized by general law, for the purpose of the contract.

The legislature shall enact legislation to implement this paragraph, including the adjustment, to be adjusted at least every four years, of the contract amount threshold to reflect

Page 2 of 4

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

582-02642-18

2018792c1

59 the rate of inflation or deflation as indicated in the Consumer  
 60 Price Index for All Urban Consumers, U.S. City Average, All  
 61 Items, or a successor index, as calculated by the United States  
 62 Department of Labor Bureau of Labor Statistics, or its successor  
 63 agency.

64 (d) The commissioner of agriculture shall have supervision  
 65 of matters pertaining to agriculture except as otherwise  
 66 provided by law.

67 (e) The governor as chair, the chief financial officer, and  
 68 the attorney general shall constitute the state board of  
 69 administration, which shall succeed to all the power, control,  
 70 and authority of the state board of administration established  
 71 pursuant to Article IX, Section 16 of the Constitution of 1885,  
 72 and which shall continue as a body at least for the life of  
 73 Article XII, Section 9(c).

74 (f) The governor as chair, the chief financial officer, the  
 75 attorney general, and the commissioner of agriculture shall  
 76 constitute the trustees of the internal improvement trust fund  
 77 and the land acquisition trust fund as provided by law.

78 (g) The governor as chair, the chief financial officer, the  
 79 attorney general, and the commissioner of agriculture shall  
 80 constitute the agency head of the Department of Law Enforcement.

81

82 BE IT FURTHER RESOLVED that the following statement be  
 83 placed on the ballot:

84

CONSTITUTIONAL AMENDMENT

85

ARTICLE IV, SECTION 4

86

87

DUTIES OF THE CHIEF FINANCIAL OFFICER.—Expands the Chief  
 Financial Officer's duties to require that he or she participate

Page 3 of 4

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

582-02642-18

2018792c1

88 as a principal in consensus economic, demographic, and revenue  
 89 estimating conferences and review and certify certain state  
 90 contracts above a threshold dollar amount to ensure compliance  
 91 with certain laws and that such contracts do not require  
 92 payments in any fiscal year which exceed the amount appropriated  
 93 or the amount authorized by law. Requires the Legislature to  
 94 enact legislation to implement the amendment.

Page 4 of 4

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Steube, Chair  
Senate Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** January 30, 2018

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I respectfully request that **Senate Bill #792**, relating to **Chief Financial Officer**, be placed on the:

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

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

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Senator Tom Lee  
Florida Senate, District 20

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 1254

INTRODUCER: Education Committee and Senator Passidomo and others

SUBJECT: Early Learning

DATE: February 5, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bouck</u>	<u>Graf</u>	<u>ED</u>	<b>Fav/CS</b>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1254 modifies provisions relating to the school readiness program. Specifically, the bill:

- Requires the Office of Early Learning to:
  - Adopt a program assessment that measures the quality of teacher-child interactions including classroom organization and specified supports.
  - Provide a differential payment of up to 10 percent for each care level and unit of child care for a child care provider that meets specified requirements.
  - Revise the statewide provider contract to include contracted slots, quality improvement strategies, and program assessment requirements.
  - Modify the annual report to include specified data regarding school readiness program provider compliance with requirements relating to the program assessment.
- Revises Early Learning Coalitions (ELC) plans to add information regarding:
  - An assessment of local priorities based on the needs of families and provider capacity using available community data.
  - Local eligibility priorities for children, the use of contracted slots in the ELC's procedures for program implementation, a payment rate schedule, and a description of quality improvement strategies in the ELC's quality activities and services.
- Modifies school readiness program eligibility, provider standards, and funding to:
  - Revise the child eligibility priorities for participation in the school readiness program based on the ELC's local priorities; and also revise the definition of "at-risk" children for eligibility purposes.



- Revise provider eligibility requirements to specify that the providers must participate in a program assessment that measures the quality of teacher-child interactions.
- Authorize the award of grants and financial supports to providers and instructors to also meet program assessment requirements.

The bill appropriates \$6 million for the 2018-2019 fiscal year from the Child Care and Development Block Grant Trust Fund to the Office of Early Learning to implement the program assessment for school readiness program providers.

The bill takes effect July 1, 2018.

## II. Present Situation:

Established in 1999,<sup>1</sup> the school readiness program provides subsidies for child care services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.<sup>2</sup> The school readiness program offers financial assistance for child care to support working families and children to develop skills for success in school and provides developmental screening and referrals to health and education specialists where needed.

The school readiness program is a state-federal partnership between the Office of Early Learning (OEL)<sup>3</sup> and the Office of Child Care of the United States Department of Health and Human Services.<sup>4</sup> It is administered by early learning coalitions (ELCs) at the county or regional level.<sup>5</sup> The OEL administers the program at the state level, including statewide coordination of the ELCs.<sup>6</sup>

### Office of Early Learning

The OEL is the lead agency in Florida for administering the federal Child Care and Development Block Grant Trust Fund (CCDF).<sup>7</sup> The school readiness program is funded primarily by the CCDF.<sup>8</sup>

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<sup>1</sup> Ch. 99-357, s. 1 Laws of Fla.

<sup>2</sup> Section 1002.87, F.S.

<sup>3</sup> In 2013, the Legislature established the Office of Early Learning in the Office of Independent Education and Parental Choice within the Department of Education (DOE). The office is administered by an executive director and is fully accountable to the Commissioner of Education but shall independently exercise all powers, duties, and functions prescribed by law, as well as adopt rules for the establishment and operation of the school readiness program and the VPK Program. Ch. 2013-252, s. 1, Laws of Fla., codified as s. 1001.213, F.S.

<sup>4</sup> See U.S. Department of Health and Human Services, *Child Care and Development Fund Fact Sheet*, <http://www.acf.hhs.gov/programs/occ/fact-sheet-occ> (last visited Feb. 2, 2018).

<sup>5</sup> Section 1002.83, F.S.

<sup>6</sup> Section 1001.213(3), F.S.

<sup>7</sup> Section 1002.82(1), F.S.

<sup>8</sup> The Office of Early Learning, 2016-2018 Child Care Development Fund State Plan, [http://www.floridaearlylearning.com/oel\\_resources/ccdf\\_plan.aspx](http://www.floridaearlylearning.com/oel_resources/ccdf_plan.aspx) (last visited Feb. 2, 2018).

The OEL is required to focus on improving the educational quality of all program providers participating in the school readiness program while preserving parental choice by permitting parents to choose from a variety of child care categories.<sup>9</sup> Other OEL duties include, but are not limited to, requirements to:

- Enter into a memorandum of understanding with local licensing agencies and the Department of Children and Families (DCF) for inspections of school readiness program providers to monitor and verify compliance with program provider standards and OEL’s health and safety checklist.<sup>10</sup>
- Develop and adopt standards and benchmarks that address the age-appropriate progress of children in the development of school readiness skills.<sup>11</sup>
- Select assessments that are valid, reliable, and developmentally appropriate for use as preassessment and postassessment.<sup>12</sup> The assessments must be designed to measure progress in the domains of the performance standards and be administered by qualified individuals.<sup>13</sup>
- Adopt, by rule, a standard statewide provider contract to be used with each school readiness program provider that includes, at a minimum, provisions for provider probation, termination for cause, and emergency termination for those actions or inactions of a provider that pose an immediate and serious danger to the health, safety, or welfare of the children.<sup>14</sup>
- Monitor and evaluate the performance of each ELC in administering the school readiness program.<sup>15</sup>
- Establish procedures for the biennial calculation of the average market rate.<sup>16</sup> The OEL must establish procedures for the adoption of a market rate schedule that include minimum and maximum rates for child care providers that hold a Gold Seal Quality Care designation,<sup>17</sup> and a market rate for providers that do not hold such designation.<sup>18</sup>
- Review each early learning coalition’s school readiness program plan every 2 years.<sup>19</sup>

The OEL is also required to annually, by January 1, publish an annual report to include a summary of early learning coalition annual reports, a statewide summary; an analysis of early learning activities throughout the state, including the school readiness program, student disenrollment and reasons for disenrollment, providers by type, and actions on provider contracts.<sup>20</sup>

<sup>9</sup> Section 1002.82(1) and (2)(a)-(b), F.S. Care and curriculum by a faith-based provider must not be limited or excluded in any of these categories. *Id.*

<sup>10</sup> Section 1002.82(2)(i), F.S.

<sup>11</sup> Section 1002.82(2)(j), F.S.

<sup>12</sup> Section 1002.82(2)(k), F.S.

<sup>13</sup> Section 1002.82(2)(k), F.S.

<sup>14</sup> Section 1002.82(2)(m), F.S.

<sup>15</sup> Section 1002.82(2)(p), F.S.

<sup>16</sup> Section 1002.82(2)(d), F.S. OEL must establish procedures for the adoption of a market rate schedule that include minimum and maximum rates for child care providers that hold a Gold Seal Quality Care designation, and a market rate for providers that do not hold such designation. Section 1002.895(1), F.S.

<sup>17</sup> A child care facility, large family child care home, or family day care home that is accredited by an accrediting association approved by the DOE and meets all other requirements shall, upon application to the DOE, receive a separate “Gold Seal Quality Care” designation. Section 402.281(1)(a), F.S.

<sup>18</sup> Section 1002.895(1), F.S.

<sup>19</sup> Section 1002.82(2)(e), F.S.

<sup>20</sup> Section 1002.82(5), F.S.

## Early Learning Coalitions

The OEL governs the day-to-day operations of statewide early learning programs and administers federal and state child care funds. Across the state, 30 regional ELCs and the Redlands Christian Migrant Association are responsible for delivering local services.<sup>21</sup> Each ELC is governed by a board of directors comprised of various stakeholders and community representatives.<sup>22</sup>

In order to participate in the school readiness program, each ELC must submit a school readiness plan to the OEL for approval.<sup>23</sup> The plan must include, but is not limited to:<sup>24</sup>

- The ELC's operations, including its membership and business organization.
- The minimum number of children to be served by care level.
- The procedures for implementing program requirements such as single point of entry, uniform waiting list, eligibility and enrollment, sliding fee scale, and payment rate.
- A detailed description of the ELC's quality activities and services.
- A detailed budget outlining the estimated expenditures for state, federal, and local matching funds.
- A detailed accounting of all revenues and expenditures during the previous state fiscal year<sup>25</sup>
- Policies and procedures governing procurement, maintenance of tangible personal property, maintenance of records, information technology security, and disbursement controls.
- A description of the procedures for monitoring school readiness program providers, including the process for responding to a parental complaint.
- Documentation that the coalition has solicited and considered comments regarding the proposed school readiness plan from the local community.

## School Readiness Program

### *School Readiness Eligibility and Enrollment*

Florida law specifies that ELCs must admit children into the School Readiness program according to the following priorities:<sup>26</sup>

- **First priority** is a child younger than 13 years of age from families in which an adult is receiving temporary cash assistance<sup>27</sup> and subject to federal work requirements.<sup>28</sup>
- **Second priority** is a child younger than the age of 9 who is at-risk.

<sup>21</sup> The Office of Early Learning, *Coalitions*, <http://www.floridaearlylearning.com/coalitions.aspx> (last visited Feb 2, 2018). *See also* 1002.83(1), F.S.

<sup>22</sup> Section 1002.83(3), F.S.

<sup>23</sup> Section 1002.85(2), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 1002.85(2)(a)-(i), F.S.

<sup>26</sup> Section 1002.87(1), F.S.

<sup>27</sup> Temporary cash assistance under chapter 414. Section 1002.87(1)(a), F.S.

<sup>28</sup> Federal work requirements require a state to meet or exceed minimum rates of recipients participating in "work activities," e.g., employment, education, job search, community service, and vocational training. 42 U.S.C. s. 607(a)-(d). Under Florida law, the maximum number of hours a recipient of subsidized child care, who is not otherwise exempt from work activity, may be required to work is 40 hours per week. Section 445.024(2), F.S.

- **Third priority** is a child, birth to beginning of the school year for which the child is eligible for kindergarten, from a working family that is economically disadvantaged<sup>29</sup> and may include such a child's eligible siblings who are eligible to enter kindergarten through the summer before sixth grade, provided that the ELC uses local revenues first.
- **Fourth priority** is a child of a parent who transitions from the work program into employment from birth through the summer before kindergarten.
- **Fifth priority** is an at-risk child, at least 9 years of age but younger than 13. The child is given priority over other children if his or her sibling is enrolled in the School Readiness program under eligibility priorities 1, 2, or 3.
- **Sixth priority** is a child younger than 13 years of age from a working family that is economically disadvantaged. Such a child is given priority over other children if his or her sibling is enrolled in the School Readiness program under eligibility priority 3.
- **Seventh priority** is a child under age 13 whose parent transitions from the work program into employment.
- **Eighth priority** is a child ages 3-5 years of age who has a current individual education plan with a Florida school district. Such a child is eligible until he or she is old enough for kindergarten admission.
- **Last priority** is a child who is also concurrently enrolled in the Head Start program and the VPK Program.<sup>30</sup>

A child is considered to be "at risk" if, among other things, the child is in the custody of a parent who is a victim of domestic violence residing in a certified domestic violence center.<sup>31</sup>

### ***School Readiness Program Provider Standards***

In order to be eligible to deliver the school readiness program, a provider must be:<sup>32</sup>

- A licensed child care facility;
- A licensed or registered family day care home;
- A licensed large family child care home;
- A public school or nonpublic school;
- A license-exempt faith-based child care provider;
- A before-school or after-school program; or
- An authorized informal child care provider.<sup>33</sup>

Provider responsibilities include, but are not limited to, a requirement to:<sup>34</sup>

<sup>29</sup> "Economically disadvantaged" means having a family income that does not exceed 150 percent of the federal poverty level. Section 1002.81(7), F.S.

<sup>30</sup> Section 1002.87(1), F.S.

<sup>31</sup> At-risk children can also include children who are homeless or who may be experiencing abuse, neglect, abandonment or exploitation. See s. 1002.81(1), F.S., for the definition of "at-risk child".

<sup>32</sup> Section 1002.88(1), F.S.

<sup>33</sup> Section 1002.88(1)(a). Generally speaking, informal child care is care provided by a relative. See Florida Office of Early Learning, *Child Care and Development Fund (CCDF) Plan FFY 2016-2018* (2016) at 99, available at [http://www.floridaearlylearning.com/sites/www/Uploads/14-Draft-FY2016-2018%20CCDF%20Plan%20Preprint%20%2012-17-15\\_final\\_markup\\_SC\\_Comments\\_CLEAN\\_PDF\\_ADA.pdf](http://www.floridaearlylearning.com/sites/www/Uploads/14-Draft-FY2016-2018%20CCDF%20Plan%20Preprint%20%2012-17-15_final_markup_SC_Comments_CLEAN_PDF_ADA.pdf).

<sup>34</sup> Section 1002.88(1), F.S.

- Provide instruction and activities to enhance the age-appropriate progress of each child in attaining the child development standards.
- Provide basic health and safety of its premises and facilities and compliance with requirements for age-appropriate immunizations of children enrolled in the school readiness program.
- Employ child care personnel who have satisfied background screening and training requirements.
- Provide activities to foster brain development in infants and toddlers in an environment rich in language and music and visual, tactile, auditory, and linguistic stimulation and including 30 minutes of reading to children each day.
- Execute the standard statewide provider contract adopted by the OEL.
- Implement a character development program.
- Administer preassessments and postassessments that have been approved by the OEL, but only if the provider chooses to administer such assessments.

### ***School Readiness Funding***

Funding for the school readiness program is allocated among the ELCs according to law and the General Appropriations Act.<sup>35</sup> State, federal, and local matching funds provided to an ELC for purposes of the school readiness program must be used for implementation of its approved school readiness program plan, including the hiring of staff to effectively operate the school readiness program.<sup>36</sup>

Costs must be kept to the minimum necessary for the efficient and effective administration of the school readiness program with the highest priority of expenditure being direct services for eligible children. Among the administrative costs and nondirect services authorized for expenditure of funds as specified in law,<sup>37</sup> allowable activities to improve the quality of child care<sup>38, 39</sup> must be to, in part:

- Award grants and providing financial support to school readiness program providers and their staff to assist them in meeting applicable state requirements for child care performance standards,
- Implement developmentally appropriate curricula and related classroom resources that support curricula,
- Provide literacy supports, and
- Provide continued professional development and training.

For FY 2017-18, a total of \$608.4 million was appropriated for the School Readiness program from state and federal funds, including \$140.6 million from the state's General Revenue Fund, \$370.7 million from the CCDF block grant, \$500,000 from Federal Grants Trust Fund, and \$96.6 million from the Welfare Transition Trust Fund.<sup>40</sup>

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<sup>35</sup> Section 1002.89(1), F.S.

<sup>36</sup> Section 1002.89(5), F.S.

<sup>37</sup> Section 1002.89(6)(a) and (c), F.S.

<sup>38</sup> Section 1002.89(6)(b)2, F.S.

<sup>39</sup> 45 C.F.R. s. 98.51.

<sup>40</sup> Specific Appropriation 84, ch. 2017-70, s. 2, Laws of Fla.

### III. Effect of Proposed Changes:

CS/SB 1254 modifies provisions relating to the school readiness program. Specifically, the bill:

- Requires the Office of Early Learning to:
  - Adopt a program assessment that measures the quality of teacher-child interactions including classroom organization and specified supports.
  - Provide a differential payment of up to 10 percent for each care level and unit of child care for a child care provider that meets specified requirements.
  - Revise the statewide provider contract to include contracted slots, quality improvement strategies, and program assessment requirements.
  - Modify the annual report to include specified data regarding school readiness program provider compliance with requirements relating to the program assessment.
- Revises Early Learning Coalitions (ELC) plans to add information regarding:
  - An assessment of local priorities based on the needs of families and provider capacity using available community data.
  - Local eligibility priorities for children, the use of contracted slots in the ELC's procedures for program implementation, a payment rate schedule, and a description of quality improvement strategies in the ELC's quality activities and services.
- Modifies school readiness program eligibility, provider standards, and funding to:
  - Revise the child eligibility priorities for participation in the school readiness program based on the ELC's local priorities; and also revise the definition of "at-risk" children for eligibility purposes.
  - Revise provider eligibility requirements to specify that the providers must participate in a program assessment that measures the quality of teacher-child interactions.
  - Authorize the award of grants and financial supports to providers and instructors to also meet program assessment requirements.

#### Office of Early Learning

The bill requires the OEL to adopt a program assessment for providers participating in the school readiness program that measures the quality of teacher-child interactions, including emotional and behavioral support, engaged support for learning, classroom organization, and instructional support. Program assessment requirements adopted by OEL must include, at a minimum, quality measures, a minimum threshold for contracting purposes, processes for provider participation, granting of exemptions, and the achievement of improvement through the completion of an improvement plan.

The bill provides for a differential payment, based on the quality measures adopted as a part of the program assessment, of up to 10 percent for each care level and unit if child care for a provider that has completed a program assessment and scored above an established minimum threshold for contracting purposes.

Additionally, the bill requires the OEL to revise the standard statewide provider contract for school readiness program providers to include the following provisions:

- Contracted slots, if applicable;

- Quality improvement strategies, if applicable;<sup>41</sup> and
- Program assessment requirements.

The bill also requires provisions for termination for cause, included within the standard statewide provider contract. The provisions must include a provider's failure to meet the minimum quality measures adopted as a part of the program assessment for a period of up to 5 years, unless the ELC determines that the provider is essential to meeting capacity needs based on an assessment of local priorities and the provider has an active improvement plan as a part of the program assessment.

Finally, the bill requires the OEL to revise its annual report to include the number of school readiness program providers who have completed the program assessment requirement, the number of providers who have not met the minimum quality measures to be eligible for a contract, and the number of providers that have an active improvement plan based on the results of the program assessment.

### **Early Learning Coalitions**

The bill requires each Early Learning Coalition (ELC) plan to include:

- An assessment of local priorities within the county or multicounty region based on the needs of families and provider capacity using available community data.
- Local eligibility priorities for children and a payment rate schedule as a part of the ELC's procedures for implementation of the school readiness program.
- The use of contracted slots, as applicable, based on the results of the completed community needs assessment.
- A description of quality improvement strategies utilized by the ELC to strengthen teaching practices and improve child outcomes.

### **School Readiness Program**

#### ***School Readiness Eligibility and Enrollment***

The bill revises the definition of an "at-risk child" to specify that an at-risk child means a child is in the custody of a parent who is considered a victim of domestic violence and is receiving services through a certified domestic violence center. Under current law, an "at-risk" child means a child in the custody of a parent who is a victim of domestic violence residing in a certified domestic violence center. The bill does not require a parent who is a victim of domestic violence to reside in the certified domestic violence center for the child to be considered at risk.

The bill revises child eligibility priorities and criteria by requiring ELCs, after serving children in the first two child priority categories, to prioritize services for children in subsequent categories based on the ELC's community needs assessment. Additionally, the bill modifies the subsequent priority category relating to a child who is younger than 13 years of age from a working family that is economically disadvantaged to remove the requirement for priority enrollment in that category for such child who has a sibling enrolled in the school readiness program.

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<sup>41</sup> Section 658(c)(2)(a) of the Child Care and Development Block Grant Act of 2014.

***School Readiness Provider Standards***

As a requirement for eligibility to deliver the school readiness program, the bill requires school readiness program providers to participate in a program assessment identified by the OEL.

***School Readiness Funding***

The bill includes implementation of the program assessment adopted by OEL to the grants and financial support to school readiness program providers as part of authorized activities to improve the quality of child care, as specified in law.<sup>42</sup>

The bill takes effect July 1, 2018.

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

CS/SB 1254 requires school readiness program providers to participate in program assessment and quality improvement strategies as a condition of participation in the program, subject to legislative appropriation.<sup>43</sup>

**C. Government Sector Impact:**

CS/SB 1254 appropriates \$6 million for the 2018-2019 fiscal year from the Child Care and Development Block Grant Trust Fund to the Office of Early Learning to implement the program assessment for school readiness program providers.

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<sup>42</sup> 45 C.F.R. 98.51

<sup>43</sup> Florida Department of Education, Office of Early Learning, *2017 Agency Bill Analysis for SB 1254* (Dec. 19, 2017).



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1002.81, 1002.82, 1002.84, 1002.85, 1002.87, 1002.88, 1002.89, and 1002.92.

The bill creates an undesignated section of Florida Law.

**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 Education on January 29, 2018:**

The committee substitute maintains the substance of the bill with some modifications.

Specifically, the committee substitute:

- Modifies the definition of an “at-risk” child to mean a child who is in the custody of a parent who is considered a victim of domestic violence and who is receiving services through a certified domestic violence center. The bill defined such child to mean a child in the custody of a parent who is a victim of domestic violence as verified by a certified domestic violence center.
- Removes from the bill, the provision requiring a triennial evaluation of accrediting agencies for school readiness program providers.
- Revises from 20 percent to 10 percent, the differential payment for providers who meet specified criteria.
- Removes from the bill, the provision requiring the standard statewide contract to include health and safety provisions.
- Adds a provision to specify that provisions for termination for cause must include failure to meet the minimum quality standards adopted as a part of the program assessment for a period of 5 years, unless the coalition determines that the provider is essential to meeting capacity needs based on the specified local priority assessment and the provider has an active improvement plan.

**B. Amendments:**

None.

By the Committee on Education; and Senators Passidomo and Book

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1 A bill to be entitled  
 2 An act relating to early learning; amending s.  
 3 1002.81, F.S.; revising the definition of "at-risk  
 4 child"; amending s. 1002.82, F.S.; revising the duties  
 5 of the Office of Early Learning; revising the standard  
 6 statewide contract for providers; providing that  
 7 failing to meet certain measures for a specified  
 8 period is cause for termination of a provider;  
 9 providing for the development of a program assessment  
 10 for school readiness providers; providing program  
 11 assessment requirements; requiring the office to set a  
 12 payment differential for certain providers; revising  
 13 the requirement for an analysis of early learning  
 14 activities throughout the state; amending s. 1002.84,  
 15 F.S.; conforming a cross-reference; amending s.  
 16 1002.85, F.S.; revising the required contents of the  
 17 school readiness program plan each early learning  
 18 coalition must submit; amending s. 1002.87, F.S.;  
 19 revising the priority criteria for participation in  
 20 the school readiness program; amending s. 1002.88,  
 21 F.S.; revising school readiness provider requirements  
 22 for program participation; conforming cross-  
 23 references; amending s. 1002.89, F.S.; providing for  
 24 the use of specified funds for a required assessment;  
 25 amending s. 1002.92, F.S.; conforming a cross-  
 26 reference; providing an appropriation; providing an  
 27 effective date.  
 28  
 29 Be It Enacted by the Legislature of the State of Florida:

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

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30  
 31 Section 1. Paragraph (e) of subsection (1) of section  
 32 1002.81, Florida Statutes, is amended to read:  
 33 1002.81 Definitions.—Consistent with the requirements of 45  
 34 C.F.R. parts 98 and 99 and as used in this part, the term:  
 35 (1) "At-risk child" means:  
 36 (e) A child in the custody of a parent who is considered a  
 37 victim of domestic violence and is receiving services through  
 38 ~~residing in~~ a certified domestic violence center.  
 39 Section 2. Present paragraphs (n) through (x) of subsection  
 40 (2) of section 1002.82, Florida Statutes, are redesignated as  
 41 paragraphs (p) through (z), respectively, paragraph (m) of  
 42 subsection (2) and paragraph (a) of subsection (5) of that  
 43 section are amended, and new paragraphs (n) and (o) are added to  
 44 subsection (2) of that section, to read:  
 45 1002.82 Office of Early Learning; powers and duties.—  
 46 (2) The office shall:  
 47 (m) Adopt by rule a standard statewide provider contract to  
 48 be used with each school readiness program provider, with  
 49 standardized attachments by provider type. The office shall  
 50 publish a copy of the standard statewide provider contract on  
 51 its website. The standard statewide contract shall include, at a  
 52 minimum, contracted slots, if applicable, in accordance with the  
 53 Child Care and Development Block Grant Act of 2014, 45 C.F.R.  
 54 parts 98 and 99; quality improvement strategies, if applicable;  
 55 program assessment requirements; and provisions for provider  
 56 probation, termination for cause, and emergency termination for  
 57 those actions or inactions of a provider that pose an immediate  
 58 and serious danger to the health, safety, or welfare of the

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59 children. The standard statewide provider contract shall also  
 60 include appropriate due process procedures. During the pendency  
 61 of an appeal of a termination, the provider may not continue to  
 62 offer its services. Any provision imposed upon a provider that  
 63 is inconsistent with, or prohibited by, law is void and  
 64 unenforceable. Provisions for termination for cause must include  
 65 failure to meet the minimum quality measures established under  
 66 paragraph (n) for a period of up to 5 years, unless the  
 67 coalition determines that the provider is essential to meeting  
 68 capacity needs based on the assessment under s. 1002.85(2) (j)  
 69 and the provider has an active improvement plan pursuant to  
 70 paragraph (n).

71 (n) Adopt a program assessment for school readiness program  
 72 providers that measures the quality of teacher-child  
 73 interactions, including emotional and behavioral support,  
 74 engaged support for learning, classroom organization, and  
 75 instructional support. The program assessment must also include  
 76 the adoption of quality measures, including a minimum threshold  
 77 for contracting purposes; a process for program participation;  
 78 exemptions; and improvement through the completion of an  
 79 improvement plan.

80 (o) Subject to appropriation, provide for a differential  
 81 payment, based on the quality measures adopted by the office  
 82 under paragraph (n), of up to 10 percent for each care level and  
 83 unit of child care for a child care provider that has completed  
 84 a program assessment and scored above the minimum threshold for  
 85 contracting purposes.

86 (5) By January 1 of each year, the office shall annually  
 87 publish on its website a report of its activities conducted

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88 under this section. The report must include a summary of the  
 89 coalitions' annual reports, a statewide summary, and the  
 90 following:

91 (a) An analysis of early learning activities throughout the  
 92 state, including the school readiness program and the Voluntary  
 93 Prekindergarten Education Program.

94 1. The total and average number of children served in the  
 95 school readiness program, enumerated by age, eligibility  
 96 priority category, and coalition, and the total number of  
 97 children served in the Voluntary Prekindergarten Education  
 98 Program.

99 2. A summary of expenditures by coalition, by fund source,  
 100 including a breakdown by coalition of the percentage of  
 101 expenditures for administrative activities, quality activities,  
 102 nondirect services, and direct services for children.

103 3. A description of the office's and each coalition's  
 104 expenditures by fund source for the quality and enhancement  
 105 activities described in s. 1002.89(6) (b).

106 4. A summary of annual findings and collections related to  
 107 provider fraud and parent fraud.

108 5. Data regarding the coalitions' delivery of early  
 109 learning programs.

110 6. The total number of children disenrolled statewide and  
 111 the reason for disenrollment.

112 7. The total number of providers by provider type.

113 8. The number of school readiness program providers who  
 114 have completed the program assessment required under paragraph  
 115 (2) (n); the number of providers who have not met the minimum  
 116 threshold for contracting established under to paragraph (2) (n);

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117 and the number of providers that have an active improvement plan  
 118 based on the results of the program assessment under paragraph  
 119 (2) (n).

120 ~~9.8-~~ The total number of provider contracts revoked and the  
 121 reasons for revocation.

122 Section 3. Subsection (4) of section 1002.84, Florida  
 123 Statutes, is amended to read:

124 1002.84 Early learning coalitions; school readiness powers  
 125 and duties.—Each early learning coalition shall:

126 (4) Establish a regional Warm-Line as directed by the  
 127 office pursuant to s. 1002.82(2)(t) ~~s. 1002.82(2)(r)~~. Regional  
 128 Warm-Line staff shall provide onsite technical assistance, when  
 129 requested, to assist child care facilities and family day care  
 130 homes with inquiries relating to the strategies, curriculum, and  
 131 environmental adaptations the child care facilities and family  
 132 day care homes may need as they serve children with disabilities  
 133 and other special needs.

134 Section 4. Paragraphs (c) and (d) of subsection (2) of  
 135 section 1002.85, Florida Statutes, are amended, and paragraph  
 136 (j) is added to that subsection, to read:

137 1002.85 Early learning coalition plans.—

138 (2) Each early learning coalition must biennially submit a  
 139 school readiness program plan to the office before the  
 140 expenditure of funds. A coalition may not implement its school  
 141 readiness program plan until it receives approval from the  
 142 office. A coalition may not implement any revision to its school  
 143 readiness program plan until the coalition submits the revised  
 144 plan to and receives approval from the office. If the office  
 145 rejects a plan or revision, the coalition must continue to

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146 operate under its previously approved plan. The plan must  
 147 include, but is not limited to:

148 (c) The coalition's procedures for implementing the  
 149 requirements of this part, including:

- 150 1. Single point of entry.
- 151 2. Uniform waiting list.
- 152 3. Eligibility and enrollment processes and local  
 153 eligibility priorities for children pursuant to s. 1002.87.
- 154 4. Parent access and choice.
- 155 5. Sliding fee scale and policies on applying the waiver or  
 156 reduction of fees in accordance with s. 1002.84(8).
- 157 6. Use of preassessments and postassessments, as  
 158 applicable.
- 159 7. Payment rate schedule.
- 160 8. Use of contracted slots, as applicable, based on the  
 161 results of the assessment required under paragraph (j).

162 (d) A detailed description of the coalition's quality  
 163 activities and services, including, but not limited to:

- 164 1. Resource and referral and school-age child care.
- 165 2. Infant and toddler early learning.
- 166 3. Inclusive early learning programs.
- 167 4. Quality improvement strategies that strengthen teaching  
 168 practices and increase child outcomes.

169 (j) An assessment of local priorities within the county or  
 170 multicounty region based on the needs of families and provider  
 171 capacity using available community data.

172 Section 5. Subsections (1), (2), (3), and (7) of section  
 173 1002.87, Florida Statutes, are amended to read:

174 1002.87 School readiness program; eligibility and

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175 enrollment.—

176 (1) Each early learning coalition shall give priority for  
177 participation in the school readiness program as follows:

178 (a) Priority shall be given first to a child younger than  
179 13 years of age from a family that includes a parent who is  
180 receiving temporary cash assistance under chapter 414 and  
181 subject to the federal work requirements.

182 (b) Priority shall be given next to an at-risk child  
183 younger than 9 years of age.

184 (c) Subsequent priority shall be given, based on the early  
185 learning coalition's local priorities identified under s.  
186 1002.85(2)(j), to children who meet the following criteria: next  
187 to

188 1. A child from birth to the beginning of the school year  
189 for which the child is eligible for admission to kindergarten in  
190 a public school under s. 1003.21(1)(a)2. who is from a working  
191 family that is economically disadvantaged, and may include such  
192 child's eligible siblings, beginning with the school year in  
193 which the sibling is eligible for admission to kindergarten in a  
194 public school under s. 1003.21(1)(a)2. until the beginning of  
195 the school year in which the sibling is eligible to begin 6th  
196 grade, provided that the first priority for funding an eligible  
197 sibling is local revenues available to the coalition for funding  
198 direct services.

199 2.(d) ~~Priority shall be given next to~~ A child of a parent  
200 who transitions from the work program into employment as  
201 described in s. 445.032 from birth to the beginning of the  
202 school year for which the child is eligible for admission to  
203 kindergarten in a public school under s. 1003.21(1)(a)2.

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204 ~~3.(e)~~ ~~Priority shall be given next to~~ An at-risk child who  
205 is at least 9 years of age but younger than 13 years of age. An  
206 at-risk child whose sibling is enrolled in the school readiness  
207 program within an eligibility priority category listed in  
208 paragraphs (a) and (b) and subparagraph (c)1. ~~(a) (e)~~ shall be  
209 given priority over other children who are eligible under this  
210 paragraph.

211 ~~4.(f)~~ ~~Priority shall be given next to~~ A child who is  
212 younger than 13 years of age from a working family that is  
213 economically disadvantaged. ~~A child who is eligible under this~~  
214 ~~paragraph whose sibling is enrolled in the school readiness~~  
215 ~~program under paragraph (c) shall be given priority over other~~  
216 ~~children who are eligible under this paragraph.~~

217 ~~5.(g)~~ ~~Priority shall be given next to~~ A child of a parent  
218 who transitions from the work program into employment as  
219 described in s. 445.032 who is younger than 13 years of age.

220 ~~6.(h)~~ ~~Priority shall be given next to~~ A child who has  
221 special needs, has been determined eligible as a student with a  
222 disability, has a current individual education plan with a  
223 Florida school district, and is not younger than 3 years of age.  
224 A special needs child eligible under this paragraph remains  
225 eligible until the child is eligible for admission to  
226 kindergarten in a public school under s. 1003.21(1)(a)2.

227 ~~7.(i)~~ ~~Notwithstanding paragraphs (a) (d), priority shall be~~  
228 ~~given last to~~ A child who otherwise meets one of the eligibility  
229 criteria in paragraphs (a) and (b) and subparagraphs (c)1. and  
230 2. ~~(a) (d)~~ but who is also enrolled concurrently in the federal  
231 Head Start Program and the Voluntary Prekindergarten Education  
232 Program.

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233 (2) A school readiness program provider may be paid only  
 234 for authorized hours of care provided for a child in the school  
 235 readiness program. A child enrolled in the Voluntary  
 236 Prekindergarten Education Program may receive care from the  
 237 school readiness program if the child is eligible according to  
 238 the eligibility priorities and criteria established in  
 239 subsection (1) this section.

240 (3) Contingent upon the availability of funds, a coalition  
 241 shall enroll eligible children, including those from its waiting  
 242 list, according to the eligibility priorities and criteria  
 243 established in subsection (1) this section.

244 (7) If a coalition disenrolls children from the school  
 245 readiness program, the coalition must disenroll the children in  
 246 reverse order of the eligibility priorities and criteria listed  
 247 in subsection (1) beginning with children from families with the  
 248 highest family incomes. A notice of disenrollment must be sent  
 249 to the parent and school readiness program provider at least 2  
 250 weeks before disenrollment to provide adequate time for the  
 251 parent to arrange alternative care for the child. However, an  
 252 at-risk child may not be disenrolled from the program without  
 253 the written approval of the Child Welfare Program Office of the  
 254 Department of Children and Families or the community-based lead  
 255 agency.

256 Section 6. Present paragraphs (h) through (q) of subsection  
 257 (1) of section 1002.88, Florida Statutes, are redesignated as  
 258 paragraphs (i) through (r), respectively, present paragraphs (m)  
 259 and (o) of subsection (1) of that section are amended, and a new  
 260 paragraph (h) is added to subsection (1) of that section, to  
 261 read:

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262 1002.88 School readiness program provider standards;  
 263 eligibility to deliver the school readiness program.—

264 (1) To be eligible to deliver the school readiness program,  
 265 a school readiness program provider must:

266 (h) Participate in the program assessment under s.  
 267 1002.82(2)(n).

268 (n) ~~(m)~~ For a provider that is an informal provider, comply  
 269 with the provisions of paragraph (m) ~~(l)~~ or maintain homeowner's  
 270 liability insurance and, if applicable, a business rider. If an  
 271 informal provider chooses to maintain a homeowner's policy, the  
 272 provider must obtain and retain a homeowner's insurance policy  
 273 that provides a minimum of \$100,000 of coverage per occurrence  
 274 and a minimum of \$300,000 general aggregate coverage. The office  
 275 may authorize lower limits upon request, as appropriate. An  
 276 informal provider must add the coalition as a named  
 277 certificateholder and as an additional insured. An informal  
 278 provider must provide the coalition with a minimum of 10  
 279 calendar days' advance written notice of cancellation of or  
 280 changes to coverage. The general liability insurance required by  
 281 this paragraph must remain in full force and effect for the  
 282 entire period of the provider's contract with the coalition.

283 (p) ~~(e)~~ Notwithstanding paragraph (m) ~~(l)~~, for a provider  
 284 that is a state agency or a subdivision thereof, as defined in  
 285 s. 768.28(2), agree to notify the coalition of any additional  
 286 liability coverage maintained by the provider in addition to  
 287 that otherwise established under s. 768.28. The provider shall  
 288 indemnify the coalition to the extent permitted by s. 768.28.

289 Section 7. Paragraph (b) of subsection (6) of section  
 290 1002.89, Florida Statutes, is amended to read:

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291 1002.89 School readiness program; funding.—  
 292 (6) Costs shall be kept to the minimum necessary for the  
 293 efficient and effective administration of the school readiness  
 294 program with the highest priority of expenditure being direct  
 295 services for eligible children. However, no more than 5 percent  
 296 of the funds described in subsection (5) may be used for  
 297 administrative costs and no more than 22 percent of the funds  
 298 described in subsection (5) may be used in any fiscal year for  
 299 any combination of administrative costs, quality activities, and  
 300 nondirect services as follows:  
 301 (b) Activities to improve the quality of child care as  
 302 described in 45 C.F.R. s. 98.51, which shall be limited to the  
 303 following:  
 304 1. Developing, establishing, expanding, operating, and  
 305 coordinating resource and referral programs specifically related  
 306 to the provision of comprehensive consumer education to parents  
 307 and the public to promote informed child care choices specified  
 308 in 45 C.F.R. s. 98.33.  
 309 2. Awarding grants and providing financial support to  
 310 school readiness program providers and their staff to assist  
 311 them in meeting applicable state requirements for the program  
 312 assessment required under s. 1002.82(2)(n), child care  
 313 performance standards, implementing developmentally appropriate  
 314 curricula and related classroom resources that support  
 315 curricula, providing literacy supports, and providing continued  
 316 professional development and training. Any grants awarded  
 317 pursuant to this subparagraph shall comply with ss. 215.971 and  
 318 287.058.  
 319 3. Providing training, technical assistance, and financial

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320 support to school readiness program providers, staff, and  
 321 parents on standards, child screenings, child assessments, child  
 322 development research and best practices, developmentally  
 323 appropriate curricula, character development, teacher-child  
 324 interactions, age-appropriate discipline practices, health and  
 325 safety, nutrition, first aid, cardiopulmonary resuscitation, the  
 326 recognition of communicable diseases, and child abuse detection,  
 327 prevention, and reporting.  
 328 4. Providing, from among the funds provided for the  
 329 activities described in subparagraphs 1.-3., adequate funding  
 330 for infants and toddlers as necessary to meet federal  
 331 requirements related to expenditures for quality activities for  
 332 infant and toddler care.  
 333 5. Improving the monitoring of compliance with, and  
 334 enforcement of, applicable state and local requirements as  
 335 described in and limited by 45 C.F.R. s. 98.40.  
 336 6. Responding to Warm-Line requests by providers and  
 337 parents, including providing developmental and health screenings  
 338 to school readiness program children.  
 339 Section 8. Paragraph (a) of subsection (3) of section  
 340 1002.92, Florida Statutes, is amended to read:  
 341 1002.92 Child care and early childhood resource and  
 342 referral.—  
 343 (3) Child care resource and referral agencies shall provide  
 344 the following services:  
 345 (a) Identification of existing public and private child  
 346 care and early childhood education services, including child  
 347 care services by public and private employers, and the  
 348 development of a resource file of those services through the

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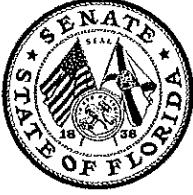
349 single statewide information system developed by the office  
350 under s. 1002.82(2)(p) ~~s. 1002.82(2)(n)~~. These services may  
351 include family day care, public and private child care programs,  
352 the Voluntary Prekindergarten Education Program, Head Start, the  
353 school readiness program, special education programs for  
354 prekindergarten children with disabilities, services for  
355 children with developmental disabilities, full-time and part-  
356 time programs, before-school and after-school programs, vacation  
357 care programs, parent education, the temporary cash assistance  
358 program, and related family support services. The resource file  
359 shall include, but not be limited to:

- 360 1. Type of program.
- 361 2. Hours of service.
- 362 3. Ages of children served.
- 363 4. Number of children served.
- 364 5. Program information.
- 365 6. Fees and eligibility for services.
- 366 7. Availability of transportation.

367 Section 9. For the 2018-2019 fiscal year, the sum of \$6  
368 million from the Child Care and Development Block Grant Trust  
369 Fund is appropriated to the Office of Early Learning to  
370 implement the provisions of s. 1002.82(2)(n), Florida Statutes,  
371 established by this act.

372 Section 10. This act shall take effect July 1, 2018.





The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Steube, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** January 31, 2018

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I respectfully request that **Senate Bill #1254**, relating to Early Learning, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

---

Senator Kathleen Passidomo  
Florida Senate, District 28

# APPEARANCE RECORD

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

2/6/18  
Meeting Date

1254  
Bill Number (if applicable)

Topic Early Learning

Amendment Barcode (if applicable)

Name DR. PHYLLIS KALIFEH

Job Title PRESIDENT & CEO

Address 2807 REMINGTON GREEN CIR

Phone 850-681-7002

JALAPASSIE, FL 32308  
City State Zip

Email pkalifeh@yahoo.com

Speaking:  For  Against  Information

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

Representing CHILDREN'S FORUM

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1254

Bill Number (if applicable)

Topic Early Learning

Amendment Barcode (if applicable)

Name Dr. Brittany Birken

Job Title CEO

Address 111 N. Gadsden Street

Phone (850) 212-0408

Tall City FL 32301 State Zip

Email bbirken@floridacs.org

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Florida Children's Council

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

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

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

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# APPEARANCE RECORD

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

2-6-18

Meeting Date

1254

Bill Number (if applicable)

Topic EARLY LEARNING

Amendment Barcode (if applicable)

Name TED GRANGER

Job Title PRESIDENT

Address 307 E 7<sup>th</sup> AVE

Phone 850-488-8276

Street

TAUNTAUSSEE

FL

32303

City

State

Zip

Email TGRANGER@UWOF.ORG

Speaking:  For  Against  Information

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

Representing UNITED WAY OF FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18  
Meeting Date

1254  
Bill Number (if applicable)

Topic EARLY LEARNING

Amendment Barcode (if applicable)

Name JESSICA SCHER

Job Title Director, Public Policy

Address 3250 SW 3rd Ave  
Street

Phone 305 322 6143

MIAMI FL 33129  
City State Zip

Email scherj@unitedway  
miami.org

Speaking:  For  Against  Information

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

Representing United Way of Miami-Dade

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/18  
Meeting Date

1254  
Bill Number (if applicable)

Topic EARLY LEARNING

Amendment Barcode (if applicable)

Name Tara Reid

Job Title Lobbyist

Address 200 W College Ave. Suite 202

Phone 386-530-0926

Tallahassee FL 32301  
City State Zip

Email treid@strategosgroup.com

Speaking:  For  Against  Information

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

Representing Children's Movement of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1316

INTRODUCER: Senator Simmons

SUBJECT: Uniform Voidable Transactions Act

DATE: February 5, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1316 conforms this state’s Uniform Fraudulent Transfer Act to the updated version of the model legislation it was based upon, which is now called the Uniform Voidable Transactions Act (UVTA). The UVTA, like its predecessor, governs a creditor’s recovery of assets that a debtor has transferred to another person for the purpose of avoiding using the assets to pay the debt.

The bill’s updates to the existing act include:

- Providing that a creditor making a claim has the burden of proving the elements of its claim by a preponderance of the evidence;
- Modifying the criteria used to determine whether partnerships are insolvent;
- Subjecting partnerships to the same solvency standard as other debtors; and
- Adding a provision that requires a claim for relief to be governed by the claims law of the jurisdiction in which the debtor is located when a transfer is made or an obligation is incurred.

The bill also specifies that each “protected series” in a “series organization,” as well as the organization itself, must be regarded as a separate business for the purpose of the UVTA. By way of context, a series organization is a limited liability corporation that is divided into several series, or cells, which for many purposes are treated as distinct entities.

Finally, the bill affects the timeframes for filing a lawsuit under the UVTA. Under current law, a claim based on a transaction that was allegedly done with the actual intent to hinder, delay, or defraud any creditor of the debtor generally must be filed within 4 years after the transaction. However, a claim may be outside this timeframe if it is filed within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant. But under the bill, this 1-year period does not begin to run until the wrongfulness of the transaction is discovered or reasonably could have been discovered.

## II. Present Situation:

According to the National Conference of Commissioners on Uniform State Laws, 45 states and the U.S. Virgin Islands have adopted the Uniform Fraudulent Transfer Act (“UFTA”).<sup>1</sup> This state enacted the UFTA in 1987<sup>2</sup> and codified it as ch. 726, F.S.

Chapter 726, F.S., provides redress to creditors by allowing them to recover assets from debtors who have fraudulently transferred assets to third parties or incurred obligations before or after a creditor’s claim arises. For example, s. 726.105(1), F.S., provides that a transfer is fraudulent as to a creditor if the debtor made the transfer:

- With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- Without receiving a reasonably equivalent value in exchange for the transfer or obligation, if the debtor also:
  - Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
  - Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

Section 726.105(2), F.S., authorizes a court to consider, among other factors, the 11 factors set forth in that subsection to determine whether a transfer of assets or taking on of an obligation was done “with actual intent to hinder, delay, or defraud a creditor.” For example, a court may consider whether the transfer or obligation was to an insider, whether the debtor retained possession or control of the property transferred after the transfer, and whether the transfer or obligation was disclosed or concealed.

Section 726.106, F.S., deems a debtor’s transfer to be fraudulent as to a creditor whose claim arose before the transfer was made if the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer, and:

- The debtor was insolvent at that time; or
- The debtor became insolvent as a result of the transfer or obligation.

Similar statutes have led to confusion in some courts in other jurisdictions that have adopted the UFTA. Courts have held that creditors must show intent to hinder, delay, or defraud by “clear and convincing evidence.” Additionally, some courts have shifted the burden to transferees to show a debtor is not insolvent.<sup>3</sup>

The UFTA also specifies the remedies available to a creditor harmed by a wrongful transfer or obligation. The chief remedy is the recovery of the transferred item or its value. Other remedies

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<sup>1</sup> UNIFORM LAW COMMISSION, THE UNIFORM VOIDABLE TRANSACTION ACT (2014 AMENDMENTS), <http://www.uniformlaws.org/shared/docs/fraudulent%20transfer/UVTA%20-%20Summary.pdf> (last visited Feb. 5, 2018).

<sup>2</sup> Chapter 87-79, Laws of Fla.

<sup>3</sup> Gary A. Foster, Eric C. Boughman, American Bar Association, *The Uniform Voidable Transactions Act: An Overview of Refinements to the Uniform Fraudulent Transfer Act*, [https://www.americanbar.org/publications/probate\\_property\\_magazine\\_2012/2015/july\\_august\\_2015/2015\\_aba\\_rpte\\_pp\\_v29\\_3\\_article\\_foster\\_boughman\\_uniform\\_voidable\\_transactions\\_act.html](https://www.americanbar.org/publications/probate_property_magazine_2012/2015/july_august_2015/2015_aba_rpte_pp_v29_3_article_foster_boughman_uniform_voidable_transactions_act.html) (last visited Feb. 2, 2018).



provided by the law are designed to facilitate this recovery and to cease further fraudulent transfers.<sup>4</sup>

These remedies are generally subject to a 4-year statute of limitations, unless otherwise specified. The UFTA contains some exceptions to the remedy of recovering an asset that was fraudulently transferred, primarily for any “person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.”<sup>5</sup>

In 2014, National Conference of Commissioners on Uniform State Laws amended the model version of the UFTA (as opposed to this state’s UFTA, codified in ch. 726, F.S.). The amendments included renaming the act as the “Uniform Voidable Transactions Act” (UVTA). A commenter argues that “the UVTA is not a new act; it is the UFTA, renamed and lightly amended.”<sup>6</sup> The UVTA has been adopted in 16 states and is under consideration in 2018 in five other states, including Florida.<sup>7</sup>

### III. Effect of Proposed Changes:

The bill conforms this state’s Uniform Fraudulent Transfer Act (UFTA) to the updated version of the model legislation on which it is based, which is now called the Uniform Voidable Transactions Act (UVTA).

#### Changes in Title and Style (Sections 1, 2, 5, and 6)

The changes made in **sections 1, 2, 5, and 6** change the name of the “Uniform Fraudulent Transfer Act” to the “Uniform Voidable Transactions Act,” change the chapter title from “Fraudulent Transfers” to “Voidable Transactions,” and replace the word “fraudulent” with “voidable” where applicable in the act.

#### Definitions (Section 3)

**Section 3** amends s. 726.102, F.S., regarding definitions for the UVTA. The bill adds the following definitions:

- “Claims law” means a fraudulent conveyance, fraudulent transfer, or voidable transfer laws or other laws of similar effect.
- “Electronic” means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- “Organization” means a person other than an individual.
- “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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<sup>4</sup> Section 726.108, F.S.

<sup>5</sup> Section 726.109(1), F.S.

<sup>6</sup> Kenneth C. Kettering, *The Uniform Voidable Transactions Act; or, the 2014 Amendments to the Uniform Fraudulent Transfer Act*, *The Business Lawyer*, Volume 70, Summer 2015 at p. 779.

<sup>7</sup> [http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Voidable%20Transactions%20Act%20Amendments%20\(2014\)%20-%20Formerly%20Fraudulent%20Transfer%20Act](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Voidable%20Transactions%20Act%20Amendments%20(2014)%20-%20Formerly%20Fraudulent%20Transfer%20Act) (last visited February 2, 2018).

- “Sign” means to execute or adopt a tangible symbol, or attach to or logically associate with the record an electronic symbol, sound, or process, with present intent to authenticate or adopt a record.

Also, the bill amends the definition of “person” to include limited partnership, business corporation, nonprofit business corporation, public corporation, limited liability company, limited cooperative association, unincorporated nonprofit association, common law business trust, statutory trust, and association joint venture.

#### **Insolvency (Section 4)**

**Section 4** amends s. 726.103, F.S., which sets forth what constitutes “insolvency” under the UVTA and under what circumstances a debtor will be presumed to be insolvent. Current law provides that a debtor is insolvent if the sum of the debtor’s debts is greater than all of the debtor’s assets at a fair valuation.<sup>8</sup> And a debtor is presumed to be insolvent if the debtor generally is not paying his or her debts as they become due.<sup>9</sup> However, the bill excepts persons who are not paying their debts as a result of a bona fide dispute from this presumption. Moreover, the bill specifies that the party against whom the presumption of insolvency is directed has the burden to prove that its solvency is more probable than its insolvency.

Under current law, s. 726.103(3), F.S., requires a different analysis to be used to determine whether a partnership is insolvent than it does to determine whether other persons are insolvent. A partnership is considered insolvent if the sum of the partnership’s debts is greater than the combined value of:

- All of the partnership’s assets; and
- The sum of the excess of the value of each general partner’s nonpartnership assets over the partner’s nonpartnership debts.

But, under the bill, a partnership is treated like any other person for the purposes of determining insolvency. Thus, under the bill, a partnership is insolvent if, at a fair valuation, the sum of the partnership’s debts is greater than the sum of the partnership’s assets.

#### **Burden and Standard of Proof (Sections 5 and 6)**

**Sections 5 and 6** amend ss. 726.105 and 726.106, F.S., to expressly state that a creditor has the burden to prove, by preponderance of the evidence, that a transfer is voidable.

#### **Defenses (Section 9)**

**Section 9** amends s. 726.109, F.S., which sets forth defenses for persons who engage in an allegedly voidable transfer and specifies from whom certain voidable transfer judgments may be recovered. Current law states that an allegedly fraudulent transfer cannot be undone if the transferee took what it received in good faith and in exchange for something of a reasonably

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<sup>8</sup> Section 726.103(1), F.S.

<sup>9</sup> Section 726.103(2), F.S.

equivalent value. For this protection to apply, the bill specifies that the item of reasonably equivalent value must be given to the debtor.

Current law provides that a creditor's recovery pursuant to a judgment for the asset transferred or the amount necessary to satisfy the creditor's claim is available against:

- The first transferee of the asset or the person for whose benefit the transfer was made; or
- Any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

Under the bill, a judgment may be entered against:

- The first transferee of the asset or the person for whose benefit the transfer was made; or
- Any subsequent transferee other than a good faith transferee that took for value or any good faith transferee that is subsequent to this person.

As such, the bill broadens the possibilities for recovery upon a judgement by authorizing recovery from bad faith transferees, no matter how remote they are from the first transfer. At the same time, the bill specifies that the persons specified are the only ones against whom recovery may be made.

Another defense provided in chapter 726, F.S., is that a transfer is not voidable if it results from enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code (UCC). The bill revises the defense related to the UCC by specifying that the defense does not include the acceptance of collateral in full or partial satisfaction of the obligation it secures.

The bill outlines who carries the burden of proving the defenses or right to attach judgments against transferees. Anyone seeking to invoke the defenses set forth in the UVTA has the burden of proving the applicability of that defense. A creditor has the burden of proving all the elements of its claim including proving the amount of its claim and the value of assets transferred at the time of their transfer. A good faith transferee has the burden of proving they are a good faith transferee or a mediate good faith transferee. And the standard of proof is a preponderance of the evidence.

### **Timeframes for Filing a Lawsuit (Section 10)**

Under current law, a claim based on a transaction that was allegedly done with the actual intent to hinder, delay, or defraud any creditor of the debtor must be filed within 4 years after the transaction, or if later, within 1 year after the transaction was or could reasonably have been discovered by the claimant.

But under the bill, this 1-year period does not begin to run until the wrongfulness of the transaction is or reasonably could have been discovered.

### **Governing Law for a Voidable Transaction Claim (Section 13)**

The bill creates s. 726.113, F.S., to specify that a claim for relief is governed by the law of the jurisdiction where the debtor is located when the transaction occurs. Furthermore, the bill

provides criteria for determining a debtor's location for purposes of determining which jurisdiction's law governs the claim:

- A debtor that is an individual is located at his or her principal residence.
- A debtor that is an organization and has only one place of business is located at its place of business.
- A debtor that is an organization and has more than one place of business is located at its chief executive office.

The bill does not affect a debtor's entitlement to homestead protections under the Florida Constitution.

### **Series Organizations (Section 14)**

A series organization is a limited liability corporation that is divided into several series, or cells, which for many purposes are treated as distinct entities. A series mechanism "creates an elastic single vehicle for operating multiple businesses or owning multiple properties in a limited liability environment."<sup>10</sup> It allows, for example, a limited liability company to designate specific assets to a specific series. Once designated, creditors of one series cannot look to the assets of another series even if the series are owned by the same limited liability company. This emulates creating multiple limited liability companies without actually doing so.<sup>11</sup> The bill creates s. 726.114, F.S., to specify how chapter 726, F.S., applies to series organizations. It defines "series organization" as "an organization that, pursuant to the law under which it is organized, has the following characteristics:

- The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of, or associated with, the protected series.
- Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of, or associated with, the protected series only, and not against the property of, or associated with, the organization or other protected series of the organization.
- Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of, or associated with, a protected series of the organization."

The bill provides that a series organization and each protected series of the organization is a separate person for purposes of the UVTA.

### **Electronic Signatures (Section 15)**

The Electronic Signatures in the Global and National Commerce Act of 2000 (E-Sign Act) "allows electronic signatures or documents to satisfy most existing legal requirements for written

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<sup>10</sup> Adam Hiller, *But Series-ly, Folks – The Series Laws and How They (May) Intersect with Bankruptcy Law*, 20 Am. Bankr. Inst. L. Rev. 353, 354 (2012).

<sup>11</sup> *Id.* at 354-355.

signatures, disclosures, or records” with respect to transactions of interstate or foreign commerce.<sup>12</sup> Accordingly, its main provision states:

- Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II), with respect to any transaction in or affecting interstate or foreign commerce—;
  - A signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
  - A contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

**Section 15** creates s. 726.115, F.S., to provide that the UVTA modifies, limits, and supersedes the E-Sign Act as a general matter but does not modify, limit, or supersede the portion of the Act that, in general terms, requires a consumer to consent to the use of electronic records and permits a consumer to withdraw its consent.<sup>13</sup>

### **Effective Date**

The effective date of the bill is July 1, 2018.

## **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.

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<sup>12</sup> Reed Smith LLP, *Reed Smith Client Alerts – Electronic Signatures in Global and National Commerce Act* (July 2000) <https://www.reedsmith.com/en/perspectives/2000/07/electronic-signatures-in-global-and-national-comm> (last visited February 3, 2018)

<sup>13</sup> See 15 U.S.C. § 7003(c)

**B. Private Sector Impact:**

The bill extends the timeframe for filing a lawsuit under the act to 1 year after the date on which the creditor knew or reasonably could have known of the wrongfulness of a transaction. As such, the bill could increase litigation and its associated costs. However, the bill may enable creditors to be made whole for their losses in more circumstances.

**C. Government Sector Impact:**

The bill extends the timeframe for filing a lawsuit under the act to 1 year after the date on which the creditor knew or reasonably could have known of the wrongfulness of a transaction. As such, the bill could increase litigation, thus increasing costs to the state court system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 726.101, 726.102, 726.103, 726.105, 726.106, 726.107, 726.108, 726.109, 726.110, 726.111, and 726.112.

This bill creates the following sections of the Florida Statutes: 726.113, 726.114, and 726.115.

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

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

None.

**B. Amendments:**

None.

By Senator Simmons

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1 A bill to be entitled  
 2 An act relating to the Uniform Voidable Transactions  
 3 Act; providing a directive to the Division of Law  
 4 Revision and Information; amending s. 726.101, F.S.;  
 5 revising a short title; amending s. 726.102, F.S.;  
 6 revising and defining terms; amending s. 726.103,  
 7 F.S.; removing conditions under which a partnership is  
 8 insolvent; imposing upon certain debtors the burden of  
 9 proving insolvency; amending ss. 726.105 and 726.106,  
 10 F.S.; imposing upon certain creditors the burden of  
 11 proving elements of a claim for relief; amending s.  
 12 726.107, F.S.; conforming provisions to changes made  
 13 by the act; amending s. 726.108, F.S.; providing  
 14 conditions under which attachments or other  
 15 provisional remedies are available to creditors;  
 16 amending s. 726.109, F.S.; revising the parties  
 17 subject to judgments for recovery of a creditor's  
 18 claim; revising conditions under which a transfer is  
 19 not voidable; imposing upon specified persons the  
 20 burden of proving certain applicability, claim  
 21 elements, and adjustments; providing requirements for  
 22 standard of proof; amending ss. 726.110, 726.111, and  
 23 726.112, F.S.; conforming provisions to changes made  
 24 by the act; creating s. 726.113, F.S.; providing that  
 25 claims for relief are governed by specified claims  
 26 law; creating s. 726.114, F.S.; defining terms;  
 27 providing applicability of specified provisions for  
 28 series organizations and the protected series of such  
 29 organizations; creating s. 726.115, F.S.; providing

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30 applicability of a specified federal act; providing an  
 31 effective date.  
 32  
 33 Be It Enacted by the Legislature of the State of Florida:  
 34  
 35 Section 1. The Division of Law Revision and Information is  
 36 directed to rename chapter 726, Florida Statutes, entitled  
 37 "FRAUDULENT TRANSFERS," as "VOIDABLE TRANSACTIONS."  
 38 Section 2. Section 726.101, Florida Statutes, is amended to  
 39 read:  
 40 726.101 Short title.—This act may be cited as the "Uniform  
 41 Voidable Transactions Fraudulent Transfer Act."  
 42 Section 3. Section 726.102, Florida Statutes, is amended to  
 43 read:  
 44 726.102 Definitions.—As used in this chapter ~~ss. 726.101-~~  
 45 ~~726.112~~:  
 46 (1) "Affiliate" means:  
 47 (a) A person that ~~who~~ directly or indirectly owns,  
 48 controls, or holds with power to vote, 20 percent or more of the  
 49 outstanding voting securities of the debtor, other than a person  
 50 that ~~who~~ holds the securities:  
 51 1. As a fiduciary or agent without sole discretionary power  
 52 to vote the securities; or  
 53 2. Solely to secure a debt, if the person has not in fact  
 54 exercised the power to vote;—  
 55 (b) A corporation 20 percent or more of whose outstanding  
 56 voting securities are directly or indirectly owned, controlled,  
 57 or held with power to vote, by the debtor or a person that ~~who~~  
 58 directly or indirectly owns, controls, or holds, with power to

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59 vote, 20 percent or more of the outstanding voting securities of  
 60 the debtor, other than a person that who holds the securities:  
 61 1. As a fiduciary or agent without sole discretionary power  
 62 to vote the securities; or  
 63 2. Solely to secure a debt, if the person has not in fact  
 64 exercised the power to vote; -  
 65 (c) A person whose business is operated by the debtor under  
 66 a lease or other agreement, or a person substantially all of  
 67 whose assets are controlled by the debtor; or  
 68 (d) A person that who operates the debtor's business under  
 69 a lease or other agreement or controls substantially all of the  
 70 debtor's assets.  
 71 (2) "Asset" means property of a debtor, but the term does  
 72 not include:  
 73 (a) Property to the extent it is encumbered by a valid  
 74 lien;  
 75 (b) Property to the extent it is generally exempt under  
 76 nonbankruptcy law; or  
 77 (c) An interest in property held in tenancy by the  
 78 entireties to the extent it is not subject to process by a  
 79 creditor holding a claim against only one tenant.  
 80 (3) "Charitable contribution" means a charitable  
 81 contribution as that term is defined in s. 170(c) of the  
 82 Internal Revenue Code of 1986, if that contribution consists of:  
 83 (a) A financial instrument as defined in s. 731(c)(2)(C) of  
 84 the Internal Revenue Code of 1986; or  
 85 (b) Cash.  
 86 (4) "Claim," except as used in "claim for relief," means a  
 87 right to payment, whether or not the right is reduced to

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88 judgment, liquidated, unliquidated, fixed, contingent, matured,  
 89 unmatured, disputed, undisputed, legal, equitable, secured, or  
 90 unsecured.  
 91 (5) "Claims law" means fraudulent conveyance, fraudulent  
 92 transfer, or voidable transfer laws or other laws of similar  
 93 effect.  
 94 (6)-(5) "Creditor" means a person that who has a claim.  
 95 (7)-(6) "Debt" means liability on a claim.  
 96 (8)-(7) "Debtor" means a person that who is liable on a  
 97 claim.  
 98 (9) "Electronic" means technology having electrical,  
 99 digital, magnetic, wireless, optical, electromagnetic, or  
 100 similar capabilities.  
 101 (10)-(8) "Insider" includes:  
 102 (a) If the debtor is an individual:  
 103 1. A relative of the debtor or of a general partner of the  
 104 debtor;  
 105 2. A partnership in which the debtor is a general partner;  
 106 3. A general partner in a partnership described in  
 107 subparagraph 2.; or  
 108 4. A corporation of which the debtor is a director,  
 109 officer, or person in control;  
 110 (b) If the debtor is a corporation:  
 111 1. A director of the debtor;  
 112 2. An officer of the debtor;  
 113 3. A person in control of the debtor;  
 114 4. A partnership in which the debtor is a general partner;  
 115 5. A general partner in a partnership described in  
 116 subparagraph 4.; or



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117 6. A relative of a general partner, director, officer, or  
 118 person in control of the debtor;~~;~~  
 119 (c) If the debtor is a partnership:  
 120 1. A general partner in the debtor;  
 121 2. A relative of a general partner in, a general partner  
 122 of, or a person in control of the debtor;  
 123 3. Another partnership in which the debtor is a general  
 124 partner;  
 125 4. A general partner in a partnership described in this  
 126 paragraph ~~subparagraph 3~~; or  
 127 5. A person in control of the debtor;~~;~~  
 128 (d) An affiliate, or an insider of an affiliate as if the  
 129 affiliate were the debtor; ~~and~~  
 130 (e) A managing agent of the debtor.  
 131 ~~(11)(9)~~ "Lien" means a charge against or an interest in  
 132 property to secure payment of a debt or performance of an  
 133 obligation, and includes a security interest created by  
 134 agreement, a judicial lien obtained by legal or equitable  
 135 process or proceedings, a common-law lien, or a statutory lien.  
 136 (12) "Organization" means a person other than an  
 137 individual.  
 138 ~~(13)(10)~~ "Person" means an individual;~~;~~ partnership;  
 139 limited partnership; business corporation; nonprofit business  
 140 corporation; public~~;~~ corporation;~~;~~ limited liability company;  
 141 limited cooperative association; unincorporated nonprofit  
 142 association;~~;~~ ~~organization~~, government or governmental  
 143 subdivision, instrumentality, or agency;~~;~~ business trust; common  
 144 law business trust; statutory trust;~~;~~ estate;~~;~~ trust;~~;~~  
 145 association; joint venture; or any other legal or commercial

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146 entity.  
 147 ~~(14)(11)~~ "Property" means anything that may be the subject  
 148 of ownership.  
 149 ~~(15)(12)~~ "Qualified religious or charitable entity or  
 150 organization" means:  
 151 (a) An entity described in s. 170(c)(1) of the Internal  
 152 Revenue Code of 1986; or  
 153 (b) An entity or organization described in s. 170(c)(2) of  
 154 the Internal Revenue Code of 1986.  
 155 (16) "Record" means information that is inscribed on a  
 156 tangible medium or that is stored in an electronic or other  
 157 medium and is retrievable in perceivable form.  
 158 ~~(17)(13)~~ "Relative" means an individual related by  
 159 consanguinity within the third degree as determined by the  
 160 common law, a spouse, or an individual related to a spouse  
 161 within the third degree as so determined, and includes an  
 162 individual in an adoptive relationship within the third degree.  
 163 (18) "Sign" or "signed" means, with present intent to  
 164 authenticate or adopt a record:  
 165 (a) To execute or adopt a tangible symbol; or  
 166 (b) To attach to or logically associate with the record an  
 167 electronic symbol, sound, or process.  
 168 ~~(19)(14)~~ "Transfer" means every mode, direct or indirect,  
 169 absolute or conditional, voluntary or involuntary, of disposing  
 170 of or parting with an asset or an interest in an asset, and  
 171 includes payment of money, release, lease, license, and creation  
 172 of a lien or other encumbrance.  
 173 ~~(20)(15)~~ "Valid lien" means a lien that is effective  
 174 against the holder of a judicial lien subsequently obtained by

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175 legal or equitable process or proceedings.

176 Section 4. Section 726.103, Florida Statutes, is amended to

177 read:

178 726.103 Insolvency.—

179 (1) A debtor is insolvent if, at a fair valuation, the sum

180 of the debtor's debts is greater than the sum ~~all~~ of the

181 debtor's assets ~~at a fair valuation~~.

182 (2) A debtor that ~~who~~ is generally not paying its ~~his or~~

183 ~~her~~ debts as they become due, for reasons other than as a result

184 of a bona fide dispute, is presumed to be insolvent. The party

185 against which the presumption is directed has the burden of

186 proving that the nonexistence of insolvency is more probable

187 than its existence.

188 ~~(3) A partnership is insolvent under subsection (1) if the~~

189 ~~sum of the partnership's debts is greater than the aggregate, at~~

190 ~~a fair valuation, of all of the partnership's assets and the sum~~

191 ~~of the excess of the value of each general partner's~~

192 ~~nonpartnership assets over the partner's nonpartnership debts.~~

193 ~~(3)(4)~~ Assets under this section do not include property

194 that has been transferred, concealed, or removed with intent to

195 hinder, delay, or defraud creditors or that has been transferred

196 in a manner making the transfer voidable under this chapter ~~ss.~~

197 ~~726.101-726.112~~.

198 ~~(4)(5)~~ Debts under this section do not include an

199 obligation to the extent it is secured by a valid lien on

200 property of the debtor not included as an asset.

201 Section 5. Section 726.105, Florida Statutes, is amended to

202 read:

203 726.105 Transfers or obligations voidable ~~fraudulent~~ as to

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204 present and future creditors.—

205 (1) A transfer made or obligation incurred by a debtor is

206 voidable ~~fraudulent~~ as to a creditor, whether the creditor's

207 claim arose before or after the transfer was made or the

208 obligation was incurred, if the debtor made the transfer or

209 incurred the obligation:

210 (a) With actual intent to hinder, delay, or defraud any

211 creditor of the debtor; or

212 (b) Without receiving a reasonably equivalent value in

213 exchange for the transfer or obligation, and the debtor:

214 1. Was engaged or was about to engage in a business or a

215 transaction for which the remaining assets of the debtor were

216 unreasonably small in relation to the business or transaction;

217 or

218 2. Intended to incur, or believed or reasonably should have

219 believed that the debtor ~~he or she~~ would incur, debts beyond the

220 debtor's ~~his or her~~ ability to pay as they became due.

221 (2) In determining actual intent under paragraph (1)(a),

222 consideration may be given, among other factors, to whether:

223 (a) The transfer or obligation was to an insider.

224 (b) The debtor retained possession or control of the

225 property transferred after the transfer.

226 (c) The transfer or obligation was disclosed or concealed.

227 (d) Before the transfer was made or obligation was

228 incurred, the debtor had been sued or threatened with suit.

229 (e) The transfer was of substantially all the debtor's

230 assets.

231 (f) The debtor absconded.

232 (g) The debtor removed or concealed assets.

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233 (h) The value of the consideration received by the debtor  
234 was reasonably equivalent to the value of the asset transferred  
235 or the amount of the obligation incurred.

236 (i) The debtor was insolvent or became insolvent shortly  
237 after the transfer was made or the obligation was incurred.

238 (j) The transfer occurred shortly before or shortly after a  
239 substantial debt was incurred.

240 (k) The debtor transferred the essential assets of the  
241 business to a lienor that ~~who~~ transferred the assets to an  
242 insider of the debtor.

243 (3) A creditor making a claim for relief under subsection  
244 (1) has the burden of proving the elements of the claim for  
245 relief by a preponderance of the evidence.

246 Section 6. Section 726.106, Florida Statutes, is amended to  
247 read:

248 726.106 Transfers or obligations voidable ~~fraudulent~~ as to  
249 present creditors.—

250 (1) A transfer made or obligation incurred by a debtor is  
251 voidable ~~fraudulent~~ as to a creditor whose claim arose before  
252 the transfer was made or the obligation was incurred if the  
253 debtor made the transfer or incurred the obligation without  
254 receiving a reasonably equivalent value in exchange for the  
255 transfer or obligation and the debtor was insolvent at that time  
256 or the debtor became insolvent as a result of the transfer or  
257 obligation.

258 (2) A transfer made by a debtor is voidable ~~fraudulent~~ as  
259 to a creditor whose claim arose before the transfer was made if  
260 the transfer was made to an insider for an antecedent debt, the  
261 debtor was insolvent at that time, and the insider had

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262 reasonable cause to believe that the debtor was insolvent.

263 (3) Subject to s. 726.103(2), a creditor making a claim for  
264 relief under subsection (1) or subsection (2) has the burden of  
265 proving the elements of the claim for relief by a preponderance  
266 of the evidence.

267 Section 7. Section 726.107, Florida Statutes, is amended to  
268 read:

269 726.107 When transfer made or obligation incurred.—For the  
270 purposes of this chapter ~~ss. 726.101-726.112~~:

271 (1) A transfer is made:

272 (a) With respect to an asset that is real property other  
273 than a fixture, but including the interest of a seller or  
274 purchaser under a contract for the sale of the asset, when the  
275 transfer is so far perfected that a good faith purchaser of the  
276 asset from the debtor against which ~~whom~~ applicable law permits  
277 the transfer to be perfected cannot acquire an interest in the  
278 asset that is superior to the interest of the transferee.

279 (b) With respect to an asset that is not real property or  
280 that is a fixture, when the transfer is so far perfected that a  
281 creditor on a simple contract cannot acquire a judicial lien  
282 otherwise than under this chapter ~~ss. 726.101-726.112~~ that is  
283 superior to the interest of the transferee.

284 (2) If applicable law permits the transfer to be perfected  
285 as provided in subsection (1) and the transfer is not so  
286 perfected before the commencement of an action for relief under  
287 this chapter ~~ss. 726.101-726.112~~, the transfer is deemed made  
288 immediately before the commencement of the action.

289 (3) If applicable law does not permit the transfer to be  
290 perfected as provided in subsection (1), the transfer is made

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291 when it becomes effective between the debtor and the transferee.

292 (4) A transfer is not made until the debtor has acquired  
293 rights in the asset transferred.

294 (5) An obligation is incurred:

295 (a) If oral, when it becomes effective between the parties;  
296 or

297 (b) If evidenced by a record writing, when the record  
298 signed writing ~~executed~~ by the obligor is delivered to or for  
299 the benefit of the obligee.

300 Section 8. Section 726.108, Florida Statutes, is amended to  
301 read:

302 726.108 Remedies of creditors.—

303 (1) In an action for relief against a transfer or  
304 obligation under this chapter ss. 726.101-726.112, a creditor,  
305 subject to the limitations in s. 726.109, may obtain:

306 (a) Avoidance of the transfer or obligation to the extent  
307 necessary to satisfy the creditor's claim;

308 (b) An attachment or other provisional remedy against the  
309 asset transferred or other property of the transferee if and to  
310 the extent available under ~~in accordance with~~ applicable law; or

311 (c) Subject to applicable principles of equity and in  
312 accordance with applicable rules of civil procedure:

313 1. An injunction against further disposition by the debtor  
314 or a transferee, or both, of the asset transferred or of other  
315 property;

316 2. Appointment of a receiver to take charge of the asset  
317 transferred or of other property of the transferee; or

318 3. Any other relief the circumstances may require.

319 (2) If a creditor has obtained a judgment on a claim

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320 against the debtor, the creditor, if the court so orders, may  
321 levy execution on the asset transferred or its proceeds.

322 Section 9. Section 726.109, Florida Statutes, is amended to  
323 read:

324 726.109 Defenses, liability, and protection of transferee  
325 or obligee.—

326 (1) A transfer or obligation is not voidable under s.  
327 726.105(1) (a) against a person that ~~who~~ took in good faith and  
328 for a reasonably equivalent value given the debtor or against  
329 any subsequent transferee or obligee.

330 (2) (a) Except as otherwise provided in this section, to the  
331 extent a transfer is voidable in an action by a creditor under  
332 s. 726.108(1) (a), the creditor may recover judgment for the  
333 value of the asset transferred, as adjusted under subsection  
334 (3), or the amount necessary to satisfy the creditor's claim,  
335 whichever is less. The judgment may be entered against:

336 1. ~~(a)~~ The first transferee of the asset or the person for  
337 whose benefit the transfer was made; or

338 2. ~~(b)~~ An immediate or mediate transferee of the first ~~Any~~  
339 ~~subsequent~~ transferee other than:

340 a. A good faith transferee that ~~who~~ took for value; or

341 b. An immediate or mediate good faith transferee of a  
342 person described in sub-subparagraph a ~~from any subsequent~~  
343 ~~transferee.~~

344 (b) Recovery pursuant to s. 726.108(1) (a) or (2) of or from  
345 the asset transferred or its proceeds, by levy or otherwise, is  
346 available only against a person described in subparagraph (a)1.  
347 or subparagraph (a)2.

348 (3) If the judgment under subsection (2) is based upon the

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349 value of the asset transferred, the judgment must be for an  
350 amount equal to the value of the asset at the time of the  
351 transfer, subject to adjustment as the equities may require.

352 (4) Notwithstanding voidability of a transfer or an  
353 obligation under this chapter ~~ss. 726.101-726.112~~, a good faith  
354 transferee or obligee is entitled, to the extent of the value  
355 given the debtor for the transfer or obligation, to:

356 (a) A lien on or a right to retain an ~~any~~ interest in the  
357 asset transferred;

358 (b) Enforcement of an ~~any~~ obligation incurred; or

359 (c) A reduction in the amount of the liability on the  
360 judgment.

361 (5) A transfer is not voidable under s. 726.105(1) (b) or s.  
362 726.106 if the transfer results from:

363 (a) Termination of a lease upon default by the debtor when  
364 the termination is pursuant to the lease and applicable law; or

365 (b) Enforcement of a security interest in compliance with  
366 Article 9 of the Uniform Commercial Code other than acceptance  
367 of collateral in full or partial satisfaction of the obligation  
368 it secures.

369 (6) A transfer is not voidable under s. 726.106(2):

370 (a) To the extent the insider gave new value to or for the  
371 benefit of the debtor after the transfer was made, except to the  
372 extent unless the new value was secured by a valid lien;

373 (b) If made in the ordinary course of business or financial  
374 affairs of the debtor and the insider; or

375 (c) If made pursuant to a good faith effort to rehabilitate  
376 the debtor and the transfer secured present value given for that  
377 purpose as well as an antecedent debt of the debtor.

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378 (7) (a) The transfer of a charitable contribution that is  
379 received in good faith by a qualified religious or charitable  
380 entity or organization is not a fraudulent transfer under s.  
381 726.105(1) (b) or s. 726.106(1).

382 (b) However, a charitable contribution from a natural  
383 person is a fraudulent transfer if the transfer was received on,  
384 or within 2 years before, the earlier of the date of  
385 commencement of an action under this chapter, the filing of a  
386 petition under the federal Bankruptcy Code, or the commencement  
387 of insolvency proceedings by or against the debtor under any  
388 state or federal law, including the filing of an assignment for  
389 the benefit of creditors or the appointment of a receiver,  
390 unless:

391 1. The transfer was consistent with the practices of the  
392 debtor in making the charitable contribution; or

393 2. The transfer was received in good faith and the amount  
394 of the charitable contribution did not exceed 15 percent of the  
395 gross annual income of the debtor for the year in which the  
396 transfer of the charitable contribution was made.

397 (8) (a) A party that seeks to invoke subsection (1),  
398 subsection (4), subsection (5), or subsection (6) has the burden  
399 of proving the applicability of that subsection.

400 (b) Except as otherwise provided in paragraphs (c) and (d),  
401 the creditor has the burden of proving each applicable element  
402 of subsection (2) or subsection (3).

403 (c) The transferee has the burden of proving the  
404 applicability to the transferee under subparagraph (2) (a) 2.

405 (d) A party that seeks adjustment under subsection (3) has  
406 the burden of proving the adjustment.

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407 (9) The standard of proof required to establish matters  
 408 referred to in this section is a preponderance of the evidence.

409 (10) The creditor has the burden of proving the requisite  
 410 elements of any claim under this chapter, as set forth in ss.  
 411 726.105(3) and 726.106(3).

412 Section 10. Section 726.110, Florida Statutes, is amended  
 413 to read:

414 726.110 Extinguishment of claim for relief ~~cause of~~  
 415 ~~action.~~ A claim for relief ~~cause of action~~ with respect to a  
 416 ~~fraudulent~~ transfer or obligation under this chapter ~~ss.~~  
 417 ~~726.101-726.112~~ is extinguished unless action is brought:

418 (1) Under s. 726.105(1)(a), within 4 years after the  
 419 transfer was made or the obligation was incurred or, if later,  
 420 within 1 year after the transfer or obligation and its wrongful  
 421 nature was or could reasonably have been discovered by the  
 422 claimant;

423 (2) Under s. 726.105(1)(b) or s. 726.106(1), within 4 years  
 424 after the transfer was made or the obligation was incurred; or

425 (3) Under s. 726.106(2), within 1 year after the transfer  
 426 was made or the obligation was incurred.

427 Section 11. Section 726.111, Florida Statutes, is amended  
 428 to read:

429 726.111 Supplementary provisions.—Unless displaced by the  
 430 provisions of this chapter ~~ss. 726.101-726.112~~, the principles  
 431 of law and equity, including the law merchant and the law  
 432 relating to principal and agent, estoppel, laches, fraud,  
 433 misrepresentation, duress, coercion, mistake, insolvency, or  
 434 other validating or invalidating cause, supplement those  
 435 provisions.

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436 Section 12. Section 726.112, Florida Statutes, is amended  
 437 to read:

438 726.112 Uniformity of application and construction.—Chapter  
 439 87-79, Laws of Florida, shall be applied and construed to  
 440 effectuate its general purpose to make uniform the law with  
 441 respect to the subject of the law among states enacting the law  
 442 ~~it~~.

443 Section 13. Section 726.113, Florida Statutes, is created  
 444 to read:

445 726.113 Governing law.—

446 (1) For the purposes of this section, the following  
 447 provisions determine a debtor's physical location:

448 (a) A debtor that is an individual is located at his or her  
 449 principal residence.

450 (b) A debtor that is an organization and has only one place  
 451 of business is located at its place of business.

452 (c) A debtor that is an organization and has more than one  
 453 place of business is located at its chief executive office.

454 (2) A claim for relief in the nature of a claim for relief  
 455 under this chapter is governed by the claims law of the  
 456 jurisdiction in which the debtor is located when the transfer is  
 457 made or the obligation is incurred.

458 (3) This section does not affect the governing law for any  
 459 other claims or issues between the parties arising outside of  
 460 this chapter or other claims law. If this section requires the  
 461 application of the claims law of a foreign jurisdiction, such a  
 462 determination does not affect which jurisdiction's exemption  
 463 laws apply, the availability of exemptions under applicable law,  
 464 or the debtor's entitlement to any protections afforded to the

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20181316\_\_

465 debtor's homestead under the Florida Constitution.

466 Section 14. Section 726.114, Florida Statutes, is created  
467 to read:

468 726.114 Application to series organization.-

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

470 (a) "Protected series" means an arrangement, however  
471 denominated, created by a series organization that, pursuant to  
472 the law under which the series organization is organized, meets  
473 the criteria set forth in paragraph (b).

474 (b) "Series organization" means an organization that,  
475 pursuant to the law under which it is organized, has the  
476 following characteristics:

477 1. The organic record of the organization provides for  
478 creation by the organization of one or more protected series,  
479 however denominated, with respect to specified property of the  
480 organization, and for records to be maintained for each  
481 protected series that identify the property of, or associated  
482 with, the protected series.

483 2. Debt incurred or existing with respect to the activities  
484 of, or property of or associated with, a particular protected  
485 series is enforceable against the property of, or associated  
486 with, the protected series only, and not against the property  
487 of, or associated with, the organization or other protected  
488 series of the organization.

489 3. Debt incurred or existing with respect to the activities  
490 or property of the organization is enforceable against the  
491 property of the organization only, and not against the property  
492 of, or associated with, a protected series of the organization.

493 (2) A series organization and each protected series of the

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494 organization is a separate person for purposes of this chapter,  
495 even if for other purposes a protected series is not a person  
496 separate from the organization or other protected series of the  
497 organization. Provisions of law other than this chapter  
498 determine whether and to what extent a series organization and  
499 each protected series of the organization is a separate person  
500 for purposes other than the purposes of this chapter.

501 Section 15. Section 726.115, Florida Statutes, is created  
502 to read:

503 726.115 Relation to Electronic Signatures in Global and  
504 National Commerce Act.-This chapter modifies, limits, and  
505 supersedes the federal Electronic Signatures in Global and  
506 National Commerce Act, 15 U.S.C. ss. 7001, et seq., but does not  
507 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.  
508 7001(c), or authorize electronic delivery of any of the notices  
509 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

510 Section 16. This act shall take effect July 1, 2018.



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Steube, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** January 30, 2018

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I respectfully request that **Senate Bill 1316**, relating to Uniform Voidable Transactions Act, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

---

Senator David Simmons  
Florida Senate, District 9



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/6/18

Meeting Date

SB 1316

Bill Number (if applicable)

Topic Uniform Voidable Transfers Act

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Relations

Address 1001 Thomasville Rd, Ste 201

Phone 850-509-8020

Street

Tallahassee

FL

32301

City

State

Zip

Email kpratt@floridabankers.com

Speaking:  For  Against  Information

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

Representing Florida Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

# APPEARANCE RECORD

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

2/6/18

Meeting Date

SB 1316

Bill Number (if applicable)

Topic Uniform Voidable Transactions Act

Amendment Barcode (if applicable)

Name Jay Brown

Job Title \_\_\_\_\_

Address 50 N. Lanna St., Suite 3100

Phone 904 798 3700

Street

Jacksonville FL 32202

Email jacob.brown@ahermon.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing the Business Law Section of the Florida Bar

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-6-18

Meeting Date

1316

Bill Number (if applicable)

Topic SB 1316

Amendment Barcode (if applicable)

Name Stephen Shiver

Job Title Partner - CARDENAS Partners

Address 204 S Monroe St

Phone 850 222 8900

Street

Tallahessa FL 32201

City

State

Zip

Email ss@CardenasPartners.com

Speaking:  For  Against  Information

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

Representing TAX Section - FL BAR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/18

*Meeting Date*

1316

*Bill Number (if applicable)*

Topic \_\_\_\_\_

*Amendment Barcode (if applicable)*

Name Martha Edenfield

Job Title \_\_\_\_\_

Address 215 S. Monroe Street #815

Phone 850-999-4100

*Street*

Tallahassee

FL

32301

Email medenfield@comcast.net

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing The Real Property, Probate and Trust Law Section of the Florida Bar

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1862

INTRODUCER: Senator Broxson

SUBJECT: Physician Fee Sharing

DATE: February 5, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SB 1862 provides two new exceptions to the statutes that prohibit allopathic<sup>1</sup> and osteopathic<sup>2</sup> physicians from entering into fee-splitting arrangements or from receiving any commission, bonus, kickback, or rebate for patients who are referred for health care goods and services. The exceptions created by the bill:

- Allow an allopathic or osteopathic physician to enter into an alternative payment arrangement that otherwise complies with state and federal law; and
- If the compensation payments comply with state and federal law, allow a physician who is an employee or independent contractor of the entity compensating the physician to receive a share of:
  - Profits, collections, or revenues based on the professional services provided by the physician, or directly supervised by the physician, which are provided on behalf of the entity compensating the physician; or
  - Overall profit or revenue of the entity compensating the physician as long as the share is not determined in a manner that directly takes into account the volume or value of services ordered by the physician but not performed by the physician or under the supervision of the physician.

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<sup>1</sup> Physicians are licensed under ch. 458, F.S. Physicians who are not osteopathic physicians are sometimes referred to as allopathic physicians.

<sup>2</sup> Osteopathic physicians are licensed under ch. 459 F.S.

## II. Present Situation:

### The Patient Self-Referral Act of 1992

Section 456.053, F.S., entitled the “Patient Self-Referral Act of 1992,” was enacted by the Legislature to safeguard the people of Florida from unnecessary and costly health care expenditures while providing guidance to health care providers on prohibited patient referrals.<sup>3</sup> The Act applies to any physician licensed under chapters 458, 459, 460, or 461, F.S., or any health care provider licensed under chapter 463 or 466, F.S.<sup>4</sup>

The Act has differing limitations and prohibitions on patient referrals depending on the type of health care service to be provided as follows:

- A health care provider may not refer a patient for the provision of designated health services<sup>5</sup> to an entity in which the health care provider is an investor<sup>6</sup> or has an investment interest.<sup>7,8</sup>
- A health care provider may not refer a patient for the provision of any other health care services or items (non-designated health services) to an entity in which the health care provider is an investor unless:<sup>9</sup>
  - For entities whose shares are publicly traded:
    - The provider’s investment interest is in registered securities purchased over a national exchange or over-the-counter market; and
    - The entity’s total assets at the end of the last fiscal quarter exceed \$50 million;
  - For entities whose shares are not publicly traded:
    - No more than 50 percent of the value of the investment interests are held by investors in a position to make referrals to the entity;
    - The terms of an investment interest offered to an investor are the same regardless of whether the investor is in a position to make referrals;
    - The terms offered to an investor are not related to the previous or expected volume of referrals; and
    - There is no requirement that an investor refer patients to the entity as a condition for becoming or remaining an investor.

<sup>3</sup> Section 456.053(2), F.S.

<sup>4</sup> Allopathic, osteopathic, chiropractic, and podiatric physicians, certified optometrists, and dentists are health care providers under the Act.

<sup>5</sup> Section 456.053(3)(c), F.S., defines “designated health services” as clinical laboratory services, physical therapy services, comprehensive rehabilitative services, diagnostic-imaging services, and radiation therapy services.

<sup>6</sup> Section 456.053(3)(l), F.S., defines “investor” as a person or entity owning a legal or beneficial ownership or investment interest, directly or indirectly, including, without limitation, through an immediate family member, trust, or another entity related to the investor within the meaning of 42 C.F.R. s. 413.17, in an entity.

<sup>7</sup> Section 456.053(3)(k), F.S., defines “investment interest” to include an equity or debt security issued by an entity, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instrument. Certain investment interests are excepted from the definition including an investment interest in a sole provider of health care services in a rural area; an investment interest in the form of certain notes, bonds, debentures, or other debt instruments that matured prior to Oct. 1, 1996; an investment interest in real property resulting in a landlord-tenant relationship between the entity and the referring healthcare provider unless the rent is determined by the volume of referrals; and an investment interest in an entity which owns or leases and operates a hospital or nursing home.

<sup>8</sup> Section 456.053(5)(a), F.S. Offices providing radiation therapy services are exempt from these requirements if they were in business before April 1, 1991. (*See s. 456.053(5)(i)*, F.S.).

<sup>9</sup> Section 456.053(5)(b), F.S.

- Entities accepting outside referrals for diagnostic imaging must meet additional conditions including conditions for the physician make-up of the solo or group practice as well as physician performance of diagnostic imaging services, conditions on billing practices, restrictions on contracting with outside providers, and conditions on reporting accepted outside referrals to the Agency for Health Care Administration (AHCA).<sup>10</sup>

A health care provider who refers a patient to an entity that the health care provider has an investment interest in must disclose such interest to the patient on a written form that details the patient's right to obtain the services elsewhere along with at least two alternative sources from which the patient could receive the services.<sup>11</sup>

A health care provider found to have violated the Act could be subject to one or more disciplinary actions or penalties including:

- A penalty of up to \$100,000 for each arrangement if a health care provider or other entity enters into an arrangement that has the principal purpose of assuring referrals between the provider and the entity.<sup>12</sup>
- Discipline by his or her appropriate board and hospitals are subject to penalties imposed by the AHCA.<sup>13</sup>
- Being charged with a first degree misdemeanor and subject to additional penalties and disciplinary action by his or her respective board if a health care provider fails to comply with the notice provisions of the Act and s. 456.052, F.S.<sup>14</sup>

A claim for payment for a service provided pursuant to a referral prohibited by the Act may not be made and any such payments received must be refunded. Additionally, any person who knows or should know that such a claim is prohibited and who presents or causes to be presented such a claim, is subject to a fine of up to \$15,000 per service to be imposed and collected by that person's regulatory board.<sup>15</sup>

### **The Federal Stark Law**

The federal Physician Self-Referral Law,<sup>16</sup> also known as the Stark law, is similar to the Act. It prohibits a physician from referring Medicare or Medicaid patients to an entity that provides designated health services if the physician or his or her immediate family member has a financial relationship with the entity, unless an exception applies.<sup>17</sup> Under Stark, designated health services include:

- Clinical laboratory services;
- Physical therapy, occupational therapy, and outpatient speech-language pathology services;
- Radiology and certain other imaging services;

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<sup>10</sup> Section 456.053(4), F.S.

<sup>11</sup> Sections 456.053(5)(j) and 456.052, F.S.

<sup>12</sup> Section 456.053(5)(f), F.S.

<sup>13</sup> Section 456.053(5)(g), F.S.

<sup>14</sup> Section 456.052(3), F.S.

<sup>15</sup> Section 456.053(5)(c)-(e), F.S.

<sup>16</sup> 42 U.S.C. s. 1395nn.

<sup>17</sup> U.S. Dept. of Health & Human Services, Office of the Inspector General: *A Roadmap for New Physicians: Fraud and Abuse Laws*, available at <http://oig.hhs.gov/compliance/physician-education/01laws.asp>, (last visited Feb. 1, 2018).

- Radiation therapy services and supplies;
- Durable medical equipment and supplies;
- Parenteral and enteral nutrients, equipment, and supplies;
- Prosthetics, orthotics, and prosthetic devices and supplies;
- Home health services;
- Outpatient prescription drugs; and
- Inpatient and outpatient hospital services.<sup>18</sup>

The Stark law, in legal terms, is a strict liability statute. This means that liability does not depend on proof of a specific intent to violate the law. Stark prohibits someone from submitting, or causing someone to submit, claims that violate the law's restrictions on referrals. The penalties for physicians who violate this law include fines and exclusion from participating in the Federal health care programs.<sup>19</sup>

The exceptions to Stark's self-referral prohibitions include:

- Exceptions for certain services:
  - Most referrals of a patient for physician's services and in-office ancillary services provided by the same physician or another physician in the same group practice; and
  - Referrals for services furnished by an organization that has a contract with a health maintenance organization or a prepaid health plan.<sup>20</sup>
- Exceptions related to ownership or investment interests:
  - Ownership of investment securities that are publically traded and held in a corporation having equity exceeding \$75 million on average during the previous 3 fiscal years and which were purchased on terms generally available to the public; and
  - Ownership of shares in an investment company if the company has total assets exceeding \$75 million on average during the previous 3 fiscal years.<sup>21</sup>
  - Ownership of certain hospitals including hospitals in Puerto Rico, in rural areas, and certain hospitals in which the referring physician is authorized to perform services.<sup>22</sup>
- Exceptions related to other compensation arrangements:
  - The rental of office space or equipment with terms that are consistent with fair market value and without consideration of any past or future referrals made between the parties;
  - Bona fide employment relationships with remuneration that does not take into account the volume or value of referrals by the referring physician;
  - Personal services arrangements with terms that do not exceed fair market value and do not take into account the volume or value of any referrals or other business generated between the parties;
  - Physician incentive plans if no specific payment is made to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the entity;

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<sup>18</sup> 42 U.S.C. s. 1395nn(h)(6). When compared to Florida law, it can be seen that the list of designated health services under Stark includes the services listed as designated health services under the Act but also includes additional services not included in Florida law.

<sup>19</sup> See supra note 17.

<sup>20</sup> 42 U.S.C. s. 1395nn(b).

<sup>21</sup> 42 U.S.C. s. 1395nn(c).

<sup>22</sup> 42 U.S.C. s. 1395nn(d).



- Remuneration provided by a hospital to a physician that is unrelated to designated health services;
- Physician recruitment bonuses paid by a hospital that do not take into account the volume or value of referrals;
- Certain isolated transactions;
- Certain group practice arrangements made with hospitals that began before December 19, 1989; and
- Payments made by a physician for laboratory services or other items or services if paid at fair market value.<sup>23</sup>

### **Additional Restrictions on Agreements between Referring Health Care Providers and Providers of Health Care Services**

#### ***Federal and State Anti-Kickback Statutes***

Both Florida and Federal law include a prohibition on providing any sort of kickback for the referral of patients from a health care provider to a licensed facility. Section 395.0185, F.S., prohibits any person from paying a commission, bonus, kickback, or rebate or engaging in any form of split-fee arrangement with a physician, surgeon, organization, or person for patients referred to a licensed facility. The AHCA is required to enforce the provisions of the law and, if the violator is not licensed by the AHCA, the law authorizes the AHCA to impose a fine of up to \$1,000, and if applicable, to recommend disciplinary action to the appropriate licensing board. Section 456.054, F.S., prohibits a health care provider or provider of health care services to offer, pay, solicit, or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.<sup>24</sup>

Federal law also prohibits payments for the referral of an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made under a Federal health care program.<sup>25</sup> A violation of the federal anti-kickback statute is punishable as a felony and a fine of not more than \$25,000, or up to 5 years imprisonment, or both. However, there are several exceptions to the federal statute including, but not limited to:

- Discounts properly disclosed and appropriately reflected in the costs claimed and charges made by the provider or entity;
- Payments between employers and employees for employment in the provision of covered items or services;
- Certain amounts paid to vendors;
- Waivers of co-insurance; and
- The waiver of any cost-sharing provisions by a pharmacy.

#### ***Anti-Trust Laws***

Additionally, both Florida and Federal law prohibit price-fixing and unfair trade practices which may be applicable to certain relationships between referring health care providers and providers

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<sup>23</sup> 42 U.S.C. s. 1395nn(e).

<sup>24</sup> Violations of this section are considered patient brokering and are punishable as provided in s. 817.505, F.S., which can include criminal penalties (felony of the third degree) and other civil, administrative, or criminal penalties.

<sup>25</sup> 42 U.S.C. s. 1320a-7b(b)(2)(A).

of health care services. The Florida Deceptive and Unfair Trade Practices Act<sup>26</sup> generally prohibits unfair methods of competition, as well as deceptive acts or practices, in the conduct of trade or commerce. Also, Federal anti-trust laws, including the Sherman Act, generally prohibit unreasonable restraints on fair trade created by contract, combination, or conspiracy.<sup>27</sup>

***Sections 458.331(1)(i) and 459.015(1)(j), F.S.***

In addition to the prohibitions detailed above, the practice acts for both allopathic and osteopathic physicians include a restriction against referring patients for compensation. These sections restrict a physician from paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies.<sup>28</sup>

These sections have been interpreted by the courts to prohibit an employer from sharing profits with a physician employee. In *Crow v. the Agency for Health Care Administration*, the Florida Fifth District Court of Appeal found that “[t]o the extent that the arrangement proposed by Petitioner would provide for either a salary or a year-end bonus based upon total revenues generated by Petitioner for [the employer], such an arrangement would be in violation of the prohibition set forth in Subsection 458.331(1)(i), Florida Statutes.”<sup>29</sup> This interpretation is narrower than other state and federal laws (detailed above) that provide exceptions in certain situations, such as for health care practitioners in a group practice.

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

SB 1862 provides two new exceptions to the prohibition against allopathic physicians<sup>30</sup> and osteopathic physicians entering into fee-splitting arrangements or receiving any commission, bonus, kickback, or rebate for patients who are referred for health care goods and services. The exceptions created by the bill:

- Allow an allopathic and osteopathic physician to enter into an alternative payment arrangement that otherwise complies with state and federal law; and
- If the compensation payments comply with state and federal law, allow a physician who is an employee or independent contractor of the entity compensating the physician to receive a share of:
  - Profits, collections, or revenues based on the professional services provided by the physician, or directly supervised by the physician, which are provided on behalf of the entity compensating the physician; or
  - Overall profit or revenue of the entity compensating the physician as long as the share is not determined in a manner that directly takes into account the volume or value of services ordered by the physician but not performed by the physician or under the supervision of the physician.

<sup>26</sup> Sections 501.201 and 501.204, F.S.

<sup>27</sup> Federal Trade Commission, *The Antitrust Laws*, available at: <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws>, (last visited Feb. 1, 2018).

<sup>28</sup> Section 817.505, F.S., has a similar prohibition related to patient brokering.

<sup>29</sup> See *Crow v. Agency for Health Care Administration*, 669 So. 2d 1160, 1162 (Fla. 5th DCA 1996).

<sup>30</sup> Licensed under ch. 458, F.S.

The effective date of the bill is July 1, 2018.

**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:

Physicians and employers may see an indeterminate fiscal impact from being authorized to enter into compensation arrangements allowed by the bill.

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: 458.331 and 459.015.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None

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

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By Senator Broxson

1-00805A-18

20181862\_\_

A bill to be entitled

An act relating to physician fee sharing; amending ss. 458.331 and 459.015, F.S.; revising an exemption relating to grounds for disciplinary action by the Boards of Medicine and Osteopathic Medicine and the Department of Health to authorize specified forms of payment to a physician or osteopathic physician, respectively; providing an effective date.

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

Section 1. Paragraph (i) of subsection (1) of section 458.331, Florida Statutes, is amended to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(i) Paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. ~~The provisions of~~ This paragraph ~~may shall~~ not be construed to preclude a physician from entering into an alternative payment arrangement that otherwise complies with federal and state law or to preclude prevent a physician from receiving one or more of the following forms of payment or compensation, as long as the forms

Page 1 of 3

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

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of payment or compensation comply with federal and state law:

1. A fee for professional consultation services; or  
2. If the physician is an employee or independent contractor of the entity compensating the physician, a share of:  
a. Profits, collections, or revenues based on the professional services provided by the physician, or on his or her direct supervision of the provision of such professional services, which are provided on behalf of the entity compensating the physician; or  
b. Overall profit or revenue of the entity compensating the physician, provided that such share is not determined in a manner that directly takes into account the volume or value of services ordered by, but not performed by, or performed under the direct supervision of, the physician.

Section 2. Paragraph (j) of subsection (1) of section 459.015, Florida Statutes, is amended to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(j) Paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, person, partnership, firm, corporation, or other business entity, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. ~~The provisions of~~ This paragraph ~~may shall~~ not be construed to preclude an osteopathic physician from entering

Page 2 of 3

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

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59 into an alternative payment arrangement that otherwise complies  
60 with federal and state law or to preclude ~~prevent~~ an osteopathic  
61 physician from receiving one or more of the following forms of  
62 payment or compensation, as long as the forms of payment or  
63 compensation comply with federal and state law:

64 1. A fee for professional consultation services; or

65 2. If the osteopathic physician is an employee or

66 independent contractor of the entity compensating the  
67 osteopathic physician, a share of:

68 a. Profits, collections, or revenues based on the  
69 professional services provided by the osteopathic physician, or  
70 on his or her direct supervision of the provision of such  
71 professional services, which are provided on behalf of the  
72 entity compensating the osteopathic physician; or

73 b. Overall profit or revenue of the entity compensating the  
74 osteopathic physician, provided that such share is not  
75 determined in a manner that directly takes into account the  
76 volume or value of services ordered by, but not performed by, or  
77 performed under the direct supervision of, the osteopathic  
78 physician.

79 Section 3. This act shall take effect July 1, 2018.



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Steube, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** January 31, 2018

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I respectfully request that **Senate Bill 1862**, relating to Physician Fee Sharing, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Doug Broxson".

---

Senator Doug Broxson  
Florida Senate, District 1

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1862

Bill Number (if applicable)

Topic Physician Fee Sharing

Amendment Barcode (if applicable)

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

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

Representing Florida Chapter, American College of Physicians

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

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

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

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



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2/6/18  
Meeting Date

1862  
Bill Number (if applicable)

Topic Physician Fee Sharing

Amendment Barcode (if applicable)

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Speaking:  For  Against  Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2-6

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

1862

Meeting Date

Bill Number (if applicable)

Topic Physician Fee Sharing

Amendment Barcode (if applicable)

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

Representing Florida Medical Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/6/18

Meeting Date

1862

Bill Number (if applicable)

Topic Physician Fee Sharing

Amendment Barcode (if applicable)

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

Representing Adventist Health / Florida Hospital

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 590

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Garcia and others

SUBJECT: Child Welfare

DATE: February 6, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 590 makes a number of changes to the laws relating to relative and nonrelative caregivers for children in out-of-home foster care. The most significant changes required by the bill are as follows:

- Creation of s. 39.4015, F.S., implementing Family Finding Programs by the Department of Children and Families (DCF or the department), sheriffs' offices that conduct child protective investigations, or community-based care lead agencies to identify relatives that may become caregivers for children of family members placed in out-of-home care.
- Court determination at each judicial hearing throughout the dependency process that the DCF or other appropriate agency engaged in family finding.
- Renaming of the Relative Caregiver Program to the Kinship Care Program and recognition of "fictive kin," a person unrelated to a child by blood but who is so close to the child to be regarded as kin.
- Payments to relatives or qualifying nonrelatives are no longer delayed and begin when the child comes into a relative's or qualifying nonrelative's care at the current relative caregiver rate under s. 39.5085, F.S.
- Establishment of Kinship Navigator Programs by community-based care lead agencies to provide support and assistance to relative and nonrelative caregivers.

The bill also amends the Rilya Wilson Act, s. 39.604, F.S. as follows:

- To provide an alternative to fulltime enrollment in a childcare program for foster children under the age of three whose caregiver stays home all day or works less than fulltime.
- To require that children under age five who are victims of substantiated child abuse or neglect be referred for an early intervention assessment by Early Steps or Florida Diagnostic & Learning Resources System (FDLRS) Child Find as appropriate.
- To appoint a surrogate parent to make educational decisions if appropriate, and provides for educational stability and transitions.

The bill is expected to have both a negative and positive fiscal impact on state government.

Sections 1, 5, and 10 of the bill have an effective date of January 1, 2019, and the remainder of the bill has an effective date of July 1, 2018.

## II. Present Situation:

### Relative and Nonrelative Caregivers

When children cannot remain safely with their parents, placement with relatives is preferred over placement in foster care with nonrelatives. Caseworkers try to identify and locate a relative or relatives who can safely care for the children while parents receive services to help them address the issues that brought the children to the attention of child welfare. Placement with relatives—or kinship care—provides permanency for children and helps them maintain family connections. Kinship care is the raising of children by grandparents, other extended family members, and non-relative adults with whom they have a close, family-like relationship, such as godparents and close family friends.<sup>1</sup>

Kinship care may “be formal and involve a training and licensure process for the caregivers, monthly payments to help defray the costs of caring for the [child], and support services[.]”<sup>2</sup> Kinship care also may “be informal” and “involve only an assessment process to ensure the safety and suitability of the home along with supportive services for the child and caregivers.”<sup>3</sup> “Approximately one-fourth of [the] children in out-of-home care are living with relatives.”<sup>4</sup>

According to the National Conference of State Legislatures,

Nearly 3 million American children are cared for by relatives other than their parents. Child welfare agencies in many states rely on extended families,

<sup>1</sup> U.S. Department of Health & Human Services, Administration for Children & Families, Children’s Bureau, Child Welfare Information Gateway, *About Kinship Care*, <https://www.childwelfare.gov/topics/outofhome/kinship/about/> (last visited Feb. 4, 2018).

<sup>2</sup> JOHN MCCLENNEN, PHD, *SOCIAL WORK AND FAMILY VIOLENCE THEORIES, ASSESSMENT, AND INTERVENTION* at 88, (Springer Publishing Co., LLC, 2010), <https://books.google.com/books?id=nHHWSsUvXwwC&pg=PA88&lpg=PA88&dq=one-fourth+of+the+children+in+out-of-home+care+are+living+with+relatives&source=bl&ots=0w8X1YFtl0&sig=qdPfe5h2r0l8t3YR2zxN3rce5mQ&hl=en&sa=X&ved=0ahUKEwikze--io3ZAhWprFkKHV5wCJUQ6AEIPDAD#v=onepage&q=one-fourth%20of%20the%20children%20in%20out-of-home%20care%20are%20living%20with%20relatives&f=false> (last visited Feb. 4, 2018).

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

<sup>4</sup> *Id.*

primarily grandparents, to provide homes for children who cannot safely remain with their parents. In fact, relatives care for 27 percent of children in foster care—about 107,000—according to the Adoption and Foster Care Analysis and Reporting System.<sup>5</sup>

In Florida, a point in time count as of December 31, 2017, showed there were 24,069 children in out-of-home care. More than half of those children, 13,579, were placed with approved relatives and “fictive kin” non-relatives,<sup>6</sup> while 10,490 were placed in licensed foster care, group care, or in another placement.<sup>7</sup>

### **Relative Caregiver Program**

The Relative Caregiver Program was established in 1998<sup>8</sup> for the purpose of recognizing the importance of family relationships and providing additional placement options and incentives to help achieve permanency and stability for many children who are otherwise at risk of foster care placement. The program provides financial assistance to qualified relatives. Within available funding, the Relative Caregiver Program is also required to provide caregivers with family support and preservation services, school readiness assistance, and other available services in order to support the child’s safety, growth, and healthy development. Children living with caregivers who are receiving assistance under the program are also eligible for Medicaid coverage.<sup>9</sup>

In 2014,<sup>10</sup> the Legislature expanded the Relative Caregiver Program to include nonrelatives who a child may have a close relationship with who are not a blood relative or a relative by marriage. Those nonrelatives are eligible for financial assistance if they are able and willing to care for the child and provide a safe, stable home environment. The court must find that a proposed placement is in the best interest of the child.<sup>11</sup>

Under the Relative Caregiver Program, the statewide average monthly rate for children placed by the court with relatives or nonrelatives who are not licensed as foster homes may not exceed 82 percent of the statewide average foster care rate. Additionally, the cost of providing the assistance to any caregiver in the program may not exceed the cost of providing out-of-home care in emergency shelter or foster care.<sup>12</sup>

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<sup>5</sup> National Conference of State Legislatures, *Supporting Relative Caregivers of Children* (Feb. 13, 2017), <http://www.ncsl.org/research/human-services/relative-caregivers.aspx> (last visited Feb. 4, 2018).

<sup>6</sup> “Fictive kin” is defined by the bill in section 1 (s. 39.4015(2)(d)) as “an individual who is unrelated to the child by either birth or marriage, but has such a close emotional relationship with the child that he or she may be considered part of the family.”

<sup>7</sup> Florida Department of Children and Families, *Children in Out-of-Home Care – Statewide* (Jan. 10, 2018), <http://www.dcf.state.fl.us/programs/childwelfare/dashboard/c-in-ooh.shtml> (last visited Feb. 4, 2018).

<sup>8</sup> Ch. 1998-78, Laws of Fla.

<sup>9</sup> Section 39.5085, F.S.

<sup>10</sup> Ch. 2014-224, Laws of Fla.

<sup>11</sup> Section 39.5085(2)(a)3., F.S.

<sup>12</sup> Section 39.5085(2)(d), F.S.

**Financial Assistance**

The Relative Caregiver Program also provides monthly cash assistance to relatives who meet eligibility rules and have custody of a child under age 18 who has been adjudicated dependent by a Florida court and placed in their home by the Department of Children and Families Child Welfare/Community Based Care (CW/CBC) contracted provider.<sup>13</sup> As demonstrated by the charts below, the monthly cash assistance amount is higher than the Temporary Cash Assistance for one child, but less than the amount paid for a child in the foster care program.

Monthly cash assistance:

Age of Child	Relative and Nonrelative Caregivers <sup>14</sup>	Foster Parents <sup>15</sup>	Residential Group Home Placement <sup>16</sup>
Age 0 through 5 years	\$242	\$439	\$3,355 per month average <sup>17</sup>
Age 6 through 12 years	\$249	\$451	
Age 13 through 18 years	\$298	\$527	
<b>These are monthly benefit amounts per child</b>			

Temporary cash assistance for relative caregivers:

Number of Children	Monthly Benefit
1	\$180
2	\$241
3	\$303
<b>These are monthly benefit amounts per total number of children<sup>18</sup></b>	

Additionally, while reimbursement for children in foster care or in residential group homes begins at the time the child is placed, the monthly benefit payment for relative and nonrelative caregivers does not begin until the child has been adjudicated dependent.<sup>19</sup> Adjudication typically takes 2 months to a year. During this time, a nonrelative caregiver receives *no* benefit and a relative caregiver may be eligible only for temporary cash assistance if in close enough

<sup>13</sup> Section 39.5085, F.S.

<sup>14</sup> Fla. Admin. Code Ann. r. 65C-28.008 (2018). Department of Children and Families, *Temporary Cash Assistance Fact Sheet*, 5-6 (July 2012), <http://www.dcf.state.fl.us/programs/access/docs/tcafactsheet.pdf> (last visited Feb. 4, 2018).

<sup>15</sup> Office of Program Policy Analysis and Government Accountability, *Characteristics of Children in Foster Homes and Groups Homes*, 13 (Apr. 17, 2017) <http://www.oppaga.state.fl.us/monitordocs/Presentations/P17-18.pdf> (last visited Feb. 4, 2018).

<sup>16</sup> *Id.* at 15.

<sup>17</sup> *Id.* The average amount is derived from dividing the residential group care expenditures from 2014-2015, \$89,778,347, by the average number of children from 2014-2015, 2,230, which equals \$40,259.35 per child per year. This number was divided by 12 months to reach the monthly average per child.

<sup>18</sup> See *supra* n. 13 at 6 (reflecting a portion of the chart).

<sup>19</sup> Section 39.5085(2)(a), F.S. (providing that *dependent* children may be placed with a relative or nonrelative caregiver).

consanguinity to the child.<sup>20</sup> Once the child has been adjudicated dependent, the relative becomes eligible for the full Relative Caregiver Program benefit amount.<sup>21</sup>

### *Child Care Assistance*

The cost of participating in the school readiness program is subsidized in part or fully by the funding of the local early learning coalition for eligible children.<sup>22</sup> Criteria have been established for the children who are to receive priority for participating in the program at no cost or at a subsidized rate.<sup>23</sup> However, to the extent that subsidized childcare is not available, the cost of childcare is assumed by the caregiver.<sup>24</sup>

### **Additional Information**

Committee staff<sup>25</sup> conducted telephone/video conferences with dependency judges statewide who identified the following issues related to the use of relative caregivers for children placed in out-of-home care:

- **Unexpected caregiving responsibility** – Foster parents are licensed, trained, and expect to take children into their homes; whereas, relatives are more often than not asked to take in children of family members suddenly and without time or help for any preparation.
- **Lack of knowledge about trauma** – While foster parents receive training, relative caregivers do not typically know how to deal with the trauma to which the children may have been exposed.
- **Dysfunctional family dynamics** – Relatives have additional stress and issues due to the fact that they are caring for children of other family members.
- **Increased use of family finding in order to identify family members earlier in the process** – In circuits where it is used, family finding works well to identify more family members and identify them earlier in the process, either during investigations or at the shelter hearing. In some circuits, the use of family finding is sporadic and not utilized throughout the life of the dependency case. Parents are often embarrassed and do not want family members to know they are involved with the child welfare system. Older children who know who their relatives are often overlooked as a source of contact information.
- **Delays in process** – Delays in getting the results from home studies and fingerprint submissions is problematic. Also, delays in the Interstate Compact for the Placement of Children (ICPC) process, which establishes procedures for ensuring the safety and stability of placements of children across state lines, cause further delays in placing children with out of state relatives. Judicial decisions with interstate placement implications must comply with the Compact.

<sup>20</sup> See *supra* n. 14 at 4 (“A child must live in the home of a parent or a relative who is a blood relative of the child. The degree of relationship to the child can be no greater than first cousin once removed.”).

<sup>21</sup> See *supra* n. 13.

<sup>22</sup> Office of Early Learning, *School Readiness Payment Rates for Children Concurrently Enrolled in the VPK Program*, [http://www.floridaearlylearning.com/sites/www/Uploads/files/Oel%20Resources/Rules%20Guidance%20and%20Proposed%20Rules/Issued%20Program%20Guidance/440.50\\_ConcurrentPaymentRates\\_Final\\_ADA.pdf](http://www.floridaearlylearning.com/sites/www/Uploads/files/Oel%20Resources/Rules%20Guidance%20and%20Proposed%20Rules/Issued%20Program%20Guidance/440.50_ConcurrentPaymentRates_Final_ADA.pdf) (last visited Feb. 5, 2018).

<sup>23</sup> Office of Early Learning, *School Readiness Eligibility Priorities*, [http://www.floridaearlylearning.com/coalitions/school\\_readiness\\_eligibility\\_priorities.aspx](http://www.floridaearlylearning.com/coalitions/school_readiness_eligibility_priorities.aspx) (last visited Feb. 5, 2018).

<sup>24</sup> Fla. Admin. Code Ann. r. 65C-13.030(2)(d)4. (2014).

<sup>25</sup> Surveys and studies conducted by the staff of the Senate Committee on Children, Families and Elder Affairs.



- **Lack of services and support for families** – In some areas of the state, there is inadequate support for caregivers because there is no formal program to provide information, referral, training, legal services, and other follow-up services. As a result, grandparents and other relatives raising children are not being linked to the benefits and supports that they or the children in their care need.
- **Fewer benefits for children in care** – Children in out-of-home care are only eligible for some benefits if they are or have been in a licensed placement. For example, children in relative care are eligible for tuition and fee exemptions for postsecondary education,<sup>26</sup> but they are *not* typically eligible for independent living financial support and services.<sup>27</sup>
- **Caseworker “neglect”** –When a relative will not or cannot immediately commit to become a fulltime caregiver, the caseworker often forgets about the caregiver. There is little or no effort made to include the relative in other aspects of the child’s life or improve the home so that the relative may be able to become a fulltime caregiver.
- **Lack of time and skill to effectively engage with relatives** – A number of circuits reported that while caseworkers generally do a good job, they frequently do not have the time to effectively deal with relatives who may become caregivers for children due either to large caseloads or to a lack of appropriate skills. Caseworkers often feel that placement with a relative is a “safe placement” and pay less attention to those placements.
- **Access to services should be the same regardless of placement** – Currently, access to services and supports for a child in out-of-home care vary depending on what type of placement the child is in.

In addition to speaking with judges around the state, committee staff<sup>28</sup> spoke with leadership, program staff, and relative caregivers with community-based care lead agencies across the state. Four major issues affecting the ability of relatives and nonrelatives to care for children placed in their care were identified:

- Sporadic and ineffective use of family finding. Family finding is defined as an intensive relative search and engagement technique to identify family of and other close adults to children in foster care, who will be involved in developing and carrying out a plan for the emotional and legal permanency of a child
- Inadequate support of caregivers in some areas of the state due to a lack of formal kinship navigator programs designed to provide information, referral, and follow-up services. As a result, grandparents and other relatives raising children are not being linked to the benefits and supports that they or the children in their care need.
- Inadequate financial support or delays in receiving financial support.
- The obligation for relative caregivers to assume what may be a large portion of child care/early education expenses for a child in their care.

Notably, provisions of the bill address these four issues.

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<sup>26</sup> Section 1009.25, F.S.

<sup>27</sup> Section 409.1451, F.S.

<sup>28</sup> See *supra*, n. 25.

Circuit	Lead Agency
<i>Shaded rows indicate community-based care lead agencies with whom committee staff communicated.</i>	
1 Escambia, Okaloosa, Santa Rosa, and Walton Counties	Lakeview Center, Families First Network
2 & 14 Franklin, Gadsden, Jefferson, Leon, Liberty, Wakulla Counties and Bay, Calhoun, Gulf, Holmes, Jackson, Washington Counties	Big Bend Community Based Care, Inc.
3 & 8 Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, Taylor Counties and Alachua, Baker, Bradford, Gilchrist, Levy, Union Counties	Partnership for Strong Families
4 Duval and Nassau Counties	Family Support Services of North Florida Inc.
4 Clay County	Kids First of Florida, Inc
7 St. Johns County	St Johns County Board of County Commissioners
7 Flagler, Volusia, and Putnam Counties	Community Partnership for Children, Inc
12 DeSoto, Manatee, and Sarasota Counties	Sarasota Family YMCA, Inc.
6 Pasco and Pinellas Counties	Eckerd Community Alternatives
13 Hillsborough County	Eckerd Community Alt.,
20 Charlotte, Collier, Glades, Hendry and Lee Counties	Children's Network of SW Florida
5 Citrus, Hernando, Lake, Marion and Sumter Counties	Kids Central, Inc
9 & 18 Orange, Osceola County and Seminole Counties	Community Based Care of Central Florida
18 Brevard County	Brevard Family Partnership
10 Hardee, Highlands, and Polk Counties	Heartland For Children
19 Indian River, Martin, Okeechobee, and St. Lucie Counties	Devereux CBC
15 & 17 Palm Beach County and Broward County	ChildNet Inc.
11 & 16 Miami-Dade County and Monroe County	Our Kids of Miami-Dade/Monroe, Inc

**Judicial Hearings and Review**

When the department removes a child from his or her home, a series of dependency court proceedings must occur to adjudicate the child dependent and place him or her in out-of-home care, as indicated by the chart below:

Proceeding		Reference
<b>Shelter Hearing</b>	A shelter hearing occurs within 24 hours after removal. The court determines whether the child is to remain in out-of-home care.	s. 39.402, F.S.
<b>Arraignment Hearing</b>	An arraignment hearing occurs within 28 days of the shelter hearing. This allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any shelter placement.	s. 39.506, F.S.
<b>Adjudicatory Hearing</b>	An adjudicatory trial is held within 30 days of arraignment, to determine whether a child is dependent.	s. 39.507, F.S.
<b>Disposition Hearing</b>	Disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews and orders the case plan for the family and the appropriate placement of the child.	s. 39.521, F.S.
<b>Review Hearing</b>	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.

As noted above, current law provides for specific findings and determinations to be made by the court at each hearing.

### The Rilya Wilson Act

The Rilya Wilson Act is named for a four-year-old girl who disappeared from state custody and went unnoticed for 15 months. Rilya’s caregiver provided several stories concerning Rilya’s whereabouts, one being that someone from the Department of Children and Families removed Rilya from her home sometime in January 2001. However, the department was unaware that Rilya was missing until April 2002. While Rilya’s caregiver (who is suspected but not convicted of having killed Rilya) was sentenced to 55 years in prison in 2013 for offenses connected to Rilya’s disappearance (including aggravated child abuse), Rilya remains missing.<sup>29</sup>

With the disappearance of Rilya Wilson, the responsibility of the state to ensure the safety of children in its care received heightened attention. To ensure the safety and well-being of children in its custody or under its supervision, DCF was required to provide for more frequent and continuous face-to-face contact with children, particularly those under the age of five. The Rilya Wilson Act provides such increased visibility of these very young children by requiring that these children participate in an approved early education or childcare program. In turn, these early education or childcare programs are bound to report certain incidences of the child’s nonattendance or absence to DCF.<sup>30</sup>

<sup>29</sup> The Miami Herald, GERALYN GRAHAM GET 55 YEARS IN RILYA WILSON FOSTER CHILD ABUSE CASE, *available at*: <http://www.miamiherald.com/latest-news/article1947207.html>. (last visited Feb. 5, 2018).

<sup>30</sup> Section 39.604, F.S. (“Rilya Wilson Act”).

Participation in early childcare and learning programs under the Rilya Wilson Act is intended not only to minimize further abuse and neglect, but also to reverse the developmental effects that abuse, neglect, and abandonment can have on children.<sup>31</sup>

Early education and child care programs are provided in Florida through the school readiness program under ss. 1001.213 and 1002.82, F.S. With the establishment of the school readiness program, the different early education and child care programs and their funding sources were merged for the delivery of a comprehensive program of school readiness services to be designed and administered through local early learning coalitions.<sup>32</sup> The school readiness program is housed with the Office of Early Learning.<sup>33</sup>

Current law requires that each early learning coalition give priority for participation in the school readiness program according to specified criteria, with an at-risk child being second on the priority list.<sup>34</sup> An at-risk child is defined as meaning:<sup>35</sup>

- A child from a family under investigation by the Department of Children and Families or a designated sheriff's office for child abuse, neglect, abandonment, or exploitation.
- A child who is in a diversion program provided by the Department of Children and Families or its contracted provider and who is from a family that is actively participating and complying in department-prescribed activities, including education, health services, or work.
- A child from a family that is under supervision by the Department of Children and Families or a contracted service provider for abuse, neglect, abandonment, or exploitation.
- A child placed in court-ordered, long-term custody or under the guardianship of a relative or nonrelative after termination of supervision by the Department of Children and Families or its contracted provider.
- A child in the custody of a parent who is a victim of domestic violence residing in a certified domestic violence center.
- A child in the custody of a parent who is considered homeless as verified by a Department of Children and Families certified homeless shelter.

As mentioned earlier, the cost of participating in the school readiness program is subsidized in part or fully by the funding of the local early learning coalition for eligible children.<sup>36</sup> Criteria have been established for the children who are to receive priority for participating in the program at no cost or at a subsidized rate.<sup>37</sup> However, to the extent that subsidized childcare is not available, the cost of childcare is assumed by the caregiver.<sup>38</sup>

<sup>31</sup> Section 39.604(2), F.S. (“The Legislature recognizes that children who are in the care of the state due to abuse, neglect, or abandonment are at increased risk of poor school performance and other behavioral and social problems. It is the intent of the Legislature that children who are currently in the care of the state be provided with an age-appropriate education program to help ameliorate the negative consequences of abuse, neglect, or abandonment.”).

<sup>32</sup> Sections 1002.82 and 1002.83, F.S.

<sup>33</sup> Section 1002.82, F.S.

<sup>34</sup> Section 1002.87, F.S.

<sup>35</sup> Section 1002.81, F.S.

<sup>36</sup> Office of Early Learning, *School Readiness Payment Rates for Children Concurrently Enrolled in the VPK Program*, [http://www.floridaearlylearning.com/sites/www/Uploads/files/Oel%20Resources/Rules%20Guidance%20and%20Proposed%20Rules/Issued%20Program%20Guidance/440.50\\_ConcurrentPaymentRates\\_Final\\_ADA.pdf](http://www.floridaearlylearning.com/sites/www/Uploads/files/Oel%20Resources/Rules%20Guidance%20and%20Proposed%20Rules/Issued%20Program%20Guidance/440.50_ConcurrentPaymentRates_Final_ADA.pdf) (last visited Feb. 5, 2018).

<sup>37</sup> Office of Early Learning, *School Readiness Eligibility Priorities*, [http://www.floridaearlylearning.com/coalitions/school\\_readiness\\_eligibility\\_priorities.aspx](http://www.floridaearlylearning.com/coalitions/school_readiness_eligibility_priorities.aspx) (last visited Feb. 5, 2018).

<sup>38</sup> Fla. Admin. Code Ann. r. 65C-13.030(2)(d)4. (2014).

Regardless of whether a school readiness program provider is licensed, the program must “comply with the reporting requirements of the Rilya Wilson Act for each at-risk child under the age of school entry who is enrolled in the school readiness program.”<sup>39</sup> Under the Rilya Wilson Act, children from birth to the age of school entry who are in the state’s care due to abuse, neglect, or abandonment and who are enrolled in an early education or child care programs must participate in the program 5 days a week.<sup>40</sup> This participation must be reflected in any case plan required by chapter 39, F.S., as well. However, the court in approving or revising the case plan may grant a waiver of the requirement to participate 5 days a week.<sup>41</sup>

The Rilya Wilson Act also provides that:

- Withdrawal from the program is prohibited unless prior written approval is provided by the department or the community-based lead agency.<sup>42</sup>
- The person with whom the child is living is required to report any absence to the program on the day of the absence. Failure to report an absence results in the absence being considered unexcused, and the early education or child care program is required to report any unexcused absence or seven consecutive excused absences to the department or community-based lead agency.<sup>43</sup>
- Reports of two consecutive unexcused absences or seven consecutive excused absences are to result in a site visit to the child’s residence. Children who are found missing during the site visit are to be reported as missing to law enforcement and the procedures for locating missing children initiated. If the children are not found to be missing, the parent or caregiver is to be informed that it is a violation of the case plan if the child does not attend the early education or child care program.<sup>44</sup>
- After two such site visits, action to notify the court of the parent or caregiver’s non-compliance with the care plan is to be initiated.<sup>45</sup>

### **Early Childhood Intervention for Developmental Disabilities**

Under federal law, the Child Abuse Prevention and Treatment Act (CAPTA)<sup>46</sup> and the Individuals with Disabilities Education Act (IDEA),<sup>47</sup> states are required to have provisions and procedures for the referral of children under the age of three to early intervention services who are: a) involved in substantiated cases of child abuse or neglect; or b) are affected by substance abuse or withdrawal symptoms from prenatal drug exposure. These are often called CAPTA referrals.<sup>48</sup>

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<sup>39</sup> Section 1002.87, F.S.

<sup>40</sup> Section 39.604(3), F.S.

<sup>41</sup> *Id.*

<sup>42</sup> Section 39.604(4)(a), F.S.

<sup>43</sup> Section 39.604(4)(b)1., F.S.

<sup>44</sup> Section 39.604(4)(b)2.-3., F.S.

<sup>45</sup> Section 39.604(4)(b)4., F.S.

<sup>46</sup> P.L. 108-36.

<sup>47</sup> P.L. 108-446.

<sup>48</sup> See generally Early Childhood Technical Assistance Center, *Early Identification: Referral Requirements under CAPTA and IDEA*, <http://ectacenter.org/topics/earlyid/capta.asp> (last visited Feb. 5, 2018).

In 2008, the DCF and the Early Steps Program<sup>49</sup> within Children's Medical Services at the Department of Health (DOH) entered into an interagency agreement for the purpose of ensuring that children under the age of three who are involved in substantiated cases of child abuse or neglect and are potentially eligible for early intervention services are referred to the local Early Steps office within their region.<sup>50</sup> The agreement describes referral procedures for early intervention services provided through Part C under IDEA<sup>51</sup> and provides that the local Early Steps will screen or evaluate all children referred by the DCF or its contracted agencies.<sup>52</sup>

Additionally, for purposes of identifying children involved in substantiated cases of child abuse or neglect who are potentially eligible for early intervention services, under federal law, IDEA, states are required to develop a comprehensive Child Find system.<sup>53</sup> In Florida, children from ages 3-5 suspected of having developmental delays are screened and provided services if necessary through the Florida Diagnostics and Learning Resources System (FDLRS) Child Find.<sup>54</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 39.4015, F.S., relating to family finding, to require the department, in collaboration with sheriffs' offices that conduct child protective investigations and community-based care lead agencies, to develop a formal family finding program to be implemented statewide by child protective investigators and community-based care lead agencies. Family finding is required as soon as a child comes to the attention of the department and throughout the duration of the case. The department or community-based care lead agency must specifically document strategies taken to locate and engage relatives and kin. Strategies of engagement are provided in the bill.

The department and the community-based care lead agencies must use diligent efforts in family finding, must continue those efforts until multiple relatives and kin are identified, and must go beyond a basic computer search by exploring alternative tools and methodologies. Efforts to be used by the department and the community-based care lead agency are provided in the bill.

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<sup>49</sup> Florida Department of Health, *Early Steps, State Systemic Improvement Plan (SSIP)*,

[http://www.floridahealth.gov/programs-and-services/childrens-health/early-steps/documents/earlysteps\\_SSIPIInformationSheet.pdf](http://www.floridahealth.gov/programs-and-services/childrens-health/early-steps/documents/earlysteps_SSIPIInformationSheet.pdf) (last visited Feb. 5, 2018).

<sup>50</sup> Florida Department of Health, Children's Medical Services, *Interagency Agreement, The Florida Department of Children and Families and the Florida Department of Health, Children's Medical Services, Early Steps*,

[http://www.floridahealth.gov/alternatesites/cms-](http://www.floridahealth.gov/alternatesites/cms-kids/home/resources/es_policy/Attachments/11_DOH_DCF_CAPTA_Agreement.pdf)

[kids/home/resources/es\\_policy/Attachments/11\\_DOH\\_DCF\\_CAPTA\\_Agreement.pdf](http://www.floridahealth.gov/alternatesites/cms-kids/home/resources/es_policy/Attachments/11_DOH_DCF_CAPTA_Agreement.pdf). (last visited Feb. 5, 2018). The DOH reported that the only CAPTA referrals they receive from the department are for those children who are referred to a Child Protection Team. (Telephone conversation with DOH staff on November 15, 2017).

<sup>51</sup> Early Childhood Technical Assistance Center, *Early Identification: Part C Eligibility*,

<http://ectacenter.org/topics/earlyvid/partcelig.asp> (last visited Feb. 5, 2018).

<sup>52</sup> See *supra* n. 49 at 5-6.

<sup>53</sup> 34 CRF s. 303.302; *Id.*, *Early Identification: Overview to Child Find Systems*,

<http://ectacenter.org/topics/earlyvid/idoverview.asp> (last visited Feb. 5, 2018).

<sup>54</sup> The Florida Diagnostic and Learning Resources System (FDLRS), *Child Find*, <http://www.fdlrs.org/child-find.html> (last visited Feb. 5, 2018). FDLRS is a discretionary project of the Florida Department of Education (FLDOE) Bureau of Exceptional Education and Student Services. <http://www.fdlrs.org/aboutus.html> (last visited Feb. 5, 2018).

The court is required to inquire and make a determination regarding family finding at each stage of the case, including the shelter care hearing pursuant to s. 39.402. The court is to place its determinations on the record as to whether the department or community-based care lead agency has reasonably engaged in family finding. The level of reasonableness is to be determined by the length of the case and time the department or community-based care lead agency has had to begin or continue the process.

Section 1 is effective January 1, 2019.

**Section 2** amends s. 39.402, F.S., relating to placement in a shelter, to require educational records of children under the age of school entry to be provided, to require a judge rather than a school superintendent to appoint a surrogate parent for a child under the age of school entry if necessary, and to require the court to make a determination relating to family finding.

**Section 3** amends s. 39.506, F.S., relating to arraignment hearings, to require the court to make a determination relating to family finding.

**Section 4** amends s. 39.507, F.S., relating to adjudicatory hearings and orders of adjudication, to require the court to make a determination relating to family finding.

**Section 5** amends s. 39.5085, F.S., relating to the Kinship Care Program to provide that both relative and nonrelative caregivers receive financial assistance in the amount currently required for the Relative Caregiver Program with the payments to begin at the time a child comes into their care.

The bill also requires each community-based care lead agency to establish a kinship navigator program that must:

- Be coordinated with other state or local agencies that promote service coordination or provide information and referral services;
- Be planned and operated in consultation with kinship caregivers and organizations representing them, youth raised by kinship caregivers, relevant governmental agencies, and relevant community-based or faith-based organizations;
- Establish a toll-free telephone hotline to provide information to link kinship caregivers to specified entities;
- Provide outreach to kinship care families; and
- Promote partnerships between public and private agencies and relevant governmental agencies to increase their knowledge of the needs of kinship care families to promote better services for those families.

Section 5 is effective January 1, 2019.

**Section 6** amends s. 39.521, F.S., relating to disposition hearings and powers of disposition, to require the court to make a determination relating to family finding and to require educational records of children under the age of school entry to be provided.

**Section 7** amends s. 39.6012, F.S., relating to case plan tasks and services, to require documentation of case plan requirements under s. 39.604, F.S.

**Section 8** amends s. 39.604, F.S., relating to the Rilya Wilson Act, to clarify attendance and reporting requirements related to children in out-of-home care who are attending a child care or early education program, and to require that children under the age of three and children who are ages 3 to 5 years who are victims of substantiated child abuse or neglect to be referred for an early intervention assessment by Early Steps or FDLRS Child Find as appropriate.

The bill also provides for the appointment of a surrogate parent<sup>55</sup> if appropriate, and provides for educational stability and transitions.

**Section 9** amends s. 39.701, relating to judicial review, requiring the court to appoint a surrogate parent if the child is under the age of school entry, and requiring the court to determine if the department and community-based lead agency has reasonably engaged in family finding.

**Section 10** amends s. 414.045, F.S., relating to the cash assistance program, to conform a provision to changes made by the bill.

Section 10 is effective January 1, 2019.

**Section 11** amends s. 1009.25, F.S., relating to fee exemptions, to conform a provision to changes made by the bill.

**Section 12** provides that except as otherwise expressly provided in the bill, the effective date of the bill is July 1, 2018.

#### **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.

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<sup>55</sup> Section 39.0016(1)(c), F.S. (A “surrogate parent” is “an individual appointed to act in the place of a parent in educational decisionmaking and in safeguarding a child’s rights under the Individuals with Disabilities Education Act [IDEA] and this section.”).



**B. Private Sector Impact:**

The Department reports that it currently has 19 contracts with the Community-based Care (CBC) Lead Agencies. To implement the family finder and kinship navigation programs required by the bill, the Department anticipates that each of the 19 contracts will need to add one staff member. The Department notes that one of the contracts (Eckerd Community Alternatives, Circuit 13) currently has a family finder position at a salary of \$52,000, including taxes and benefits. Multiplying this salary package, \$52,000, by the remaining number of CBC Lead Agencies, 18, the Department anticipates funding for 19 positions will total \$945,000.<sup>56</sup>

**C. Government Sector Impact:**

In the six counties where the Sheriff's office has an investigative unit, DCF estimates that those offices will need to hire six family finder positions. Using the \$52,000 salary package number above, DCF estimates funding for six new positions will be \$315,000.<sup>57</sup> DCF also estimates that funding for additional staff in its six regions will cost \$630,000.<sup>58</sup>

The Department also reports that the bill will increase the cost of relative and non-relative care giver payments by beginning payment at the time of the child's placement rather than delaying payment until the child is adjudicated dependent. DCF estimates the cost of these payments to increase to be \$3.6 million each year.<sup>59</sup> Additionally, DCF estimates a technology cost for issuing the additional payments at between \$384,696 and \$464,256.<sup>60</sup>

However, the cost of placing a child with a relative or non-relative care giver under the bill is between \$2,904 and \$3,576 per year per child (depending on the child's age), while placement in group care averages over \$40,000 per year per child. An increase in relative and non-relative care givers would lead to decreased expenditures on foster care and group care.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends ss. 39.402, 39.506, 39.507, 39.5085, 39.521, 39.6012, 39.604, 39.701, 414.045, and 1009.25 of the Florida Statutes.

<sup>56</sup> Department of Children and Families, *Senate Bill 590*, p. 8 (Oct. 24, 2017) (on file with the Senate Judiciary Committee).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at p. 7.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at p. 8.

The bill creates s. 39.4015 of the Florida Statutes.

**IX. Additional Information:**

**CS by Children, Families, and Elder affairs on December 4, 2017:**

- Amends ss. 39.402, 39.506, 39.507, 39.521, and 39.701, F.S., relating to judicial hearings, to require a determination by the court relating to family finding.
- Adds a task to the case plan requirements required under s. 39.604, F.S.
- Requires that children under the age of three and children ages 3 to 5 years who are victims of substantiated child abuse or neglect be referred for an early intervention assessment by Early Steps or FDLRS Child Find as appropriate.
- Provides for the appointment of a surrogate parent if appropriate, and provides for educational stability and transitions in child care and early education program settings.

**A. Amendments:**

None.

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

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512692

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/06/2018	.	
	.	
	.	
	.	

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The Committee on Judiciary (Steube) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 100 and 101  
insert:

Section 1. Paragraph (a) of subsection (3) of section  
39.3065, Florida Statutes, is amended to read:

39.3065 Sheriffs of certain counties to provide child  
protective investigative services; procedures; funding.-

(3) (a) Beginning in fiscal year 1999-2000, the sheriffs of  
Pasco County, Manatee County, Broward County, and Pinellas  
County shall ~~have the responsibility to~~ provide all child



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12 protective investigations in their respective counties.  
13 Beginning in fiscal year 2018-2019, the Sheriff of Walton County  
14 shall provide all child protective investigations in his or her  
15 county. Beginning in fiscal year 2000-2001, the Department of  
16 Children and Families is authorized to enter into grant  
17 agreements with sheriffs of other counties to perform child  
18 protective investigations in their respective counties.

19  
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete line 2

23 and insert:

24 An act relating to child welfare; amending s. 39.3065,  
25 F.S.; requiring the Sheriff of Walton County to  
26 provide all child protective investigations in the  
27 county beginning with a specified fiscal year;  
28 creating s. 39.4015,

By the Committee on Children, Families, and Elder Affairs; and  
Senators Garcia and Campbell

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1 A bill to be entitled  
2 An act relating to child welfare; creating s. 39.4015,  
3 F.S.; providing legislative findings and intent;  
4 defining terms; requiring the Department of Children  
5 and Families, in collaboration with sheriffs' offices  
6 that conduct child protective investigations and  
7 community-based care lead agencies, to develop a  
8 statewide family-finding program; requiring the  
9 implementation of family finding by a specified date;  
10 requiring the department and community-based care lead  
11 agencies to document strategies taken to engage  
12 relatives and kin; providing strategies to engage  
13 relatives and kin; requiring the department and  
14 community-based care lead agencies to use diligent  
15 efforts in family finding; providing that certain  
16 actions do not constitute family finding; requiring  
17 determinations by the court; requiring the department  
18 to adopt rules; amending s. 39.402, F.S.; requiring  
19 the court to request that parents consent to providing  
20 access to additional records; requiring a judge to  
21 appoint a surrogate parent for certain children;  
22 requiring the court to place on the record its  
23 determinations regarding the department's or the  
24 community-based lead agency's reasonable engagement in  
25 family finding; providing guidelines for determining  
26 reasonableness; amending ss. 39.506; requiring the  
27 court to make a determination regarding the  
28 department's or the community-based lead agency's  
29 reasonable engagement in family finding; providing

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30 guidelines for determining reasonableness; amending s.  
31 39.507 F.S.; requiring the court to make a  
32 determination regarding the department's or the  
33 community-based lead agency's reasonable engagement in  
34 family finding; providing guidelines for determining  
35 reasonableness; requiring the court to advise parents  
36 that their parental rights may be terminated and the  
37 child's out-of-home placement may become permanent  
38 under certain circumstances; amending s. 39.5085,  
39 F.S.; providing legislative findings and intent;  
40 defining terms; requiring the department to provide  
41 financial assistance to kinship caregivers who meet  
42 certain requirements; providing eligibility criteria  
43 for such financial assistance; providing that children  
44 living with caregivers who are receiving financial  
45 assistance are eligible for Medicaid coverage;  
46 providing the purpose of a kinship navigator program;  
47 requiring each community-based care lead agency to  
48 establish a kinship navigator program by a certain  
49 date; providing requirements for programs; requiring  
50 the department to adopt rules; deleting provisions  
51 related to the Relative Caregiver Program; amending s.  
52 39.521, F.S.; requiring the court to make a  
53 determination regarding the department's or the  
54 community-based lead agency's reasonable engagement in  
55 family finding ; providing guidelines for determining  
56 reasonableness; conforming provisions to changes made  
57 by the act; amending s. 39.6012, F.S.; revising the  
58 types of records that must be attached to a case plan

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59 and updated throughout the judicial review process;  
 60 requiring that documentation of the family-finding  
 61 efforts of the department and the community-based care  
 62 lead agency be included in certain case plans;  
 63 amending s. 39.604, F.S.; revising legislative  
 64 findings and intent; providing requirements and  
 65 procedures for referring certain children to the Early  
 66 Steps Program; requiring the Early Steps Program to  
 67 screen or evaluate all children referred to the  
 68 program by the department or its contracted agencies;  
 69 requiring the service coordinator of the Early Steps  
 70 Program to forward certain information to the  
 71 department and the community-based care lead agency;  
 72 requiring the dependency court to appoint a surrogate  
 73 parent for certain children under certain  
 74 circumstances; requiring the department or a  
 75 community-based care lead agency to refer a child to  
 76 the Child Find program of the Florida Diagnostic and  
 77 Learning Resources System under certain circumstances;  
 78 requiring a caregiver to choose certain providers to  
 79 care for children in out-of-home care; revising  
 80 enrollment and attendance requirements for children in  
 81 an early education or child care program; conforming  
 82 cross-references; providing requirements and  
 83 procedures for maintaining the educational stability  
 84 of a child during the child's placement in out-of-home  
 85 care, or subsequent changes in out-of-home placement;  
 86 requiring that a child's transition from a child care  
 87 or early education program be pursuant to a plan that

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88 meets certain requirements; amending s. 39.701, F.S.;  
 89 requiring the court to appoint a surrogate parent if  
 90 the child is under the age of school entry; requiring  
 91 the court to determine if the department and  
 92 community-based lead agency has continued to  
 93 reasonably engaged in family finding; providing  
 94 guidelines for determining the level of  
 95 reasonableness; amending ss. 414.045 and 1009.25,  
 96 F.S.; conforming provisions to changes made by the  
 97 act; providing effective dates.  
 98  
 99 Be It Enacted by the Legislature of the State of Florida:  
 100  
 101 Section 1. Effective January 1, 2019, section 39.4015,  
 102 Florida Statutes, is created to read:  
 103 39.4015 Family finding.—  
 104 (1) LEGISLATIVE FINDINGS AND INTENT.—  
 105 (a) The Legislature finds that every child who is in out-  
 106 of-home care has the goal of finding a permanent home, whether  
 107 achieved by reunifying the child with his or her parents or  
 108 finding another permanent connection, such as adoption or legal  
 109 guardianship with a relative or nonrelative who has a  
 110 significant relationship with the child.  
 111 (b) The Legislature finds that while legal permanency is  
 112 important to a child in out-of-home care, emotional permanency  
 113 helps increase the likelihood that children will achieve  
 114 stability and well-being and successfully transition to  
 115 independent adulthood.  
 116 (c) The Legislature also finds that research has

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117 consistently shown that placing a child within his or her own  
 118 family reduces the trauma of being removed from his or her home,  
 119 is less likely to result in placement disruptions, and enhances  
 120 prospects for finding a permanent family if the child cannot  
 121 return home.

122 (d) The Legislature further finds that the primary purpose  
 123 of family finding is to facilitate legal and emotional  
 124 permanency for children who are in out-of-home care by finding  
 125 and engaging their relatives.

126 (e) It is the intent of the Legislature that every child in  
 127 out-of-home care be afforded the advantages that can be gained  
 128 from the use of family finding to establish caring and long-term  
 129 or permanent connections and relationships for children and  
 130 youth in out-of-home care, as well as to establish a long-term  
 131 emotional support network with family members and other adults  
 132 who may not be able to take the child into their home but who  
 133 want to stay connected with the child.

134 (2) DEFINITIONS.—As used in this section, the term:

135 (a) "Diligent efforts" means the use of methods and  
 136 techniques including, but not limited to, interviews with  
 137 immediate and extended family and kin, genograms, eco-mapping,  
 138 case mining, cold calls, and specialized computer searches.

139 (b) "Family finding" means an intensive relative search and  
 140 engagement technique used in identifying family and other close  
 141 adults for children in out-of-home care and involving them in  
 142 developing and carrying out a plan for the emotional and legal  
 143 permanency of a child.

144 (c) "Family group decisionmaking" is a generic term that  
 145 includes a number of approaches in which family members and

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146 fictive kin are brought together to make decisions about how to  
 147 care for their children and develop a plan for services. The  
 148 term includes family team conferencing, family team meetings,  
 149 family group conferencing, family team decisionmaking, family  
 150 unity meetings, and team decisionmaking, which may consist of  
 151 several phases and employ a trained facilitator or coordinator.

152 (d) "Fictive kin" means an individual who is unrelated to  
 153 the child by either birth or marriage, but has such a close  
 154 emotional relationship with the child that he or she may be  
 155 considered part of the family.

156 (3) FAMILY-FINDING PROGRAM.—The department, in  
 157 collaboration with sheriffs' offices that conduct child  
 158 protective investigations and community-based care lead  
 159 agencies, shall develop a formal family-finding program to be  
 160 implemented statewide by child protective investigators and  
 161 community-based care lead agencies.

162 (a) Family finding is required as soon as a child comes to  
 163 the attention of the department and throughout the duration of  
 164 the case, and finding and engaging with as many family members  
 165 and fictive kin as possible for each child who may help with  
 166 care or support for the child is considered a best practice. The  
 167 department or community-based care lead agency must specifically  
 168 document strategies taken to locate and engage relatives and  
 169 kin. Strategies of engagement may include, but are not limited  
 170 to, asking the relatives and kin to:

171 1. Participate in a family group decisionmaking conference,  
 172 family team conferencing, or other family meetings aimed at  
 173 developing or supporting the family service plan;

174 2. Attend visitations with the child;

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175 3. Assist in transportation of the child;  
 176 4. Provide respite or child care services; or  
 177 5. Provide actual kinship care.  
 178 (b) The department and the community-based care lead  
 179 agencies must use diligent efforts in family finding, must  
 180 continue those efforts until multiple relatives and kin are  
 181 identified, and must go beyond basic searching tools by  
 182 exploring alternative tools and methodologies. Efforts by the  
 183 department and the community-based care lead agency may include,  
 184 but are not limited to:  
 185 1. Searching for and locating adult relatives and kin.  
 186 2. Identifying and building positive connections between  
 187 the child and the child's relatives and fictive kin.  
 188 3. Supporting the engagement of relatives and fictive kin  
 189 in social service planning and delivery of services and creating  
 190 a network of extended family support to assist in remedying the  
 191 concerns that led to the child becoming involved with the child  
 192 welfare system, when appropriate.  
 193 4. Maintaining family connections, when possible.  
 194 5. Keeping siblings together in care, when in the best  
 195 interest of each child and when possible.  
 196 (c) A basic computer search using the Internet or attempts  
 197 to contact known relatives at a last known address or telephone  
 198 number do not constitute effective family finding.  
 199 (d) The court's inquiry and determination regarding family  
 200 finding should be made at each stage of the case, including a  
 201 shelter hearing conducted pursuant to s. 39.402. The court shall  
 202 place its determinations on the record as to whether the  
 203 department or community-based care lead agency has reasonably

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204 engaged in family finding. The level of reasonableness is to be  
 205 determined by the length of the case and the amount of time the  
 206 department or community-based care lead agency has had to begin  
 207 or continue the process.  
 208 (4) RULEMAKING.—The department shall adopt rules to  
 209 implement this section.  
 210 Section 2. Paragraphs (c) and (d) of subsection (11) of  
 211 section 39.402, Florida Statutes, and subsection (17) of that  
 212 section are amended to read:  
 213 39.402 Placement in a shelter.—  
 214 (11)  
 215 (c) The court shall request that the parents consent to  
 216 provide access to the child's child care records, early  
 217 education program records, or other educational records and  
 218 provide information to the court, the department or its contract  
 219 agencies, and any guardian ad litem or attorney for the child.  
 220 If a parent is unavailable or unable to consent or withholds  
 221 consent and the court determines access to the records and  
 222 information is necessary to provide services to the child, the  
 223 court shall issue an order granting access.  
 224 (d) The court may appoint a surrogate parent or may refer  
 225 the child to the district school superintendent for appointment  
 226 of a surrogate parent if the child has or is suspected of having  
 227 a disability and the parent is unavailable pursuant to s.  
 228 39.0016(3) (b). If the child is under the age of school entry,  
 229 the court must make the appointment.  
 230 (17) At the shelter hearing, the court shall inquire of the  
 231 parent whether the parent has relatives who might be considered  
 232 as a placement for the child. The parent shall provide to the

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233 court and all parties identification and location information  
 234 regarding the relatives. The court shall advise the parent that  
 235 the parent has a continuing duty to inform the department of any  
 236 relative who should be considered for placement of the child.  
 237 The court shall place its determinations on the record as to  
 238 whether the department or community-based care lead agency has  
 239 reasonably engaged in family finding. The level of  
 240 reasonableness is to be determined by the length of the case and  
 241 amount of time the department or community-based care lead  
 242 agency has had to begin or continue the process.

243 Section 3. Present subsection (9) of section 39.506,  
 244 Florida Statutes, is redesignated as subsection (10), and a new  
 245 subsection (9) is added to that section, to read:

246 39.506 Arraignment hearings.—

247 (9) The court shall review whether the department or  
 248 community-based care lead agency has reasonably engaged in  
 249 family finding and make a written determination as to its  
 250 findings. The level of reasonableness is determined by the  
 251 length of the case and amount of time the department or  
 252 community-based care lead agency has had to begin or continue  
 253 the process.

254 Section 4. Paragraphs (c) and (d) of subsection (7) of  
 255 section 39.507, Florida Statutes, are amended to read:

256 39.507 Adjudicatory hearings; orders of adjudication.—

257 (7)

258 (c) If a court adjudicates a child dependent and the child  
 259 is in out-of-home care, the court shall inquire of the parent or  
 260 parents whether the parents have relatives who might be  
 261 considered as a placement for the child. ~~The court shall advise~~

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262 ~~the parents that, if the parents fail to substantially comply~~  
 263 ~~with the case plan, their parental rights may be terminated and~~  
 264 ~~that the child's out-of-home placement may become permanent.~~ The  
 265 parent or parents shall provide to the court and all parties  
 266 identification and location information of the relatives. The  
 267 court shall review whether the department or community-based  
 268 care lead agency has reasonably engaged in family finding and  
 269 make a written determination as to its findings. The level of  
 270 reasonableness is determined by the length of the case and  
 271 amount of time the department or community-based care lead  
 272 agency has had to begin or continue the process.

273 (d) The court shall advise the parents that, if they fail  
 274 to substantially comply with the case plan, their parental  
 275 rights may be terminated and that the child's out-of-home  
 276 placement may become permanent.

277 Section 5. Effective January 1, 2019, section 39.5085,  
 278 Florida Statutes, is amended to read:

279 39.5085 Kinship Care ~~Relative Caregiver~~ Program.—

280 (1) LEGISLATIVE FINDINGS AND INTENT.—

281 (a) The Legislature finds that an increasing number of  
 282 relatives and fictive kin are assuming the responsibility of  
 283 raising children because the parents of these children are  
 284 unable to care for them.

285 (b) The Legislature also finds that these kinship  
 286 caregivers perform a vital function by providing homes for  
 287 children who would otherwise be at risk of foster care placement  
 288 and that kinship care is a crucial option in the spectrum of  
 289 out-of-home care available to children in need.

290 (c) The Legislature finds that children living with kinship

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291 caregivers experience increased placement stability, are less  
 292 likely to reenter care if they are reunified with their parents,  
 293 and have better behavioral and mental health outcomes.

294 (d) The Legislature further finds that these kinship  
 295 caregivers may face a number of difficulties and need assistance  
 296 to support the health and well-being of the children they care  
 297 for. These needs include, but are not limited to, financial  
 298 assistance, legal assistance, respite care, child care,  
 299 specialized training, and counseling.

300 (e) It is the intent of the Legislature to provide for the  
 301 establishment and implementation of procedures and protocols  
 302 that are likely to increase and adequately support appropriate  
 303 and safe kinship care placements.

304 (2) DEFINITIONS.—As used this section, the term:

305 (a) "Fictive kin" means an individual who is unrelated to  
 306 the child by either birth or marriage, but has such a close  
 307 emotional relationship with the child that he or she may be  
 308 considered part of the family.

309 (b) "Kinship care" means the full-time care of a child  
 310 placed in out-of-home care by the court in the home of a  
 311 relative or fictive kin.

312 (c) "Kinship navigator program" means a statewide program  
 313 designed to ensure that kinship caregivers are provided with  
 314 necessary resources for the preservation of the family.

315 (d) "Relative" means an individual who is caring full time  
 316 for a child placed in out-of-home care by the court and who:

317 1. Is related to the child within the fifth degree by blood  
 318 or marriage to the parent or stepparent of the child; or

319 2. Is related to a half-sibling of that child within the

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320 fifth degree by blood or marriage to the parent or stepparent.

321 (3) FINANCIAL ASSISTANCE.—The department shall provide  
 322 financial assistance to all caregivers who qualify under this  
 323 subsection.

324 (a) Relatives or fictive kin caring for a child who has  
 325 been placed with them by the court shall receive a monthly  
 326 caregiver benefit, beginning when the child is placed with them.  
 327 The amount of the benefit payment is based on the child's age  
 328 within a payment schedule established by rule of the department.  
 329 The cost of providing the assistance described in this section  
 330 to any caregiver may not exceed the cost of providing out-of-  
 331 home care in emergency shelter or foster care.

332 (b) Caregivers who receive assistance under this section  
 333 must be capable, as determined by a home study, of providing a  
 334 physically safe environment and a stable, supportive home for  
 335 the children under their care and must assure that the  
 336 children's well-being is met, including, but not limited to, the  
 337 provision of immunizations, education, and mental health  
 338 services, as needed.

339 (c) Caregivers who qualify for and receive assistance under  
 340 this section are not required to meet foster care licensing  
 341 requirements under s. 409.175.

342 (d) Children receiving cash benefits under this section are  
 343 not eligible to simultaneously receive WAGES cash benefits under  
 344 chapter 414.

345 (d) A caregiver may not receive a benefit payment if the  
 346 parent or stepparent of the child resides in the home. However,  
 347 a caregiver may receive the benefit payment for a minor parent  
 348 who is in his or her care, as well as for the minor parent's

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349 child, if both children have been adjudicated dependent and meet  
 350 all other eligibility requirements. If the caregiver is  
 351 receiving a benefit payment when a parent, other than an  
 352 eligible minor parent, or stepparent moves into the home, the  
 353 payment must be terminated no later than the first day of the  
 354 month following the move, allowing for 10-day notice of adverse  
 355 action.

356 (e) Children living with caregivers who are receiving  
 357 assistance under this section are eligible for Medicaid  
 358 coverage.

359 (4) ADDITIONAL ASSISTANCE AND SERVICES.-

360 (a) The purpose of a kinship navigator program is to help  
 361 relative caregivers and fictive kin in the child welfare system  
 362 to navigate the broad range of services available to them and  
 363 the children from public, private, community, and faith-based  
 364 organizations.

365 (b) By January 1, 2019, each community-based care lead  
 366 agency shall establish a kinship navigator program. In order to  
 367 meet the requirements of a kinship navigator program, the  
 368 program must:

369 1. Be coordinated with other state or local agencies that  
 370 promote service coordination or provide information and referral  
 371 services, including any entities that participate in the Florida  
 372 211 Network, to avoid duplication or fragmentation of services  
 373 to kinship care families;

374 2. Be planned and operated in consultation with kinship  
 375 caregivers and organizations representing them, youth raised by  
 376 kinship caregivers, relevant governmental agencies, and relevant  
 377 community-based or faith-based organizations;

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378 3. Establish a toll-free telephone hotline to provide  
 379 information to link kinship caregivers, kinship support group  
 380 facilitators, and kinship service providers to:

381 a. One another;

382 b. Eligibility and enrollment information for federal,  
 383 state, and local benefits;

384 c. Relevant training to assist kinship caregivers in  
 385 caregiving and in obtaining benefits and services; and

386 d. Relevant knowledge related to legal options available  
 387 for child custody, other legal assistance, and help in obtaining  
 388 legal services.

389 4. Provide outreach to kinship care families, including by  
 390 establishing, distributing, and updating a kinship care website,  
 391 or other relevant guides or outreach materials; and

392 5. Promote partnerships between public and private  
 393 agencies, including schools, community-based or faith-based  
 394 organizations, and relevant governmental agencies, to increase  
 395 their knowledge of the needs of kinship care families to promote  
 396 better services for those families.

397 (5) RULEMAKING.-The department shall adopt rules to  
 398 implement this section.

399 ~~(1) It is the intent of the Legislature in enacting this~~  
 400 ~~section to:~~

401 ~~(a) Provide for the establishment of procedures and~~  
 402 ~~protocols that serve to advance the continued safety of children~~  
 403 ~~by acknowledging the valued resource uniquely available through~~  
 404 ~~grandparents, relatives of children, and specified nonrelatives~~  
 405 ~~of children pursuant to subparagraph (2)(a)3.~~

406 ~~(b) Recognize family relationships in which a grandparent~~

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407 or other relative is the head of a household that includes a  
 408 child otherwise at risk of foster care placement.

409 ~~(c) Enhance family preservation and stability by~~  
 410 ~~recognizing that most children in such placements with~~  
 411 ~~grandparents and other relatives do not need intensive~~  
 412 ~~supervision of the placement by the courts or by the department.~~

413 ~~(d) Recognize that permanency in the best interests of the~~  
 414 ~~child can be achieved through a variety of permanency options,~~  
 415 ~~including permanent guardianship under s. 39.6221 if the~~  
 416 ~~guardian is a relative, by permanent placement with a fit and~~  
 417 ~~willing relative under s. 39.6231, by a relative, guardianship~~  
 418 ~~under chapter 744, or adoption, by providing additional~~  
 419 ~~placement options and incentives that will achieve permanency~~  
 420 ~~and stability for many children who are otherwise at risk of~~  
 421 ~~foster care placement because of abuse, abandonment, or neglect,~~  
 422 ~~but who may successfully be able to be placed by the dependency~~  
 423 ~~court in the care of such relatives.~~

424 ~~(e) Reserve the limited casework and supervisory resources~~  
 425 ~~of the courts and the department for those cases in which~~  
 426 ~~children do not have the option for safe, stable care within the~~  
 427 ~~family.~~

428 ~~(f) Recognize that a child may have a close relationship~~  
 429 ~~with a person who is not a blood relative or a relative by~~  
 430 ~~marriage and that such person should be eligible for financial~~  
 431 ~~assistance under this section if he or she is able and willing~~  
 432 ~~to care for the child and provide a safe, stable home~~  
 433 ~~environment.~~

434 ~~(2)(a) The Department of Children and Families shall~~  
 435 ~~establish, operate, and implement the Relative Caregiver Program~~

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436 ~~by rule of the department. The Relative Caregiver Program shall,~~  
 437 ~~within the limits of available funding, provide financial~~  
 438 ~~assistance to:~~

439 ~~1. Relatives who are within the fifth degree by blood or~~  
 440 ~~marriage to the parent or stepparent of a child and who are~~  
 441 ~~caring full-time for that dependent child in the role of~~  
 442 ~~substitute parent as a result of a court's determination of~~  
 443 ~~child abuse, neglect, or abandonment and subsequent placement~~  
 444 ~~with the relative under this chapter.~~

445 ~~2. Relatives who are within the fifth degree by blood or~~  
 446 ~~marriage to the parent or stepparent of a child and who are~~  
 447 ~~caring full-time for that dependent child, and a dependent half-~~  
 448 ~~brother or half sister of that dependent child, in the role of~~  
 449 ~~substitute parent as a result of a court's determination of~~  
 450 ~~child abuse, neglect, or abandonment and subsequent placement~~  
 451 ~~with the relative under this chapter.~~

452 ~~3. Nonrelatives who are willing to assume custody and care~~  
 453 ~~of a dependent child in the role of substitute parent as a~~  
 454 ~~result of a court's determination of child abuse, neglect, or~~  
 455 ~~abandonment and subsequent placement with the nonrelative~~  
 456 ~~caregiver under this chapter. The court must find that a~~  
 457 ~~proposed placement under this subparagraph is in the best~~  
 458 ~~interest of the child.~~

459 ~~4. A relative or nonrelative caregiver, but the relative or~~  
 460 ~~nonrelative caregiver may not receive a Relative Caregiver~~  
 461 ~~Program payment if the parent or stepparent of the child resides~~  
 462 ~~in the home. However, a relative or nonrelative may receive the~~  
 463 ~~Relative Caregiver Program payment for a minor parent who is in~~  
 464 ~~his or her care, as well as for the minor parent's child, if~~

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465 both children have been adjudicated dependent and meet all other  
 466 eligibility requirements. If the caregiver is currently  
 467 receiving the payment, the Relative Caregiver Program payment  
 468 must be terminated no later than the first of the following  
 469 month after the parent or stepparent moves into the home,  
 470 allowing for 10-day notice of adverse action.

471  
 472 The placement may be court-ordered temporary legal custody to  
 473 the relative or nonrelative under protective supervision of the  
 474 department pursuant to s. 39.521(1)(c)3., or court-ordered  
 475 placement in the home of a relative or nonrelative as a  
 476 permanency option under s. 39.6221 or s. 39.6231 or under former  
 477 s. 39.622 if the placement was made before July 1, 2006. The  
 478 Relative Caregiver Program shall offer financial assistance to  
 479 caregivers who would be unable to serve in that capacity without  
 480 the caregiver payment because of financial burden, thus exposing  
 481 the child to the trauma of placement in a shelter or in foster  
 482 care.

483 (b) Caregivers who receive assistance under this section  
 484 must be capable, as determined by a home study, of providing a  
 485 physically safe environment and a stable, supportive home for  
 486 the children under their care and must assure that the  
 487 children's well-being is met, including, but not limited to, the  
 488 provision of immunizations, education, and mental health  
 489 services as needed.

490 (c) Relatives or nonrelatives who qualify for and  
 491 participate in the Relative Caregiver Program are not required  
 492 to meet foster care licensing requirements under s. 409.175.

493 (d) Relatives or nonrelatives who are caring for children

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494 placed with them by the court pursuant to this chapter shall  
 495 receive a special monthly caregiver benefit established by rule  
 496 of the department. The amount of the special benefit payment  
 497 shall be based on the child's age within a payment schedule  
 498 established by rule of the department and subject to  
 499 availability of funding. The statewide average monthly rate for  
 500 children judicially placed with relatives or nonrelatives who  
 501 are not licensed as foster homes may not exceed 82 percent of  
 502 the statewide average foster care rate, and the cost of  
 503 providing the assistance described in this section to any  
 504 caregiver may not exceed the cost of providing out-of-home care  
 505 in emergency shelter or foster care.

506 (e) Children receiving cash benefits under this section are  
 507 not eligible to simultaneously receive WACES cash benefits under  
 508 chapter 414.

509 (f) Within available funding, the Relative Caregiver  
 510 Program shall provide caregivers with family support and  
 511 preservation services, flexible funds in accordance with s.  
 512 409.165, school readiness, and other available services in order  
 513 to support the child's safety, growth, and healthy development.  
 514 Children living with caregivers who are receiving assistance  
 515 under this section shall be eligible for Medicaid coverage.

516 (g) The department may use appropriate available state,  
 517 federal, and private funds to operate the Relative Caregiver  
 518 Program. The department may develop liaison functions to be  
 519 available to relatives or nonrelatives who care for children  
 520 pursuant to this chapter to ensure placement stability in  
 521 extended family settings.

522 Section 6. Paragraph (e) of subsection (1) of section

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523 39.521, Florida Statutes, is amended to read:

524 39.521 Disposition hearings; powers of disposition.—

525 (1) A disposition hearing shall be conducted by the court,  
526 if the court finds that the facts alleged in the petition for  
527 dependency were proven in the adjudicatory hearing, or if the  
528 parents or legal custodians have consented to the finding of  
529 dependency or admitted the allegations in the petition, have  
530 failed to appear for the arraignment hearing after proper  
531 notice, or have not been located despite a diligent search  
532 having been conducted.

533 (e) The court shall, in its written order of disposition,  
534 include all of the following:

- 535 1. The placement or custody of the child.  
536 2. Special conditions of placement and visitation.  
537 3. Evaluation, counseling, treatment activities, and other  
538 actions to be taken by the parties, if ordered.  
539 4. The persons or entities responsible for supervising or  
540 monitoring services to the child and parent.  
541 5. Continuation or discharge of the guardian ad litem, as  
542 appropriate.  
543 6. The date, time, and location of the next scheduled  
544 review hearing, which must occur within the earlier of:  
545 a. Ninety days after the disposition hearing;  
546 b. Ninety days after the court accepts the case plan;  
547 c. Six months after the date of the last review hearing; or  
548 d. Six months after the date of the child's removal from  
549 his or her home, if no review hearing has been held since the  
550 child's removal from the home.  
551 7. If the child is in an out-of-home placement, child

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552 support to be paid by the parents, or the guardian of the  
553 child's estate if possessed of assets which under law may be  
554 disbursed for the care, support, and maintenance of the child.  
555 The court may exercise jurisdiction over all child support  
556 matters, shall adjudicate the financial obligation, including  
557 health insurance, of the child's parents or guardian, and shall  
558 enforce the financial obligation as provided in chapter 61. The  
559 state's child support enforcement agency shall enforce child  
560 support orders under this section in the same manner as child  
561 support orders under chapter 61. Placement of the child shall  
562 not be contingent upon issuance of a support order.

563 8.a. If the court does not commit the child to the  
564 temporary legal custody of an adult relative, legal custodian,  
565 or other adult approved by the court, the disposition order must  
566 ~~shall~~ include the reasons for such a decision and ~~shall include~~  
567 a written determination as to whether diligent efforts were made  
568 by the department and the community-based care lead agency  
569 reasonably engaged in family finding in attempting to locate an  
570 adult relative, legal custodian, or other adult willing to care  
571 for the child in order to present that placement option to the  
572 court instead of placement with the department. The level of  
573 reasonableness is determined by the length of the case and  
574 amount of time the department or community-based care lead  
575 agency has had to begin or continue the process.

576 b. If no suitable relative is found and the child is placed  
577 with the department or a legal custodian or other adult approved  
578 by the court, both the department and the court shall consider  
579 transferring temporary legal custody to an adult relative  
580 approved by the court at a later date, but neither the

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581 department nor the court is obligated to so place the child if  
582 it is in the child's best interest to remain in the current  
583 placement.

584 ~~For the purposes of this section, "diligent efforts to locate an~~  
585 ~~adult relative" means a search similar to the diligent search~~  
586 ~~for a parent, but without the continuing obligation to search~~  
587 ~~after an initial adequate search is completed.~~

589 9. Other requirements necessary to protect the health,  
590 safety, and well-being of the child, to preserve the stability  
591 of the child's child care, early education program, or any other  
592 educational placement, and to promote family preservation or  
593 reunification whenever possible.

594 Section 7. Paragraph (b) of subsection (2) and paragraph  
595 (a) of subsection (3) of section 39.6012, Florida Statutes, are  
596 amended to read:

597 39.6012 Case plan tasks; services.—

598 (2) The case plan must include all available information  
599 that is relevant to the child's care including, at a minimum:

600 (b) A description of the plan for ensuring that the child  
601 receives safe and proper care and that services are provided to  
602 the child in order to address the child's needs. To the extent  
603 available and accessible, the following health, mental health,  
604 and education information and records of the child must be  
605 attached to the case plan and updated throughout the judicial  
606 review process:

- 607 1. The names and addresses of the child's health, mental
- 608 health, and educational providers;
- 609 2. The child's grade level performance;

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610 3. The child's school record or, if the child is under the  
611 age of school entry, any records from a child care program,  
612 early education program, or preschool program;

613 4. Documentation of compliance or noncompliance with the  
614 attendance requirements under s. 39.604, if the child is  
615 enrolled in a child care program, early education program, or  
616 preschool program;

617 ~~5.4.~~ Assurances that the child's placement takes into  
618 account proximity to the school in which the child is enrolled  
619 at the time of placement;

620 ~~6.5.~~ A record of The child's immunizations;

621 ~~7.6.~~ The child's known medical history, including any known  
622 health problems;

623 ~~8.7.~~ The child's medications, if any; and

624 ~~9.8.~~ Any other relevant health, mental health, and  
625 education information concerning the child.

626 (3) In addition to any other requirement, if the child is  
627 in an out-of-home placement, the case plan must include:

628 (a) A description of the type of placement in which the  
629 child is to be living and, if the child has been placed with the  
630 department, whether the department and the community-based care  
631 lead agency have reasonably engaged in family finding to locate  
632 an adult relative, legal custodian, or other adult willing to  
633 care for the child in order to present that placement option to  
634 the court instead of placement with the department.

635 Section 8. Section 39.604, Florida Statutes, is amended to  
636 read:

637 39.604 Rilya Wilson Act; short title; legislative intent;  
638 early intervention; child care; early education; preschool

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639 ~~requirements, attendance and reporting responsibilities.-~~

640 (1) SHORT TITLE.—This section may be cited as the “Rilya  
641 Wilson Act.”

642 (2) LEGISLATIVE FINDINGS AND INTENT.—

643 (a) The Legislature finds that children from birth to age 5  
644 years are particularly vulnerable to maltreatment and that they  
645 enter out-of-home care in disproportionately high numbers.

646 (b) The Legislature also finds that children who are abused  
647 or neglected are at high risk of experiencing physical and  
648 mental health problems and problems with language and  
649 communication, cognitive development, and social and emotional  
650 development.

651 (c) The Legislature also finds that providing early  
652 intervention and services, as well as quality child care and  
653 early education programs to support the healthy development of  
654 these young children, can have positive effects that last  
655 throughout childhood and into adulthood.

656 (d) The Legislature also finds that the needs of each of  
657 these children are unique, and while some children may be best  
658 served by a quality child care or early education program,  
659 others may need more attention and nurturing that can best be  
660 provided by a stay-at-home caregiver ~~The Legislature recognizes~~  
661 ~~that children who are in the care of the state due to abuse,~~  
662 ~~neglect, or abandonment are at increased risk of poor school~~  
663 ~~performance and other behavioral and social problems.~~

664 (e) It is the intent of the Legislature that children who  
665 are currently in out-of-home the care of the state be provided  
666 with an age-appropriate developmental child care or early  
667 education arrangement that is in the best interest of the child

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668 ~~education program~~ to help ameliorate the negative consequences  
669 of abuse, neglect, or abandonment.

670 (3) EARLY INTERVENTION FOR CHILDREN UNDER THE AGE OF  
671 THREE.—The Child Abuse Prevention and Treatment Act, 42 U.S.C.  
672 ss. 5101, et seq., and federal the Individuals with Disabilities  
673 Education Act requires states to have provisions and procedures  
674 for referring to early intervention services children who are  
675 under the age of 3 years and involved in substantiated cases of  
676 child abuse or neglect, or who are affected by substance abuse  
677 or withdrawal symptoms from prenatal drug exposure.

678 (a) Referral process.—A child from birth to age 36 months  
679 who is determined to be a victim of any substantiated case of  
680 child abuse or neglect or who is affected by substance abuse or  
681 withdrawal symptoms from prenatal drug exposure, shall be  
682 referred to the Early Steps Program under s. 391.301, according  
683 to the following criteria:

684 1. Children who will remain in the home of their parents or  
685 legal guardian without referral to a community-based care lead  
686 agency for services shall be referred to the Early Steps Program  
687 by the protective investigator handling the case within 48 hours  
688 of verification of the abuse or neglect.

689 2. When there is an indication that they may have an  
690 established condition or developmental delay, children who will  
691 remain in the home of their parents or legal guardian and who  
692 are referred to a community-based care lead agency for services  
693 must be referred to the Early Steps Program by the community-  
694 based care lead agency case worker during the case plan  
695 development process within 7 days after the identification of an  
696 established condition or possible developmental delay. The



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697 community-based care lead agency shall follow up to determine  
 698 whether the child has been found eligible for Part C services  
 699 and shall support the participation of the eligible children's  
 700 families in the Early Steps Program. Support may include, but  
 701 need not be limited to:

702 a. Assistance with transportation, if necessary;  
 703 b. Providing written information about the Early Steps  
 704 Program; and

705 c. Followup with the family and encouraging the child's  
 706 participation in the Early Steps Program.

707 3. Children being placed into shelter care for referral to  
 708 a community-based care lead agency for out-of-home placement  
 709 must receive an initial assessment during the case plan  
 710 development process and may be referred to the Early Steps  
 711 Program according to the following criteria:

712 a. Children who are not referred for a comprehensive  
 713 behavioral health assessment under the Medicaid program must be  
 714 referred to the Early Steps Program by the case worker during  
 715 the case plan development process for the child. The referral  
 716 must be documented in the case plan.

717 b. Children who are referred for a comprehensive behavioral  
 718 health assessment under the Medicaid program must be referred to  
 719 the Early Steps Program by the community-based care lead agency  
 720 case worker if their comprehensive behavioral health assessment  
 721 flags them as potentially having a developmental delay or an  
 722 established condition. The referral must be documented in the  
 723 case plan. The Early Steps Program referral form must be  
 724 accompanied by the comprehensive behavioral health assessment  
 725 that flagged the child as potentially having a developmental

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726 delay or an established condition.

727 (b) Screening and evaluation.—The local Early Steps Program  
 728 shall screen or evaluate all children referred by the department  
 729 or its contracted agencies. The information on the outcome of a  
 730 child's screening or evaluation, and any recommended services on  
 731 the child's individualized family support plan, shall be  
 732 forwarded by the Early Steps Program's service coordinator to  
 733 the department and the community-based care lead agency for  
 734 consideration in development of the child's case plan.

735 (c) Appointment of surrogate parent.—Federal law requires  
 736 parental consent and participation at every stage of the early  
 737 intervention process after referral. A dependency court shall  
 738 appoint a surrogate parent under s. 39.0016 for a child from  
 739 birth to age 36 months whose parents are unavailable or  
 740 unwilling to provide consent for services when the child has  
 741 been determined to be a victim of any substantiated case of  
 742 child abuse or neglect or is affected by substance abuse or  
 743 withdrawal symptoms from prenatal drug exposure and has been  
 744 referred to the Early Steps Program under s. 391.301.

745 (4) EARLY INTERVENTION FOR CHILDREN AGES THREE YEARS TO  
 746 FIVE YEARS.—The federal Individuals with Disabilities Education  
 747 Act requires states to develop a comprehensive Child Find  
 748 program to locate children who are potentially eligible for  
 749 services, including children who are involved in substantiated  
 750 cases of child abuse or neglect, and link them to early  
 751 intervention services. If the department or a community-based  
 752 care lead agency suspects that a child is a victim of  
 753 substantiated child abuse or neglect, the child must be referred  
 754 to the Child Find program of the Florida Diagnostic and Learning

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754 Resources System for assessment.

755 (5) CHILD CARE, EARLY EDUCATION PROGRAMS, PRESCHOOL.-

756 Research has found that the quality of child care, early  
757 education programs, and preschool programs is important to the  
758 cognitive, language, and social development of young children,  
759 with consistent and emotionally supportive care being of great  
760 benefit to children and their families. Children who receive  
761 high-quality early childhood care and education have better  
762 math, language, and social skills as they enter school, and, as  
763 they grow older, require less remedial education, progress  
764 further in school, and have fewer interactions with the justice  
765 system. Significant involvement of parents in early childhood  
766 care and education may help reduce the incidence of maltreatment  
767 of children and may be beneficial to children and families who  
768 are already involved in the child welfare system by virtue of  
769 establishing caring relationships in a supportive learning  
770 environment that assists parents in establishing social support  
771 networks, accessing information about parenting and child  
772 development, and receiving referrals to other services.

773 (a) Early child care and education preference.-Care for  
774 children in out-of-home care shall be chosen by the caregiver  
775 according to the following order:

776 1. Providers who receive a Gold Seal Quality Care  
777 designation pursuant to s. 402.281, or providers participating  
778 in a quality rating system;

779 2. Licensed child care providers;

780 3. Public school providers; and

781 4. License-exempt child care providers, including  
782 religious-exempt and registered providers, and non-public  
783

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784 schools. These providers must be participating in the school  
785 readiness program through the local early learning coalition.

786 (b) Enrollment

787 ~~(3) REQUIREMENTS.-~~

788 1. A child from birth to the age of school entry, who is  
789 under court-ordered protective supervision or in out-of-home  
790 care and is the custody of the Family Safety Program Office of  
791 the Department of Children and Families or a community-based  
792 lead agency, and enrolled in an a-licensed early education or  
793 child care program must attend the program 5 days a week unless  
794 the court grants an exception due to the court determining it is  
795 in the best interest of a child from birth to age 3 years:

796 a. With a stay-at-home caregiver to remain at home.

797 b. With a caregiver who works less than full time to attend  
798 an early education or child care program fewer than 5 days a  
799 week.

800 2. Notwithstanding s. 39.202, the department of Children  
801 and Families must notify operators of an the-licensed early  
802 education or child care program, subject to the reporting  
803 requirements of this act, of the enrollment of any child from  
804 birth to the age of school entry, under court-ordered protective  
805 supervision or in out-of-home care. If the custody of the Family  
806 Safety Program Office of the Department of Children and Families  
807 or a community-based lead agency. When a child is enrolled in an  
808 early education or child care program regulated by the  
809 department, the child's attendance in the program must be a  
810 required task action in the safety plan or the case plan  
811 developed for the child pursuant to this chapter. An exemption  
812 to participating in the licensed early education or child care

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813 ~~program 5 days a week may be granted by the court.~~  
 814 (c)(4) Attendance ATTENDANCE AND REPORTING REQUIREMENTS.-  
 815 1.(a) A child enrolled in an a licensed early education or  
 816 child care program who meets the requirements of paragraph (b)  
 817 ~~subsection (3)~~ may not be withdrawn from the program without the  
 818 prior written approval of the department Family Safety Program  
 819 ~~Office of the Department of Children and Families~~ or the  
 820 community-based care lead agency.  
 821 2.a.(b)1- If a child covered by this section is absent from  
 822 the program on a day when he or she is supposed to be present,  
 823 the person with whom the child resides must report the absence  
 824 to the program by the end of the business day. If the person  
 825 with whom the child resides, whether the parent or caregiver,  
 826 fails to timely report the absence, the absence is considered to  
 827 be unexcused. The program shall report any unexcused absence or  
 828 seven consecutive excused absences of a child who is enrolled in  
 829 the program and covered by this act to the local designated  
 830 ~~staff of the Family Safety Program Office of the department of~~  
 831 ~~Children and Families~~ or the community-based care lead agency by  
 832 the end of the business day following the unexcused absence or  
 833 seventh consecutive excused absence.  
 834 b.2- The department or community-based care lead agency  
 835 shall conduct a site visit to the residence of the child upon  
 836 receiving a report of two consecutive unexcused absences or  
 837 seven consecutive excused absences.  
 838 c.3- If the site visit results in a determination that the  
 839 child is missing, the department or community-based care lead  
 840 agency shall follow the procedure set forth in s. 39.0141 ~~report~~  
 841 ~~the child as missing to a law enforcement agency and proceed~~

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842 ~~with the necessary actions to locate the child pursuant to~~  
 843 ~~procedures for locating missing children.~~  
 844 d.4- If the site visit results in a determination that the  
 845 child is not missing, the parent or caregiver shall be notified  
 846 that failure to ensure that the child attends the ~~licensed~~ early  
 847 education or child care program is a violation of the safety  
 848 plan or the case plan. If more than two site visits are  
 849 conducted pursuant to this paragraph ~~subsection~~, staff shall  
 850 ~~initiate action to~~ notify the court of the parent or caregiver's  
 851 noncompliance with the case plan.  
 852 (6) EDUCATIONAL STABILITY.-Just as educational stability is  
 853 important for school-age children, it is also important to  
 854 minimize disruptions to secure attachments and stable  
 855 relationships with supportive caregivers of children from birth  
 856 to school age and to ensure that these attachments are not  
 857 disrupted due to placement in out-of-home care or subsequent  
 858 changes in out-of-home placement.  
 859 (a) A child must be allowed to remain in the child care or  
 860 early educational setting that he or she attended before entry  
 861 into out-of-home care, unless the program is not in the best  
 862 interest of the child.  
 863 (b) If it is not in the best interest of the child for him  
 864 or her to remain in his or her child care or early education  
 865 setting upon entry into out-of-home care, the caregiver must  
 866 work with the case manager, guardian ad litem, child care and  
 867 educational staff, and educational surrogate, if one has been  
 868 appointed, to determine the best setting for the child. Such  
 869 setting may be a child care provider that receives a Gold Seal  
 870 Quality Care designation pursuant to s. 402.281, a provider

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871 participating in a quality rating system, a licensed child care  
 872 provider, a public school provider, or a license-exempt child  
 873 care provider, including religious-exempt and registered  
 874 providers, and non-public schools.

875 (c) The department and providers of early care and  
 876 education shall develop protocols to ensure continuity if  
 877 children are required to leave a program because of a change in  
 878 out-of-home placement.

879 (7) TRANSITIONS.-In the absence of an emergency, if a child  
 880 from birth to school age leaves a child care or early education  
 881 program, the transition must be pursuant to a plan that involves  
 882 cooperation and sharing of information among all persons  
 883 involved, that respects the child's developmental stage and  
 884 associated psychological needs, and that allows for a gradual  
 885 transition from one setting to another.

886 Section 9. Paragraph (c) of subsection (2) of section  
 887 39.701, Florida Statutes, is amended to read:

888 39.701 Judicial review.-

889 (2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF  
 890 AGE.-

891 (c) *Review determinations.*-The court and any citizen review  
 892 panel shall take into consideration the information contained in  
 893 the social services study and investigation and all medical,  
 894 psychological, and educational records that support the terms of  
 895 the case plan; testimony by the social services agency, the  
 896 parent, the foster parent or legal custodian, the guardian ad  
 897 litem or surrogate parent for educational decisionmaking if one  
 898 has been appointed for the child, and any other person deemed  
 899 appropriate; and any relevant and material evidence submitted to

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900 the court, including written and oral reports to the extent of  
 901 their probative value. These reports and evidence may be  
 902 received by the court in its effort to determine the action to  
 903 be taken with regard to the child and may be relied upon to the  
 904 extent of their probative value, even though not competent in an  
 905 adjudicatory hearing. In its deliberations, the court and any  
 906 citizen review panel shall seek to determine:

907 1. If the parent was advised of the right to receive  
 908 assistance from any person or social service agency in the  
 909 preparation of the case plan.

910 2. If the parent has been advised of the right to have  
 911 counsel present at the judicial review or citizen review  
 912 hearings. If not so advised, the court or citizen review panel  
 913 shall advise the parent of such right.

914 3. If a guardian ad litem needs to be appointed for the  
 915 child in a case in which a guardian ad litem has not previously  
 916 been appointed or if there is a need to continue a guardian ad  
 917 litem in a case in which a guardian ad litem has been appointed.

918 4. Who holds the rights to make educational decisions for  
 919 the child. If appropriate, the court may refer the child to the  
 920 district school superintendent for appointment of a surrogate  
 921 parent or may itself appoint a surrogate parent under the  
 922 Individuals with Disabilities Education Act and s. 39.0016. If  
 923 the child is under the age of school entry, the court must make  
 924 the appointment.

925 5. The compliance or lack of compliance of all parties with  
 926 applicable items of the case plan, including the parents'  
 927 compliance with child support orders.

928 6. The compliance or lack of compliance with a visitation

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929 contract between the parent and the social service agency for  
930 contact with the child, including the frequency, duration, and  
931 results of the parent-child visitation and the reason for any  
932 noncompliance.

933 7. The frequency, kind, and duration of contacts among  
934 siblings who have been separated during placement, as well as  
935 any efforts undertaken to reunite separated siblings if doing so  
936 is in the best interest of the child.

937 8. The compliance or lack of compliance of the parent in  
938 meeting specified financial obligations pertaining to the care  
939 of the child, including the reason for failure to comply, if  
940 applicable.

941 9. Whether the child is receiving safe and proper care  
942 according to s. 39.6012, including, but not limited to, the  
943 appropriateness of the child's current placement, including  
944 whether the child is in a setting that is as family-like and as  
945 close to the parent's home as possible, consistent with the  
946 child's best interests and special needs, and including  
947 maintaining stability in the child's educational placement, as  
948 documented by assurances from the community-based care provider  
949 that:

950 a. The placement of the child takes into account the  
951 appropriateness of the current educational setting and the  
952 proximity to the school in which the child is enrolled at the  
953 time of placement.

954 b. The community-based care agency has coordinated with  
955 appropriate local educational agencies to ensure that the child  
956 remains in the school in which the child is enrolled at the time  
957 of placement.

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958 10. Whether the department or community-based care lead  
959 agency continues to reasonably engage in family finding. The  
960 level of reasonableness is determined by the length of the case  
961 and amount of time the department or community-based care lead  
962 agency has had to continue the process.

963 11. ~~10.~~ A projected date likely for the child's return home  
964 or other permanent placement.

965 12. ~~11.~~ When appropriate, the basis for the unwillingness  
966 or inability of the parent to become a party to a case plan. The  
967 court and the citizen review panel shall determine if the  
968 efforts of the social service agency to secure party  
969 participation in a case plan were sufficient.

970 13. ~~12.~~ For a child who has reached 13 years of age but is  
971 not yet 18 years of age, the adequacy of the child's preparation  
972 for adulthood and independent living. For a child who is 15  
973 years of age or older, the court shall determine if appropriate  
974 steps are being taken for the child to obtain a driver license  
975 or learner's driver license.

976 14. ~~13.~~ If amendments to the case plan are required.  
977 Amendments to the case plan must be made as provided in ~~under~~ s.  
978 39.6013.

979 Section 10. Effective January 1, 2019, paragraph (b) of  
980 subsection (1) of section 414.045, Florida Statutes, is amended  
981 to read:

982 414.045 Cash assistance program.—Cash assistance families  
983 include any families receiving cash assistance payments from the  
984 state program for temporary assistance for needy families as  
985 defined in federal law, whether such funds are from federal  
986 funds, state funds, or commingled federal and state funds. Cash

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987 assistance families may also include families receiving cash  
 988 assistance through a program defined as a separate state  
 989 program.

990 (1) For reporting purposes, families receiving cash  
 991 assistance shall be grouped into the following categories. The  
 992 department may develop additional groupings in order to comply  
 993 with federal reporting requirements, to comply with the data-  
 994 reporting needs of the board of directors of CareerSource  
 995 Florida, Inc., or to better inform the public of program  
 996 progress.

997 (b) *Child-only cases.*—Child-only cases include cases that  
 998 do not have an adult or teen head of household as defined in  
 999 federal law. Such cases include:

1000 1. Children in the care of caretaker relatives, if the  
 1001 caretaker relatives choose to have their needs excluded in the  
 1002 calculation of the amount of cash assistance.

1003 2. Families in the Kinship Care Relative Caregiver Program  
 1004 as provided in s. 39.5085.

1005 3. Families in which the only parent in a single-parent  
 1006 family or both parents in a two-parent family receive  
 1007 supplemental security income (SSI) benefits under Title XVI of  
 1008 the Social Security Act, as amended. To the extent permitted by  
 1009 federal law, individuals receiving SSI shall be excluded as  
 1010 household members in determining the amount of cash assistance,  
 1011 and such cases shall not be considered families containing an  
 1012 adult. Parents or caretaker relatives who are excluded from the  
 1013 cash assistance group due to receipt of SSI may choose to  
 1014 participate in work activities. An individual whose ability to  
 1015 participate in work activities is limited who volunteers to

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1016 participate in work activities shall be assigned to work  
 1017 activities consistent with such limitations. An individual who  
 1018 volunteers to participate in a work activity may receive child  
 1019 care or support services consistent with such participation.

1020 4. Families in which the only parent in a single-parent  
 1021 family or both parents in a two-parent family are not eligible  
 1022 for cash assistance due to immigration status or other  
 1023 limitation of federal law. To the extent required by federal  
 1024 law, such cases shall not be considered families containing an  
 1025 adult.

1026 5. To the extent permitted by federal law and subject to  
 1027 appropriations, special needs children who have been adopted  
 1028 pursuant to s. 409.166 and whose adopting family qualifies as a  
 1029 needy family under the state program for temporary assistance  
 1030 for needy families. Notwithstanding any provision to the  
 1031 contrary in s. 414.075, s. 414.085, or s. 414.095, a family  
 1032 shall be considered a needy family if:

1033 a. The family is determined by the department to have an  
 1034 income below 200 percent of the federal poverty level;

1035 b. The family meets the requirements of s. 414.095(2) and  
 1036 (3) related to residence, citizenship, or eligible noncitizen  
 1037 status; and

1038 c. The family provides any information that may be  
 1039 necessary to meet federal reporting requirements specified under  
 1040 Part A of Title IV of the Social Security Act.

1041 Families described in subparagraph 1., subparagraph 2., or  
 1042 subparagraph 3. may receive child care assistance or other  
 1043 supports or services so that the children may continue to be  
 1044

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1045 cared for in their own homes or in the homes of relatives. Such  
1046 assistance or services may be funded from the temporary  
1047 assistance for needy families block grant to the extent  
1048 permitted under federal law and to the extent funds have been  
1049 provided in the General Appropriations Act.

1050 Section 11. Paragraph (d) of subsection (1) of section  
1051 1009.25, Florida Statutes, is amended to read:

1052 1009.25 Fee exemptions.—

1053 (1) The following students are exempt from the payment of  
1054 tuition and fees, including lab fees, at a school district that  
1055 provides workforce education programs, Florida College System  
1056 institution, or state university:

1057 (d) A student who is or was at the time he or she reached 18  
1058 years of age in the custody of a kinship caregiver ~~relative or~~  
1059 ~~nonrelative~~ under s. 39.5085 or who was adopted from the  
1060 Department of Children and Families after May 5, 1997. Such  
1061 exemption includes fees associated with enrollment in applied  
1062 academics for adult education instruction. The exemption remains  
1063 valid until the student reaches 28 years of age.

1064 Section 12. Except as otherwise expressly provided in this  
1065 act, this act shall take effect July 1, 2018.



**The Florida Senate**  
State Senator René García  
36<sup>th</sup> District

Please reply to:

District Office:

1490 West 68 Street  
Suite # 201  
Hialeah, FL 33014  
Phone# (305) 364-3100

December 7, 2017

The Honorable Greg Steube  
Chair, Judiciary  
515 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Senator Steube,

Please have this letter serve as my formal request to have **SB 590: Child Welfare** be heard during the next scheduled Judiciary Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García  
District 36

CC: Tom Cibula  
Joyce Butler



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2.6.18

590

Meeting Date

Bill Number (if applicable)

Topic Child Welfare

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

590

Meeting Date

Bill Number (if applicable)

Topic

Child Welfare

Amendment Barcode (if applicable)

Name

Victoria Frepp

Job Title

Chief Policy & Research Officer

Address

411 E Colley Ave

Phone

850/241 6309

Street

City

JLH

State

Zip

FL 32301

Email

Victoria.Frepp@challenging.org

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Representing

FL Coalition for Children

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/16/18

Meeting Date

590

~~1388~~  
Bill Number (if applicable)

Topic ~~DCJ~~ DCF

Amendment Barcode (if applicable)

Name Greg Pound

Job Title

Address 9166 Sunrise Dr.  
Street

Phone

Largo FL 33773  
City State Zip

Email

Speaking:  For  Against  Information

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

Representing

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 602

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Mandatory Minimum Sentences

DATE: February 6, 2018      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 602 authorizes a court to depart from the 3-year mandatory minimum term of imprisonment applicable to trafficking in various controlled substances, excluding opioids and opiates. The departure is authorized if the court makes the following written findings:

- The violation only involved possession;
- The offender did not use or threaten violence or use a weapon during the commission of the offense;
- The offense did not result in a death or serious bodily injury of a person not a party to the offense; and
- A factor, consideration, or circumstance clearly demonstrates that imposing the mandatory minimum term of imprisonment would constitute or result in an injustice.

The Legislature’s Office of Economic and Demographic Research estimates that the bill will have a “negative indeterminate” prison bed impact (an unquantifiable decrease in prison beds). See Section V. Fiscal Impact Statement.

## II. Present Situation:

### Florida's Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the “potential for abuse”<sup>1</sup> of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

### Punishment of Prohibited Drug Acts

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance. The penalty for violating s. 893.13, F.S., can depend on the act committed, the substance and quantity of the substance involved, and the location in which the violation occurred. For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., which includes many synthetic controlled substances, is a third degree felony.<sup>2</sup> However, if that substance is sold within 1,000 feet of a K-12 school or other designated facility or location, the

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<sup>1</sup> Pursuant to s. 893.035(3)(a), F.S., “potential for abuse” means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user’s health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user’s own initiative rather than on the basis of professional medical advice.

<sup>2</sup> Section 893.13(1)(a)2., F.S. A third-degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

violation is a second-degree felony.<sup>3</sup> With three exceptions,<sup>4</sup> s. 893.13, F.S., does *not* provide for mandatory minimum terms of imprisonment.

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances. And the controlled substances involved in the trafficking statute must meet a specified weight or quantity threshold.

Most drug trafficking offenses are first degree felonies<sup>5</sup> and are subject to a mandatory minimum term<sup>6</sup> and a mandatory fine, which is determined by the weight or quantity of the substance.<sup>7</sup> For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000.<sup>8</sup> Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000.<sup>9</sup>

### **Criminal Punishment Code**

The Criminal Punishment Code<sup>10</sup> (Code) is Florida's "primary sentencing policy."<sup>11</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>12</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed

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<sup>3</sup> Section 893.13(1)(c)2., F.S. A second-degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082(3)(d) and 775.083(1)(b), F.S.

<sup>4</sup> Exceptions: s. 893.13(1)(c)1., F.S. (selling, etc., certain Schedule I and II controlled substances within 1,000 feet of a K-12 school, park, community center, or publicly owned recreational facility subject to 3-year mandatory minimum); s. 893.13(1)(g)1., F.S. (manufacturing methamphetamine or phencyclidine in a structure or conveyance where any child under 16 is present subject to 5-year mandatory minimum); and s. 893.13(1)(g)2., F.S. (manufacturing methamphetamine or phencyclidine causes a child under 16 to suffer great bodily harm subject to 10-year mandatory minimum).

<sup>5</sup> A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082(3)(b) and 775.083(1)(b), F.S.

<sup>6</sup> There are currently 56 mandatory minimum terms of imprisonment in s. 893.135, F.S., which range from three years to life imprisonment.

<sup>7</sup> See s. 893.135, F.S.

<sup>8</sup> Section 893.135(b)(1)a., F.S.

<sup>9</sup> Section 893.135(1)b.1.b., F.S.

<sup>10</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

<sup>11</sup> *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) Executive Summary (Offenses Committed On or After October 1, 1998)*, Florida Department of Corrections, available at [http://www.dc.state.fl.us/pub/sg\\_annual/1213/executives.html](http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html) (last visited on Jan. 31, 2018).

<sup>12</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.<sup>13</sup> Absent mitigation,<sup>14</sup> the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>15</sup>

### **Mandatory Minimum Sentences and Departures**

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: “If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.”<sup>16</sup> As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

Prosecutors have “complete discretion” in the charging decision.<sup>17</sup> The exercise of this discretion may determine whether or not a defendant is subject to a mandatory minimum term or a reduced mandatory minimum term. A prosecutor could determine in a particular case that mandatory minimum sentencing is inappropriate or too severe and avoid or ameliorate such sentencing. For example, the prosecutor could offer a plea to a violation of s. 893.13, F.S., or attempted drug trafficking, neither of which carries a mandatory minimum term. A prosecutor could also offer a plea to a drug trafficking violation that carries a 3-year mandatory minimum term, even though the defendant could be prosecuted for a drug trafficking violation that carries a greater mandatory minimum term. Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.<sup>18</sup>

There are few circumstances in which a court is statutorily authorized to depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is determined to be a youthful offender.<sup>19</sup> In determining youthful offender status, the defendant

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<sup>13</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>14</sup> The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

<sup>15</sup> If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

<sup>16</sup> Fla. R. Crim. P. 3.704(d)(26).

<sup>17</sup> “Under Florida’s constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute.” *State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986) (citing FLA. CONST. art. II, s. 3) (other citations omitted).

<sup>18</sup> Sections 790.163(2), 790.164(2), 893.135(4), and 921.0024(1)(b), F.S. However, lower-level dealers or peripheral actors may have little, if any, information beneficial to prosecutors. Inmate population data reported in a 2009 Senate interim report indicated that the average sentence of inmates with a lower-level trafficking offense was above the mandatory minimum term, while the average sentence of inmates with a higher-level trafficking offense was below the mandatory minimum term. *A Policy Analysis of Minimum Mandatory Sentencing for Drug Traffickers*, Interim Report 2010-109 (Oct. 2009), p. 7, Committee on Criminal Justice, The Florida Senate, [http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-109cj.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-109cj.pdf) (last visited on January 31, 2018).

<sup>19</sup> Section 958.04, F.S.

must be given the opportunity to present facts to the court.<sup>20</sup> A court may also depart from a mandatory minimum term for a violation of s. 316.027(2)(c), F.S. (driver involved in a fatal crash fails to stop and remain at the scene of a crash), upon the defendant's motion if the court "finds that a factor, consideration or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice."<sup>21</sup>

### III. Effect of Proposed Changes:

The bill authorizes a court to depart only from the 3-year mandatory minimum terms of imprisonment for trafficking in various controlled substances, excluding opioids and opiates.<sup>22</sup> The departure is authorized if the court makes the following written findings:

- The violation only involved possession;
- The offender did not use or threaten violence or use a weapon during the commission of the offense;
- The offense did not result in a death or serious bodily injury of a person not a party to the offense; and
- A factor, consideration, or circumstance clearly demonstrates that imposing the mandatory minimum term of imprisonment would constitute or result in an injustice.

Because only a drug trafficking act involving possession may be considered for departure under the bill, the court may not depart from the mandatory minimum term if the drug trafficking violation involves sale, purchase, manufacture, delivery, or importation of a controlled substance.

Specifically, the bill authorizes downward departures from 3-year mandatory minimum sentences for trafficking in the smallest quantities of the following controlled substances:

- In excess of 25 pounds, but less than 2,000 pounds of cannabis, or 300 or more cannabis plants, but not more than 2,000 cannabis plants;<sup>23</sup>
- 28 grams or more, but less than 200 grams, of cocaine;<sup>24</sup>
- 28 grams or more, but less than 200 grams, of phencyclidine;<sup>25</sup>
- 200 grams or more, but less than 5 kilograms, of methaqualone;<sup>26</sup>
- 14 grams or more, but less than 28 grams, of amphetamine or methamphetamine;<sup>27</sup>
- 4 grams or more, but less than 14 grams, of flunitrazepam;<sup>28</sup>

<sup>20</sup> Section 958.07, F.S.

<sup>21</sup> Section 316.027(2)(g), F.S.

<sup>22</sup> Section 893.135(1)(c), F.S.

<sup>23</sup> Section 893.135(1)(a)1., F.S.

<sup>24</sup> Section 893.135(1)(b)1.a., F.S.

<sup>25</sup> Section 893.135(1)(d)1.a., F.S. Phencyclidine "is a hallucinogen formerly used as a veterinary anesthetic, and briefly as a general anesthetic for humans." "Phencyclidine," PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/phencyclidine> (last visited on January 31, 2018).

<sup>26</sup> Section 893.135(1)(e)1.a., F.S. Methaqualone "is a quinazoline derivative with hypnotic and sedative properties." "Methaqualone," PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/6292> (last visited on Jan. 31, 2018).

<sup>27</sup> Section 893.135(1)(f)1.a., F.S.

<sup>28</sup> Section 893.135(1)(g)1.a., F.S. "Flunitrazepam, trade name Rohypnol, is a central nervous system depressant in a class of drugs called benzodiazepines." "Flunitrazepam (Rohypnol)," Center for Substance Abuse Research, <http://www.cesar.umd.edu/cesar/drugs/rohypnol.asp> (last visited on Jan. 31, 2018).



- 1 kilogram or more, but less than 5 kilograms, of gamma-hydroxybutyric acid (GHB);<sup>29</sup>
- 1 kilogram or more, but less than 5 kilograms, of gamma-butyrolactone (GBL);<sup>30</sup>
- 1 kilogram or more, but less than 5 kilograms, of 1,4-Butanediol;<sup>31</sup>
- 10 grams or more, but less than 200 grams, of specified phenethylamines and cathinones, substituted<sup>32</sup> phenethylamines, and substituted cathinones;<sup>33</sup>
- 1 gram or more, but less than 5 grams, of lysergic acid diethylamide (LSD);<sup>34</sup>
- 280 grams or more, but less than 500 grams, of specified synthetic cannabinoids;<sup>35</sup> and
- 14 grams or more, but less than 100 grams, of n-benzyl phenethylamines.<sup>36</sup>

Except for cannabis, mixtures containing the above-referenced controlled substances are included.

Excluded from the departure provisions of the bill are trafficking in various opiates or opioids, such as opium, morphine, heroin, hydromorphone, codeine, hydrocodone, oxycodone, fentanyl, and carfentanil and other fentanyl derivatives.<sup>37</sup>

The bill does not authorize departure from mandatory fines.

The effective date of the bill is July 1, 2018.

<sup>29</sup> Section 893.135(1)(h)1.a., F.S. “Gamma-hydroxybutyric acid (GHB) is a naturally occurring analog of gamma-aminobutyric acid (GABA) that has been used in research and clinical medicine for many years. GHB was used clinically as an anesthetic in the 1960s but was withdrawn due to side effects that included seizures and coma.” Kapoor P., Revati Deshmukh R., and Kukreja I., “GHB Acid: A rage or reprove” (abstract) (Oct.–Dec. 2013) 4(4): 173, *Journal of Advanced Pharmaceutical Technology and Research*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3853692/> (last visited on January 31, 2018). “The primary effects of GHB use are those of a CNS [central nervous system] depressant[.]” *Id.* “GHB has been implicated in a number of crime types; most notably in drug-facilitated sexual assault.” *Id.* [S]exual predators . . . covertly administer the drug for its sedative and amnesic effects[.]” *Id.*

<sup>30</sup> Section 893.135(1)(i)1.a., F.S. “Analogues that are often substituted for GHB include GBL (gamma butyrolactone) and 1,4 BD (also called just “BD”), which is 1,4-butanediol.” “Drug Fact Sheet/GHB” (undated), U.S. Drug Enforcement Administration (on file with the Senate Committee on Criminal Justice).

<sup>31</sup> Section 893.135(1)(j)1.a., F.S. *See* n. 36, *infra*.

<sup>32</sup> “The term ‘substituted’ is a general term that means a portion of the chemical structure is removed and replaced with a different chemical structure.” Staff Analysis (CS/CS/CS/SB 150) (April 27, 2017), p. 11, n. 58, The Florida Senate, <http://www.flsenate.gov/Session/Bill/2017/150/Analyses/2017s00150.ap.PDF> (last visited on Jan. 31, 2018).

<sup>33</sup> Section 893.135(1)(k)2.a., F.S. “Phenethylamines” is a broad category of “psychoactive substances.” Sanders B., Lankenau S., Bloom J., and Hathazi D., “‘Research chemicals’: Tryptamine and Phenethylamine Use Among High Risk Youth” (2008) 43(3-4): 389, *Substance Use & Misuse*, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/> (last visited on January 31, 2018). “Cathinone . . . is a monoamine alkaloid found in the shrub *Catha edulis* (Khat)[.]” and is “[c]losely related to ephedrine, cathine and other amphetamines[.]” “Cathinone,” PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/Cathinone#section=Top> (last visited on Jan. 31, 2018).

<sup>34</sup> Section 893.135(1)(l)1.a., F.S.

<sup>35</sup> Section 893.135(1)(m)2.a., F.S. “Synthetic [c]annabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but . . . they are cannabinoid-like in their activity.” “Synthetic Cannabinoids Drug Information,” Redwood Toxicology Laboratory, [https://www.redwoodtoxicology.com/resources/drug\\_info/synthetic\\_cannabinoids](https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids) (last visited on Jan. 31, 2018).

<sup>36</sup> Section 893.135(1)(n)2.a., F.S. *See* n. 31, *supra*.

<sup>37</sup> These controlled substances are described in s. 893.135(1)(c), F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues:

The bill does not provide for retroactive application. Consequently, drug trafficking departures authorized by the bill would apply to applicable drug trafficking offenses committed on or after July 1, 2018, the effective date of the bill. “In Florida, without clear legislative intent to the contrary, a law is presumed to apply prospectively.”<sup>38</sup>

Additionally, Article X, Section 9 of the Florida Constitution, provides that repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.<sup>39</sup> This prohibition applies even if the retroactive application does not disadvantage the offender.<sup>40</sup>

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature’s Office of Economic and Demographic Research (EDR) preliminarily estimated that the original bill would have a “negative indeterminate” prison bed impact (an unquantifiable

<sup>38</sup> *Bates v. State*, 750 So. 2d 6, 10 (Fla. 1999) (in the absence of explicit legislative direction, the court refused to retroactively apply amendments to a sentencing statute to offenses committed before the effective date of the amendments).

<sup>39</sup> This constitutional provision operates as a savings clause to preserve laws in effect at the time of a defendant’s crime that affect prosecution or punishment of the defendant for that crime.

<sup>40</sup> See *Castle v. State*, 305 So. 2d 794, 796 (Fla. 4th DCA 1974), *affirmed*, 330 So.2d 10 (Fla. 1976) (Florida’s saving clause prohibits retroactive application of a reduced penalty for arson to a defendant sentenced under the pre-amended arson statute).

decrease in prison beds).<sup>41</sup> CS/SB 602 includes additional findings the court must make to depart from a mandatory minimum term. However, these changes should have no impact on EDR's estimate.

Additionally, the Department of Corrections indicates that the financial impact is indeterminate.<sup>42</sup>

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

The bill does not indicate how the request for a mandatory minimum term should be raised before the court.<sup>43</sup> If adopted into law, the courts will likely require the defendant to (1) make a motion to depart from the mandatory minimum term at sentencing, and (2) prove the four requirements for departure by a preponderance of the evidence<sup>44</sup> in order that the court may make its written findings.

## VIII. Statutes Affected:

This bill substantially amends section 893.135, Florida Statutes.

## IX. Additional Information:

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

### **CS by Criminal Justice on December 4, 2017:**

The Committee Substitute provides additional findings the court must make to depart from a mandatory minimum term: the offender did not use or threaten violence or use a weapon during the commission of the offense; and the offense did not result in a death or serious bodily injury of a person not a party to the offense.

<sup>41</sup> E-mail from EDR staff to staff of the Senate Committee on Criminal Justice, dated Nov. 3, 2017 (on file with the Senate Committee on Criminal Justice).

<sup>42</sup> Department of Corrections, *2018 Agency Legislative Bill Analysis*, S.B. 602 (Nov. 9, 2017) (on file with Senate Judiciary Committee).

<sup>43</sup> *Compare* s. 316.027(2)(g), F.S. (providing that defendant may make a motion to depart from mandatory minimum term to which state may object); s. 958.07, F.S. (requiring that defendant seeking youthful offender status have opportunity to present mitigating facts to the court that may materially affect adjudication as youthful offender).

<sup>44</sup> *See, e.g.*, s. 921.0026, F.S. (authorizing downward departure for sentences under criminal punishment code). Section 921.0026 does not specify who must move for departure or who has the burden. However, the courts have held that “[t]he burden rests on the defendant to ‘prove these elements, or other mitigating factors, before the trial court will depart.’” *State v. Milici*, 219 So. 3d 117, 121 (Fla. 5th DCA 2017)(quoting *Wallace v. State*, 197 So.3d 1204, 1205 (Fla. 1st DCA 2016), accord *State v. Jones*, 122 So.3d 517, 518 (Fla. 1st DCA 2013)).

B. Amendments:

None.

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

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By the Committee on Criminal Justice; and Senator Bracy

591-01781-18

2018602c1

A bill to be entitled

An act relating to mandatory minimum sentences; amending s. 893.135, F.S.; authorizing a court to depart from mandatory minimum terms of imprisonment for certain drug trafficking offenses if it makes specified findings; providing an effective date.

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

Section 1. Paragraphs (a), (b), and (d) through (n) of subsection (1) of section 893.135, Florida Statutes, are amended and subsection (8) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(a) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of 25 pounds of cannabis, or 300 or more cannabis plants, commits a felony of the first degree, which felony shall be known as "trafficking in cannabis," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity of cannabis involved:

1. Is in excess of 25 pounds, but less than 2,000 pounds, or is 300 or more cannabis plants, but not more than 2,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$25,000. However, the court may depart from the mandatory minimum term of imprisonment if it

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makes written findings as provided in subsection (8).

2. Is 2,000 pounds or more, but less than 10,000 pounds, or is 2,000 or more cannabis plants, but not more than 10,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$50,000.

3. Is 10,000 pounds or more, or is 10,000 or more cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$200,000.

For the purpose of this paragraph, a plant, including, but not limited to, a seedling or cutting, is a "cannabis plant" if it has some readily observable evidence of root formation, such as root hairs. To determine if a piece or part of a cannabis plant severed from the cannabis plant is itself a cannabis plant, the severed piece or part must have some readily observable evidence of root formation, such as root hairs. Callous tissue is not readily observable evidence of root formation. The viability and sex of a plant and the fact that the plant may or may not be a dead harvested plant are not relevant in determining if the plant is a "cannabis plant" or in the charging of an offense under this paragraph. Upon conviction, the court shall impose the longest term of imprisonment provided for in this paragraph.

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of

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59 cocaine or any such mixture, commits a felony of the first  
60 degree, which felony shall be known as "trafficking in cocaine,"  
61 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
62 If the quantity involved:

63 a. Is 28 grams or more, but less than 200 grams, such  
64 person shall be sentenced to a mandatory minimum term of  
65 imprisonment of 3 years, and the defendant shall be ordered to  
66 pay a fine of \$50,000. However, the court may depart from the  
67 mandatory minimum term of imprisonment if it makes written  
68 findings as provided in subsection (8).

69 b. Is 200 grams or more, but less than 400 grams, such  
70 person shall be sentenced to a mandatory minimum term of  
71 imprisonment of 7 years, and the defendant shall be ordered to  
72 pay a fine of \$100,000.

73 c. Is 400 grams or more, but less than 150 kilograms, such  
74 person shall be sentenced to a mandatory minimum term of  
75 imprisonment of 15 calendar years and pay a fine of \$250,000.

76 2. Any person who knowingly sells, purchases, manufactures,  
77 delivers, or brings into this state, or who is knowingly in  
78 actual or constructive possession of, 150 kilograms or more of  
79 cocaine, as described in s. 893.03(2)(a)4., commits the first  
80 degree felony of trafficking in cocaine. A person who has been  
81 convicted of the first degree felony of trafficking in cocaine  
82 under this subparagraph shall be punished by life imprisonment  
83 and is ineligible for any form of discretionary early release  
84 except pardon or executive clemency or conditional medical  
85 release under s. 947.149. However, if the court determines that,  
86 in addition to committing any act specified in this paragraph:

87 a. The person intentionally killed an individual or

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88 counseled, commanded, induced, procured, or caused the  
89 intentional killing of an individual and such killing was the  
90 result; or

91 b. The person's conduct in committing that act led to a  
92 natural, though not inevitable, lethal result,

93  
94 such person commits the capital felony of trafficking in  
95 cocaine, punishable as provided in ss. 775.082 and 921.142. Any  
96 person sentenced for a capital felony under this paragraph shall  
97 also be sentenced to pay the maximum fine provided under  
98 subparagraph 1.

99 3. Any person who knowingly brings into this state 300  
100 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,  
101 and who knows that the probable result of such importation would  
102 be the death of any person, commits capital importation of  
103 cocaine, a capital felony punishable as provided in ss. 775.082  
104 and 921.142. Any person sentenced for a capital felony under  
105 this paragraph shall also be sentenced to pay the maximum fine  
106 provided under subparagraph 1.

107 (d)1. Any person who knowingly sells, purchases,  
108 manufactures, delivers, or brings into this state, or who is  
109 knowingly in actual or constructive possession of, 28 grams or  
110 more of phencyclidine, as described in s. 893.03(2)(b)23., a  
111 substituted phenylcyclohexylamine, as described in s.  
112 893.03(1)(c)195., or a substance described in s.  
113 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture  
114 containing phencyclidine, as described in s. 893.03(2)(b)23., a  
115 substituted phenylcyclohexylamine, as described in s.  
116 893.03(1)(c)195., or a substance described in s.

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117 893.03(1)(c)13., 32., 38., 103., or 146., commits a felony of  
 118 the first degree, which felony shall be known as "trafficking in  
 119 phencyclidine," punishable as provided in s. 775.082, s.  
 120 775.083, or s. 775.084. If the quantity involved:  
 121 a. Is 28 grams or more, but less than 200 grams, such  
 122 person shall be sentenced to a mandatory minimum term of  
 123 imprisonment of 3 years, and the defendant shall be ordered to  
 124 pay a fine of \$50,000. However, the court may depart from the  
 125 mandatory minimum term of imprisonment if it makes written  
 126 findings as provided in subsection (8).  
 127 b. Is 200 grams or more, but less than 400 grams, such  
 128 person shall be sentenced to a mandatory minimum term of  
 129 imprisonment of 7 years, and the defendant shall be ordered to  
 130 pay a fine of \$100,000.  
 131 c. Is 400 grams or more, such person shall be sentenced to  
 132 a mandatory minimum term of imprisonment of 15 calendar years  
 133 and pay a fine of \$250,000.  
 134 2. Any person who knowingly brings into this state 800  
 135 grams or more of phencyclidine, as described in s.  
 136 893.03(2)(b)23., a substituted phenylcyclohexylamine, as  
 137 described in s. 893.03(1)(c)195., or a substance described in s.  
 138 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture  
 139 containing phencyclidine, as described in s. 893.03(2)(b)23., a  
 140 substituted phenylcyclohexylamine, as described in s.  
 141 893.03(1)(c)195., or a substance described in s.  
 142 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the  
 143 probable result of such importation would be the death of any  
 144 person commits capital importation of phencyclidine, a capital  
 145 felony punishable as provided in ss. 775.082 and 921.142. Any

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146 person sentenced for a capital felony under this paragraph shall  
 147 also be sentenced to pay the maximum fine provided under  
 148 subparagraph 1.  
 149 (e)1. Any person who knowingly sells, purchases,  
 150 manufactures, delivers, or brings into this state, or who is  
 151 knowingly in actual or constructive possession of, 200 grams or  
 152 more of methaqualone or of any mixture containing methaqualone,  
 153 as described in s. 893.03(1)(d), commits a felony of the first  
 154 degree, which felony shall be known as "trafficking in  
 155 methaqualone," punishable as provided in s. 775.082, s. 775.083,  
 156 or s. 775.084. If the quantity involved:  
 157 a. Is 200 grams or more, but less than 5 kilograms, such  
 158 person shall be sentenced to a mandatory minimum term of  
 159 imprisonment of 3 years, and the defendant shall be ordered to  
 160 pay a fine of \$50,000. However, the court may depart from the  
 161 mandatory minimum term of imprisonment if it makes written  
 162 findings as provided in subsection (8).  
 163 b. Is 5 kilograms or more, but less than 25 kilograms, such  
 164 person shall be sentenced to a mandatory minimum term of  
 165 imprisonment of 7 years, and the defendant shall be ordered to  
 166 pay a fine of \$100,000.  
 167 c. Is 25 kilograms or more, such person shall be sentenced  
 168 to a mandatory minimum term of imprisonment of 15 calendar years  
 169 and pay a fine of \$250,000.  
 170 2. Any person who knowingly brings into this state 50  
 171 kilograms or more of methaqualone or of any mixture containing  
 172 methaqualone, as described in s. 893.03(1)(d), and who knows  
 173 that the probable result of such importation would be the death  
 174 of any person commits capital importation of methaqualone, a

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175 capital felony punishable as provided in ss. 775.082 and  
 176 921.142. Any person sentenced for a capital felony under this  
 177 paragraph shall also be sentenced to pay the maximum fine  
 178 provided under subparagraph 1.

179 (f)1. Any person who knowingly sells, purchases,  
 180 manufactures, delivers, or brings into this state, or who is  
 181 knowingly in actual or constructive possession of, 14 grams or  
 182 more of amphetamine, as described in s. 893.03(2)(c)2., or  
 183 methamphetamine, as described in s. 893.03(2)(c)4., or of any  
 184 mixture containing amphetamine or methamphetamine, or  
 185 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine  
 186 in conjunction with other chemicals and equipment utilized in  
 187 the manufacture of amphetamine or methamphetamine, commits a  
 188 felony of the first degree, which felony shall be known as  
 189 "trafficking in amphetamine," punishable as provided in s.  
 190 775.082, s. 775.083, or s. 775.084. If the quantity involved:

191 a. Is 14 grams or more, but less than 28 grams, such person  
 192 shall be sentenced to a mandatory minimum term of imprisonment  
 193 of 3 years, and the defendant shall be ordered to pay a fine of  
 194 \$50,000. However, the court may depart from the mandatory  
 195 minimum term of imprisonment if it makes written findings as  
 196 provided in subsection (8).

197 b. Is 28 grams or more, but less than 200 grams, such  
 198 person shall be sentenced to a mandatory minimum term of  
 199 imprisonment of 7 years, and the defendant shall be ordered to  
 200 pay a fine of \$100,000.

201 c. Is 200 grams or more, such person shall be sentenced to  
 202 a mandatory minimum term of imprisonment of 15 calendar years  
 203 and pay a fine of \$250,000.

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204 2. Any person who knowingly manufactures or brings into  
 205 this state 400 grams or more of amphetamine, as described in s.  
 206 893.03(2)(c)2., or methamphetamine, as described in s.  
 207 893.03(2)(c)4., or of any mixture containing amphetamine or  
 208 methamphetamine, or phenylacetone, phenylacetic acid,  
 209 pseudoephedrine, or ephedrine in conjunction with other  
 210 chemicals and equipment used in the manufacture of amphetamine  
 211 or methamphetamine, and who knows that the probable result of  
 212 such manufacture or importation would be the death of any person  
 213 commits capital manufacture or importation of amphetamine, a  
 214 capital felony punishable as provided in ss. 775.082 and  
 215 921.142. Any person sentenced for a capital felony under this  
 216 paragraph shall also be sentenced to pay the maximum fine  
 217 provided under subparagraph 1.

218 (g)1. Any person who knowingly sells, purchases,  
 219 manufactures, delivers, or brings into this state, or who is  
 220 knowingly in actual or constructive possession of, 4 grams or  
 221 more of flunitrazepam or any mixture containing flunitrazepam as  
 222 described in s. 893.03(1)(a) commits a felony of the first  
 223 degree, which felony shall be known as "trafficking in  
 224 flunitrazepam," punishable as provided in s. 775.082, s.  
 225 775.083, or s. 775.084. If the quantity involved:

226 a. Is 4 grams or more but less than 14 grams, such person  
 227 shall be sentenced to a mandatory minimum term of imprisonment  
 228 of 3 years, and the defendant shall be ordered to pay a fine of  
 229 \$50,000. However, the court may depart from the mandatory  
 230 minimum term of imprisonment if it makes written findings as  
 231 provided in subsection (8).

232 b. Is 14 grams or more but less than 28 grams, such person



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233 shall be sentenced to a mandatory minimum term of imprisonment  
234 of 7 years, and the defendant shall be ordered to pay a fine of  
235 \$100,000.

236 c. Is 28 grams or more but less than 30 kilograms, such  
237 person shall be sentenced to a mandatory minimum term of  
238 imprisonment of 25 calendar years and pay a fine of \$500,000.

239 2. Any person who knowingly sells, purchases, manufactures,  
240 delivers, or brings into this state or who is knowingly in  
241 actual or constructive possession of 30 kilograms or more of  
242 flunitrazepam or any mixture containing flunitrazepam as  
243 described in s. 893.03(1)(a) commits the first degree felony of  
244 trafficking in flunitrazepam. A person who has been convicted of  
245 the first degree felony of trafficking in flunitrazepam under  
246 this subparagraph shall be punished by life imprisonment and is  
247 ineligible for any form of discretionary early release except  
248 pardon or executive clemency or conditional medical release  
249 under s. 947.149. However, if the court determines that, in  
250 addition to committing any act specified in this paragraph:

251 a. The person intentionally killed an individual or  
252 counseled, commanded, induced, procured, or caused the  
253 intentional killing of an individual and such killing was the  
254 result; or

255 b. The person's conduct in committing that act led to a  
256 natural, though not inevitable, lethal result,

257  
258 such person commits the capital felony of trafficking in  
259 flunitrazepam, punishable as provided in ss. 775.082 and  
260 921.142. Any person sentenced for a capital felony under this  
261 paragraph shall also be sentenced to pay the maximum fine

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262 provided under subparagraph 1.

263 (h)1. Any person who knowingly sells, purchases,  
264 manufactures, delivers, or brings into this state, or who is  
265 knowingly in actual or constructive possession of, 1 kilogram or  
266 more of gamma-hydroxybutyric acid (GHB), as described in s.  
267 893.03(1)(d), or any mixture containing gamma-hydroxybutyric  
268 acid (GHB), commits a felony of the first degree, which felony  
269 shall be known as "trafficking in gamma-hydroxybutyric acid  
270 (GHB)," punishable as provided in s. 775.082, s. 775.083, or s.  
271 775.084. If the quantity involved:

272 a. Is 1 kilogram or more but less than 5 kilograms, such  
273 person shall be sentenced to a mandatory minimum term of  
274 imprisonment of 3 years, and the defendant shall be ordered to  
275 pay a fine of \$50,000. However, the court may depart from the  
276 mandatory minimum term of imprisonment if it makes written  
277 findings as provided in subsection (8).

278 b. Is 5 kilograms or more but less than 10 kilograms, such  
279 person shall be sentenced to a mandatory minimum term of  
280 imprisonment of 7 years, and the defendant shall be ordered to  
281 pay a fine of \$100,000.

282 c. Is 10 kilograms or more, such person shall be sentenced  
283 to a mandatory minimum term of imprisonment of 15 calendar years  
284 and pay a fine of \$250,000.

285 2. Any person who knowingly manufactures or brings into  
286 this state 150 kilograms or more of gamma-hydroxybutyric acid  
287 (GHB), as described in s. 893.03(1)(d), or any mixture  
288 containing gamma-hydroxybutyric acid (GHB), and who knows that  
289 the probable result of such manufacture or importation would be  
290 the death of any person commits capital manufacture or

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291 importation of gamma-hydroxybutyric acid (GHB), a capital felony  
 292 punishable as provided in ss. 775.082 and 921.142. Any person  
 293 sentenced for a capital felony under this paragraph shall also  
 294 be sentenced to pay the maximum fine provided under subparagraph  
 295 1.

296 (i)1. Any person who knowingly sells, purchases,  
 297 manufactures, delivers, or brings into this state, or who is  
 298 knowingly in actual or constructive possession of, 1 kilogram or  
 299 more of gamma-butyrolactone (GBL), as described in s.  
 300 893.03(1)(d), or any mixture containing gamma-butyrolactone  
 301 (GBL), commits a felony of the first degree, which felony shall  
 302 be known as "trafficking in gamma-butyrolactone (GBL)," as  
 303 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 304 If the quantity involved:

305 a. Is 1 kilogram or more but less than 5 kilograms, such  
 306 person shall be sentenced to a mandatory minimum term of  
 307 imprisonment of 3 years, and the defendant shall be ordered to  
 308 pay a fine of \$50,000. However, the court may depart from the  
 309 mandatory minimum term of imprisonment if it makes written  
 310 findings as provided in subsection (8).

311 b. Is 5 kilograms or more but less than 10 kilograms, such  
 312 person shall be sentenced to a mandatory minimum term of  
 313 imprisonment of 7 years, and the defendant shall be ordered to  
 314 pay a fine of \$100,000.

315 c. Is 10 kilograms or more, such person shall be sentenced  
 316 to a mandatory minimum term of imprisonment of 15 calendar years  
 317 and pay a fine of \$250,000.

318 2. Any person who knowingly manufactures or brings into the  
 319 state 150 kilograms or more of gamma-butyrolactone (GBL), as

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320 described in s. 893.03(1)(d), or any mixture containing gamma-  
 321 butyrolactone (GBL), and who knows that the probable result of  
 322 such manufacture or importation would be the death of any person  
 323 commits capital manufacture or importation of gamma-  
 324 butyrolactone (GBL), a capital felony punishable as provided in  
 325 ss. 775.082 and 921.142. Any person sentenced for a capital  
 326 felony under this paragraph shall also be sentenced to pay the  
 327 maximum fine provided under subparagraph 1.

328 (j)1. Any person who knowingly sells, purchases,  
 329 manufactures, delivers, or brings into this state, or who is  
 330 knowingly in actual or constructive possession of, 1 kilogram or  
 331 more of 1,4-Butanediol as described in s. 893.03(1)(d), or of  
 332 any mixture containing 1,4-Butanediol, commits a felony of the  
 333 first degree, which felony shall be known as "trafficking in  
 334 1,4-Butanediol," punishable as provided in s. 775.082, s.  
 335 775.083, or s. 775.084. If the quantity involved:

336 a. Is 1 kilogram or more, but less than 5 kilograms, such  
 337 person shall be sentenced to a mandatory minimum term of  
 338 imprisonment of 3 years, and the defendant shall be ordered to  
 339 pay a fine of \$50,000. However, the court may depart from the  
 340 mandatory minimum term of imprisonment if it makes written  
 341 findings as provided in subsection (8).

342 b. Is 5 kilograms or more, but less than 10 kilograms, such  
 343 person shall be sentenced to a mandatory minimum term of  
 344 imprisonment of 7 years, and the defendant shall be ordered to  
 345 pay a fine of \$100,000.

346 c. Is 10 kilograms or more, such person shall be sentenced  
 347 to a mandatory minimum term of imprisonment of 15 calendar years  
 348 and pay a fine of \$500,000.

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349 2. Any person who knowingly manufactures or brings into  
 350 this state 150 kilograms or more of 1,4-Butanediol as described  
 351 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,  
 352 and who knows that the probable result of such manufacture or  
 353 importation would be the death of any person commits capital  
 354 manufacture or importation of 1,4-Butanediol, a capital felony  
 355 punishable as provided in ss. 775.082 and 921.142. Any person  
 356 sentenced for a capital felony under this paragraph shall also  
 357 be sentenced to pay the maximum fine provided under subparagraph  
 358 1.

359 (k)1. A person who knowingly sells, purchases,  
 360 manufactures, delivers, or brings into this state, or who is  
 361 knowingly in actual or constructive possession of, 10 grams or  
 362 more of a:

363 a. Substance described in s. 893.03(1)(c)4., 5., 10., 11.,  
 364 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86.,  
 365 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163.,  
 366 165., or 187.-189., a substituted cathinone, as described in s.  
 367 893.03(1)(c)191., or substituted phenethylamine, as described in  
 368 s. 893.03(1)(c)192.;

369 b. Mixture containing any substance described in sub-  
 370 subparagraph a.; or

371 c. Salt, isomer, ester, or ether or salt of an isomer,  
 372 ester, or ether of a substance described in sub-subparagraph a.,

373  
 374 commits a felony of the first degree, which felony shall be  
 375 known as "trafficking in phenethylamines," punishable as  
 376 provided in s. 775.082, s. 775.083, or s. 775.084.

377 2. If the quantity involved under subparagraph 1.:

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378 a. Is 10 grams or more, but less than 200 grams, such  
 379 person shall be sentenced to a mandatory minimum term of  
 380 imprisonment of 3 years and shall be ordered to pay a fine of  
 381 \$50,000. However, the court may depart from the mandatory  
 382 minimum term of imprisonment if it makes written findings as  
 383 provided in subsection (8).

384 b. Is 200 grams or more, but less than 400 grams, such  
 385 person shall be sentenced to a mandatory minimum term of  
 386 imprisonment of 7 years and shall be ordered to pay a fine of  
 387 \$100,000.

388 c. Is 400 grams or more, such person shall be sentenced to  
 389 a mandatory minimum term of imprisonment of 15 years and shall  
 390 be ordered to pay a fine of \$250,000.

391 3. A person who knowingly manufactures or brings into this  
 392 state 30 kilograms or more of a substance described in sub-  
 393 subparagraph 1.a., a mixture described in sub-subparagraph 1.b.,  
 394 or a salt, isomer, ester, or ether or a salt of an isomer,  
 395 ester, or ether described in sub-subparagraph 1.c., and who  
 396 knows that the probable result of such manufacture or  
 397 importation would be the death of any person commits capital  
 398 manufacture or importation of phenethylamines, a capital felony  
 399 punishable as provided in ss. 775.082 and 921.142. A person  
 400 sentenced for a capital felony under this paragraph shall also  
 401 be sentenced to pay the maximum fine under subparagraph 2.

402 (l)1. Any person who knowingly sells, purchases,  
 403 manufactures, delivers, or brings into this state, or who is  
 404 knowingly in actual or constructive possession of, 1 gram or  
 405 more of lysergic acid diethylamide (LSD) as described in s.  
 406 893.03(1)(c), or of any mixture containing lysergic acid

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407 diethylamide (LSD), commits a felony of the first degree, which  
 408 felony shall be known as "trafficking in lysergic acid  
 409 diethylamide (LSD)," punishable as provided in s. 775.082, s.  
 410 775.083, or s. 775.084. If the quantity involved:

411 a. Is 1 gram or more, but less than 5 grams, such person  
 412 shall be sentenced to a mandatory minimum term of imprisonment  
 413 of 3 years, and the defendant shall be ordered to pay a fine of  
 414 \$50,000. However, the court may depart from the mandatory  
 415 minimum term of imprisonment if it makes written findings as  
 416 provided in subsection (8).

417 b. Is 5 grams or more, but less than 7 grams, such person  
 418 shall be sentenced to a mandatory minimum term of imprisonment  
 419 of 7 years, and the defendant shall be ordered to pay a fine of  
 420 \$100,000.

421 c. Is 7 grams or more, such person shall be sentenced to a  
 422 mandatory minimum term of imprisonment of 15 calendar years and  
 423 pay a fine of \$500,000.

424 2. Any person who knowingly manufactures or brings into  
 425 this state 7 grams or more of lysergic acid diethylamide (LSD)  
 426 as described in s. 893.03(1)(c), or any mixture containing  
 427 lysergic acid diethylamide (LSD), and who knows that the  
 428 probable result of such manufacture or importation would be the  
 429 death of any person commits capital manufacture or importation  
 430 of lysergic acid diethylamide (LSD), a capital felony punishable  
 431 as provided in ss. 775.082 and 921.142. Any person sentenced for  
 432 a capital felony under this paragraph shall also be sentenced to  
 433 pay the maximum fine provided under subparagraph 1.

434 (m)1. A person who knowingly sells, purchases,  
 435 manufactures, delivers, or brings into this state, or who is

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436 knowingly in actual or constructive possession of, 280 grams or  
 437 more of a:

438 a. Substance described in s. 893.03(1)(c)30., 46.-50.,  
 439 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic  
 440 cannabinoid, as described in s. 893.03(1)(c)190.; or  
 441 b. Mixture containing any substance described in sub-  
 442 subparagraph a.,

443

444 commits a felony of the first degree, which felony shall be  
 445 known as "trafficking in synthetic cannabinoids," punishable as  
 446 provided in s. 775.082, s. 775.083, or s. 775.084.

447 2. If the quantity involved under subparagraph 1.:

448 a. Is 280 grams or more, but less than 500 grams, such  
 449 person shall be sentenced to a mandatory minimum term of  
 450 imprisonment of 3 years, and the defendant shall be ordered to  
 451 pay a fine of \$50,000. However, the court may depart from the  
 452 mandatory minimum term of imprisonment if it makes written  
 453 findings as provided in subsection (8).

454 b. Is 500 grams or more, but less than 1,000 grams, such  
 455 person shall be sentenced to a mandatory minimum term of  
 456 imprisonment of 7 years, and the defendant shall be ordered to  
 457 pay a fine of \$100,000.

458 c. Is 1,000 grams or more, but less than 30 kilograms, such  
 459 person shall be sentenced to a mandatory minimum term of  
 460 imprisonment of 15 years, and the defendant shall be ordered to  
 461 pay a fine of \$200,000.

462 d. Is 30 kilograms or more, such person shall be sentenced  
 463 to a mandatory minimum term of imprisonment of 25 years, and the  
 464 defendant shall be ordered to pay a fine of \$750,000.

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465 (n)1. A person who knowingly sells, purchases,  
 466 manufactures, delivers, or brings into this state, or who is  
 467 knowingly in actual or constructive possession of, 14 grams or  
 468 more of:

469 a. A substance described in s. 893.03(1)(c)164., 174., or  
 470 175., a n-benzyl phenethylamine compound, as described in s.  
 471 893.03(1)(c)193.; or

472 b. A mixture containing any substance described in sub-  
 473 subparagraph a.,

474  
 475 commits a felony of the first degree, which felony shall be  
 476 known as "trafficking in n-benzyl phenethylamines," punishable  
 477 as provided in s. 775.082, s. 775.083, or s. 775.084.

478 2. If the quantity involved under subparagraph 1.:

479 a. Is 14 grams or more, but less than 100 grams, such  
 480 person shall be sentenced to a mandatory minimum term of  
 481 imprisonment of 3 years, and the defendant shall be ordered to  
 482 pay a fine of \$50,000. However, the court may depart from the  
 483 mandatory minimum term of imprisonment if it makes written  
 484 findings as provided in subsection (8).

485 b. Is 100 grams or more, but less than 200 grams, such  
 486 person shall be sentenced to a mandatory minimum term of  
 487 imprisonment of 7 years, and the defendant shall be ordered to  
 488 pay a fine of \$100,000.

489 c. Is 200 grams or more, such person shall be sentenced to  
 490 a mandatory minimum term of imprisonment of 15 years, and the  
 491 defendant shall be ordered to pay a fine of \$500,000.

492 3. A person who knowingly manufactures or brings into this  
 493 state 400 grams or more of a substance described in sub-

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494 subparagraph 1.a. or a mixture described in sub-subparagraph  
 495 1.b., and who knows that the probable result of such manufacture  
 496 or importation would be the death of any person commits capital  
 497 manufacture or importation of a n-benzyl phenethylamine  
 498 compound, a capital felony punishable as provided in ss. 775.082  
 499 and 921.142. A person sentenced for a capital felony under this  
 500 paragraph shall also be sentenced to pay the maximum fine under  
 501 subparagraph 2.

502 (8) The court may depart from the mandatory minimum term of  
 503 imprisonment for a violation of this section if the departure is  
 504 specifically authorized by this section and the court makes the  
 505 following written findings:

506 (a) The offense only involved possession.

507 (b) The offender did not use or threaten violence or use a  
 508 weapon during the commission of the offense.

509 (c) The offense did not result in the death or serious  
 510 bodily injury of a person not a party to the offense.

511 (d) A factor, consideration, or circumstance clearly  
 512 demonstrates that imposing the mandatory minimum term of  
 513 imprisonment would constitute or result in an injustice.

514 Section 2. This act shall take effect July 1, 2018.



The Florida Senate  
**Committee Agenda Request**

**To:** Senator Greg Steube, Chair  
Judiciary Committee

**Subject:** Committee Agenda Request

**Date:** January 30, 2018

---

I respectfully request that **Senate Bill #602**, relating to Mandatory Minimum Sentences, be placed on the:

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

A handwritten signature in cursive script, reading "Randolph Bracy".

---

Senator Randolph Bracy  
Florida Senate, District 11

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

602

Bill Number (if applicable)

Topic Mandatory Minimum Sentences

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 107 N. Gadsden St

Phone 850 488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2.6.18

*Meeting Date*

602

*Bill Number (if applicable)*

Topic Mandatory Minimum Sentences

*Amendment Barcode (if applicable)*

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

*Street*

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE

APPEARANCE RECORD

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

2/8/18

Meeting Date

602

Bill Number (if applicable)

Topic

Mandatory Minimums

Name

Jorge Chamizo

Job Title

Attorney

Address

Street

108 South Monroe Street

City

Tallahassee

State

FL 32301

Zip

Phone

(850) 681-0024

Email

jorge@papertimes.com

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Representing

Families Against Mandatory Minimums (FAMM)

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/2018

Meeting Date

SB602

Bill Number (if applicable)

Topic Mandatory Minimum Sentences

Amendment Barcode (if applicable)

Name Mrs. Logan Padgett

Job Title Director of Public Affairs

Address 100 N Duval Street

Phone 850-386-3131

Street

Tallahassee

FL

32301

Email lpadgett@jamesmadison.org

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information

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

Representing The James Madison Institute

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

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

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

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# APPEARANCE RECORD

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

2/6/18

Meeting Date

SBC 602

Bill Number (if applicable)

Topic Safety Valves

Amendment Barcode (if applicable)

Name Kira Romero-Craft

Job Title Managing Attorney

Address 520 S. Lakemont Ave

Phone (407) 443-0006

Winter Park FL 32792

Email kiracraft@icloud.com

Speaking:  For  Against  Information

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

Representing Latino Justice PRLDEF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/18

Meeting Date

SB ~~601~~ 602

Bill Number (if applicable)

Topic Safety Values

Amendment Barcode (if applicable)

Name Rev. Jimmie F. Dickey

Job Title Pastor

Address 1929 Maryellen Drive  
Street

Phone 850/422-2267

Tallahassee FL 32303  
City State Zip

Email jfdickey@joimail.com

Speaking:  For  Against  Information

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

Representing AME Church

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# APPEARANCE RECORD

2/6/18

Meeting Date

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

SB 602

Bill Number (if applicable)

Topic Mandatory Minimum

Amendment Barcode (if applicable)

Name Amy Bisceglia

Job Title Govt Consultant

Address 112 E. Jefferson St.

Phone (850) 681-9111

City Tall Ft State FL Zip 32301

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Campaign for Criminal Justice Reform

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

2pm-1105

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/18  
*Meeting Date*

SB 602  
*Bill Number (if applicable)*

Topic Mandatory Minimums

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Counsel

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Speaking:  For  Against  Information

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

Representing ACLU of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

602

Bill Number (if applicable)

Topic MANDATORY MINIMUM SENTENCES

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

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Speaking: [ ] For [ ] Against [ ] Information

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

Representing BROWARD COUNTY GOVT

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

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

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1076

INTRODUCER: Senator Steube

SUBJECT: Franchises

DATE: February 5, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1076 creates the “Protect Florida Small Business Act” (act). The act regulates the conduct of franchisors and their representatives to prevent fraud, unfair business practices, unfair methods of competition, impositions, and other abuses upon franchisees in Florida. The bill addresses requirements for sale, transfer, or assignment of franchises.

The bill provides that a franchise agreement in violation of any provision in the act is void and unenforceable, as is any provision that restricts, to a jurisdiction outside of Florida, the location (venue) of an action related to a claim arising under a franchise agreement, if the claim involves a franchisee who was a resident of Florida when the franchise agreement was signed, or a business entity established in Florida, or a franchise either operating or to be operated in Florida. Furthermore, the bill provides the act does not apply to a franchise agreement between a Florida franchisor and a franchisee who has no connections to Florida (i.e., was not a resident of Florida when the franchise agreement was signed, or a business entity established in Florida, or involving a franchise either operating or to be operated in Florida), even if the franchise agreement says Florida law applies.

SB 1076 has an indeterminate fiscal impact on state government. See Section V. Fiscal Impact Statement.

**II. Present Situation:**

The regulation of franchising in Florida is addressed in multiple provisions of Florida law. Chapter 817, F.S. relating to Fraudulent Practices, includes provisions concerning False Pretenses and Frauds.<sup>1</sup>

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<sup>1</sup> See part I of ch. 817, F.S.



## Florida Franchise Act

Section 817.416, F.S., deals with requirements for the relationship between a franchisee and a franchisor.<sup>2</sup> That statute defines the term “franchise or distributorship” to mean a contract, either express or implied, oral or written, between two or more persons wherein:

- A commercial relationship of definite duration or continuing indefinite duration is involved;
- One party, hereinafter called the “franchisee,” is granted the right to offer, sell, and distribute goods or services manufactured, processed, distributed or, in the case of services, organized and directed by another party;
- The franchisee as an independent business constitutes a component of franchisor’s distribution system; and
- The operation of the franchisee’s business franchise is substantially reliant on franchisors for the basic supply of goods.<sup>3</sup>

The term “goods,” means “any article or thing without limitation, or any part of such article or thing, including any article or thing used or consumed by a franchisee in rendering a service established, organized, directed, or approved by a franchisor.”<sup>4</sup>

It is unlawful for any person selling or establishing a franchise or distributorship to intentionally:

- Misrepresent the prospects or chances for success of a proposed or existing franchise or distributorship;
- Misrepresent, by failure to disclose or otherwise, the known required total investment for such franchise or distributorship; or
- Misrepresent, or fail to disclose efforts to sell or establish more franchises or distributorships than is reasonable to expect the market or market area for the franchise or distributorship to sustain.<sup>5</sup>

The execution or carrying out of a scheme, plan, or corporate organization in violation of s. 817.416, F.S., if knowledge or intent is proved, is a second degree misdemeanor.<sup>6</sup>

In addition, a person who proves a violation of s. 817.416, F.S., may be granted a judgment for all moneys invested in a franchise or distributorship. Upon such a showing of proof, a court may award the successful plaintiff reasonable attorney’s fees and must award reasonable costs incurred in bringing the action.<sup>7</sup>

The Department of Legal Affairs, or the Department of Legal Affairs and the Department of Agriculture and Consumer Services jointly, on behalf of the people of Florida, may sue for

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<sup>2</sup> Section 817.416, F.S. has not been amended since 1971. *See* ch. 71-61, Laws of Fla. While popularly referred as the “Florida Franchise Act,” the law does not cite s. 817.416, F.S., as such.

<sup>3</sup> *See* s. 817.416(1)(b), F.S.

<sup>4</sup> Section 817.416(1)(c), F.S.

<sup>5</sup> *See* s. 817.416(2), F.S.

<sup>6</sup> Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

<sup>7</sup> *See* s. 817.416(3), F.S.

injunctive relief against franchise or distributorship plans or activities that engage in the intentional misrepresentations described above.<sup>8</sup>

### **The Florida Sale of Business Opportunities Act**

The Florida Sale of Business Opportunities Act (SBOA)<sup>9</sup> requires a person offering a “business opportunity” to make specified disclosures about the business to a prospective purchaser.<sup>10</sup> A purchaser of a business opportunity pays the seller \$500 or more to purchase or lease products, equipment, supplies, or services that enable the purchaser to start a business. In return, the seller represents that it:

- Will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, currency or card operated equipment, or other similar devices or currency-operated amusement machines or devices on premises neither owned nor leased by the purchaser or seller;
- Will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using in whole or in part the supplies, services, or chattels sold to the purchaser;
- Guarantees a partial or full refund to the seller; or
- Provides a sales program or marketing program, excepting a sales or marketing program made in conjunction with the licensing of a registered trademark or service mark.

A “business opportunity” does not include the sale of ongoing businesses when the owner sells and intends to sell up to five businesses. Also, a business opportunity does not include the not-for-profit sale of sales demonstration equipment, materials, or samples for a price up to \$500 or any sales training course offered by the seller at a cost up to \$500, or the sale or lease of laundry and drycleaning equipment.<sup>11</sup>

The sale of a franchise is exempt from the required disclosures if the franchise satisfies the Federal Trade Commission’s (FTC) definition of a franchise<sup>12</sup> and applies for the exemption with the Department of Agriculture and Consumer Services (DACS).<sup>13</sup>

The FTC defines “franchise” to mean any continuing commercial relationship or arrangement in which the purchaser’s business uses the trademark of the seller’s business, the seller exercises significant control over how the business operates, and the purchaser pays a fee to the seller.<sup>14</sup>

The application for the exemption through the DACS requires only the name of the applicant, the name of the franchise and the name under which the applicant intends to, or does, transact

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<sup>8</sup> See s. 817.416(4), F.S.

<sup>9</sup> Part VII of ch. 559, F.S.

<sup>10</sup> Section 559.803, F.S.

<sup>11</sup> Section 559.801(1)(b), F.S.

<sup>12</sup> See *Federal Trade Commission, Franchise Rule, 16 CFR, Part 436 Compliance Guide*, (FTC Compliance Guide) at: <https://www.ftc.gov/system/files/documents/plain-language/bus70-franchise-rule-compliance-guide.pdf> (last visited Jan. 22, 2018). The FTC Compliance Guide provides a sample disclosure document and general instructions. See <https://www.ftc.gov/system/files/documents/plain-language/bus70-franchise-rule-compliance-guide.pdf> (last visited Jan. 22, 2018), at pages 34-154.

<sup>13</sup> See s. 559.803, F.S.

<sup>14</sup> 16 C.F.R. s. 436.1(h) (2017).

business, if different, the applicant's principal business address, and the applicant's federal employer identification number.<sup>15</sup>

### **Federal Trade Commission Regulations Affecting Franchises**

The Federal Trade Commission's rule on franchises gives prospective franchise purchasers information to weigh the risks and benefits of an investment in a franchise.<sup>16</sup> The rule requires franchisors to provide all potential franchisees with a disclosure document that contains 23 specific items of information about the offered franchise, its officers, and other franchisees.<sup>17</sup> The FTC Compliance Guide provides a sample disclosure document and general instructions concerning the mandatory disclosures.<sup>18</sup>

### **Florida Deceptive and Unfair Trade Practices Act**

Part II of ch. 501, F.S., the "Florida Deceptive and Unfair Trade Practices Act" (FDUTPA), addresses protection of the public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce. Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.<sup>19</sup>

Section 501.203(2), F.S., addresses who is authorized to enforce the FDUTPA (enforcing authority), which includes the:

- Office of the state attorney when a violation occurs in or affects the judicial circuit under the jurisdiction of that state attorney; or
- Department of Legal Affairs, if the violation occurs in or affects more than one judicial circuit, or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.

The enforcing authority may pursue actions:

- To obtain a declaratory judgment that an act or practice violates the FDUTPA;
- To enjoin any person who has violated, is violating, or is otherwise likely to violate, the FDUTPA; and
- For the actual damages caused by an act or practice in violation of the FDUTPA, on behalf of one or more consumers or governmental entities, except that damages are not recoverable against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated the FDUTPA.<sup>20</sup>

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<sup>15</sup> Section 559.803(3), F.S., and Florida Admin. R. 5J-10.002 (2012). The form for the application is available at the DACS website: <http://www.freshfromflorida.com/Business-Services/Sellers-of-Business-Opportunities> (last visited Jan. 22, 2018).

<sup>16</sup> See 16 C.F.R. Part 436.1(h). See also <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/franchise-rule> (last visited Jan. 22, 2018).

<sup>17</sup> See <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/franchise-rule> (last visited Jan. 22, 2018).

<sup>18</sup> *Id.* at pages 34-154.

<sup>19</sup> See s. 501.202, F.S.

<sup>20</sup> See s. 501.207(1), F.S.

Any person, firm, corporation, association, or entity, or any agent or employee of such persons, who is willfully using, or has willfully used, a method, act, or practice declared unlawful, or who is willfully violating any of the rules of the Department of Agriculture and Consumer Services (DACS) adopted under part II of ch. 501, F.S., is liable for a civil penalty of not more than \$10,000 for each violation.<sup>21</sup>

Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule.<sup>22</sup> The civil penalty may be recovered in any action brought under FDUTPA by the enforcing authority; or the enforcing authority may terminate any investigation or action upon the agreement to pay a civil penalty by the person, firm, corporation, association, or entity, or their agent or employee.<sup>23</sup>

The DACS or the court may waive a civil penalty if the person, firm, corporation, association, or entity, or the agent or employee of the foregoing, has previously made full restitution or reimbursement or has paid actual damages to the consumers or governmental entities who have been injured by the unlawful act or practice or rule violation.<sup>24</sup> If civil penalties are assessed in any litigation, the enforcing authority is entitled to reasonable attorney's fees and costs; a civil penalty accrues to the state.<sup>25</sup>

Violations of the FDUTPA involving senior citizens, disabled persons, or active duty or veteran members of the United States Armed Forces may result in penalties not to exceed \$15,000 for each violation. However, these penalties only apply if the violator knew or should have known that the conduct was unfair or deceptive.<sup>26</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill provides that the act may be cited as the "Protect Florida Small Business Act" (act).

The act regulates the conduct of franchisors and their representatives to prevent fraud, unfair business practices, unfair methods of competition, impositions, and other actions taken as to franchisees in Florida.

**Section 2** of the bill sets forth legislative findings and intent. Specifically, the Legislature finds that the welfare of franchisees, including the success and failure of their franchise businesses, affects the state economy and the public. Accordingly, with the act, the Legislature intends to promote fair business relations between franchisees and franchisors and to protect franchisees against unfair treatment by franchisors.

**Section 3** of the bill creates s. 686.103, F.S., to define the following terms:

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<sup>21</sup> See s. 501.2075, F.S.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See s. 501.2077, F.S.

- “Area franchise” means a contract or agreement, expressed or implied, written or oral, regardless of whether the contract or agreement is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, between a franchisor and another person through which that person is granted the right, for consideration in whole or in part for such right:
  - To sell or negotiate the sale of a franchise in the name or on behalf of the franchisor; or
  - To become an area developer and develop a franchise for the benefit of that person or that person’s affiliates.
- “Area franchisee” means the owner of an area franchise.
- “Franchise” or “franchise agreement” means a contract or agreement, expressed or implied, written or oral, regardless of whether the contract or agreement is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, for a definite or indefinite time, between two or more persons by which:
  - A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor;
  - The operation of the franchise business pursuant to that marketing plan or system is substantially associated with the franchisor’s trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and
  - The franchisee is required to pay, directly or indirectly, a franchise fee.
- The term “franchise” or “franchise agreement” includes an area franchise, but does not include any of the following:
  - A franchise governed by the Agricultural Equipment Manufacturers and Dealers Act.
  - Any activity under by ss. 686.501-686.506, F.S., pertaining to art dealers.
  - A franchise governed by the Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act.
  - A motor vehicle franchise or agreement governed by ss. 320.60-320.70, F.S. F.S.
  - A business relationship between a beer distributor and a manufacturer governed by s. 563.022, F.S.
  - A professional sports franchise as described in s. 288.11625(2)(c), F.S.
- “Franchise fee” means a fee or charge greater than \$100 annually which a franchisee is required to pay or agrees to pay, directly or indirectly, to or for the benefit of the franchisor for the right to enter into or continue a franchise, including, but not limited to, a payment for goods or services. However, the term does not include a fee or charge that a franchisee pays or agrees to pay the franchisor for goods at a bona fide wholesale price, if no obligation is imposed upon the franchisee to purchase or pay for a quantity of goods in excess of that which a reasonable person normally would purchase by way of a starting inventory or supply or to maintain an ongoing inventory or supply.
- “Franchisee” means a person to whom a franchise is offered or granted.

- “Franchisor” means a person who grants a franchise to a franchisee.
- “Person” means a natural person, corporation, limited liability company, association, partnership, trust, or other business entity and, in the case of a business entity, includes any other affiliate of such entity.

**Section 4** of the bill creates s. 686.104, F.S., relating to termination or nonrenewal of a franchise. Except as otherwise provided in the act, a franchisor may not terminate or refuse to renew a franchise except for good cause. And if a franchise is terminated without good cause, then that action constitutes an actionable unfair termination.

In general, good cause is limited to the failure of the franchisee to substantially comply with the reasonable and material requirements imposed upon the franchisee by the franchise agreement after being given notice at least 90 days in advance of the termination and a reasonable opportunity of not less than 60 days after the date of the notice of noncompliance, to cure the failure. If the franchisee cures the failure within the time given to cure, the termination notice is void.

However, there are other specified circumstances that constitute good cause to terminate or not renew a franchise agreement. Specifically, an immediate notice of termination may be given to a franchisee by a franchisor without an opportunity to cure if, during the period in which the franchise is in effect, any of the following events relevant to the franchise occurs:

- The franchisee has been judicially determined to be insolvent, has had all or a substantial part of its assets assigned to or for the benefit of any creditor, or has admitted its inability to pay its debts as they come due.
- The franchisee abandons, by failing to operate, the franchise business for 10 consecutive days during which, under the terms of the franchise, the franchisee is required to operate the franchise business, unless such failure to operate is due to an act of God; a work stoppage; a strike or labor difficulty; a fire, flood, hurricane, or sinkhole; or other cause beyond the franchisee’s control.
- The franchisee fails, for a period of 10 days after a notice of noncompliance, to comply with any federal, state, or local law or regulation, including, but not limited to, any health, safety, building, or labor law or regulation applicable to the operation of the franchise.
- The franchisee is convicted of a felony, if that felony significantly, directly, and adversely affects the operation of the franchise business.
- The franchisor makes a reasonable determination that continued operation of the franchise business by the franchisee will result in imminent and substantial danger to public health or safety.

**Section 5** of the bill creates s. 686.105, F.S., relating to sales, transfers, and assignments of franchises.

A franchisor may not deny the surviving spouse, heir, or estate of a deceased franchisee (the survivors), or of a deceased person who controlled a majority interest in the franchise, the opportunity to participate in the ownership of the franchise or franchise business under a valid franchise agreement for at least 180 days after the death of the franchisee or the death of a person

controlling a majority interest in the franchise (the status quo period). During the status quo period, the surviving spouse, heir, or estate must either meet all of the existing reasonable qualifications for a purchaser of a franchise or must sell, transfer, or assign the franchise to a person who meets the franchisor's existing reasonable qualifications for new franchisees. The surviving spouse, heir, or estate must maintain all standards and obligations of the franchise.

With the prior written consent of the franchisor, a franchisee may sell, transfer, or assign a franchise. The franchisor's consent may not be withheld unless the purchaser, transferee, or assignee does not meet the qualifications for new or renewing franchisees, or the franchisee and the purchaser, transferee, or assignee fail to comply with other reasonable transfer conditions specified in the franchise agreement.

A franchisor may not prevent a franchisee from selling, transferring, or assigning a franchise, all or substantially all of the assets of the franchise business, or an interest in the franchise to another person, if that person meets the franchisor's reasonable qualifications for the approval of new or renewing franchisees in effect at the time the franchisor receives notice of the proposed sale, transfer, or assignment. The franchisor must make the list of qualifications available to the franchisee, and must consistently apply such qualifications to similarly situated franchisees operating within the franchise brand.

Section 6 of the bill creates s. 686.106, F.S., concerning the rights and prohibitions that govern the relations between a franchisor and its franchisee, to require that the parties deal with each other in good faith and in a commercially reasonable manner.<sup>27</sup>

A franchisor may not:

- Terminate or fail to renew a franchise agreement in violation of the act.
- Prevent a sale, transfer, or assignment of a franchise in violation of the requirements regarding sales, transfers, and assignments set forth in proposed s. 686.105, F.S., created in this bill (*see Section 5* above).
- Violate the Florida Deceptive and Unfair Trade Practices Act<sup>28</sup> or s. 817.416, F.S., relating to claims for franchise misrepresentations, in connection with its business as a franchisor, or an officer, agent, or other representative thereof.
- Require a franchisee to assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed under the act, including, but not limited to, through the use of a disclaimer or checklist designed to avoid a protection under the act.
- Require a franchisee to assent to the use of a choice of law provision by selecting a different state's law to govern the relationship of the parties.

A person who proves in court that a violation of this section has occurred is entitled to the remedies set forth in proposed s. 686.109, F.S., created in this bill (*see Section 9* below).

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<sup>27</sup> For purposes of Florida's Uniform Commercial Code (ch. 670 through ch. 680, F.S.), (Code), s. 671.201(20), F.S., defines the term "good faith" to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing" unless otherwise provided in the Code. *See* s. 672.103(1)(b), F.S., where the term is used in connection with sales of goods, and s. 677.102(1)(f), F.S., where the term is used in connection with documents of title.

<sup>28</sup> *See* ss. 501.201-213, F.S.

**Section 7** of the bill creates s. 686.107, F.S., and provides that a franchise agreement or other contract, any part thereof, or any practice under such contract, that violates any provision of the act is deemed against public policy and is void and unenforceable. The bill provides that an aggrieved party may choose to seek to void only the unenforceable portion of a franchise agreement and continue to enforce the remainder of the agreement.

**Section 8** of the bill creates s. 686.108, F.S., to provide that provisions in a franchise agreement restricting the venue to a forum outside of Florida or selecting the law of any other state or jurisdiction other than Florida, are void with respect to any claim arising under or relating to a franchise agreement involving a franchisee that was, at the time of signing, a resident of Florida, or a business entity established in Florida, or a franchise business either operating or planning to be operated in Florida.

The bill also provides the act does not apply to a franchise agreement between a Florida-based franchisor and a franchisee that was not, at the time of signing, a resident of Florida, or a business entity established in Florida, or involving a franchise operating or to be operated in Florida, even if the agreement says Florida law applies.

**Section 9** of the bill creates s. 686.109, F.S., and provides that in addition to relief specified in the act, any person aggrieved or injured in his or her business or property by a violation of the act may bring an action in state or federal court in Florida to recover the damages sustained and the costs of such action, including reasonable attorney fees.

In addition to any other remedy or relief to which a person is entitled, any person aggrieved by a violation of the act also may bring an action to obtain a declaratory judgment stating that an action or a practice violates the act, and injunctive relief enjoining a franchisor that has violated, is violating, or is otherwise likely to violate the act from committing the violation.

These remedies are in addition to any other remedies provided by law or in equity, including, but not limited to, those provided under the Florida Deceptive and Unfair Trade Practices Act<sup>29</sup> and s. 817.416, F.S., relating to claims for franchise misrepresentations.

**Section 10** of the bill creates s. 686.11, F.S., expressly setting forth which persons and franchises the act applies to. Particularly, the act provides that any person or franchisor who engages directly or indirectly in an agreement or contract in Florida concerning a franchise, and any franchise whose franchisee is a Florida resident or is domiciled in Florida, or whose franchise business is, has been, or is intended to be operated in Florida, is subject to the act and to the jurisdiction of Florida courts, in accordance with Florida law, for violations of the act.

The act expressly applies to:

- Any franchise entered into, renewed, amended, or revised after the effective date of the act;
- Any existing franchise of an indefinite duration which may be terminated by the franchisee or franchisor without cause; and
- Any existing franchise entered into before the effective date of the act, only to the extent that the act does not significantly impair the existing contract rights between the parties.

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<sup>29</sup> See ss. 501.201-.213, F.S.



**Section 11** of the bill amends s. 817.416, F.S., relating to claims for franchise misrepresentations, to substitute the term “area franchise” (defined in proposed s. 686.103, F.S., created in this bill (*see Section 3* above)), for the term “distributorship.” The bill also provides that the provisions of s. 817.416, F.S., “may not be waived by any choice of venue clause, choice of law clause, checklist, or any other contract provision, scheme, or device that would otherwise affect a person’s rights to make a claim” thereunder.

**Section 12** of the bill directs the Division of Law Revision and Information to replace the phrase “the effective date of the act” wherever it occurs in the act, with the date that the act becomes a law.

**Section 13** of the bill provides that the bill is effective upon becoming law.

#### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

SB 1076 creates provisions affecting persons who engage, directly or indirectly, in an agreement or contract in Florida in connection with a franchise, and any franchise whose franchisee is a Florida resident or is domiciled in Florida, or whose franchise business is, has been, or is intended to be operating in this state. (*See Section 10* of the bill.) Such persons are made subject to the act and to jurisdiction of Florida courts for violations of the act. With respect to *existing* franchise agreements or contracts, certain provisions of the bill may implicate constitutional concerns relating to impairment of contract.<sup>30</sup>

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,<sup>31</sup> the Florida Supreme court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The Florida Supreme Court invalidated a statute, as an unconstitutional impairment of contract, which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The court set forth several factors to be considered in balancing whether a state law has in fact

<sup>30</sup> Article I, s. 10, U.S. Constitution and Art. I, s. 10, Fla. Const.

<sup>31</sup> *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

operated as a substantial impairment of a contractual relationship, stating “[t]he severity of the impairment measures the height of the hurdle the state legislation must clear.”<sup>32</sup>

The court stated that if there is minimal alteration of contractual obligations, the inquiry may end at its first stage. Severe impairment pushes the inquiry into a careful examination of the nature and purpose of the state legislation. The factors to be considered are whether:

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary, or whether it is severe, permanent, immediate, and retroactive.<sup>33</sup>

In *United States Fidelity & Guaranty Co. v. Department of Insurance*,<sup>34</sup> the Florida Supreme Court followed *Pomponio* and said that the method requires a balancing of a person’s interest to not have his or her contracts impaired, with the state’s interest in exercising its legitimate police power. The court adopted the method used by the U.S. Supreme Court, in which the threshold inquiry is “whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.”<sup>35</sup> The severity of the impairment increases the level of scrutiny.

Relevant to the extent of the impairment is whether the industry the complaining party had entered had been regulated in the past because if the party was already subject to regulation when the contract was entered, then it is understood that it would be subject to further legislation upon the same topic.<sup>36</sup> If the state regulation constitutes a substantial impairment, the state must have a significant and legitimate public purpose<sup>37</sup> and any adjustment of the rights and responsibilities of the contracting parties must be appropriate to the public purpose justifying the legislation.<sup>38</sup>

Furthermore, although retroactive application of a law may be constitutional in certain situations,<sup>39</sup> in 2011, the Florida Supreme Court unanimously held, in *Cohn v. The Grand Condominium Association, Inc.*,<sup>40</sup> that by changing the distribution of voting power between residential owners and other owners in a mixed-use condominium (i.e., a provision of an existing contract), the retroactive application of the law at issue in that case altered the rights of the unit owners in contravention of their contractual agreement and, thus, impaired the obligation of contract as applied.

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<sup>32</sup> *Pomponio*, 378 So. 2d at 779.

<sup>33</sup> *Id.*

<sup>34</sup> *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984).

<sup>35</sup> *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).

<sup>36</sup> *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n. 13).

<sup>37</sup> *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (citing *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977)).

<sup>38</sup> *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1361.

<sup>39</sup> *Century Village, Inc. v. Wellington*, 361 So. 2d 128 (Fla. 1978).

<sup>40</sup> *Cohn*, 62 So. 3d 1120, 1122 (Fla. 2011).

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

None.

**B. Private Sector Impact:**

SB 1076 may impact the financial interests of persons who engage, directly or indirectly, in an agreement or contract in Florida in connection with a franchise, and any franchise whose franchisee is a Florida resident or is domiciled in Florida, or whose franchise business is, has been, or is intended to be operating in this state.

**C. Government Sector Impact:**

The act increases regulation of business relationships related to franchises. Moreover, the act expressly creates a cause of action for any violation of the act. Accordingly, the act could increase litigation, increasing costs of the state court system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 817.416 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 686.101, 686.102, 686.103, 686.104, 686.105, 686.106, 686.107, 686.108, 686.109, and 686.11.

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

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

None.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Judiciary (Steube) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 686.101, Florida Statutes, is created to  
read:

686.101 Sales, transfers, and assignments of franchises.-

(1) A franchisor may not deny the surviving spouse, heir,  
or estate of a deceased franchisee or of a deceased person who  
controlled a majority interest in the franchise the opportunity  
to participate in the ownership of the franchise or franchise



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12 business under a valid franchise agreement for at least 180 days  
13 after the death of the franchisee or the death of a person  
14 controlling a majority interest in the franchise. During that  
15 time, the surviving spouse, heir, or estate of the deceased must  
16 either meet all of the existing reasonable qualifications for a  
17 purchaser of a franchise or must sell, transfer, or assign the  
18 franchise to a person who meets the franchisor's existing  
19 reasonable qualifications for new franchisees. The rights  
20 granted to the surviving spouse, heir, or estate under this  
21 section are granted subject to the surviving spouse, heir, or  
22 estate of the deceased maintaining all standards and obligations  
23 of the franchise.

24 (2) (a) A franchisee may sell, transfer, or assign a  
25 franchise, all or substantially all of the assets of the  
26 franchise business, or an interest in the franchise with the  
27 prior written consent of the franchisor. The franchisor's  
28 consent may not be withheld unless the purchaser, transferee, or  
29 assignee does not meet the qualifications for new or renewing  
30 franchisees described in paragraph (b) or the franchisee and the  
31 purchaser, transferee, or assignee fail to comply with other  
32 reasonable transfer conditions specified in the franchise  
33 agreement.

34 (b) A franchisor may not prevent a franchisee from selling,  
35 transferring, or assigning a franchise, all or substantially all  
36 of the assets of the franchise business, or an interest in the  
37 franchise to another person if the other person meets the  
38 franchisor's reasonable qualifications for the approval of new  
39 or renewing franchisees in effect at the time the franchisor  
40 receives notice of the proposed sale, transfer, or assignment.



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41 The franchisor shall make this list of qualifications available  
42 to the franchisee, and the franchisor shall consistently apply  
43 such qualifications to similarly situated franchisees operating  
44 within the franchise brand.

45 Section 2. Section 686.102, Florida Statutes, is created to  
46 read:

47 686.102 Venue; choice of law.—A provision in a franchise  
48 agreement restricting the venue to a forum outside of this state  
49 or selecting the law of any other state or jurisdiction other  
50 than this state is void with respect to any claim arising under  
51 or relating to a franchise agreement involving a franchisee that  
52 was, at the time of signing, a resident of this state or a  
53 business entity established in this state or involving a  
54 franchise business either operating or planning to be operated  
55 in this state. An agreement between a Florida-based franchisor  
56 and a franchisee with none of these stated connections to this  
57 state is not subject to this section or s. 686.101, regardless  
58 of whether the franchise agreement contains a choice of law  
59 provision selecting this state.

60 Section 3. This act shall take effect upon becoming a law.

61  
62 ===== T I T L E A M E N D M E N T =====

63 And the title is amended as follows:

64 Delete everything before the enacting clause  
65 and insert:

66 A bill to be entitled  
67 An act relating to franchises; creating s. 686.101,  
68 F.S.; prohibiting a franchisor from denying certain  
69 persons the opportunity to participate in the



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70 ownership of a franchise for at least a specified  
71 period after the death of the franchisee or the death  
72 of a person controlling a majority interest in the  
73 franchise; requiring specified persons to either meet  
74 certain requirements or sell, transfer, or assign the  
75 franchise after the death of the franchisee or the  
76 death of the person controlling a majority interest in  
77 the franchise; authorizing a franchisee to sell,  
78 transfer, or assign a franchise, specified assets, or  
79 an interest in the franchise under certain  
80 circumstances; prohibiting a franchisor from  
81 preventing a franchisee from selling or transferring a  
82 franchise, assets of the franchise business, or an  
83 interest in the franchise under certain circumstances;  
84 requiring the franchisor to make available to the  
85 franchisee and to consistently apply qualifications  
86 for the approval of new or renewing franchises;  
87 creating s. 686.102, F.S.; prohibiting the use of  
88 certain choice of venue and choice of law provisions,  
89 under certain circumstances; providing an effective  
90 date.

By Senator Steube

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1 A bill to be entitled  
 2 An act relating to franchises; creating s. 686.101,  
 3 F.S.; providing a short title; creating s. 686.102,  
 4 F.S.; providing legislative findings and intent;  
 5 providing construction; creating s. 686.103, F.S.;  
 6 defining terms; creating s. 686.104, F.S.; prohibiting  
 7 a franchisor from terminating or not renewing a  
 8 franchise under certain circumstances; providing  
 9 limitations on what constitutes good cause;  
 10 authorizing the franchisor to give immediate notice of  
 11 termination of a franchise for specified reasons under  
 12 certain circumstances; creating s. 686.105, F.S.;  
 13 prohibiting a franchisor from denying certain persons  
 14 the opportunity to participate in the ownership of a  
 15 franchise for a specified period after the death of  
 16 the franchisee or the death of a person controlling a  
 17 majority interest in the franchise; requiring  
 18 specified persons to meet certain requirements or to  
 19 sell, transfer, or assign the franchise after the  
 20 death of the franchisee or the death of the person  
 21 controlling a majority interest in the franchise;  
 22 authorizing a franchisee to sell, transfer, or assign  
 23 a franchise, specified assets, or an interest in the  
 24 franchise under certain circumstances; prohibiting a  
 25 franchisor from preventing a franchisee from selling  
 26 or transferring a franchise, assets of the franchise  
 27 business, or an interest in the franchise under  
 28 certain circumstances; requiring the franchisor to  
 29 make available and to apply specified requirements for

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30 the approval of new or renewing franchises, under  
 31 certain circumstances; creating s. 686.106, F.S.;  
 32 requiring a franchisor and a franchisee to deal with  
 33 each other in good faith; prohibiting the franchisor  
 34 from acting in a certain manner; providing remedies;  
 35 creating s. 686.107, F.S.; voiding certain contracts,  
 36 contract provisions, or practices; creating s.  
 37 686.108, F.S.; prohibiting the use of certain choice  
 38 of venue and choice of law provisions, under certain  
 39 circumstances; creating s. 686.109, F.S.; providing  
 40 remedies for a franchisee or an aggrieved or injured  
 41 person under certain circumstances; clarifying that  
 42 specified remedies are in addition to existing  
 43 remedies; creating s. 686.11, F.S.; providing  
 44 applicability; amending s. 817.416, F.S.; defining the  
 45 term "area franchise"; prohibiting waivers through  
 46 certain contract provisions that would affect a  
 47 person's rights to make a claim; providing a directive  
 48 to the Division of Law Revision and Information;  
 49 providing an effective date.

50  
51 Be It Enacted by the Legislature of the State of Florida:52  
53 Section 1. Section 686.101, Florida Statutes, is created to  
54 read:55 686.101 Short title.—Sections 686.101-686.11 may be cited  
56 as the "Protect Florida Small Business Act."57 Section 2. Section 686.102, Florida Statutes, is created to  
58 read:

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59 686.102 Legislative findings and intent; construction of  
60 the act.—

61 (1) The Legislature finds that the welfare of franchisees,  
62 including the success and failure of their franchise businesses,  
63 greatly affects the general economy of this state, the public  
64 interest, and the public welfare. It is the intent of the  
65 Legislature to promote fair business relations between  
66 franchisees and franchisors and to protect franchisees against  
67 unfair treatment by franchisors. Therefore, it is necessary to  
68 regulate the conduct of franchisors and their representatives in  
69 order to prevent fraud, unfair business practices, unfair  
70 methods of competition, impositions, and other abuses upon  
71 franchisees in this state.

72 (2) In order to promote the intent and policies announced  
73 in this section, the provisions of this act shall be liberally  
74 construed.

75 Section 3. Section 686.103, Florida Statutes, is created to  
76 read:

77 686.103 Definitions.—As used in this act, the term:

78 (1) "Area franchise" means a contract or agreement,  
79 expressed or implied, written or oral, regardless of whether the  
80 contract or agreement is designated as a franchise, permit,  
81 license, resolution, contract, certificate, agreement, or  
82 otherwise, between a franchisor and another person through which  
83 that person is granted the right, for consideration in whole or  
84 in part for such right:

85 (a) To sell or negotiate the sale of a franchise in the  
86 name or on behalf of the franchisor; or

87 (b) To become an area developer and develop a franchise for

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88 the benefit of that person or that person's affiliates.

89 (2) "Area franchisee" means the owner of an area franchise.

90 (3) (a) "Franchise" or "franchise agreement" means a  
91 contract or agreement, expressed or implied, written or oral,  
92 regardless of whether the contract or agreement is designated as  
93 a franchise, permit, license, resolution, contract, certificate,  
94 agreement, or otherwise, for a definite or indefinite time,  
95 between two or more persons by which:

96 1. A franchisee is granted the right to engage in the  
97 business of offering, selling, or distributing goods or services  
98 under a marketing plan or system prescribed in substantial part  
99 by a franchisor;

100 2. The operation of the franchise business pursuant to that  
101 marketing plan or system is substantially associated with the  
102 franchisor's trademark, service mark, trade name, logotype,  
103 advertising, or other commercial symbol designating the  
104 franchisor or its affiliate; and

105 3. The franchisee is required to pay, directly or  
106 indirectly, a franchise fee.

107 (b) The term includes an area franchise.

108 (c) The term does not include any of the following:

109 1. A franchise governed by the Agricultural Equipment  
110 Manufacturers and Dealers Act.

111 2. Any activity under ss. 686.501-686.506.

112 3. A franchise governed by the Outdoor Power Equipment  
113 Manufacturers, Distributors, Wholesalers, and Servicing Dealers  
114 Act.

115 4. A motor vehicle franchise or agreement governed by ss.  
116 320.60-320.70.

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117 5. A business relationship between a beer distributor and a  
 118 manufacturer governed by s. 563.022.

119 6. A professional sports franchise as described in s.  
 120 288.11625(2)(c).

121 (4) "Franchise fee" means a fee or charge greater than \$100  
 122 annually which a franchisee is required to pay or agrees to pay,  
 123 directly or indirectly, to or for the benefit of the franchisor  
 124 for the right to enter into or continue a franchise, including,  
 125 but not limited to, a payment for goods or services. However, a  
 126 fee or charge that a franchisee pays or agrees to pay the  
 127 franchisor for goods at a bona fide wholesale price if no  
 128 obligation is imposed upon the franchisee to purchase or pay for  
 129 a quantity of goods in excess of that which a reasonable person  
 130 normally would purchase by way of a starting inventory or supply  
 131 or to maintain an ongoing inventory or supply is not considered  
 132 a franchise fee.

133 (5) "Franchisee" means a person to whom a franchise is  
 134 offered or granted.

135 (6) "Franchisor" means a person who grants a franchise to a  
 136 franchisee.

137 (7) "Person" means a natural person, corporation, limited  
 138 liability company, association, partnership, trust, or other  
 139 business entity and, in the case of a business entity, includes  
 140 any other affiliate of such entity.

141 Section 4. Section 686.104, Florida Statutes, is created to  
 142 read:

143 686.104 Termination or nonrenewal.—

144 (1) Except as otherwise provided in this act, a franchisor  
 145 may not terminate or refuse to renew a franchise except for good

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146 cause. The termination or nonrenewal of a franchise without good  
 147 cause constitutes an actionable unfair termination. Except as  
 148 provided in subsection (2), good cause is limited to the failure  
 149 of the franchisee to substantially comply with the reasonable  
 150 and material requirements imposed upon the franchisee by the  
 151 franchise agreement after being given notice at least 90 days in  
 152 advance of the termination and a reasonable opportunity, which  
 153 may not be less than 60 days after the date of the notice of  
 154 noncompliance, to cure the failure. If the franchisee cures the  
 155 failure within the time given to cure, the termination notice is  
 156 void.

157 (2) A franchisor may give to a franchisee an immediate  
 158 notice of termination without an opportunity to cure if, during  
 159 the period in which the franchise is in effect, any one of the  
 160 following events relevant to the franchise occurs:

161 (a) The franchisee has been judicially determined to be  
 162 insolvent, has had all or a substantial part of its assets  
 163 assigned to or for the benefit of any creditor, or has admitted  
 164 its inability to pay its debts as they come due.

165 (b) The franchisee abandons, by failing to operate, the  
 166 franchise business for 10 consecutive days during which, under  
 167 the terms of the franchise, the franchisee is required to  
 168 operate the franchise business unless such failure to operate is  
 169 due to an act of God; a work stoppage; a strike or labor  
 170 difficulty; a fire, flood, hurricane, or sinkhole; or other  
 171 cause beyond the franchisee's control.

172 (c) The franchisee fails, for a period of 10 days after a  
 173 notice of noncompliance, to comply with any federal, state, or  
 174 local law or regulation, including, but not limited to, any

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175 health, safety, building, or labor law or regulation applicable  
176 to the operation of the franchise.

177 (d) The franchisee is convicted of a felony if that felony  
178 significantly, directly, and adversely affects the operation of  
179 the franchise business.

180 (e) The franchisor makes a reasonable determination that  
181 continued operation of the franchise business by the franchisee  
182 will result in imminent and substantial danger to public health  
183 or safety.

184 Section 5. Section 686.105, Florida Statutes, is created to  
185 read:

186 686.105 Sales, transfers, and assignments.-

187 (1) A franchisor may not deny the surviving spouse, heir,  
188 or estate of a deceased franchisee or of a deceased person who  
189 controlled a majority interest in the franchise the opportunity  
190 to participate in the ownership of the franchise or franchise  
191 business under a valid franchise agreement for at least 180 days  
192 after the death of the franchisee or the death of a person  
193 controlling a majority interest in the franchise. During that  
194 time, the surviving spouse, heir, or estate of the deceased must  
195 either meet all of the existing reasonable qualifications for a  
196 purchaser of a franchise or must sell, transfer, or assign the  
197 franchise to a person who meets the franchisor's existing  
198 reasonable qualifications for new franchisees. The rights  
199 granted to the surviving spouse, heir, or estate under this  
200 section are granted subject to the surviving spouse, heir, or  
201 estate of the deceased maintaining all standards and obligations  
202 of the franchise.

203 (2) (a) A franchisee may sell, transfer, or assign a

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204 franchise, all or substantially all of the assets of the  
205 franchise business, or an interest in the franchise with the  
206 prior written consent of the franchisor. The franchisor's  
207 consent may not be withheld unless the purchaser, transferee, or  
208 assignee does not meet the qualifications for new or renewing  
209 franchisees described in paragraph (b) or the franchisee and the  
210 purchaser, transferee, or assignee fail to comply with other  
211 reasonable transfer conditions specified in the franchise  
212 agreement.

213 (b) A franchisor may not prevent a franchisee from selling,  
214 transferring, or assigning a franchise, all or substantially all  
215 of the assets of the franchise business, or an interest in the  
216 franchise to another person if the other person meets the  
217 franchisor's reasonable qualifications for the approval of new  
218 or renewing franchisees in effect at the time the franchisor  
219 receives notice of the proposed sale, transfer, or assignment.  
220 The franchisor shall make this list of qualifications available  
221 to the franchisee, and the franchisor shall consistently apply  
222 such qualifications to similarly situated franchisees operating  
223 within the franchise brand.

224 Section 6. Section 686.106, Florida Statutes, is created to  
225 read:

226 686.106 Rights and prohibitions.-The following rights and  
227 prohibitions govern the relations between a franchisor and its  
228 franchisee:

229 (1) The parties shall deal with each other in good faith  
230 and in a commercially reasonable manner.

231 (2) A franchisor may not:

232 (a) Terminate or fail to renew a franchise agreement in

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233 violation of this act;  
 234 (b) Prevent a sale, transfer, or assignment of a franchise  
 235 in violation of s. 686.105;  
 236 (c) Violate the Florida Deceptive and Unfair Trade  
 237 Practices Act or s. 817.416 in connection with its business as a  
 238 franchisor, or an officer, agent, or other representative  
 239 thereof;  
 240 (d) Require a franchisee to assent to a release,  
 241 assignment, novation, waiver, or estoppel that would relieve any  
 242 person from liability imposed under this act, including, but not  
 243 limited to, through the use of a disclaimer or checklist  
 244 designed to avoid a protection under this act; or  
 245 (e) Require a franchisee to assent to the use of a choice  
 246 of law provision by selecting a different state's law to govern  
 247 the relationship of the parties.  
 248 (3) A person who shows in a civil court of law a violation  
 249 of this section is entitled to the remedies under s. 686.109.  
 250 Section 7. Section 686.107, Florida Statutes, is created to  
 251 read:  
 252 686.107 Unenforceable franchise agreement or other contract  
 253 or part thereof.—A franchise agreement or other contract, or a  
 254 part thereof or practice thereunder, which is in violation of  
 255 any provision of this act is deemed against public policy and is  
 256 void and unenforceable. An aggrieved party may choose to seek to  
 257 void the portion of the agreement that is unenforceable and  
 258 continue to enforce the remainder of the agreement.  
 259 Section 8. Section 686.108, Florida Statutes, is created to  
 260 read:  
 261 686.108 Venue; choice of law.—A provision in a franchise

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262 agreement restricting the venue to a forum outside of this state  
 263 or selecting the law of any other state or jurisdiction other  
 264 than this state is void with respect to any claim arising under  
 265 or relating to a franchise agreement involving a franchisee that  
 266 was, at the time of signing, a resident of this state or a  
 267 business entity established in this state or involving a  
 268 franchise business either operating or planning to be operated  
 269 in this state. An agreement between a Florida-based franchisor  
 270 and a franchisee with none of these stated connections to this  
 271 state is not subject to this act, regardless of whether the  
 272 franchise agreement contains a choice of law provision selecting  
 273 this state.  
 274 Section 9. Section 686.109, Florida Statutes, is created to  
 275 read:  
 276 686.109 Remedies.—  
 277 (1) In addition to any relief specified in this act, any  
 278 person aggrieved or injured in his or her business or property  
 279 by any violation of this act may bring an action in the  
 280 appropriate state or federal court of this state and shall  
 281 recover the damages sustained and the costs of such action,  
 282 including reasonable attorney fees.  
 283 (2) Without regard and in addition to any other remedy or  
 284 relief to which a person is entitled, any person aggrieved by a  
 285 violation of this act may bring an action to obtain a  
 286 declaratory judgment stating that an action or a practice  
 287 violates this act and may obtain injunctive relief enjoining a  
 288 franchisor that has violated, is violating, or is otherwise  
 289 likely to violate these sections from committing the violation.  
 290 (3) The remedies provided in this section are in addition

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291 to any other remedies provided by law or in equity, including,  
 292 but not limited to, the Florida Deceptive and Unfair Trade  
 293 Practices Act and s. 817.416.

294 Section 10. Section 686.11, Florida Statutes, is created to  
 295 read:

296 686.11 Applicability.-

297 (1) Any person or franchisor who engages directly or  
 298 indirectly in an agreement or contract within this state in  
 299 connection with a franchise; or any franchise whose franchisee  
 300 is a resident of this state or is domiciled in this state or  
 301 whose franchise business is, has been, or is intended to be  
 302 operated in this state, is subject to this act and to the  
 303 jurisdiction of the courts of this state, in accordance with the  
 304 laws of this state, for violations of this act.

305 (2) This act applies to:

306 (a) Any franchise entered into, renewed, amended, or  
 307 revised after the effective date of this act;

308 (b) Any existing franchise of an indefinite duration which  
 309 may be terminated by the franchisee or franchisor without cause;  
 310 and

311 (c) Any existing franchise entered into before the  
 312 effective date of this act, only to the extent that this act  
 313 does not significantly impair the existing contract rights  
 314 between the parties.

315 Section 11. Section 817.416, Florida Statutes, is amended  
 316 to read:

317 817.416 Franchises and distributorships;  
 318 misrepresentations.-

319 (1) DEFINITIONS.-For the purpose of this section, the term:

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320 (a) "Area franchise" has the same meaning as in s. 686.103.

321 (d)(a) The term "Person" means an individual, partnership,  
 322 corporation, association, or other entity doing business in this  
 323 state Florida.

324 (b) The term "Franchise or distributorship" means a  
 325 contract or agreement, either expressed or implied, whether oral  
 326 or written, between two or more persons:

327 1. Wherein a commercial relationship of definite duration  
 328 or continuing indefinite duration is involved;

329 2. Wherein one party, ~~hereinafter~~ hereinafter called the "franchisee,"  
 330 is granted the right to offer, sell, and distribute goods or  
 331 services manufactured, processed, distributed or, in the case of  
 332 services, organized and directed by another party;

333 3. Wherein the franchisee as an independent business  
 334 constitutes a component of franchisor's distribution system; and

335 4. Wherein the operation of the franchisee's business  
 336 franchise is substantially reliant on franchisors for the basic  
 337 supply of goods.

338 (c) The term "Goods" means any article or thing without  
 339 limitation, or any part of such article or thing, including any  
 340 article or thing used or consumed by a franchisee in rendering a  
 341 service established, organized, directed, or approved by a  
 342 franchisor.

343 (2) DECLARATIONS.-

344 (a) It is unlawful, when selling or establishing a  
 345 franchise or area franchise distributorship, for any person to:

346 1. Intentionally ~~to~~ misrepresent the prospects or chances  
 347 for success of a proposed or existing franchise or area  
 348 franchise distributorship;

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349 2. Intentionally ~~to~~ misrepresent, by failure to disclose or  
 350 otherwise, the known required total investment for such  
 351 franchise or area franchise distributorship; or

352 3. Intentionally ~~to~~ misrepresent or fail to disclose  
 353 efforts to sell or establish more franchises or area franchises  
 354 ~~distributorships~~ than is reasonable to expect the market or  
 355 market area for the particular franchise or area franchise  
 356 ~~distributorship~~ to sustain.

357 (b) The execution or carrying out of a scheme, plan, or  
 358 corporate organization which violates any of the provisions of  
 359 this section, if knowledge or intent be proved, is ~~shall be~~ a  
 360 misdemeanor of the second degree, punishable as provided in ss.  
 361 775.082 and 775.083.

362 (3) WAIVER.—The applicability of this section may not be  
 363 waived by any choice of venue clause, choice of law clause,  
 364 checklist, or any other contract provision, scheme, or device  
 365 that would otherwise affect a person's rights to make a claim  
 366 under this section.

367 (4)(3) CIVIL PROVISIONS.—Any person, who shows in a civil  
 368 court of law a violation of this section may receive a judgment  
 369 for all moneys invested in the ~~such~~ franchise or area franchise  
 370 ~~distributorship~~. Upon such a showing, the court may award any  
 371 person bringing said action reasonable attorney fees ~~attorney's~~  
 372 ~~fees~~ and shall award such person reasonable costs incurred in  
 373 bringing the action, and execution shall thereupon issue.

374 (5)(4) INJUNCTIONS.—The Department of Legal Affairs, or the  
 375 Department of Legal Affairs and the Department of Agriculture  
 376 and Consumer Services jointly, may sue in behalf of the people  
 377 of this state for injunctive relief against franchise or area

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20181076\_\_

378 franchise distributorship plans or activities in violation of  
 379 paragraph (2) (a).

380 Section 12. The Division of Law Revision and Information is  
 381 directed to replace the phrase "the effective date of this act"  
 382 wherever it occurs in this act with the date the act becomes a  
 383 law.

384 Section 13. This act shall take effect upon becoming a law.

# APPEARANCE RECORD

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

2-6-18

Meeting Date

1076

Bill Number (if applicable)

Topic Franchise

Amendment Barcode (if applicable)

Name Jeff Hanscom

Job Title VP, State Gov't Relations

Address 1900 K St NW # 700

Phone 202-662-4179

Street

Washington

DC

State

20006

Zip

Email jhanscom@franchise.org

Speaking:  For  Against  Information

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

Representing International Franchise Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

02/06/18

Meeting Date

1070

Bill Number (if applicable)

Topic Franchises

Amendment Barcode (if applicable)

Name Richard Turner

Job Title Senior VP Legal & Legislative Affairs

Address 230 S. Adams St.

Phone 850-224-2250

Street

Tallahassee

FL

32301

City

State

Zip

Email rturner@frla.org

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Florida Restaurant & Lodging ASSO.

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

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

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

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APPEARANCE RECORD

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

2/6/18

Meeting Date

1076

Bill Number (if applicable)

Topic FRANCHISE

Amendment Barcode (if applicable)

Name Chris Holmes

Job Title FRANCHISEE

Address 3018 Kinmer Rowe Dr.

Phone (850) 567-5177

Callahassce FL 3309

Email cholmer@firehousesubs.com

City State Zip

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

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

Representing FIREHOUSE SUBS

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

# APPEARANCE RECORD

2-6-18

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

SB 1076

Meeting Date

Bill Number (if applicable)

Topic Franchise

Amendment Barcode (if applicable)

Name MATT Holmes

Job Title owner

Address 14213 OTTER Run Rd

Phone 850-509-4759

Street

Tallahassee FL

32312

Email mholmes@firehousesubs.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1076

Bill Number (if applicable)

Topic FRANKHISE

Amendment Barcode (if applicable)

Name Jim Magill

Job Title Lobbyist

Address 101 N. Monroe St Suite 1090

Phone 850-~~515~~-681-0411

PALM BEACH FL 32301

Email JAMES.MAGILL@BIPC.COM

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

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

Representing Pinch a Penny Pools

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

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

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/6/18

Meeting Date

SB 1076

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Erik Kerr - Poole McKelvey

Job Title \_\_\_\_\_

Address 106 E College Ave 32301

Phone 850 528 4424

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Yam Brands

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/6/18

Meeting Date

1076

Bill Number (if applicable)

Topic Franchise

Amendment Barcode (if applicable)

Name Doug Bell

Job Title \_\_\_\_\_

Address 119 S. Monroe St

Phone 205-9000

Street

TLH

City

FL

State

Zip

Email doug.bell@uhdfirm.com

Speaking:  For  Against  Information

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

Representing McDonald's

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/18  
Meeting Date

1076  
Bill Number (if applicable)

Topic Franchise

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title \_\_\_\_\_

Address 119 South Monroe #200  
Street

Phone 850-205-9000

Tallahassee FL 32301  
City State Zip

Email aimee.diazlyon@mhdfirm.com

Speaking:  For  Against  Information

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

Representing the Business Law Section of the Florida Bar

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# APPEARANCE RECORD

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

2/6/18

Meeting Date

SB 1076

Bill Number (if applicable)

Topic Franchises

Amendment Barcode (if applicable)

Name JAKE FARMER

Job Title Legislative Coordinator

Address 227 S Adams Street

Phone 352-359-6835

Street

City

State

Zip

Tallahassee

FL

32301

Email Jake@frf.org

Speaking:  For  Against  Information

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

Representing Florida Retail Federation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 1168

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Steube

SUBJECT: Insurance

DATE: February 7, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1168 creates new requirements for assignment of post-loss benefits from personal residential property insurance policies. The bill does not allow personal lines residential or commercial residential property insurance policies to prohibit the post-loss assignment of benefits. It provides, however, that an agreement to assign post-loss benefits is not valid unless the agreement:

- Is in writing;
- Is limited to claims for work performed or work to be performed by the assignee;
- Contains an accurate and up-to-date statement of the scope of work to be performed;
- Allows the insured to rescind the assignment within 7 days after execution without penalty or fee;
- Prohibits any check or mortgage processing fee or administrative fee;
- Provides that the insured or insurer may be responsible for payment for any work performed before the rescission of the assignment; and
- Contains a notice provision informing the homeowner of certain rights and obligations.

The bill requires the assignee to:

- Provide a copy of the assignment agreement to the insurer within a specified time;
- Provide the insurer with a written estimate of the work to be done; and
- Provide specified notice to the insurer no later than 30 days before initiating litigation against an insurer.



The bill allows the insurer to inspect the property at any time. The assignee may raise the insurer's failure to in good faith attempt to inspect the property within 7 days after learning of the loss and promptly deliver to the assignee written notice of any perceived deficiency in the assignee's notice or work performed, for purposes of estopping the insurer from asserting that the work done was not reasonably necessary or the assignee provided insufficient notice.

The bill provides that acceptance by an assignee of a valid assignment agreement constitutes a waiver by the assignee of any claims, with specified exceptions, against named insureds for payment arising from the loss. This waiver is valid even if the assignment agreement is determined to be invalid.

The bill provides that in a civil action relating to a residential homeowner's property insurance claim under a policy in which an assignment agreement was executed, a proposal for settlement may be made by any party no earlier than 30 days after the civil action has commenced.

The bill requires each insurer to report specified data on each residential property claim paid pursuant to an assignment agreement in the prior calendar year to the Office of Insurance Regulation (OIR).

The bill restricts an insurer's ability to deny claims or rescind a policy based on misrepresentations on insurance applications and restricts an insurer's ability to require or recommend specific vendors to policyholders.

## **II. Present Situation:**

### **Property Insurance Rates**

Section 627.062, F.S., specifies the rate filing process for property and casualty insurers and provides rating standards for these insurers. The rating law applies to property, casualty, and surety insurance and prohibits rates that are excessive, inadequate, or unfairly discriminatory. At the same time, an insurer is allowed a reasonable rate of return. The Office of Insurance Regulation (OIR) regulates insurer rate and form filing.

A rate is excessive if:

- It is likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved or if expenses are unreasonably high in relation to the services rendered.
- The rate structure established by a stock insurance company provides for replenishment of surpluses from premiums, when the replacement is attributable to investment losses.<sup>1</sup>

A rate is inadequate if:

- It is clearly insufficient, together with the investment income attributable to them to sustain projected losses and expenses in the class of business to which it applies.
- If discounts or credits are allowed that exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group of risks.<sup>2</sup>

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<sup>1</sup> Section 627.062(2)(e)1. and 2., F.S.

<sup>2</sup> Section 627.062(2)(e)3. and 5., F.S.

A rate is unfairly discriminatory if:

- The rating plan, including discounts, credits, or surcharges fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program pursuant to s. 627.0625, F.S.
- As to a risk or group of risks, the application of premium discounts, credits, or surcharges among the risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.<sup>3</sup>

### ***Attorney Fees in Insurance Litigation***

Section 627.428(1), F.S., provides, in part:

Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.

This statute allows the insured or the insured's assignee<sup>4</sup> to recover attorney's fees if the insured or assignee prevails in an action against an insurer. Florida courts have interpreted the statute broadly to allow recovery of fees when the insurer ultimately settles the case before trial.<sup>5</sup> Fees are awarded pursuant to the statute even if the insurer does not act in bad faith.<sup>6</sup> The Florida Supreme Court recently explained the purpose of the statute:

The need for fee and cost reimbursement in the realm of insurance litigation is deeply rooted in public policy. Namely, the Legislature recognized that it was essential to "level the playing field" between the economically-advantaged and sophisticated insurance companies and the individual citizen. Most assuredly, the average policyholder has neither the finances nor the expertise to single-handedly take on an insurance carrier. Without the funds necessary to compete with an insurance carrier, often a concerned policyholder's only means to take protective action is to hire that expertise in the form of legal counsel. . . . For this reason, the Legislature recognized that an insured is not made whole when an insurer simply grants the previously denied benefits without fees. The reality is that once the

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<sup>3</sup> Section 627.062(2)(e)4. and 6., F.S.

<sup>4</sup> *All Ways Reliable Bldg. Maintenance, Inc. v. Moore*, 261 So. 2d 131 (Fla. 1972).

<sup>5</sup> *See Johnson v. Omega Ins. Co.*, 200 So. 3d 1207, 1215 (Fla. 2016) ("[I]t is well settled that the payment of a previously denied claim following the initiation of an action for recovery, but prior to the issuance of a final judgment, constitutes the functional equivalent of a confession of judgment.") (citations omitted). *See also Wollard v. Lloyd's & Cos. of Lloyd's*, 439 So. 2d 217, 218 (Fla. 1983) ("When the insurance company has agreed to settle a disputed case, it has, in effect, declined to defend its position in the pending suit. Thus, the payment of the claim is, indeed, the functional equivalent of a confession of judgment or a verdict in favor of the insured.").

<sup>6</sup> *Johnson*, 200 So. 3d at 1216 ("[T]he insurer's intentions do not factor into a policyholder's recovery of fees; it is the fact that the denial of benefits was ultimately incorrect that triggers the statute."); *Ins. Co. of N. Am. v. Lexow*, 602 So. 2d 528, 531 (Fla. 1992) ("INA's good faith in bringing this suit is irrelevant. If the dispute is within the scope of s. 627.428 and the insurer loses, the insurer is always obligated for attorney's fees.").

benefits have been denied and the plaintiff retains counsel to dispute that denial, additional costs that require relief have been incurred. Section 627.428 takes these additional costs into consideration and levels the scales of justice for policyholders by providing that the insurer pay the attorney's fees resulting from incorrectly denied benefits.<sup>7</sup>

### ***Attorney Fees in Insurance Rates***

Generally, attorney fees, including those paid pursuant to s. 627.428, F.S., are expenses that insurers can use to justify a rate.<sup>8</sup> However, motor vehicle insurers cannot use attorney fees to justify a rate or rate change if those fees are related to bad faith or punitive damages.<sup>9</sup> Likewise, medical malpractice insurers are prohibited from using attorney fees related to bad faith to justify a rate or rate change.<sup>10</sup>

Section 627.062(10), F.S., provides that an insurer cannot include interest paid to a policyholder when an insurer does not act on a claim within statutory time limits.<sup>11</sup>

### **Misrepresentations in Insurance Applications (Section 1 of the bill)**

Section 627.409(1), F.S., provides that recovery under an insurance policy may be prevented if a misrepresentation, omission, concealment of fact, or incorrect statement on an application for insurance:

- (1) is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by the insurer; or
- (2) if the true facts had been known to the insurer, the insurer would not have issued the policy, would not have issued it at the same premium rate, would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.

If an insurer discovers a misrepresentation or omission after issuing the policy, Florida courts have held that the insurer may deny coverage after a claim is made. For example, in *Nationwide Mutual Fire Insurance Company v. Kramer*,<sup>12</sup> an insurer properly refused to pay a claim for a stolen automobile because the insureds did not disclose a previous bankruptcy filing. In *Kieser v. Old Line Insurance Company of America*,<sup>13</sup> an insurance company properly refused to pay a life insurance policy because the insured failed to disclose certain health conditions and failed to disclose that he was shopping for other life insurance policies. And in *Universal Property and Casualty Insurance Company v. Johnson*,<sup>14</sup> an insurance company properly refused to pay a property insurance claim because the insureds failed to disclose prior criminal history. Florida

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<sup>7</sup> Johnson, 200 So. 3d at 1215-1216 (internal citations omitted).

<sup>8</sup> See, e.g., s. 627.062(2)(b)2., F.S., (requiring the OIR to consider expenses when reviewing a rate filing).

<sup>9</sup> Section 627.0651(12), F.S.

<sup>10</sup> Section 627.062(7)(a), F.S.

<sup>11</sup> See s. 627.70131, F.S.

<sup>12</sup> 725 So. 2d 1141 (Fla. 2d DCA 1998).

<sup>13</sup> 712 So. 2d 1261 (Fla. 1st DCA 1998).

<sup>14</sup> 114 So. 3d 1031 (Fla. 1st DCA 2013).

courts also recognize that a misrepresentation or an omission in an insurance application need not be intentional in order for the insurance company to deny recovery.<sup>15</sup>

A misrepresentation does not need to have a causal connection to the claim in order for the misrepresentation to be material.<sup>16</sup> One commenter explained the rationale for the general rule:

There is a very sound reason for not requiring a causal connection: such a requirement may encourage fraud. If a loss is caused by something other than the fact misrepresented, there will be coverage. If the cause of loss is connected to the misrepresented fact, the insured has lost nothing, because he wouldn't have had coverage anyway. If the cause of loss is not connected, he has coverage he otherwise couldn't have obtained. Thus, he had nothing to lose by misrepresenting.<sup>17</sup>

### ***Mandatory Offer of Replacement Cost Coverage and Law and Ordinance Coverage***

Section 627.7011(1), F.S., requires an insurer, prior to issuing a homeowner's insurance policy, to offer each of the following:

- A policy providing that any loss that is repaired or replaced will be adjusted on the basis of replacement costs to the dwelling not exceeding policy limits, rather than actual cash value, but not including costs necessary to meet applicable laws and ordinances regulating the construction, use, or repair of any property or requiring the tearing down of any property, including the costs of removing debris.
- A policy providing that, subject to other policy provisions, any loss that is repaired or replaced at any location will be adjusted on the basis of replacement costs to the dwelling not exceeding policy limits, rather than actual cash value, and also including costs necessary to meet applicable laws and ordinances regulating the construction, use, or repair of any property or requiring the tearing down of any property, including the costs of removing debris.

Unless the insurer obtains the policyholder's written refusal of the policies or endorsements discussed above, any policy covering the dwelling is deemed to include the law and ordinance coverage limited to 25 percent of the dwelling limit.<sup>18</sup> In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs, the insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible.<sup>19</sup> The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value.<sup>20</sup>

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<sup>15</sup> *Id.* at 1035. See also *Kramer*, 725 So. 2d at 1143.

<sup>16</sup> John Dwight Ingram, *Misrepresentations in Applications for Insurance*, 14 U. MIAMI BUS. L. REV. 103, 111 (2005) ("In most jurisdictions, a misrepresentation is considered material and sufficient grounds for rescission or denial of a claim regardless of whether the fact represented has any causal connection with the death or loss involved in the claim.").

<sup>17</sup> *Id.*

<sup>18</sup> Section 627.7011(2), F.S.

<sup>19</sup> Section 627.7011(3), F.S.

<sup>20</sup> *Id.*

## Assignment of Benefits (Sections 2 and 4 of the bill)

### *Background on Assignment of Benefits*

An assignment is the voluntary transfer of the rights of one party under a contract to another party.<sup>21</sup> Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee may file a lawsuit against the insurer to recover the insurance benefits.

Section 627.422, F.S., governs assignability of insurance contracts and provides that a policy may or may not be assignable according to its terms. For instance, in *Lexington Insurance Company v. Simkins Industries*,<sup>22</sup> the court held that a provision in an insurance contract prohibiting assignment of the policy was enforceable under the plain language of s. 627.422, F.S. The court explained that the purpose of a provision prohibiting assignment was “to protect an insurer against unbargained-for risks.”<sup>23</sup>

However, an assignment made after the loss is valid, even if the contract states otherwise.<sup>24</sup> In *Continental Casualty Company v. Ryan Incorporated*,<sup>25</sup> the court noted that it is a “well-settled rule that [anti-assignment provisions do] not apply to an assignment after loss.”<sup>26</sup> As noted by a court of a sister state, the rationale for permitting post-loss but not pre-loss assignments is that the “assignment of the policy, or rights under the policy, before the loss is incurred transfers the insurer’s contractual relationship to a party with whom it never intended to contract[;] but an assignment after loss is simply the transfer of the right to a claim for money” and “has no effect upon the insurer’s duty under the policy.”<sup>27</sup>

Assignments have been prohibited by contract in other insurance contexts. In *Kohl v. Blue Cross Blue Shield of Florida, Inc.*,<sup>28</sup> the court found that a health insurance contract’s anti-assignment language was sufficiently clear and upheld this language prohibiting the assignment of a health insurance claim. The court explained that anti-assignment clauses “prohibiting an insured’s assignments to out-of-network medical providers are valuable tools in persuading health [care]

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<sup>21</sup> See BLACK’S LAW DICTIONARY (10th ed. 2014) (defining the word “assignment” as follows: “**1.** The transfer of rights or property <assignment of stock options>. **2.** The rights or property so transferred <the aunt assigned those funds to her niece, who promptly invested the assignment in mutual funds>.”).

<sup>22</sup> 704 So. 2d 1384 (Fla. 1998).

<sup>23</sup> *Id.* at 1386.

<sup>24</sup> See *Gisela Inv., N.V. v. Liberty Mut. Ins. Co.*, 452 So. 2d 1056, 1057 (Fla. 3d DCA 1984) (“A provision in a policy of insurance which prohibits assignment thereof except with consent of the insurer does not apply to prevent assignment of the claim or interest in the insurance money then due, after loss.”) (citing *West Fla. Grocery Co. v. Teutonia Fire Ins. Co.*, 74 Fla. 220, 77 So. 209 (1917)).

<sup>25</sup> 974 So. 2d 368 (Fla. 2000).

<sup>26</sup> *Id.* at 377, n. 7 (citing *West Fla. Grocery Co.*, *supra*, and *Better Constr., Inc. v. Nat’l Union Fire Ins. Co.*, 651 So. 2d 141, 142 (Fla. 3d DCA 1995)).

<sup>27</sup> *Wehr Constructors, Inc. v. Assurance Company of America*, 384 S.W. 3d 680, 683 (Ky. 2012) (citing 3 COUCH ON INS. s. 35:9).

<sup>28</sup> 955 So. 2d 1140 (Fla. 4<sup>th</sup> DCA 2007).

providers to keep their costs down and as such override the general policy favoring the free alienability of choses in action.”<sup>29</sup>

Section 627.428(1), F.S., allows the insured to recover attorney’s fees if the insured prevails in an action against an insurer, and provides in part:

Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured’s or beneficiary’s attorney prosecuting the suit in which the recovery is had.

A person who takes an assignment of benefits stands in the shoes of the insured as an assignee and is entitled to attorney’s fees if that assignee prevails in an action against an insurer.<sup>30</sup>

### ***Assignment of Benefits in Property Insurance Cases***

In recent years, insurers have complained of abuses of the assignment of benefits process. One insurance company described the issue in a recent court filing, noting that most incidences of abuse involved water remediation companies:

The typical scenario surrounding the use of an “assignment of benefits” involved vendors and contractors, mostly water remediation companies, who were called by an insured immediately after a loss to perform emergency remediation services, such as water extraction. The vendor came to the insured’s home and, before performing any work, required the insured to sign an “assignment of benefits” – when the insured would be most vulnerable to fraud and price gouging. Vendors advised the insured, “We’ll take care of everything for you.” The vendor then submitted its bill to the insurer that was, on average, nearly 30 percent higher than comparative estimates from vendors without an assignment of benefits. Some vendors added to the invoice an additional 20 percent for “overhead and profit,” even though a general contractor would not be required or hired to oversee the work. Vendors used these inflated invoices to extract higher settlements from insurers. This, in turn, significantly increases litigation over the vendors’ invoices.<sup>31</sup>

On the other hand, in a court filing in a different case, an emergency repair and construction services company explained the rationale behind accepting assignments of insurance benefits:

<sup>29</sup> *Id.* at 1144-45 (internal quotations and citations omitted).

<sup>30</sup> *Allstate Insurance Co. v. Regar*, 942 So. 2d 969, 972 (Fla. 2d DCA 2006) (“[A]n assignee of an insurance claim stands to all intents and purposes in the shoes of the insured and logically should be entitled to an attorney’s fee when he sues and recovers on the claim.”) (quoting *All Ways Reliable*, 261 So. 2d at 132).

<sup>31</sup> *Security First Insurance Company v. State of Florida, Office of Insurance Regulation*, Case No. 1D14-1864 (Fla. 1st DCA), Appellant’s Initial Brief at pp. 3-4 (appellate record citations omitted) (on file with Senate Judiciary Committee).

As a practical matter, a homeowner often will not be able to afford or hire a contractor immediately following a loss unless the contractor accepts an assignment of benefits to ensure payment. A homeowner may be unable to comply with the . . . provision requiring the homeowner to protect and repair the premises unless the remediation contractor accepts an assignment of benefits, however, contractors will become unwilling to accept payments by assignment if court decisions render the assignments unenforceable. . . .

Whether the repair invoice is routed through the insured or submitted by the service provider directly by assignment, the service provider's repair invoice is submitted to the insurer for coverage and reviewed by an adjuster. The only difference an assignment makes is that, if an insurance company wishes to partially deny coverage or contest an invoice as unreasonable, the insured policyholder is not mired in litigation in which he or she has no stake.<sup>32</sup>

There have been a number of cases in recent years where Florida courts have held that post-loss benefits are assignable.<sup>33</sup>

### ***Data and Recommendations for Reform***

According to the Department of Financial Services, the number of lawsuits related to water claims where the claimant is an assignee has increased in recent years. In 2006, there were 8 lawsuits but in 2010, there were 483. The numbers increased in subsequent years:

2011 – 989  
 2012 – 1,603  
 2013 – 2,083  
 2014 – 2,786  
 2015 – 5,328  
 2016 – 8,488  
 2017 through September 30 – 5,968<sup>34</sup>

In 2015, the Office of Insurance Regulation (OIR) did a data call to attempt to determine the effect of assignment of benefits in the insurance market.<sup>35</sup> The OIR found that water losses alone could require rate increases of 10 percent per year.<sup>36</sup> One company reported that, in 2015, the cost of a water damage claim with an assignment of benefits was, on average, 140 percent greater than the cost of a claim without an assignment of benefits.<sup>37</sup> The company reported 90

<sup>32</sup> *One Call Property Services, Inc. v. Security First Insurance Company*, Case No. 4D14-0424 (Fla. 4th DCA), Appellant's Initial Brief at 46-48 (on file with Senate Judiciary Committee).

<sup>33</sup> See, e.g., *Security First Ins. Co. v. State of Florida Office of Insurance Regulation*, 177 So. 3d 627, *reh'g den.* (Fla. 1st DCA 2015); *Bioscience W., Inc. v. Gulfstream Prop. & Cas. Ins. Co.*, 185 So. 3d 638 (Fla. 2d DCA 2016); *One Call Property Services, Inc. v. Security First Ins. Co.*, 165 So. 3d 749 (Fla. 4th DCA 2015); *Accident Cleaners, Inc. v. Universal Ins. Co.*, 186 So. 3d 1 (Fla. 5th DCA 2015).

<sup>34</sup> Information provided by the DFS to Committee staff (on file with the Committee on Banking and Insurance).

<sup>35</sup> <http://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx> (last accessed January 8, 2018).

<sup>36</sup> Office of Insurance Regulation, *2015 Report on Review of the 2015 Assignment of Benefits Data Call*, p. 8 (Feb. 8, 2016), <https://www.floir.com/siteDocuments/AssignmentBenefitsDataCallReport02082016.pdf> (last visited Feb. 2, 2018).

<sup>37</sup> Security First Insurance, *Troubled Water: An Analysis of Water Damage Claims and the Impact on Homeowner's Insurance Premiums in Florida*, p. 13 (July 20, 2016), <http://johnsonstrategiesllc.com/wp-content/uploads/downloads/2016/07/Troubled-Waters-Water-Damage-Claims-Analysis-7-1-16.pdf> (last visited Feb. 2, 2018).

cases of suspected insurance fraud to the Department of Financial Services in 2015 and part of 2016.<sup>38</sup>

Citizens Property Insurance Company reported that the percentage of claims litigated with an assignment of benefits increased from 9.6 percent in 2012 to 46.9 percent in 2015.<sup>39</sup> It projects that the average premium will increase in Miami-Dade County from \$2,926 to \$4,712 by 2022, and in Broward County from \$2,390 to \$3,850 by 2022.<sup>40</sup> Citizens reports that water claims, including those that do not involve an assignment of benefits, have been increasing:

8,097 new lawsuits were filed against Citizens between January and November 2016, a 30 percent increase from the same period in 2015. Meanwhile, Citizens' policy count dropped by 26.3 percent between January 2015 and November 2016.<sup>41</sup>

Citizens noted that factors other than assignment of benefits contribute to the increase in the number of lawsuits. It noted that in many cases, it is made aware of a loss only after repairs are made or the policyholder has hired an attorney or a public adjuster.<sup>42</sup>

Citizens reported 16,150 closed non-weather water claims between January 1, 2016, and June 30, 2017:

Type of Claim	Number of Claims	Severity
Attorney Involved and AOB	5,042	\$29,889
Attorney Involved, No AOB	4,644	\$21,289
No Attorney Involved and AOB	636	\$9,530
No Attorney Involved, No AOB	5,828	\$4,430 <sup>43</sup>

In a presentation to the Florida Cabinet on February 7, 2017, the State Insurance Commissioner explained that the frequency of water claims rose by 46 percent from 2010 to 2015 and the amount the insurers pay on those claims has increased 28 percent.<sup>44</sup> Data gathered in a data call by the OIR showed that the use of assignments of benefits has increased from 5.7 percent of the claims in 2010 to 15.9 percent of the claims in 2015.<sup>45</sup> The Commissioner continued:

<sup>38</sup> *Id.* at p. 6.

<sup>39</sup> Citizens Property Insurance Corporation, *Non-Catastrophic Homeowners Water Claims*, p. 3 (Jan. 2016) <https://www.citizensfla.com/documents/20702/1335431/20160121+White+Paper+Non-Catastrophic+Homeowners+Water+Claims.pdf/f66d4f43-e4cf-4e6e-b857-d457d761f5d6> (last visited Feb. 2, 2018).

<sup>40</sup> Citizens Property Insurance Company, *AOB Reform Makes Pocket Sense* <https://www.citizensfla.com/documents/20702/460724/AOB+Reform+Makes+Pocket+Sense.pdf/010a2a22-6b2f-4ef5-81b4-5c89cc0b9cc8> (last visited Feb. 2, 2108).

<sup>41</sup> Press Release, Citizens Property Insurance Corporation, *Litigated Water Claims, AOB to Top Citizens 2017 Challenges* (Dec. 7, 2016), [https://www.citizensfla.com/-/20161207\\_bog-press-release](https://www.citizensfla.com/-/20161207_bog-press-release) (last visited Feb. 2, 2018).

<sup>42</sup> *Id.*

<sup>43</sup> Citizens Property Insurance Corporation, *President's Report*, p. 14 (Dec. 13, 2017) (on file with the Committee on Banking and Insurance).

<sup>44</sup> Transcript of February 7, 2017, Meeting of the Governor and Cabinet, p. 11 (Feb. 7, 2017), <http://www.myflorida.com/myflorida/cabinet/agenda17/0207/transcript.pdf> (last visited Feb. 8, 2018).

<sup>45</sup> *See supra* n. 37 at pp. 6 and 11.



Absent any other type of reform, absent any other type of coverage or other expense that might be present on an insurance policy, were these trends to continue unchecked, policyholders would expect to see about a 10 percent rate increase going forward just to keep up with the water trends that are covering their policy.<sup>46</sup>

The Commissioner recommended various reforms:

- Amending s. 627.428, F.S., to apply to insureds only and not to assignees;
- Consumer protections so that consumers are not left “holding the bag” if there is a dispute between the insurance company and a contractor; and
- Notice requirements so the insurer is aware of the assignment and can participate in the claims adjustment process.<sup>47</sup>

On January 12, 2018, the OIR released a report on a 2017 data call.<sup>48</sup> The frequency of water claims per 1,000 policies has increased 44 percent since 2015 and the average severity of claims has increased 11.4 percent on an annualized basis since 2018.<sup>49</sup> The number of water claims with an AOB increased to 17 percent in 2017 from 14.9 percent in 2016.<sup>50</sup> The report also showed a claim with at least one AOB was generally a more severe claim than a claim without an AOB.<sup>51</sup>

The First District Court of Appeal recently noted:

[W]e are not unmindful of the concerns that Security First expressed in support of [limiting assignment of benefits], providing evidence that inflated or fraudulent post-loss claims filed by remediation companies exceeded by thirty percent comparable services; that policyholders may sign away their rights without understanding the implications; and that a “cottage industry” of “vendors, contractors, and attorneys” exists that use the “assignments of benefits and the threat of litigation” to “extract higher payments from insurers.” These concerns, however, are matters of policy that we are ill-suited to address.<sup>52</sup>

The Fourth District Court of Appeal explained the competing policy arguments raised by the assignment of benefits issue:

Turning to the practical implications of this case, we note that this issue boils down to two competing public policy considerations. On the one side, the insurance industry argues that assignments of benefits allow contractors to unilaterally set the value of a claim and demand payment for fraudulent or inflated invoices. On the other side, contractors argue that assignments of benefits

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<sup>46</sup> See *supra* n. 45 at 11-12.

<sup>47</sup> *Id.* at 16-18.

<sup>48</sup> Office of Insurance Regulation, *Report of the 2017 Assignment of Benefits Data Call* (Jan. 8, 2018) <https://www.floir.com/siteDocuments/AssignmentBenefitsDataCallReport02082017.pdf> (last visited Feb. 2, 2018).

<sup>49</sup> *Id.* at 3.

<sup>50</sup> *Id.* at 9.

<sup>51</sup> *Id.* at 8. The OIR noted that the reason for higher severity cannot be determined from the information gathered in the data call.

<sup>52</sup> *Security First Ins. Co.*, 177 So. 3d at 628.

allow homeowners to hire contractors for emergency repairs immediately after a loss, particularly in situations where the homeowners cannot afford to pay the contractors up front.<sup>53</sup>

The court noted that if “studies show that these assignments are inviting fraud and abuse, then the legislature is in the best position to investigate and undertake comprehensive reform.”<sup>54</sup>

### **Proposals for Settlement (Section 5, Proposed Subparagraph (5) of s. 627.7152, F.S.)**

The “offer of judgment” provided by s. 768.79(1), F.S., awards attorney’s fees to:

- A defendant in any civil action for damage whose proposal for settlement is rejected where the judgment is 75 percent or less than the defendant’s offer (including where the plaintiff is awarded nothing or there is a finding of no liability); or
- A plaintiff whose proposal for settlement is rejected where the judgment is at least 25 percent more than the plaintiff’s offer.

Section 768.79, F.S., does not provide a time for making settlement proposals. However, Florida Rule of Civil Procedure 1.442(b) provides that “[a] proposal to a defendant shall be served no earlier than 90 days after service of process on the defendant; a proposal to the plaintiff shall be serviced no earlier than 90 days after the action has been commenced.”

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

#### **Misrepresentations in Insurance Applications (Section 1 of the bill)**

The bill amends s. 627.409, F.S., to provide that a misrepresentation, omission, concealment of fact, or incorrect statement on an insurance application may prevent recovery only if the misrepresentation, omission, concealment of fact, or incorrect statement directly relates to the cause of the claim. If the misrepresentation, omission, concealment of fact or incorrect statement directly relates to the cause of the claim, one of the following must apply:

- (1) The misrepresentation, omission, concealment, or statement is fraudulent or is material to the acceptance of the risk or to the hazard assumed by the insurer; or
- (2) If the true facts relative to the loss claimed had been known to the insurer pursuant to a policy requirement or other requirement, the insurer in good faith would *not* have:
  - Issued the policy or contract;
  - Issued the policy or contract at a premium rate at least 20 percent higher than the rate actually charged;
  - Issued a policy or contract in as large an amount; or
  - Provided coverage with respect to the hazard resulting in the loss.

However, the bill expressly states that s. 627.409, F.S., cannot be construed as allowing the types of fraudulent insurance claims described in s. 817.234, F.S.

<sup>53</sup> *One Call Property Services*, 165 So. 3d at 755.

<sup>54</sup> *Id.*

## **Replacement Cost Coverage**

**Section 3** amends s. 627.7011, F.S., to prohibit an insurer from requiring that a particular vendor make repairs to a dwelling insured on the basis of replacement costs. It also prohibits the insurer from recommending or suggesting a particular vendor to make repairs to a dwelling insured on the basis of replacement costs.

## **Assignment of Benefits**

**Section 2** of the bill amends s. 627.422, F.S., to provide that a personal lines residential property insurance policy or a commercial residential property insurance policy may not restrict the assignment of post-loss benefits. This provision is a restatement of case law that prohibits the restriction of post-loss assignments.

**Section 4** of the bill creates s. 627.7152, F.S., to provide requirements for the valid execution of an assignment of post-loss benefits of a residential homeowner's property insurance policy, create requirements regarding litigation involving such assignments, and require insurers to report data to the OIR regarding homeowner's insurance claims involving post-loss assignments.

The bill in s. 627.7152(1), F.S., provides that an agreement to assign post-loss benefits of a residential homeowner's property insurance policy is not valid unless the agreement:

- Is in writing;
- Is limited to claims for work performed or work to be performed by the assignee;
- Contains an accurate and up-to-date statement of the scope of work to be performed;
- Allows the insured to rescind the assignment within 7 days after the execution of the assignment without a penalty or fee;
- Prohibits any check or mortgage processing fee or administrative fee;
- Provides that the insured may be responsible for payment for any work performed before the rescission of the assignment; and
- Contains a provision, in 14-point boldfaced type, which allows the insured to rescind the agreement within 7 days after execution of the assignment, and with a notice that if the assignment is rescinded, the homeowner is responsible to pay for the work done up to the date of the rescission and that the homeowner is not otherwise responsible to pay for the work covered by the assignment.

The bill in s. 627.7152(2), F.S., requires the assignee to provide a copy of the assignment agreement to the insurer within the earlier of 7 days after execution of the agreement, or 48 hours after beginning nonemergency work if the insurer has a facsimile number and e-mail address on its website designated for the delivery of such documents. The assignment agreement must be accompanied by a written estimate of the work to be done, with unit prices indicated where appropriate, and the basis for calculating lump sum fees if unit prices are inappropriate. The estimate must be timely updated if conditions require a change in scope. The failure to comply with this requirement constitutes a defense to any payment obligation under the policy or the assignment, if the insurer can establish prejudice resulting from the failure.

The bill allows the insurer to inspect the property at any time. If the insurer fails to attempt in good faith to inspect the property within 7 days after learning of the loss and promptly deliver to

the assignee written notice of any perceived deficiency in the assignee's notice or the work being performed, the failure may be raised to estop the insurer from asserting that work done was not reasonably necessary or that the notice was insufficient.

The bill in s. 627.7152(3), F.S., provides that notwithstanding any other law, the acceptance by an assignee of a valid assignment agreement constitutes a waiver by the assignee or transferee, and any subcontractor of the assignee or transferee, of any and all claims against named insureds for payment arising from the specified loss. However, all named insureds remain responsible for:

- The payment of any deductible amount provided for by the terms of the insurance policy;
- The payment for work performed before the rescission of the assignment agreement, if there is a rescission; and
- The cost of any betterment ordered by all named insureds.

This waiver is valid even if the assignment agreement is determined to be invalid.

Under s. 627.7152(7), F.S., the bill's requirements relating to assignment agreements do not apply to:

- An assignment, transfer, or conveyance granted to a subsequent purchaser of the property with an insurable interest in the property following a loss; or
- A power of attorney under ch. 709, F.S., which grants to a management company, family member, guardian, or similarly situated person of an insured the authority to act on behalf of an insured as it relates to a property insurance claim.

### **Presuit Notice**

The bill in s. 627.7152(4), F.S., requires an assignee to provide the insurer an invoice for all work that has been performed and a current estimate of work remaining to be performed no later than 30 days before an assignee initiates litigation against an insurer relating to a residential homeowner's property insurance claim.

### **Proposals for Settlement**

The bill in s. 627.7152(5), F.S., provides that in a civil action relating to a residential homeowner's property insurance claim under a policy in which an assignment agreement was executed, an offer of settlement under s. 768.79, F.S., may be made by any party no earlier than 30 days after the civil action has commenced.

### **Required Reports to the Office of Insurance Regulation**

The bill in s. 627.7152(6), F.S., requires each insurer to report data on each residential property claim paid pursuant to an assignment agreement in the prior calendar year. The data must include specific data about claims adjustment and settlement timeframes and trends grouped by whether litigated or not litigated, by loss adjustment expenses, and by the amount and type of attorney fees incurred or paid. The bill provides that the Financial Services Commission may adopt rules to administer these provisions.

The required information must be reported by January 30, 2021, and each year thereafter.

**Section 5** provides that the amendments made by the bill to s. 627.422, F.S., and the provisions of s. 627.7152, F.S. (created by the bill) apply to assignment agreements executed on or after July 1, 2018.

**Section 6** provides that the bill takes effect July 1, 2018.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

#### **Court Rulemaking**

Lines 194-198 (s. 627.7152(5), F.S.) of the bill allow either party to make a proposal for settlement no earlier than 30 days after the civil action has commenced. However, Florida Rule of Civil Procedure 1.442(b) provides that a proposal for settlement to a defendant shall be served no earlier than 90 days after service of process on that defendant. A proposal to a plaintiff shall be served no earlier than 90 days after the action has been commenced. And Florida Rule of Civil Procedure 1.442(a) provides that the rule applies to all proposals for settlement and “supersedes all other provisions of the rules and statutes that may be inconsistent with this rule.”

Article V, section 2(a), of the Florida Constitution provides, in relevant part:

The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought.

Article II, section 3 of the Florida Constitution, reads:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

These provisions have been interpreted to give the Florida Supreme Court exclusive jurisdiction over procedural matters while the Legislature has exclusive jurisdiction over substantive law.

The concern raised by the bill is whether the Legislature has the constitutional power to set a time for service of proposals for settlement which is not consistent with the time set in the court rule. The Florida Rules of Civil Procedure are rules of procedure adopted by the Florida Supreme Court. If the timing of service of proposals for settlement is deemed procedural, then the Florida Supreme Court has exclusive jurisdiction to set the time. If it is substantive, then the Legislature can set the time by general law.

The Florida Supreme Court has not specifically addressed the issue. If the bill is passed and the resulting statute were to be challenged, the court would have a number of options. The court could recognize that the “legislative action” here is “a statement of the public desire” and necessity given the growing assignment of benefits problem, and amend the Florida Rule of Civil Procedure 1.442 accordingly.<sup>55</sup> For instance, in *Timmons v. Coombs*,<sup>56</sup> the court found that s. 768.79, F.S., contained procedural portions and adopted those as rules of court without explaining which portions of the law were procedural and which portions were substantive.

On the other hand, if the court were to find the time for service is procedural, it could strike down that portion of the statute and require the parties to follow rule 1.442. However, article V, section 2(a), of the Florida Constitution, permits the Legislature to repeal a court rule by a “two-thirds vote of the membership of each house[.]”

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

The bill may help to stave off rate property insurance rate increases to consumers and insureds by requiring assignees or contractors and insurers to work together very early in the process of making home repairs or remediation. The bill’s requirement that the assignee or contractor give notice of the assignment to the insurer within 5 days of beginning work places the insurer in a better position to evaluate the problem being remedied and substantiate the type and amount of work required. Earlier agreements

<sup>55</sup> *Leapai v. Milton*, 595 So. 2d 12, 15 (Fla. 1992) (rejecting district court’s conclusion that s. 45.061, F.S., is unconstitutional merely because it contains procedural aspects).

<sup>56</sup> 608 So. 2d 1 (1992). *See* n. 56, *supra* (“We have consistently held that statutes should be construed to effectuate the express legislative intent and all doubt as to the validity of any statute should be resolved in favor of its constitutionality. . . . This is particularly so in areas of the judicial process that necessarily involve both procedural and substantive provisions to accomplish a proposal’s objective. To strictly apply the nonseverance principle . . . would make it increasingly difficult to adopt new judicial process proposals that have both substantive and procedural aspects. The judiciary and the legislature must work to solve these types of separation-of-powers problems without encroaching upon each other’s functions and recognizing each other’s constitutional functions and duties. One example . . . is The Florida Evidence Code[.]”).

between contractors and the insurers upon a reasonable rate for the work performed may result in faster payments to contractors and the avoidance of lawsuits. To the extent that the provisions of the bill will reduce lawsuits, there will be fewer expenditures of insurer funds due to the one-way attorney's fee provision in s. 627.428, F.S. These expenditures affect the rates paid by consumers for insurance.

**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: 627.062, 627.409, 627.422, and 627.7011.

This bill creates section 627.7152 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Judiciary on February 6, 2018:**

The Committee Substitute:

- Deletes the provision prohibiting property insurers from including attorney fees and costs paid under the one-way attorney fee provision in s. 627.428, F.S., as part of the property insurer's rate base or as justification to raise rates. Although the amendment removes the express prohibition to include attorney's fees and costs in determining rates, an insurer's rate base and any proposed rate increase is still subject to review by the Office of Insurance Regulation to determine whether the rate is excessive, inadequate, or unfairly discriminatory.
- Provides that s. 627.409, F.S., cannot be construed as allowing the types of fraudulent insurance claims described in s. 817.234, F.S.
- Amends the statute created by the bill, s. 627.7152, F.S., providing that the insurer as well as the insured may be responsible to pay for work performed before the rescission of an assignment; and requiring that the assignee provide the assignment agreement to the insurer in 5 days rather than 7.

**CS by Banking and Insurance on January 23, 2018:**

The CS:

- Prohibits insurers from requiring particular vendors or recommending particular vendors when the dwelling is insured on the basis of replacement costs;
- Prohibits administrative fees or mortgage processing fees from being charged to the consumer;
- Provides that the vendor who accepts an AOB waives certain claims against the homeowner; and
- Makes technical changes.

**B. Amendments:**

None.





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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/06/2018	.	
	.	
	.	
	.	

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The Committee on Judiciary (Steube) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 52 - 157

and insert:

Section 1. Subsection (1) of section 627.409, Florida Statutes, is amended to read:

627.409 Representations in applications; warranties.-

(1) Any statement or description made by or on behalf of an insured or annuitant in an application for an insurance policy or annuity contract, or in negotiations for a policy or contract, is a representation and not a warranty. Except as



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12 provided in subsection (3), a misrepresentation, omission,  
13 concealment of fact, or incorrect statement may prevent recovery  
14 under the contract or policy only if the misrepresentation,  
15 omission, concealment of fact, or incorrect statement directly  
16 relates to the cause of the claim being made and any of the  
17 following apply:

18 (a) The misrepresentation, omission, concealment, or  
19 statement is fraudulent or is material to the acceptance of the  
20 risk or to the hazard assumed by the insurer.

21 (b) If the true facts relative to the loss claimed had been  
22 known to the insurer pursuant to a policy requirement or other  
23 requirement, the insurer in good faith would not have:

24 1. Issued the policy or contract; ~~it would not have~~

25 2. Issued the policy or contract ~~it~~ at a the same premium  
26 rate at least 20 percent higher than the rate actually charged;  
27 ~~would not have~~

28 3. Issued a policy or contract in as large an amount; ~~it~~ or

29 4. ~~would not have~~ Provided coverage with respect to the  
30 hazard resulting in the loss.

31 Section 2. Section 627.422, Florida Statutes, is amended to  
32 read:

33 627.422 Assignment of policies or post-loss benefits.-A  
34 policy may be assignable, or not assignable, as provided by its  
35 terms.

36 (1) LIFE OR HEALTH INSURANCE POLICIES.-Subject to its terms  
37 relating to assignability, any life or health insurance policy  
38 under the terms of which the beneficiary may be changed upon the  
39 sole request of the policyowner may be assigned either by pledge  
40 or transfer of title, by an assignment executed by the



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41 policyowner alone and delivered to the insurer, whether or not  
42 the pledgee or assignee is the insurer. Any such assignment  
43 shall entitle the insurer to deal with the assignee as the owner  
44 or pledgee of the policy in accordance with the terms of the  
45 assignment, until the insurer has received at its home office  
46 written notice of termination of the assignment or pledge or  
47 written notice by or on behalf of some other person claiming  
48 some interest in the policy in conflict with the assignment.

49 (2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE  
50 POLICIES.-A personal lines residential property insurance policy  
51 or a commercial residential property insurance policy may not  
52 restrict the assignment of post-loss benefits.

53 Section 3. Paragraph (a) of subsection (3) of section  
54 627.7011, Florida Statutes, is amended to read:

55 627.7011 Homeowners' policies; offer of replacement cost  
56 coverage and law and ordinance coverage.-

57 (3) In the event of a loss for which a dwelling or personal  
58 property is insured on the basis of replacement costs:

59 (a) For a dwelling:7

60 1. The insurer must initially pay at least the actual cash  
61 value of the insured loss, less any applicable deductible. The  
62 insurer shall pay any remaining amounts necessary to perform  
63 such repairs as work is performed and expenses are incurred. If  
64 a total loss of a dwelling occurs, the insurer shall pay the  
65 replacement cost coverage without reservation or holdback of any  
66 depreciation in value, pursuant to s. 627.702.

67 2. The insurer may not require that a particular vendor  
68 make repairs to such dwelling.

69 3. The insurer may not, unless expressly requested by the



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70 insured, recommend or suggest a particular vendor for repairs to  
71 be made to such dwelling.

72 Section 4. Paragraph (a) of subsection (2) of section  
73 627.706, Florida Statutes, is amended to read

74 627.706 Sinkhole insurance; catastrophic ground cover  
75 collapse; definitions.—

76 (2) As used in ss. 627.706-627.7074, and as used in  
77 connection with any policy providing coverage for a catastrophic  
78 ground cover collapse or for sinkhole losses, the term:

79 (a) "Catastrophic ground cover collapse" means geological  
80 activity that results in any of ~~all~~ the following:

81 1. The imminent ~~abrupt~~ collapse of the ground cover. ~~†~~

82 2. A depression in the ground cover clearly visible to the  
83 naked eye and ~~†~~

84 ~~3.~~ Structural damage to the covered building, including the  
85 foundation. ~~†~~ ~~and~~

86 ~~3.4.~~ The insured structure being condemned and ordered to  
87 be vacated by the governmental agency authorized by law to issue  
88 such an order for that structure, or being declared dangerous,  
89 as defined in the Florida Building Code, by written notice of  
90 the real and imminent threat to public safety which is from a  
91 licensed professional engineer to the governmental agency having  
92 code enforcement authority for the structure.

93  
94 Contents coverage applies if there is a loss resulting from a  
95 catastrophic ground cover collapse. Damage consisting merely of  
96 the settling or cracking of a foundation, structure, or building  
97 does not constitute a loss resulting from a catastrophic ground  
98 cover collapse, unless the building has been ordered to be



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99 vacated, or is declared dangerous by a licensed professional  
100 engineer or the governmental agency having code enforcement  
101 authority for the structure.

102 Section 5. Section 627.7152, Florida Statutes, is created  
103 to read:

104 627.7152 Assignment of residential homeowner's property  
105 insurance post-loss benefits; prelitigation invoice; offer of  
106 settlement; annual reporting.—

107 (1) An agreement to assign post-loss benefits of a  
108 residential homeowner's property insurance policy is not valid  
109 unless the agreement:

110 (a) Is in writing;

111 (b) Is limited to claims for work performed or work to be  
112 performed by the assignee;

113 (c) Contains an accurate and up-to-date statement of the  
114 scope of work to be performed;

115 (d) Allows the insured to rescind the assignment within 7  
116 days after the execution of the assignment without a penalty or  
117 fee;

118 (e) Prohibits any check or mortgage processing fee or  
119 administrative fee;

120 (f) Provides that the insured or the insurer may be  
121 responsible for payment for any work performed before the  
122 rescission of the assignment; and

123 (g) Contains a provision, in 14-point boldfaced type, which  
124 allows the insured to rescind the agreement within 7 days after  
125 execution of the assignment, and with a notice that if the  
126 assignment is rescinded, the homeowner is responsible to pay for  
127 the work done up to the date of the rescission and that the



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128 homeowner is not otherwise responsible to pay for the work  
129 covered by the assignment.

130 (2) (a) The assignee shall provide a copy of the assignment  
131 agreement to the insurer within 5 days after execution of the  
132 agreement if the insurer has a facsimile number and

133  
134 ===== T I T L E A M E N D M E N T =====

135 And the title is amended as follows:

136 Delete lines 2 - 17

137 and insert:

138 An act relating to insurance; amending s. 627.409,  
139 F.S.; adding and revising conditions under which  
140 certain misrepresentations, omissions, concealments of  
141 fact, or incorrect statements may prevent recovery  
142 under an insurance policy or annuity contract;  
143 amending s. 627.422, F.S.; providing that personal  
144 lines residential and commercial residential property  
145 insurance policies may not restrict the assignment of  
146 post-loss benefits; amending s. 627.7011, F.S.;

147 prohibiting specified acts by insurers relating to  
148 certain losses under homeowners' insurance policies;  
149 amending s. 627.706, F.S.; revising the definition of  
150 the term "catastrophic ground cover collapse" for  
151 purposes of certain provisions relating to sinkhole  
152 coverage in property insurance contracts; creating s.  
153 627.7152, F.S.; providing that



289730

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/06/2018	.	
	.	
	.	
	.	

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The Committee on Judiciary (Steube) recommended the following:

1           **Senate Amendment to Amendment (566142) (with directory and**  
2 **title amendments)**

3  
4           Between lines 30 and 31

5 insert:

6           (2) A breach or violation by the insured of a warranty,  
7 condition, or provision of a wet marine or transportation  
8 insurance policy, contract of insurance, endorsement, or  
9 application does not void the policy or contract, or constitute  
10 a defense to a loss thereon, unless such breach or violation  
11 increased the hazard by any means within the control of the



289730

12 insured.

13 (3) For residential property insurance, if a policy or  
14 contract has been in effect for more than 90 days, a claim filed  
15 by the insured cannot be denied based on credit information  
16 available in public records.

17 (4) This section may not be construed to allow fraudulent  
18 insurance claims as described in s. 817.234.

19  
20 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

21 And the directory clause is amended as follows:

22 Delete line 5

23 and insert:

24 Section 1. Section 627.409, Florida

25  
26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 Delete line 142

29 and insert:

30 under an insurance policy or annuity contract;

31 providing construction;





799328

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
	.	
	.	
	.	

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The Committee on Judiciary (Thurston) recommended the following:

1           **Senate Substitute for Amendment (566142) (with title**  
2 **amendment)**

3  
4           Delete lines 52 - 157

5 and insert:

6           Section 1. Section 627.409, Florida Statutes, is amended to  
7 read:

8           627.409 Representations in applications; warranties.-

9           (1) Any statement or description made by or on behalf of an  
10 insured or annuitant in an application for an insurance policy  
11 or annuity contract, or in negotiations for a policy or



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12 contract, is a representation and not a warranty. Except as  
13 provided in subsection (3), a misrepresentation, omission,  
14 concealment of fact, or incorrect statement may prevent recovery  
15 under the contract or policy only if the misrepresentation,  
16 omission, concealment of fact, or incorrect statement directly  
17 relates to the cause of the claim being made and any of the  
18 following apply:

19 (a) The misrepresentation, omission, concealment, or  
20 statement is fraudulent or is material to the acceptance of the  
21 risk or to the hazard assumed by the insurer.

22 (b) If the true facts relative to the loss claimed had been  
23 known to the insurer pursuant to a policy requirement or other  
24 requirement, the insurer in good faith would not have:

25 1. Issued the policy or contract; ~~it would not have~~  
26 2. Issued the policy or contract ~~it~~ at a ~~the same~~ premium  
27 rate at least 20 percent higher than the rate actually charged;  
28 ~~would not have~~

29 3. Issued a policy or contract in as large an amount; ~~or~~

30 4. ~~would not have~~ Provided coverage with respect to the  
31 hazard resulting in the loss.

32 (2) A breach or violation by the insured of a warranty,  
33 condition, or provision of a wet marine or transportation  
34 insurance policy, contract of insurance, endorsement, or  
35 application does not void the policy or contract, or constitute  
36 a defense to a loss thereon, unless such breach or violation  
37 increased the hazard by any means within the control of the  
38 insured.

39 (3) For residential property insurance, if a policy or  
40 contract has been in effect for more than 90 days, a claim filed



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41 by the insured cannot be denied based on credit information  
42 available in public records.

43 (4) This section may not be construed to allow fraudulent  
44 insurance claims as described in s. 817.234.

45 Section 2. Section 627.422, Florida Statutes, is amended to  
46 read:

47 627.422 Assignment of policies or post-loss benefits.—A  
48 policy may be assignable, or not assignable, as provided by its  
49 terms.

50 (1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its terms  
51 relating to assignability, any life or health insurance policy  
52 under the terms of which the beneficiary may be changed upon the  
53 sole request of the policyowner may be assigned either by pledge  
54 or transfer of title, by an assignment executed by the  
55 policyowner alone and delivered to the insurer, whether or not  
56 the pledgee or assignee is the insurer. Any such assignment  
57 shall entitle the insurer to deal with the assignee as the owner  
58 or pledgee of the policy in accordance with the terms of the  
59 assignment, until the insurer has received at its home office  
60 written notice of termination of the assignment or pledge or  
61 written notice by or on behalf of some other person claiming  
62 some interest in the policy in conflict with the assignment.

63 (2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE  
64 POLICIES.—A personal lines residential property insurance policy  
65 or a commercial residential property insurance policy may not  
66 restrict the assignment of post-loss benefits.

67 Section 3. Paragraph (a) of subsection (3) of section  
68 627.7011, Florida Statutes, is amended to read:

69 627.7011 Homeowners' policies; offer of replacement cost



799328

70 coverage and law and ordinance coverage.—

71 (3) In the event of a loss for which a dwelling or personal  
72 property is insured on the basis of replacement costs:

73 (a) For a dwelling:—

74 1. The insurer must initially pay at least the actual cash  
75 value of the insured loss, less any applicable deductible. The  
76 insurer shall pay any remaining amounts necessary to perform  
77 such repairs as work is performed and expenses are incurred. If  
78 a total loss of a dwelling occurs, the insurer shall pay the  
79 replacement cost coverage without reservation or holdback of any  
80 depreciation in value, pursuant to s. 627.702.

81 2. The insurer may not require that a particular vendor  
82 make repairs to such dwelling.

83 3. The insurer may not, unless expressly requested by the  
84 insured, recommend or suggest a particular vendor for repairs to  
85 be made to such dwelling.

86 Section 4. Section 627.7152, Florida Statutes, is created  
87 to read:

88 627.7152 Assignment of residential homeowner's property  
89 insurance post-loss benefits; prelitigation invoice; offer of  
90 settlement; annual reporting.—

91 (1) An agreement to assign post-loss benefits of a  
92 residential homeowner's property insurance policy is not valid  
93 unless the agreement:

94 (a) Is in writing;

95 (b) Is limited to claims for work performed or work to be  
96 performed by the assignee;

97 (c) Contains an accurate and up-to-date statement of the  
98 scope of work to be performed;



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99           (d) Allows the insured to rescind the assignment within 7  
100 days after the execution of the assignment without a penalty or  
101 fee;

102           (e) Prohibits any check or mortgage processing fee or  
103 administrative fee;

104           (f) Provides that the insured or the insurer may be  
105 responsible for payment for any work performed before the  
106 rescission of the assignment; and

107           (g) Contains a provision, in 14-point boldfaced type, which  
108 allows the insured to rescind the agreement within 7 days after  
109 execution of the assignment, and with a notice that if the  
110 assignment is rescinded, the homeowner is responsible to pay for  
111 the work done up to the date of the rescission and that the  
112 homeowner is not otherwise responsible to pay for the work  
113 covered by the assignment.

114           (2) (a) The assignee shall provide a copy of the assignment  
115 agreement to the insurer within 5 days after execution of the  
116 agreement if the insurer has a facsimile number and

117  
118 ===== T I T L E   A M E N D M E N T =====

119 And the title is amended as follows:

120           Delete lines 2 - 11

121 and insert:

122           An act relating to insurance; amending s. 627.409,  
123 F.S.; adding and revising conditions under which  
124 certain misrepresentations, omissions, concealments of  
125 fact, or incorrect statements may prevent recovery  
126 under an insurance policy or annuity contract;  
127 providing construction; amending s. 627.422, F.S.;



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128

providing that

By the Committee on Banking and Insurance; and Senator Steube

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1 A bill to be entitled  
 2 An act relating to insurance; amending s. 627.062,  
 3 F.S.; providing that certain attorney fees and costs  
 4 paid by property insurers may not be included in the  
 5 property insurer's rate base and may not be used to  
 6 justify a rate increase or rate change; amending s.  
 7 627.409, F.S.; adding and revising conditions under  
 8 which certain misrepresentations, omissions,  
 9 concealments of fact, or incorrect statements may  
 10 prevent recovery under an insurance policy or annuity  
 11 contract; amending s. 627.422, F.S.; providing that  
 12 personal lines residential and commercial residential  
 13 property insurance policies may not restrict the  
 14 assignment of post-loss benefits; amending s.  
 15 627.7011, F.S.; prohibiting specified acts by insurers  
 16 relating to certain losses under homeowners' insurance  
 17 policies; creating s. 627.7152, F.S.; providing that  
 18 an agreement to assign post-loss benefits of a  
 19 residential homeowner's property insurance is not  
 20 valid unless specified conditions are met; requiring  
 21 the assignee, under certain circumstances, to provide  
 22 a copy of the assignment agreement and a specified  
 23 written estimate to the insurer within a specified  
 24 timeframe; requiring the estimate to be timely updated  
 25 if conditions require a change in scope; providing  
 26 construction relating to failure to comply with such  
 27 requirement; authorizing an insurer to inspect the  
 28 property at any time; providing that an insurer's  
 29 failure to make a certain attempt to inspect the

Page 1 of 8

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

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30 property and deliver a certain notice, under certain  
 31 circumstances, may estop certain assertions by the  
 32 insurer; providing that a person's acceptance of an  
 33 assignment agreement constitutes a waiver by the  
 34 assignee or transferee, or any subcontractor of the  
 35 assignee or transferee, of certain claims against  
 36 named insureds, except under specified circumstances;  
 37 providing construction relating to such waiver;  
 38 requiring an assignee, before initiating certain  
 39 litigation against an insurer, to provide a certain  
 40 invoice and estimate to the insurer within a specified  
 41 timeframe; providing that certain offers of settlement  
 42 in certain civil actions may not be made until after a  
 43 specified timeframe; requiring the Office of Insurance  
 44 Regulation to require each insurer to annually report  
 45 specified data relating to certain claims paid  
 46 pursuant to assignment agreements; authorizing the  
 47 Financial Services Commission to adopt rules;  
 48 providing applicability; providing an effective date.

49  
 50 Be It Enacted by the Legislature of the State of Florida:

51  
 52 Section 1. Subsection (11) is added to section 627.062,  
 53 Florida Statutes, to read:

54 627.062 Rate standards.—

55 (11) Attorney fees and costs paid by a property insurer  
 56 pursuant to s. 627.428 may not be included in the property  
 57 insurer's rate base and may not be used to justify a rate  
 58 increase or rate change.

Page 2 of 8

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

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59 Section 2. Subsection (1) of section 627.409, Florida  
60 Statutes, is amended to read:

61 627.409 Representations in applications; warranties.—

62 (1) Any statement or description made by or on behalf of an  
63 insured or annuitant in an application for an insurance policy  
64 or annuity contract, or in negotiations for a policy or  
65 contract, is a representation and not a warranty. Except as  
66 provided in subsection (3), a misrepresentation, omission,  
67 concealment of fact, or incorrect statement may prevent recovery  
68 under the contract or policy only if the misrepresentation,  
69 omission, concealment of fact, or incorrect statement directly  
70 relates to the cause of the claim being made and any of the  
71 following apply:

72 (a) The misrepresentation, omission, concealment, or  
73 statement is fraudulent or is material to the acceptance of the  
74 risk or to the hazard assumed by the insurer.

75 (b) If the true facts relative to the loss claimed had been  
76 known to the insurer pursuant to a policy requirement or other  
77 requirement, the insurer in good faith would not have:

- 78 1. Issued the policy or contract;~~7. would not have~~  
79 2. Issued the policy or contract ~~it~~ at a ~~the same~~ premium  
80 rate at least 20 percent higher than the rate actually charged;~~7.~~  
81 ~~would not have~~  
82 3. Issued a policy or contract in as large an amount;~~7. or~~  
83 4. ~~would not have~~ Provided coverage with respect to the  
84 hazard resulting in the loss.

85 Section 3. Section 627.422, Florida Statutes, is amended to  
86 read:

87 627.422 Assignment of policies or post-loss benefits.—A

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88 policy may be assignable, or not assignable, as provided by its  
89 terms.

90 (1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its terms  
91 relating to assignability, any life or health insurance policy  
92 under the terms of which the beneficiary may be changed upon the  
93 sole request of the policyowner may be assigned either by pledge  
94 or transfer of title, by an assignment executed by the  
95 policyowner alone and delivered to the insurer, whether or not  
96 the pledgee or assignee is the insurer. Any such assignment  
97 shall entitle the insurer to deal with the assignee as the owner  
98 or pledgee of the policy in accordance with the terms of the  
99 assignment, until the insurer has received at its home office  
100 written notice of termination of the assignment or pledge or  
101 written notice by or on behalf of some other person claiming  
102 some interest in the policy in conflict with the assignment.

103 (2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE  
104 POLICIES.—A personal lines residential property insurance policy  
105 or a commercial residential property insurance policy may not  
106 restrict the assignment of post-loss benefits.

107 Section 4. Paragraph (a) of subsection (3) of section  
108 627.7011, Florida Statutes, is amended to read:

109 627.7011 Homeowners' policies; offer of replacement cost  
110 coverage and law and ordinance coverage.—

111 (3) In the event of a loss for which a dwelling or personal  
112 property is insured on the basis of replacement costs:

113 (a) For a dwelling:~~7.~~

- 114 1. The insurer must initially pay at least the actual cash  
115 value of the insured loss, less any applicable deductible. The  
116 insurer shall pay any remaining amounts necessary to perform



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117 such repairs as work is performed and expenses are incurred. If  
 118 a total loss of a dwelling occurs, the insurer shall pay the  
 119 replacement cost coverage without reservation or holdback of any  
 120 depreciation in value, pursuant to s. 627.702.

121 2. The insurer may not require that a particular vendor  
 122 make repairs to such dwelling.

123 3. The insurer may not, unless expressly requested by the  
 124 insured, recommend or suggest a particular vendor for repairs to  
 125 be made to such dwelling.

126 Section 5. Section 627.7152, Florida Statutes, is created  
 127 to read:

128 627.7152 Assignment of residential homeowner's property  
 129 insurance post-loss benefits; prelitigation invoice; offer of  
 130 settlement; annual reporting.-

131 (1) An agreement to assign post-loss benefits of a  
 132 residential homeowner's property insurance policy is not valid  
 133 unless the agreement:

134 (a) Is in writing;

135 (b) Is limited to claims for work performed or work to be  
 136 performed by the assignee;

137 (c) Contains an accurate and up-to-date statement of the  
 138 scope of work to be performed;

139 (d) Allows the insured to rescind the assignment within 7  
 140 days after the execution of the assignment without a penalty or  
 141 fee;

142 (e) Prohibits any check or mortgage processing fee or  
 143 administrative fee;

144 (f) Provides that the insured may be responsible for  
 145 payment for any work performed before the rescission of the

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146 assignment; and

147 (g) Contains a provision, in 14-point boldfaced type, which  
 148 allows the insured to rescind the agreement within 7 days after  
 149 execution of the assignment, and with a notice that if the  
 150 assignment is rescinded, the homeowner is responsible to pay for  
 151 the work done up to the date of the rescission and that the  
 152 homeowner is not otherwise responsible to pay for the work  
 153 covered by the assignment.

154 (2) (a) The assignee shall provide a copy of the assignment  
 155 agreement to the insurer within 7 days after execution of the  
 156 agreement, or within 48 hours after beginning nonemergency work,  
 157 whichever is earlier, if the insurer has a facsimile number and  
 158 e-mail address on its website designated for the delivery of  
 159 such documents. This assignment agreement must be accompanied by  
 160 a written estimate of the work to be done, with unit prices  
 161 indicated where appropriate, and the basis for calculating lump  
 162 sum fees if unit prices are inappropriate. The estimate must be  
 163 timely updated if conditions require a change in scope. The  
 164 failure to comply with this requirement constitutes a defense to  
 165 any payment obligation under the policy or the assignment, if  
 166 the insurer can establish prejudice resulting from the failure.

167 (b) The insurer may inspect the property at any time. If  
 168 the insurer fails to attempt in good faith to do so within 7  
 169 days after learning of the loss and promptly deliver to the  
 170 assignee written notice of any perceived deficiency in the  
 171 assignee's notice or the work being performed, the failure may  
 172 be raised to estop the insurer from asserting that work done was  
 173 not reasonably necessary or that the notice was insufficient to  
 174 comply with this section.

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175 (3) Notwithstanding any other law, the acceptance by a  
 176 person of any assignment agreement constitutes a waiver by the  
 177 assignee or transferee, and any subcontractor of the assignee or  
 178 transferee, of any and all claims against all named insureds for  
 179 payment arising from the specified loss, except that all named  
 180 insureds remain responsible for the payment of any deductible  
 181 amount provided for by the terms of the insurance policy and for  
 182 the cost of any betterment ordered by all named insureds. This  
 183 waiver remains in effect notwithstanding any subsequent  
 184 determination that the assignment agreement is invalid or  
 185 notwithstanding the rescission of the assignment agreement by  
 186 all named insureds, except that the assignee is entitled to  
 187 payment for the reasonable cost of any contracted work performed  
 188 before the assignor rescinded the assignment agreement.

189 (4) No later than 30 days before an assignee initiates  
 190 litigation against an insurer relating to a residential  
 191 homeowner's property insurance claim, the assignee must provide  
 192 the insurer an invoice for all work that has been performed and  
 193 a current estimate of work remaining to be performed.

194 (5) In a civil action relating to a residential homeowner's  
 195 property insurance claim under a policy in which an assignment  
 196 agreement under this section was executed, an offer of  
 197 settlement under s. 768.79 by any party may be made no earlier  
 198 than 30 days after the civil action has commenced.

199 (6) The office shall require each insurer to report by  
 200 January 30, 2021, and each year thereafter, data on each  
 201 residential property insurance claim paid in the prior calendar  
 202 year pursuant to an assignment agreement. Such data must  
 203 include, but are not limited to, specific data about claims

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204 adjustment and settlement timeframes and trends grouped by  
 205 whether litigated or not litigated, by loss adjustment expenses,  
 206 and by the amount and type of attorney fees incurred or paid.  
 207 The commission may adopt rules to administer this subsection.

208 (7) This section does not apply to:

209 (a) An assignment, transfer, or conveyance granted to a  
 210 subsequent purchaser of the property with an insurable interest  
 211 in the property following a loss; or

212 (b) A power of attorney under chapter 709 which grants to a  
 213 management company, family member, guardian, or similarly  
 214 situated person of an insured the authority to act on behalf of  
 215 an insured as it relates to a property insurance claim.

216 Section 6. The amendment made by this act to s. 627.422,  
 217 Florida Statutes, and the creation by this act of s. 627.7152,  
 218 Florida Statutes, apply to assignment agreements executed on or  
 219 after July 1, 2018.

220 Section 7. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1168

Bill Number (if applicable)

799328

Amendment Barcode (if applicable)

Topic Property Insurance

Name DAVE DeBlonder

Job Title Dinner

Address 3255 Potter St.  
Street

Phone 850-484-8500

Pensacola FL 32514  
City State Zip

Email ddeblander7c@yahoo.com

Speaking:  For  Against  Information

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

Representing pro clean restoration

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1168

Bill Number (if applicable)

799328

Amendment Barcode (if applicable)

Topic Property Insurance

Name Amanda Prater

Job Title Legislative Director

Address 941 W. Morse Blvd.

Street

Phone 850-766-0679

Winter Park FL 32789

City

State

Zip

Email amanda@cooperativestrategies.net

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Restoration Assoc. of FL

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1168

Bill Number (if applicable)

799328

Amendment Barcode (if applicable)

Topic Property Insurance

Name Richie Kidwell

Job Title Owner

Address 941 W. MORSE BLVD.

Street

Winter Park, FL

City

State

32789

Zip

Phone 407-233-0493

Email richieca@qualityassessors.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Air Quality Assessors

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

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

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

02.06.18

*Meeting Date*

1168

*Bill Number (if applicable)*

566142

*Amendment Barcode (if applicable)*

Topic Insurance

Name John Derr

Job Title \_\_\_\_\_

Address 215 South Monroe Street - Ste. 600

*Street*

Phone 850-412-1042

Tallahassee

FL

32301

Email jderr@qpwblaw.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

# APPEARANCE RECORD

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

2/6/18  
Meeting Date

1168  
Bill Number (if applicable)

Topic Insurance

Amendment Barcode (if applicable)

Name Foyt Ralston

Job Title \_\_\_\_\_

Address 317 E. Park Ave  
Street

Phone 294-5390

Tallahassee  
City State Zip

Email foyt@capadvocates.com

Speaking:  For  Against  Information

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

Representing Florida Association of Restoration Specialists

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18  
Meeting Date

1168  
Bill Number (if applicable)

Topic Insurance

Amendment Barcode (if applicable)

Name Caitlin Murray

Job Title Director of Government Affairs

Address Street Phone

City State Zip Email

Speaking:  For  Against  Information

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

Representing Office of Insurance Regulation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



# APPEARANCE RECORD

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

2/16

Meeting Date

1168

Bill Number (if applicable)

Topic Assignment of Benefits

Name William Stander

Amendment Barcode (if applicable)

Job Title \_\_\_\_\_

Address P.O. Box 1042  
Street

Phone 850-212-3250

Tallahassee FL 32302  
City State Zip

Email William@williamstander.com

Speaking:  For  Against  Information  
*if time permits*

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

Representing Florida Property & Casualty Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-6-18

Meeting Date

CS/1168

Bill Number (if applicable)

Topic AOB

Name CAM FENTRESS

Amendment Barcode (if applicable)

Job Title LEGISLATIVE COUNSEL

Address 1400 VILLAGE SQ #3-243

Phone 880-222-2772

City TALL

State FL

Zip 32312

Email CFENTRESS@AOL.COM

Speaking:  For  Against  Information

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

Representing FCA ROOFING & SHEET METAL CONTRACTORS ASSN

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

# APPEARANCE RECORD

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

2-6-18

Meeting Date

CS/1168

Bill Number (if applicable)

Topic AOB

Amendment Barcode (if applicable)

Name AM FENTRISS

Job Title LEGISLATIVE COUNSEL

Address 1400 VILAGE SQ # 3-243

Phone 850-222-2772

Street

TALL

City

FL

State

32312

Zip

Email AFENTRISS@AOL.COM

Speaking:  For  Against  Information

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

Representing ~~TUA REFRIGERATION &~~ AC CONTRACTORS ASSN

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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# APPEARANCE RECORD

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

2.6.18

Meeting Date

1168

Bill Number (if applicable)

Topic Insurance bill

Name Brewster Bevis

Amendment Barcode (if applicable)

Job Title \_\_\_\_\_

Address 516 N Adams

Street

Phone 224-9173

Tally FL 3230

City

State

Zip

Email bbevis@aif.com

Speaking:  For  Against  Information

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

Representing AIF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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# APPEARANCE RECORD

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

2-6-18

Meeting Date

1168

Bill Number (if applicable)

Topic Insurance

Amendment Barcode (if applicable)

Name Christine Ashburn

Job Title Chief - Communications + Legislative Affairs

Address 2101 Maryland Circle

Phone 850-513-3746

Street

Tallahassee FL

32303

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Citizens Property Insurance Corp.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

02.06.18

*Meeting Date*

1168

*Bill Number (if applicable)*

Topic Insurance

*Amendment Barcode (if applicable)*

Name John Derr

Job Title \_\_\_\_\_

Address 215 South Monroe Street - Ste. 600

Phone 850-412-1042

*Street*

Tallahassee

FL

32301

Email jderr@qpwblaw.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/18

*Meeting Date*

1168

*Bill Number (if applicable)*

Topic Insurance - Assignment of Benefits Reform

*Amendment Barcode (if applicable)*

Name Michael Carlson

Job Title President

Address 215 S. Monroe St. Suite 835

Phone 8505977425

*Street*

Tallahassee

FL

32301

Email michael.carlson@piff.net

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing The Personal Insurance Federation of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1168

Bill Number (if applicable)

Topic Insurance

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough Street

Phone 521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: [ ] For [x] Against [ ] Information

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

Representing Florida Chamber of Commerce

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

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

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# APPEARANCE RECORD

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

Feb. 6, 2018

Meeting/Date

CS/SB 1168

Bill Number (if applicable)

Topic Insurance

Amendment Barcode (if applicable)

Name Liz Reynolds

Job Title Regional VP - Southeast

Address 3933 Victoria Lakes Dr. South

Phone (317) 417-5618

Street

Jacksonville FL 32226

City

State

Zip

Email lreynolds@namico.org

Speaking:  For  Against  Information

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

Representing National Assoc. of Mutual Insurance Companies

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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# APPEARANCE RECORD

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

2/6/18  
Meeting Date

SB 1168  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Gary Guzzo

Job Title lobbyist/consultant

Address 108 S. Monroe St

Phone (850) 681-0024

Street

Tallahassee FL 32301

City

State

Zip

Email gguzzo@flaparty.org

Speaking:  For  Against  Information

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

Representing Institute for Legal Reform

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

Meeting Date

1168

Bill Number (if applicable)

Topic Property Insurance

Amendment Barcode (if applicable)

Name Amanda Prater

Job Title Legislative Director

Address 941 W. Morse Blvd

Phone 407-233-0493

Street

Winter Park

FL

32789

Email Richie@airqualityassessors.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Restoration Association of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/18

*Meeting Date*

1168

*Bill Number (if applicable)*

Topic Property Insurance

*Amendment Barcode (if applicable)*

Name Richie Kidwell

Job Title Owner

Address 941 W. Morse Blvd

Phone 407-233-0493

*Street*

Winter Park

FL

32789

*City*

*State*

*Zip*

Email Richie@airqualityassessors.com

Speaking:  For  Against  Information

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

Representing Air Quality Assessors

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/18

1168

Meeting Date

Bill Number (if applicable)

Topic Property Insurance

Amendment Barcode (if applicable)

Name Dave DeBlander

Job Title Owner

Address 3255 Potter Street

Phone 850-484-8500

Street

Pensacola

FL

32514

Email djdeblander1@yahoo.com

City

State

Zip

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

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

Representing Pro Clean Restoration

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

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1168  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Amendment Barcode (if applicable) \_\_\_\_\_

Topic Insurance

Name David Heil

Job Title Attorney for Policy Holders

Address 2324 Lee Road

Phone 407-599-2100

Street Windsor Park FL 32789  
City State Zip

Email david@heil-law.com

Speaking:  For  Against  Information

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

Representing Homeowners

Appearing at request of Chair:  Yes  No      Lobbyist registered with Legislature:  Yes  No

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# CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 2/6/2018 2:10:43 PM

Ends: 2/6/2018 3:26:02 PM Length: 01:15:20

2:10:43 PM Meeting called to order by Chair Steube  
2:10:45 PM Roll call by Administrative Assistant Joyce Butler  
2:11:04 PM Quorum  
2:11:26 PM TAB 5 Chair call Senator Simmons to present SB 1316. Senator Simmons present SB 1316  
2:12:23 PM Kenneth Pratt waives in support  
2:12:28 PM Jay Brown waives in support  
2:12:38 PM Stephen Shiver waives in opposition  
2:12:44 PM Martha Edenfield waives in opposition  
2:12:56 PM Senator Simmons closes on SB 1316  
2:14:32 PM SB 1316 Reported Favorably  
2:14:49 PM Chair stated that Senator Benacquisto moves that Tab 9 SB 1076 Temporarily Postponed  
2:15:01 PM TAB 3 Chair call Senator Lee to present CS/SJR 792. Senator Lee presented CS/SJR 792  
2:20:33 PM Senator Lee closes on CS/SJR 792  
2:21:30 PM CS/SJR 792 Reported Favorably  
2:21:44 PM TAB 1 Chair call Senator Young to present CS/SB 624. Senator Young presented CS/SB 624  
2:22:33 PM Chief Stephen Dembinsky waives in support  
2:22:36 PM Lisa Hurley wavier in support  
2:22:45 PM Jeff Branch waives in support  
2:22:48 PM Barney Bishop waive in support  
2:22:51 PM Jess McCarty waive in support  
2:23:01 PM Rebecca De La Rosa waive in support  
2:23:03 PM Jared Torres waive in support  
2:23:07 PM Chair ask Senator Young to close on her bill. Senator Young waives closing  
2:23:28 PM Chair ask Joyce to call the roll on CS/SB 624 Reported Favorably  
2:23:41 PM TAB 2 Chair call Senator Young to present SB 1482. Senator Young presented. SB 1482 presented  
2:25:26 PM Amendment Barcode 964952 presented by Senator Young

2:25:54 PM Amendment adopted  
2:26:06 PM Question by Senator Gibson  
2:26:18 PM Response by Senator Young  
2:26:34 PM Kate Catner waives in support  
2:26:40 PM Vicki Wooldridge waives in support  
2:26:51 PM Senator Young waives close  
2:27:10 PM SB 1482 Reported Favorably  
2:27:27 PM TAB 8 Chair call Senator Bracy to present CS/SB 602. Senator Bracy presented CS/SB 602  
2:28:19 PM Nancy Daniels waives in support  
2:28:28 PM Barney Bishop waives against  
2:28:33 PM Joyce Chamro waives in support  
2:28:39 PM James Madison waives in support  
2:28:45 PM Latino Justice waives in support  
2:28:51 PM Reverend Jimmie Dickey waives in support  
2:28:56 PM Amy Basciglia waives in support  
2:29:05 PM Kara Gross waives in support  
2:29:14 PM Daphne Sainvil waives in support  
2:29:20 PM Chair ask Senator Bracy to close on his bill. Senator Bracy closes  
2:30:15 PM Chair ask Joyce to call roll on CS/SB 602 Reported Favorably  
2:30:30 PM TAB 4 Chair call Senator Passidomo to present CS/SB 1254. Senator Passidomo presented. CS/SB 1254  
2:31:17 PM Dr. Phyllis Kalifeh waives in support  
2:31:23 PM Dr. Brittany Birken waives in support  
2:31:30 PM Ted Granger waives in support  
2:31:40 PM Jessica Scher waives in support  
2:31:47 PM Tara Reid waives in support  
2:31:52 PM Chris Nuland waives in support  
2:31:54 PM Senator Bracy waives closing  
2:31:55 PM Chair ask Joyce to call roll on CS/SB 1254  
2:32:05 PM CS/SB 1254 Reported Favorably  
2:32:26 PM TAB 6 Chair call Senator Broxson to present SB 1862. Senator Broxson presented SB 1862  
2:34:07 PM Chris Nuland waives in support  
2:34:13 PM Stephen Winn waives in support  
2:34:17 PM Jared Fowler waives in support  
2:34:26 PM David Christian waives in support  
2:34:31 PM Chair ask Senator Broxson to close on his bill. Senator Broxson waives close  
2:34:53 PM Chair ask Joyce to call the roll on SB 1862. SB 1862 Reported



Favorably

**2:35:07 PM** TAB 7 Chair call Senator Garcia to present CS/SB 590. Senator Garcia presented CS/SB 590

**2:37:07 PM** Amendment Barcode 512692 presented by Senator Steube

**2:38:05 PM** Senator Garcia asks for amendment to be withdrawn

**2:38:28 PM** Senator Steube withdraws amendment barcode 512692

**2:38:35 PM** Barney Bishop waives in support

**2:38:54 PM** Speaker Victoria Zepp, Florida Coalition of Children

**2:39:48 PM** Senator Garcia closes on SB 590

**2:40:20 PM** CS/SB 590 Reported Favorably

**2:40:35 PM** TAB 10 Vice-Chair call Senator Steube to present CS/SB 1168. Senator Steube presented CS/SB 1168

**2:41:04 PM** Amendment Barcode 566142 presented by Senator Steube

**2:41:52 PM** CS/SB 1168 presented by Senator Steube

**2:43:00 PM** Amendment Barcode 566142 presented by Senator Steube

**2:43:45 PM** Question by Senator Flores

**2:44:00 PM** Response by Senator Steube

**2:44:22 PM** Follow-up by Senator Flores

**2:44:39 PM** Response by Senator Steube

**2:45:24 PM** Speaker John Derr

**2:47:09 PM** Amendment Barcode 289730 presented by Senator Steube

**2:47:41 PM** Amendment to Amendment adopted

**2:47:58 PM** Amendment Barcode 799328 presented by Senator Thurston

**2:49:03 PM** Dave DeBlander waives in support

**2:49:10 PM** Amanda Plater waives in support

**2:49:21 PM** Richy Kidwell waives in support

**2:49:26 PM** Amendment adopted

**2:49:30 PM** Vice-Chair stated we are back on the bill as amended and we will go to the speaker cards

**2:49:39 PM** Foyt Rowston waives in support

**2:49:48 PM** Caitlin Murray no position

**2:50:08 PM** Speaker Caitlin Murray

**2:50:35 PM** Question by Senator Thurston

**2:50:42 PM** Response by Speaker Caitlin Murray

**2:51:01 PM** Question by Senator Flores

**2:51:07 PM** Response by Caitlin Murray

**2:51:45 PM** Question by Senator Thurston

**2:51:58 PM** Response by Caitlin Murray

**2:52:28 PM** Speaker William Stander

**2:53:33 PM** Cam Fentriss waives in opposition

**2:53:42 PM** Brewster Bevis waives in opposition

2:53:50 PM Speaker Christine Ashburn  
2:54:32 PM Speaker John Derr  
2:57:41 PM Question by Senator Gibson  
2:57:57 PM Response by Speaker John Derr  
2:58:46 PM Speaker Michael Carson  
3:00:40 PM Question by Senator Benacquisto  
3:00:55 PM Response by Speaker Michael Carlson  
3:01:37 PM Follow-up by Senator Benacquisto  
3:01:50 PM Response by Speaker Michael Carlson  
3:02:29 PM Question by Senator Thurston  
3:02:45 PM Response by Speaker Michael Carlson  
3:03:44 PM Question by Senator Steube  
3:04:25 PM Response by Speaker Michael Carlson  
3:04:51 PM Follow-up by Senator Steube  
3:05:21 PM Response by Speaker Michael Carlson  
3:05:34 PM Follow-up Senator Steube  
3:05:54 PM Response by Speaker Michael Carlson  
3:06:56 PM Speaker Carolyn Johnson, Florida Chamber of Commerce  
3:08:25 PM Liz Reynolds waives in opposition  
3:08:33 PM Speaker Gary Guzzo  
3:09:41 PM Amanda Prater waives in support  
3:09:47 PM Richie Kidwell waives in support  
3:09:53 PM Speaker Dave DeBlander  
3:12:36 PM Question by Senator Thurston  
3:12:58 PM Response by David DeBlander  
3:14:03 PM David Heil waives in support  
3:14:08 PM Debate by Senator Flores  
3:19:37 PM Debate by Senator Garcia  
3:21:02 PM Debate by Senator Mayfield  
3:22:43 PM Senator Steube closes on CS/CS/SB 1168  
3:25:00 PM Vice-Chair ask Joyce to call roll on CS/CS/SB 1168. CS/CS/SB  
Reported Favorably  
3:25:38 PM Senator Mayfield motion to be shown voting favorably on 624,  
1482, 792, 1254, 1862 and voting nay on 602. Without objection  
3:25:51 PM Senator Bradley motion to be shown voting favorably on SB  
1316  
3:25:56 PM Meeting adjourned without objection