

Tab 1 CS/SB 122 by BI, Broxson (CO-INTRODUCERS) Hooper, Simmons; Agreements Between Service Providers and Consumers

380464	D	S	RS	JU, Broxson	Delete everything after	03/20 08:59 AM
748114	SD	S	RCS	JU, Broxson	Delete everything after	03/20 08:59 AM
643976	AA	S	WD	JU, Rodriguez	Delete L.50:	03/20 08:59 AM
461950	ASA	S	WD	JU, Rodriguez	Delete L.32 - 47:	03/20 08:59 AM
492832	ASA	S	WD	JU, Rodriguez	Delete L.211 - 216:	03/20 08:59 AM
882166	ASA	S	WD	JU, Rodriguez	In title, delete L.250	03/20 08:59 AM

Tab 2 SB 116 by Stewart; Motor Vehicle Racing

Tab 3 SB 440 by Rouson; (Identical to H 00283) Florida Commission on Human Relations

Tab 4 SB 826 by Rouson; (Similar to H 00347) Towing-storage Operator Liens

917578	D	S	RCS	JU, Rouson	Delete everything after	03/20 08:59 AM
341992	AA	S	RCS	JU, Rouson	Delete L.222:	03/20 08:59 AM

Tab 5 SB 1140 by Hutson; (Similar to H 00829) Attorney Fees and Costs

292360	A	S	RCS	JU, Hutson	Delete L.21 - 39:	03/19 11:15 AM
850524	AA	S	RCS	JU, Hutson	Delete L.11:	03/19 11:15 AM

Tab 6 SB 1154 by Berman; (Identical to H 01307) Decedents' Property

Tab 7 SB 1174 by Bean; (Identical to H 00917) Custody of Minor Children by Extended Family

391970	A	S	RCS	JU, Bean	Delete L.47 - 73:	03/20 08:59 AM
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Tab 8 SB 1246 by Wright; (Similar to H 00911) Construction Defects

Tab 9 SB 1338 by Rodriguez; (Similar to H 01085) Guardianship

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Simmons, Chair
Senator Rodriguez, Vice Chair

MEETING DATE: Monday, March 18, 2019
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 122 Banking and Insurance / Broxson	Agreements Between Service Providers and Consumers; Specifying limitations and authorized provisions relating to a service provider's right to payment under certain agreements with consumers under urgent or emergency circumstances; specifying requirements, limitations, and prohibited provisions for agreements containing a post-loss assignment of benefits; providing that attorney fees under certain provisions of the Florida Insurance Code may not be awarded to an assignee of post-loss benefits who is a service provider, etc. BI 01/22/2019 Workshop-Discussed BI 02/04/2019 Workshop-Discussed BI 02/11/2019 Temporarily Postponed BI 03/04/2019 Fav/CS JU 03/18/2019 Fav/CS RC	Fav/CS Yeas 5 Nays 1
2	SB 116 Stewart (Identical H 611)	Motor Vehicle Racing; Increasing the criminal penalty for a third or subsequent violation related to motor vehicle racing within a specified period after the date of a prior violation that resulted in a conviction, etc. IS 02/19/2019 Favorable CJ 03/04/2019 Favorable JU 03/18/2019 Favorable RC	Favorable Yeas 6 Nays 0
3	SB 440 Rouson (Identical H 283, Compare S 1488)	Florida Commission on Human Relations; Providing quorum requirements for the Commission on Human Relations and its panels; revising the number of persons the commission may recommend for the Florida Civil Rights Hall of Fame; deleting a requirement that a facility or community that provides housing for older persons register with and submit a letter to the commission; deleting the requirement for the commission or Attorney General to investigate a complaint of discrimination in evaluating an application for club membership, etc. GO 03/06/2019 Favorable JU 03/18/2019 Favorable RC	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, March 18, 2019, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 826 Rouson (Similar H 347)	Towing-storage Operator Liens; Requiring that certain lien notices be sent through an electronic third-party mailing service; requiring electronic third-party mailing services to apply to the Department of Highway Safety and Motor Vehicles for approval; requiring an electronic third-party mailing service to maintain certain records for a specified timeframe and to allow inspection of such records by the department, etc. JU 03/18/2019 Fav/CS IS AP	Fav/CS Yeas 6 Nays 0
5	SB 1140 Hutson (Similar H 829)	Attorney Fees and Costs; Waiving the sovereign immunity of local governments for liability for certain attorney fees and costs; providing for award of attorney fees and costs and damages in successful civil actions challenging local ordinances as being preempted by the State Constitution or state law; prohibiting an award of attorney fees and costs under certain circumstances, etc. JU 03/18/2019 Fav/CS CA RC	Fav/CS Yeas 4 Nays 2
6	SB 1154 Berman (Identical H 1307)	Decedents' Property; Abolishing certain common law requirements relating to joint tenancies with right of survivorship and tenancies by the entirety; specifying that precious metals are tangible personal property for the purposes of the Florida Probate Code; expanding the list of sales or encumbrances that are voidable by interested persons under certain circumstances; specifying when an attorney or a person related to the attorney is deemed appointed in a trust instrument, etc. JU 03/18/2019 Favorable CF RC	Favorable Yeas 6 Nays 0
7	SB 1174 Bean (Identical H 917)	Custody of Minor Children by Extended Family; Providing that a petition for concurrent custody may include certain requests; authorizing a court to establish conditions for a parent to obtain custody in an order granting temporary custody under certain circumstances; requiring the court to establish any conditions for the transition of custody of the child to the parent which are in the child's best interest, and to consider specified factors, etc. JU 03/18/2019 Fav/CS CF RC	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, March 18, 2019, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1246 Wright (Similar H 911)	Construction Defects; Requiring courts to require parties in actions involving construction defects to take part in nonbinding arbitration; authorizing parties to agree to be bound by the arbitration award; requiring a jury verdict and a final judgment to contain specified information in certain proceedings, etc. JU 03/18/2019 Temporarily Postponed IT RC	Temporarily Postponed
9	SB 1338 Rodriguez (Similar H 1085)	Guardianship; Applying provisions relating to the determination of venue in proceedings for the appointment of a guardian to minors; requiring that a court dismiss a petition for determination of incapacity if all members of the examining committee conclude that the person is not incapacitated, unless a certain motion is filed within a specified period, etc. JU 03/18/2019 Favorable CF RC	Favorable Yeas 6 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 122

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Broxson and others

SUBJECT: Agreements Between Service Providers and Consumers

DATE: March 20, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 122 regulates the assignment of post-loss insurance benefits from consumers to service providers. These regulations specify requirements for those agreements and their limitations and provide for the award of attorney fees in litigation.

For agreements entered into between service providers and consumers under urgent or emergency circumstances, the following provisions apply:

- The agreement must be in writing and detail, to the extent that is reasonable, the work to be performed and the charges to be provided.
- The service provider may only contract for work to stabilize, protect, and prevent additional damage.
- If the agreement includes an assignment of the right to payment, the agreement may include an assignment of insurance benefits limited to \$3,000 or 1 percent of the Coverage A limit for a property insurance policy and \$500 under a motor vehicle policy for windshield damage.

For all post-loss agreements, including a post-loss assignment of benefits that contemplates additional work after an emergency repair, the following provisions apply:

- The agreement must be in writing and must detail to the extent reasonable under the circumstances, the work to be performed, the charges for the services and the dates by which work will commence and be completed.

- If the agreement contains a post-loss assignment of insurance benefits under a property insurance policy or a comprehensive or combined additional coverage under a motor vehicle policy for windshield damage, the assignment of benefits is valid only if the agreement is consistent with the consumer protection provisions of the bill which are detailed in the Effect of Proposed Changes section of this analysis.

The bill removes the “one way” attorney fee for assignees of property insurance benefits or motor vehicle insurance benefits to repair or replace automobile windshields under comprehensive or combined additional coverage. It does not change the law relating to first party insurance claims. Instead of “one way” attorney fees, the bill provides that the prevailing party in a suit between an assignee and an insurer has the right to attorney fees and costs. The bill defines the prevailing party as the party which prevails on the significant issues of the case and provides factors that a court must consider when determining the prevailing party:

- The issues litigated;
- The amount of the claim by the service provider versus the amount recovered;
- The existence of setoffs and counterclaims; and
- The amounts offered by either party to resolve the issues prior to or during litigation.

The bill requires an assignee to waive any and all claims against a consumer. However, the consumer remains responsible for the payment of any deductible amount provided for by the terms of the insurance policy, and for the cost of any betterment ordered by the consumer. The waiver is effective even if the assignment agreement is subsequently found invalid or rescinded by the consumer.

The bill provides that if an assignee commences a suit based upon or including the same claim against the same adverse party that such assignee has previously voluntarily dismissed, the court may order the assignee to pay the costs of the adverse party of the action previously voluntarily dismissed.

This bill takes effect on July 1, 2019.

II. Present Situation:

Attorney Fees in Insurance Litigation

In general, parties to a lawsuit each pay their own attorney fees unless statutes or contractual provisions provide otherwise. Section 627.428, 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.¹

This statute allows an insured to recover his or her own attorney fees if the insured prosecutes a lawsuit to enforce an insurance policy. Some version of this statute has been the law in Florida since at least 1893.²

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 benefits have been denied and the plaintiff retains counsel to dispute that denial, additional costs that require relief have been incurred. Section 627.428, F.S., 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.³

Florida courts have interpreted the statute broadly to allow recovery of fees when the insurer ultimately settles the case before trial.⁴ The court awards fees pursuant to the statute even if the insurer does not act in bad faith.⁵

There must be a dispute over the amount owed before attorney fees can be recovered pursuant to s. 627.428, F.S. In *Goldman v. United Services Automobile Association*,⁶ homeowners sustained water damage due to a plumbing leak. The homeowners reported the claim to their insurance company. The insurance company investigated and paid the claim. The homeowners filed a lawsuit without informing the insurance company that they disputed the amount of the claim.

¹ Section 626.9373, F.S., contains substantially similar language but it applies to surplus lines insurers. Florida courts have interpreted the statutes to have the same meaning.

² See *Tillis v. Liverpool & London & Globe Insurance Company*, 35 So. 171 (1903)(rejecting an insurance company argument that the 1893 law providing that an insured may recover attorney fees in actions against an insurance company to enforce a policy violates due process and equal protection).

³ *Johnson v. Omega Ins. Co.*, 200 So.3d 1207, 1215-1216 (Fla. 2016)(internal citations omitted).

⁴ *Johnson v. Omega Ins. Co.*, 200 So.3d 1207, 1215 (Fla. 2016)(noting that it 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").

⁵ *Insurance Co. of North America v. Lexow*, 602 So.2d 528, 531 (Fla. 1992)("We reject the argument that attorney's fees should not be assessed against INA because this dispute involved a type of claim which reasonably could be expected to be resolved by a court. INA's good faith in bringing this suit is irrelevant. If the dispute is within the scope of s. 627.428, F.S., and the insurer loses, the insurer is always obligated for attorney's fees").

⁶ *Goldman v. United Services Automobile Association*, 244 So.3d 310 (Fla. 4th DCA 2018).

The insurance company demanded an appraisal and paid the disputed amount after the appraisal award.⁷ The court held the homeowners were not entitled to attorney fees because the insurance company was not aware of a dispute over the amount of the claim until the filing of the lawsuit. The court said that attorney fees may only be recovered when the claims process breaks down and the parties are no longer working to resolve the claim.⁸

Assignments of Post-Loss Insurance Benefits

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. This assignment is often called an “assignment of benefits” or “AOB.” 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.⁹

The Florida Supreme Court Applies Section 627.428, F.S., to AOB Cases

Section 627.428, F.S., provides that “any named or omnibus insured or the named beneficiary under a policy” may be entitled to attorney fees. In 1961, the First District Court of Appeal held that an assignee of the proceeds of a life insurance policy could recover attorney fees when the assignee had to sue to enforce payment.¹⁰

In 1971, the Fourth District Court of Appeal considered whether the insured’s assignee of benefits from a property insurance policy was entitled to attorney fees and held the assignee was not entitled to fees because the assignee was not a named insured or beneficiary.¹¹ The Fourth District’s opinion was appealed to the Florida Supreme Court and the Florida Supreme Court reversed. In 1972, the Florida Supreme Court held that an insured’s assignee is entitled to attorney fees under s. 627.0127, F.S., the predecessor statute to s. 627.428, F.S. The court said “an 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.”¹²

The court reaffirmed the holding in 2008:

[S]ection 627.428 authorizes an award of attorney's fees only to “the named or omnibus insured or named beneficiary” under an insurance policy and to other third parties who obtain coverage based on an assignment from an insured.¹³

⁷ *Goldman*, 244 So.3d at 311.

⁸ *Goldman*, 244 So.3d at 312. *See also Hill v. State Farm Florida Insurance Company*, 35 So.3d 956, 961 (Fla. 2d DCA 2010)(stating that “fees should normally be limited to the work associated with filing the lawsuit after the insurance carrier has ceased to negotiate or has breached the contract and the additional legal work necessary and reasonable to resolve the breach of contract); *Lewis v. Universal Property and Casualty Insurance Co.*, 13 So.3d 1079 (Fla. 4th DCA 2009).

⁹ *Nationwide Mutual Insurance Company v. Pinnacle Medical, Inc.* 753 So.2d 55, 57 (Fla. 2000)(“The right of assignee to sue for breach of contract to enforce assigned rights predates the Florida Constitution”).

¹⁰ *Travelers Insurance Company v. Tallahassee Bank and Trust Company*, 133 So.2d 463 (Fla. 1st DCA 1961).

¹¹ *Southern American Fire Insurance Company v. All Ways Reliable Building Maintenance, Inc.*, 251 So.2d 11 (Fla. 4th DCA 1971), *reversed*, *All Ways Reliable Building Maintenance, Inc. v. Moore*, 261 So.2d 131 (Fla. 1972).

¹² *All Ways Reliable Bldg. Maintenance, Inc. v. Moore*, 261 So.2d 131, 132 (1972)

¹³ *Continental Cas. Co. v. Ryan, Inc. Eastern*, 974 So.2d 368, 379 (Fla. 2008).

Anti-Assignment Provisions in Insurance Contracts Do Not Prevent AOB in Property Insurance or Motor Vehicle Insurance

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. In *Lexington Insurance Company v. Simkins Industries*,¹⁴ 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.¹⁵

An assignment made after the loss is valid even if the contract states otherwise.¹⁶ In *Continental Casualty Company v. Ryan Incorporated Eastern*,¹⁷ the court noted that it is a “well-settled rule that [anti-assignment provisions do] not apply to an assignment after loss.” A court explained that a rationale for post-loss assignments is that “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.”¹⁸

Assignments have been prohibited by contract in other insurance contexts. In *Kohl v. Blue Cross Blue Shield of Florida, Inc.*,¹⁹ the court found anti-assignment language was sufficiently clear and upheld 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] providers to keep their costs down and as such override the general policy favoring the free alienability of choses in action.”²⁰

AOB in Property Insurance Cases

In recent years, insurers have complained of abuse of the assignment of benefits process. An insurance company described the issue in a court filing:

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

¹⁴ *Lexington Insurance Company v. Simkins Industries* 704 So.2d 1384 (Fla. 1998).

¹⁵ *Id.* at 1386.

¹⁶ *West Fla. Grocery Co. v. Teutonia Fire Ins. Co.*, 74 Fla. 220, 77 So. 209 (1917); *Gisela Inv., N.V. v. Liberty Mut. Ins. Co.*, 452 So.2d 1056 (Fla. 3d DCA 1984).

¹⁷ *Continental Casualty Company v. Ryan Incorporated Eastern*, 974 So.2d 368, 377 n. 7 (Fla. 2000).

¹⁸ *Wehr Constructors, Inc. v. Assurance Company of America*, 384 S.W.3d 680, 683 (Ky. 2012). The Florida courts’ interpretation of s. 627.422, F.S., appears to be the position of a majority of states that have considered the issue.

¹⁹ *Kohl v. Blue Cross Blue Shield of Florida, Inc.*, 955 So.2d 1140 (Fla. 4th DCA 2007).

²⁰ *Id.* at 1144-1145.

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.²¹

In a court filing in a different case, a company that provides emergency repair and construction services explained the rationale behind assignments of insurance benefits:

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.²²

There have been a number of cases in recent years where courts have held that post-loss benefits are assignable.²³

Automobile Insurance

Automobile insurance consists of different types of insurance coverages. Personal injury protection or “PIP” coverage is required in Florida to cover injuries to the driver regardless of which party is at fault in an accident. Bodily injury liability coverage pays for damage that the insured causes to other drivers and passengers in an accident. Property damage liability coverage covers damage that the insured causes to the property of another individual. Collision coverage pays for damages to the insured automobile caused by a collision with another automobile. Comprehensive coverage generally pays for damages to the insured automobile, including damage to the windshield, caused by events other than a collision.

²¹ *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).

²² *One Call Property Services, Inc. v. Security First Insurance Company*, Case No. 4D14-0424 (Fla. 4th DCA), Appellant’s Initial Brief at 46-48.

²³ See, e.g., *Security First Ins. Co. v. State of Florida Office of Insurance Regulation*, 177 So.3d 627, rehearing denied (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).

The “deductible” is the amount the insured must pay before the insurance company pays any amount. Section 627.7288, F.S. states:

The deductible provisions of any policy of motor vehicle insurance, delivered or issued in this state by an authorized insurer, providing comprehensive coverage or combined additional coverage shall not be applicable to damage to the windshield of any motor vehicle covered under such policy.^{24, 25}

Consumers who purchase the minimum coverage required by law do not have first-party coverage for windshield repair or replacement. Consumers who purchase comprehensive coverage have first-party coverage if a windshield is damaged or broken. Lenders often require borrowers to purchase comprehensive coverage, so consumers who owe money on their vehicles will often qualify for windshield repair or replacement without a deductible.²⁶

Windshield Replacement and Repair

Florida law does not contain insurer claim handling requirements specific to windshield claims. The claims are handled through the insurance contract. Current law does not prohibit an insurer from including an inspection requirement in policy forms.

Many Florida insurance carriers set up a network of providers that will provide windshield repair or replacement services at negotiated rates. If the insured uses one of these “in-network” providers, an insured windshield is repaired or replaced at no cost to the insured. Some glass shops do not participate in the insurer’s provider network. To claim benefits from an insured’s automobile insurer, the “out-of-network” shop often obtains an assignment of benefits from the insured. Florida law allows an insured to assign the benefits of his or her insurance policy to a third party, in this case, the out-of-network glass shop. The assignee glass shop can negotiate with the insurer and file a lawsuit against the insurance company if the two sides do not agree on the claim amount.²⁷

Vehicle Safety Requirements

Section 316.2952, F.S., requires vehicles operated on highways to have a windshield. Section 316.610, F.S., prohibits driving a vehicle in such an unsafe condition that it endangers persons or property. A police officer is allowed to stop a vehicle if required equipment is not in proper repair.²⁸ Depending on the severity of the equipment damage, a police officer may order a vehicle removed from use until repairs are made or give the driver 48 hours to make the repairs.²⁹

²⁴ Language similar to s. 627.7288, F.S., has been part of Florida law since 1979. See Ch. 79-241, Laws of Florida.

²⁵ At least seven other states have provisions prohibiting insurers from requiring a deductible for windshield claims or allowing insureds to purchase a policy with no deductible for windshield claims.

²⁶ Florida Department of Financial Services, *Automobile Insurance A Toolkit for Consumers*, <https://www.myfloridacfo.com/division/consumers/UnderstandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited March 15, 2019).

²⁷ Dale Parker and Brendan McKay, *Florida Auto Glass Claims: A Cracked System*, Trial Advocate Quarterly Fall 2016 (Westlaw Citation: 35 No. 4 Trial Advoc. Q. 20).

²⁸ Section 316.610(1), F.S.

²⁹ Section 316.610(2), F.S.

AOB Windshield Litigation

According to the Department of Financial Services,³⁰ the number of AOB auto glass lawsuits has increased in recent years:

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Auto Glass	397	571	271	709	351	478	1,389	4,331	9,018	12,817	19,695	25,664	17,399

Some insurers argue that the increase in litigation is caused by the ability of some vendors to execute an assignment of benefits and recover attorney fees under s. 627.428, F.S. They allege that some vendors are obtaining an assignment of benefits from the insured and inflating the cost of the claim when they bill the insurance company.³¹ Insurers also believe that many windshield claims brought by assignees are fraudulent.^{32,33} In such cases, the insurer must determine whether to pay what it believes to be an inflated or fraudulent claim or pay its own attorneys to litigate the case and risk having to pay the other side’s attorney fees if it does not prevail.³⁴

Some auto glass vendors argue that litigation is necessary because insurers enter into agreements with preferred vendors and will not pay the “prevailing competitive price” for windshield repair or replacement. Instead, some vendors contend, insurers will only pay the price they pay to the preferred vendors and that litigation is necessary to force the insurers to pay the “prevailing competitive price” pursuant to the insurance policy language.³⁵

Data and Recommendations for Reform

According to the Department of Financial Services,³⁶ the number of AOB lawsuits for water claims has increased in recent years:

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Water	8	35	87	184	483	989	1,603	2,083	2,786	5,328	8,488	10,937	16,890

This chart shows the percentage of lawsuits with an AOB for water claims or for windshield glass:

Year	Lawsuits	AOB	AOB Percentage
2018	278,739	34,289	12.3%

³⁰ Data provided by the Department of Financial Services (on file with the Senate Committee on Banking and Insurance).
³¹ One provider offers cash rebates and restaurant gift cards to customers “with qualifying insurance” for windshield repair or replacement. See <http://www.auto-glassamerica.com> (last accessed March 15, 2019).
³² *Government Employees Insurance Co. v. Clear Vision Windshield Repair, L.L.C.*, 2017 WL 1196438 (M.D. Florida March 29, 2017).
³³ In *VIP Auto Glass, Inc. v. Geico General Insurance Co.*, 2018 WL 3649638 (M.D. Florida January 3, 2018), the court dismissed a class action lawsuit brought by an auto glass company because the court found the assignment of benefits was fraudulent. The court also awarded attorney fees to the insurance company.
³⁴ Florida Justice Reform Institute, White Paper: *Restoring Balance in Insurance Litigation* (2015)(on file with the Senate Committee on Banking and Insurance).
³⁵ See *VIP Auto Glass, Inc. v. Geico General Insurance Co.*, 2017 WL 3712918 (M.D. Florida March 17, 2017) at p. 1. (discussing a class action lawsuit against Geico by VIP Auto Glass).
³⁶ Data presented to the Senate Committee on Banking and Insurance on January 22, 2019 (on file with the Senate Committee on Banking and Insurance).

2017	229,188	36,601	16.0%
2016	192,598	28,183	14.6%
2015	161,062	18,145	11.3%
2014	148,003	11,804	8.0%
2013	141,320	6,414	4.5% ³⁷

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.³⁸ The OIR found that water losses alone could require rate increases of 10 percent per year.³⁹ The Insurance Commissioner showed that the OIR has approved a greater percentage of rate increases in personal residential insurance in recent years:

Year	Percentage of Filings with a Rate Increase
2017	91.9%
2016	72.0%
2015	44.9%
2014	37.6% ⁴⁰

In 2017, the OIR conducted another data call on AOB. The OIR found that water losses (a combination of the frequency of water claims and the severity of the claims) increased 14.2 percent per year from January 1, 2010, to September 30, 2015.⁴¹ From January 1, 2015, to June 30, 2017, water losses increased by 42.1 percent per year.⁴² In 2015, almost 13 percent of the water claims utilized an AOB. In 2017, that percentage was approximately 17 percent.⁴³

Citizens Property Insurance Company (Citizens) reports an increase in both litigation and litigation where the claimant has an AOB:⁴⁴

Year	Lawsuits	AOB	AOB Percentage
2018	13,363	3,631	27.2%
2017	7,624	2,718	35.6%
2016	10,061	3,242	32.2%
2015	7,653	1,250	16.3%

³⁷ The number of lawsuits was determined by entering a start date of January 1 and an end date of December 31 for each year as selection criteria into the Florida Department of Financial Services Service of Process reports site <https://apps.fldfs.com/LSOPReports/Reports/Report.aspx> (last visited March 15, 2019). The number of AOB lawsuits was provided the Florida Department of Financial Services.

³⁸ <http://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx> (last accessed February 5, 2019).

³⁹ Office of Insurance Regulation, *2015 Report on Review of the 2015 Assignment of Benefits Data Call* (February 8, 2016) at p 8. The report can be accessed at <https://www.floir.com/siteDocuments/AssignmentBenefitsDataCallReport02082016.pdf> (last visited on February 5, 2019).

⁴⁰ Presentation by David Altmaier to the Senate Committee on Banking and Insurance on January 22, 2019 (on file with the Senate Committee on Banking and Insurance).

⁴¹ Office of Insurance Regulation, *Report of the 2017 Assignment of Benefits Data Call*, January 8, 2018, at page 1. The report can be accessed at <https://www.floir.com/siteDocuments/AssignmentBenefitsDataCallReport02082017.pdf> (last visited on February 5, 2019).

⁴² *Id.*

⁴³ *Id.* at p. 3.

⁴⁴ Presentation by Barry Gilway to the Senate Committee on Banking and Insurance on January 22, 2019 (on file with the Senate Committee on Banking and Insurance).

2014	9,525	1,062	11.1%
2013	9,146	860	9.4%

The current average actuarial rate indication for multiperil homeowners policies for policies issued by Citizens Property Insurance Company (Citizens) is 25.2 percent. Citizens anticipates an actuarial rate indication on the same policies of 10.1 percent if AOB reform is successful.⁴⁵ Citizens reports that 70 percent of its homeowners multiperil customers received rate decreases in 2015 while 97 percent of those customers will see rate increases in 2019.⁴⁶

A restoration contractor testified that issues arise between assignees and insurers because insurers wrongly deny claims and adjusters are poorly trained.⁴⁷ The contractor suggested the following solutions:

- Regulation of restoration contractors;
- Increased training for insurance company claims staff;
- Increased penalties for insurance fraud committed by contractors; and
- Penalties against insurers for underpayment and delayed claims.⁴⁸

Nebraska AOB Reform

In *Millard Gutter Company v. Farm Bureau Property and Casualty Insurance Company*,⁴⁹ the Nebraska Supreme Court held that assignment of post-loss benefits from an insured to a roofing contractor is allowed under Nebraska law. In 2018, the Nebraska Legislature adopted a statute to deal with perceived issues in Nebraska. The statute:

- Allows an assignment to authorize a contractor to be named as a copayee;
- Requires the assignment to be provided to the insurer within five business days after execution;
- Requires the following notice on an assignment:

YOU ARE AGREEING TO ASSIGN CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY. WITH AN ASSIGNMENT, THE RESIDENTIAL CONTRACTOR SHALL BE ENTITLED TO PURSUE ANY RIGHTS OR REMEDIES THAT YOU, THE INSURED HOMEOWNER, HAVE UNDER YOUR INSURANCE POLICY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING;

- Provides that the assignment shall not impair the interest of a mortgagee; and
- Provides that the assignment shall not prevent or inhibit an insurer from communicating with the named insured or mortgagee.⁵⁰

⁴⁵ Presentation by Barry Gilway to the Senate Committee on Banking and Insurance on January 22, 2019 (on file with the Senate Committee on Banking and Insurance).

⁴⁶ *Id.*

⁴⁷ Presentation by Josh Reynolds to the Senate Committee on Banking and Insurance on February 4, 2019 (on file with the Senate Committee on Banking and Insurance).

⁴⁸ *Id.*

⁴⁹ *Millard Gutter Company v. Farm Bureau Property and Casualty Insurance Company*, 889 N.W.2d 596 (Neb. 2016).

⁵⁰ Neb.Rev.St. s 44-8605.

Florida Courts Say if Policy Changes Are Needed, They Should be Made by the Legislature

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.⁵¹

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 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.⁵²

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."⁵³

III. Effect of Proposed Changes:

The bill creates requirements for agreements to assign post-loss insurance benefits from a consumer⁵⁴ to a service provider.⁵⁵ The bill changes how a service provider may obtain attorney fees in a civil action based on assignment of post-loss benefits under a property insurance policy or under a motor vehicle insurance policy for coverage of windshield damage. It limits the ability of consumers to contract for repairs in emergency or urgent situations. It also provides a deterrent to prevent "judge shopping" by litigants. The preamble of the bill contains legislative findings and intent. Each subject will be discussed as follows.

⁵¹ *Security First Ins. Co. v. State of Florida Office of Insurance Regulation*, 177 So.3d 627, 628, rehearing denied (Fla. 1st DCA 2015).

⁵² *One Call Property Services, Inc. v. Security First Ins. Co.*, 165 So.3d 749, 755 (Fla. 4th DCA 2015).

⁵³ *Id.*

⁵⁴ The bill defines consumer as "a person who has an interest in, or who has a right to manage real or personal property, including improvements upon such property, regardless of whether for personal or business purposes, including an owner, a tenant, a licensee, or a property manager."

⁵⁵ The bill defines "service provider" as "a person who enters into an agreement with a consumer for the stabilization, repair, improvement, or remediation of real or personal property."

Requirements for Post-Loss Agreements, Including Those Containing a Post-Loss Assignment of Benefits (Section 501.172(3), F.S.)

The bill creates section 501.172(3), F.S., to govern assignment agreements between service providers and consumers. It requires that an agreement be in writing when entered into by a consumer and a service provider after a loss or damage has occurred to the consumer's property. The writing must detail, to the extent reasonable under the circumstances, the work to be performed and the applicable charges and the dates by which the work will commence and be completed. The agreement may also provide for subsequent change orders, if approved by the consumer and service provider, but those change orders must also identify the changes to the scope of the work and the costs for those changes.

When an agreement contains a post-loss assignment of insurance benefits to the service provider or some third person under a property insurance policy or under the comprehensive or combined additional coverage under a motor vehicle insurance policy for coverage of windshield damage, the purported assignment of benefits is valid only if all of the following conditions are met:

- The consumer or service provider provides a copy of the agreement to the consumer's insurer, sent to the location designated for receipt of such agreements if specified in the insurance policy, within 3 business days after the agreement's execution.
- The agreement provides that the consumer may rescind the agreement by submitting a written notice of the rescission, which is signed by the consumer, to the service provider within 14 days after the execution of the agreement, at least 30 days after the date the work on the property is scheduled to begin if the service provider has not substantially performed, or at least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the service provider has not begun substantial work on the property. However, a service provider retains the right to be paid for services provided pursuant to the agreement before he or she received notice of the rescission. The agreement does not impose any fee or penalty for rescinding the agreement, for check processing, for not using a specified service provider for permanent repairs, or for mortgage processing.
- The agreement does not prevent or inhibit an insurer from communicating with the consumer at any time.
- The agreement, if made under a motor vehicle insurance policy for comprehensive or combined additional coverage for windshield damage, does not assign the right to more than \$500 in post-loss benefits.
- The agreement does not transfer or create any authority to adjust, negotiate, or settle any portion of a claim to a person or an entity who is not authorized to adjust, negotiate, or settle a claim on behalf of the insured or claimant under part VI of chapter 626.
- The agreement does not transfer to the assignee any greater right to attorney fees and costs from the insurer than the right to attorney fees and costs as provided for in the bill; and
- The agreement relates only to work performed or to be performed by the service provider.

Attorney Fees (Section 501.172(4), F.S.)

The bill provides that in a civil action under a property insurance policy or under the comprehensive or combined additional coverage under a motor vehicle insurance policy for coverage of windshield damage, between an insurer and a service provider who obtains an assignment of post-loss benefits, the prevailing party has the right to attorney fees and costs from

the opposing party. The prevailing party is the party which prevails on the significant issues of the case. The court may determine that there is no prevailing party in a case. In determining if there is a prevailing party, the court must consider:

- The issues litigated;
- The amount of the claims by the service provider versus the amount recovered;
- The existence of setoffs and counterclaims, if any; and
- The amounts offered by either party to resolve the issues prior to or during litigation.

Service provider assignees will no longer be able to obtain attorney fees from an insurer under ss. 626.9373 or 627.428, F.S. Instead, they can obtain attorney fees from an insurer similar to the way a contractor can obtain fees against a homeowner in a construction lien case.

In *Trytek v. Gale Industries, Inc.*, 3 So.3d 1194, 1203 (Fla. 2009), the Florida Supreme Court discussed the factors that a lower court must consider when determining the prevailing party in a construction lien case:

[W]e conclude that a trial court has the discretion to make a determination that neither party has prevailed on the significant issues in litigation after a thorough examination of all the factors, including the issues litigated, the amount of the claim of lien versus the amount recovered on the lien, the existence of setoffs and counterclaims by the homeowner, and the amounts offered by either party to resolve the issues prior to the litigation, assuming that those negotiations were not otherwise confidential either by agreement or statute.

The bill requires the court to consider the same factors set forth in *Trytek* when determining which party, if any, prevailed in the case. The bill's changes to attorney fee statutes in litigation against insurers only applies when certain benefits are assigned. It does not alter the ability of insureds to obtain attorney fees in actions against their own insurers.

Agreements Between Service Providers and Consumers Under Urgent or Emergency Circumstances (Section 501.172(2), F.S.)

The bill provides that if a consumer acts under urgent or emergency circumstances to protect property from damage and enters into an agreement with a service provider to stabilize, protect, repair, or improve the property, the service provider may only contract for the right to payment for the work necessary to stabilize, protect, and prevent additional damage to the property. The agreement must be in writing and detail, to the extent that is reasonable under the circumstances, the work to be performed and the charges for the services to be provided. The right to payment may include a post-loss assignment of benefits under a property insurance policy or under the comprehensive or combined additional coverage under a motor vehicle insurance policy for coverage of windshield damage.

A service provider may not receive from a consumer acting under urgent or emergency circumstances an assignment of post-loss benefits:

- Under a property insurance policy, in excess of the greater of \$3,000 or 1 percent of the Coverage A limit under such policy; or
- Under a motor vehicle insurance policy for comprehensive or combined additional coverage for windshield damage, in excess of \$500.

A service provider may receive an acknowledgement of the rights that may exist, if any, under chapter 713, F.S., to make a claim upon the property.

The bill provides that an agreement between a consumer and a service provider that purports to provide greater rights to the service provider under such urgent or emergency circumstances, including rights to do further repairs, remediation, or improvements or an assignment of rights, benefits, causes of action, or other contractual rights in violation of this subsection is void.

Limitation on Recovery from the Consumer (Section 501.172(5), F.S.)

An assignee service provider that accepts an assignment of post-loss benefits waives any and all claims against a consumer. However, the consumer remains responsible for the payment of any deductible amount provided for by the terms of the insurance policy, and for the cost of any betterment ordered by the consumer. The bill does not prohibit the assignee from collecting or attempting to collect money from, maintaining an action at law against, or claiming a lien on the property of a consumer or reporting a consumer to a credit agency for payment of the amount of the insurance deductible, or any amount attributable to betterment ordered by the consumer. The waiver is effective notwithstanding any subsequent determination that the assignment agreement is invalid or the rescission of the assignment agreement by the consumer.

Actions Based on the Same Claim Previously Dismissed (Section 501.172(6), F.S.)

The bill provides that if a service provider assignee commences an action in any court based upon or including the same claim against the same adverse party that such assignee has previously voluntarily dismissed, the court may order the assignee to pay the attorney fees and costs of the adverse party.

Application - Power of Attorney (Section 501.172(7), F.S.)

This bill does not apply to a power of attorney granted to a management company, family member, guardian, or similarly situated person which complies with chapter 709 and which may include, as part of the authority granted, the authority to act in place of a principal as it relates to a property insurance or motor vehicle insurance claim, if such power of attorney is not provided to a service provider or any person with a personal or financial interest in the service provider.

Other Provisions (Sections 2 and 3)

The bill amends sections 626.9373 and 627.428, F.S., to provide that attorney fees may not be awarded under those sections to an assignee of post-loss benefits who is a service provider under section 501.172, F.S.

Application to Pending Actions (Section 4)

The bill provides that section 501.172, F.S., and the amendments to ss. 626.9373 and 627.428, F.S., apply to actions pending on or after July 1, 2019, to the extent they do not require the invalidation of any provision of a contract executed before July 1, 2019.

Preamble

The preamble to the bill contains legislative findings. In these findings, the Legislature recognizes that statutes permitting insureds to recover attorney fee in litigation against their insurance companies are intended to level the economic playing field between the economically-advantaged insurance company and the individual consumer. It finds that the award of attorney fees to the individual consumer under these statutes makes the consumer financially whole and discourages insurance companies from contesting valid claims.

The Legislature finds that the increased use of post-loss assignment of benefits by service providers has led to a dramatic increase in assignment of benefits litigation. The Legislature recognizes that additional costs incurred by insurance companies in contesting assignment of benefits-related litigation are factored into the rates charged for property insurance and motor vehicle insurance. By explicitly providing that any right to attorney fees or costs against an insurer by an assignee service provider shall be as provided by the bill, the Legislature finds that it is addressing the dramatic increase in assignment of benefits litigation by nonparties to property insurance policies and motor vehicle insurance policies for coverage of windshield damage and the associated increase in insurance premiums that are experienced by consumers.

The bill takes effect on July 1, 2019.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:**Due Process**

The Florida Supreme Court has explained that in order to determine whether a statute violates due process, it must determine whether the statute bears a reasonable relationship to a legitimate legislative objective and is not discriminatory, arbitrary, or oppressive.⁵⁶

⁵⁶ *Nationwide Mutual Fire Insurance Company v. Pinnacle Medical Inc.*, 753 So.2d 55, 59 (Fla. 2000).

In *Nationwide Mutual Fire Insurance Company v. Pinnacle Medical Inc.*,⁵⁷ the Court considered a challenge to a provision in the Florida Motor Vehicle No-Fault law that created a prevailing party standard for awarding attorney fees to medical provider assignees, rather than the standard applied to insureds under s. 627.428, F.S. The Court held that the prevailing party standard for awarding attorney fees to medical provider assignees violated the due process⁵⁸ rights of medical providers.

In 1998, the Motor Vehicle No-Fault Law required motor vehicle insurance policies to contain a provision requiring providers who accepted an assignment of personal injury protection benefits to provide medical services or supplies to resolve any dispute with the insurance company via binding arbitration. It provided the prevailing party could recover attorney fees but did not define prevailing party.⁵⁹ In 1998, the Legislature amended the No-Fault Law to create a prevailing party definition.⁶⁰ Under s. 626.736, F.S., providers who accepted assignments and had a dispute were not entitled to attorney fees under s. 627.428, F.S. Instead, they could only recover fees if they prevailed at arbitration under the statutory formula.

The court said that an objective of No-Fault Law was to provide persons injured in an accident with prompt payment of benefits and that the legislative objective of s. 627.428, F.S., was to discourage insurance companies from contesting valid claims and to reimburse successful insureds for their attorney fees when they are compelled to sue to enforce their insurance contracts. The court explained that the prevailing party attorney fee formula replaced s. 627.428, F.S., attorney fees with an award of attorney fees based on who was the prevailing party. Therefore, medical provider-assignees were subject to attorney fees while insureds suing to enforce the exact same contract could obtain one-way imposition of attorney fees against insurers. The court held that this distinction does nothing to further the prompt payment of benefits or to discourage insurers' denial of valid claims and that the effect of the attorney-fee provision was to delay insureds from receiving medical benefits by encouraging medical providers to require payment from insureds at the time the services are rendered. Therefore, the court said the prevailing party attorney-fee provision arbitrarily distinguished between medical providers and insureds and violated medical providers' due process rights.⁶¹

Opponents may argue that the provisions of this bill that prohibit an assignee from using s. 627.428, F.S., to collect attorney fees when the assignee prevails in an action against an insurance company similarly violates the assignee's due process rights. They could argue that the assignee, like the medical providers in *Pinnacle*, are suing to enforce the same

⁵⁷ *Id.*

⁵⁸ Article 1, section 9 of the Florida Constitution provides that no person shall be deprived of life, liberty, or property without due process of law.

⁵⁹ See Section 627.736(5), F.S. (Supp. 1998).

⁶⁰ See ch. 98-270, s. 2, Laws of Fla. The definition provides that the claimant prevails if the PIP award at arbitration exceeds the sum of the insurer's offer at arbitration plus 50 percent of the difference between the insurer's demand at arbitration and the insurer's offer. The insurer prevails if the PIP award is less than the insurer's offer at arbitration plus 50 percent of the difference between the insurer's demand at arbitration and the insurer's offer. The formula can be expressed as PIP BENEFITS DETERMINED BY ARBITRATION < or > INSURER OFFER + .5(CLAIMANT DEMAND – INSURER OFFER)

⁶¹ *Pinnacle*, 753 So.2d at 59.

contract as a named insured and the distinction between assignees and named insureds is arbitrary and does nothing to encourage the prompt payment of valid claims.

Proponents could argue that this bill's distinction is not arbitrary. Proponents could argue that the distinction was drawn because: (1) there has been a large increase in AOB litigation in recent years; (2) claims with an AOB are often higher cost than claims without an AOB; (3) AOB claims are more likely to be inflated; and (4) the one-way attorney fee statute limits the insurers' ability to litigate smaller claims. Proponents could argue that the Legislature is drawing this distinction to prevent further increases in insurance rates because higher rates harm the state's economy.

Freedom of Contract

The bill limits a consumer's ability to contract with a service provider during urgent or emergency circumstances. The Florida Supreme Court has explained that any "restraints imposed by legislation on the right to contract must not be arbitrary or unreasonable. The right to make contracts ... should not be struck down or arbitrarily restrained unless such restraint be reasonably justified by the needs of the public health, safety or welfare."⁶² If the limitation on contracts during emergency were challenged, a court would have to consider whether the restraint imposed by the bill is reasonably justified by the needs of public welfare.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Contractors and other vendors who use assignments of benefits may use them less often. They could be responsible for their own attorney fees if they had to prosecute a lawsuit against an insurance company and did not prevail in the lawsuit.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The term "Coverage A limit" is used in the bill but is not defined in the bill or elsewhere in the statutes. To avoid multiple or conflicting interpretations, it would be helpful if the term were defined.

VII. Related Issues:

None.

⁶² *Larson v. Lesser*, 106 So. 2d 188, 191–92 (Fla. 1958).

VIII. Statutes Affected:

This bill creates section 501.172 of the Florida Statutes.

This bill substantially amends sections 626.9373 and 627.428 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 March 18, 2019:

In addition to stylistic and clarifying changes, the following provisions are added:

- Agreements made under urgent or emergency circumstances must be in writing and identify the work to be performed and the applicable changes.
- All post-loss agreements must be in writing and identify the work to be performed and the applicable charges and the dates by which the work will begin and be completed.
- Consumers may rescind an agreement, *not* 30 days after execution, *but* 30 days after the scheduled commencement date if the service provider has not substantially performed.
- Language is added to clarify that, whether a contract was made under urgent circumstances or otherwise, a service provider retains the right to payment for services performed before the rescission.

The Legislative Findings and Intent section of the underlying bill are moved from the end of the bill and placed as “whereas” clauses at the beginning of the bill.

CS by Banking and Insurance on March 4, 2019:

- Establishes standards for a valid assignment of post-loss benefits under property insurance policies and motor vehicle insurance policies for coverage of windshield damage under comprehensive or combined additional coverage.
- Limits the scope of an AOB in urgent or emergency circumstances and requires the assignee service provider to waive all claims against a consumer other than for payment of the deductible and betterment ordered by the consumer.
- Provides that the prevailing party in litigation between an assignee service provider and insurer may be awarded attorney fees and establishes standard for the court to apply when determining the prevailing party.
- Prohibits “judge shopping” by authorizing judges to order assignees to pay attorney fees and cost to the other party when an assignee service provider files suit, voluntarily dismisses the action, and then refiles in hopes of being assigned a different judge.
- Contains legislative findings and intent.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/20/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 501.172, Florida Statutes, is created to
read:

501.172 Agreements between service providers and
consumers.—

(1) DEFINITIONS.—As used in this section:

(a) "Consumer" means a person who has an interest in, or
who has a right to manage real or personal property, including



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12 improvements upon such property, regardless of whether for
13 personal or business purposes, including an owner, a tenant, a
14 licensee, or a property manager.

15 (b) "Service provider" means a person who enters into an
16 agreement with a consumer for the stabilization, repair,
17 improvement, or remediation of real or personal property.

18 (2) LIMITATION ON AGREEMENTS BETWEEN SERVICE PROVIDERS AND
19 CONSUMERS UNDER URGENT OR EMERGENCY CIRCUMSTANCES.—

20 (a) If a consumer acts under urgent or emergency
21 circumstances to protect property from damage and enters into an
22 agreement with a service provider to stabilize, protect, repair,
23 or improve such property, the service provider may only contract
24 for, receive, or acquire in any manner from the consumer at such
25 time the right to payment for the work necessary to stabilize,
26 protect, and prevent additional damage to the property. Such
27 right to payment may include:

28 1. A post-loss assignment of benefits under a property
29 insurance policy or under the comprehensive or combined
30 additional coverage under a motor vehicle insurance policy for
31 coverage of windshield damage, executed pursuant to subsection
32 (3), except that notwithstanding ss. 626.9373 and 627.428, any
33 right to attorney fees or costs against an insurer by any such
34 service provider shall be as provided in subsection (4). A
35 service provider may not receive from a consumer acting under
36 urgent or emergency circumstances an assignment of post-loss
37 benefits:

38 a. Under a property insurance policy, in excess of the
39 greater of \$3,000 or 1 percent of the Coverage A limit under
40 such policy.



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41 b. Under a motor vehicle insurance policy for comprehensive
42 or combined additional coverage for windshield damage, in excess
43 of \$500.

44 2. An acknowledgment of the rights that may exist, if any,
45 under chapter 713 to make a claim upon the property.

46 (b) To the extent that an agreement between a consumer and
47 a service provider purports to provide greater rights to the
48 service provider under such urgent or emergency circumstances,
49 including alleged rights to do further repairs, remediation, or
50 improvements or an assignment of rights, benefits, causes of
51 action, or other contractual rights in violation of this
52 subsection, such purported assignment is void.

53 (3) REQUIREMENTS FOR AGREEMENTS CONTAINING A POST-LOSS
54 ASSIGNMENT OF BENEFITS.—In all circumstances, an agreement
55 entered into by a consumer and a service provider after a loss
56 or damage has occurred to the consumer's property which contains
57 a post-loss assignment of insurance benefits under a property
58 insurance policy or under the comprehensive or combined
59 additional coverage under a motor vehicle insurance policy for
60 coverage of windshield damage to the service provider or some
61 third person, such purported assignment of benefits is valid
62 only if:

63 (a) The consumer or service provider provides a copy of the
64 agreement to the consumer's insurer, sent to the location
65 designated for receipt of such agreements if specified in the
66 insurance policy, within 3 business days after the agreement's
67 execution;

68 (b) The agreement contains a provision allowing the
69 consumer to rescind the agreement in a writing signed by the



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70 assignor if the consumer provides written notice of the
71 rescission to the service provider within 14 days after the
72 execution of the agreement or at least 30 days after the
73 execution of the agreement if the service provider has not begun
74 substantial work on the property; except that the service
75 provider retains the right to payment under paragraph (2) (a) for
76 services it performs under urgent or emergency circumstances
77 before receiving such notice;

78 (c) The agreement does not impose any fee or penalty for
79 rescinding the agreement, for check processing, for not using a
80 specified service provider for permanent repairs, or for
81 mortgage processing;

82 (d) The agreement does not prevent or inhibit an insurer
83 from communicating with the consumer at any time;

84 (e) The agreement, if made under a motor vehicle insurance
85 policy for comprehensive or combined additional coverage for
86 windshield damage, does not assign the right to more than \$500
87 in post-loss benefits;

88 (f) The agreement does not transfer or create any authority
89 to adjust, negotiate, or settle any portion of a claim to a
90 person or an entity who is not authorized to adjust, negotiate,
91 or settle a claim on behalf of the insured or claimant under
92 part VI of chapter 626;

93 (g) The agreement does not transfer to the assignee any
94 greater right to attorney fees and costs from the insurer than
95 the right to attorney fees and costs as provided for in
96 subsection (4); and

97 (h) The agreement relates only to work performed or to be
98 performed by the service provider.



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99 (4) ATTORNEY FEES.—

100 (a) In a civil action under a property insurance policy or
101 under the comprehensive or combined additional coverage under a
102 motor vehicle insurance policy for coverage of windshield
103 damage, between an insurer and a service provider who obtains an
104 assignment of post-loss benefits, the prevailing party has the
105 right to attorney fees and costs from the:

106 1. Insurer, if the service provider is the prevailing
107 party.

108 2. Service provider, if the insurer is the prevailing
109 party.

110 (b) The prevailing party is the party which prevails on the
111 significant issues of the case. The court may determine that
112 there is no prevailing party in a case. In determining if there
113 is a prevailing party, the court must consider:

114 1. The issues litigated;

115 2. The amount of the claims by the service provider versus
116 the amount recovered;

117 3. The existence of setoffs and counterclaims, if any; and

118 4. The amounts offered by either party to resolve the
119 issues prior to or during litigation.

120 (5) LIMITATION ON RECOVERY FROM ASSIGNOR.—An assignee
121 service provider that accepts an assignment of post-loss
122 benefits waives any and all claims against a consumer, except as
123 provided herein. The consumer remains responsible for the
124 payment of any deductible amount provided for by the terms of
125 the insurance policy, and for the cost of any betterment ordered
126 by the consumer. This subsection does not prohibit the assignee
127 from collecting or attempting to collect money from, maintaining



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128 an action at law against, or claiming a lien on the property of
129 a consumer or reporting a consumer to a credit agency for
130 payment of the amount of the insurance deductible, or any amount
131 attributable to betterment ordered by the consumer. This waiver
132 is effective notwithstanding any subsequent determination that
133 the assignment agreement is invalid or the rescission of the
134 assignment agreement by the consumer.

135 (6) ACTIONS BASED UPON THE SAME CLAIM AND PARTY PREVIOUSLY
136 VOLUNTARILY DISMISSED.—If a service provider assignee commences
137 an action in any court of this state based upon or including the
138 same claim against the same adverse party that such assignee has
139 previously voluntarily dismissed in a court of this state, the
140 court may, as it deems proper, order the assignee to pay the
141 attorney fees and costs of the adverse party of the action
142 previously voluntarily dismissed. Upon the issuance of such
143 order, the court shall stay the proceedings in the subsequent
144 action until the assignee has complied with the order.

145 (7) APPLICATION.—This section does not apply to a power of
146 attorney granted to a management company, family member,
147 guardian, or similarly situated person which complies with
148 chapter 709 and which may include, as part of the authority
149 granted, the authority to act in place of a principal as it
150 relates to a property insurance or motor vehicle insurance
151 claim, if such power of attorney is not provided to a service
152 provider or any person with a personal or financial interest in
153 the service provider.

154 Section 2. Section 626.9373, Florida Statutes, is amended
155 to read:

156 626.9373 Attorney ~~Attorney's~~ fees.—



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157 (1) Upon the rendition of a judgment or decree by any court
158 of this state against a surplus lines insurer in favor of any
159 named or omnibus insured or the named beneficiary under a policy
160 or contract executed by the insurer on or after the effective
161 date of this act, the trial court or, if the insured or
162 beneficiary prevails on appeal, the appellate court, shall
163 adjudge or decree against the insurer in favor of the insured or
164 beneficiary a reasonable sum as fees or compensation for the
165 insured's or beneficiary's attorney prosecuting the lawsuit for
166 which recovery is awarded.

167 (2) If awarded, attorney ~~attorney's~~ fees or compensation
168 shall be included in the judgment or decree rendered in the
169 case.

170 (3) Attorney fees may not be awarded under this section to
171 an assignee of post-loss benefits who is a service provider
172 under s. 501.172.

173 Section 3. Section 627.428, Florida Statutes, is amended to
174 read:

175 627.428 Attorney fees ~~Attorney's fee~~.-

176 (1) Upon the rendition of a judgment or decree by any of
177 the courts of this state against an insurer and in favor of any
178 named or omnibus insured or the named beneficiary under a policy
179 or contract executed by the insurer, the trial court or, in the
180 event of an appeal in which the insured or beneficiary prevails,
181 the appellate court shall adjudge or decree against the insurer
182 and in favor of the insured or beneficiary a reasonable sum as
183 fees or compensation for the insured's or beneficiary's attorney
184 prosecuting the suit in which the recovery is had.

185 (2) As to suits based on claims arising under life



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186 insurance policies or annuity contracts, no such attorney fees
187 ~~attorney's fee~~ shall be allowed if such suit was commenced prior
188 to expiration of 60 days after proof of the claim was duly filed
189 with the insurer.

190 (3) When so awarded, compensation or fees of the attorney
191 shall be included in the judgment or decree rendered in the
192 case.

193 (4) Attorney fees may not be awarded under this section to
194 an assignee of post-loss benefits who is a service provider
195 under s. 501.172.

196 Section 4. Section 501.172, Florida Statutes, as created by
197 this act, and the amendments made by this act to ss. 626.9373
198 and 627.428, Florida Statutes, apply to actions pending on or
199 after July 1, 2019, to the extent that the act does not require
200 the invalidation of any provision of a contract executed before
201 July 1, 2019.

202 Section 5. This act shall take effect July 1, 2019.

203
204 ===== T I T L E A M E N D M E N T =====

205 And the title is amended as follows:

206 Delete everything before the enacting clause
207 and insert:

208 A bill to be entitled
209 An act relating to agreements between service
210 providers and consumers; creating s. 501.172, F.S.;
211 defining terms; specifying limitations and authorized
212 provisions relating to a service provider's right to
213 payment under certain agreements with consumers under
214 urgent or emergency circumstances; specifying



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215 requirements, limitations, and prohibited provisions
216 for agreements containing a post-loss assignment of
217 benefits; providing that a prevailing party under
218 certain policies and coverages has the right to
219 attorney fees and costs; providing that a court need
220 not determine that there is a prevailing party;
221 providing factors a court must consider in determining
222 who is the prevailing party, under certain
223 circumstances; providing construction relating to
224 waiver of claims and limitations on recovery;
225 authorizing a court to order an assignee to pay
226 attorney fees and costs under certain circumstances;
227 requiring the court to stay proceedings under certain
228 circumstances; providing applicability; amending ss.
229 626.9373 and 627.428, F.S.; providing that attorney
230 fees under certain provisions of the Florida Insurance
231 Code may not be awarded to an assignee of post-loss
232 benefits who is a service provider; providing
233 applicability; providing an effective date.

234
235 WHEREAS, the Legislature finds that provisions of law
236 allowing insureds to recover attorney fees in litigation against
237 their insurers are intended to level the economic playing field
238 between the economically-advantaged insurance company and the
239 individual consumer, and

240 WHEREAS, the award of attorney fees to the individual
241 consumer under such laws makes the consumer financially whole
242 and discourages insurance companies from contesting valid
243 claims, and



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244 WHEREAS, however, the Legislature finds that the increased
245 use of post-loss assignment of benefits by service providers has
246 led to a dramatic increase in assignment of benefits litigation,
247 and

248 WHEREAS, the Legislature recognizes that additional costs
249 incurred by insurance companies in contesting assignment of
250 benefits-related litigation or in paying inflated claims for
251 insurance proceeds are factored into the rates charged for
252 property insurance and motor vehicle insurance, and

253 WHEREAS, the Legislature finds that by explicitly providing
254 that any right to attorney fees or costs against an insurer by a
255 service provider must be as provided in this act, the
256 Legislature is addressing the dramatic increase in assignment of
257 benefits litigation by nonparties to property insurance policies
258 and motor vehicle insurance policies for coverage of windshield
259 damage and the associated increase in insurance premiums that
260 are experienced by consumers, and

261 WHEREAS, the Legislature intends to maintain its public
262 policy of making consumers financially whole and reducing
263 inequities between consumers and their insurance companies, as
264 such consumers have the right to obtain attorney fees in civil
265 actions they bring against their insurers, NOW, THEREFORE,



748114

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2019	.	
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The Committee on Judiciary (Broxson) recommended the following:

1 **Senate Substitute for Amendment (380464) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 501.172, Florida Statutes, is created to
7 read:

8 501.172 Agreements between service providers and
9 consumers.—

10 (1) DEFINITIONS.—As used in this section:

11 (a) "Consumer" means a person who has an interest in, or



748114

12 who has a right to manage real or personal property, including
13 improvements upon such property, regardless of whether for
14 personal or business purposes, including an owner, a tenant, a
15 licensee, or a property manager.

16 (b) "Service provider" means a person who enters into an
17 agreement with a consumer for the stabilization, repair,
18 improvement, or remediation of real or personal property.

19 (2) LIMITATION ON AGREEMENTS BETWEEN SERVICE PROVIDERS AND
20 CONSUMERS UNDER URGENT OR EMERGENCY CIRCUMSTANCES.—

21 (a) If a consumer acts under urgent or emergency
22 circumstances to protect property from damage and enters into an
23 agreement with a service provider to stabilize, protect, repair,
24 or improve the property, the service provider may only contract
25 for, receive, or acquire in any manner from the consumer at the
26 time the right to payment for the work necessary to stabilize,
27 protect, and prevent additional damage to the property. The
28 agreement must be in writing and detail, to the extent
29 reasonable under the circumstances, the work to be performed and
30 the charges for the services to be provided. The right to
31 payment may include:

32 1. A post-loss assignment of benefits under a property
33 insurance policy or under the comprehensive or combined
34 additional coverage under a motor vehicle insurance policy for
35 coverage of windshield damage, executed pursuant to subsection
36 (3), except that notwithstanding ss. 626.9373 and 627.428, any
37 right to attorney fees or costs against an insurer by any such
38 service provider shall be as provided in subsection (4). A
39 service provider may not receive from a consumer acting under
40 urgent or emergency circumstances an assignment of post-loss



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41 benefits:

42 a. Under a property insurance policy, in excess of the
43 greater of \$3,000 or 1 percent of the Coverage A limit under
44 such policy.

45 b. Under a motor vehicle insurance policy for comprehensive
46 or combined additional coverage for windshield damage, in excess
47 of \$500.

48 2. An acknowledgment of the rights that may exist, if any,
49 under chapter 713 to make a claim upon the property.

50 (b) To the extent that an agreement between a consumer and
51 a service provider purports to provide greater rights to the
52 service provider under such urgent or emergency circumstances,
53 including alleged rights to do further repairs, remediation, or
54 improvements or an assignment of rights, benefits, causes of
55 action, or other contractual rights in violation of this
56 subsection, such purported assignment is void.

57 (3) REQUIREMENTS FOR POST-LOSS AGREEMENTS, INCLUDING THOSE
58 CONTAINING A POST-LOSS ASSIGNMENT OF BENEFITS.—In all
59 circumstances, an agreement entered into by a consumer and a
60 service provider after a loss or damage has occurred to the
61 consumer's property must be in writing. The agreement must
62 detail, to the extent reasonable under the circumstances, the
63 work to be performed, the charges for the services to be
64 provided, and the dates by which work on the property will
65 commence and be completed. The agreement may also provide for
66 subsequent change orders, subject to the approval by the
67 consumer and service provider, which must also set forth in
68 writing the changes to the scope of work and the cost for the
69 changes to the work. To the extent that the agreement contains a



748114

70 post-loss assignment of insurance benefits to the service
71 provider or some third person under a property insurance policy
72 or under the comprehensive or combined additional coverage under
73 a motor vehicle insurance policy for coverage of windshield
74 damage, the purported assignment of benefits is valid only if
75 all of the following are satisfied:

76 (a) The consumer or service provider provides a copy of the
77 agreement to the consumer's insurer, sent to the location
78 designated for receipt of such agreements if specified in the
79 insurance policy, within 3 business days after the agreement's
80 execution.

81 (b) The agreement provides that the consumer may rescind
82 the agreement by submitting a written notice of rescission which
83 is signed by the consumer to the service provider within 14 days
84 after the execution of the agreement, at least 30 days after the
85 date work on the property is scheduled to commence if the
86 service provider has not substantially performed, or at least 30
87 days after the execution of the agreement if the agreement does
88 not contain a commencement date and the service provider has not
89 begun substantial work on the property. However, the service
90 provider retains the right to payment for services performed
91 pursuant to the agreement before receiving notice of the
92 rescission.

93 (c) The agreement does not impose any fee or penalty for
94 rescinding the agreement, for check processing, for not using a
95 specified service provider for permanent repairs, or for
96 mortgage processing.

97 (d) The agreement does not prevent or inhibit an insurer
98 from communicating with the consumer at any time.



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99 (e) The agreement, if made under a motor vehicle insurance
100 policy for comprehensive or combined additional coverage for
101 windshield damage, does not assign the right to more than \$500
102 in post-loss benefits.

103 (f) The agreement does not transfer or create any authority
104 to adjust, negotiate, or settle any portion of a claim to a
105 person or an entity who is not authorized to adjust, negotiate,
106 or settle a claim on behalf of the insured or claimant under
107 part VI of chapter 626.

108 (g) The agreement does not transfer to the assignee any
109 greater right to attorney fees and costs from the insurer than
110 the right to attorney fees and costs as provided for in
111 subsection (4).

112 (h) The agreement relates only to work performed or to be
113 performed by the service provider.

114 (4) ATTORNEY FEES.—

115 (a) In a civil action under a property insurance policy or
116 under the comprehensive or combined additional coverage under a
117 motor vehicle insurance policy for coverage of windshield
118 damage, between an insurer and a service provider who obtains an
119 assignment of post-loss benefits, the prevailing party has the
120 right to attorney fees and costs from the:

121 1. Insurer, if the service provider is the prevailing
122 party.

123 2. Service provider, if the insurer is the prevailing
124 party.

125 (b) The prevailing party is the party which prevails on the
126 significant issues of the case. The court may determine that
127 there is no prevailing party in a case. In determining if there



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128 is a prevailing party, the court must consider:

129 1. The issues litigated;

130 2. The amount of the claims by the service provider versus
131 the amount recovered;

132 3. The existence of setoffs and counterclaims, if any; and

133 4. The amounts offered by either party to resolve the
134 issues prior to or during litigation.

135 (5) LIMITATION ON RECOVERY FROM ASSIGNOR.—An assignee
136 service provider that accepts an assignment of post-loss
137 benefits waives any and all claims against a consumer, except as
138 provided herein. The consumer remains responsible for the
139 payment of any deductible amount provided for by the terms of
140 the insurance policy, and for the cost of any betterment ordered
141 by the consumer. This subsection does not prohibit the assignee
142 from collecting or attempting to collect money from, maintaining
143 an action at law against, or claiming a lien on the property of
144 a consumer or reporting a consumer to a credit agency for
145 payment of the amount of the insurance deductible, or any amount
146 attributable to betterment ordered by the consumer. This waiver
147 is effective notwithstanding any subsequent determination that
148 the assignment agreement is invalid or the rescission of the
149 assignment agreement by the consumer.

150 (6) ACTIONS BASED UPON THE SAME CLAIM AND PARTY PREVIOUSLY
151 VOLUNTARILY DISMISSED.—If a service provider assignee commences
152 an action in any court of this state based upon or including the
153 same claim against the same adverse party that such assignee has
154 previously voluntarily dismissed in a court of this state, the
155 court may, as it deems proper, order the assignee to pay the
156 attorney fees and costs of the adverse party of the action



748114

157 previously voluntarily dismissed. Upon the issuance of such
158 order, the court shall stay the proceedings in the subsequent
159 action until the assignee has complied with the order.

160 (7) APPLICATION.—This section does not apply to a power of
161 attorney granted to a management company, family member,
162 guardian, or similarly situated person which complies with
163 chapter 709 and which may include, as part of the authority
164 granted, the authority to act in place of a principal as it
165 relates to a property insurance or motor vehicle insurance
166 claim, if such power of attorney is not provided to a service
167 provider or any person with a personal or financial interest in
168 the service provider.

169 Section 2. Section 626.9373, Florida Statutes, is amended
170 to read:

171 626.9373 Attorney ~~Attorney's~~ fees.—

172 (1) Upon the rendition of a judgment or decree by any court
173 of this state against a surplus lines insurer in favor of any
174 named or omnibus insured or the named beneficiary under a policy
175 or contract executed by the insurer on or after the effective
176 date of this act, the trial court or, if the insured or
177 beneficiary prevails on appeal, the appellate court, shall
178 adjudge or decree against the insurer in favor of the insured or
179 beneficiary a reasonable sum as fees or compensation for the
180 insured's or beneficiary's attorney prosecuting the lawsuit for
181 which recovery is awarded.

182 (2) If awarded, attorney ~~attorney's~~ fees or compensation
183 shall be included in the judgment or decree rendered in the
184 case.

185 (3) Attorney fees may not be awarded under this section to



748114

186 an assignee of post-loss benefits who is a service provider
187 under s. 501.172.

188 Section 3. Section 627.428, Florida Statutes, is amended to
189 read:

190 627.428 Attorney fees ~~Attorney's fee.~~-

191 (1) Upon the rendition of a judgment or decree by any of
192 the courts of this state against an insurer and in favor of any
193 named or omnibus insured or the named beneficiary under a policy
194 or contract executed by the insurer, the trial court or, in the
195 event of an appeal in which the insured or beneficiary prevails,
196 the appellate court shall adjudge or decree against the insurer
197 and in favor of the insured or beneficiary a reasonable sum as
198 fees or compensation for the insured's or beneficiary's attorney
199 prosecuting the suit in which the recovery is had.

200 (2) As to suits based on claims arising under life
201 insurance policies or annuity contracts, no such attorney fees
202 ~~attorney's fee~~ shall be allowed if such suit was commenced prior
203 to expiration of 60 days after proof of the claim was duly filed
204 with the insurer.

205 (3) When so awarded, compensation or fees of the attorney
206 shall be included in the judgment or decree rendered in the
207 case.

208 (4) Attorney fees may not be awarded under this section to
209 an assignee of post-loss benefits who is a service provider
210 under s. 501.172.

211 Section 4. Section 501.172, Florida Statutes, as created by
212 this act, and the amendments made by this act to ss. 626.9373
213 and 627.428, Florida Statutes, apply to actions pending on or
214 after July 1, 2019, to the extent that the act does not require



215 the invalidation of any provision of a contract executed before
216 July 1, 2019.

217 Section 5. This act shall take effect July 1, 2019.

218

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

220 And the title is amended as follows:

221 Delete everything before the enacting clause
222 and insert:

223 A bill to be entitled
224 An act relating to agreements between service
225 providers and consumers; creating s. 501.172, F.S.;
226 defining terms; specifying limitations and authorized
227 provisions relating to a service provider's right to
228 payment under certain agreements with consumers under
229 urgent or emergency circumstances; specifying
230 requirements, limitations, and prohibited provisions
231 for agreements containing a post-loss assignment of
232 benefits; providing that a prevailing party under
233 certain policies and coverages has the right to
234 attorney fees and costs; providing that a court need
235 not determine that there is a prevailing party;
236 providing factors a court must consider in determining
237 who is the prevailing party, under certain
238 circumstances; providing construction relating to
239 waiver of claims and limitations on recovery;
240 authorizing a court to order an assignee to pay
241 attorney fees and costs under certain circumstances;
242 requiring the court to stay proceedings under certain
243 circumstances; providing applicability; amending ss.



748114

244 626.9373 and 627.428, F.S.; providing that attorney
245 fees under certain provisions of the Florida Insurance
246 Code may not be awarded to an assignee of post-loss
247 benefits who is a service provider; providing
248 applicability; providing an effective date.

249
250 WHEREAS, the Legislature finds that provisions of law
251 allowing insureds to recover attorney fees in litigation against
252 their insurers are intended to level the economic playing field
253 between the economically-advantaged insurance company and the
254 individual consumer, and

255 WHEREAS, the award of attorney fees to the individual
256 consumer under such laws makes the consumer financially whole
257 and discourages insurance companies from contesting valid
258 claims, and

259 WHEREAS, however, the Legislature finds that the increased
260 use of post-loss assignment of benefits by service providers has
261 led to a dramatic increase in assignment of benefits litigation,
262 and

263 WHEREAS, the Legislature recognizes that additional costs
264 incurred by insurance companies in contesting assignment of
265 benefits-related litigation or in paying inflated claims for
266 insurance proceeds are factored into the rates charged for
267 property insurance and motor vehicle insurance, and

268 WHEREAS, the Legislature finds that by explicitly providing
269 that any right to attorney fees or costs against an insurer by a
270 service provider must be as provided in this act, the
271 Legislature is addressing the dramatic increase in assignment of
272 benefits litigation by nonparties to property insurance policies



748114

273 and motor vehicle insurance policies for coverage of windshield
274 damage and the associated increase in insurance premiums that
275 are experienced by consumers, and

276 WHEREAS, the Legislature intends to maintain its public
277 policy of making consumers financially whole and reducing
278 inequities between consumers and their insurance companies, as
279 such consumers have the right to obtain attorney fees in civil
280 actions they bring against their insurers, NOW, THEREFORE,



643976

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/20/2019	.	
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The Committee on Judiciary (Rodriguez) recommended the following:

Senate Amendment to Amendment (748114)

Delete line 50
and insert:

(b) A property insurance policy may not require a consumer to mitigate damages in an amount greater than any cap imposed under the policy, including the caps on the service provider's right to payment under subparagraph (a)1.

(c) To the extent that an agreement between a consumer and



461950

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/20/2019	.	
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The Committee on Judiciary (Rodriguez) recommended the following:

Senate Amendment to Substitute Amendment (748114)

Delete lines 32 - 47

and insert:

1. A post-loss assignment of benefits under a property insurance policy executed pursuant to subsection (3), except that notwithstanding ss. 626.9373 and 627.428, any right to attorney fees or costs against an insurer by an such service provider shall be as provided in subsection (4). A service provider may not receive from a consumer acting under urgent or



461950

11 emergency circumstances an assignment of post-loss benefits
12 under a property insurance policy in excess of the greater of
13 \$3,000 or 1 percent of the Coverage A limit under such policy.



492832

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/20/2019	.	
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The Committee on Judiciary (Rodriguez) recommended the following:

Senate Amendment to Substitute Amendment (748114)

Delete lines 211 - 216

and insert:

Section 4. This act applies to assignments executed on or after the effective date of the act to the extent that the act does not require the invalidation of any provision of a contract executed before the effective date of the act.



882166

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/20/2019	.	
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The Committee on Judiciary (Rodriguez) recommended the following:

- 1 **Senate Amendment to Substitute Amendment (748114)**
- 2
- 3 In title, delete lines 250 - 280.

By the Committee on Banking and Insurance; and Senators Broxson and Hooper

597-02675-19

2019122c1

1 A bill to be entitled
 2 An act relating to agreements between service
 3 providers and consumers; creating s. 501.172, F.S.;
 4 defining terms; specifying limitations and authorized
 5 provisions relating to a service provider's right to
 6 payment under certain agreements with consumers under
 7 urgent or emergency circumstances; specifying
 8 requirements, limitations, and prohibited provisions
 9 for agreements containing a post-loss assignment of
 10 benefits; providing that a prevailing party under
 11 certain policies and coverages has the right to
 12 attorney fees and costs; providing that a court need
 13 not determine there is a prevailing party; providing
 14 factors a court must consider in determining who the
 15 prevailing party is under certain circumstances;
 16 providing construction relating to waiver and
 17 limitations on recovery; authorizing a court to order
 18 an assignee to pay attorney fees and costs under
 19 certain circumstances; requiring the court to stay
 20 proceedings under certain circumstances; providing
 21 applicability; providing legislative findings and
 22 intent; amending ss. 626.9373 and 627.428, F.S.;
 23 providing that attorney fees under certain provisions
 24 of the Florida Insurance Code may not be awarded to an
 25 assignee of post-loss benefits who is a service
 26 provider; providing applicability; 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.

597-02675-19

2019122c1

30
 31 Section 1. Section 501.172, Florida Statutes, is created to
 32 read:
 33 501.172 Agreements between service providers and
 34 consumers.—
 35 (1) DEFINITIONS.—As used in this section:
 36 (a) "Consumer" means a person who has an interest in, or
 37 who has a right to manage real or personal property, including
 38 improvements upon such property, regardless of whether for
 39 personal or business purposes, including an owner, a tenant, a
 40 licensee, or a property manager.
 41 (b) "Service provider" means a person who enters into an
 42 agreement with a consumer for the stabilization, repair,
 43 improvement, or remediation of real or personal property.
 44 (2) LIMITATION ON AGREEMENTS BETWEEN SERVICE PROVIDERS AND
 45 CONSUMERS UNDER URGENT OR EMERGENCY CIRCUMSTANCES.—
 46 (a) If a consumer acts under urgent or emergency
 47 circumstances to protect property from damage and enters into an
 48 agreement with a service provider to stabilize, protect, repair,
 49 or improve such property, the service provider may only contract
 50 for, receive, or acquire in any manner from the consumer at such
 51 time the right to payment for the work necessary to stabilize,
 52 protect, and prevent additional damage to the property. Such
 53 right to payment may include:
 54 1. A post-loss assignment of benefits under a property
 55 insurance policy or under the comprehensive or combined
 56 additional coverage under a motor vehicle insurance policy for
 57 coverage of windshield damage, executed pursuant to subsection
 58 (3), except that notwithstanding ss. 626.9373 and 627.428, any

Page 2 of 9

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

597-02675-19

2019122c1

59 right to attorney fees or costs against an insurer by any such
 60 service provider shall be as provided in subsection (4). A
 61 service provider may not receive from a consumer acting under
 62 urgent or emergency circumstances an assignment of post-loss
 63 benefits in excess of:

64 a. Under a property insurance policy, in excess of the
 65 greater of \$3,000 or 1 percent of the Coverage A limit under
 66 such policy.

67 b. Under a motor vehicle insurance policy for comprehensive
 68 or combined additional coverage for windshield damage, in excess
 69 of \$500.

70 2. An acknowledgement of the rights that may exist, if any,
 71 under chapter 713 to make a claim upon the property.

72 (b) An agreement between a consumer and a service provider
 73 that provides greater rights to the service provider under such
 74 urgent or emergency circumstances, including alleged rights to
 75 do further repairs, remediation, or improvements or an
 76 assignment of rights, benefits, causes of action, or other
 77 contractual rights in violation of this subsection is void.

78 (3) REQUIREMENTS FOR AGREEMENTS CONTAINING A POST-LOSS
 79 ASSIGNMENT OF BENEFITS.—In all circumstances, an agreement
 80 entered into by a consumer and a service provider after a loss
 81 or damage has occurred to the consumer's property which contains
 82 a post-loss assignment of benefits to the service provider or
 83 some third person is only valid if:

84 (a) The consumer or service provider provides a copy of the
 85 agreement to the consumer's insurer, sent to the location
 86 designated for receipt of such agreements if specified in the
 87 insurance policy, within 3 business days after the agreement's

597-02675-19

2019122c1

88 execution;

89 (b) The agreement contains a provision allowing the
 90 consumer to rescind the agreement in a writing signed by the
 91 assignor, if the consumer provides written notice of the
 92 rescission to the service provider within 14 days of the
 93 execution of the agreement or at least 30 days after the
 94 execution of the agreement if the service provider has not begun
 95 substantial work on the property;

96 (c) The agreement does not impose any fee or penalty for
 97 rescinding the agreement, for check processing, for not using a
 98 specified service provider for permanent repairs, or for
 99 mortgage processing;

100 (d) The agreement does not prevent or inhibit an insurer
 101 from communicating with the consumer at any time;

102 (e) The agreement, if made under a motor vehicle insurance
 103 policy for comprehensive or combined additional coverage for
 104 windshield damage, does not assign the right to more than \$500
 105 in post-loss benefits;

106 (f) The agreement does not transfer or create any authority
 107 to adjust, negotiate, or settle any portion of a claim to a
 108 person or an entity who is not authorized to adjust, negotiate,
 109 or settle a claim on behalf of the insured or claimant under
 110 part VI of chapter 626;

111 (g) The agreement does not transfer to the assignee any
 112 greater right to attorney fees and costs from the insurer than
 113 the right to attorney fees and costs as provided for in
 114 subsection (4); and

115 (h) The agreement relates only to work performed or to be
 116 performed by the service provider.

597-02675-19

2019122c1

117 (4) ATTORNEY FEES.—

118 (a) In a civil action under a property insurance policy or
 119 under the comprehensive or combined additional coverage under a
 120 motor vehicle insurance policy for coverage of windshield
 121 damage, between an insurer and a service provider who obtains an
 122 assignment of post-loss benefits, the prevailing party has the
 123 right to attorney fees and costs from the:

124 1. Insurer, if the service provider is the prevailing
 125 party.

126 2. Service provider, if the insurer is the prevailing
 127 party.

128 (b) The prevailing party is the party which prevails on the
 129 significant issues of the case. The court may determine that
 130 there is no prevailing party in a case. In determining if there
 131 is a prevailing party, the court must consider:

132 1. The issues litigated;

133 2. The amount of the claims by the service provider versus
 134 the amount recovered;

135 3. The existence of setoffs and counterclaims, if any; and

136 4. The amounts offered by either party to resolve the
 137 issues prior to or during litigation.

138 (5) LIMITATION ON RECOVERY FROM ASSIGNOR.—An assignee
 139 service provider and any subcontractor of the service provider
 140 that accepts an assignment of post-loss benefits waives any and
 141 all claims against a consumer, except as provided herein. The
 142 consumer remains responsible for the payment of any deductible
 143 amount provided for by the terms of the insurance policy, and
 144 for the cost of any betterment ordered by the consumer. This
 145 subsection does not prohibit the assignee from collecting or

597-02675-19

2019122c1

146 attempting to collect money from, maintaining an action at law
 147 against, or claiming a lien on the property of a consumer or
 148 reporting a consumer to a credit agency for payment of the
 149 amount of the insurance deductible, or any amount attributable
 150 to betterment ordered by the consumer. This waiver is effective
 151 notwithstanding any subsequent determination that the assignment
 152 agreement is invalid or the rescission of the assignment
 153 agreement by the consumer.

154 (6) ACTIONS BASED UPON THE SAME CLAIM AND PARTY PREVIOUSLY
 155 VOLUNTARILY DISMISSED.—If a service provider assignee commences
 156 an action in any court of this state based upon or including the
 157 same claim against the same adverse party that such assignee has
 158 previously voluntarily dismissed in a court of this state the
 159 court may, as it deems proper, order the assignee to pay the
 160 attorney fees and costs of the adverse party of the action
 161 previously voluntarily dismissed. Upon the issuance of such
 162 order, the court shall stay the proceedings in the subsequent
 163 action until the assignee has complied with the order.

164 (7) APPLICATION.—This section does not apply to a power of
 165 attorney granted to a management company, family member,
 166 guardian, or similarly situated person which complies with
 167 chapter 709 and which may include, as part of the authority
 168 granted, the authority to act in place of a principal as it
 169 relates to a property insurance or motor vehicle insurance
 170 claim, if such power of attorney is not provided to a service
 171 provider or any person with a personal or financial interest in
 172 the service provider.

173 (8) LEGISLATIVE FINDINGS AND INTENT.—

174 (a) The Legislature recognizes that the provisions of ss.

597-02675-19 2019122c1

175 626.9373 and 627.428 are intended to level the economic playing
 176 field between the economically-advantaged insurance company and
 177 the individual consumer. The award of attorney fees to the
 178 individual consumer under these statutes makes the consumer
 179 financially whole and discourages insurance companies from
 180 contesting valid claims.

181 (b) The increased use of post-loss assignment of benefits
 182 by service providers, however, has led to a dramatic increase in
 183 assignment of benefits litigation. The Legislature recognizes
 184 that additional costs incurred by insurance companies, in
 185 contesting assignment of benefits-related litigation or paying
 186 inflated claims for insurance proceeds, are factored into the
 187 rates charged for property insurance and motor vehicle
 188 insurance.

189 (c) By explicitly providing that notwithstanding ss.
 190 626.9373 and 627.428, any right to attorney fees or costs
 191 against an insurer by a service provider shall be as provided in
 192 this section, the Legislature is addressing the dramatic
 193 increase in assignment of benefits litigation by nonparties to
 194 property insurance policies and motor vehicle insurance policies
 195 for coverage of windshield damage and the associated increase in
 196 insurance premiums that are experienced by consumers. The
 197 Legislature is maintaining its public policy of making consumers
 198 financially whole and reducing inequities between consumers and
 199 their insurance companies, as such consumers have the right to
 200 obtain attorney fees under ss. 626.9373 and 627.428 in civil
 201 actions they bring against their insurers.

202 Section 2. Section 626.9373, Florida Statutes, is amended
 203 to read:

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204 626.9373 Attorney ~~Attorney's~~ fees.-

205 (1) Upon the rendition of a judgment or decree by any court
 206 of this state against a surplus lines insurer in favor of any
 207 named or omnibus insured or the named beneficiary under a policy
 208 or contract executed by the insurer on or after the effective
 209 date of this act, the trial court or, if the insured or
 210 beneficiary prevails on appeal, the appellate court, shall
 211 adjudge or decree against the insurer in favor of the insured or
 212 beneficiary a reasonable sum as fees or compensation for the
 213 insured's or beneficiary's attorney prosecuting the lawsuit for
 214 which recovery is awarded.

215 (2) If awarded, attorney ~~attorney's~~ fees or compensation
 216 shall be included in the judgment or decree rendered in the
 217 case.

218 (3) Attorney fees may not be awarded under this section to
 219 an assignee of post-loss benefits who is a service provider
 220 under s. 501.172.

221 Section 3. Section 627.428, Florida Statutes, is amended to
 222 read:

223 627.428 Attorney fees ~~Attorney's fee~~.-

224 (1) Upon the rendition of a judgment or decree by any of
 225 the courts of this state against an insurer and in favor of any
 226 named or omnibus insured or the named beneficiary under a policy
 227 or contract executed by the insurer, the trial court or, in the
 228 event of an appeal in which the insured or beneficiary prevails,
 229 the appellate court shall adjudge or decree against the insurer
 230 and in favor of the insured or beneficiary a reasonable sum as
 231 fees or compensation for the insured's or beneficiary's attorney
 232 prosecuting the suit in which the recovery is had.

597-02675-19

2019122c1

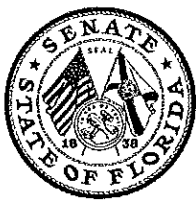
233 (2) As to suits based on claims arising under life
234 insurance policies or annuity contracts, no such attorney fees
235 ~~attorney's fee~~ shall be allowed if such suit was commenced prior
236 to expiration of 60 days after proof of the claim was duly filed
237 with the insurer.

238 (3) When so awarded, compensation or fees of the attorney
239 shall be included in the judgment or decree rendered in the
240 case.

241 (4) Attorney fees may not be awarded under this section to
242 an assignee of post-loss benefits who is a service provider
243 under s. 501.172.

244 Section 4. The creation of s. 501.172, Florida Statutes,
245 and the amendments made to ss. 626.9373 and 627.428, Florida
246 Statutes, by this act apply to actions pending on or after July
247 1, 2019, to the extent that the act does not require the
248 invalidation of any provision of a contract executed before July
249 1, 2019.

250 Section 5. This act shall take effect July 1, 2019.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 5, 2019

I respectfully request that **Senate Bill 122**, relating to Attorney Fee Awards Under Insurance Policies and Contracts, 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)

3/18/18
Meeting Date

50122
Bill Number (if applicable)

461950
Amendment Barcode (if applicable)

Topic A.O.B. 513 122

Name KEITH SEAMAN

Job Title GM. GLASS REPLACEMENTS

Address 6034 CHESTER AVE STE. 208
Street

Phone 904.608.3940

JACKSONVILLE FL. 32217
City State Zip

Email KEITH_SEAMAN@JANITE.COM

Speaking: For Against Information

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

Representing GLASS REPLACEMENTS LLC

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)

3-18-19
Meeting Date

SB 122
Bill Number (if applicable)

461950
Amendment Barcode (if applicable)

Topic SB 122 AOB

Name Todd Palmer

Job Title Owner

Address 5821 Silver Moon Ave
Street

Phone 813-802-2516

Tampa Fl. 33625
City State Zip

Email todd@fixmygasck.com

Speaking: For Against Information

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

Representing Mr. Auto Class

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)

3/18/19
Meeting Date

122
Bill Number (if applicable)

002100
Amendment Barcode (if applicable)

Topic SB 122

Name Richie Kidwell

Job Title Owner

Address 941 W Morse Blvd #100

Phone 407-233-0493

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

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)

3/18/19

Meeting Date

122

Bill Number (if applicable)

582166

Amendment Barcode (if applicable)

Topic

Assignment

Name

Dave DeBlander

Job Title

President, Pro Clean Restoration

Address

3255 Potter St. Suite, C

Phone

Street

Pensacola

Fl

32514

Email

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Representing

Florida Association of Restoration Specialist

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)

3-19-19

Meeting Date

SR 122

Bill Number (if applicable)

Topic SR 122 AOB

492832
Amendment Barcode (if applicable)

Name Todd R. Palmer

Job Title Owner

Address 5821 Silver Moon Ave

Phone 813-802-2516

Street

Tampa

City

Fl.

State

33625

Zip

Email todd@fixpack.com

Speaking: For Against Information

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

Representing Mr. Auto Glass

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)

3/18/19
Meeting Date

122
Bill Number (if applicable)
492832
Amendment Barcode (if applicable)

Topic AOB

Name Tyler Chase Z

Job Title ATTORNEY

Address 2876 S. OSCEOLA AVE.
Street

Phone 407-425-4640

City Orlando FL Zip 32806

Email Tyler@whjlegal.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/19

Meeting Date

122

Bill Number (if applicable)

492832

Amendment Barcode (if applicable)

Topic Assignment

Name Dave DeBlander

Job Title President, Pro Clean Restoration

Address 3255 Potter St. Suite, C

Street

Phone

Pensacola

Fl

32514

Email

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing Florida Association of Restoration Specialist

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

Lobbyist registered with Legislature: [] Yes [] No

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

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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)

3/18/19

Meeting Date

122

Bill Number (if applicable)

748114

Amendment Barcode (if applicable)

Topic AOB

Name Tyler Chasez

Job Title ATTORNEY

Address 2876 S. Oseola Ave

Street

Orlando FL 32806

City

State

Zip

Phone 407-425-4640

Email Tyler@hijlegal.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/19

Meeting Date

122

Bill Number (if applicable)

748114

Amendment Barcode (if applicable)

~~Anti-Security~~

Topic SB 122

Name Dallas Trahern

Job Title Chief operating officer

Address 945 W. 15th St

Street

Phone 501-966-0165

Riviera Bch, FL 33404

City

State

Zip

Email dallasentrusted.com

Speaking: For Against Information

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

Representing Entrusted

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)

3/18/19

Meeting Date

122

Bill Number (if applicable)

~~3801101~~

Amendment Barcode (if applicable)

748114

Topic SB 122

Name Larry Bond

Job Title Managing partner

Address 10 NW 42nd Ave Ste 330

Phone 843-455-6046

City Miami State FL Zip 33126

Email lb@wraproof.com

Speaking: For Against Information

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

Representing Wrap Roof

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

3/18/19

Meeting Date

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

122

Bill Number (if applicable)

Topic SB 122

~~3401171~~

Amendment Barcode (if applicable)

Name Luis Pascual

748114

Job Title Homeowner

Address 170 Solano Prado

Street

Phone 305-753-8870

Miami

FL

33156

Email luispascual199@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/18/19 Meeting Date

122 Bill Number (if applicable)

~~3201174~~ Amendment Barcode (if applicable)

Topic SB 122

748114

Name Manny Pozo

Job Title Owner

Address 7331 NW 7th St.

Phone 786-252-5207

Miami FL City State Zip

Email manny.pozo@bioresponsecorp.com

Speaking: [] For [x] Against [] Information

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

Representing Bio Response

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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3/18/19
Meeting Date

122
Bill Number (if applicable)

748114
Amendment Barcode (if applicable)

Topic SB 122

Name Jim Apuzzo

Job Title V.P. OPERATION

Address 2200 Winter Springs Blvd
Street

Phone 407.448-0048

Oviedo FL 32765
City State Zip

Email JimApuzzo@gmail.com

Speaking: For Against Information

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

Representing Damage Control

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)

3/18/19

Meeting Date

122

Bill Number (if applicable)

740114

Amendment Barcode (if applicable)

~~ACT Steering~~

Topic SB 122

Name Richie Kidwell

Job Title Owner

Address 911 W Morse Blvd #100

Street

Phone 407-233-0493

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

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)

3-18-19
Meeting Date

122
Bill Number (if applicable)
748114
Amendment Barcode (if applicable)

Topic SB 122 AOB

Name Todd Palmer

Job Title Owner

Address 5921 Silver Moon Ave
Street

Phone 813-802-2516

Tampa Fl. 33625
City State Zip

Email toddp@fixmyquack.com

Speaking: For Against Information

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

Representing Mr. Auto Glass

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)

3/18/19
Meeting Date

122

Bill Number (if applicable)

748114

Amendment Barcode (if applicable)

Topic 513 122 A.O.B.

Name KEITH SEAMAN

Job Title G.M. GLASS REPLACEMENTS LLC

Address 6034 CHESTER AVE. STE 208
Street

Phone 904-733-2315

JACKSONVILLE, FL. 32217
City State Zip

Email KEITH.SEAMAN@GMAIL.COM

Speaking: For Against Information

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

Representing GLASS REPLACEMENTS LLC

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)

3/18/19
Meeting Date

122
Bill Number (if applicable)

Topic SB 122

748114
Amendment Barcode (if applicable)

Name John TORRES

anti-steering

Job Title owner

Address 945 N. 15th St.
Street

Phone 561-966-0765

Riviera Bch FL 33404
City State Zip

Email john@entrusted.com

Speaking: For Against Information

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

Representing Entrusted

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)

3-18-19

Meeting Date

C/SB 122

Bill Number (if applicable)

Topic AOB

Amendment Barcode (if applicable)

Name CAM FENTRESS

Job Title LEG. COUNSEL

Address 1400 VILLAGE SQ # 3-243

Phone 850-222-2772

Street

JALL

City

FL

State

32312

Zip

Email AFENTRESS@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
FCA REFRIGERATION + AC CONTRACTORS ASSN

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/19

Meeting Date

122

Bill Number (if applicable)

Topic AOB

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Brandon Ln St

Street

Phone 521-1200

Tallahassee, FL 32301

City

State

Zip

Email cjohnson@flchamber.com

Speaking: For Against Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-19

Meeting Date

SB 122

Bill Number (if applicable)

Topic Agreements Between Service Providers + Consumers

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 201

Phone 850-509-8020

Street

Tallahassee

City

FL

State

32301

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.

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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)

1/18/19
Meeting Date

122
Bill Number (if applicable)

Topic AOB

Amendment Barcode (if applicable)

Name Caitlin Murray

Job Title Director of Government Affairs

Address 200 E. Gaines St.
Street

Phone (850) 413-5005

Tallahassee FL 32399
City State Zip

Email caitlin.murray@flor.com

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.

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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)

3/18/19

Meeting Date

122

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Michael Carlson

Job Title President/CEO

Address 215 S. Monroe St. Ste. 835

Phone 850-597-7425

Street

Tallahassee

FL

32301

Email michael.carlson@piff.net

City

State

Zip

Speaking: For Against Information

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

Representing The Personal Insurance Federation of Florida, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3-18-19

Meeting Date

122

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Christine Ashburn

Job Title Chief of 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

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)

March 18, 2019
Meeting Date

122
Bill Number (if applicable)

Topic ADB

Amendment Barcode (if applicable)

Name Josh Aubuchon

Job Title Attorney

Address 315 S. Callhoun
Street

Phone 224-7000

Tallahassee FL 32301
City State Zip

Email

Speaking: [X] For [] Against [] Information

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

Representing State Farm Insurance

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18

Meeting Date

Bill Number (if applicable)

Topic SB 122 AOB

Amendment Barcode (if applicable)

Name Alan Williams

Job Title

Address Street

Phone

City

State

Zip

Email

Speaking: [X] For [] Against [] Information

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

Representing NAIPA-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.

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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)

3.19.19

Meeting Date

122

Bill Number (if applicable)

Topic HOB

Amendment Barcode (if applicable)

Name Danielle Scoggins

Job Title Gov't Affairs VP

Address 200 S. Monroe St.

Phone 224-1400

Street

Tallahassee, FL

State

32301

Zip

Email

Speaking: For Against Information

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

Representing Florida Realtors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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3.18.19

Meeting Date

122

Bill Number (if applicable)

Topic AB

Amendment Barcode (if applicable)

Name Brewster Benis

Job Title VP Govt Affairs

Address 374 N. Adams St.

Phone 222-7173

Street

Tallahassee FL 32301

City

State

Zip

Email bbenis@afl.com

Speaking: For Against Information

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

Representing Associated Industries of Florida (AIF)

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)

3.18.19
Meeting Date

122
Bill Number (if applicable)

Topic AOB

Amendment Barcode (if applicable)

Name Ashley Kalifeh

Job Title lobbyist/attorney

Address 101 E College Ave #302
Street

Phone 222-9075

Tallahassee FL 32301
City State Zip

Email akalifeh@capcity.com

Speaking: For Against Information

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

Representing Florida Justice Reform Institute (FJRI)

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)

3/18/19
Meeting Date

SB122
Bill Number (if applicable)

Topic A.O.B.

Amendment Barcode (if applicable)

Name Todd Palmer

Job Title Owner

Address 5821 Silver Moon Ave
Street

Phone 813-862-2516

Tampa Fl. 33625
City State Zip

Email todd@fixmyquail.com

Speaking: For Against Information

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

Representing Mr. Auto Class

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)

3/18/19
Meeting Date

SB 122
Bill Number (if applicable)

Topic SB 122 A.O.B.

Amendment Barcode (if applicable)

Name KEITH SEAMANN

Job Title G.M. GLASS REPLACEMENTS LLC

Address 6034 CHESTER AVE STE 208

Phone 904.733.2315

Street
City JACKSONVILLE State FL Zip 32217

Email KEITH.SEAMANN@gmail.com

Speaking: For Against Information

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

Representing GLASS REPLACEMENTS LLC.

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)

3/18/19
Meeting Date

SB 122
Bill Number (if applicable)

Topic Agreements between Service Providers + Consumers

Amendment Barcode (if applicable)

Name Ben Stearns

Job Title Attorney

Address 215 S. Monroe St., Suite 500
Street

Phone 850-224-1585

Tallahassee FL 32301
City State Zip

Email bstearns@carltonfields.com

Speaking: For Against Information

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

Representing NAMIC

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

3/18/2019

Meeting Date

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

122

Bill Number (if applicable)

Topic AGREEMENTS BETWEEN SERVICE PROVIDERS & CONSUMERS

Amendment Barcode (if applicable)

Name Christian R. Camara - R Street Institute

Job Title Senior Fellow

Address 1212 New York Ave. NW, Suite 900

Phone 202-525-5717

Street

Washington

DC

20005

Email ccamara@rstreet.org

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing R Street Institute

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/19

Meeting Date

122

Bill Number (if applicable)

Topic Agreements between service providers + Consumers

Amendment Barcode (if applicable)

Name Meredith Brock Stanfield

Job Title Director of Legislative + Cabinet Affairs

Address Plaza Level 11, The Capitol

Phone 850 413 2890

Street

Tallahassee

FL

32399

Email Meredith.Stanfield@MyFloridaCFO.com

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Chief Financial Officer Jimmy Patronis

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

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

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

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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)

3/18/19

Meeting Date

122

Bill Number (if applicable)

748114

Amendment Barcode (if applicable)

Topic Agreements Between Service Providers and Consumers

Name Dave DeBlander

Job Title President, Pro Clean Restoration

Address 3255 Potter St. Suite, C

Street

Phone _____

Pensacola

FL

32514

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Association of Restoration Specialist

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/19

Meeting Date

122

Bill Number (if applicable)

Topic Assign. Between Service Providers & Consumers

748114

Amendment Barcode (if applicable)

Name Foyt Ralston

Job Title _____

Address 317 East Park Ave

Phone 850-294-5390

Street

Tallahassee

Fl

32301

Email foyt@capadvocates.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Association of Restoration Specialist

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/19

Meeting Date

122

Bill Number (if applicable)

~~3304704~~

Amendment Barcode (if applicable)

748114

Topic SB 122

Name Jeff Groover

Job Title Attorney

Address 3615 E. Frontage Rd

Street

Phone 561-892-9665

Tampa

FL

33607

City

State

Zip

Email jgroover@kpaattorney.com

Speaking: For Against Information

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

Representing Kanner & Pinta Iuga

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 116

INTRODUCER: Senator Stewart

SUBJECT: Motor Vehicle Racing

DATE: March 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	Favorable
2.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	Favorable
3.	<u>Farach</u>	<u>Cibula</u>	<u>JU</u>	Favorable
4.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 116 increases the penalty from a first degree misdemeanor to a third degree felony for a third or subsequent violation of s. 316.191(2), F.S., which prohibits any form of participation in motor vehicle racing, if the violation occurs within 5 years of a prior violation of the statute.

The Criminal Justice Impact Conference estimates that the bill will result in a positive insignificant fiscal impact to prisons (i.e. an increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

II. Present Situation:

Motor vehicle racing is a professional and amateur automobile sport practiced throughout the world, which includes drag racing.¹ A drag race is an acceleration contest from a standing start between two vehicles over a measured distance.² Drag racing began in the California deserts, with the first organized event dating back to 1949.³ Legal drag races take place on monitored drag strips or racetracks.⁴

¹ Encyclopedia Britannica, *Automobile Racing*, available at <https://www.britannica.com/sports/automobile-racing> (last visited February 21, 2019).

² National Hot Rod Association, *NHRA 101*, available at <https://www.nhra.com/nhra-101> (last visited February 21, 2019).

³ PBS, *Drag Racing*, available at <http://www.pbs.org/opb/historydetectives/feature/drag-racing/> (last visited February 21, 2019).

⁴ Driving Line, *Drag Racing 101: Understanding the Basics of 1320 Racing* (July 24, 2015), available at <https://www.drivingline.com/articles/drag-racing-101-understanding-the-basics-of-1320-racing/> (last visited February 21, 2019).

In contrast, illegal drag racing takes place on highways. Videos of these races depict drivers either taking off from a rolling start or coming to a complete stop on the highway and then taking off. Specifically, in Broward County, dragsters make their way to “The Spot,” a stretch of highway US-27, to race their cars up to speeds of 140 mph or better. Racers use cameras with microphones and drones to get footage of the races to post to websites. The dangers of these races is apparent from the videos – there is no concrete median separating the lanes and a flat tire or debris in the road could have fatal consequences.⁵

Drag racing encourages cars to reach unsafe speeds, which has prompted the adoption of laws regulating or prohibiting it. Specifically, s. 316.191(2), F.S., prohibits a person from doing any of the following:

- Driving any motor vehicle, including any motorcycle, in any race,⁶ speed competition or contest, drag race⁷ or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot;
- Participating in, coordinating, facilitating, or collecting money at any location for any such race, competition, contest, test, or exhibition;
- Knowingly riding as a passenger in any such race, competition, contest, test, or exhibition; or
- Purposefully causing the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.⁸

Any person who violates s. 316.191(2), F.S., commits a first degree misdemeanor.⁹ However, additional fines and penalties increase for subsequent violations. For example:

- A first-time violation is punishable with a fine of not less than \$500 and not more than \$1,000, and a revocation of one’s driver’s license for 1 year.
- A second violation within 5 years of a prior violation is punishable with a fine of not less than \$1,000 and not more than \$3,000, and a revocation of one’s driver’s license for 2 years.
- A third or subsequent violation within 5 years of a prior violation is punishable with a fine of not less than \$2,000 and not more than \$5,000, and a revocation of one’s driver’s license for 4 years.¹⁰

⁵ Jim DeFede, CBS Miami, *An Inside Look at Broward County’s Illegal Drag Racing*, (May 1, 2018), available at <https://miami.cbslocal.com/2018/05/01/broward-illegal-drag-racing/> (last visited February 21, 2019).

⁶ “Race” means the use of one or more motor vehicles in competition, arising from a challenge to demonstrate superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of the circumstances, can reasonably be interpreted as a challenge to race. Section 316.191(1)(c), F.S.

⁷ “Drag race” means the operation of two or more motor vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such motor vehicle or motor vehicles within a certain distance or time limit. Section 316.191(1)(b), F.S.

⁸ Section 316.191(2)(a)-(d), F.S. Section 316.191, F.S., does not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes. Section 316.191(7), F.S.

⁹ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year, a fine of \$1,000, or both. Sections 775.082 and 775.083, F.S.

¹⁰ Section 316.191(3)(a)-(c), F.S. In all instances of a violation that results in the subsequent revocation of a person’s driver’s license, he or she may request a hearing pursuant to s. 322.271, F.S.

A law enforcement officer may immediately arrest a person who has engaged in a race.¹¹ Any motor vehicle that was used in unlawful racing may be impounded for 30 days, if the person who is arrested and taken into custody for the unlawful racing is the registered owner or co-owner of the vehicle.¹²

III. Effect of Proposed Changes:

The bill increases the penalty from a first degree misdemeanor to a third degree felony¹³ for a third or subsequent violation of s. 316.191(2), F.S., which prohibits any form of participation in motor vehicle racing, if such violation occurs within 5 years of a prior violation of the statute.

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹¹ Section 316.191(5), F.S.

¹² Section 316.191(5)(c), F.S.

¹³ A third degree felony is punishable by a term of imprisonment not exceeding 5 years, a fine of \$5,000, or both. Sections 775.082 and 775.083, F.S.

C. Government Sector Impact:

The Criminal Justice Impact Conference has estimates that the bill will result in a positive insignificant fiscal impact to prisons (i.e. an increase in prison beds).¹⁴

There were a total of 764 violations of s. 316.191, F.S., in 2017.¹⁵ However, the Florida Department of Law Enforcement indicated that there were no arrests, convictions, or adjudications withheld for a third or subsequent violation of s. 316.191, F.S., during FY 2017-18.¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.191 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

¹⁴ Criminal Justice Impact Conference, Narrative Analyses of HB 611 - Motor Vehicle Racing (Identical SB 116) (Feb. 27, 2019), <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB611.pdf>.

¹⁵ Florida Department of Highway Safety and Motor Vehicles, *Annual Uniform Traffic Citation Report*, (Select 2017, all counties, all agencies, criminal violation, racing on highway violation to generate data) available at <https://services.flhsmv.gov/specialtyplates/uniformtrafficcitationreport> (last visited Feb. 21, 2019).

¹⁶ *Supra* n. 14.

By Senator Stewart

13-00175-19

2019116__

A bill to be entitled

An act relating to motor vehicle racing; amending s. 316.191, F.S.; increasing the criminal penalty for a third or subsequent violation related to motor vehicle racing within a specified period after the date of a prior violation that resulted in a conviction; providing an effective date.

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

Section 1. Subsection (2) and paragraph (c) of subsection (3) of section 316.191, Florida Statutes, are amended to read:
316.191 Racing on highways.—

(2) A person may not do any of the following:

(a) Drive any motor vehicle, including any motorcycle, in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot. ~~;~~

(b) In any manner participate in, coordinate, facilitate, or collect moneys at any location for any such race, competition, contest, test, or exhibition. ~~;~~

(c) Knowingly ride as a passenger in any such race, competition, contest, test, or exhibition. ~~;~~ ~~or~~

(d) Purposefully cause the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.

(3)

(c) Any person who commits a third or subsequent violation

Page 1 of 2

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

13-00175-19

2019116__

of subsection (2) within 5 years after the date of a prior violation that resulted in a conviction for a violation of subsection (2) commits a felony of the third ~~misdeemeanor of the first~~ degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084, and shall pay a fine of not less than \$2,000 and not more than \$5,000. The department shall also revoke the driver license of that person for 4 years. A hearing may be requested pursuant to s. 322.271.

Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 6, 2019

I respectfully request that **Senate Bill #: 116** relating to Motor Vehicle Racing, be placed on the:

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

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

c.c. Tom Cibula, Staff Director
Joyce Butler, Committee Administrative Assistant

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.18.19

Meeting Date

116

Bill Number (if applicable)

Topic Motor Vehicle Racing

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

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.

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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)

03-18-19
Meeting Date

SB 0116
Bill Number (if applicable)

Topic STREET RACING

Amendment Barcode (if applicable)

Name MATT BUTLER

Job Title CAPTAIN - ORANGE COUNTY SHERIFF'S OFFICE

Address 2500 L. COLONIAL DR.
Street

Phone 407-254-7000

ORLANDO FL 32802
City State Zip

Email MATT.BUTLER@OCFL.NET

Speaking: For Against Information

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

Representing ORANGE COUNTY SHERIFF'S OFFICE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 440

INTRODUCER: Senator Rouson

SUBJECT: Florida Commission on Human Relations

DATE: March 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 440 amends several statutes involving the Florida Commission on Human Relations (Commission). The Commission is responsible for investigating and resolving discrimination complaints in the areas of employment, housing, and certain public accommodations, as well as investigating state employee whistle-blower complaints of retaliation.

Specifically, the bill:

- Changes the number of commissioners required for a quorum from seven to a majority of the currently appointed commissioners and establishes a quorum of three for panels.
- Allows the Commission to nominate fewer than 10 people for the Florida Civil Rights Hall of Fame each year.
- Requires the Commission to provide notice to an aggrieved person under specified circumstances and notify the person that he or she must file a civil action within 1 year or the action will be barred.
- Removes the registration requirement for facilities and communities that claim an exemption for housing the elderly and eliminates related fees and fines.
- Deletes a requirement that the Commission or the Attorney General investigate public housing discrimination complaints and increases the time from 30 to 45 days for the Commission or the Attorney General has to resolve the dispute. Revises various deadlines and time constraints regarding the Commission's fact-finding investigation period for a retaliation claim.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect July 1, 2019.

II. Present Situation:

Florida Civil Rights Act (Part I, Chapter 760, F.S.)

The Florida Civil Rights Act (FCRA) protects persons from discrimination based on race, color, religion, sex, pregnancy, national origin, age, handicap, and marital status. The FCRA establishes the Florida Commission on Human Relations (the Commission) within the Department of Management Services. The Commission possesses the requisite powers to enforce the FCRA.¹ The Governor appoints, and the Senate confirms, the 12 members of the Commission.²

The Florida Commission on Human Relations

The Commission is empowered to receive, initiate, investigate, conciliate, and act upon complaints alleging discriminatory practices.³ Additionally, the Attorney General may initiate a civil action for damages, injunctive relief, civil penalties of up to \$10,000 per violation, and other appropriate relief.⁴

An aggrieved person, the Commission, a commissioner, or the Attorney General has 365 days after the alleged violation to file a complaint with the Commission.⁵ Within 180 days after the filing, the Commission must make a determination of whether reasonable cause exists to believe that discriminatory practice has occurred.⁶

If the Commission issues a finding of reasonable cause, the aggrieved person may request an administrative hearing or bring civil action.⁷ A civil action must be brought within a year after the determination of reasonable cause.⁸ The FCRA expressly requires a plaintiff to exhaust his or her administrative remedy as a prerequisite to filing a civil action alleging unlawful discrimination, including housing discrimination.⁹ The remedies available through an administrative hearing include back pay and attorney's fees, while remedies available through a civil action include injunctive relief, compensatory damages, punitive damages up to \$100,000, and attorney's fees.¹⁰

Quorum for Commission Meeting

The Commission is comprised of 12 members. Currently, the Commission has just 9 members serving on its board.¹¹

¹ Section 760.06(6), F.S.

² Section 760.03(1), F.S.

³ Section 760.06(5), F.S.

⁴ Section 760.021(1), F.S.

⁵ Section 760.11(1), F.S.

⁶ Section 760.11(3), F.S.

⁷ Section 760.11(4), F.S.

⁸ Section 760.11(5), F.S. If, however, the Commission fails to make a determination of reasonable cause, the four-year statute of limitations for cause of action based on statutory liability applies. *Joshua v. City of Gainesville*, 768 So.2d 432 at 439 (Fla. 2000).

⁹ Section 760.07, F.S.

¹⁰ Section 760.11(5), (6), and (7), F.S.

¹¹ Florida Commission on Human Relations, *Commissioners*, <https://fchr.myflorida.com/fchrcommissioners>.

Current law provides that seven members constitute a quorum for the Commission to conduct business.¹² Due to the low number of commissioners currently appointed, the Commission has difficulty meeting the seven member quorum. If three members were to resign, the Commission could no longer conduct official business at all. Other government entities and commissions may satisfy their quorum requirements with a majority of their currently appointed members.¹³

The Commission is also permitted to establish panels of not less than three members to exercise its powers under the Florida Civil Rights Act, subject to procedures and limitations the Commission may provide by rule.

Halls of Fame in Florida

It is the intent of the Florida Legislature to recognize and honor those persons, living or dead, who have made significant contributions to this state. The Legislature has established various Halls of Fame including the Florida Women's Hall of fame, Florida Artists Hall of Fame, Florida Educator Hall of Fame, Florida Sports Hall of Fame, and the Florida Civil Rights Hall of Fame.

The Florida Civil Rights Hall of Fame was created by the Florida Legislature in 2010.¹⁴ Each year the Commission recommends 10 people for induction into the Florida Civil Rights Hall of Fame, from which list the Governor selects up to 3 new members.¹⁵ An eligible nominee must:

- Be at least 18 years of age;
- Have been born in Florida or adopted Florida as his or her home state and base of operations; and
- Have made significant contribution and provided exemplary leadership toward Florida's progress and achievements in civil rights.¹⁶

The Commission has failed to receive the minimum 10 recommendations in some years. In 2014 the Commission received 6 nominations, in 2015, it received 9 nominations, and in 2016, it received 9 nominations, such that the Commission faced violating the statute by submitting fewer than 10 recommendations. In each year the Governor has selected the maximum three inductees.

Fair Housing Act

Part II of ch. 760, F.S., constitutes the Florida Fair Housing Act, which protects citizens against discrimination in housing practices.¹⁷ The Florida Fair housing Act provides that any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice may file a complaint with the Commission.¹⁸ The complainant must file the complaint within one year after the alleged discriminatory practice

¹² Section 760.03(5), F.S.

¹³ See, e.g. ss. 43.291(6) (Judicial Nominating Commissions), 265.003(3)(b) (Florida Veterans' Hall of Fame), and s. 456.011(3) (Boards and Commissions within DOH).

¹⁴ Section 760.065, F.S.; see ch. 3010-53, Laws of Fla.

¹⁵ Section 760.065(3)(a), F.S.

¹⁶ Section 760.065(3)(b), F.S.

¹⁷ Sections 760.20-760.37, F.S.

¹⁸ Section 760.34(1), F.S.

has occurred.¹⁹ The Commission has 100 days after receipt of the complaint to complete its investigation and give notice in writing to the person aggrieved whether it intends to resolve it.²⁰ The Commission may attempt to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.²¹

The provisions of the Florida Fair Housing Act apply to all housing and housing-related entities (realtors, brokers, mortgage companies, financial institutions) in Florida. In 2001, the Legislature created exemptions for which charges of housing discrimination do not apply. Certain housing for older persons is exempt from charges of discrimination based on familial status.²² Housing for older persons is any housing intended for and solely occupied by persons 62 years of age or older, or if occupancy is by persons 55 years of age or older, at least 80 percent of the units are occupied by at least one person age 55 years or older. These facilities must register with the Commission and renew such registration every two years, and pay a fee that does not exceed \$20 fee for registration and renewal.²³ The Commission may impose an administrative fine of up to \$500 for submission of false information,²⁴ but there is no penalty for failure to register with the Commission. Failure to register does not prohibit a community from claiming the exemption, and the Commission does not actively seek out entities that are not registered.

The Commission has not charged a fee to register or renew facilities and communities since 2015. The registry is not determinative as to whether the community actually qualifies from the housing for older persons' exemption under the Florida Fair Housing Act. A facility or community that registers is still subject to an investigation if a complaint were filed against it and would have to prove that it meets the exemption. The same is true of a facility or community that has not registered.

Whistleblower Investigations

The Commission is authorized to investigate any allegation of an adverse action against a state employee, former employee, applicant for employment, or an employee of a contractor with the state in retaliation for exposing gross mismanagement, fraud, wrongful act, or other violations by state government.²⁵ When an employer retaliates against an employee who makes such a disclosure (a whistleblower), the whistleblower may make a complaint to either the Inspector General or the Commission within 60 days.²⁶ The office must provide notice of receipt of such a complaint, and the Commission will begin a fact finding investigation into the complaint.²⁷ The Commission must investigate the complaint and, if a violation is found, move to protect the whistleblower by petitioning for relief and recommending disciplinary proceedings as they see fit.²⁸

¹⁹ Section 760.34(2), F.S.

²⁰ Section 760.34(1), F.S.

²¹ *Id.*

²² Section 760.29(4), F.S.

²³ Section 760.29(4)(c), F.S.

²⁴ *Id.*

²⁵ *See s. 112.3187(4), (5), (6), and (7).*

²⁶ Section 112.31895(1), F.S.

²⁷ Section 112.31895(2), F.S.

²⁸ Section 112.31895(3), F.S.

If an agency does not implement the recommended action of the Commission within 20 days, the Commission must terminate its investigation and notify the complainant of the right to appeal to the Public Employees Relations Commission or petition the agency for corrective action.²⁹ A complainant may file a complaint against the employer-agency with the Public Employees Relations Commission after the termination of an investigation by the Commission.³⁰

If the Commission is unable to resolve a complaint within 60 days after receipt of the fact-finding report, the Commission must terminate the investigation. The Commission must then notify the complainant and agency head of the termination of the investigation, provide a summary of relevant facts found during the investigation, and state the reasons for terminating the investigation.³¹

Discriminatory Practices in Certain Clubs

As part of the Florida Civil Rights Act, the Legislature prohibits certain clubs from discriminating against individuals based on race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital status in evaluating an application for membership.³² This prohibition only applies to clubs that have more than 400 members, provide regular meal service, and receive payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from non-members for business purposes.³³ The law also prohibits the publication, circulation, issuance, display, posting, or mailing of any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because of race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital status.³⁴ This prohibition does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.³⁵

Any person who has been discriminated against by a club meeting these specifications may file a complaint with the Commission or with the Attorney General's Office of Civil Rights.³⁶ Upon receipt, the Commission or the Attorney General must provide a copy of the complaint to the club and, within 30 days, investigate the alleged discrimination and inform the complainant in writing if it intends to resolve the complaint.³⁷

If the Commission or the Attorney General decides to resolve the complaint, it must attempt to eliminate or correct the alleged discriminatory practices of a club by the informal methods of conference, conciliation, and persuasion.³⁸ If the Commission or Attorney General fails to give notice of its intent to eliminate or correct the alleged discriminatory practices of a club within 30 days, or if the Commission or Attorney General fails to resolve the complaint within 30 days

²⁹ Section 112.31895 (3)(e), F.S.

³⁰ Section. 112.31895(4)(a), F.S.

³¹ Section 112.31895(3)(d), F.S.

³² Section 760.60(1), F.S.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Section 760.60(2), F.S.

³⁷ *Id.*

³⁸ *Id.*

after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action against the club, its officers, or its members to enforce this section.³⁹ If the court finds a discriminatory practice has occurred at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.⁴⁰

III. Effect of Proposed Changes:

Florida Commission on Human Rights

Section 1 amends s. 760.03, F.S., to change the number of commissioners required for a quorum from seven to a majority of the currently appointed commissioners. This change should avoid a situation where action needs to be taken but, due to unfilled commissioner slots, having seven commissioners is impracticable. For example, the bill would allow the Commission as it sits today to meet and conduct business with five of the nine commissioners. The bill also provides that panels created by the Commission would be able to establish a quorum to conduct business with three commissioners on the panel.

Section 2 amends s. 760.065, F.S., to allow the Commission to recommend fewer than 10 people for the Florida Civil Rights Hall of Fame each year. Currently, the Commission must recommend exactly 10 people each year, while the Governor may accept between zero and three new members. This prevents the Commission from violating the law when they receive fewer than 10 nominations from which to select.

Section 3 amends s. 760.11, F.S., to provide that if the Commission fails to determine whether there is reasonable cause within 180 days, the Commission is required to promptly notify the individual of the Commission's failure to conciliate or to determine reasonable cause, to inform the individual of available options, and to inform the individual that a civil action alleging a violation of the Florida Civil Rights Act is prohibited if not filed within 1 year after the date the Commission certifies that the notice was mailed.

The bill requires that any civil action brought by an individual must be commenced within 1 year after the date the Commission certifies that the notice was mailed.

Fair Housing Act

Section 4 deletes s. 760.29(4)(e), F.S., to remove the requirement that a facility or community that claims the exemption as housing for older persons must register with the Commission. This deletion includes the provisions for the registration and renewal fee and administrative fine for submission of false information to the Commission.

Section 5 amends s. 760.31, F.S., to remove instructions for fee and forms made obsolete by the changes in s. 760.29 (4)(e), F.S., in section 4.

³⁹ Section 760.60(3), F.S.

⁴⁰ *Id.*

Discriminatory Practices in Certain Clubs

Section 6 amends s. 760.60, F.S., to delete the requirement that the Commission or the Attorney General investigate the public accommodation discrimination complaint. The bill also extends from 30 days to 45 days the time for the Commission or the Attorney General to resolve the dispute.

State Employee Whistle-blower's Act

Section 7 amends s. 112.31895, F.S., to revise various time periods involving the Commission's fact-finding investigation period for a whistleblower retaliation claim. Specifically, this section:

- Increases the time to acknowledge receipt of a complaint from 3 to 5 working days;
- Removes the requirement that the Commission separately acknowledge receipt of a complaint;
- Increases the time for the Commission to complete its fact-finding report from 90 to 180 days;
- Decreases the time for the Commission to terminate its investigation from 60 to 35 days after receipt of the fact-finding report;
- Increases the time for the relevant agency to implement the Commission's recommended action from 20 to 35 days; and
- Decreases the time for a complainant to appeal following a notice of termination of the investigation from 60 to 21 days.

These changes bring most of the timeframes for s. 112.31895, F.S., complaint investigations in line with complaints filed with the Commission under s. 760.11, F.S.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Elderly housing organizations will no longer have to register every two years.

C. Government Sector Impact:

The Commission will have a longer period of time to investigate whistleblower allegations, which will allow it more flexibility in organizing its efforts. The Commission will also no longer have to register elderly housing organizations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 760.03, 760.065, 760.11, 760.29, 760.31, 760.60, and 112.31895.

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 Rouson

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1 A bill to be entitled
 2 An act relating to the Florida Commission on Human
 3 Relations; amending s. 760.03, F.S.; providing quorum
 4 requirements for the Commission on Human Relations and
 5 its panels; amending s. 760.065, F.S.; revising the
 6 number of persons the commission may recommend for the
 7 Florida Civil Rights Hall of Fame; amending s. 760.11,
 8 F.S.; requiring the commission to provide notice to an
 9 aggrieved person under specified circumstances;
 10 providing notice requirements; providing a limitation
 11 on the time a civil action may be filed after an
 12 alleged violation of the Florida Civil Rights Act;
 13 amending s. 760.29, F.S.; deleting a requirement that
 14 a facility or community that provides housing for
 15 older persons register with and submit a letter to the
 16 commission; amending s. 760.31, F.S.; conforming a
 17 provision; amending s. 760.60, F.S.; deleting the
 18 requirement for the commission or Attorney General to
 19 investigate a complaint of discrimination in
 20 evaluating an application for club membership;
 21 revising the length of time the commission or Attorney
 22 General has to resolve such a complaint; amending s.
 23 112.31895, F.S.; revising the timeline relating to a
 24 complaint alleging a prohibited personnel action;
 25 deleting a requirement that the commission notify a
 26 complainant upon receipt of the complaint; providing
 27 an effective date.
 28
 29 Be It Enacted by the Legislature of the State of Florida:

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30
 31 Section 1. Subsection (5) of section 760.03, Florida
 32 Statutes, is amended to read:
 33 760.03 Commission on Human Relations; staff.-
 34 (5) A quorum is necessary for the conduct of official
 35 business. Unless otherwise provided by law, a quorum consists of
 36 a majority of the currently appointed commissioners. ~~Seven~~
 37 ~~members shall constitute a quorum for the conduct of business;~~
 38 ~~however,~~ The commission may establish panels of not less than
 39 three of its members to exercise its powers under the Florida
 40 Civil Rights Act of 1992, subject to such procedures and
 41 limitations as the commission may provide by rule.
 42 Notwithstanding this subsection, three appointed members serving
 43 on panels shall constitute a quorum for the conduct of official
 44 business of the panel.
 45 Section 2. Paragraph (a) of subsection (3) of section
 46 760.065, Florida Statutes, is amended to read:
 47 760.065 Florida Civil Rights Hall of Fame.-
 48 (3) (a) The commission shall annually accept nominations for
 49 persons to be recommended as members of the Florida Civil Rights
 50 Hall of Fame. The commission shall recommend up to 10 persons
 51 from which the Governor shall select up to 3 hall-of-fame
 52 members.
 53 Section 3. Subsection (8) of section 760.11, Florida
 54 Statutes, is amended to read:
 55 760.11 Administrative and civil remedies; construction.-
 56 (8) ~~If in the event that~~ the commission fails to conciliate
 57 or determine whether there is reasonable cause on any complaint
 58 under this section within 180 days of the filing of

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59 the complaint;⁷

60 (a) An aggrieved person may proceed under subsection (4) if
 61 as if the commission determined that there was reasonable cause.

62 (b) The commission shall promptly notify the aggrieved
 63 person of the failure to conciliate or determine whether there
 64 is reasonable cause. The notice shall provide the options
 65 available to the aggrieved person under subsection (4) and
 66 inform the aggrieved person that a civil action is prohibited if
 67 not filed within 1 year after the date the commission certifies
 68 that the notice was mailed.

69 (c) Any civil action brought by an aggrieved person under
 70 this section must be commenced within 1 year after the date the
 71 commission certifies that the notice was mailed pursuant to
 72 paragraph (b).

73 Section 4. Subsection (4) of section 760.29, Florida
 74 Statutes, is amended to read:

75 760.29 Exemptions.—

76 (4) (a) Any provision of ss. 760.20-760.37 regarding
 77 familial status does not apply with respect to housing for older
 78 persons.

79 (b) As used in this subsection, the term "housing for older
 80 persons" means housing:

81 1. Provided under any state or federal program that the
 82 commission determines is specifically designed and operated to
 83 assist elderly persons, as defined in the state or federal
 84 program;

85 2. Intended for, and solely occupied by, persons 62 years
 86 of age or older; or

87 3. Intended and operated for occupancy by persons 55 years

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88 of age or older that meets the following requirements:

89 a. At least 80 percent of the occupied units are occupied
 90 by at least one person 55 years of age or older.

91 b. The housing facility or community publishes and adheres
 92 to policies and procedures that demonstrate the intent required
 93 under this subparagraph. If the housing facility or community
 94 meets the requirements of sub-subparagraphs a. and c. and the
 95 recorded governing documents provide for an adult, senior, or
 96 retirement housing facility or community and the governing
 97 documents lack an amendatory procedure, prohibit amendments, or
 98 restrict amendments until a specified future date, then that
 99 housing facility or community shall be deemed housing for older
 100 persons intended and operated for occupancy by persons 55 years
 101 of age or older. If those documents further provide a
 102 prohibition against residents 16 years of age or younger, that
 103 provision shall be construed, for purposes of the Fair Housing
 104 Act, to only apply to residents 18 years of age or younger, in
 105 order to conform with federal law requirements. Governing
 106 documents which can be amended at a future date must be amended
 107 and properly recorded within 1 year after that date to reflect
 108 the requirements for consideration as housing for older persons,
 109 if that housing facility or community intends to continue as
 110 housing for older persons.

111 c. The housing facility or community complies with rules
 112 made by the Secretary of the United States Department of Housing
 113 and Urban Development pursuant to 24 C.F.R. part 100 for
 114 verification of occupancy, which rules provide for verification
 115 by reliable surveys and affidavits and include examples of the
 116 types of policies and procedures relevant to a determination of

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117 compliance with the requirements of sub-subparagraph b. Such
 118 surveys and affidavits are admissible in administrative and
 119 judicial proceedings for the purposes of such verification.

120 (c) Housing shall not fail to be considered housing for
 121 older persons if:

122 1. A person who resides in such housing on or after October
 123 1, 1989, does not meet the age requirements of this subsection,
 124 provided that any new occupant meets such age requirements; or

125 2. One or more units are unoccupied, provided that any
 126 unoccupied units are reserved for occupancy by persons who meet
 127 the age requirements of this subsection.

128 (d) A person shall not be personally liable for monetary
 129 damages for a violation of this subsection if such person
 130 reasonably relied in good faith on the application of the
 131 exemption under this subsection relating to housing for older
 132 persons. For purposes of this paragraph, a person may show good
 133 faith reliance on the application of the exemption only by
 134 showing that:

135 1. The person has no actual knowledge that the facility or
 136 the community is ineligible, or will become ineligible, for such
 137 exemption; and

138 2. The facility or community has stated formally, in
 139 writing, that the facility or community complies with the
 140 requirements for such exemption.

141 ~~(e) A facility or community claiming an exemption under~~
 142 ~~this subsection shall register with the commission and submit a~~
 143 ~~letter to the commission stating that the facility or community~~
 144 ~~complies with the requirements of subparagraph (b)1.,~~
 145 ~~subparagraph (b)2., or subparagraph (b)3. The letter shall be~~

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146 ~~submitted on the letterhead of the facility or community and~~
 147 ~~shall be signed by the president of the facility or community.~~
 148 ~~This registration and documentation shall be renewed biennially~~
 149 ~~from the date of original filing. The information in the~~
 150 ~~registry shall be made available to the public, and the~~
 151 ~~commission shall include this information on an Internet~~
 152 ~~website. The commission may establish a reasonable registration~~
 153 ~~fee, not to exceed \$20, that shall be deposited into the~~
 154 ~~commission's trust fund to defray the administrative costs~~
 155 ~~associated with maintaining the registry. The commission may~~
 156 ~~impose an administrative fine, not to exceed \$500, on a facility~~
 157 ~~or community that knowingly submits false information in the~~
 158 ~~documentation required by this paragraph. Such fines shall be~~
 159 ~~deposited in the commission's trust fund. The registration and~~
 160 ~~documentation required by this paragraph shall not substitute~~
 161 ~~for proof of compliance with the requirements of this~~
 162 ~~subsection. Failure to comply with the requirements of this~~
 163 ~~paragraph shall not disqualify a facility or community that~~
 164 ~~otherwise qualifies for the exemption provided in this~~
 165 ~~subsection.~~

166
 167 A county or municipal ordinance regarding housing for older
 168 persons may not contravene the provisions of this subsection.

169 Section 5. Subsection (5) of section 760.31, Florida
 170 Statutes, is amended to read:

171 760.31 Powers and duties of commission.—The commission
 172 shall:

173 (5) Adopt rules necessary to implement ss. 760.20-760.37
 174 and govern the proceedings of the commission in accordance with

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175 chapter 120. Commission rules shall clarify terms used with
 176 regard to handicapped accessibility, exceptions from
 177 accessibility requirements based on terrain or site
 178 characteristics, and requirements related to housing for older
 179 persons. ~~Commission rules shall specify the fee and the forms
 180 and procedures to be used for the registration required by s.
 181 760.29(4)(c).~~

182 Section 6. Subsections (2) and (3) of section 760.60,
 183 Florida Statutes, are amended to read:

184 760.60 Discriminatory practices of certain clubs
 185 prohibited; remedies.-

186 (2) A person who has been discriminated against in
 187 violation of this act may file a complaint with the Commission
 188 on Human Relations or with the Attorney General's Office of
 189 Civil Rights. A complaint must be in writing and must contain
 190 such information and be in such form as the commission requires.
 191 Upon receipt of a complaint, the commission or the Attorney
 192 General shall provide a copy to the person who represents the
 193 club. Within 30 days after receiving a complaint, the commission
 194 or the Attorney General shall ~~investigate the alleged~~
 195 ~~discrimination and~~ give notice in writing to the person who
 196 filed the complaint if it intends to resolve the complaint. If
 197 the commission or the Attorney General decides to resolve the
 198 complaint, it shall attempt to eliminate or correct the alleged
 199 discriminatory practices of a club by informal methods of
 200 conference, conciliation, and persuasion.

201 (3) If the commission or the Attorney General fails, within
 202 30 days after receiving a complaint filed pursuant to subsection
 203 (2), to give notice of its intent to eliminate or correct the

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204 alleged discriminatory practices of a club, or if the commission
 205 or the Attorney General fails to resolve the complaint within 45
 206 ~~30~~ days after giving such notice, the person or the Attorney
 207 General on behalf of the person filing the complaint may
 208 commence a civil action in a court against the club, its
 209 officers, or its members to enforce this section. If the court
 210 finds that a discriminatory practice occurs at the club, the
 211 court may enjoin the club, its officers, or its members from
 212 engaging in such practice or may order other appropriate action.

213 Section 7. Subsections (1) and (2), paragraphs (d) and (e)
 214 of subsection (3), and paragraph (a) of subsection (4) of
 215 section 112.31895, Florida Statutes, are amended to read:

216 112.31895 Investigative procedures in response to
 217 prohibited personnel actions.-

218 (1) (a) If a disclosure under s. 112.3187 includes or
 219 results in alleged retaliation by an employer, the employee or
 220 former employee of, or applicant for employment with, a state
 221 agency, as defined in s. 216.011, that is so affected may file a
 222 complaint alleging a prohibited personnel action, which
 223 complaint must be made by filing a written complaint with the
 224 Office of the Chief Inspector General in the Executive Office of
 225 the Governor or the Florida Commission on Human Relations, no
 226 later than 60 days after the prohibited personnel action.

227 (b) Within 5 ~~three~~ working days after receiving a complaint
 228 under this section, the office or officer receiving the
 229 complaint shall acknowledge receipt of the complaint and provide
 230 copies of the complaint and any other preliminary information
 231 available concerning the disclosure of information under s.
 232 112.3187 to each of the other parties named in paragraph (a),

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233 which parties shall each acknowledge receipt of such copies to
234 the complainant.

235 (2) FACT FINDING.—The Florida Commission on Human Relations
236 shall:

237 (a) Receive any allegation of a personnel action prohibited
238 by s. 112.3187, including a proposed or potential action, and
239 conduct informal fact finding regarding any allegation under
240 this section, to the extent necessary to determine whether there
241 are reasonable grounds to believe that a prohibited personnel
242 action under s. 112.3187 has occurred, is occurring, or is to be
243 taken.

244 ~~(b) Notify the complainant, within 15 days after receiving~~
245 ~~a complaint, that the complaint has been received by the~~
246 ~~department.~~

247 (b)(e) Within 180 ~~90~~ days after receiving the complaint,
248 provide the agency head and the complainant with a fact-finding
249 report that may include recommendations to the parties or
250 proposed resolution of the complaint. The fact-finding report
251 shall be presumed admissible in any subsequent or related
252 administrative or judicial review.

253 (3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

254 (d) If the Florida Commission on Human Relations is unable
255 to conciliate a complaint within 35 ~~60~~ days after receipt of the
256 fact-finding report, the Florida Commission on Human Relations
257 shall terminate the investigation. Upon termination of any
258 investigation, the Florida Commission on Human Relations shall
259 notify the complainant and the agency head of the termination of
260 the investigation, providing a summary of relevant facts found
261 during the investigation and the reasons for terminating the

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262 investigation. A written statement under this paragraph is
263 presumed admissible as evidence in any judicial or
264 administrative proceeding but is not admissible without the
265 consent of the complainant.

266 (e)1. The Florida Commission on Human Relations may request
267 an agency or circuit court to order a stay, on such terms as the
268 court requires, of any personnel action for 45 days if the
269 Florida Commission on Human Relations determines that reasonable
270 grounds exist to believe that a prohibited personnel action has
271 occurred, is occurring, or is to be taken. The Florida
272 Commission on Human Relations may request that such stay be
273 extended for appropriate periods of time.

274 2. If, in connection with any investigation, the Florida
275 Commission on Human Relations determines that reasonable grounds
276 exist to believe that a prohibited action has occurred, is
277 occurring, or is to be taken which requires corrective action,
278 the Florida Commission on Human Relations shall report the
279 determination together with any findings or recommendations to
280 the agency head and may report that determination and those
281 findings and recommendations to the Governor and the Chief
282 Financial Officer. The Florida Commission on Human Relations may
283 include in the report recommendations for corrective action to
284 be taken.

285 3. If, after 35 ~~20~~ days, the agency does not implement the
286 recommended action, the Florida Commission on Human Relations
287 shall terminate the investigation and notify the complainant of
288 the right to appeal under subsection (4), or may petition the
289 agency for corrective action under this subsection.

290 4. If the Florida Commission on Human Relations finds, in

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291 consultation with the individual subject to the prohibited
292 action, that the agency has implemented the corrective action,
293 the commission shall file such finding with the agency head,
294 together with any written comments that the individual provides,
295 and terminate the investigation.

296 (4) RIGHT TO APPEAL.—

297 (a) Not more than 21 ~~60~~ days after receipt of a notice of
298 termination of the investigation from the Florida Commission on
299 Human Relations, the complainant may file, with the Public
300 Employees Relations Commission, a complaint against the
301 employer-agency regarding the alleged prohibited personnel
302 action. The Public Employees Relations Commission shall have
303 jurisdiction over such complaints under ss. 112.3187 and
304 447.503(4) and (5).

305 Section 8. This act shall take effect July 1, 2019.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Judiciary Committee

Subject: Committee Agenda Request

Date: March 13, 2019

I respectfully request that **Senate Bill # 440**, relating to the Florida Commission on Human Relations, be placed on the:

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

A handwritten signature in cursive script that reads "Darryl Rouson".

Senator Darryl Rouson
Florida Senate, District 19

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/19

Meeting Date

440

Bill Number (if applicable)

Topic FL Commission on Human Relations

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address Bo S Bronough St

Phone 521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: For Against Information

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

Representing FL Chamber of Commerce

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

18 March 2019

Meeting Date

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

440

Bill Number (if applicable)

Topic FLHR Bill

Amendment Barcode (if applicable)

Name Christopher L. Turner

Job Title Deputy Director Legislative Affairs

Address 4075 Esplanade Way Room 100

Phone 850-901-8761

Street

Tallahassee, FL 32304

City

State

Zip

Email christopher.turner@fcht.myfloridachamber.com

Speaking: For Against Information

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

Representing Florida Commission on Human Relations

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 826

INTRODUCER: Judiciary Committee and Senator Rouson

SUBJECT: Towing-storage Operator Liens

DATE: March 20, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			IS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 826 revises the process for notifying a registered owner, insurance company, or lienholder that a vehicle or vessel has been towed or stored and that a lien has been placed on it for those services. The bill also revises the rights a vehicle or vessel owner or other specified party has to inspect, remove personal property, and recover a vehicle or vessel that has been towed and stored.

Currently, the towing-storage operator is responsible for sending a lien notice by certified mail to the interested parties. The bill prohibits the towing-storage operator from sending the notice and places that responsibility on a neutral entity called a third-party notification service that will send the notice by certified mail. The third-party notification service will receive the notice request through its website from the towing-storage operator, access specified databases to gather the necessary information, and electronically generate, print, and send by certified mail the notice on behalf of the towing company. The service must be approved by the Department of Highway Safety and Motor Vehicles and meet its qualifications.

The bill also requires a storage facility operator to permit an owner, the owner's agent, or a lienholder or insurance company representative to immediately inspect a towed vehicle or vessel and release the personal property in the vehicle or vessel to that person before paying any charges. Also, the bill specifies what evidence of ownership or other documents are required for a person to claim a motor vehicle or vessel in the possession of a towing-storage operator.

II. Present Situation:

Background

When someone is regularly engaged in the lawful business¹ of recovering, towing, or storing vehicles or vessels, he or she is entitled to have a lien on the vehicle or vessel for a reasonable towing and storage fee, if the vehicle is stored for at least 6 hours.² The person who claims a lien for recovery, towing, or storage services must give notice to the registered owner, the insurance company insuring the vehicle, and to anyone claiming a lien as disclosed in the records of the Department of Highway Safety and Motor Vehicles (DHSMV) or the records of a similar agency in another state where the vehicle is identified through a records check of the National Motor Vehicle Title Information System or a comparable system.³

Some have suggested that unscrupulous towing-storage operators do not comply with the lawful requirements for providing notice to an owner, insurance company, or lienholder. They submit false information or even an empty envelope to prevent the owner, insurance company, or lienholder from being able to recover a vehicle or vessel. Moreover, some have also stated that unscrupulous towing-storage operators do not permit people to inspect or retrieve their personal items from a towed or stored vehicle upon request and do not surrender vehicles and vessels to their rightful owners when towing and storage fees are fully paid.

Notice Requirements

When the Owner, Insurance Company, or Lienholder is Located

The notice must be sent by certified mail⁴ within 7 business days after the date of storage to the registered owner, the insurance company insuring the vehicle, and all people of record claiming a lien against the vehicle or vessel. The notice must state that the item is held and include the following:

- A lien is claimed;
- Charges have accrued and the amount of the charges;
- The lien is subject to enforcement pursuant to law;
- The owner or lienholder, if any, has the right to a hearing as set forth in statute; and
- Any unclaimed vehicle or vessel that remains unclaimed or for which the charges remain unpaid, may be sold free of all prior liens after 35 days if the item is more than 3 years old or after 50 days if the item is 3 years old or less.⁵

¹ Section 713.78(2), F.S., states that a person is entitled to have a lien on the vehicle or vessel for a reasonable towing fee and for a reasonable storage fee whenever he or she is regularly engaged in the business of transporting vehicles or vessels by wrecker, tow truck, or car carrier and recovers, removes, or stores a vehicle or vessel based upon the instructions from: the owner; the owner or lessor, or a person authorized by the owner or lessor, of property on which the vehicle or vessel is wrongfully parked and the removal is done in compliance with s. 715.07; the landlord or a person authorized by the landlord when the vehicle or vessel remained on the premises after the tenancy terminated and the removal is done in compliance with s. 83.806 or s. 715.104, or any law enforcement agency.

² Section 713.78(2), F.S.

³ Section 713.78(4)(a), F.S.

⁴ Certified mail is described as “a special USPS service that provides proof of mailing via a receipt to the sender.” With electronic tracking, a sender is notified when the mail is delivered or that an attempted delivery was made.

<https://www.stamps.com/usps/what-is-certified-mail/>.

⁵ Section 713.78(4)(c), F.S.

When the Owner or Lienholder is not Located

If the attempts to locate the name and address of the owner or lienholder are not successful, then the towing-storage operator must, after 7 working days from the initial tow and storage, excluding Saturday and Sunday, provide a written notice:

- To the public agency of jurisdiction where the vehicle or vessel is stored;
- Using certified mail or acknowledged hand delivery;
- Stating that the company has not been able to locate the name and address of the owner or lienholder;
- That a physical search of the vehicle or vessel has not disclosed ownership information; and
- A “good faith effort”⁶ has been made, including records checks to the DHSMV database and the National Motor Vehicle Title Information System or a comparable system.⁷

Public Sale, Notice by Certified Mail and Publication in Newspaper

A lawfully stored vehicle or vessel that remains unclaimed or one for which reasonable charges for recovery, towing, or storing remain unpaid, and any contents that are not released pursuant to law,⁸ may be sold by the owner or operator of the storage space for the towing or storage charge after 35 days from the time the vehicle is stored if the vehicle is more than 3 years old, or after 50 days if the vehicle or vessel is 3 years old or less. The sale must be a public sale for cash.⁹

If the date of the sale was not included in the notice, then notice of the sale must be given to the person in whose name the vehicle or vessel is registered and to all people claiming a lien on the vehicle or vessel as stated on the DHSMV records or records of a similar agency in another state identified through the National Motor Vehicle Title Information System or an equivalent system. The notice must be sent by certified mail to the owner and the person having a recorded lien at the address shown on the records of the registering agency. The notice may not be mailed less than 15 days before the date of the sale. If, after a diligent search and inquiry, the name and address of the registered owner or the owner of record lien cannot be determined, then there is no need to follow the requirements of notice by mail. In addition to the notice by mail, a public notice of the time and location of the sale must be published once, at least 10 days before the date of the sale, in a newspaper of general circulation in the county where the sale will be held. The proceeds of the sale, after payment of reasonable towing and storage charges and costs of the sale, are then deposited with the clerk of the circuit court for the county if the owner or lienholder is absent and the clerk shall hold the proceeds subject to the claim of the lienholder who is entitled to them.¹⁰

⁶ Eleven checks or requirements that constitute a “good faith effort” by the company to establish a prior state of registration and title are set forth in s. 713.78(4)(d), F.S. Among those requirements are checking DHSMV and national databases, checking the vehicle for any type of tag or tag record, checking the law enforcement report for tag number or identifying information if law enforcement requested the tow, checking the trip sheet or tow ticket, checking the law enforcement report for an out-of-state address if indicated from the driver license information, checking for an inspection sticker or decal that may indicate a state for possible registration, checking the interior of the vehicle for information regarding a state of registration, and checking for a vehicle identification number.

⁷ Section 713.78(4)(d), F.S.

⁸ See 713.78(1), F.S.

⁹ Section 713.78(6), F.S.

¹⁰ *Id.*

Whoever violates the notice provisions contained in section 713.78(4), F.S. is guilty of a first degree misdemeanor which is punishable by a fine that does not exceed \$1,000¹¹ and imprisonment that does not exceed 1 year.¹²

Recovery of a Vehicle or Vessel from a Towing-Storage Operator

Section 713.78(10), F.S., provides that towing and storage operators must permit vehicle or vessel owners, lienholders, insurance company representatives, or agents to inspect a towed vehicle or vessel and release to that person all personal property that was not affixed when the vehicle or vessel came into the custody of the towing or storage operator. The authorization of agency must be documented in an original writing acknowledged by the owner before a notary public or someone authorized to administer oaths. This subsection, however, does not provide guidance on how an interested party may take possession of the vehicle or vessel once it has been towed or stored.

Whoever violates the inspection provisions contained in s. 713.78 (10) , F.S., is guilty of a third degree felony which is punishable by a fine that does not exceed \$5,000¹³ and imprisonment that does not exceed 5 years.¹⁴

III. Effect of Proposed Changes:

Changes Made to the Process for Sending Notices to Interested Parties

The bill changes the current procedure for notifying a registered owner, insurance company, or lienholder that a vehicle or vessel has been towed or stored. By creating an independent third party, as a buffer, to send a notice to the intended recipient by certified mail, the bill reduces the possibility that a towing-storage operator would dishonestly send incomplete or inaccurate information or even an empty envelope as a lien notice to the interested parties.

When the Owner, Insurance Company, or Lienholder is Located

Under the bill, a towing-storage operator will send a notice through a “third-party notification service,” to the registered owner, insurance company, and lienholders by certified mail, within 7 business days after storing a vehicle or vessel. The third-party notification service, discussed below, must be approved by DHSMV.

When the Owner or Lienholder is not Located

If attempts to locate the name and address of the owner or lienholder are not successful after 7 business days¹⁵ of the initial tow or storage, the towing-storage operator, working through a third-party notification service, must send notice by certified mail to the public agency of jurisdiction where the vehicle or vessel is stored and let the agency know: where the vehicle or vessel is stored, that the towing-storage company has not been able to locate the name and

¹¹ Section 775.083(1)(d), F.S.

¹² Section 775.082(4)(a), F.S.

¹³ Section 775.083(1)(c), F.S.

¹⁴ Section 775.082(3)(e), F.S.

¹⁵ The bill provides a window of “7 business days” for attempts to locate the interested parties before notifying the public agency of jurisdiction. Current law provides for 7 working days, excluding Saturday and Sunday.

address for the owner or lienholder; a physical search of the vehicle or vessel has not provided ownership information and a good faith effort has been made, including records checks of the databases of DHSMV and the National Motor Vehicle Title Information System or an equivalent system.

Third-Party Notification Service

A “third-party notification service” is defined as a qualified business entity that, upon a request submitted through a website by a towing-storage operator:

- Accesses the DHSMV’s vehicle database and the National Motor Vehicle Title Information System to obtain any owner, lienholder, or insurer information necessary for sending a notice required by this section;
- Electronically generates and provides for the printing and mailing of the notice on behalf of the towing-storage operator;
- Electronically returns tracking information or other proof of mailing and delivery of the notice to the towing-storage operator; and
- Electronically reports to DHSMV, through an electronic data exchange process that uses the Internet, necessary information, as applicable, related to the notice.

The information that must be reported to the DHSMV includes:

- The vehicle identification number or vessel hull identification number;
- The license plate number;
- The name and address of the towing-storage operator;
- The physical location of the vehicle or vessel;
- The date of the tow;
- The amount of towing and storage charges owed when the notice is generated; and
- The date the notice is mailed and delivered.

A third-party notification service must apply to DHSMV and be approved in order to provide notice services. The DHSMV will prescribe an application format and approve an applicant if the applicant:

- Provides a performance bond of \$1 million issued by a surety company that is authorized to do business in the state;
- Submits an acceptable level 2 internal control and data security audit, or its equivalent, from an independent certified public accountant licensed in the state, and the audit must have been conducted within 1 year before applying to DHSMV; and
- Successfully demonstrates an ability to electronically report to the DHSMV the required information related to a lien notice through an electronic data exchange process that uses the Internet.

In order to remain eligible to provide notices, a service must annually provide DHSMV with proof that it has maintained the performance bond and annually submit to DHSMV an acceptable audit conducted within the previous year.

The DHSMV may deny, suspend, or revoke approval of a service if it determines that the service has committed an act of fraud or misrepresentation related to a notice required by this bill.

A third-party notification service must maintain all notice-related records for 5 years and allow the DHSMV to inspect and copy the records upon request. The records may be maintained in an electronic format.

Default Provision If No Third-Party Notification Services Are Approved

If no third-party notification services are approved by DHSMV, the towing-storage operator may send any notice required by this section of statutes on its own behalf. However, if a towing-storage operator submits an application for a certificate of title or certificate of destruction, then it must submit proof to DHSMV that it has complied with the statutory requirements of obtaining title and the certificate of destruction.¹⁶

Recovery of a Vehicle or Vessel from a Towing-Storage Operator

The bill also revises the rights a vehicle or vessel owner or interested party has to inspect and recover a vehicle or vessel that has been towed and stored. Under existing law, a storage facility operator must permit an owner, the owner's agent, a lienholder, or insurance company representative to inspect a towed vehicle or vessel. The bill requires that the towing-storage operator fulfill this duty and immediately release the personal property contained in the vehicle or vessel to that person before the vehicle owner or other party pays any charges. The personal property is defined as the property that is not affixed to the vehicle or vessel and that was in the vehicle or vessel at the time that it came into the custody of the towing-storage operator.

Additionally, the bill specifies what supporting documents are required for a person, including an owner, lienholder, or insurer, to be authorized to take possession of a motor vehicle or vessel held by a towing-storage operator upon the payment for service. These supporting documents include evidence of ownership, a recorded claim of lien, a vehicle or vessel registration, a lease or contract, a title certificate or electronic title, or a lien sale notice. Existing law did not specify any particular documentation required to have authority to claim a vehicle or vessel.

The bill takes effect January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁶ When a vehicle or vessel is going to be sold for purposes of being dismantled, destroyed, or changed such that it is not the one described in the certificate of title, the towing-storage operator must report it to the National Motor Vehicle Title Information System and apply to DHSMV for a certificate of destruction. The certificate authorizes the dismantling or destruction of the vehicle or vessel. The application for a certificate of destruction must include proof of reporting to the National Motor Vehicle Title Information System and an affidavit from the applicant that it has complied with all applicable requirements. Section 713.78(11)(a), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Towing-storage operators will likely incur additional costs to use electronic third-party mailing service. The costs are unknown at this time.

C. Government Sector Impact:

No agency analysis has been supplied at this time. However, the bill could result in a fiscal impact to DHSMV but that amount has not been determined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 713.78 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 March 18, 2019:

The committee substitute makes the following changes to the underlying bill:

- The term “electronic third-party mailing service” is replaced with the term “third party notification service” throughout the bill.

- A new provision is added to the bill which gives certain enumerated people the right to immediately inspect a vehicle or vessel and take possession of personal property inside. This subsection also states that, upon receiving proper documentation and payment for services and fees, a towing-storage operator must release the vehicle or vessel to the person who pays the charges.
- Provisions are added detailing what a third party notification service must provide to DHSMV to qualify for approval.
- A default provision is inserted which states that, if no third-party notification services qualify with DHSMV, then the towing-storage operator may send notices but must provide proof of compliance with the section.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Rouson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (c) and (d) of subsection (4),
subsection (6), and subsection (10) of section 713.78, Florida
Statutes, are amended, and subsection (14) is added to that
section, to read:

713.78 Liens for recovering, towing, or storing vehicles
and vessels.—

(4)



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12 (c) ~~Notice by certified mail shall be sent~~ Within 7
13 business days after the date of storage of the vehicle or
14 vessel, the towing-storage operator shall, through a third-party
15 notification service approved by the Department of Highway
16 Safety and Motor Vehicles, send notice by certified mail to the
17 registered owner, the insurance company insuring the vehicle
18 notwithstanding the provisions of s. 627.736, and all persons of
19 record claiming a lien against the vehicle or vessel. The notice
20 must ~~It shall~~ state the fact of possession of the vehicle or
21 vessel, that a lien as provided in subsection (2) is claimed,
22 that charges have accrued and the amount thereof, that the lien
23 is subject to enforcement pursuant to law, and that the owner or
24 lienholder, if any, has the right to a hearing as set forth in
25 subsection (5), and that any vehicle or vessel which remains
26 unclaimed, or for which the charges for recovery, towing, or
27 storage services remain unpaid, may be sold free of all prior
28 liens after 35 days if the vehicle or vessel is more than 3
29 years of age or after 50 days if the vehicle or vessel is 3
30 years of age or less.

31 (d) If attempts to locate the name and address of the owner
32 or lienholder prove unsuccessful, ~~the towing-storage operator~~
33 ~~shall,~~ after 7 business working days, excluding Saturday and
34 Sunday, of the initial tow or storage, the towing-storage
35 operator, through a third-party notification service approved by
36 the Department of Highway Safety and Motor Vehicles, shall send
37 notice by certified mail to ~~notify~~ the public agency of
38 jurisdiction where the vehicle or vessel is stored ~~in writing by~~
39 ~~certified mail or acknowledged hand delivery~~ that the towing-
40 storage company has been unable to locate the name and address



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41 of the owner or lienholder and a physical search of the vehicle
42 or vessel has disclosed no ownership information and a good
43 faith effort has been made, including records checks of the
44 Department of Highway Safety and Motor Vehicles database and the
45 National Motor Vehicle Title Information System or an equivalent
46 commercially available system. For purposes of this paragraph
47 and subsection (9), "good faith effort" means that the following
48 checks have been performed by the company to establish prior
49 state of registration and for title:

50 1. Check of the Department of Highway Safety and Motor
51 Vehicles database for the owner and any lienholder.

52 2. Check of the electronic National Motor Vehicle Title
53 Information System or an equivalent commercially available
54 system to determine the state of registration when there is not
55 a current registration record for the vehicle on file with the
56 Department of Highway Safety and Motor Vehicles.

57 3. Check of vehicle or vessel for any type of tag, tag
58 record, temporary tag, or regular tag.

59 4. Check of law enforcement report for tag number or other
60 information identifying the vehicle or vessel, if the vehicle or
61 vessel was towed at the request of a law enforcement officer.

62 5. Check of trip sheet or tow ticket of tow truck operator
63 to see if a tag was on vehicle or vessel at beginning of tow, if
64 private tow.

65 6. If there is no address of the owner on the impound
66 report, check of law enforcement report to see if an out-of-
67 state address is indicated from driver license information.

68 7. Check of vehicle or vessel for inspection sticker or
69 other stickers and decals that may indicate a state of possible



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70 registration.

71 8. Check of the interior of the vehicle or vessel for any
72 papers that may be in the glove box, trunk, or other areas for a
73 state of registration.

74 9. Check of vehicle for vehicle identification number.

75 10. Check of vessel for vessel registration number.

76 11. Check of vessel hull for a hull identification number
77 which should be carved, burned, stamped, embossed, or otherwise
78 permanently affixed to the outboard side of the transom or, if
79 there is no transom, to the outmost seaboard side at the end of
80 the hull that bears the rudder or other steering mechanism.

81 (6) Any vehicle or vessel which is stored pursuant to
82 subsection (2) and which remains unclaimed, or for which
83 reasonable charges for recovery, towing, or storing remain
84 unpaid, and any contents not released pursuant to subsection
85 (10), may be sold by the owner or operator of the storage space
86 for such towing or storage charge after 35 days from the time
87 the vehicle or vessel is stored therein if the vehicle or vessel
88 is more than 3 years of age or after 50 days following the time
89 the vehicle or vessel is stored therein if the vehicle or vessel
90 is 3 years of age or less. The sale shall be at public sale for
91 cash. If the date of the sale was not included in the notice
92 required in subsection (4), notice of the sale shall be given to
93 the person in whose name the vehicle or vessel is registered and
94 to all persons claiming a lien on the vehicle or vessel as shown
95 on the records of the Department of Highway Safety and Motor
96 Vehicles or of any corresponding agency in any other state in
97 which the vehicle is identified through a records check of the
98 National Motor Vehicle Title Information System or an equivalent



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99 commercially available system as being titled. The towing-
100 storage operator, through a third-party notification service
101 approved by the Department of Highway Safety and Motor Vehicles,
102 shall send notice ~~shall be sent~~ by certified mail to the owner
103 of the vehicle or vessel and the person having the recorded lien
104 on the vehicle or vessel at the address shown on the records of
105 the registering agency and shall be mailed not less than 15 days
106 before the date of the sale. After diligent search and inquiry,
107 if the name and address of the registered owner or the owner of
108 the recorded lien cannot be ascertained, the requirements of
109 notice by mail may be dispensed with. In addition to the notice
110 by mail, public notice of the time and place of sale shall be
111 made by publishing a notice thereof one time, at least 10 days
112 before ~~prior to~~ the date of the sale, in a newspaper of general
113 circulation in the county in which the sale is to be held. The
114 proceeds of the sale, after payment of reasonable towing and
115 storage charges, and costs of the sale, in that order of
116 priority, shall be deposited with the clerk of the circuit court
117 for the county if the owner or lienholder is absent, and the
118 clerk shall hold such proceeds subject to the claim of the owner
119 or lienholder legally entitled thereto. The clerk shall be
120 entitled to receive 5 percent of such proceeds for the care and
121 disbursement thereof. The certificate of title issued under this
122 law shall be discharged of all liens unless otherwise provided
123 by court order. The owner or lienholder may file a complaint
124 after the vehicle or vessel has been sold in the county court of
125 the county in which it is stored. Upon determining the
126 respective rights of the parties, the court may award damages,
127 ~~attorney's fees,~~ and costs in favor of the prevailing party.



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128 (10) Persons who provide services pursuant to this section
129 shall permit:

130 (a) A vehicle or vessel owner, a lienholder, or an owners,
131 lienholders, insurance company representative, upon presentation
132 of documentation of ownership or recorded claim of lien,
133 including the vehicle or vessel registration, lease or contract,
134 title certificate, electronic title, or lien sale notice; or

135 (b) An agent of the vehicle or vessel owner
136 representatives, or their agents, which agency is evidenced by
137 an original writing acknowledged by the owner before a notary
138 public or other person empowered by law to administer oaths,
139
140 immediately upon his or her arrival at the storage facility and
141 before payment of any charges, to inspect the towed vehicle or
142 vessel and shall release to the owner, lienholder, or agent the
143 vehicle, vessel, or all personal property not affixed to the
144 vehicle or vessel which was in the vehicle or vessel at the time
145 the vehicle or vessel came into the custody of the person
146 providing such services. Upon receiving the documentation
147 required under paragraph (a) or paragraph (b) and payment of the
148 towing and storage charges, the person providing such services
149 must release the vehicle or vessel to the owner, lienholder, or
150 agent who paid the charges.

151 (14) (a) For purposes of this section, the term "third-party
152 notification service" means a qualified business entity that,
153 upon a request submitted through a website by a towing-storage
154 operator:

155 1. Accesses the Department of Highway Safety and Motor
156 Vehicles' database and the National Motor Vehicle Title



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157 Information System to obtain any owner, lienholder, or insurer
158 information necessary for sending a notice required by this
159 section;

160 2. Electronically generates, and provides for the printing
161 and mailing of, the notice on behalf of the towing-storage
162 operator;

163 3. Electronically returns tracking information or other
164 proof of mailing and delivery of the notice to the towing-
165 storage operator; and

166 4. Electronically reports to the Department of Highway
167 Safety and Motor Vehicles, through an electronic data exchange
168 process that uses the Internet, the following information, as
169 applicable, related to the notice:

170 a. The vehicle identification number or vessel hull
171 identification number;

172 b. The license plate number;

173 c. The name and address of the towing-storage operator;

174 d. The physical location of the vehicle or vessel;

175 e. The date of the tow;

176 f. The amount of towing and storage charges owed when the
177 notice is generated; and

178 g. The date the notice is mailed and delivered.

179 (b) A third-party notification service must apply to the
180 Department of Highway Safety and Motor Vehicles and be approved
181 in order to provide notices under this section. The department
182 shall prescribe the format for such applications. The department
183 may approve a third-party notification service applicant as
184 qualified to provide the services described in paragraph (a) if
185 the applicant:



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186 1. Provides the department with a performance bond in the
187 amount of \$1 million issued by a surety company authorized to do
188 business in this state;

189 2. Submits an acceptable level 2 internal control and data
190 security audit, or the equivalent, from an independent certified
191 public accountant licensed in this state, which audit must have
192 been conducted within 1 year before applying to the department;
193 and

194 3. Successfully demonstrates its ability to electronically
195 report to the department the required information related a
196 towing-storage notice through an electronic data exchange
197 process that uses the Internet.

198
199 To remain eligible to provide notices under this section, an
200 approved third-party notification service must annually provide
201 the department with proof it has maintained the performance bond
202 required under subparagraph 1. and must annually submit to the
203 department an acceptable audit required under subparagraph 2.
204 which was conducted within 1 year after the previously submitted
205 audit.

206 (c) The department may deny, suspend, or revoke approval of
207 a third-party notification service if the department determines
208 that the third-party notification service has committed an act
209 of fraud or misrepresentation related to a notice required by
210 this section.

211 (d) A third-party notification service must maintain all
212 records related to providing notices under this section for 5
213 years and allow the department to inspect and copy such records
214 upon request. The records may be maintained in electronic



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215 format.

216 (e) In the event there are no third-party notification
217 services approved by the department, the towing-storage operator
218 may send any notice required by this section on its own behalf
219 and must, upon submission of an application for a certificate of
220 title or certificate of destruction, submit proof of compliance
221 with this section.

222 Section 2. This act shall take effect July 1, 2019.

223
224 ===== T I T L E A M E N D M E N T =====

225 And the title is amended as follows:

226 Delete everything before the enacting clause
227 and insert:

228 A bill to be entitled
229 An act relating to towing-storage operator liens;
230 amending s. 713.78, F.S.; requiring certain lien
231 notices be sent through a third-party notification
232 service; deleting a provision authorizing the award of
233 attorney fees to the prevailing party in court
234 proceedings determining the respective rights of
235 owners or lienholders of vehicles or vessels and
236 towing-storage operators; revising requirements for
237 the inspection and release of vehicles or vessels and
238 personal property in such vehicles or vessels;
239 defining the term "third-party notification service";
240 requiring third-party notification services to apply
241 to the Department of Highway Safety and Motor Vehicles
242 for approval; authorizing the department to approve an
243 application if certain conditions are met; requiring



917578

244 approved third-party notification services to provide
245 the department with proof that it has maintained the
246 performance bond; requiring approved third-party
247 notification services to submit a specified annual
248 audit to the department; authorizing the department to
249 deny, suspend, or revoke its approval under certain
250 circumstances; requiring a third-party notification
251 service to maintain certain records for a specified
252 period and allow for the inspection and copying of
253 such records by the department; authorizing towing-
254 storage operators to send notices on their own behalf
255 if there are no approved third-party notification
256 services; providing an effective date.



341992

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Rouson) recommended the following:

Senate Amendment to Amendment (917578)

Delete line 222

and insert:

Section 2. This act shall take effect January 1, 2020.

By Senator Rouson

19-01178-19

2019826__

A bill to be entitled

An act relating to towing-storage operator liens; amending s. 713.78, F.S.; requiring that certain lien notices be sent through an electronic third-party mailing service; defining the term "electronic third-party mailing service"; requiring electronic third-party mailing services to apply to the Department of Highway Safety and Motor Vehicles for approval; requiring the department to approve an application if certain conditions are met; authorizing the department to deny, suspend, or revoke its approval under certain circumstances; requiring an electronic third-party mailing service to maintain certain records for a specified timeframe and to allow inspection of such records by the department; requiring the department to adopt rules; providing an effective date.

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

Section 1. Paragraphs (c) and (d) of subsection (4) and subsection (6) of section 713.78, Florida Statutes, are amended, and subsection (14) is added to that section, to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.—

(4)

(c) ~~Notice by certified mail shall be sent~~ Within 7 business days after the date of storage of the vehicle or vessel, the towing-storage operator shall, through an electronic third-party mailing service approved by the Department of

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Highway Safety and Motor Vehicles, send notice by certified mail to the registered owner, the insurance company insuring the vehicle notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against the vehicle or vessel. ~~The notice must~~ ~~it shall~~ state the fact of possession of the vehicle or vessel, that a lien as provided in subsection (2) is claimed, that charges have accrued and the amount thereof, that the lien is subject to enforcement pursuant to law, and that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (5), and that any vehicle or vessel which remains unclaimed, or for which the charges for recovery, towing, or storage services remain unpaid, may be sold free of all prior liens after 35 days if the vehicle or vessel is more than 3 years of age or after 50 days if the vehicle or vessel is 3 years of age or less.

(d) If attempts to locate the name and address of the owner or lienholder prove unsuccessful, ~~the towing-storage operator shall, after 7 business working days, excluding Saturday and Sunday,~~ of the initial tow or storage, the towing-storage operator, through an electronic third-party mailing service approved by the Department of Highway Safety and Motor Vehicles, shall send notice by certified mail to notify the public agency of jurisdiction where the vehicle or vessel is stored ~~in writing by certified mail or acknowledged hand delivery~~ that the towing-storage company has been unable to locate the name and address of the owner or lienholder and a physical search of the vehicle or vessel has disclosed no ownership information and a good faith effort has been made, including records checks of the Department of Highway Safety and Motor Vehicles database and the

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59 National Motor Vehicle Title Information System or an equivalent
60 commercially available system. For purposes of this paragraph
61 and subsection (9), "good faith effort" means that the following
62 checks have been performed by the company to establish prior
63 state of registration and for title:

64 1. Check of the Department of Highway Safety and Motor
65 Vehicles database for the owner and any lienholder.

66 2. Check of the electronic National Motor Vehicle Title
67 Information System or an equivalent commercially available
68 system to determine the state of registration when there is not
69 a current registration record for the vehicle on file with the
70 Department of Highway Safety and Motor Vehicles.

71 3. Check of vehicle or vessel for any type of tag, tag
72 record, temporary tag, or regular tag.

73 4. Check of law enforcement report for tag number or other
74 information identifying the vehicle or vessel, if the vehicle or
75 vessel was towed at the request of a law enforcement officer.

76 5. Check of trip sheet or tow ticket of tow truck operator
77 to see if a tag was on vehicle or vessel at beginning of tow, if
78 private tow.

79 6. If there is no address of the owner on the impound
80 report, check of law enforcement report to see if an out-of-
81 state address is indicated from driver license information.

82 7. Check of vehicle or vessel for inspection sticker or
83 other stickers and decals that may indicate a state of possible
84 registration.

85 8. Check of the interior of the vehicle or vessel for any
86 papers that may be in the glove box, trunk, or other areas for a
87 state of registration.

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88 9. Check of vehicle for vehicle identification number.

89 10. Check of vessel for vessel registration number.

90 11. Check of vessel hull for a hull identification number
91 which should be carved, burned, stamped, embossed, or otherwise
92 permanently affixed to the outboard side of the transom or, if
93 there is no transom, to the outmost seaboard side at the end of
94 the hull that bears the rudder or other steering mechanism.

95 (6) Any vehicle or vessel which is stored pursuant to
96 subsection (2) and which remains unclaimed, or for which
97 reasonable charges for recovery, towing, or storing remain
98 unpaid, and any contents not released pursuant to subsection
99 (10), may be sold by the owner or operator of the storage space
100 for such towing or storage charge after 35 days from the time
101 the vehicle or vessel is stored therein if the vehicle or vessel
102 is more than 3 years of age or after 50 days following the time
103 the vehicle or vessel is stored therein if the vehicle or vessel
104 is 3 years of age or less. The sale shall be at public sale for
105 cash. If the date of the sale was not included in the notice
106 required in subsection (4), notice of the sale shall be given to
107 the person in whose name the vehicle or vessel is registered and
108 to all persons claiming a lien on the vehicle or vessel as shown
109 on the records of the Department of Highway Safety and Motor
110 Vehicles or of any corresponding agency in any other state in
111 which the vehicle is identified through a records check of the
112 National Motor Vehicle Title Information System or an equivalent
113 commercially available system as being titled. The towing-
114 storage operator, through an electronic third-party mailing
115 service approved by the Department of Highway Safety and Motor
116 Vehicles, shall send notice ~~shall be sent~~ by certified mail to

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117 the owner of the vehicle or vessel and the person having the
 118 recorded lien on the vehicle or vessel at the address shown on
 119 the records of the registering agency and shall be mailed not
 120 less than 15 days before the date of the sale. After diligent
 121 search and inquiry, if the name and address of the registered
 122 owner or the owner of the recorded lien cannot be ascertained,
 123 the requirements of notice by mail may be dispensed with. In
 124 addition to the notice by mail, public notice of the time and
 125 place of sale shall be made by publishing a notice thereof one
 126 time, at least 10 days ~~before~~ ~~prior to~~ the date of the sale, in
 127 a newspaper of general circulation in the county in which the
 128 sale is to be held. The proceeds of the sale, after payment of
 129 reasonable towing and storage charges, and costs of the sale, in
 130 that order of priority, shall be deposited with the clerk of the
 131 circuit court for the county if the owner or lienholder is
 132 absent, and the clerk shall hold such proceeds subject to the
 133 claim of the owner or lienholder legally entitled thereto. The
 134 clerk shall be entitled to receive 5 percent of such proceeds
 135 for the care and disbursement thereof. The certificate of title
 136 issued under this law shall be discharged of all liens unless
 137 otherwise provided by court order. The owner or lienholder may
 138 file a complaint after the vehicle or vessel has been sold in
 139 the county court of the county in which it is stored. Upon
 140 determining the respective rights of the parties, the court may
 141 award damages, attorney's fees, and costs in favor of the
 142 prevailing party.

143 (14) (a) As used in this section, the term "electronic
 144 third-party mailing service" means a person who, upon a request
 145 submitted through a website by a towing-storage operator:

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146 1. Obtains the owner, lienholder, or insurer information,
 147 as applicable, for a vehicle or vessel from the Department of
 148 Highway Safety and Motor Vehicles;
 149 2. Prepares or assists the towing-storage operator in
 150 preparing a notice required by this section through the website;
 151 3. Prints and sends the notice to the intended recipient by
 152 certified mail; and
 153 4. Electronically returns tracking information or other
 154 proof of mailing and delivery of the notice to the towing-
 155 storage operator.
 156 (b) An electronic third-party mailing service shall apply
 157 to and must be approved by the department to be eligible to
 158 provide services under this section. The department shall
 159 prescribe the format for such applications. The department shall
 160 approve an electronic third-party mailing service if the
 161 applicant demonstrates to the satisfaction of the department
 162 that it is qualified to provide the services described in
 163 paragraph (a). The department may deny, suspend, or revoke
 164 approval of an electronic third-party mailing service if the
 165 department determines that the electronic third-party mailing
 166 service has committed an act of fraud or misrepresentation
 167 related to a notice required by this section.
 168 (c) An electronic third-party mailing service shall
 169 maintain all records related to the provision of services under
 170 this section for 3 years and must allow the department to
 171 inspect such records upon request. The records may be maintained
 172 in electronic format.
 173 (d) The department shall adopt rules to administer this
 174 section.

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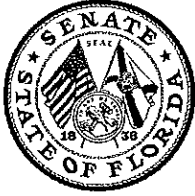
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19-01178-19

2019826__

175

Section 2. This act shall take effect July 1, 2019.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Judiciary Committee

Subject: Committee Agenda Request

Date: February 19, 2019

I respectfully request that **Senate Bill # 826**, relating to Towing-storage Operator Liens, be placed on the:

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

A handwritten signature in cursive script that reads "Darryl Rouson".

Senator Darryl Rouson
Florida Senate, District 19

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18 Meeting Date

826 Bill Number (if applicable)

Topic Towing

Amendment Barcode (if applicable)

Name Jose Diaz

Job Title

Address 108 E. Jefferson St Street

Phone 850-294-7583

Tallahassee FL 32301 City State Zip

Email jdiazjr@aol.com

Speaking: [X] For [] Against [] Information

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

Representing Professional Wrecker Operators of Florida

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)

3-18

Meeting Date

826

Bill Number (if applicable)

Topic Tow Trucks

Amendment Barcode (if applicable)

Name Mike Seamon

Job Title Executive Director

Address 4718 Edgewater Dr

Phone 407-402-1040

Orlando FL 32804
City State Zip

Email MSeamon@Hotmail.com

Speaking: For Against Information

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

Representing Professional Wrecker Operators 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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1140

INTRODUCER: Judiciary Committee and Senator Hutson

SUBJECT: Attorney Fees and Costs

DATE: March 19, 2019

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1140 authorizes the payment of attorney fees and costs to the prevailing party in an action challenging the adoption or enforcement of a local government ordinance on preemption grounds if a court finds that the subject of the ordinance has been expressly preempted by the Constitution or state law. However, a local government may avoid liability for attorney fees and costs if the challenged ordinance is repealed or withdrawn within 21 days of either (1) receiving written notice of the claim or (2) the filing of a motion for attorney fees, whichever is earlier.

The bill provides that the payment of attorney fees and costs is supplemental to all other sanctions and remedies.

The bill provides for a July 1, 2019, effective date and for retroactive application to cases pending on July 1, 2019.

II. Present Situation:

Attorney Fees and Costs: The “American Rule”

Although England and the United States share the same common law origins, the two nations have taken different positions concerning who pays attorney fees and costs in a lawsuit.¹ Under the “English Rule,” the “loser pays” attorney fees and costs to the prevailing party as part of that party’s overall damages award.² However, under the “American Rule,” each party to a lawsuit is responsible for his or her own attorney fees and costs no matter who wins.³

There are, however, two exceptions to the “American Rule” in Florida. First, the prevailing party may recover attorney fees and costs from the losing party if authorized by statute. Second, the prevailing party may recover attorney fees and costs from the losing party in a contract dispute by prior agreement of the parties to include a “prevailing party provision” in their contract.⁴

Statutory Exceptions to the “American Rule”

Sanctions

When a statutory exception to the “American Rule” is enacted, it may be intended as a sanction or a punitive measure to curtail certain practices. For example, in Florida, section 57.105, F.S. permits a party may to be sanctioned for filing a frivolous lawsuit in the form of paying the other party’s attorney’s fees and costs.⁵ Florida courts have noted that the purpose of this statutory exception to the “American Rule” is to “discourage baseless claims, stonewall defenses and sham appeals in civil litigation by placing a price tag through attorney’s fees awards on losing parties who engage in these activities.”⁶

¹ Aaron Bartholomew & Sharon Yamen, *The American Rule: The Genesis and Policy of the Enduring Legacy on Attorney Fee Awards*, 30 UTAH B.J., at 14 (September/October 2017) (discussing the history of the American Rule, the difference from the English Rule, and the rationale for each).

² *Id.* at 16. The English Rule is thought to discourage frivolous lawsuits, discourage driving up litigation costs during discovery, and make a party truly, completely whole. *Id.* at 16-17.

³ *Id.* at 14. The early rationale for the American Rule was to give the poor access to justice. The English Rule was seen effectively denying justice to the poor and because, even if the case was meritorious, the risk of paying the other party’s attorney fees and costs would serve as deterrent to filing suit. *Id.* at 17. However, commentary suggests the American Rule has actually survived because lawyers are no longer under statutory fee regulations and are free to contract for fees with their clients, thus alleviating the need to recover the fees from the other party. *Id.* at 17-18.

⁴ *Id.*; *Price v. Tyler*, 890 So. 2d 246, 250 (Fla. 2004) (quoting *State Farm Fire & Cas. Co. v. Palma*, 629 So. 2d 830, 832 (Fla.1993) in parenthetical: “This Court has followed the ‘American Rule’ that attorney’s fees may be awarded by a court only when authorized by statute or by agreement of the parties.”).

⁵ Section 57.105(1), F.S. (“(1) Upon the court’s initiative or motion of any party, the court shall award a reasonable attorney’s fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party’s attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party’s attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial: (a) Was not supported by the material facts necessary to establish the claim or defense; or (b) Would not be supported by the application of then-existing law to those material facts.”).

⁶ *MC Liberty Express, Inc. v. All Points Services, Inc.*, 252 So. 3d 397, 402 (Fla. 3d DCA 2018) (quoting *Whitten v. Progressive Cas. Ins. Co.*, 410 So. 2d 501, 505 (Fla. 1982))(internal quotation marks omitted).

Compliance Incentive

Additionally, a statutory exception to the “American Rule” may be intended to act as an incentive to comply with the law. For instance, under Florida’s Public Records Act (PRA), if an agency unlawfully refuses to permit public records to be inspected or copied, the PRA provides that the courts “shall assess and award the reasonable costs of enforcement, including reasonable attorneys’ fees, against the agency responsible.”⁷ As noted by the Second District Court of Appeal, the purpose of the PRA’s attorney fee provision is “to encourage voluntary compliance with Florida’s public records law, which gives effect to the state’s policy ‘that all state, county, and municipal records shall be open for personal inspection by any person.’”⁸

Local Government

In Florida, local government consists of two entities: **counties and municipalities**.

Counties are established by the Florida Constitution as subdivisions of the State.⁹ Additionally, “[c]ounties in Florida are given broad authority to enact ordinances.”¹⁰

The precise scope of the power to enact ordinances and operation of those ordinances depends on whether or not the county operates under a charter. The differences in non-charter and charter county governments are set forth in Article VIII, section 1(f) and (g) of the Florida Constitution:

(f) Non-charter government. Counties not operating under county charters *shall have such power of self-government as is provided by general or special law*. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county *ordinances not inconsistent with general or special law*, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.¹¹

(g) Charter government. Counties operating under county charters *shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors*. The governing body of a county operating under a charter may enact county ordinances *not inconsistent with general law*. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

⁷ Section 119.12, F.S. (requiring pre-suit notice to the agency and determinations by the court).

⁸ *Office of State Attorney for Thirteenth Judicial Circuit of Florida v. Gonzalez*, 953 So. 2d 759, 763 (Fla. 2d DCA 2007) (quoting s. 119.01(1), F.S.). *See also N.Y. Times Co. v. PHH Mental Health Servs., Inc.*, 616 So. 2d 27, 29 (Fla. 1993) (“If public agencies are required to pay attorney’s fees and costs to parties who are wrongfully denied access to the records of such agencies, then the agencies are less likely to deny proper requests for documents.”) (cited by *Gonzalez*).

⁹ FLA. CONST. art. VIII, s. 1.

¹⁰ *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005) (citing FLA. CONST. art. VIII, s. 1(f), (g); s. 125.01(3), Fla. Stat.; *St. Johns County v. N.E. Fla. Builders Ass’n*, 583 So. 2d 635, 642 (Fla. 1991)).

¹¹ *See also* s. 125.01, F.S.

Municipalities, on the other hand, are created by legislative enactment.¹² Historically, municipalities were “established in separately described areas containing inhabitants whose interests require special local governmental activities not afforded by State and county units.”¹³ Municipalities, likewise, have broad statutory authority to enact ordinances under their home rule powers.¹⁴ As set out in s. 116.021(3), F.S.,

The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:

- (a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
- (b) Any subject expressly prohibited by the constitution;
- (c) Any subject expressly preempted to state or county government by the constitution or by general law; and
- (d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.¹⁵

Legislative Preemption

“Preemption essentially takes a topic or a field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the Legislature.”¹⁶ There are two types of preemption: **express** and **implied**.

“**Express preemption** requires a specific statement” by the Legislature; it “must be accomplished by clear language stating that intent.”¹⁷ “[T]he legislature can easily create express preemption by including clear language in a statute.”¹⁸ For example, the Legislature has clearly and expressly preempted the area of state firearms and ammunition regulation as set forth in s. 790.33(1), F.S.:

(1) Preemption.--Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal

¹² FLA. CONST. art. VIII, s. 2.

¹³ *City of Miami v. Rosen*, 10 So. 2d 307, 309 (Fla. 1942).

¹⁴ FLA. CONST. art. VIII, s. 2(c); s. 116.021, F.S. See also *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006).

¹⁵ Section 116.021, F.S. has been held unconstitutional as applied in the case of *City of Miami Beach v. Bd. of Trustees of City Pension Fund for Firefighters & Police Officers in City of Miami Beach*, 91 So. 3d 237, 237 (Fla. 3d DCA 2012).

¹⁶ *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006) (quoting *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005))(internal quotations omitted).

¹⁷ *Id.* (quoting *Fla. League of Cities, Inc. v. Dep't of Ins. & Treasurer*, 540 So. 2d 850, 856 (Fla. 1st DCA 1989), accord *Bd. of Trs. v. Dulje*, 453 So. 2d 177, 178 (Fla. 2d DCA 1984); quoting *Phantom of Clearwater, Inc.* at 1018) (internal quotations omitted).

¹⁸ *Phantom of Clearwater, Inc.*, at 1019 (citing *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996)).

ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.

Implied preemption is “actually a decision by the courts to create preemption in the absence of an explicit legislative directive.”¹⁹ “[C]ourts imply preemption only when the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.”²⁰ “When courts create preemption by implication, the preempted field is usually a narrowly defined field, limited to the specific area where the Legislature has expressed their will to be the sole regulator.”²¹ For example, in *Barragan v. City of Miami*, the Florida Supreme Court recognized that the Legislature in chapter 440, F.S. had implicitly “preempted local regulation on the subject of worker’s compensation,” reasoning that “[t]he preemption need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject.”²²

Coexisting State Law and Local Ordinance

Under their broad home rule powers, counties and municipalities may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the state.²³ County and municipal ordinances “are inferior to laws of the state and must not conflict with any controlling provision of a statute.”²⁴ Local government cannot, in other words, “forbid what the legislature has expressly licensed, authorized or required, nor . . . authorize what the legislature has expressly forbidden.”²⁵ “[A]n ordinance penalty may not exceed the penalty imposed by the state”; however, an ordinance may provide a penalty less severe than that imposed by a state statute.²⁶

Legal Action Challenging Ordinances on Preemption Grounds

A legal action challenging an ordinance on preemption grounds may be brought in a suit for declaratory relief. A suit for declaratory relief is properly brought under the declaratory judgment act to “declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”²⁷ “Even though the legislature has expressed its intent that the declaratory judgment act should be broadly construed,²⁸ there still must exist some justiciable controversy *between adverse parties* that needs to be resolved for a court to exercise its

¹⁹ *Id.*

²⁰ *Id.* (citations and internal quotations omitted).

²¹ *Id.* (citations and internal quotations omitted).

²² 545 So. 2d 252, 254 (Fla. 1989) (citing *Tribune Co. v. Cannella*, 458 So.2d 1075 (Fla.1984), *appeal dismissed*, 471 U.S. 1096 (1985)).

²³ *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006) (citing *Wyche v. State*, 619 So. 2d 231, 237–38 (Fla. 1993), *accord City of Miami Beach v. Rocio Corp.*, 404 So. 2d 1066, 1069 (Fla. 3d DCA 1981); *Barragan v. City of Miami*, 545 So. 2d 252, 254 (Fla. 1989)). *See also Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005).

²⁴ *City of Hollywood v. Mulligan*, 934 So. 2d at 1246 (citing *Thomas v. State*, 614 So.2d 468, 470 (Fla.1993)).

²⁵ *Id.* at 1247 (citations and internal quotations omitted).

²⁶ *Id.* (citations and internal quotations omitted).

²⁷ Section 86.011, F.S.

²⁸ *Id.*

jurisdiction.”²⁹ “Otherwise, any opinion on a statute’s validity would be advisory only and improperly considered in a declaratory action.”³⁰

For instance, in *City of Hollywood v. Mulligan*, after his arrest for soliciting a prostitute, Mr. Mulligan’s vehicle was seized pursuant to an ordinance passed by the City of Hollywood requiring the forfeiture of any vehicle used in connection with the solicitation of a prostitute. Mr. Mulligan filed an action for declaratory relief to declare the ordinance invalid on the grounds that the Legislature had preempted the forfeiture field. The Florida Supreme Court ultimately held that the forfeiture field had not been preempted.³¹

III. Effect of Proposed Changes:

Section 1 creates section 57.112, F.S. to authorize the payment of attorney fees and costs to the prevailing party in a challenge to a local government’s adoption or enforcement of an ordinance on the grounds that the subject of the ordinance is preempted by the State Constitution or by state law.

Under the bill, a court may order the prevailing party to pay the other party’s attorney fees and costs if the court determines that the ordinance is expressly preempted. However, prevailing party attorney fees and costs will not be authorized if the local government withdraws or repeals the ordinance within 21 days after (1) receiving a written claim that the ordinance is preempted, or (2) the other party filing a motion for attorney fees and costs (whichever occurs first).

The language of the bill also suggests that permitting an award of attorney fees and costs to the prevailing party is meant to be a sanction, given that the bill’s statement that the attorney fees and costs award “is cumulative to all other sanctions or remedies available under law or court rule.”

Additionally, the bill carves out an exception for ordinances “relating to growth management.” This appears to refer to the comprehensive plans for land use governed by Chapter 163, Part II, entitled “Growth Policy; County and Municipal Planning; Land Development Regulation.”

Section 2 provides that this bill is remedial in nature and applies retroactively to all cases pending or commenced on or after July 1, 2019.

Section 3 provides that the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁹ *Atwater v. City of Weston*, 64 So. 3d 701, 704–05 (Fla. 1st DCA 2011) (quoting *Martinez v. Scanlan*, 582 So. 2d 1167, 1170–71 (Fla.1991) (emphasis added)).

³⁰ *Id.* (quoting *Martinez*).

³¹ *City of Hollywood v. Mulligan*, 934 So. 2d at 1241.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The bill would provide private individuals and businesses with a more effective method of holding local governing bodies accountable to operate within their proper authority.

C. Government Sector Impact:

The bill may open local governments to liability to pay attorney fees in cases where preemption of a subject area is unclear and the local government did *not* intentionally flout any express preemption of a subject area by passing a particular ordinance. In other words, a local government may be penalized in a case where they had a good faith belief that they were passing a legally permissible ordinance.

VI. Technical Deficiencies:

To clarify the intent of s. 57.112(6), F.S., the Legislature may wish to state that the bill's provisions do not apply to Chapter 163, Part II, F.S. rather than to "ordinances relating to growth management."

The bill refers to local ordinances that are "preempted by the State Constitution or by state law." Because the Constitution does not preempt local ordinances to the state, the Legislature may wish to revise the phrase to refer the ordinances that are prohibited by the State Constitution or preempted by state law.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 57.112, 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 March 18, 2019:

- Removes the waiver of sovereign immunity.
- Changes the attorney fee requirement from a one-sided rule, making only the local government liable for attorney fees and costs if it loses, to a prevailing party rule, meaning either party may be liable to pay attorney fees and costs if it loses.
- Changes the applicability of the attorney fee requirement from all preemption challenges, which includes express or implied preemption, to express preemption only.

- B. **Amendments:**

None.



292360

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/19/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 21 - 39
and insert:

(1) As used in this section, the term "attorney fees and costs" means the reasonable and necessary attorney fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding.

(2) If a civil action is filed against a local government to challenge the adoption or enforcement of a local ordinance on the grounds that it is preempted by the State Constitution or by



292360

12 state law, the court shall assess and award reasonable attorney
13 fees and costs and damages, including prejudgment interest and
14 costs, to the prevailing party.

15 (3) Attorney fees and costs may not be awarded pursuant to
16 this section if the local government withdraws or repeals an
17 ordinance that the court determined was preempted within 21 days
18 after the earlier of:

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 lines 3 - 7

23 and insert:

24 s. 57.112, F.S.; defining the term "attorney fees and
25 costs"; providing for award of attorney fees and costs
26 and damages in civil actions challenging



850524

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/19/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Hutson) recommended the following:

Senate Amendment to Amendment (292360)

Delete line 11

and insert:

the grounds that it is expressly preempted by the State
Constitution or by

By Senator Hutson

7-01360-19

20191140__

A bill to be entitled

An act relating to attorney fees and costs; creating s. 57.112, F.S.; waiving the sovereign immunity of local governments for liability for certain attorney fees and costs; defining the term "attorney fees and costs"; providing for award of attorney fees and costs and damages in successful civil actions challenging local ordinances as being preempted by the State Constitution or state law; prohibiting an award of attorney fees and costs under certain circumstances; providing construction; providing applicability; providing retroactive application; providing an effective date.

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

Section 1. Section 57.112, Florida Statutes, is created to read:

57.112 Attorney fees and costs and damages; preempted local actions.—

(1) In accordance with s. 13, Art. X of the State Constitution, sovereign immunity for local governments is waived for liability for attorney fees and costs awarded pursuant to this section. There is no limit to the amount of attorney fees and costs a court may award pursuant to this section.

(2) As used in this section, the term "attorney fees and costs" means the reasonable and necessary attorney fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding.

Page 1 of 2

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

7-01360-19

20191140__

(3) If a civil action is filed against a local government to challenge the adoption or enforcement of a local ordinance on the grounds that it is preempted by the State Constitution or by state law, the court shall assess and award reasonable attorney fees and costs and damages, including prejudgment interest and costs, against the local government if the court determines that the ordinance was preempted.

(4) Attorney fees and costs may not be awarded pursuant to this section if the local government withdraws or repeals the ordinance within 21 days after the earlier of:

(a) The local government's receipt of a written claim that the ordinance, as proposed or adopted, is preempted by the State Constitution or by state law; or

(b) A motion being filed seeking attorney fees and costs pursuant to this section.

(5) The provisions in this section are supplemental to all other sanctions or remedies available under law or court rule.

(6) This section does not apply to ordinances relating to growth management.

Section 2. This act is intended to be remedial in nature and applies retroactively to all cases pending or commenced on or after July 1, 2019.

Section 3. This act shall take effect July 1, 2019.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 4, 2019

I respectfully request that **Senate Bill #1140**, relating to Attorney Fees and Costs, be placed on the:

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

A handwritten signature in cursive script that reads "Travis Hutson".

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/19

Meeting Date

1140

Bill Number (if applicable)

Topic Attorney Fees & Costs

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title General Counsel

Address 230 S. Adams St.

Phone 224-2250

Street

Tallahassee

FL

32301

City

State

Zip

Email spadgett@fla.org

Speaking: [X] For [] Against [] Information

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

Representing Florida Restaurant & Lodging Assoc.

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)

3/18/19 Meeting Date

1140 Bill Number (if applicable)

Topic Attorney fees & Costs

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757 Street

Phone 222 9684

Tallahassee FL 32302-1757 City State Zip

Email rohara@flcities.com

Speaking: For Against Information

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

Representing Fla 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)

3-18-19

Meeting Date

1140

Bill Number (if applicable)

Topic ATTORNEY'S FEES

Amendment Barcode (if applicable)

Name LAURA YOUMANIS

Job Title LEGISLATIVE COUNSEL

Address 100 N. MONROE ST

Phone 294-1858

Street

TAL

City

FL

State

32301

Zip

Email LYOUANISE@counties.com

Speaking: For Against Information

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

Representing FLORIDA ASSOCIATION 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.

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)

March 18, 2019
Meeting Date

1140
Bill Number (if applicable)

Topic Attorneys Fees & Costs

Amendment Barcode (if applicable)

Name GRACE Lovett

Job Title VP Governmental Affairs

Address 227 S Adams St.

Phone 850 227 4082

Tallahassee FL 32301
City State Zip

Email grace@frf.org

Speaking: For Against Information

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

Representing FL 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

APPEARANCE RECORD

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

3.18.19
Meeting Date

1140
Bill Number (if applicable)

Topic attorney's fees

Amendment Barcode (if applicable)

Name Brewster Benis

Job Title VP Gov't Affairs

Address 576 W. Adams St.

Phone 224-7123

Tallahassee FL 32307
City State Zip

Email bbenis@afl.com

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1154
 INTRODUCER: Senator Berman
 SUBJECT: Decedents' Property
 DATE: March 15, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Favorable
2.	_____	_____	CF	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1154 amends several sections of the probate code relating to compensation of attorneys who serve as personal representatives, conflicts of interest by personal representatives, and notice in probate proceedings. The bill also amends the trust code regarding compensation of attorneys who serve as trustees. Additionally, the bill makes various changes relating to co-owned personal property.

More specifically, the bill:

- Prohibits an attorney who prepared or supervised the preparation of a will from being compensated as a personal representative of the estate unless the attorney is a relative of the decedent or makes specified disclosures to the testator before the will is prepared;
- Provides a similar prohibition regarding an attorney who drafts a trust and serves as a trustee;
- Brings more types of transactions involving a personal representative's conflict of interest under the statute that renders these transactions voidable by an interested person;
- Attempts to clarify what constitutes sufficient notice for a court to exercise personal jurisdiction over a person in a probate proceeding;
- Eliminates the requirement that personal property held in a tenancy by the entirety or a joint tenancy with right of survivorship must be acquired by its co-owners at the same time and through the same instrument;
- Eliminates the requirement that personal property held in a joint tenancy with right of survivorship be held in equal shares or interests; and
- Creates a rebuttable presumption that an item of personal property owned by two spouses is owned in a tenancy by the entirety if the ownership document does not clearly indicate otherwise, the ownership document designates joint tenancy with right of survivorship and does not indicate that a tenancy by the entirety was not intended, or a spouse adds the other spouse's name to an ownership document;

- Creates a rebuttable presumption that an item of personal property is owned by joint tenants with right of survivorship if none of the above presumptions apply and the owner adds or designates another person's name in an ownership document indicating a joint tenancy with right of survivorship; and
- Categorizes as tangible property bullion and coins, such as collectible coins, that are not used as money.

II. Present Situation:

Conflict of Interests by Personal Representatives

Several types of transactions that involve a conflict of a personal representative's interests are voidable by an interested person, except one who has consented after fair disclosure.¹ However, transactions that involve a conflict of the personal representative's interests are not voidable if the will or a contract entered into by the decedent expressly authorized the transaction, or if it is authorized by a court after notice to interested persons.²

Compensation of Attorney Who Also Serves as Personal Representative or Trustee

An attorney licensed by the Florida Bar who serves as a personal representative of an estate and has rendered legal services in connection with the administration of the estate is allowed a fee for the legal services in addition to his or her fee as personal representative.³ However, the fee for legal services must be taken into account when determining the attorney's compensation for non-legal services as personal representative.⁴

Similarly, an attorney who provides legal services in his or her administration of the trust may accept reasonable compensation for the legal services in addition to his or her reasonable compensation as a trustee.⁵

Notice to Interested Persons in a Probate Proceeding

Section 731.301(2), F.S., provides that, in a probate proceeding, "formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person's interest in the estate or in the decedent's protected homestead." The courts have interpreted this to include jurisdiction over a person in an adversarial proceeding, including one in which an out-of-state law firm providing legal services for a Florida estate may be forced to pay money back to the estate.⁶

However, the Real Property, Probate and Trust Law Section of The Florida Bar asserts that the personal jurisdiction contemplated in s. 731.301(2), F.S., does not include this type of

¹ Section 733.610, F.S.

² *Id.*

³ Section 733.617, F.S.

⁴ Section 733.612(19), F.S.

⁵ Section 733.0708(3), F.S.

⁶ *See, e.g., Rogers and Wells v. Winston*, 662 So. 2d 1303 (Fla. 4th DCA 1995).

proceeding.⁷ Rather, the Section asserts that formal notice is sufficient for the court to acquire jurisdiction over a person for the purpose of determining the person's rights to estate property.⁸

Co-tenancy

An item of personal property, such as brokerage account or an automobile, may be owned by multiple people in one of a few arrangements, including “tenancy by the entirety” and “joint tenancy with right of survivorship.”⁹ Although these forms of co-ownership are substantially similar, one key difference between them is that a tenancy by the entirety may be used only by two married people.¹⁰

Joint Tenancy with Right of Survivorship

A joint tenancy with right of survivorship requires five “unities” as to an item of property, which are the unities of:

- Possession (joint ownership and control);
- Interest (the interests must be the same);
- Title (the interests must originate in the same instrument);
- Time (the interests must commence simultaneously); and
- Survivorship (both spouses take property outright upon the other's death).¹¹

Tenancy by the Entirety

A tenancy by the entirety requires an additional unity, the unity of marriage.¹² This means the co-owners of the property must be married at the time the property became titled in their joint names.

Due to the unities of time and title, a person may not create either of these forms of co-ownership by directly granting an interest in an item of property to another person. For example, a husband who is the sole owner of a brokerage account may not create a tenancy by the entirety in it with his wife by adding her name to the account—their interests in the account would have originated at different times and through different instruments.¹³

Presumptions regarding a Tenancy by the Entirety or a Joint Tenancy with Right of Survivorship

Beginning with the Florida Supreme Court in 2001, several courts have stated that personal property is presumed to be held as a tenancy by the entirety if it is owned:

- By two people who are married to each other; and

⁷ Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper: Proposed amendment of § 731.301 to provide that service of formal notice does not confer in personam jurisdiction over the recipient* (2019) (on file with the Senate Committee on Judiciary).

⁸ *Id.*

⁹ See generally, *Beal Bank, SSB v. Almand and Associates*, 780 So. 2d 45, 52 (Fla. 2001).

¹⁰ *Id.*

¹¹ See *Sitomer v. Orlan*, 660 So. 2d 1111, 1113 (Fla. 4th DCA 1995).

¹² See *Beal Bank, SSB v. Almand and Associates*, 780 So. 2d 45, 52 (Fla. 2001).

¹³ Nonetheless, a husband or wife may create a tenancy by the entirety in real property (e.g., homes, land) by directly granting an interest to his or her spouse. See s. 689.11, F.S.

- In accordance with the six unities required for a tenancy by the entirety.¹⁴

The 2001 Supreme Court case addressed a bank account co-owned by a husband and wife. The court acknowledged that the law had long provided for a presumption of a tenancy by the entirety regarding *real property* held by a husband and wife. And the Court spoke in broad terms of extending this presumption of a tenancy by the entirety, not just to bank accounts, but to *personal property in general*. Though this language may be *dicta*, other courts have adopted it as law, applying it to other types of personal property, such as stock certificates.¹⁵

The holding of the 2001 Supreme Court case regarding bank accounts was codified in s. 655.79(1), F.S., which provides that “any deposit or account made in the name of two persons who are husband and wife shall be considered a tenancy by the entirety unless otherwise specified in writing.”¹⁶ The presumption may be overcome “only by proof of fraud or undue influence or clear and convincing proof of a contrary intent.”¹⁷

As with personal property held jointly by two people who are married to each other, the Florida Statutes do not provide a presumption that all items of personal property co-owned by multiple *non-married* people are held as a joint tenancy with right of survivorship. However, s. 655.79(1), F.S., provides a presumption that the co-owners have a right of survivorship in a bank account. As with tenancies by the entirety in bank accounts, the presumption may be overcome “only by proof of fraud or undue influence or clear and convincing proof of a contrary intent.”¹⁸

Precious Metals and Collectible Coins as Probate Assets

Florida law does not specify whether bullion or coins that are not commonly used as currency constitute tangible personal property. And according to the Real Property, Probate and Trust Law Section of The Florida Bar, there is a lack of consensus among practitioners regarding this issue.¹⁹ Accordingly, it is unclear whether certain directions given in a will would apply to collectible coins and bullion. Moreover, it is unclear whether certain provisions of law apply to these items. For example, s. 732.515, F.S., requires that “items of tangible property” be “specifically disposed of” by the will or by a separate writing. Because it is unclear whether bullion and collectible coins are tangible property, it is unclear whether they must be specifically disposed of pursuant to this statute.

¹⁴ See *Beal Bank, SSB v. Almand and Associates*, 780 So. 2d 45, 52 (Fla. 2001); *Cacciatore v. Fisherman’s Wharf Realty Ltd. Partnership ex rel. Emalfarb Investment Corp.*, 821 So. 2d 1251 (Fla. 4th DCA 2002); *Gibson v. Wells Fargo Bank, N.A.* 255 So. 3d 944, (Fla. 2nd DCA 2018).

¹⁵ See generally, *Cacciatore v. Fisherman’s Wharf Realty Ltd. Partnership ex rel. Emalfarb Investment Corp.*, 821 So. 2d 1251 (Fla. 4th DCA 2002).

¹⁶ Also, see *Wexler v. Rich*, 80 So. 3d 1097, 1101 (Fla. 4th DCA 2012), for a discussion of the common law rule that preceded the current version of s. 655.79(1), F.S.

¹⁷ Section 655.79(2), F.S.

¹⁸ Section 655.79(2), F.S.

¹⁹ Probate Law and Procedure Committee, Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper: Proposed Addition of § 731.1065, Florida Statutes* (2019) (on file with the Senate Committee on Judiciary).

III. Effect of Proposed Changes:

Fewer Requirements for a Tenancy by the Entirety or Joint Tenancy with Right of Survivorship

The bill abolishes the “unities” of time and title as requirements for a joint tenancy with right of survivorship or a tenancy by the entirety in personal property. As such, the persons who own an item of personal property need not have acquired their interests at the same time or through the same instrument in order to own the property in one of these tenancies. The bill also abolishes the unity of interest as a requirement for a joint tenancy with right of survivorship in personal property, which means owners do not need to have equal ownership interests.

Rebuttable Presumptions

Tenancy by the Entirety

The bill provides that there is a rebuttable presumption that personal property owned by both spouses is owned in a tenancy by the entirety if:

- An ownership document does not specify a different intent, either by “expressly indicating” that a tenancy by the entirety is not intended or by specifying a different form of ownership;
- There is a designation of joint tenancy with right of survivorship in an ownership document and no express indication that a tenancy by the entirety was not intended; or
- The co-ownership was created by a spouse adding his or her spouse’s name to an ownership document.

The *intent* to create a tenancy by the entirety in personal property is *conclusively* presumed when spouses designate this tenancy in an ownership document. This intent is also conclusively presumed when an owner adds the name of his or her spouse to an ownership document that designates a tenancy by the entirety, if the designation or addition was not the product of fraud, undue influence, or a lack of capacity.

Joint Tenancy with Right of Survivorship

The bill provides that there is a rebuttable presumption that personal property is owned in a joint tenancy with right of survivorship if the owner designates or adds the name of at least one other person in an ownership document. However, the document must indicate that the property is owned by these people in a joint tenancy with right of survivorship.

Overcoming the Rebuttable Presumptions of a Joint Tenancy with Right of Survivorship or a Tenancy by the Entirety

The rebuttable presumptions that personal property is owned in a tenancy by the entirety or a joint tenancy with right of survivorship may be overcome by proving:

- By a preponderance of the evidence the existence of fraud, undue influence, or lack of capacity; or
- By clear and convincing evidence that the presumed tenancy was not intended or created.

Equal Interests in a Tenancy in Common or a Joint Tenancy with Right of Survivorship

A third rebuttable presumption created by the bill is that the interests held by joint tenants with right of survivorship or tenants in common hold equal interests in personal property. This presumption may be overcome by proving by a preponderance of the evidence the existence of fraud, undue influence, lack of capacity, or contrary intent.

Precious Metals

The bill provides that for the purposes of the probate code, precious metals in any tangible form, including bullion or coins kept for purposes such as collecting and not for use as legal tender for payment are tangible personal property. The bill provides that this clarifies current law, which does not clearly categorize these items. Accordingly, the bill states that these provisions apply to all written instruments, as well as to all probate proceedings except those in which a disposition of these items has not been finally determined.

Notice in a Probate Proceeding

Current s. 731.301(2), F.S., states, “In a probate proceeding, formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate or in the decedent’s protected homestead.” Following this sentence, the bill adds: “Formal notice is not sufficient to invoke the court’s personal jurisdiction over the person receiving formal notice.” Accordingly, the bill with existing law provides that formal notice gives a court “jurisdiction over the person,” but not “personal jurisdiction.” Because jurisdiction over the person and personal jurisdiction appear to be the same concept, the effect of the new sentence is not clear.

According to the Real Property Probate and Trust Law Section of The Florida Bar, the added sentence is intended to limit the court’s jurisdiction under the first sentence. The added sentence, according to the Section, will also require service of process to give a court personal jurisdiction with respect to matters beyond a person’s interest in the estate. To avoid the potential for uncertainty, the Legislature may wish to revise the second sentence to clarify the circumstances under which a method other than “formal notice” is required to give a court personal jurisdiction in probate proceedings or to specify what constitutes an “interest in the estate.”²⁰

Personal Representative’s Conflict of Interest

The bill renders voidable more types of sales, transactions, and encumbrances that involve a personal representative’s conflict of interest than current law. Subject to exceptions, current law renders voidable a sale or encumbrance of estate assets to any corporation or trust in which the personal representative has a substantial beneficial interest. The bill also renders voidable any sale or encumbrance to a corporation, trust, *or other entity* in which the personal representative or his or her *spouse, agent, or attorney* has a substantial beneficial or *ownership* interest.

²⁰ According to the RPPTL Section, the sentence added to s. 731.301(2), F.S., is intended to overrule *Rogers and Wells v. Winston*, 662 So. 2d 1303 (Fla. 4th DCA 1995) in which the Fourth DCA found that formal notice to a New York law firm handling Florida probate proceedings gave the trial court jurisdiction over the firm with respect to a payment dispute. The law firm objected to the trial court’s assertion of jurisdiction because it had not been served with process. Implicit in the appellate court opinion is a finding that the payments from a decedent’s estate to a firm are also an “interest in the estate.”

Compensation of a Personal Representative or Trustee Who is also an Attorney

The bill prohibits an attorney from being compensated as a personal representative if the attorney prepared or supervised the execution of a will that nominated the attorney or person related to the attorney as personal representative. However, the prohibition does not apply if the attorney or person nominated is related to the testator. The prohibition also does not apply if the attorney discloses the following things prior to the execution of the will:

- Subject to certain statutory limitations, most family members, regardless of their residence, and any other persons who are residents of Florida, including friends and corporate fiduciaries, are eligible to serve as a personal representative;
- Any person, including an attorney, who serves as a personal representative is entitled to receive reasonable compensation for serving as a personal representative; and
- Compensation payable to the personal representative is in addition to any attorney fees payable to the attorney or the attorney's firm for legal services rendered to the personal representative.

However, for these disclosures to be sufficient, the testator must execute a written statement acknowledging that the disclosures were made before the will was executed. And the written statement must substantially be in the form set forth in the bill.

The bill provides virtually identical requirements regarding an attorney who serves as a trustee and desires to be compensated both in his or her role as attorney and as a trustee.

The bill takes effect October 1, 2019, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill includes several provisions that are expressly intended to apply retroactively. In all but one of these instances, the provision is described in the bill as remedial or clarifying.

The Florida Supreme Court has developed a two-prong analysis for determining whether a statute may be applied retroactively.²¹ First, there must be “clear evidence of legislative intent to apply the statute retrospectively.”²² If so, then the court moves to the second prong, “which is whether retroactive application is constitutionally permissible.”²³ Retroactive application is unconstitutional if deprives a person of due process by impairing vested rights or imposing new obligations to previous conduct:

A retrospective provision of a legislative act is not necessarily invalid. It is so only in those cases wherein vested rights are adversely affected or destroyed or when a new obligation or duty is created or imposed, or an additional disability is established, on connection with transactions or considerations previously had or expiated.²⁴

Accordingly, a “remedial” or “procedural” statute may be applied retroactively, because these statutes do not create or destroy rights or obligations.²⁵ Instead, a remedial statute “operates to further a remedy or confirm rights that already exist” and a procedural statute provides the “means and methods for the application and enforcement of existing duties and rights.”²⁶ Finally, the Legislature’s labeling of a law as remedial or procedural does not make it so.²⁷

The bill’s provisions that are intended for retroactive application do not appear to be likely to impair vested rights. However, this analysis is inherently fact-specific, and therefore difficult to perform in the abstract. Accordingly, as these provisions are applied to myriad unique circumstances, it is possible that a court may find that one or more of the provisions has destroyed a vested right in a given case, and therefore cannot be applied retroactively in that case.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²¹ See, e.g., *Florida Ins. Guar. Ass’n, Inc. v. Devon Neighborhood Ass’n, Inc.*, 67 So. 3d 187, 194 (Fla. 2011).

²² *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 3d 494 (Fla. 1999).

²³ *Id.*

²⁴ *Id.* at 503 (citing *McCord v. Smith*, 43 So. 2d 704, 708-09 (Fla. 1949)).

²⁵ See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

²⁶ *Maronda Homes, Inc. of Fla. v. Lakeview Reserve Homeowners Ass’n, Inc.*, 127 So. 3d 1258, 1272 (Fla. 2013) (citing *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *City of Lakeland v. Catinella*, 129 So. 2d 133, 136 (Fla. 1961)).

²⁷ See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

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: 731.301, 733.610, 733.617, and 736.0708.

This bill creates the following sections of the Florida Statutes: 689.151 and 731.1065.

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 Berman

31-00330C-19

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1 A bill to be entitled
 2 An act relating to decedents' property; creating s.
 3 689.151, F.S.; defining the terms "ownership
 4 document," "personal property," and "record";
 5 abolishing certain common law requirements relating to
 6 joint tenancies with right of survivorship and
 7 tenancies by the entirety; providing for the creation
 8 of joint tenancies with right of survivorship and
 9 tenancies by the entirety; specifying that there are
 10 certain rebuttable presumptions for personal property
 11 owned by both spouses and joint tenancies with right
 12 of survivorship; providing that the presumption may be
 13 overcome by a preponderance of the evidence or by
 14 clear and convincing evidence under certain
 15 circumstances; providing for the conclusive
 16 presumption of an intent to create a tenancy by the
 17 entirety; providing applicability; providing
 18 construction; providing retroactive application;
 19 creating s. 731.1065, F.S.; specifying that precious
 20 metals are tangible personal property for the purposes
 21 of the Florida Probate Code; providing for retroactive
 22 application; amending s. 731.301, F.S.; specifying
 23 that formal notice is not sufficient to invoke a
 24 court's personal jurisdiction over a person receiving
 25 such formal notice; providing applicability; amending
 26 s. 733.610, F.S.; expanding the list of sales or
 27 encumbrances that are voidable by interested persons
 28 under certain circumstances; amending s. 733.617,
 29 F.S.; specifying that certain attorneys and persons

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30 are not entitled to compensation for serving as a
 31 personal representative unless the attorney or person
 32 is related to the testator or unless certain
 33 disclosures are made before a will is executed;
 34 requiring the testator to execute a written statement
 35 that acknowledges certain disclosures were made;
 36 providing requirements for the written statement;
 37 specifying when an attorney is deemed to have prepared
 38 or supervised the execution of a will; specifying how
 39 a person may be related to an individual; specifying
 40 when an attorney or person related to the attorney is
 41 deemed to have been nominated in a will; providing
 42 construction; providing applicability; amending s.
 43 736.0708, F.S.; specifying that certain attorneys and
 44 persons are not entitled to compensation for serving
 45 as a trustee unless the attorney or person is related
 46 to the settlor or unless certain disclosures are made
 47 before the trust instrument is executed; requiring a
 48 settlor to execute a written statement that
 49 acknowledges certain disclosures were made; providing
 50 requirements for the written statement; specifying
 51 when an attorney is deemed to have prepared or
 52 supervised the execution of a trust instrument;
 53 specifying how a person may be related to an
 54 individual; specifying when an attorney or a person
 55 related to the attorney is deemed appointed in a trust
 56 instrument; providing construction; providing
 57 applicability; providing effective dates.
 58

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

60
61 Section 1. Section 689.151, Florida Statutes, is created to
62 read:

63 689.151 Tenancies by the entirety, joint tenancies with
64 right of survivorship, and tenancies in common in personal
65 property.-

66 (1) As used in this section:

67 (a) "Ownership document" means an instrument or a record of
68 transfer or an instrument or a record evidencing ownership.

69 (b) "Personal property" means all property except real
70 property, as defined in s. 192.001(12), and an interest in a
71 trust to which chapter 736 applies.

72 (c) "Record" has the same meaning as in s. 605.0102.

73 (2) With respect to joint tenancies with right of
74 survivorship and tenancies by the entirety in personal property,
75 the common law requirements of unity of time and title are
76 abolished.

77 (a) A joint tenancy with right of survivorship in personal
78 property may be created in the existing owner and one or more
79 other persons through a direct transfer by the existing owner.

80 (b) A tenancy by the entirety may be created in personal
81 property owned by one spouse through a direct transfer to both
82 spouses.

83 (3) With respect to joint tenancies with right of
84 survivorship in personal property, the common law requirement of
85 unity of interest is abolished and the shares or interests of
86 joint tenants may be equal or unequal.

87 (4) There is a rebuttable presumption that:

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88 (a) Personal property owned by both spouses is owned by the
89 spouses as tenants by the entirety if:

90 1. An ownership document does not specify a form of
91 ownership or does not expressly indicate that a tenancy by the
92 entirety is not intended; or

93 2. There is a designation of joint tenancy with right of
94 survivorship in an ownership document and no express indication
95 that a tenancy by the entirety was not intended.

96
97 The rebuttable presumptions in this paragraph also apply when an
98 owner of personal property adds the name of his or her spouse to
99 such ownership document.

100 (b) Except as provided in paragraph (a), personal property
101 is owned as joint tenants with right of survivorship when the
102 owner designates or adds the name of one or more persons in an
103 ownership document indicating that the owner and such persons
104 own or hold the property as joint tenants with right of
105 survivorship.

106 (c) The shares or interests held by joint tenants with
107 right of survivorship or tenants in common in personal property
108 are equal. Such presumption may be overcome by proving by a
109 preponderance of the evidence the existence of fraud, undue
110 influence, lack of capacity, or contrary intent.

111 (5) Unless otherwise stated, the rebuttable presumptions
112 established in subsection (4) may be overcome by proving by a
113 preponderance of the evidence the existence of fraud, undue
114 influence, or lack of capacity or by proving by clear and
115 convincing evidence that the presumed tenancy was not intended
116 or created.

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117 (6) The intent to create a tenancy by the entirety is
 118 conclusively presumed when such a tenancy is designated by
 119 spouses in an ownership document for personal property, or when
 120 an owner of personal property adds the name of his or her spouse
 121 to an ownership document with a designation of tenancy by the
 122 entirety, if the designation or addition was not the product of
 123 fraud, undue influence, or a lack of capacity.

124 (7) This section does not affect the application of s.
 125 319.22, s. 655.78, s. 655.79, s. 655.80, s. 655.82, s. 689.115,
 126 or ss. 711.50-711.512.

127 (8) The common law of joint tenancies with right of
 128 survivorship and the common law of tenancies by the entirety
 129 supplement this section except to the extent modified by it.

130 (9) The presumptions under this section apply to all
 131 proceedings pending on or before October 1, 2019, and to all
 132 proceedings commenced on or after October 1, 2019.

133 (10) Subsections (2) and (3) are remedial in nature and
 134 apply to transactions occurring before October 1, 2019, to the
 135 extent that those transactions relate to the existence of a
 136 joint tenancy with right of survivorship or a tenancy by the
 137 entirety on October 1, 2019; however, such application may not
 138 impair any right acquired before October 1, 2019, if that right
 139 is confirmed in a judicial proceeding commenced within 2 years
 140 after October 1, 2019.

141 (11) This section does not impair the rights of any
 142 lienholder or creditor acquired before October 1, 2019.

143 Section 2. Effective July 1, 2019, section 731.1065,
 144 Florida Statutes, is created to read:

145 731.1065 Precious metals.-

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146 (1) For the purposes of the code, precious metals in any
 147 tangible form, such as bullion or coins kept and acquired for
 148 their historical, artistic, collectable, or investment value
 149 apart from their normal use as legal tender for payment, are
 150 tangible personal property.

151 (2) This section is intended to clarify existing law and
 152 applies retroactively to all written instruments executed
 153 before, on, or after July 1, 2019, as well as all proceedings
 154 pending or commenced before, on, or after July 1, 2019, in which
 155 the disposition of precious metals in any tangible form has not
 156 been finally determined.

157 Section 3. Effective upon this act becoming a law,
 158 subsection (2) of section 731.301, Florida Statutes, is amended
 159 to read:

160 731.301 Notice.-

161 (2) In a probate proceeding, formal notice is sufficient to
 162 acquire jurisdiction over the person receiving formal notice to
 163 the extent of the person's interest in the estate or in the
 164 decedent's protected homestead. Formal notice is not sufficient
 165 to invoke the court's personal jurisdiction over the person
 166 receiving formal notice.

167 Section 4. The amendment made by this act to s. 731.301,
 168 Florida Statutes, applies to all proceedings pending on or
 169 before, or commenced after, the date this act becomes a law.

170 Section 5. Effective July 1, 2019, section 733.610, Florida
 171 Statutes, is amended to read:

172 733.610 Sale, encumbrance, or transaction involving
 173 conflict of interest.-Any sale or encumbrance to the personal
 174 representative or the personal representative's spouse, agent,

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175 or attorney, or any corporation, other entity, or trust in which
 176 the personal representative, or the personal representative's
 177 spouse, agent, or attorney, has a substantial beneficial or
 178 ownership interest, or any transaction that is affected by a
 179 conflict of interest on the part of the personal representative,
 180 is voidable by any interested person except one who has
 181 consented after fair disclosure, unless:

182 (1) The will or a contract entered into by the decedent
 183 expressly authorized the transaction; or

184 (2) The transaction is approved by the court after notice
 185 to interested persons.

186 Section 6. Subsection (6) of section 733.617, Florida
 187 Statutes, is amended, and subsection (8) is added to that
 188 section, to read:

189 733.617 Compensation of personal representative.—

190 (6) Except as otherwise provided in this section, if the
 191 personal representative is a member of The Florida Bar and has
 192 rendered legal services in connection with the administration of
 193 the estate, then in addition to a fee as personal
 194 representative, there also shall be allowed a fee for the legal
 195 services rendered.

196 (8) (a) An attorney serving as a personal representative, or
 197 a person related to the attorney, is not entitled to
 198 compensation for serving as a personal representative if the
 199 attorney prepared or supervised the execution of the will that
 200 nominated the attorney or person related to the attorney as
 201 personal representative, unless the attorney or person nominated
 202 is related to the testator, or the attorney makes the following
 203 disclosures to the testator before the will is executed:

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204 1. Subject to certain statutory limitations, most family
 205 members, regardless of their residence, and any other persons
 206 who are residents of Florida, including friends and corporate
 207 fiduciaries, are eligible to serve as a personal representative;

208 2. Any person, including an attorney, who serves as a
 209 personal representative is entitled to receive reasonable
 210 compensation for serving as a personal representative; and

211 3. Compensation payable to the personal representative is
 212 in addition to any attorney fees payable to the attorney or the
 213 attorney's firm for legal services rendered to the personal
 214 representative.

215 (b)1. The testator must execute a written statement
 216 acknowledging that the disclosures required under paragraph (a)
 217 were made prior to the execution of the will. The written
 218 statement must be in a separate writing from the will but may be
 219 annexed to the will. The written statement may be executed
 220 before or after the execution of the will in which the attorney
 221 or related person is nominated as the personal representative.

222 2. The written statement must be in substantially the
 223 following form:

224

225 I, ... (Name) ..., declare that:

226

227 I have designated my attorney, an attorney employed in the
 228 same law firm as my attorney, or a person related to my attorney
 229 as a nominated personal representative in my will or codicil
 230 dated ... (insert date) ...

231

232 Before executing the will or codicil, I was informed that:

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233 1. Subject to certain statutory limitations, most family
 234 members, regardless of their residence, and any other
 235 individuals who are residents of Florida, including friends and
 236 corporate fiduciaries, are eligible to serve as a personal
 237 representative.

238 2. Any person, including an attorney, who serves as a
 239 personal representative is entitled to receive reasonable
 240 compensation for serving as a personal representative.

241 3. Compensation payable to the personal representative is
 242 in addition to any attorney fees payable to the attorney or the
 243 attorney's firm for legal services rendered to the personal
 244 representative.

245 ...(Signature)...

246 ...(Testator)...

247 ...(Insert date)...

248
 249
 250 (c) For purposes of this subsection:

251 1. An attorney is deemed to have prepared or supervised the
 252 execution of a will if the preparation or supervision of the
 253 execution of the will was performed by an employee or attorney
 254 employed by the same firm as the attorney at the time the will
 255 was executed.

256 2. A person is "related" to an individual if, at the time
 257 the attorney prepared or supervised the execution of the will,
 258 the person is:

259 a. A spouse of the individual;

260 b. A lineal ascendant or descendant of the individual;

261 c. A sibling of the individual;

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262 d. A relative of the individual or of the individual's
 263 spouse with whom the attorney maintains a close, familial
 264 relationship;

265 e. A spouse of a person described in subparagraphs b.-d.;

266 f. A person who cohabitates with the individual; or

267 g. An employee or attorney employed by the same firm as the
 268 attorney at the time the will is executed.

269 3. An attorney or a person related to the attorney is
 270 deemed to have been nominated in the will when the will
 271 nominates the attorney or the person related to the attorney as
 272 personal representative, co-personal representative, successor,
 273 or alternate personal representative in the event another person
 274 nominated is unable to or unwilling to serve, or provides the
 275 attorney or any person related to the attorney with the power to
 276 nominate the personal representative and the attorney or person
 277 related to attorney was nominated using that power.

278 (d) Other than compensation payable to the personal
 279 representative, this subsection does not limit any rights or
 280 remedies that any interested person may have at law or in
 281 equity.

282 (e) The failure to obtain an acknowledgment from the
 283 testator under this subsection does not disqualify a personal
 284 representative from serving and does not affect the validity of
 285 a will.

286 (f) This subsection applies to all nominations made
 287 pursuant to a will:

288 1. Executed by a resident of this state on or after October
 289 1, 2019; or

290 2. Republished by a resident of this state on or after

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291 October 1, 2019, if the republished will nominates the attorney
 292 who prepared or supervised the execution of the instrument that
 293 republished the will, or a person related to such attorney, as
 294 personal representative.

295 Section 7. Subsection (4) is added to section 736.0708,
 296 Florida Statutes, to read:
 297 736.0708 Compensation of trustee.—
 298 (4) (a) An attorney serving as a trustee or a person related
 299 to such attorney is not entitled to compensation for serving as
 300 trustee if the attorney prepared or supervised the execution of
 301 the trust instrument that appointed the attorney or person
 302 related to the attorney as trustee, unless the attorney or
 303 person appointed is related to the settlor or the attorney makes
 304 the following disclosures to the settlor before the trust
 305 instrument is executed:

306 1. Unless specifically disqualified by the terms of the
 307 trust instrument, any person, regardless of state of residence
 308 and including a family member, friend, or corporate fiduciary,
 309 is eligible to serve as a trustee;

310 2. Any person, including an attorney, who serves as a
 311 trustee is entitled to receive reasonable compensation for
 312 servng as trustee; and

313 3. Compensation payable to the trustee is in addition to
 314 any attorney fees payable to the attorney or the attorney's firm
 315 for legal services rendered to the trustee.

316 (b)1. The settlor must execute a written statement
 317 acknowledging that the disclosures required under paragraph (a)
 318 were made prior to the execution of the trust instrument. The
 319 written statement must be in a separate writing from the trust

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320 instrument but may be annexed to the trust instrument. The
 321 written statement may be executed before or after the execution
 322 of the trust in which the attorney or related person is
 323 appointed as the trustee.

324 2. The written statement must be in substantially the
 325 following form:

326

327 I, ... (Name) ..., declare that:

328

329 I have designated my attorney, an attorney employed in the
 330 same law firm as my attorney, or a person related to my attorney
 331 as a trustee in my trust instrument dated ... (insert date) ...
 332

333 Before executing the trust, I was informed that:

334 1. Unless specifically disqualified by the terms of the
 335 trust instrument, any person, regardless of state of residence
 336 and including family members, friends, and corporate
 337 fiduciaries, is eligible to serve as a trustee.

338 2. Any person, including an attorney, who serves as a
 339 trustee is entitled to receive reasonable compensation for
 340 servng as trustee.

341 3. Compensation payable to the trustee is in addition to
 342 any attorney fees payable to the attorney or the attorney's firm
 343 for legal services rendered to the trustee.

344

345 ... (Signature) ...
 346 ... (Settlor) ...
 347 ... (Insert Date) ...
 348

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349 (c) For purposes of this subsection:
 350 1. An attorney is deemed to have prepared, or supervised
 351 the execution of, a trust instrument if the preparation, or
 352 supervision of the execution, of the trust instrument was
 353 performed by an employee or attorney employed by the same firm
 354 as the attorney at the time the trust instrument was executed.
 355 2. A person is "related" to an individual if, at the time
 356 the attorney prepared or supervised the execution of the trust
 357 instrument, the person is:
 358 a. A spouse of the individual;
 359 b. A lineal ascendant or descendant of the individual;
 360 c. A sibling of the individual;
 361 d. A relative of the individual or of the individual's
 362 spouse with whom the attorney maintains a close, familial
 363 relationship;
 364 e. A spouse of a person described in subparagraphs b.-d.;
 365 f. A person who cohabitates with the individual; or
 366 g. An employee or attorney employed by the same firm as the
 367 attorney at the time the trust instrument is executed.
 368 3. An attorney or a person related to the attorney is
 369 deemed appointed in the trust instrument when the trust
 370 instrument appoints the attorney or the person related to the
 371 attorney as trustee, co-trustee, successor, or alternate trustee
 372 in the event another person nominated is unable to or unwilling
 373 to serve, or provides the attorney or any person related to the
 374 attorney with the power to appoint the trustee and the attorney
 375 or person related to attorney was appointed using that power.
 376 (d) Other than compensation payable to the trustee, this
 377 subsection does not limit any rights or remedies that any

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378 interested person may have at law or equity.
 379 (e) The failure to obtain an acknowledgment from the
 380 settlor under this subsection does not disqualify a trustee from
 381 servicing and does not affect the validity of a trust instrument.
 382 (f) This subsection applies to all appointments made
 383 pursuant to a trust agreement:
 384 1. Executed by a resident of this state on or after October
 385 1, 2019; or
 386 2. Amended by a resident of this state on or after October
 387 1, 2019, if the trust agreement nominates the attorney who
 388 prepared or supervised the execution of the amendment or a
 389 person related to such attorney as trustee.
 390 Section 8. Except as otherwise expressly provided in this
 391 act and except for this section, which shall take effect upon
 392 this act becoming a law, this act shall take effect October 1,
 393 2019.

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The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 1, 2019

I respectfully request that **Senate Bill #1154**, relating to Decedents' Property, be placed on the:

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

A handwritten signature in cursive script that reads "Lori Berman". The signature is written over a horizontal line.

Senator Lori Berman
Florida Senate, District 31

Cc: Senator Jose Javier Rodriguez, Vice Chair
Tom Cibula, Staff Director

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/19

Meeting Date

SB 1154

Bill Number (if applicable)

Topic Decedents Property

Amendment Barcode (if applicable)

Name ANDREW LAYDENE

Job Title

Address 200 S. ORANGE AVE, SUITE 2300

Phone 407-649-4000

Street

ORLANDO

FL

32801

Email ALAYDENE@BAKERLAW.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)

3/18/2019
Meeting Date

SB 1154
Bill Number (if applicable)

Topic Support SB 1154

Amendment Barcode (if applicable)

Name Robert Lancaster

Job Title Attorney

Address 3001 Tamiami Trail N Ste 400

Phone (239) 262-8311

Naples FL 34103
City State Zip

Email rlancaster@rl-law.com

Speaking: For Against Information

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

Representing Real Property Probate Trust Law Section of 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)

3-19-19

Meeting Date

SB 1154

Bill Number (if applicable)

Topic Decedents' Property

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior Vice President of Governmental Affairs

Address 1001 Thomasville Rd Ste 201

Phone 850-589-8020

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)

REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR

WHITE PAPER

Proposed amendment of § 731.301 to provide that service of formal notice does not confer in personam jurisdiction over the recipient.

I. SUMMARY

Appellate court opinions in several cases have determined that service by formal notice under the Florida Probate Rules is sufficient for a probate court to acquire *in personam* jurisdiction over persons deemed to be “interested persons” under the Florida Probate Code. There is no authority in statutes or the probate rules suggesting that to be the law, and the Ad Hoc Jurisdiction & Service of Process Committee, although acknowledging that it is possible to provide such authority in a manner that complies with due process, believes that it is preferable to limit the means of acquiring personal jurisdiction to service of summons or other process by traditional means currently allowed by statute or the Florida Rules of Civil Procedure.

II. CURRENT SITUATION

In a series of decisions, the Second District Court of Appeal has held that those who are deemed to be “interested persons” within the meaning of F.S. 731.201(23) (i.e., those who may reasonably be expected to be affected by the outcome of a particular proceeding) may be subjected to personal jurisdiction by the service of formal notice pursuant to F.S. 731.301(2). Payette v. Clark, 559 So.2d 630 (2d DCA 1990); Kountze v. Kountze, 20 So.3d 428 (2d DCA 2009); Hall v. Tungett, 980 So.2d 1289 (2d DCA 2008); Galego v. Robinson, 695 So.2d 443 (2d DCA 1997). The Fourth District Court of Appeal has agreed, at least in cases where law firms or attorneys have rendered legal services to a Florida probate estate, that they are interested persons and that *in personam* jurisdiction (for the purpose of reviewing and potentially ordering refund of fees paid) could be acquired by service of formal notice. Rogers & Wells v. Winston, 662 So.2d 1303 (4th DCA 1995); Simmons v. Est. of Baranowitz, 189 So.3d 819 (4th DCA 2015).

Prior to October 1, 2010, when all of the foregoing cases except Baranowitz were decided, F.S. 731.301(2) read as follows:

(2) Formal notice shall be sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate.

Effective October 1, 2010, the subsection was amended to read as it does today:

(2) *In a probate proceeding*, formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the

person's interest in the estate or in the decedent's protected homestead.
[Emphasis added].

By statute, probate proceedings are *in rem*, meaning that the court has jurisdiction over the will, if any, the tangible and intangible assets of the decedent's estate (wherever located), and real estate located in Florida, all without the necessity of any original process. F.S. 731.105; *Also see In re: Estate of Williamson*, 95 So.2d 244 (Fla. 1957). Service by formal notice is one method of complying with due process requirements necessary to invoke the court's *in rem* jurisdiction over those receiving the notice to the extent of their interest in the estate. Even without addition of the phrase, "in a probate proceeding," the statute is easily read to be addressing only a means of notice to persons subject to the court's *in rem* jurisdiction that is calculated to effect due process over those receiving the notice.

Formal notice is not judicial process, and is not the equivalent of a summons. For example, nowhere in the Florida Probate Code does it provide that a default may be entered after service of Formal Notice, as would be the case with judicial process. Formal notice does not support *in personam* jurisdiction because formal notice is not judicial process, is not issued under the seal of the court, nor is it typically served as provided in Chapter 48. If the clerk's seal is not affixed to judicial process, it is void and cannot be used to obtain personal jurisdiction. 12A FLA.JUR2d *Courts and Judges* §§ 53-55 and 61-62. While acknowledging that it is possible to provide such authority in a manner that complies with due process, the Committee believes that it is preferable to limit the means of acquiring personal jurisdiction to service of summons or other judicial process by traditional means currently allowed by statute or the Florida Rules of Civil Procedure. By requiring compliance with the existing procedural rules for acquiring personal jurisdiction, the safeguards that assure actual notice by the person over whom personal jurisdiction is sought are preserved.

Personal jurisdiction is neither contemplated nor required in a majority of adversary proceedings in probate. Of those specific adversary proceedings listed in Probate Rule 5.025(a) that require service of formal notice, only surcharge of a personal representative or guardian requires *in personam* jurisdiction, and those fiduciaries have submitted to the court's personal jurisdiction by instituting or participating in the court proceedings. See *Payette v. Clark*, 559 So.2d 630 (2d DCA 1990) (filing of a petition for administration subjects the personal representative to *in personam* jurisdiction "for all purposes related to the administration").

Thus the formal notice procedure was never intended to be a method of obtaining personal jurisdiction over persons having an interest in the probate estate. *In Re Estate of Black*, 528 So.2d 1316 (Fla. 2d DCA 1988); *In Re Estate of Vernon*, 608 So.2d 510 (Fla. 4th DCA 1992). Formal notice is a method of service of notice to a person subject to the court's *in rem* jurisdiction. It is not a summons or judicial process that confers *in personam* jurisdiction over the recipient.

The notion that any person determined to be an “interested person” can be subjected to personal jurisdiction by service of formal notice is incorrect and can be made clear by the proposed amendment to F.S. 731.301.

III. EFFECT OF PROPOSED CHANGES

The proposed amendment to section 7331.301(2) provides:

In a probate proceeding, formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate or in the decedent’s protected homestead. Formal notice is not sufficient to invoke the court’s personal jurisdiction over the person receiving notice regardless of the manner in which it is served.

The proposed amendment would change the result in each of the cases cited in the first paragraph of Section II above. In those factual situations it would be necessary for the petitioners to obtain personal jurisdiction over the adverse parties by traditional means such as service of a summons pursuant to Chapter 48, Florida Statutes.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal does not have a direct economic impact on the private sector.

VI. CONSTITUTIONAL ISSUES

There appear to be no constitutional issues raised by this proposal.

VII. OTHER INTERESTED PARTIES

Florida Justice Association, Inc.

1 A bill to be entitled

2 An act relating to personal jurisdiction of probate courts over persons having an interest in
3 an estate; amending s. 731.301, F.S.; providing that in personam jurisdiction over interested
4 persons cannot be acquired by service of formal notice.

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

6 Section 1. Subsection (2) of section 731.301, Florida Statutes, is amended to read:

7 731.301 Notice

8 (2) In a probate proceeding, formal notice is sufficient to acquire jurisdiction over the person
9 receiving formal notice to the extent of the person's interest in the estate or in the decedent's
10 protected homestead. Formal notice is not sufficient to invoke the court's personal jurisdiction
11 over the person receiving notice regardless of the manner in which it is served.

12
13 Section 2. This act shall take effect upon becoming law and shall apply to formal notice
14 given on or after such date.

**The Florida Bar
Real Property, Probate and Trust Law Section
Probate Law and Procedure Committee
Coins and Bullion Subcommittee**

WHITE PAPER

Proposed Addition of § 731.1065, Florida Statutes

I. SUMMARY

The proposed bill would create § 731.1065, Fla. Stat. to: i) specify that precious metals in any tangible form, such as bullion and coins that are kept apart from their normal use as legal tender for payment, constitute tangible personal property for purposes of the Florida Probate Code without foreclosing the possibility that other items may also constitute tangible personal property; and ii) create a bright line rule as to the disposition of such items identified in a separate writing that complies with § 732.515, Fla. Stat.

II. CURRENT SITUATION

The relevant Florida law does not specify whether certain types of precious metals, such as coins and bullion, that are regularly held by individuals dying in this State constitute “tangible personal property” (which is subject to devise by a tangible personal property clause in a will or a separate writing) or intangible property (which generally passes in accordance with a residuary clause in a will in absence of other specific direction). Specifically:

- The Florida Probate Code does not specify whether these items are “tangible personal property.”
- No Florida cases specifically address this issue; only a Delaware state case has analyzed § 732.515. *In re Last Will and Testament and Trust Agreement of Moor*, 879 A.2d 648, 649 (Del.Ch. Jun 08, 2005) (court noted that money is not specifically excluded under Section 732.515; did not specifically address coins or bullion).
- There is a lack of consensus among practitioners on this issue.

The subcommittee researched the probate code in other states and did not find any state classifying precious metals as intangible property. Washington and California's probate code specifically provide that precious metals are tangible personal property (in each state's separate writing statute).

III. EFFECT OF THE PROPOSED CHANGE

Section X. Section 731.1065, Florida Statutes, is created to read:

In this code, precious metals in any tangible form, such as bullion or coins kept and acquired for their historical, artistic, collectable, or investment value apart from their normal use as legal tender for payment, are tangible personal property.

Section X. The amendment made by this act to s. 731.1065 is intended to clarify existing law, and applies retroactively to all written instruments executed before or after July 1, 2019, as well as all proceedings pending or commenced before or after July 1, 2019 in which the disposition of precious metals in any tangible form has not been finally determined.

While the definition does not create a bright line rule of construction for purposes of a tangible personal property clause in a will, the definition serves as indicia that bullion and coins are ordinarily considered tangible personal property in the probate context. As such, the definition may provide clarity in circumstances where the Will does not specify what tangible personal property is and no other evidence of the testator's intent is apparent.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT - None.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR - None.

VI. CONSTITUTIONAL ISSUES – None.

VII. OTHER INTERESTED PARTIES - None.

VIII. EFFECTIVE DATE

The addition of § 731.1065, Fla. Stat. is remedial in nature, is intended to clarify existing law, and would apply retroactively to all written instruments executed before or after July 1,

2019, as well as all proceedings pending or commenced before or after July 1, 2019 in which the disposition of precious metals in any tangible form has not been finally determined.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1174

INTRODUCER: Judiciary Committee and Senator Bean

SUBJECT: Custody of Minor Children by Extended Family

DATE: March 19, 2019

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1174 grants courts more authority and flexibility in establishing and terminating orders granting “temporary” or “concurrent” custody of a child to an extended family member. As under current law, custody of a child by his or her relative for an indefinite period is referred to in the statutes as “temporary” if it excludes the parents, and as “concurrent” if shared with the parents.

The bill requires a relative to include his or her petition for concurrent custody “[a]ny other request related to the protection of the welfare of the child, including provisions for transitioning custody or a plan for visitation.” And in an order granting concurrent custody, the bill authorizes a court to include conditions agreed to by the parties, including conditions that eliminate or diminish a parent’s custody rights if the parent agrees to the conditions.

Later, when a parent makes a motion to terminate concurrent custody, the court may decline the parent’s request to terminate the order if the parent has failed to meet the conditions and does not demonstrate that the failure does not endanger the welfare of the child.

Regarding an order for *temporary* custody, if it is based on the unfitness or absence of the parents, the court may establish conditions that the parents must meet before the court deems them fit and thus able to retake custody of their child.

Additionally, the bill requires courts to establish any conditions for the transition of the child to the parents' custody which are in the child's best interest if the child was in the temporary custody of a relative for at least six months. In determining these conditions, the court must consider:

- The length of time the child lived with the extended family member;
- The child's developmental stage and psychological needs;
- The need for a gradual transition from one setting to another; and
- Visitation with the extended family member.

II. Present Situation:

The Concept of Temporary or Concurrent Custody of a Child

Under ch. 751, F.S., a child's extended family member may obtain a court order granting him or her custody of the child for an indefinite period of time. This custody may be exclusive of, or concurrent with, the parent's custody. Custody that is exclusive of the parent's custody is referred to in the statutes as "temporary," and custody that is shared by the relative and the parent is "concurrent." Nonetheless, both are indefinite and tend to be temporary.

This system differs from "dependency," set forth in ch. 39, F.S., in that it pertains to *non-dependent* children.

Petition for Temporary or Concurrent Custody

To obtain a court order granting temporary or custody of a child, an extended family member of the child must file a petition for temporary or concurrent custody.¹ In either type of petition, the petitioner must state several things to the court, to the best of his or her knowledge, including the places where the child has lived during the past 5 years, information about other custody proceedings involving the child, the petitioner's relationship to the child, and that it is in the child's best interest for petitioner to have custody.²

In a petition for concurrent custody, the petitioner must also state:

- The time periods during the last 12 months that the child resided with the petitioner;
- The type of document, if any, provided by the parent or parents to enable the petitioner to act on behalf of the child;
- The services or actions that the petitioner is unable to obtain or undertake without an order of custody; and
- Whether each parent has consented in writing to the entry of an order of concurrent custody.³

In a petition for temporary custody, the petitioner must also state that the parents consent or the petitioner must state "the specific acts or omissions of the parents which demonstrate that the parents have abused, abandoned, or neglected the child" as defined in the dependency statutes.⁴

¹ See s. 751.03, F.S.

² *Id.*

³ Section 751.03(8), F.S.

⁴ Section 751.03(9), F.S.

Hearing on the Petition for Temporary or Concurrent Custody

The court will then hold a hearing on the petition. At the hearing, the court must hear the evidence concerning the child's need for care by the petitioner, as well as the objection and other testimony of either parent, if present.⁵

The court must grant the petition if it is in the best interests of the child and the parents do not object.⁶ However, if at least one parent objects the court must proceed in different ways depending on the type of petition.

If at least one parent objects to a petition for concurrent custody, the court must deny the petition and give the petitioner the option of converting the petition to one for temporary custody.⁷ If the petitioner exercises this option, the converted petition will be heard at a later date.⁸

If at least one of the child's parents objects to a petition for temporary custody, the court must grant the petition only if it finds, based on clear and convincing evidence, that the parents are unfit to provide for the care and control of the child.⁹ "In determining that a parent is unfit, the court must find that the parent has abused, abandoned, or neglected the child," as defined in the dependency statutes.¹⁰

Order Granting Temporary or Concurrent Custody

Order Granting Temporary Custody

In an order granting temporary custody, the statutes authorize a court to grant visitation rights to a child's parent or parents, if it is in the best interest of the child.¹¹ The statutes do not expressly authorize the court to state what parents who have been found unfit must do later to prove their fitness, and thus regain the custody of their child.

Order Granting Concurrent Custody

The order granting concurrent custody may not eliminate or diminish the custodial rights of the child's parent or parents.¹² In fact, the order must expressly state that the grant of custody does not affect the ability of the child's parent or parents to obtain physical custody of the child at any time.^{13, 14}

⁵ Section 751.05(1), F.S.

⁶ Section 751.05(2), F.S.

⁷ Section 751.05(3)(a), F.S.

⁸ *Id.*

⁹ Section 751.05(3)(b), F.S.

¹⁰ *Id.*

¹¹ Section 751.05(2), F.S.

¹² Section 751.05(4)(a), F.S.

¹³ *Id.*

¹⁴ An order granting temporary or concurrent custody may require a parent to pay child support to the relative if the parent was served with process, the petition requests the court to child support, and there is evidence of the parent's ability to pay. However, the court may order the redirection of all or part of an existing child support payment to be paid to the relative who is being granted temporary or concurrent custody. Section 751.05(5), F.S.

Terminating Temporary or Concurrent Custody

Terminating Temporary Custody

After the entry of the order granting temporary custody, either parent may petition the court to modify or terminate the order.¹⁵ The court must grant the order upon a finding that the petitioning parent is fit, or upon consent of the relative that took custody of the child.¹⁶

If a court terminates temporary custody, the child might immediately return to his or her parent's custody, and nothing in statute precludes a parent from restricting contact between the child and the relative, regardless of how long the temporary custody lasted.

Terminating Concurrent Custody

The petitioner or either parent may make a motion to terminate concurrent custody at any time.¹⁷ The court must terminate concurrent custody on a parent's request.¹⁸

III. Effect of Proposed Changes:

The bill grants courts more authority and flexibility in establishing and terminating orders granting temporary or concurrent custody of a child to an extended family member. If an order for temporary custody is based on the unfitness or absence of the parents, the court may establish conditions that the parents must meet before the court deems them fit, and thus able to retake custody of their child.

The bill requires a relative to include his or her petition for concurrent custody "[a]ny other request related to the protection of the welfare of the child, including provisions for transitioning custody or a plan for visitation." And in an order granting concurrent custody, the bill authorizes a court to include conditions agreed to by the parties, including conditions that eliminate or diminish a parent's custody rights if the parent agrees to the conditions.

Later, when a parent makes a motion to terminate concurrent custody, the court may decline the parent's request to terminate the order if the parent has failed to meet the conditions and does not demonstrate that the failure does not endanger the welfare of the child.

Regarding an order for *temporary* custody, if it is based on the unfitness or absence of the parents, the court may establish conditions that the parents must meet before the court deems them fit and thus able to retake custody of their child.

Additionally, the bill requires courts to establish any conditions for the transition of the child to the parents' custody which are in the child's best interest if the child was in the temporary custody of a relative for at least six months. In determining these conditions, the court must consider:

- The length of time the child lived with the extended family member;

¹⁵ Section 751.05(6), F.S.

¹⁶ Section 751.05(6), F.S.

¹⁷ Section 751.05(7), F.S.

¹⁸ *Id.*

- The child’s developmental stage and psychological needs;
- The need for a gradual transition from one setting to another; and
- Visitation with the extended family member.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The ability of an extended family member to obtain custody of a child in proceedings under ch. 751, F.S., are contingent on a parent’s consent or lack of objection or a finding that a parent is unfit. If the bill can be construed to allow an extended family member to retain visitation rights or custody during a transitional period over the objection of a fit parent, the bill may implicate the parent’s privacy rights.

In court opinions addressing the right of a nonparent or grandparent to have custody of or visitation with a child, courts have held that a nonparent may have custody of or visitation with a child in very limited circumstances:

Florida’s constitutional right to privacy recognizes the zone of autonomy around a nuclear family into which a judge, legislator, or official, no matter how well intentioned, simply cannot go. This zone protects “the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *D.M.T. v. T.M.H.*, 129 So.3d 320, 336 (Fla. 2013) (citing *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)). The only exception occurs if one of the members of the family is at risk of significant harm. In this regard, the Florida Supreme Court has held that “[n]either the legislature nor the courts may properly intervene in parental decision making absent significant harm to the child threatened by or resulting from those decisions.” *Von Eiff*, 720 So.2d at 514. Under these principles, it is

violation of a parent’s right to privacy for the legislature to confer on non-parents, even biological relatives such as grandparents, the right to visit minor children against the parents will. *See Beagle v. Beagle*, 678 So.2d 1271, 1277 (Fla. 1996) (holding that the State cannot impose grandparent visitation upon a minor child “without first demonstrating a harm to the child”).¹⁹

Moreover, the courts have held that the removal of a beneficial relationship with a grandparent or other person who acted like a parent is not the type of harm necessary to grant custody to or visitation with a nonparent.²⁰

Because child custody awards under ch. 751, F.S., often involve the consent of or lack of objection to custody by a parent at the outset of the proceedings, the provisions of the bill may be distinguishable from the court opinions in which a parent objected to child custody at the outset of legal proceedings. Whether these differences are sufficient to survive a challenge based on the privacy rights of a fit parent is not clear.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁹ *De Los Milagros Castellat v. Pereira*, 225 So. 3d 368, 370-371 (Fla. 3d DCA 2017).

²⁰ *Id.* at 372. The *Pereira* court explained that the removal of a beneficial relationship does not constitute sufficient harm to interfere with a parent’s authority over a child as follows:

As our Supreme Court has held, “[t]here may be many beneficial relationships for a child, but it is not for the government to decide with whom the child builds these relationships. This concept implicates the very core of our constitutional freedoms and embodies the essence of Florida’s constitutional right to privacy.” *Von Eiff*, 720 So.2d at 516. The child’s life may well be enhanced by the additional financial, social, spiritual, and emotional support the former partner might provide. But whether the benefits of such support, from a former partner who is neither the biological or legal parent, outweigh possible detriments lies in the hands of the birth mother: the State of Florida cannot wrest that choice from her.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 751.01, 751.03, and 751.05.

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 March 18, 2019:

The committee substitute authorizes a court to enforce conditions in a concurrent custody order that diminish a parent's custody rights if the parent agrees to the conditions. Additionally, the committee substitute allows a court to require transition conditions for a child that has been in the temporary custody of a relative only if the child was in the relative's custody for at least six months.

- B. **Amendments:**

None.



391970

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 47 - 73

and insert:

Section 3. Subsections (4), (6), and (7) of section 751.05, Florida Statutes, are amended to read:

751.05 Order granting temporary or concurrent custody.—

(4) The order granting:

(a) Concurrent custody of the minor child may not eliminate or diminish the custodial rights of the child's parent or parents, except that the court may approve and enforce any



391970

12 conditions agreed to by the parties as part of the court order.
13 The order must expressly state that the grant of custody does
14 not affect the ability of the child's parent or parents to
15 obtain physical custody of the child at any time, unless the
16 parent or parents agreed to such a condition and it was included
17 in the order.

18 (b) Temporary custody of the minor child to the petitioner
19 may establish conditions to demonstrate the parent's fitness
20 before the child may be returned to the physical custody of the
21 parent and may also grant visitation rights to the child's
22 parent or parents, if it is in the best interest of the child.

23 (6) At any time, either or both of the child's parents may
24 petition the court to modify or terminate the order granting
25 temporary custody.

26 (a) The court shall terminate the order upon a finding that
27 the parent is a fit parent, or by consent of the parties. If the
28 child has been in the temporary custody of an extended family
29 member for 6 months or longer, the court shall establish any
30 conditions for the transition of the child to the parents'
31 custody which are in the best interest of the child, considering
32 the length of time the child lived with the extended family
33 member, the child's developmental stage and psychological needs,
34 the need for a gradual transition from one setting to another,
35 and visitation with the extended family member.

36 (b) The court may modify an order granting temporary
37 custody if the parties consent or if modification is in the best
38 interest of the child.

39 (7) At any time, the petitioner or either or both of the
40 child's parents may move the court to terminate the order



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41 granting concurrent custody.

42 (a) The court shall terminate the order upon a finding that
43 either or both of the child's parents object to the order,
44 except that if the order granting concurrent custody contains
45 conditions agreed to by the parties, the court may require the
46 parties to comply with such conditions or demonstrate that the
47 failure to comply does not endanger the welfare of the child
48 before allowing the parents to regain physical custody.

49 (b) The fact that an order for concurrent custody has been
50 terminated does not preclude any person who is otherwise
51 eligible to petition for temporary custody from filing such
52 petition.

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 lines 7 - 13

57 and insert:

58 F.S.; providing requirements for orders granting
59 concurrent or temporary custody; requiring the court
60 to establish any conditions for the transition of
61 custody of the child to the parent which are in the
62 child's best interest under certain circumstances;
63 requiring the court to consider specified factors;
64 authorizing the court to require parties to comply
65 with conditions agreed to be the parties in the order
66 granting concurrent custody or demonstrate that
67 failure to comply does not endanger the welfare of the
68 child; providing an effective

By Senator Bean

4-01285A-19

20191174__

1 A bill to be entitled
 2 An act relating to custody of minor children by
 3 extended family; amending s. 751.01, F.S.; revising
 4 the purposes of ch. 751, F.S.; amending s. 751.03,
 5 F.S.; providing that a petition for concurrent custody
 6 may include certain requests; amending s. 751.05,
 7 F.S.; authorizing a court to establish conditions for
 8 a parent to obtain custody in an order granting
 9 temporary custody under certain circumstances;
 10 requiring the court to establish any conditions for
 11 the transition of custody of the child to the parent
 12 which are in the child's best interest, and to
 13 consider specified factors; providing an effective
 14 date.
 15
 16 Be It Enacted by the Legislature of the State of Florida:
 17
 18 Section 1. Subsection (4) is added to section 751.01,
 19 Florida Statutes, to read:
 20 751.01 Purpose of act.—The purposes of this chapter are to:
 21 (4) Protect the welfare of minor children by providing for
 22 transitions of custody that consider each child's developmental
 23 stage and psychological needs.
 24 Section 2. Subsection (8) of section 751.03, Florida
 25 Statutes, is amended to read:
 26 751.03 Petition for temporary or concurrent custody;
 27 contents.—Each petition for temporary or concurrent custody of a
 28 minor child must be verified by the petitioner, who must be an
 29 extended family member, and must contain statements, to the best

Page 1 of 3

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

4-01285A-19

20191174__

30 of the petitioner's knowledge and belief, providing:
 31 (8) If concurrent custody is being requested:
 32 (a) The ~~time~~ periods during the last 12 months that the
 33 child resided with the petitioner;
 34 (b) The type of document, if any, provided by the parent or
 35 parents to enable the petitioner to act on behalf of the child;
 36 (c) The services or actions that the petitioner is unable
 37 to obtain or undertake without an order of custody; ~~and~~
 38 (d) Whether each parent has consented in writing to the
 39 entry of an order of concurrent custody; and
 40 (e) Any other request related to the protection of the
 41 welfare of the child, including provisions for transitioning
 42 custody or a plan for visitation.
 43
 44 A copy of the written consent and any documents provided by the
 45 parent to assist the petitioner in obtaining services must be
 46 attached to the petition.
 47 Section 3. Paragraph (b) of subsection (4) and subsection
 48 (6) of section 751.05, Florida Statutes, are amended to read:
 49 751.05 Order granting temporary or concurrent custody.—
 50 (4) The order granting:
 51 (b) Temporary custody of the minor child to the petitioner
 52 may also grant visitation rights to the child's parent or
 53 parents, if it is in the best interest of the child. If the
 54 order of temporary custody is entered after a determination of
 55 parental unfitness or because the parents could not be located
 56 after notice was provided, the court may establish conditions
 57 that must be met demonstrating the fitness of the parent to care
 58 for the child before he or she may obtain custody.

Page 2 of 3

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

4-01285A-19

20191174__

59 (6) At any time, either or both of the child's parents may
60 petition the court to modify or terminate the order granting
61 temporary custody.

62 (a) The court shall terminate the order upon a finding that
63 the parent is a fit parent, or by consent of the parties.

64 (b) The court may modify an order granting temporary
65 custody if the parties consent or if modification is in the best
66 interest of the child.

67 (c) The court shall establish any conditions for the
68 transition of the child to the parents' custody which are in the
69 best interest of the child, considering the length of time the
70 child lived with the extended family member, the child's
71 developmental stage and psychological needs, the need for a
72 gradual transition from one setting to another, and visitation
73 with the extended family member.

74 Section 4. This act shall take effect July 1, 2019.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 7, 2019

I respectfully request that **Senate Bill # 1174**, relating to Custody of Minor Children by Extended Family, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE APPEARANCE RECORD

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

3/18/2019

Meeting Date

SB 1174

Bill Number (if applicable)

391970

Amendment Barcode (if applicable)

Topic Relating to Custody of Minor Children by Extended Family

Name Alan Abramowitz

Job Title Executive Director

Address 600 S. Calhoun St.

Street

Tallahassee

City

FL

State

32399

Zip

Phone 850.241.3232

Email alan.abramowitz@gal.fl.gov

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
APPEARANCE RECORD

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

3.18.19

Meeting Date

1174

Bill Number (if applicable)

Topic Custody of Minor Children by Extended Family

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1246

INTRODUCER: Senator Wright

SUBJECT: Construction Defects

DATE: March 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	Pre-meeting
2.			IT	
3.			RC	

I. Summary:

SB 1246 overhauls Chapter 558 and makes court-ordered, non-binding arbitration mandatory in all construction defect cases. In overhauling ch. 58, F.S., the bill does the following:

- Amends the Legislature’s findings in s. 558.001, F.S., clarifying that arbitration is not merely an alternative to litigation but is an effective and cost-efficient method of resolving construction defect claims.
- Repeals the pre-suit notice and opportunity to repair requirements set out in ss. 558.003, 558.004, and 558.005, F.S. and removes corresponding definitions in s. 558.002, F.S.
- Creates s. 558.0045, F.S. requiring court-ordered, non-binding arbitration for any action involving a construction defect.

Under the new procedures requiring non-binding arbitration for construction defect claims, although the parties must elect in writing within 30 days whether to be bound by the arbitrator’s determination or to pursue a traditional lawsuit concerning any unresolved claims. In either event, the arbitrator or the jury must make specific written findings in determining the monetary award against a party (contractor, sub-contractor, etc.). These findings must relate to the:

- Nature of the defect;
- Amount awarded against each separate party; and
- Reasons the amount is being awarded against that party (including the amount of the award attributable to each party’s repair or replacement of its own defective work as well as the cost to repair and replace damage cause to the non-defective work of other parties).

The bill also specifies that it should not be construed as precluding the parties from entering settlement agreements on their claims either before or after the arbitration process.

The bill is effective July 1, 2019.

II. Present Situation:

Construction Defect Claims

Florida law defines a construction defect as a deficiency in or arising out of “the design, specifications, surveying, planning, supervision, observation of construction, or construction, repair, alteration, or remodeling of real property.”¹ Construction deficiencies may result from:

- Defective material, products, or components used in the construction or remodeling.
- A code violation giving rise to a cause of action pursuant to s. 553.84, F.S.
- Construction design that fails to meet the applicable professional standards of care at the time of governmental approval.
- Construction or remodeling practices that fail to adhere to accepted trade standards, i.e., poor workmanship.

Alternative Dispute Resolution for Construction Defect Claims: Pre-Suit Notice and Opportunity to Repair

Before a property owner may file a lawsuit asserting a construction defect claim, he or she must first follow the pre-suit notice procedure set out in ch. 558, F.S.² The pre-suit notice procedure is meant to act as an alternative dispute resolution method³ of resolving construction defect claims without resorting to lengthy and expensive traditional litigation.⁴ The procedure gives the party responsible for the defect an opportunity to repair it, offer a monetary settlement, or both.⁵

The pre-suit notice procedures require the following steps. Note, the timelines are longer if the property owner is an “association” representing more than 20 parcels.⁶

*Step 1 - Notice of Claim*⁷

The property owner’s first step is to serve a written notice of claim on the contractor, subcontractor, supplier, or design professional, as applicable, and provide a reasonably detailed description and location of the defect and any known damage or loss resulting from the defect. Although a property owner is encouraged to serve the notice of claim within 15 days of the discovery of a defect, a notice of claim must be served at least 60 days before the property owner files legal action, or at least 120 days prior if the property owner is an association.⁸

¹ Section 558.002(5), F.S.

² Section 558.003, F.S. (noting that a lawsuit will be stayed until the claimant has complied with the pre-suit notice procedure).

³ *Altman Contractors, Inc. v. Crum & Forseter Specialty Ins. Co.*, 232 So. 3d 273, 278 (Fla. 2017). See discussion, *infra*.

⁴ Section 558.01, F.S.

⁵ Section 558.04(5), F.S.

⁶ “Association” means a condominium owners’ association, different types of homeowners’ associations, or association operating a property cooperative. See s. 558.002(2), F.S. (“Association” has the same meaning as in s. 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075”).

⁷ Section 558.005, F.S. provides statutory “Chapter 558 Notice of Claim” language that may be applicable based on the timeframe of the claim.

⁸ Section 558.004(1), F.S.

Step 2 - Reasonable Inspection

Once the notice of claim is served, the recipient has either 30 days, or 50 days if the property owner is an association, to inspect the property. The purpose of the recipient's inspection is to determine the nature and cause of each alleged construction defect and the extent of any repairs or replacements necessary to remedy each defect.⁹

Step 3 - Settlement Offers

After inspecting the property, the recipient must decide whether it disputes or agrees there is a defect. In either event, the recipient must inform the owner of the property in writing within 45 days of service after the claim, or 75 days if the owner is an association, whether the recipient: (1) disputes the claim and will not make an offer to repair or settle the claim; (2) agrees there is a defect and offers to either (a) repair the defect, (b) settle the claim by the monetary payment, or (c) settle the claim by a combination of monetary payment and repairs; or (3) agrees there is a defect but makes a conditional offer of insurance proceeds as payment or partial payment to be determined by the recipient's insurer within 30 days.¹⁰

In the case of an offer contingent on insurance proceeds, notice to the insurer must occur at the same time the property owner is notified of the settlement offer.¹¹

If the recipient disputes the claim or fails to respond in writing, the property owner may proceed with a traditional lawsuit. However, if the property owner receives a timely settlement offer, the property owner must serve a written notice accepting or rejecting the offer within 45 days. Any court action will be stayed until the property owner complies with this requirement.¹²

Effects of Pre-Suit Procedure on Lawsuits, Arbitration Clauses, and Insurance Policies

The pre-suit notice procedure affects **traditional lawsuits** by tolling the applicable statute of limitations once the notice of claim is served, but provides these periods may be extended by stipulation of the parties.¹³ Otherwise, the pre-suit notice procedure does not bar, limit, or create any rights, causes of action, or defenses in a traditional legal action.¹⁴

Additionally, the failure of a recipient of a notice of claim to respond with an offer a settlement is not construed as an admission of liability and is not admissible in a court proceeding as evidence of an admission against the recipient's interest.¹⁵ Finally, if a party fails to provide information requested by another other party (such as design plans, photographs, etc.) during the

⁹ Section 558.004(2), F.S.

¹⁰ Section 558.004(5), (6), F.S.

¹¹ Section 558.004(5)(e), F.S.

¹² Section 558.004(7), F.S.

¹³ Section 558.004(10), F.S. *See also* s. 95.11 F.S. for applicable statute of limitations provision.

¹⁴ Section 558.004(12), F.S.

¹⁵ Section 558.004(9), F.S. *Compare* Fla. R. Civ. P. 1.110(e) (providing that the defendant's failure in an answer or other responsive pleading to deny the claim and allegations in a complaint filed in a civil lawsuit may be deemed an admission). *See generally* s. 90.408, F.S. ("Evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value.").

pre-suit notice period, such failure may result in sanctions for discovery violations if the claim proceeds to trial.¹⁶

Concerning another form of alternative dispute resolution, **arbitration**,¹⁷ the pre-suit notice procedures control over a conflicting “arbitration clause in a contract for the sale, design, construction, or remodeling of real property.”¹⁸

Additionally, the pre-suit notice procedure does not relieve any party from complying with its contractual obligations under a **liability insurance policy** as a condition precedent for coverage.¹⁹ Also, a “notice of claim” for purposes of chapter 558, F.S. “shall not constitute a claim for insurance purposes unless the terms of the policy specify otherwise.”²⁰

The Florida Supreme Court’s Decision in *Altman Contractors v. Crum & Forster Specialty Insurance Company*²¹

The pre-suit notice procedures of chapter 558, F.S., set out above, were recently examined in the case of *Altman Contractors v. Crum & Forster Specialty Insurance Company (Altman)*. In *Altman*, the Florida Supreme Court was asked to review the following question certified by the U.S. Court of Appeals of the Eleventh Circuit:

Is the notice and repair process in chapter 558, F.S., a ‘suit’ within the meaning of the commercial general liability policy issued by C&F to Altman?²²

The question in *Altman* arose after Altman, the general contractor on a commercial condominium project, was served with multiple notices of claim of construction defects by the property owner, a condominium association. Altman was insured by Crum & Foster Specialty Insurance Company (C&F) “through seven consecutive one-year commercial general liability (CGL) insurance policies, all of which were materially the same.”²³ The policy contained the following clause:

We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result.²⁴

¹⁶ Section 558.004(15), F.S.

¹⁷ Discussed further, *infra*.

¹⁸ Section 558.004(14).

¹⁹ Section 558.004(13), F.S.

²⁰ *Id.*

²¹ 232 So. 3d 273 (Fla. 2017).

²² *Id.* at 274.

²³ *Id.* at 275.

²⁴ *Id.*

The policy further defined the term “suit” as a “civil proceeding” for damages or injuries covered by the policy. It also provided that the term “suit” included mandatory arbitration proceedings and, with the insurer’s consent, non-mandatory arbitration proceedings; and included “[a]ny other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.”²⁵

Based on the policy language, the majority opinion in *Altman* answered the Eleventh Circuit’s question in the affirmative, holding as follows:

[W]e answer the certified question in the affirmative and hold that the notice and repair process set forth in chapter 558 constitutes a “suit” within the meaning of *the commercial general liability policy issued by C & F to Altman*. Although the chapter 558 process does not constitute a “civil proceeding,” it is included in the policy’s definition of “suit” as an “alternative dispute resolution proceeding” to which the insurer’s consent is required to invoke the insurer’s duty to defend the insured.²⁶

In reaching this holding, the majority first reasoned that the chapter 558 pre-suit notice procedure did not meet the policy’s initial definition of a “suit” as a “civil proceeding.” The majority looked to the common definition of a “civil proceeding,” which is a mandatory process to adjudicate or enforce rights, regulations, laws, and remedies. Because ch. 558, F.S., does not require that a contractor or other recipient of a notice of claim actually participate in the pre-suit notice procedure, the majority reasoned that the pre-suit notice procedure is not a “civil proceeding” for purposes of the policy’s definition.²⁷ However, because the policy’s definition of a “suit” includes “any alternative dispute resolution proceeding,” the majority reasoned that the chapter 558 pre-suit notice procedure met the policy’s definition of a “suit” because it explicitly refers to itself as a method of alternative dispute resolution.²⁸

Both Justice Lewis, in his concurring opinion, and Justice Lawson, in his opinion concurring in part, dissenting part, pointed out that workmanship (construction) defects are not generally covered by the type of policy at issue in *Altman*, a general commercial liability policy.²⁹ General commercial liability policies “provide protection for personal injury or for property damage caused by the completed product, but not for the replacement and repair of that product.”³⁰ Additionally, Justice Lawson pointed out that the pre-suit notice procedures in ch. 558, F.S., does not meet the common definition of a “proceeding” because it does not provide for third-party facilitation of the process, nor does it provide a way to determine damages.³¹ Finally, Justice Lawson pointed out that the language of s. 558.004(13), F.S., stating that a notice of claim does not “constitute a claim for insurances purposes” makes it clear that “insurer participation is not intended.”³² As Justice Lawson explained,

²⁵ *Id.*

²⁶ *Id.* at 279.

²⁷ *Id.* at 278.

²⁸ *Id.* at 278.

²⁹ *Id.* at 279-80, 283.

³⁰ *Id.* at 279 (quoting *LaMarche v. Shelby Mut. Ins. Co.*, 390 So. 2d 325, 326 (Fla. 1980)(citation omitted).

³¹ *Id.* at 284.

³² *Id.*

To me, this reflects the Legislature’s understanding that the singular type of claim for which it was establishing this process—a construction defect claim—does not generally involve insurance. And, in light of this understanding, the Legislature very carefully drafted the statute so as to exclude from the chapter 558 process secondary claims for personal injury or property damage caused by a construction defect (to which insurance would typically apply). Therefore, the majority construes the statute as applying to a type of claim that the plain language of the statute excludes from the chapter 558 process.³³

Implications of the *Altman* Decision

The *Altman* decision has created questions concerning the decision’s impact on the duties of insureds toward insurers in their commercial general liability (CGL) policies. Many of these questions were presented in a recent article in The Florida Bar Journal:

If a Ch. 558 notice of claim is a “suit” for purposes of a CGL policy, is the insured now obligated to notify its insurer each time it receives a Ch. 558 notice of claim? The answer is not clear from the court’s decision, and a wrong guess by an insured could result in a loss of coverage. The court’s opinion, unfortunately, provides no answer.

Assuming an insured provides notice of receipt of a Ch. 558 notice of claim, the immediate impact of the *Altman* decision is to shift the terms of the debate from whether a Ch. 558 notice of claim could *ever* constitute a suit for insurance purposes to a more fact-intensive inquiry. Did the insured provide timely notice to the insurer of the written notice of claim? Did the insurer consent (expressly or by implication) to the insured’s participation in the Ch. 558 process? Did the insured make voluntary payments to resolve the claim for which there is no coverage under the policy? These matters were all contested in the *Altman* case, and are likely to be contested in future cases.³⁴

Arbitration

Arbitration is a form of alternative dispute resolution, permitting the parties to resolve claims and disputes outside the traditional litigation process. When one or more parties submit a dispute to arbitration, the parties’ claims are decided by one or more impartial persons known as arbitrators, who will render a final and potentially binding decision.³⁵

³³ *Id.* at 285.

³⁴ Reese J. Henderson, Jr., *Altman Contractors, Inc. V. Crum & Forster Specialty Insurance Company: Balancing The Interests Surrounding Potential Insurance Coverage For Ch. 558 Notices Of Claim*, FLA. BAR JOURNAL, Vol. 92, No. 9, p. 11, available at <https://www.floridabar.org/the-florida-bar-journal/altman-contractors-inc-v-crum-forster-specialty-insurance-company-balancing-the-interests-surrounding-potential-insurance-coverage-for-ch-558-notices-of-claim/> (last visited March 14, 2019).

³⁵ American Arbitration Association, *Arbitration*, available at <https://www.adr.org/Arbitration> (last visited March 14, 2019). See also s. 682.011(2), F.S. (defining “arbitrator”).

The advantage of arbitration for the parties is it is quicker and more economical than traditional litigation.³⁶ Additionally, the arbitrators may have specialized industry knowledge concerning the subject matter of the dispute and, thus, a better understanding of the dispute than a judge or jury.³⁷ The disadvantage, at least to parties to binding arbitration, is that the parties give up substantial safeguards that litigants in court proceedings enjoy, which may include the discovery process where parties obtain information from one another.³⁸

Revised Florida Arbitration Code

In Florida, arbitration proceedings are governed by the Revised Florida Arbitration Code (FAC).³⁹ The FAC prescribes a framework governing the rights and procedures under arbitration agreements made on or after July 1, 2013, and applies to all agreements to arbitration as of July 1, 2016.⁴⁰ Unless interstate commerce is implicated,⁴¹ the FAC governs the arbitration process in its entirety, including, but not limited to the scope and enforceability of arbitration agreements, appointment of arbitrators, arbitration hearing process and procedure, entry and enforcement of arbitration awards, and appeals.⁴²

Federal Arbitration Act

Pre-dispute arbitration agreements involving interstate commerce are governed by the Federal Arbitration Act (FAA).⁴³ The FAA established a federal policy that favors and encourages the use of arbitration to resolve disputes. Due to this federal policy, the use of pre-dispute arbitration agreements has expanded beyond use in commercial contexts between large businesses and those with equal bargaining power to use in noncommercial consumer contracts.⁴⁴

Mandatory Non-binding Arbitration

In Florida, a court may “refer any contested civil action filed in a circuit or county court to non-binding arbitration” by either its own motion or the request of the party.⁴⁵ Non-binding arbitration is conducted in accordance with Florida Rule of Civil Procedure 1.820 and “provides

³⁶ *Id.* See also *ManorCare Health Services, Inc. v. Stiehl*, 22 So. 3d 96, 105 (Fla. 2d DCA 2009) (Altenbernd, J., specially concurring) (noting “[a]rbitration was intended to create a speedy and economically efficient dispute resolution process”).

³⁷ American Arbitration Association, *Vetted National Roster of Arbitrators*, available at <https://www.adr.org/Arbitration> (last visited March 14, 2019) (noting that arbitration panels are comprised of “distinguished judges as well as leaders in the legal and business communities with industry-specific knowledge and expertise.”).

³⁸ Amanda Perwin, *Mandatory Binding Arbitration: Civil Injustice By Corporate America*, White Paper for the Center for Justice & Democracy, No. 13, p. 3 (August 2005), available at <http://centerjd.org/content/white-paper-mandatory-binding-arbitration-civil-injustice-corporate-america> (last visited March 14, 2019).

³⁹ See ch. 682, F.S. and ch. 2013-232, Laws of Fla., based on the 2000 revision of the 2000 Uniform Arbitration Act. The FAC was originally enacted in 1957, ch. 57-402, Laws of Fla., and is based on the 1955 Uniform Arbitration Act (UAA). It was subsequently amended in 1967. See ch. 67-254, Laws of Fla.

⁴⁰ Section 682.013, F.S.

⁴¹ *O’Keefe Architects, Inc. v. CED Construction Partners, Ltd.*, 944 So. 2d 181, 184 (Fla. 2006).

⁴² See generally ch. 682, F.S.

⁴³ See 9 U.S.C.A. ss. 1-16.

⁴⁴ Shelley McGill, *Consumer Arbitration Clause Enforcement: A Balanced Legislative Response*, 47 AM. BUS. L.J. 361, 366 (Fall 2010).

⁴⁵ *Contractor’s Mgmt. Sys. of NH, Inc. v. Acree Air Conditioning, Inc.*, 799 So. 2d 320, 321 (Fla. 2d DCA 2001); s. 44.103(2), F.S.

the procedural processes of standard arbitration but with an informal hearing on the dispute's merits and without the finality of a binding decision.”⁴⁶

The Legislature has required non-binding mandatory arbitration in other situations. For example, s. 718.1255, F.S. provides for mandatory non-binding arbitration to resolve disputes between a condominium association board and the unit owners pertaining to issues within the scope of the condominium association's authority.

III. Effect of Proposed Changes:

SB 1246 overhauls ch. 558, F.S., and requires court-ordered mandatory arbitration in all construction defect cases.

Amended Provisions

Section 1 amends the Legislature's findings in s. 558.001, F.S., removing less definitive language and clarifying arbitration is not merely an alternative to litigation but an effective and cost-efficient method of resolving construction defect claims.

Section 2 removes three definitions in s. 558.002, F.S.:

- (1) “Association,” which includes, by cross-reference to their statutory definitions, a condominium owners' association, homeowners' associations, and association operating a property cooperative.⁴⁷
- (2) “Completion of building improvement” which means a “certificate of occupancy.”
- (3) “Service” means “delivery by certified mail . . . by hand delivery, or by and courier with written evidence of delivery.”

Although the definition for (1) “association” is deleted by the bill, the definition of a “claimant” remains the same in s. 558.002, F.S., and means “a property owner, including a subsequent purchaser or *association*.”⁴⁸ Otherwise, it appears all three definitions are removed because they correspond to the repealed provisions in sections 4, 5, and 6.

Repealed Provisions

Sections 4, 5, and 6 repeal the current pre-suit notice and opportunity to repair requirements set out in ss. 558.003, 558.004, and 558.005, F.S.

⁴⁶ American Arbitration Association, *Non-binding Arbitration*, available at <https://www.adr.org/Arbitration> (last visited March 14, 2019) (stating further that “Non-binding arbitration can be valuable for less complex business-to-business and business-to-consumer disputes where the parties may be too far apart in their viewpoints to mediate or are in need of an evaluation of their respective positions.”).

⁴⁷ See s. 558.002(2), F.S. (“‘Association’ has the same meaning as in s. 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075”).

⁴⁸ Section 558.002(3), F.S. (emphasis added).

New Provisions

Section 3 creates s. 558.0045, F.S. which requires court-ordered, mandatory, non-binding arbitration for any action involving a construction defect, including civil lawsuits and arbitration actions.

Procedurally, the bill provides that mandatory, non-binding arbitrations conducted under this section must be conducted in accord with ch. 682, F.S. The time arbitration must be commenced is (1) once all the proper parties have been joined to the action, but (2) no later than 180 days after the action is brought. However, any party joined to the action after 180 days is still subject to mandatory, non-binding arbitration.

The bill also requires that specific findings be made by the fact-finder, be it the arbitrator or a jury in the event the parties opt not to be bound by the arbitrator's determination and pursue a traditional law suit. The fact-finder must make the following specific findings in determining an award against a party (including a contractor, sub-contractor, supplier, of design professional):

- The nature of the defect;
- The amount awarded against each separate party (contractor, sub-contractor, design professionals, and suppliers); and
- The reasons the amount is being awarded against that party, including:
 - The amount attributable to each party's repair or replacement of its own defective work.
 - The amount attributable to the cost to repair and replace damage cause to the non-defective work of other parties.
 - Any other damages awarded against the party.

Although arbitration is mandatory, it is not binding. Each party must elect in writing to be bound by the arbitration award within 30 days after it is rendered. If a party does not agree to be bound by the arbitration award, that party may proceed with a traditional lawsuit on any unresolved portions of the claim.

However, the parties may still settle any claims during the arbitration process. The bill specifically states that it should not be construed to preclude partial settlements and compromises of claims by the parties either before or after arbitration.

Additionally, the bill states that it does not affect the rights and duties of insureds and insurance carriers under their policies. However, the bill provides that subrogation (the insurance company stepping in to defend its insured in arbitration or a lawsuit) applies only to the scope of work by the policy's named insured.

Section 7 provides that the bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The bill will affect insurers who insure contractors, subcontractors, and others under policies containing similarly written provisions to the one in *Altman Contractors* concerning the duty to provide a defense to a lawsuit. Mandatory, non-binding arbitration meets the definition of a “suit” in the policy provision at issue in *Altman Contractors*, and will trigger the insurance company’s duty to defend the insured when an otherwise covered claim of construction defect is raised by a property owner.

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: 558.001, 558.002.

This bill creates the following sections of the Florida Statutes: 558.0045.

This bill repeals the following sections of the Florida Statutes: 558.003, 558.004, 558.005.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Wright

14-01462A-19

20191246__

A bill to be entitled

An act relating to construction defects; amending s. 558.001, F.S.; revising legislative findings; providing applicability; amending s. 558.002, F.S.; deleting terms; creating s. 558.0045, F.S.; providing applicability; requiring courts to require parties in actions involving construction defects to take part in nonbinding arbitration; providing requirements for the arbitration; requiring an arbitrator to include certain information in his or her award if he or she makes certain findings; authorizing parties to agree to be bound by the arbitration award; authorizing a party that does not agree to be bound by the award to proceed with certain actions; providing construction; requiring a jury verdict and a final judgment to contain specified information in certain proceedings; specifying that claims against certain parties are subject to certain mandatory nonbinding arbitration; providing applicability relating to insureds and insurance carriers; repealing s. 558.003, F.S., relating to action and compliance; repealing s. 558.004, F.S., relating to notice and opportunity to repair; repealing s. 558.005, F.S., relating to contract provisions and applicability; providing an effective date.

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

Section 1. Section 558.001, Florida Statutes, is amended to

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

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read:

558.001 Legislative findings and declaration.—The Legislature finds that it is beneficial to have an effective and cost-efficient ~~alternative~~ method to resolve construction disputes that would reduce ~~the need for~~ litigation as well as protect the rights of property owners. An effective alternative dispute resolution mechanism in ~~certain~~ construction defect matters should involve the claimant and the ~~filing a notice of claim with the~~ contractor, subcontractor, supplier, or design professional that the claimant asserts is responsible for the defect, and should provide the claimant and the contractor, subcontractor, supplier, or design professional, and the insurer of the contractor, subcontractor, supplier, or design professional, with an opportunity to resolve the claim through meaningful arbitration of the claim ~~confidential settlement negotiations~~ without resort to extended litigation. This chapter does not preclude resolution of claims through settlement negotiations ~~further legal process~~.

Section 2. Subsections (2), (4), and (9) of section 558.002, Florida Statutes, are amended to read:

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

(2) "Association" ~~has the same meaning as in s. 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075.~~

(4) "Completion of a building or improvement" ~~means issuance of a certificate of occupancy, whether temporary or otherwise, that allows for occupancy or use of the entire building or improvement, or an equivalent authorization issued by the governmental body having jurisdiction. In jurisdictions where no certificate of occupancy or equivalent authorization is~~

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59 ~~issued, the term means substantial completion of construction,~~
60 ~~finishing, and equipping of the building or improvement~~
61 ~~according to the plans and specifications.~~

62 ~~(9) "Service" means delivery by certified mail with a~~
63 ~~United States Postal Service record of evidence of delivery or~~
64 ~~attempted delivery to the last known address of the addressee,~~
65 ~~by hand delivery, or by delivery by any courier with written~~
66 ~~evidence of delivery.~~

67 Section 3. Section 558.0045, Florida Statutes, is created
68 to read:

69 558.0045 Construction defect litigation; special
70 requirements.-

71 (1) This section applies to all actions involving
72 construction defects, including civil suits and arbitrations.

73 (2) In any action involving construction defects, the court
74 shall require that the parties take part in nonbinding
75 arbitration. Such arbitration must be conducted in accordance
76 with chapter 682, except as otherwise provided in this section.
77 The mandatory arbitration must take place once all proper
78 parties have been joined in the action, but not later than 180
79 days after the action is brought.

80 (3) If the arbitrator finds in favor of a claimant as to
81 one or more parties on the construction defect claim, the award
82 must include a detailed description of the nature of the defect
83 and of the monetary amount awarded against each separate party,
84 including the monetary amount of the award attributable to each
85 of the following:

86 (a) Repairing or replacing the party's own defective work.

87 (b) Repairing or replacing other nondefective property

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88 damaged by that party's defective work.

89 (c) Other damages being awarded against the party.

90 (4) Any party to the arbitration may agree in writing to be
91 bound by the arbitration award as to claims between the parties.
92 Such election to be bound must be exercised within 30 days after
93 the arbitration award. If a party does not agree to be bound by
94 the arbitration award, such party may proceed with the civil
95 action on the unresolved portions of the claim. This chapter may
96 not be construed to preclude a partial settlement or compromise
97 of the claim as agreed to by the parties before or after the
98 arbitration.

99 (5) With regard to any parties who do not agree to be bound
100 by the arbitration and who proceed to trial in the action, the
101 jury verdict and final judgment must include a detailed
102 description of the nature of the defect and of the monetary
103 amount awarded against each separate party, including the
104 monetary amount of the award attributable to each of the
105 following:

106 (a) Repairing or replacing the party's own defective work.

107 (b) Repairing or replacing other nondefective property
108 damaged by that party's defective work.

109 (c) Other damages being awarded against the party.

110 (6) Any claims against parties joined after the 180-day
111 period set forth in subsection (2) are also subject to mandatory
112 nonbinding arbitration under subsections (2) and (3).

113 (7) This chapter does not affect the rights and duties of
114 insureds and insurance carriers under their policies, but any
115 defense, with or without a reservation of rights, provided by an
116 insurer to a party, including any party asserting additional

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117 insured status, in proceedings subject to this chapter and in
118 any action involving a construction defect applies only to the
119 scope of work of its named insured.

120 Section 4. Section 558.003, Florida Statutes, is repealed.

121 Section 5. Section 558.004, Florida Statutes, is repealed.

122 Section 6. Section 558.005, Florida Statutes, is repealed.

123 Section 7. This act shall take effect July 1, 2019.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1338

INTRODUCER: Senator Rodriguez

SUBJECT: Guardianship

DATE: March 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	Favorable
2.	_____	_____	CF	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1338 amends three provisions of the Florida Guardianship Law. The bill makes minor or technical changes to the venue provision in s. 744.3701(1)-(4), F.S., clarifying that venue for purposes of appointing a guardian applies to minors as well as incapacitated persons. Additionally, the bill makes technical changes to s. 744.3701(1), F.S., to clarify that only the enumerated list of persons or agency representatives may inspect a confidential guardianship report or settlement agreement unless a court order based on good cause or another statutory provision permits others to inspect these documents.

Most significantly, the bill changes the standard and procedures for the mandatory dismissal of a petition to determine incapacity by a court under s. 744.331(4), F.S. Under existing law, a court *must* dismiss a petition if at least two of the three members of an examining committee conclude that the alleged incapacitated person is not incapacitated in any respect. Under the bill, a court must dismiss the petition only if the committee unanimously concludes the incapacitated person is not incapacitated in any way. However, the bill provides interested parties an opportunity to object to the dismissal by filing a timely verified motion making a reasonable showing, by evidence in the record or proffered, that the hearing is necessary. However, a party that files the motion in bad faith is subject to sanctions.

The bill also provides that it is effective upon becoming a law and applies retroactively to pending cases under the Florida Guardianship Law.

II. Present Situation:

Guardianship

Guardianships are trust relationships designed to protect vulnerable members of society who do not have the ability to protect themselves, such as minor children and incapacitated adults. Under

a guardianship, a “guardian” is appointed to act on behalf of the vulnerable person, also called a “ward.”¹ There are two main forms of guardianship: (1) guardianship over the person and (2) guardianship over the property, which may be limited or plenary.² A guardian is given the legal duty and authority to care for the ward and his or her property during the ward’s infancy, disability, or incapacity.³

For **adults**, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, when an individual’s mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court appointed examination committee.⁴ Once an adult is adjudicated incompetent, then a guardian may be appointed.⁵

For **minors**, i.e., an unmarried person under the age of 18,⁶ no petition to determine incapacity need be filed⁷ because minors are presumptively lacking in capacity by operation of law. Minors are treated differently “based upon the particular vulnerability of children, their inability to make critical decisions in an informed, mature manner, and the importance of the parental role in child rearing.”⁸ For instance, minors are deemed not to have legal capacity to initiate legal proceedings⁹ or enter contracts.¹⁰

The process to determine incapacity and the appointment of a guardian begins with a petition filed in the appropriate circuit court.

Procedures to Determine Incapacity and Appoint a Guardian

“Guardianships are governed by a comprehensive statutory code and set of procedural rules.”¹¹ “The guardianship statutes and rules complement one another. The guardianship statutes set out the substantive law in this area and the Florida Probate Rules set out ‘the procedure in all probate and guardianship proceedings.’”¹² Because guardianship proceedings seek to protect the ward,¹³ unlike most other types of litigation, guardianship proceedings are not adversarial.¹⁴

¹ See generally, s. 744.102(9), F.S.

² Section 744.102(9), F.S.

³ BLACK’S LAW DICTIONARY, 10th edition, 2014.

⁴ See generally, s. 744.102(12), F.S.

⁵ *D.H. v. Adept Cmty. Services, Inc.*, 43 Fla. L. Weekly S533 (Fla. Nov. 1, 2018), *reh’g denied*, SC17-829, 2018 WL 6264576 (Fla. Nov. 29, 2018) (quoting *Hayes v. Guardianship of Thompson*, 952 So.2d 498, 505 (Fla. 2006))(internal quotation marks omitted).

⁶ Section 744.102(13), F.S.

⁷ Fla. Prob. R. 5.555(a)-(b).

⁸ 25 Fla. Jur 2d Family Law § 252

⁹ *D.H. v. Adept Cmty. Services, Inc.*, 43 Fla. L. Weekly S533 (Fla. Nov. 1, 2018), *reh’g denied*, SC17-829, 2018 WL 6264576 (Fla. Nov. 29, 2018).

¹⁰ 25 Fla. Jur 2d Family Law § 495.

¹¹ *Hayes v. Guardianship of Thompson*, 952 So. 2d 498, 506 (Fla. 2006) (quoting Fla. Prob. R. 5.010).

¹² *Id.*

¹³ Section 744.1012, F.S.

¹⁴ *Hayes* at 505.

Appropriate Court Venue

Venue is “[t]he proper or a possible place for a lawsuit to proceed, usually because the place has some connection either with the events that gave rise to the lawsuit or with the plaintiff or defendant.”¹⁵ Venue for alleged incapacitated adults is determined under s. 744.1097, F.S.¹⁶ The statute treats proceedings to declare a person incapacitated and proceedings to appoint a guardian as two separate proceedings for purposes of venue.

For proceedings to declare a person incapacitated, the venue is the court where either (1) the incapacitated adult resides or (2) the incapacitated adult is found.¹⁷

For proceedings to appoint a guardian, the venue depends on whether the incapacitated person is a state resident or non-state resident:

- If a state resident, then venue is the county where the incapacitated person resides.¹⁸
- If the person is not a state resident, however, then venue is any county where the incapacitated person’s property is located.¹⁹
- If the person is not a state resident and owns no property, then venue is in the county where any debtor of the incapacitated person resides.²⁰

Although the venue statute does not currently include minors, the committee note to Florida Probate Rule 5.555 indicates that venue for purposes of appointing a guardian to a minor is determined under ch. 744 in the same manner.²¹

Petition to Determine Incapacity and Appoint a Guardian

A petition to determine incapacity may be executed by an adult and must be served on and read to the alleged incapacitated person. The notice and copies of the petition must be provided to the attorney for the alleged incapacitated person and served on all next of kin identified in the petition.²²

Within five days after the petition has been filed, the court must appoint an examining committee to examine the alleged incapacitated person and file a written report with the court. The examining committee consists of three members:

¹⁵ BLACK’S LAW DICTIONARY (10th ed. 2014).

¹⁶ The venue provision does not apply to veterans. *See* s. 744.1097(1), F.S.

¹⁷ *Id.*

¹⁸ Section 744.1097(2)(a), F.S.

¹⁹ Section 744.1097(2)(b), F.S.

²⁰ Section 744.1097(2)(c), F.S.

²¹ Fla. Prob. R. 5.555 (“COMMITTEE NOTES: The provisions of chapter 744, Florida Statutes, and the guardianship rules enacted in 1989 leave some uncertainty with respect to the procedural requirements in guardianships for minors who are not incapacitated persons. This rule is intended to address only certain procedures with respect to the establishment and administration of guardianships over minors. The committee believes that certain provisions of the guardianship law and rules apply to both guardianships of minors as well as guardianships of incapacitated persons and no change has been suggested with respect to such rules. Because no adjudication of a minor is required by statute, it is contemplated that appointment of a guardian for a minor may be accomplished without a hearing. Initial and annual guardianship reports for minors have been simplified where all assets are on deposit with a designated financial institution under applicable Florida law.”).

²² Section 744.331(1), F.S.

One member must be a psychiatrist or other physician. The remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion. One of three members of the committee must have knowledge of the type of incapacity alleged in the petition.²³

Depending on the recommendations of the committee, the petition may either be dismissed or proceed to an adjudicatory hearing.

Dismissal of Petitions to Determine Incapacity

If a majority of the examining committee members, two of three, conclude the alleged incapacitated person is not incapacitated in any respect, section 744.331(4), F.S. states that the "court *shall* dismiss the petition." This provision was strictly construed in *Rothman v. Rothman*,²⁴ which held that a court had no discretion to hold a hearing and had to dismiss the petition in that case, notwithstanding extrinsic evidence by the alleged incapacitated person's grandson that tended to call into doubt the reports received by the examining committee.²⁵

Adjudicatory Hearing

The adjudicatory hearing must be conducted no more than 30 days after the filing of the last examining committee member's report.²⁶ In the hearing on the petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.²⁷ The court must enter a written order determining incapacity after finding that a person is incapacitated with respect to the exercise of a particular right or all rights. A person is determined to be incapacitated only with respect to those rights specified in the court's order.²⁸ When an order determines that a person is incapable of exercising delegable rights, the court must consider whether there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. If an alternative to guardianship will not sufficiently address the problems of the incapacitated person, a guardian will be appointed.²⁹

An order appointing a guardian must be issued contemporaneously with the order adjudicating the person incapacitated.³⁰ If a petition for the appointment of a guardian has not been filed at the time of the hearing on the petition to determine incapacity, the court may appoint an emergency temporary guardian.³¹

²³ Section 744.331(3), F.S.

²⁴ 93 So 3d 1052 (4th DCA 2012).

²⁵ *Id.* at 1053.

²⁶ Section 744.331(5)(a), F.S.

²⁷ Section 744.331(5)(c), F.S.

²⁸ Section 744.331(6), F.S.

²⁹ Section 744.331(6)(b), F.S.

³⁰ Section 744.344(3), F.S.

³¹ Section 744.344(4), F.S.

Minors

For minors, only a petition to appoint a guardian is filed. A petition to determine incapacity is not necessary.³²

Guardians

Once a guardian is appointed by the court, the guardian serves as a surrogate decision-maker and makes personal or financial decisions, or both, for the ward.³³ Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship.³⁴ A fiduciary relationship exists between two persons when one of them is under a duty to act or to give advice for the benefit of another upon matters within the scope of that relationship.³⁵ The most basic duty of a fiduciary is the duty of loyalty: a fiduciary must refrain from self-dealing, must not take unfair advantage of the ward, must act in the best interest of the ward, and must disclose material facts.³⁶ In addition to the duty of loyalty, a fiduciary also owes a duty of care to carry out his or her responsibilities in an informed and considered manner.

At the heart of a court's interpretation of a fiduciary relationship is a concern that persons who assume trustee-like positions with discretionary power over the interests of others might breach their duties and abuse their position. Section 744.446, F.S., states that the "fiduciary relationship which exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law." In the event of a breach by the guardian of the guardian's fiduciary duty, the court must take the necessary actions to protect the ward and the ward's assets.³⁷

Confidentiality of Guardianship Reports

Section 744.361, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary including protecting and preserving the property of the ward and his or her overall physical and social health. For instance, a guardian must file with the court an initial guardianship report,³⁸ an annual guardianship report,³⁹ and an annual accounting of the ward's property.⁴⁰ The reports provide evidence of the guardian's faithful execution of his or her fiduciary duties.⁴¹

³² Fla. Prob. R. 5.555 (a)-(b), F.S..

³³ Section 744.102(9), F.S.

³⁴ *In re Guardianship of Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990).

³⁵ *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

³⁶ *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

³⁷ Section 744.446(4), F.S.

³⁸ Section 744.362, F.S.

³⁹ Section 744.367, F.S.

⁴⁰ Section 744.3678, F.S.

⁴¹ Section 744.368, F.S.

The guardianships reports as well as settlement agreements are deemed confidential information under s. 744.3701, F.S., and may only be shared with specific, enumerated individuals or agency representatives, or when authorized by a court order.⁴²

Continuing Court Jurisdiction

The court retains jurisdiction over all guardianships and shall review the appropriateness and extent of a guardianship annually.⁴³ At any time, any interested person, including the ward, may petition the court for review alleging that the guardian is not complying with the guardianship plan or is exceeding his or her authority under the guardianship plan and is not acting in the best interest of the ward. If the petition for review is found to be without merit the court may assess costs and attorney fees against the petitioner.⁴⁴

A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee.⁴⁵ Fees and costs incurred are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.⁴⁶

A ward has the right to be restored to capacity at the earliest possible time.⁴⁷ The ward, or any interested person filing a suggestion of capacity, has the burden of proving the ward is capable of exercising some or all of the rights which were removed.⁴⁸

III. Effect of Proposed Changes:

SB 1338 amends three provisions of Florida's Guardianship Law. The changes in Sections 1 and 3 appear to be more minor or technical in nature, while the change in Section 2 substantively changes the standard and procedures for the dismissal of a petition to determine incapacity.

Minor or Technical Changes

Section 1 makes technical changes to s. 744.1097, F.S., concerning how venue is determined in two types of proceedings: (1) proceeding for declaration of incapacity, and (2) proceeding for the appointment of a guardian. For the second type of proceeding, appointment of a guardian, the bill adds the word "minor" to clarify that the venue determination applies to minors as well as incapacitated persons. This appears to bring the statutory language in line with current practice.

Additionally, the bill adds the word minor to clarify that the provisions requiring a change of venue (either by virtue of a petition from the guardian or by virtue of the ward being "found" in a different county than the county of residence) applies to minors as well as incapacitated persons.

⁴² See also Fla. R. Jud. Admin. 2.420 (d)(1)(xv)(requiring clerks of court to maintain confidentiality of "[g]uardianship reports, orders appointing court monitors, and orders relating to findings of no probable cause in guardianship cases. §§ 744.1076, 744.3701, Fla. Stat.").

⁴³ Section 744.372, F.S.

⁴⁴ Section 744.3715, F.S.

⁴⁵ Section 744.108(1), F.S.

⁴⁶ Section 744.108(8), F.S.

⁴⁷ Section 744.3215(1)(c), F.S.

⁴⁸ Section 744.464(2)(b), F.S.

Section 2 makes technical changes to s. 744.3701(1), F.S.:

- Removing a comma in the first sentence to clarify that the court’s order to permit inspection of confidential guardianship reports and settlement agreements must be based on a showing of good cause.
- Adding language directly after the comma to clarify that confidential guardianship reports and settlement agreements may also be inspected if “otherwise provided by this chapter.”
- Reformatting and creating a list of the existing enumerated persons and agency representatives who may inspect confidential guardianship reports and settlement agreements without a court order based on good cause or some other statutory authorization.

Substantive Changes

Section 3 of the bill substantively amends the standard and procedures for dismissal of petitions to determine capacity in s. 744.331(4), F.S. Currently, a court is *required* to dismiss a petition if a *majority* (2 out of 3) of the examining committee members conclude that the alleged incapacitated person is not incapacitated in any respect. This provision has been construed in *Rothman v. Rothman* as an absolute, non-discretionary requirement by a court, notwithstanding any other extrinsic evidence.

The bill amends the standard for dismissal of petitions to require to court to dismiss a petition if the examining committee *unanimously* (3 out of 3) concludes the alleged incapacitated person is not incapacitated in any respect.

However, the bill also provides an *exception*, permitting an interested person to challenge the unanimous determination and essentially object to dismissal of the petition. The procedures governing this exception provide that the court must dismiss a petition *unless* a verified motion challenging the examining committee’s unanimous conclusion is

- Filed within 10 days after service of the last examining committee report; and
- Makes a reasonable showing that a hearing on the petition is *necessary* based on evidence already in the record or proffered evidence.

When a verified motion is filed, the court must rule on it as soon as practicable. There is also an inference that the verified motion must be filed in good faith based on the bill’s provision that the court may imposed sanction under s. 744.331(7)(c)2, F.S if it finds the verified motion was filed in bad faith.

Immediate Effective Date and Retroactivity

Section 4 provides that the bill applies retroactively to all pending proceedings under the Florida Guardianship Law.

Section 5 provides 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. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill, particularly the new standard and procedure for dismissal of a petition, may increase costs associated with court proceedings. Many of these costs will be borne by the alleged incapacitated person. However, it may also protect more incapacitated, vulnerable individuals and their assets from those seeking to take advantage of the incapacity by ensuring the courts still have discretion and are not bound by potentially improper reports given to the examining committee. Additionally, the bill provides for the threat of sanctions for any verified motions challenging the examining committee's conclusions filed in bad faith.

C. Government Sector Impact:

The additional hearing authorized by the bill will result in an increase in judicial workloads.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 744.1097, 744.331, and 744.3701, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Rodriguez

37-01934A-19

20191338__

A bill to be entitled

An act relating to guardianship; amending s. 744.1097, F.S.; applying provisions relating to the determination of venue in proceedings for the appointment of a guardian to minors; amending s. 744.331, F.S.; requiring that a court dismiss a petition for determination of incapacity if all members of the examining committee conclude that the person is not incapacitated, unless a certain motion is filed within a specified period; providing requirements for such motion; requiring the court to rule on the motion as soon as practicable; authorizing the court to impose sanctions under certain circumstances; amending s. 744.3701, F.S.; making technical revisions; providing for retroactive application; providing an effective date.

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

Section 1. Section 744.1097, Florida Statutes, is amended to read:

744.1097 Venue.—

(1) The venue in proceedings for declaration of incapacity shall be where the alleged incapacitated person resides or is found. ~~The provisions of~~ This section does de not apply to veterans.

(2) The venue in proceedings for the appointment of a guardian is shall be:

(a) If the incapacitated person or minor is a resident of

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this state, in the county where the incapacitated person or minor resides.

(b) If the incapacitated person or minor is not a resident of this state, in any county in this state where property of the incapacitated person or minor is located.

(c) If the incapacitated person or minor is not a resident of this state and owns no property in this state, in the county where any debtor of the incapacitated person or minor resides.

(3) When the residence of an incapacitated person or minor is changed to another county, the guardian shall petition to have the venue of the guardianship changed to the county of the acquired residence, except as provided in s. 744.1098.

(4) If an incapacitated person or minor is a resident of this state and is found in a county other than the county of residence, the venue for declaration of incapacity and for the appointment of a guardian may be the county where the incapacitated person or minor is found. Upon transfer of the incapacitated person or minor to the county of residence, the guardian may have the venue of the guardianship changed to the county of residence and a successor guardian may be appointed.

Section 2. Subsection (4) of section 744.331, Florida Statutes is amended to read:

744.331 Procedures to determine incapacity.—

(4) DISMISSAL OF PETITION.—If all three members of the examining committee conclude that the alleged incapacitated person is not incapacitated in any respect, the court must dismiss the petition unless a verified motion that challenges the examining committee's conclusion is filed no later than 10 days after service of the last examining committee report. The

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59 verified motion must make a reasonable showing, by evidence in
 60 the record or proffered, that a hearing on the petition is
 61 necessary. The court shall rule on the verified motion as soon
 62 as is practicable. If the court finds that the verified motion
 63 is filed in bad faith, the court may impose sanctions under
 64 subparagraph (7) (c)2. If a majority of the examining committee
 65 ~~members conclude that the alleged incapacitated person is not~~
 66 ~~incapacitated in any respect, the court shall dismiss the~~
 67 ~~petition.~~

68 Section 3. Subsection (1) of section 744.3701, Florida
 69 Statutes, is amended to read:

70 744.3701 Confidentiality.—

71 (1) Unless otherwise ordered by the court, upon a showing
 72 of good cause, or unless otherwise provided by this chapter, an
 73 initial, annual, or final guardianship report or amendment
 74 thereto, or a court record relating to the settlement of a
 75 claim, is subject to inspection only by any of the following:

76 (a) The court.

77 (b) The clerk or the clerk's representative.

78 (c) The guardian and the guardian's attorney.

79 (d) The guardian ad litem with regard to the settlement of
 80 the claim.

81 (e) The ward if he or she is at least 14 years of age and
 82 has not been determined to be totally incapacitated.

83 (f) The ward's attorney.

84 (g) The minor if he or she is at least 14 years of age.

85 (h) The attorney representing the minor with regard to the
 86 minor's claim, or as otherwise provided by this chapter.

87 Section 4. This act applies retroactively to all

37-01934A-19

20191338__

88 proceedings pending before the effective date of this act and to
 89 all proceedings commenced on or after the effective date of this
 90 act.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment and General Government
Ethics and Elections
Rules

SENATOR JOSE JAVIER RODRIGUEZ
37th District

March 07, 2019

Chair Simmons
Committee on Judiciary
404 S. Monroe Street
Tallahassee, FL 32399-1100
Sent via email to simmons.david@flsenate.gov

Chair Simmons,

I respectfully request that you place SB 1338 Guardianship on the agenda of the Committee on Judiciary at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in black ink, appearing to read "JR", written over a white background.

Senator José Javier Rodríguez
District 37

CC:

Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant
Valerie Clarke, Legislative Assistant to Senator Simmons
Carolyn Grzan, Legislative Assistant to Senator Simmons
Diane Suddes, Legislative Assistant to Senator Simmons

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 854-0365
- 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/19
Meeting Date

1338
Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

Address 200 W. College Ave
Street

Phone 850-228-4243

Tally 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 AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/19

Meeting Date

SB 1338

Bill Number (if applicable)

Topic guardianship

Amendment Barcode (if applicable)

Name Nicklaus Curley

Job Title Attorney

Address 777 S. Flagler Dr, Ste 500E

Phone 561-650-0609

Street

W. Palm Bch, FL

City

33401

State

Zip

Email NCurley@Gunster.com

Speaking: For Against Information

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

Representing Real Property Probate & Trust Law Section

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee Judge:

Started: 3/18/2019 4:03:16 PM

Ends: 3/18/2019 6:00:04 PM Length: 01:56:49

4:03:15 PM Meeting called to order by Chair Simmons
4:03:18 PM Roll call by Administrative Assistant Joyce Butler
4:03:34 PM Quorum present
4:03:37 PM Announcements
4:04:18 PM Chair Simmons asked for a motion for time certain on SB 122
4:05:37 PM Senator Hutson motion for time certain to vote on SB 122 at 5:15
4:06:46 PM SB 1246 TP'd
4:07:27 PM Comments by Senator Hudson
4:07:43 PM Moment of silence for former Representative Hood
4:08:30 PM CS/SB 122 presented by Senator Broxson
4:11:54 PM Substitute Amendment Barcode 748114 presented
4:13:50 PM Question by Senator Gibson
4:14:50 PM Response by Senator Broxson
4:15:18 PM Question by Senator Gibson
4:15:55 PM Response by Senator Broxson
4:16:36 PM Question by Senator Gibson
4:17:00 PM Response by Senator Broxson
4:19:22 PM Question by Senator Rodriguez
4:19:30 PM Response by Senator Broxson
4:21:27 PM Question by Senator Rodriguez
4:22:27 PM Response by Senator Broxson
4:25:23 PM Amendment Barcode 461950 presented
4:27:34 PM Speaker Keith Seamann, Glass Replacements, LLC in favor
4:29:07 PM Speaker Todd Palmer, Mr. Auto Glass in favor
4:32:19 PM Debate by Senator Gibson
4:33:48 PM Amendments by Vice-Chair Rodriguez discussed and then withdrawn
4:33:59 PM Late-filed Amendment Barcode 882166 presented by Senator Rodriguez
4:36:18 PM Speaker Richie Kidwell, Air Quality Assessors waives in support
4:37:22 PM Speaker Dave DeBlander, President, Pro Clean Restoration in support
4:38:05 PM Amendment withdrawn
4:38:10 PM Late-filed Amendment Barcode 492832 presented by Senator Rodriguez
4:39:47 PM Speaker Todd Palmer, Mr. Auto Glass in favor
4:41:28 PM Speaker Tyler Chasez, Attorney in favor
4:42:53 PM Dave DeBlander waives in support
4:43:23 PM Amendment withdrawn
4:43:45 PM Amendment Barcode 643796 treated it as amendment to substitute amendment
4:44:45 PM Amendment Barcode 643796 presented by Senator Rodriguez
4:46:52 PM Amendment Barcode 643796 withdrawn by Senator Rodriguez
4:48:00 PM Speaker Tyler Chasez in favor
4:53:44 PM Speaker Dallas Trahern, Chief Operating Officer, Entrusted in opposition
4:57:24 PM Speaker Larry Bond, Managing Partner, Wrap Roof in opposition
4:59:14 PM Speaker Luis Pasqual in opposition

5:04:43 PM Speaker Manny Pozo in opposition
5:06:12 PM Speaker Dave DeBlander in opposition
5:08:15 PM Debate by Senator Gibson
5:11:27 PM Debate by Senator Rodriguez
5:13:01 PM Senator Broxson closes on CS/SB 122
5:14:21 PM Amendment adopted
5:14:33 PM Roll call by Administrative Assistant Joyce Butler
5:14:52 PM CS/CS/SB 122 reported favorably
5:16:21 PM SB 116 presented by Senator Stewart
5:18:15 PM Barney Bishop III, President & CEO, Florida Smart Justice Alliance waives in support
5:18:23 PM Matt Butler, Captain, Orange County Sheriff's Office waives in support
5:18:49 PM Senator Stewart closes on SB 116
5:19:11 PM Roll call by Administrative Assistant Joyce Butler
5:19:15 PM SB 116 reported favorably
5:19:35 PM SB 1154 presented by Senator Berman
5:22:48 PM Speaker Andrew Layden, The Business Law Section of the Florida Bar in opposition
5:24:48 PM Speaker Robert Lancaster, Attorney, Real Property Probate Trust Law Section of the Florida Bar in favor
5:27:46 PM Speaker Kenneth Pratt, Senior Vice President of Governmental Affairs, Florida Bankers Association in opposition
5:28:23 PM Senator Berman closes on SB 1154
5:28:43 PM Roll call by Administrative Assistant Joyce Butler
5:29:13 PM SB 1154 reported favorably
5:29:43 PM SB 1338 presented by Senator Rodriguez
5:31:04 PM Zayne Smith, AARP waives in support
5:31:27 PM Nicholas Curly, Attorney, Real Property Probate & Trust Law Section waives in support
5:31:56 PM Senator Rodriguez closes on SB 1338
5:32:05 PM Roll call by Administrative Assistant Joyce Butler
5:32:10 PM SB 1338 reported favorably
5:32:28 PM SB 440 presented by Senator Rouson
5:34:06 PM Question by Senator Gibson
5:34:17 PM Response by Senator Rouson
5:34:31 PM Carolyn Johnson, Policy Director, Florida Chamber of Commerce waives in support
5:34:47 PM Christopher Turner, Florida Commission on Human Relations waives in support
5:35:10 PM Senator Rouson closes on SB 440
5:35:24 PM Roll call by Administrative Assistant Joyce Butler
5:35:37 PM SB 440 reported favorably
5:35:54 PM SB 826 presented by Senator Rouson
5:36:45 PM Amendment Barcode 918578 presented by Senator Rouson
5:37:55 PM Senator Rouson closes on Amendment
5:38:05 PM Amendment adopted
5:38:21 PM Amendment Barcode 341992 presented by Senator Rouson
5:38:49 PM Senator Rouson closes on Amendment
5:39:12 PM Amendment adopted
5:39:27 PM Speaker Jose Diaz, Professional Wrecker Operators of Florida waives in support
5:39:55 PM Speaker Mike Seamon, Executive Director, Professional Wrecker Operators of Florida in support
5:41:08 PM Senator Rouson closes on CS/SB 826
5:41:40 PM Roll call by Administrative Assistant Joyce Butler
5:41:43 PM CS/SB 826 reported favorably
5:42:40 PM SB 1140 presented by Senator Hutson
5:43:40 PM Amendment Barcode 292360 presented by Senator Hutson

5:43:54 PM Late-filed Amendment Barcode 850524 presented
5:44:55 PM Senator Hutson closes on Amendment
5:45:28 PM Amendment adopted
5:45:50 PM Late-filed Amendment adopted
5:46:43 PM Samantha Padgett, General Counsel Florida Restaurant & Lodging Association waives in support
5:46:57 PM Speaker Rebecca O'Hara, Deputy General Counsel, Florida League of Cities in opposition
5:48:31 PM Speaker Laura Youmans, Legislative Counsel, Florida Association of Counties speaking for information
5:48:53 PM Grace Lovett, Vice President Governmental Affairs, Florida Retail Federation waives in support
5:49:53 PM Brewster Bevis, Vice President Government Affairs, Associated Industries of Florida waives in support
5:50:22 PM Debate by Senator Rodriguez
5:51:43 PM Senator Hutson closes on CS/SB 1140
5:51:51 PM Roll call by Administrative Assistant Joyce Butler
5:52:40 PM CS/SB 1140 reported favorably
5:53:06 PM SB 1174 presented by Senator Bean
5:55:39 PM Amendment Barcode 391970 presented by Senator Bean
5:57:00 PM Speaker Alan Abramowitz, Executive Director, Guardian Ad Litem waives in support
5:57:22 PM Amendment adopted
5:57:43 PM Speaker Barney Bishop III, President & CEO, Florida Smart Justice Alliance waives in support
5:58:17 PM Senator Bean closes on CS/SB 1174
5:58:20 PM Roll call by Administrative Assistant Joyce Butler
5:58:27 PM CS/SB 1174 reported favorably
5:58:44 PM Senator Stargel votes in the affirmative on CS/CS/SB 122 and SB 116
5:58:48 PM Senator Baxley moves to be shown voting in the affirmative on SB 116, SB 440, CS/SB 826, CS/SB 1140, SB 1154 and SB 1338
5:59:38 PM Senator Baxley moves to adjourn
5:59:56 PM Meeting adjourned without objection