

Tab 1	SB 186 by Taddeo; (Compare to H 00363) Contracts for the Sale or Lease of Pets						
929734	D	S	RCS	JU, Taddeo	Delete everything after	01/30 03:39 PM	
Tab 2	CS/SR 214 by IS, Rodriguez, Simpson (CO-INTRODUCERS) Cruz, Stewart, Benacquisto, Bradley, Hutson, Mayfield, Diaz, Wright, Perry, Harrell, Albritton, Hooper; (Compare to H 00051) Philosophies that Espouse Superiority						
Tab 3	SB 604 by Bean; (Similar to CS/H 00197) Servicemembers Civil Relief Act						
162920	D	S	RCS	JU, Bean	Delete everything after	01/30 07:58 AM	
Tab 4	SB 994 by Passidomo (CO-INTRODUCERS) Stewart, Thurston; (Similar to H 00709) Guardianship						
785084	A	S	RCS	JU, Passidomo	Delete L.49:	01/30 07:58 AM	
870686	A	S	RCS	JU, Passidomo	Delete L.87:	01/30 07:58 AM	
Tab 5	SB 1080 by Perry (CO-INTRODUCERS) Baxley; (Similar to H 00743) Nonopioid Alternatives						
Tab 6	SB 1328 by Wright; (Similar to H 00903) Fines and Fees						
785038	D	S	L RS	JU, Wright	Delete everything after	01/30 03:39 PM	
118198	SD	S	RCS	JU, Wright	Delete everything after	01/30 03:39 PM	
Tab 7	SB 1376 by Broxson (CO-INTRODUCERS) Baxley; (Similar to H 01211) Credit For Reinsurance						
Tab 8	SB 28 by Gibson (CO-INTRODUCERS) Bradley; (Identical to H 06507) Relief of Clifford Williams by the State of Florida						
Tab 9	SB 1668 by Simmons; Damages						
447214	A	S	L RCS	JU, Simmons	Delete L.20 - 30:	01/30 03:39 PM	
Tab 10	CS/SB 838 by CM, Simmons; (Identical to CS/CS/H 00495) Business Organizations						
Tab 11	SB 1224 by Simmons (CO-INTRODUCERS) Gruters; (Identical to H 00469) Real Estate Conveyances						
Tab 12	SB 1044 by Pizzo (CO-INTRODUCERS) Stewart, Gruters, Perry, Harrell, Torres, Diaz, Albritton, Farmer, Flores, Powell, Cruz, Book, Hooper, Mayfield, Taddeo, Rodriguez; (Similar to H 00621) Animal Cruelty						
840766	A	S		JU, Pizzo	Delete L.77:	01/27 03:44 PM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Simmons, Chair
Senator Rodriguez, Vice Chair

MEETING DATE: Tuesday, January 28, 2020
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	SB 186 Taddeo (Compare H 363)	Contracts for the Sale or Lease of Pets; Defining the term "pet"; declaring that certain contracts entered into on or after a specified date for the sale or lease of a pet are void and unenforceable as being against the public policy of this state; providing an exception, etc. JU 01/28/2020 Fav/CS BI RC	Fav/CS Yeas 6 Nays 0
2	CS/SR's 214 & 222 Infrastructure and Security / Rodriguez / Simpson (Compare HR 51)	Philosophies that Espouse Superiority; (THIS BILL COMBINES SR's 214 & 222) Rejecting and condemning any philosophy that espouses the superiority of one group of people over another which is hateful, dangerous, or a morally corrupt expression of intolerance, and affirming that such philosophies are contradictory to the values that define the people of Florida and the United States, etc. IS 01/13/2020 Fav/CS Combined - Lead JU 01/28/2020 Temporarily Postponed RC	Temporarily Postponed
3	SB 604 Bean (Similar CS/H 197)	Servicemembers Civil Relief Act; Revising the definition of "abandoned" or "abandonment"; providing that certain state laws relating to children do not supersede the Servicemembers Civil Relief Act; requiring the Department of Children and Families to ensure that the act is observed in certain cases, etc. CF 01/21/2020 Favorable JU 01/28/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, January 28, 2020, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 994 Passidomo (Similar H 709)	Guardianship; Expanding factors for a court to consider when appointing a guardian; prohibiting a guardian from consenting to or signing on behalf of a ward an order not to resuscitate without court approval; revising requirements for a petition for the appointment of a guardian; prohibiting professional guardians from petitioning for their own appointment except under certain circumstances; prohibiting guardians from taking certain actions on behalf of an alleged incapacitated person or minor, etc. CF 01/15/2020 Favorable JU 01/28/2020 Fav/CS RC	Fav/CS Yeas 6 Nays 0
5	SB 1080 Perry (Similar H 743)	Nonopioid Alternatives; Revising exceptions to certain controlled substance prescribing requirements; clarifying that a certain patient or patient representative must be informed of specified information, have specified information discussed with him or her, and be provided with an electronic or printed copy of a specified educational pamphlet, etc. HP 01/14/2020 Favorable JU 01/28/2020 Favorable RC	Favorable Yeas 5 Nays 0
6	SB 1328 Wright (Similar H 903, Compare H 6083)	Fines and Fees; Revising specified service charges for recording documents with the clerk of the circuit court; revising the methods by which the clerk of the circuit court may accept payments for certain fees, charges, costs, and fines; requiring the Office of the State Courts Administrator to develop a uniform payment plan form by a specified date; deleting provisions specifying procedures to be used if a person fails to comply with certain court-ordered requirements; authorizing certain persons to reinstate their suspended driver licenses under certain circumstances, etc. JU 01/21/2020 Workshop-Discussed JU 01/28/2020 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, January 28, 2020, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1376 Broxson (Similar H 1211)	Credit For Reinsurance; Adding conditions under which a ceding insurer must be allowed credit for reinsurance; specifying requirements for assuming insurers and reinsurance agreements; authorizing a ceding insurer or its representative that is subject to rehabilitation, liquidation, or conservation to seek a certain court order; authorizing the Office of Insurance Regulation to revoke or suspend an assuming insurer's eligibility under certain conditions, etc. BI 01/21/2020 Favorable JU 01/28/2020 Favorable RC	Favorable Yeas 6 Nays 0
8	SB 28 Gibson (Identical H 6507)	Relief of Clifford Williams by the State of Florida; Providing for the relief of Clifford Williams; providing an appropriation to compensate him for being wrongfully incarcerated for 43 years; directing the Chief Financial Officer to draw a warrant for the purchase of an annuity; providing that the act does not waive certain defenses or increase the state's limits of liability; providing that certain benefits are vacated upon specified findings, etc. SM JU 01/28/2020 Favorable ACJ AP	Favorable Yeas 5 Nays 0
9	SB 1668 Simmons	Damages; Requiring that certain medical expenses in personal injury claims be based on certain usual and customary charges; specifying what constitutes a usual and customary charge, etc. JU 01/28/2020 Fav/CS HP RC	Fav/CS Yeas 4 Nays 2
10	CS/SB 838 Commerce and Tourism / Simmons (Identical CS/CS/H 495)	Business Organizations; Specifying that certain documents accepted by the Department of State for filing are effective on the date the documents are accepted by the department; revising the required contents of a meeting notice relating to the removal of a director by shareholders; authorizing a domestic corporation to acquire one or more classes or series of shares under certain circumstances; authorizing the department to direct certain interrogatories to certain corporations and to officers or directors of certain corporations, etc. CM 01/14/2020 Fav/CS JU 01/28/2020 Favorable RC	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, January 28, 2020, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 1224 Simmons (Identical H 469)	Real Estate Conveyances; Providing that subscribing witnesses are not required to validate certain instruments conveying a leasehold interest in real property, etc. BI 01/21/2020 Favorable JU 01/28/2020 Favorable RC	Favorable Yeas 6 Nays 0
12	SB 1044 Pizzo (Similar H 621)	Animal Cruelty; Citing this act as "Allie's Law"; defining the term "treatment provider"; requiring veterinarians to report suspected animal cruelty in certain circumstances; requiring certain persons to report suspected animal cruelty to a veterinarian; providing immunity from criminal and civil liability for certain persons and entities; specifying that failure of a veterinarian to report suspected animal cruelty is grounds for discipline, etc. CJ 01/21/2020 Favorable JU 01/28/2020 Temporarily Postponed RC	Temporarily Postponed

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/SB 186

INTRODUCER: Judiciary Committee and Senator Taddeo

SUBJECT: Lease of Dogs or Cats

DATE: January 29, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u> </u>	<u> </u>	<u>BI</u>	<u> </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/SB 186 prohibits contracts that allow for the repossession of a dog or cat for failure to make required payments under the contract. Similarly, the bill prohibits lease agreements that provide for the ownership of a dog or cat to be transferred at the end of the lease term. If a contract violates the provisions of the bill, the contract is effectively void, and the consumer is entitled to the return of all amounts paid under the contract and ownership of the dog or cat.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida law considers pets as personal property that may be bought, sold, or given away at will by an owner. There are certain consumer protections and health requirements for pets transported into the state or offered for sale within the state.¹ Generally, each dog must receive vaccines and anthelmintics against a variety of diseases and internal parasites.

If the dog is under 4 months of age, the tests, vaccines and anthelmintic must be administered no more than 21 days before the sale. If the dog is being transported from out of state, the tests must be administered no more than 30 days and no less than 14 days before the dog's entry.

¹ Section 828.29, F.S.

Cats transported into the state or offered for sale must go through a similar process. Each cat must receive vaccines and anthelmintics against diseases and internal parasites.

If the cat is under 4 months of age, the tests, vaccines, and anthelmintics must be administered no more than 21 days before sale within the state. If the cat is being transported from out of state the tests must be administered no more than 30 days and no less than 14 days before the cat's entry into the state.

The tests must be administered by or under the direction of a licensed veterinarian who issues the official certificate of veterinary inspection.

If cat or dog was from a pet dealer,² Florida law gives consumers 14 days to return or exchange the dog or cat for equal value if a licensed veterinarian certifies that the animal was unfit for purchase at the time of sale. An animal can be unfit due to:

- illness,
- disease,
- presence of symptoms of a contagious or infectious disease, or
- the presence of internal or external parasites, excluding fleas and ticks.

However, if a licensed veterinarian certifies within a year of the sale that the animal was unfit for purchase due to a congenital or hereditary disorder, or the breed, sex, or health is found to have been misrepresented to the consumer, the consumer has the right to choose one of the following options:

- Return the animal and receive a refund of the purchase price and reimbursement for reasonable veterinary costs related to the certification.
- Return the animal and receive an exchange dog or cat of the consumer's choice of equivalent value, and reimbursement for reasonable veterinary costs related to the certification.
- Retain the animal and receive reimbursement for reasonable veterinary costs for necessary services and treatment related to the attempt to cure the dog or cat.

A consumer may waive the right to return the dog or cat for congenial or hereditary disorders, and may instead have the animal examined with 48 hours of the sale. However, even if a veterinarian verified the dog or cat was unfit for purchase due to a congenital or hereditary disorder, the consumer only has a right to return or exchange the animal for equal value, and is not entitled to any refund of any related veterinarian costs.

Florida Contract Law

A contract is an agreement, made with consideration, to do or not to do a particular thing.³ Consideration generally means something of value. For a contract for the transfer of ownership of a dog, for example, the bargain for consideration is typically the dog in exchange for a specific amount of money. For some contracts, such as contracts to purchase property through a

² *Id.* A pet dealer is “any person, firm, partnership, corporation, or other association which, in the ordinary course of business, engages in the sale of more than two litters, or 20 dogs or cats, per year, whichever is greater, to the public.” This includes direct to consumer sales.

³ See BLACK'S LAW DICTIONARY (2nd ed.), <https://thelawdictionary.org/contract/> (last visited Jan. 24 2020).

mortgage, the availability of financing may be an essential element. If the buyer is unable to find financing to obtain the mortgage, then the contract may be voided and the parties may go their separate ways.

If an individual does not have the money on hand, and is unable to obtain financing for a mortgage, some consumers may pursue a rental-purchase agreement as an alternative. Under Florida law, a rental purchase agreement occurs when an individual leases a property with the option to eventually buy or mortgage the property at a certain term in the lease. However, the rental-purchase agreement must conform to certain statutory standards.⁴ Under these standards, the agreement must include:

- The total amount of any initial payment, including any advance payment, delivery charge, or any trade-in allowance to be paid by the lessee at or before completion of the rental-purchase agreement.
- The amount and timing of rental payments.
- The amount of all other charges, individually itemized, payable by the lessee to the lessor which are not included in the rental payments.
- A statement of the total cost of the rental-purchase agreement expressed as the total of the initial payment, all rental payments, and all other charges necessary to acquire ownership of the rental property.
- The lessee's right to reinstate the rental-purchase agreement and the amount, or method of determining the amount, of any penalty or other charge for reinstatement.
- If a lessee fails to make a timely payment, the lessee still has the right to reinstate the original provision without losing any rights or options previously acquired so long as the lessee promptly surrenders the rental property upon request and the lessee tenders reinstatement fees within 60 days.⁵
- The party responsible for maintaining or servicing the rental property and a brief description of the responsibility.
- A statement that the lessee has the option to purchase the rental property during the term of the rental-purchase agreement and the price, formula, or method by which the purchase price is to be determined.
- The cash price of the rental property that is the subject of the rental-purchase agreement.

All the required information must be stated in a clear and coherent manner in writing and must be delivered to the consumer. Failure to include all the above requirements, in addition to several others, may make the rental-purchase agreement unenforceable.

The requirements for rental-purchase agreements under Florida law were created to give the consumer a more equal bargaining position relative to the person leasing the property. Adhesion contracts, where one party has significantly more bargaining power than the other party, are generally held to a higher level of scrutiny in court because consumers often feel they have no other choice but to agree to the terms of the contract.⁶ The rental-purchase agreement

⁴ Section 559.9233, F.S.

⁵ Section, 559.9235(1)(b), F.S.

⁶ Legal Information Institute, *Adhesion Contract*, see [https://www.law.cornell.edu/wex/adhesion_contract_\(contract_of_adhesion\)](https://www.law.cornell.edu/wex/adhesion_contract_(contract_of_adhesion)).

requirements are meant to mitigate these concerns by providing notice and certain privileges to the consumer.

III. Effect of Proposed Changes:

The bill prohibits the following contracts:

- Contracts for pets where a dog or cat is used as collateral or is subject to repossession upon default of the contract.
- Contracts for the lease of a dog or cat if the contract provides an option to transfer ownership at the end of the lease term.

If a contract for the sale or lease of a dog or cat contains a prohibited provision, the consumer who received the dog or cat under that contract is entitled to claim ownership of the dog or cat in addition to any money paid toward the contract.

The bill does not prohibit contracts for pets based on an unsecured loan.

The bill is effective July 1, 2020.

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:

Both the state⁷ and federal⁸ constitutions prohibit laws impairing the obligations of contracts. To the extent that the law may impact contracts that were implemented prior to the effective date, the remedies provided to the consumer such as the ability to render the contract unenforceable and retain ownership of the pet while reclaiming any money paid toward the pet may not be enforceable. To minimize confusion regarding the application of the bill, the Legislature may wish to revise the bill to provide that it applies to contracts executed on or after the bill's effective date.

⁷ FLA. CONST. art. 1 § 10

⁸ U.S. CONST. art. I § 10

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

None.

B. Private Sector Impact:

The bill will outlaw pet leases and contracts where a pet is used as collateral.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the section 828.32, Florida Statutes.

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

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

CS by Judiciary on January 28, 2020:

The committee substitute limits the contracts regulated by the bill to contracts for the transfer of ownership of cats and dogs and not all pets as in the original bill. The potential for the imposition of a fine for a noncriminal infraction, which was included in the original bill, is not included in the committee substitute.

B. Amendments:

None.



929734

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/30/2020	.	
	.	
	.	
	.	

The Committee on Judiciary (Taddeo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 828.32, Florida Statutes, is created to
read:

828.32 Lease of dogs or cats prohibited.—

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

(a) Transfer possession of a dog or cat, if the dog or cat
is used as collateral for the transfer agreement or is subject
to repossession in any manner upon default of the agreement.



929734

(b) Lease a dog or cat, if the lease terms provide for or offer the option of transferring ownership of the dog or cat at the end of the lease period.

(2) In addition to any other remedies provided by law, the consumer taking possession of a dog or cat in a transfer prohibited by this section is the owner of the dog or cat and is entitled to the return of all amounts the consumer paid under such lease.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the lease of dogs and cats;
creating s. 828.32, F.S.; prohibiting the transfer of
possession of dogs and cats under specified
circumstances; prohibiting the lease of dogs and cats
under certain circumstances; providing remedies for
noncompliance; providing an effective date.

By Senator Taddeo

40-00356-20

2020186__

A bill to be entitled

An act relating to contracts for the sale or lease of pets; creating s. 828.32, F.S.; providing legislative intent; defining the term "pet"; declaring that certain contracts entered into on or after a specified date for the sale or lease of a pet are void and unenforceable as being against the public policy of this state; providing an exception; providing remedies for noncompliance; providing penalties; providing an effective date.

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

Section 1. Section 828.32, Florida Statutes, is created to read:

828.32 Contracts for the sale or lease of pets.—

(1) It is the intent of the Legislature to protect consumers in this state from deceptive and predatory financing arrangements and to protect pets from the harmful effects of such arrangements by making it a policy of the state to prohibit the leasing of pets.

(2) As used in this section, the term:

(a) "Pet" means a living animal that has been acquired for the primary purpose of providing companionship to the owner, rather than for a business or agricultural purpose.

(b) "Pet dealer" has the same meaning as in s. 828.29(13).

(3) A contract entered into on or after July 1, 2020, to do any of the following is against the public policy of this state and is void and unenforceable:

Page 1 of 2

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

40-00356-20

2020186__

(a) Transfer ownership of a pet, if the pet is used as collateral for the contract or is subject to repossession in any manner upon default of the contract. Such prohibition does not apply to sales in which payments are made to repay an unsecured loan for the purchase of the animal.

(b) Lease a pet, if the contract provides for or offers the option of transferring ownership of the animal at the end of the lease term.

(4) In addition to any other remedies provided by law, the consumer taking possession of a pet transferred under a contract described in this section is the owner of the pet and is entitled to the return of all amounts the consumer paid under such contract.

(5) A person who offers a pet for lease or as collateral for a contract in violation of this section commits a noncriminal violation as defined in s. 775.08(3) and upon conviction shall be punished as provided in s. 775.082(5) by a civil fine of not more than \$500 for a first violation and not more than \$1,000 for a second or subsequent violation.

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

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: October 17, 2019

I respectfully request that **Senate Bill #186**, relating to Contracts for the Sale or Lease of Pets, be placed on the:

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

Please note that I am filing an amendment to conform our bill to our companion bill in the House.

A handwritten signature in dark ink, appearing to read "Annette Taddeo", is written over a horizontal line.

Senator Annette Taddeo
Florida Senate, District 40

THE FLORIDA SENATE

APPEARANCE RECORD

1/28/20

Meeting Date

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

186

Bill Number (if applicable)

929 734

Amendment Barcode (if applicable)

Topic PET LEASING SB 186

Name JENNIFER HOBGOOD

Job Title SENIOR DIRECTOR OF LEGISLATION

Address PO BOX 5741

Street

Phone 850 445 5245

TALLAHASSEE FL 32314

City

State

Zip

Email jen.hobgood@aspcan.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing ASPCA

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)

1-28-20

Meeting Date

186

Bill Number (if applicable)

929734

Amendment Barcode (if applicable)

Topic Pet LEASING

Name Amy W. Carotenuto

Job Title Executive Director Flagler Humane Society

Address 250 Rodeo Rd.

Street

Phone 386-566-3734

Diamond Beach FL 32174

City

State

Zip

Email acarotenuto@flaglerhumane.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Flagler Humane Society

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)

1/28/2020

Meeting Date

186

Bill Number (if applicable)

929 734

Amendment Barcode (if applicable)

Topic

Pet Leasing

Name

Jennifer Bitner

Job Title

Executive Director

Address

5 N. Q St.

Phone

850-335-2149

Street

Pensacola FL

32505

City

State

Zip

Email

jennifer@pensacolahumane.org

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Pensacola Humane Society

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

1/28/2020

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

186

Meeting Date

Bill Number (if applicable)

929734

Amendment Barcode (if applicable)

Topic

Pet Leasing

Name

Lauren Cappas

Job Title

Event Coordinator Pensacola Humane Society

Address

5 N. Q St

Phone

850-432-4250

Street

Pensacola

FL

32505

City

State

Zip

Email

Lauren@pensacolahumane.org

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Pensacola Humane Society

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/SRs 214 & 222

INTRODUCER: Infrastructure and Security Committee and Senators Rodriguez, Simpson, and others

SUBJECT: Philosophies that Espouse Superiority

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	IS	Fav/CS Combined
2.	Stallard	Cibula	JU	Pre-meeting
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SR 214/SR 222 rejects and condemns any philosophy that espouses the superiority of one group of people over another on the basis of race, color, national origin, sex, or religion as hateful, dangerous, and morally corrupt expressions of intolerance; and affirms that such philosophies are contradictory to the values that define the people of Florida and the United States.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

II. Present Situation:

Targeted Mass Violence

Florida has been the site of several mass shootings that include Pulse Nightclub in Orlando, Marjory Stoneman Douglas High School in Parkland, Fort Lauderdale-Hollywood International Airport, Jacksonville Landing, as well as a SunTrust Bank in Sebring.¹ Many of these acts of targeted mass violence appear to have been motivated by violent extremism based on a variety of supremacy philosophies.

¹ Press Release, Executive Office of the Governor, *Governor Ron DeSantis Directs FDLE to Prioritize Threat Assessment Strategy* (Feb. 13, 2019), available at <https://www.flgov.com/2019/02/13/governor-ron-desantis-directs-fdle-to-prioritize-threat-assessment-strategy/> (last visited Jan. 22, 2020).

White Nationalism

White nationalist groups espouse white supremacist or white separatist ideologies.² The term “white supremacist extremism” (WSE) describes people or groups who commit criminal acts in the name of white supremacist ideology. At its core, white supremacist ideology purports that the white race ranks above all others. WSE draws on the constitutionally protected activities of a broad swath of racist hate-oriented groups active in the United States ranging from the Ku Klux Klan to racist skinheads. Some of these groups have elaborate organizational structures, dues-paying memberships, and media wings. Additionally, many individuals espouse extremist beliefs without having formal membership in any specific organization.³

A large proportion of white supremacists dualistically divide the world between whites and all other peoples who are seen as enemies.⁴ Particular animus is directed toward Jews and African Americans.⁵

Scholars indicate that white supremacists believe in racial separation and that society discriminates against them. To them, whites have lost “ground to other groups and ... extreme measures are required to reverse the trend.”⁶ All of this has been encapsulated in a slogan known as the “Fourteen Words”: “We must secure the existence of our race and a future for white children.” This was coined by David Lane, a member of a violent terrorist group active in the 1980s. The Fourteen Words have been described as “the most popular white supremacist slogan in the world.”⁷

Incel

The term ‘incel’ was originally coined by an individual who started a website in the mid/late 1990s, entitled ‘Alana’s Involuntary Celibacy Project’ in order to discuss their sexual inactivity with others. The site was intended to foster an inclusive community to help people struggling to form relationships, but has since been co-opted by the current iteration of the incel movement.⁸

Although there is little in the way of authoritative published research in this area, the current incel movement appears to be a violent political ideology based upon misogyny, social

² Southern Poverty Law Center, *White Nationalist*, <https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist> (last visited Jan. 22, 2019).

³ Lisa N. Sacco and Jerome P. Bjelopera, Congressional Research Office, *Domestic Terrorism: An Overview*, Report R44921, Aug. 21, 2017, available at <https://crsreports.congress.gov/product/pdf/R/R44921>.

⁴ *Id.*, citing Chip Berlet and Stanislav Vysotsky, “Overview of U.S. White Supremacist Groups,” *Journal of Political and Military Sociology*, vol. 34, no. 1 (June 2006), p. 13.

⁵ *Id.*, citing Leonard Zeskind, *Blood and Politics: The History of the White Nationalist Movement from the Margins to the Mainstream* (New York: Farrar, Straus, and Giroux, 2009), p. 40.

⁶ *Id.*, citing Rory McVeigh, “Structured Ignorance and Organized Racism in the United States,” *Social Forces*, vol. 82, no. 3 (March 2004), pp. 895-936.

⁷ *Id.*, citing Anti-Defamation League, *Guidebook*, p. 16. Lane died in 2007 while serving 190 years in prison for his involvement with a terrorist group named the Order. See “Founder of Terrorist Group Dies in Prison,” *Terre Haute Tribune-Star*, May 29, 2007, <http://tribstar.com/local/x1155692948/Founder-of-terrorist-group-dies-in-prison>. Among other writings, Lane also drafted an influential racist ideological tract titled “The 88 Precepts.”

⁸ Shannon Zimmerman, Luisa Ryan and David Durie-Smith, *Recognizing the Violent Extremist Ideology of ‘Incels’* (September 2018), available at <https://www.wisglobal.org/wp-content/uploads/2018/09/Policybrief-Violent-Extremists-Incels.pdf>.

marginalization, entitlement, male and white supremacy.⁹ Incel ideology is predicated on the notion that feminism has ruined society, therefore there is a need for a ‘gender revolt’ in order to reclaim a particular type of manhood.¹⁰ Incels believe their entitled access to women’s bodies is thwarted by women’s preference for more physically desirable men, and often frame this pattern of behavior as a form of theft. These individuals are frustrated at a world they see as denying them power and sexual control over women’s bodies. In their eyes, they are victims of oppressive feminism, an ideology which must be overthrown, even if by violence.¹¹

III. Effect of Proposed Changes:

The PCS contains “Whereas” clauses stating that:

- Recent acts of domestic terror, including acts of mass violence, have shocked and saddened our nation;
- This murderous violence was perpetrated by individuals who embraced philosophies that espouse the superiority of one group of people over another on the basis of race, color, national origin, sex, or religion;
- These philosophies are embraced by groups which include white nationalists, white supremacists, “incels,” and others; and
- These philosophies are contradictory to the values, constitutional protections, and moral fiber of the United States of America and the State of Florida.

CS/SR 214 & SR 222 rejects and condemns any philosophy that espouses the superiority of one group of people over another on the basis of race, color, national origin, sex, or religion as hateful, dangerous, and morally corrupt expressions of intolerance; and affirms that such philosophies are contradictory to the values that define the people of Florida and the United States.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁹ *Id.*

¹⁰ Debbie Ging, *Alphas, betas, and incels: Theorizing the Masculinities of the Manosphere*, in *Men and Masculinities* (Dublin City University, Glasnevin, 2017).

¹¹ *Supra*, note 8.

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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This Senate resolution does not amend the Florida Statutes. If approved, it will be recorded in the Journals of the Senate.

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 Infrastructure and Security on January 13, 2020:

- Combined SR 214 and SR 222, and expanded the resolution to reject and condemn any philosophy that espouses the superiority of one group of people over another on the basis of race, color, national origin, sex, or religion; and

- Revised the whereas clauses to state:
 - Recent acts of domestic terror, including acts of mass violence, have shocked and saddened our nation;
 - This murderous violence was perpetrated by individuals who embraced philosophies that espouse the superiority of one group of people over another on the basis of race, color, national origin, sex, or religion;
 - These philosophies are embraced by groups which include white nationalists, white supremacists, “incels”, and others; and
 - These philosophies are contradictory to the values, constitutional protections, and moral fiber of the United States of America and the State of Florida.

B. Amendments:

None.



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

January 22nd, 2020

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 CS/SR 214: Philosophies that Espouse Superiority 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", with a stylized flourish extending from the end.

Senator José Javier Rodríguez
District 37

CC:

Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant
Valerie Clarke, Legislative Assistant to Senator
Carolyn Grzan, Legislative Assistant to Senator
Diane Suddes, Legislative Assistant to Senator

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)

1/28/2020
Meeting Date

219
Bill Number (if applicable)

Topic Philosophies that Espouse Superiority

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title _____

Address 104 S. Monroe Street

Phone 850-425-1344

Tallahassee FL 32301
City State Zip

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida and Florida State Conf. of NAACP

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)

1/28/2020

Meeting Date

CS/SR 214

Bill Number (if applicable)

Topic 'White Nationalists'

Amendment Barcode (if applicable)

Name David Calkett

Job Title VP, Floridians For Immigration Enforcement

Address 2314 S Cypress Bend

Phone 954 461 9391

Street

Pompano Bch FL 33069

City

State

Zip

Email David@FLIMEN.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing Floridians For Immigration Enforcement

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

28 JAN 20

Meeting Date

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

CSSR214

Bill Number (if applicable)

Topic White Supremacism

Amendment Barcode (if applicable)

Name Christopher Holton

Job Title Vice President for Outreach Center for Security Policy

Address 2020 Pennsylvania Ave

Phone 504-234-8857

Street

Washington

DC

State

20006

Zip

Email holton@centerforsecuritypolicy.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Center for Security Policy

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 604

INTRODUCER: Judiciary Committee and Senator Bean

SUBJECT: Servicemembers Civil Relief Act

DATE: January 29, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 604 amends this state's child welfare statutes to protect the rights of a parent, custodian, or legal guardian who, because of his or her military service, must be absent from his or her child or from child-welfare-related court proceedings.

More particularly, the bill:

- Provides that the absence of a deployed or soon-to-be-deployed parent, custodian, or legal guardian responsible for a child's welfare may not be considered in determining whether the child has been abandoned;
- Requires the Department of Children and Families to ensure that the federal Servicemembers Civil Relief Act (SCRA) is observed in cases where a parent, legal custodian, or caregiver, because of his or her service, is unable to take custody of his or her child or appear before the court in person; and
- Declares that ch. 39, F.S., pertaining to child welfare, does not supersede the requirements of SCRA or its implementing regulations.

The bill does not have a fiscal impact on state or local governments and has an effective date of July 1, 2020.

II. Present Situation:

Abandonment

A child is considered abandoned if the parent, legal custodian, or caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child.¹ And, under ch. 39, F.S., a child who is found by the court to be abandoned is thus found to be "dependent."²

Upon verification that a child has been abandoned, the department may file a dependency petition and require the parents to engage in services to ameliorate the state's concerns and protect the child. During the delivery of services and with the court's supervision, the department may place the child in out-of-home care until reunification with the parent is in the child's best interest. Because a verified finding of abandonment establishes grounds for termination of parental rights, the department has the option to petition the court to terminate parental rights at any time.³

Florida's statutory definition of "abandonment" does not expressly exclude deployment or anticipated deployment of a parent or caregiver from being considered when determining whether a child has been abandoned. As defined, the term expressly provides that the incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment. The definition additionally provides that a surrendered newborn, a "child in need of services," or a "family in need of services" is not considered abandoned/abandonment, and will not meet the statutory definition required for a child protective investigation.⁴

Federal Law vs. State Law

While primary responsibility for child welfare rests with states, a number of federal laws have been enacted that affect how states operate their child welfare systems. Section 39.0137, F.S., specifically provides that ch. 39, F.S., does not supersede the requirements of the Indian Child Welfare Act (ICWA)⁵ and the Multi-Ethnic Placement Act (MEPA).⁶

Legal Provisions Protecting Servicemembers

The Servicemembers Civil Relief Act is a federal law that applies to civil proceedings. The act protects servicemembers by allowing for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during

¹ Section 39.01(1), F.S. For the purposes of s. 39.01(1), F.S., "establish or maintain a substantial positive relationship," includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish a substantial and positive relationship with the child."

² See s. 39.01(15)(a), F.S.

³ Section 39.806(1), F.S.

⁴ Section 39.01(1), F.S.

⁵ 25 U.S.C. ss. 1901, et seq.

⁶ Pub. L. No. 103-382.

their military service.⁷ The SCRA allows a servicemember to request a delay in a court or agency proceeding that may adversely affect his or her rights during his or her military service.⁸

While the SCRA applies to all civil proceedings, the SCRA was amended in 2014 and 2016 to provide servicemembers with additional protections in child custody proceedings.⁹ Child custody may become an issue in a child welfare proceeding if the court is determining which parent should have custody over the child when the other parent cannot protect the child's safety and well-being. The act protects servicemembers from losing permanent custody of their children due to military deployment, and prohibits state courts from considering current or future deployments as the sole factor in determining the best interest of the child when contemplating a permanent change in child custody.¹⁰

Servicemembers must also receive notice both annually and prior to deployment of the child custody protections under the SCRA and courts are to construe the SCRA liberally in favor of servicemembers.¹¹

States may provide more protections to servicemembers¹² than what is provided under the SCRA, as Florida does. For example, because the SCRA only applies to call-ups by the president, Florida law expands SCRA protections to governor-ordered National Guard call-ups if the service exceeds 17 days.¹³ In these situations, the court may stay any civil action or proceeding up to 30 days on its own motion, and must stay the proceeding upon motions of either party, unless it finds the ability to prosecute or defend the action is not materially affected by reason of the active duty status.¹⁴ Florida law also allows active duty servicemembers to terminate real estate contracts if certain requirements are met.¹⁵

As a federal law, the SCRA preempts conflicting state law even if state law does not expressly say so.¹⁶ Currently, the SCRA is expressly cited in several Florida statutes that provide:

- If one of the parties to a divorce has performed at least 10 years of credible service in the military and the division of marital property includes division of military retirement benefits, then the final judgement must include certification that the SCRA was observed if the decree was issued while the member was on active duty and was not represented in court.¹⁷
- Unless prohibited by the SCRA, the court may issue a temporary order granting custodial responsibility after a deploying parent receives notice of deployment; however, the temporary custody may only last until the deployment terminates.¹⁸

⁷ Servicemembers Civil Relief Act, 50 U.S.C. s. 3902.

⁸ *Id.*

⁹ Jennifer K. Elsea, *The Servicemember Civil Relief Act (SCRA): Section-by-Section Summary*, (Updated March 25, 2019) <https://fas.org/sgp/crs/natsec/R45283.pdf>.

¹⁰ Servicemembers Civil Relief Act, 50 U.S.C. s. 3938.

¹¹ 50 U.S.C. s. 3938a.

¹² Florida statutes define "servicemember" as any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.

¹³ Section 250.5201, F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See U.S. CONST. art VI, cl. 2.

¹⁷ Section 61.076(2), F.S.

¹⁸ Section 61.733(1), F.S.

- A court may modify or terminate a temporary grant of custodial responsibility on motion of a deploying parent if modification or termination is consistent with the SCRA and is in child's best interest.¹⁹
- If any other provision of law conflicts with the SCRA or the provisions of Florida law related to military affairs, the SCRA or the provisions of Florida law related to military affairs, whichever is applicable, shall control.²⁰

Currently, Florida's child welfare statutes do not specifically state that the SCRA preempts state law. However, because the SCRA is a federal law, it will preempt state law even if it is not explicitly stated in Florida's child welfare law.

III. Effect of Proposed Changes:

SB 604 amends this state's child-welfare statutes to protect the rights of a parent, custodian, or legal guardian who, because of his or her military service, must be absent from his or her child or from child-welfare-related court proceedings.

More particularly, the bill:

- Provides that the absence of a deployed or soon-to-be-deployed parent, custodian, or legal guardian responsible for a child's welfare may not be considered in determining whether the child has been abandoned;
- Requires the Department of Children and Families to ensure that the federal Servicemembers Civil Relief Act (SCRA) is observed in cases where a parent, legal custodian, or caregiver, because of his or her service, is unable to take custody of his or her child or appear before the court in person; and
- Declares that ch. 39, F.S., which pertains to child welfare, does not supersede the requirements of SCRA or its implementing regulations.

The bill does not have a fiscal impact on state or local governments and has an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁹ Section 61.749(1), F.S.

²⁰ Section 250.83, F.S.

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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 39.01 and 39.0137 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 January 28, 2020:

The committee substitute requires the Department of Children and Families to ensure that the Servicemembers Civil Relief Act is observed in cases where legal custodian or caregiver, because of his or her service, is unable to take custody of a child or appear before the court in person. Under the bill, this provision applied only to parents.

B. Amendments:

None.



162920

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/30/2020	.	
	.	
	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 39.01, Florida
Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the
context otherwise requires:

(1) “Abandoned” or “abandonment” means a situation in which
the parent or legal custodian of a child or, in the absence of a
parent or legal custodian, the caregiver, while being able, has



162920

made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this subsection, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. A man's acknowledgment of paternity of the child does not limit the period of time considered in determining whether the child was abandoned. The term does not include a surrendered newborn infant as described in s. 383.50, a "child in need of services" as defined in chapter 984, or a "family in need of services" as defined in chapter 984. The absence of a parent, legal custodian, or caregiver responsible for a child's welfare, who is a servicemember, by reason of deployment or anticipated deployment as defined in 50 U.S.C. s. 3938(e), may not be considered or used as a factor in determining abandonment. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

Section 2. Subsection (1) of section 39.0137, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

39.0137 Federal law; rulemaking authority.—

(1) This chapter does not supersede the requirements of the



162920

Indian Child Welfare Act, 25 U.S.C. ss. 1901 et seq., ~~or~~ the Multi-Ethnic Placement Act of 1994, Pub. L. No. 103-382, as amended, the Servicemembers Civil Relief Act, 50 U.S.C. ss. 3901 et seq., or the implementing regulations for such acts.

(3) The department shall ensure that the Servicemembers Civil Relief Act is observed in cases where a parent, legal custodian, or caregiver responsible for a child's welfare, by virtue of his or her service, is unable to take custody of his or her child or appear before the court in person.

Section 3. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the Servicemembers Civil Relief Act; amending s. 39.01, F.S.; revising the definition of the terms "abandoned" or "abandonment"; amending s. 39.0137, F.S.; providing that certain state laws relating to children do not supersede the Servicemembers Civil Relief Act; requiring the Department of Children and Families to ensure that the act is observed in certain cases; providing an effective date.

By Senator Bean

4-00839-20

2020604__

A bill to be entitled

An act relating to the Servicemembers Civil Relief Act; amending s. 39.01, F.S.; revising the definition of "abandoned" or "abandonment"; amending s. 39.0137, F.S.; providing that certain state laws relating to children do not supersede the Servicemembers Civil Relief Act; requiring the Department of Children and Families to ensure that the act is observed in certain cases; providing an effective date.

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

Section 1. Subsection (1) of section 39.01, Florida Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(1) "Abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this subsection, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a

Page 1 of 2

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

4-00839-20

2020604__

substantial and positive relationship with a child. A man's acknowledgment of paternity of the child does not limit the period of time considered in determining whether the child was abandoned. The term does not include a surrendered newborn infant as described in s. 383.50, a "child in need of services" as defined in chapter 984, or a "family in need of services" as defined in chapter 984. The absence of a parent, legal custodian, or caregiver responsible for a child's welfare who is a servicemember by reason of deployment or anticipated deployment, as defined in 50 U.S.C. s. 3938(e), may not be considered or used as a factor in determining abandonment. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

Section 2. Subsection (1) of section 39.0137, Florida Statutes, is amended, and a new subsection (3) is added to that section to read:

39.0137 Federal law; rulemaking authority.—

(1) This chapter does not supersede the requirements of the Indian Child Welfare Act, 25 U.S.C. ss. 1901 et seq., ~~or~~ the Multi-Ethnic Placement Act of 1994, Pub. L. No. 103-382, as amended, the Servicemembers Civil Relief Act, 50 U.S.C. ss. 3901 et seq., or the implementing regulations for such acts.

(3) The department shall ensure that the Servicemembers Civil Relief Act is observed in cases where a parent, by virtue of his or her service, is unable to take custody of his or her child or appear before the court in person.

Section 3. This act shall take effect July 1, 2020.

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: January 21, 2020

I respectfully request that **Senate Bill # 604**, relating to Servicemembers Civil Relief Act, 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

1/28/2020*Meeting Date*

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

604*Bill Number (if applicable)*Topic Servicemembers Civil Relief Act - 2020*Amendment Barcode (if applicable)*Name Candice BrowerJob Title Regional CounselAddress 227 N Bronough StreetPhone (352)681-0293*Street*TallahasseeFL32301Email Candice.Brower@rc1.myflorida.com*City**State**Zip*Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Offices of Criminal Conflict & Civil Regional CounselAppearing at request of Chair: ☐ Yes ☐ NoLobbyist 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)

1/28/20

Meeting Date

604

Bill Number (if applicable)

Topic SERVICE MEMBERS RELIEF Act

Amendment Barcode (if applicable)

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

Representing Tall. Veterans Legal Collaborative

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)

1-25-2020

Meeting Date

604

Bill Number (if applicable)

Topic SERVICE MEMBERS RELIEF ACT

Amendment Barcode (if applicable)

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

Representing FLORIDA VETERANS FOUNDATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/27/20

Meeting Date

604

Bill Number (if applicable)

Topic Servicemembers Civil Relief Act

Amendment Barcode (if applicable)

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

Representing Guardian ad Litem Program

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 994

INTRODUCER: Judiciary Committee and Senator Passidomo and others

SUBJECT: Guardianship

DATE: January 29, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 994 revises the guardianship statutes to ensure that a ward's personal and property interests are carefully protected by and from a guardian. The bill:

- Requires a court, when appointing a guardian, to inquire into and consider potential disqualifications and conflicts of interest;
- Specifies that a guardian must obtain court approval before consenting to or obtaining an order not to resuscitate a ward, and requires a court to issue a determination within 72 hours after a verified petition is filed;
- Mandates that a petition for appointment of a guardian or professional guardian disclose certain background information about the guardian seeking appointment and whether a less restrictive arrangement, other than a guardianship, could meet the needs of the ward;
- Defines the term "alternatives to guardianship;"
- Prohibits a professional guardian from petitioning for appointment unless the petitioner is a relative of the alleged incapacitated person or minor or the petitioner is a public guardian who seeks appointment for a person of limited financial means and the public guardian will be paid by the Office of Public and Professional Guardians or a local government;
- Specifies that the initial guardianship plan and each annual guardianship plan must include a list of preexisting orders not to resuscitate or preexisting advance directives and certain information about those documents;
- Requires that, in the annual guardianship report, a guardian report any payments or remuneration received from any source for services rendered for the ward;

- Prohibits a guardian from offering, paying, soliciting, or receiving a commission, benefit, or split-fee arrangement in return for engaging in a transaction for goods or services on behalf of an alleged incapacitated person or minor or a ward; and
- Prohibits a guardian from having an interest in a business transaction or activity with certain individuals unless prior approval is granted by a court order or the relationship existed before the guardian was appointed.

The bill could have an indeterminate fiscal impact on the state court system and has an effective date of July 1, 2020.

II. Present Situation:

Guardianship

A guardian may be described as someone who has been given the legal duty and authority to care for another person or his or her property because of that person's infancy, disability, or incapacity.¹ Guardianships are trust relationships designed to protect vulnerable members of society who do not have the ability to protect themselves. The person for whom a guardian is appointed is called a "ward."² 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.³ Guardianships are generally disfavored because the ward loses his or her individual and civil rights. A guardian may be appointed only if the court finds there is no less restrictive alternative to guardianship.

Two Forms of Guardianship

There are two main forms of guardianship: guardianship over the person or guardianship over the property, which may be limited or plenary.⁴ 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.⁵

Fiduciary Duty

Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship.⁶ 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.⁷ 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

¹ BLACK'S LAW DICTIONARY, 11th edition, 2019.

² Section 744.102(22), F.S.

³ Section 744.102(9), F.S.

⁴ See generally, s. 744.102(9), F.S. A plenary guardian exercises all delegable rights and powers of the ward after a court has determined that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

⁵ See generally, s. 744.102(12), F.S.

⁶ *In re Guardianship of Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990).

⁷ *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

interest of the ward, and must disclose material facts.⁸ 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.

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. A guardian must file with the court an initial guardianship report,⁹ an annual guardianship report,¹⁰ and an annual accounting of the ward's property.¹¹ The reports provide evidence of the guardian's faithful execution of his or her fiduciary duties.¹²

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.¹³

Professional Guardians

In Florida, a "professional guardian" means any guardian who has, at any time, rendered services to three or more wards as their guardian.¹⁴ A professional guardian must register annually with the Statewide Public Guardianship Office.¹⁵ Professional guardians must receive a minimum of 40 hours of instruction and training and a minimum of 16 hours of continuing education every 2 years after the initial educational requirement is met. The instruction and education must be completed through a course approved or offered by the Statewide Public Guardianship Office.¹⁶

A professional guardian is subject to a level 2 background check,¹⁷ an investigation of the guardian's credit history,¹⁸ and is required to demonstrate competency to act as a professional guardian by taking an examination approved by the DOEA.¹⁹ These requirements do not apply to a professional guardian or the employees of that professional guardian when that guardian is a:

- Trust company;
- State banking corporation;

⁸ *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

⁹ Section 744.362, F.S.

¹⁰ Section 744.367, F.S.

¹¹ Section 744.3678, F.S.

¹² Section 744.368, F.S.

¹³ Section 744.446(4), F.S.

¹⁴ Section 744.102(17), F.S.

¹⁵ Section 744.2002(1) F.S.

¹⁶ Section 744.2003(3), F.S.

¹⁷ Section 744.2003(5), F.S. Level 2 screenings are more thorough than level 1 screenings because they apply to positions of responsibility or trust, often with more vulnerable people, such as children, the elderly, or the disabled. Level 2 screenings require a security background investigation that includes fingerprint-based searches for statewide criminal history records through FDLE and a national criminal history records check through the Federal Bureau of Investigation. It may also include local criminal records checks. Section 435.04, F.S.

¹⁸ Section 744.2003(4), F.S.

¹⁹ Section 744.2003(6), F.S.

- State savings association authorized and qualified to exercise fiduciary powers in this state; or
- National banking association or federal savings and loan association authorized and qualified to exercise fiduciary duties in this state.²⁰

Determining Incapacity

The process to determine incapacity and the appointment of a guardian begins with a petition filed in the appropriate circuit court. A petition 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.²¹

In the hearing on the petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.²² 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.²³ 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.²⁴

Court Proceedings

The court retains jurisdiction over all guardianships and shall review the appropriateness and extent of a guardianship annually.²⁵ 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.²⁶

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.²⁷ Fees and costs incurred are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.²⁸

²⁰ Section 744.2003(10), F.S.

²¹ Section 744.331(1), F.S.

²² Section 744.331(5)(c), F.S.

²³ Section 744.331(6), F.S.

²⁴ Section 744.331(6)(b), F.S.

²⁵ Section 744.372, F.S.

²⁶ Section 744.3715, F.S.

²⁷ Section 744.108(1), F.S.

²⁸ Section 744.108(8), F.S.

A ward has the right to be restored to capacity at the earliest possible time.²⁹ 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. Immediately upon the filing of the suggestion of capacity, the court must appoint a physician to examine the ward. The physician must examine the ward and file a report with the court within 20 days.³⁰ All objections to the suggestion of capacity must be filed within 20 days after formal notice is served on the ward, guardian, attorney for the ward, if any, and any other interested persons designated by the court.³¹ If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court must set the matter for hearing.³²

Guardian Compensation

The 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 for services rendered and reimbursement for costs incurred on behalf of the assets of the guardianship estate unless the court finds the requested compensation to be substantially unreasonable.³³ Before the fees may be paid, a petition for fees or expenses must be filed with the court and accompanied by an itemized description of the services performed for the fees and expenses sought to be recovered.³⁴ When fees for a guardian or an attorney are submitted to the court for determination, the court shall consider:

- The time and labor required;
- The novelty and difficulty of the questions involved and the skill required to perform the services properly;
- The likelihood that the acceptance of the particular employment will preclude other employment of the person;
- The fee customarily charged in the locality for similar services;
- The nature and value of the incapacitated person's property, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person;
- The results obtained;
- The time limits imposed by the circumstances;
- The nature and length of the relationship with the incapacitated person; and
- The experience, reputation, diligence, and ability of the person performing the service.³⁵

Conflict of Interest

Unless the court gives prior approval, or the relationship existed prior to the appointment of the guardian and is disclosed to the court in the petition for appointment of a guardian, a guardian may not:

- Have any interest, financial or otherwise, direct or indirect, in any business transaction or activity with the guardianship;
- Acquire an ownership, possessory, security, or other monetary interest adverse to the ward;

²⁹ Section 744.3215(1)(c), F.S.

³⁰ Section 744.464(2)(b), F.S.

³¹ Section 744.464(2)(d), F.S.

³² Section 744.464(2)(e), F.S.

³³ Section 744.108(1) and (8), F.S.

³⁴ Section 744.108(5), (7), F.S.

³⁵ Section 744.108(2), F.S.

- Be designated as a beneficiary on any life insurance policy, pension, or benefit plan of the ward unless such designation was made by the ward prior to adjudication of incapacity; and
- Directly or indirectly purchase, rent, lease, or sell any property or services from or to any business entity that the guardian, or the guardian's spouse or family, is an officer, partner, director, shareholder, or proprietor, or has any financial interest.³⁶

A guardian with such a conflict of interest may be removed from the guardianship by the court.³⁷

End of Life Decision-Making

Florida law defines an advance directive as a witnessed, oral statement or written instruction that expresses a person's desires about any aspect of his or her future health care, including the designation of a health care surrogate, a living will, or an anatomical gift.³⁸ Designation of each of these can serve different purposes and have their own unique requirements and specifications under the law.

One type of advance directive, a "do not resuscitate order" (DNRO) results in the withholding of cardiopulmonary resuscitation (CPR) from an individual if a DNRO is presented to the health care professional treating the patient. For the DNRO to be valid, it must be on the form adopted by the Department of Health, signed by the patient's physician and by the patient, or if the patient is incapacitated, the patient's health care surrogate or proxy, court-appointed guardian, or attorney in fact under a durable power of attorney.³⁹ Florida's DNRO form is printed on yellow paper.⁴⁰ It is the responsibility of the Emergency Medical Services provider to ensure that the DNRO form or the patient identification device, which is a miniature version of the form, accompanies the patient.⁴¹ A DNRO may be revoked by the patient at any time, if signed by the patient, or the patient's health care surrogate, proxy, court-appointed guardian or a person acting under a durable power of attorney.⁴²

Recent Investigations Into Guardianship Abuse

The abuses of professional guardian Rebecca Fierle began surfacing in the spring of 2019⁴³ and have revealed several weaknesses in the guardianship statutes. For example, Steven Stryker, a ward of Ms. Fierle's, died in May 2019 in a Tampa hospital after choking on food. Hospital staff could not perform lifesaving procedures on the 75-year-old due to a "do not resuscitate" order executed by Ms. Fierle. Testimony revealed that Ms. Fierle refused to remove the order even though Mr. Stryker had never expressed a desire to forego life-saving measures and die.⁴⁴

³⁶ Section 744.446, F.S.

³⁷ *Id.*

³⁸ Section 765.101, F.S.

³⁹ Section 401.45(3), F.S.

⁴⁰ Rule 64J-2.018, F.A.C.

⁴¹ *Id.*

⁴² *Id.*

⁴³ J.D. Peacock II, Clerk of the Circuit Court and Comptroller for Okaloosa County, Florida, *OPPG Investigation Case Number 19-064* (July 9, 2019) (on file with the Senate Committee on Judiciary).

⁴⁴ Monivette Cordeiro, ORLANDO SENTINEL, *Man died after Orlando legal guardian filed 'do not resuscitate' order against his wishes, investigation finds/Exclusive* (July 15, 2019) <http://www.orlandosentinel.com/news/os-ne-man-died-after-orlando-guardian-filed-dnr-order-20190715-nnggrqhainedzce4j74oshar2y-story.html>.

An investigation by the Orange County Comptroller's office concluded that Ms. Fierle was assigned to almost 100 Orange County guardianship cases in July 2019. In reviewing the 6,936 invoices that Ms. Fierle submitted to AdventHealth through her companies, it was determined that she submitted invoices of at least \$3,956,325 between January 2009 and June 2019. AdventHealth reported payments of \$3,706,609 since 2014. Those invoices represented services she allegedly provided to 682 patients. Of the 682 patients, 210 related to current or previous guardianship cases.

The Orange County Comptroller's investigation concluded that:

- Payments of \$2,514,715 were not reported to the court as required by statute;
- In bypassing the court for the approval of her fees, Ms. Fierle's hourly rates greatly exceeded the amounts that were determined to be reasonable by the court;
- Ms. Fierle appeared to maintain business relationships with her wards that were not disclosed or even approved by the court;
- Ms. Fierle double-billed AdventHealth and her wards' assets for identical services and fees;
- Previous relationships between Ms. Fierle and wards were not disclosed to the court as required by law;
- Petitions were submitted by Ms. Fierle requesting that she be appointed to the case as guardian;
- Bills were submitted for services provided before a guardianship case was initiated;
- Many invoices were paid twice resulting in multiple reimbursements for the same invoices;
- Ms. Fierle submitted invoices for cases that were not assigned to her but to a different guardian.⁴⁵

It was also reported by the media that Ms. Fierle developed relationships and conflicts of interest with people who were appointed to serve on a three member guardianship examining committee that was used to determine the incapacity of a person.⁴⁶

In July, an Orange County circuit judge found that Ms. Fierle had abused her powers as a guardian and removed Ms. Fierle from 98 cases in Orange and Osceola counties. A Seminole County judge followed suit that same week. The courts also revoked any do not resuscitate orders that Ms. Fierle may have filed.⁴⁷ Ms. Fierle filed an appeal to the Fifth District Court of Appeal in hopes that the lower court decisions would be overturned. The court denied her petition although she currently has at least one other petition pending in the Fifth District Court of Appeal.⁴⁸

⁴⁵ Phil Diamond, CPA County Comptroller of Orange County Florida, *Investigation of Payments Made to Professional Guardian – Rebecca Fierle by AdventHealth, Report 479*, (Sept. 2019) <https://www.occompt.com/download/Audit%20Reports/rpt479.pdf>.

⁴⁶ Monivette Cordeiro, *Florida's troubled guardianship system riddled with conflicts of interest, critics claim | Special Report*, ORLANDO SENTINEL (Aug. 14, 2019), <https://www.orlandosentinel.com/news/florida/guardians/os-ne-guardianship-examining-committee-conflicts-20190814-osbekpwnlfezneolyxttvzmrhy-story.html>.

⁴⁷ Greg Angel, *Watchdog Update: 2nd Judge Removes Guardian From Cases After Man's Death*, Orlando Spectrum News 13, (July 19, 2019) <https://www.mynews13.com/fl/orlando/news/2019/07/19/watchdog-update--2nd-judge-removes-guardian-after-man-s-death>.

⁴⁸ Florida Fifth District Court of Appeal Docket, Case Number: 5D19-3013 (reviewed on Jan. 22, 2020) <http://onlinedocketsdca.flcourts.org/DCAResults/LTCases?CaseNumber=3013&CaseYear=2019&Court=5>

Ms. Fierle resigned her position as a registered professional guardian on July 25, 2019, and sought discharge from all of her cases. The Florida Department of Law Enforcement confirmed that a search warrant was executed on Ms. Fierle's Orlando office on August 5, 2019. The cremated remains of nine people were recovered, one of which remains unidentified. The criminal investigation against Ms. Fierle and her business is ongoing.⁴⁹

III. Effect of Proposed Changes:

Considerations When Appointing a Guardian

Section 1 amends s. 744.312, F.S., to place additional responsibilities on a court before appointing someone to serve as a guardian. The court must inquire into and consider a guardian's potential disqualification under s. 744.309, F.S., which outlines who may be appointed as a guardian for a ward, or potential conflicts of interest under s. 744.446, F.S., which requires that a guardian be independent, impartial, and maintain a fiduciary relationship to the ward.

Orders Not to Resuscitate a Ward

Section 2 amends s. 744.3215, F.S., to specifically address do-not-resuscitate (DNR) orders. A guardian may not consent to, or sign on behalf of a ward, a do-not-resuscitate order without first obtaining court approval. A court must make a determination whether to grant the order within 72 hours after the verified petition is filed by the petitioner. Additionally, the verified petition must state:

- The petitioner's interest in obtaining the DNR order;
- The specific authority that the petitioner is seeking;
- The facts that are the basis for requesting the DNR; and
- That the authority being requested from the court is in the best interest of the ward.

Petitions for Appointment of a Guardian or Professional Guardian

Section 3 amends s. 744.334, F.S., to require that a petition for the appointment of a guardian state the reasons why an individual should be appointed guardian and whether he or she is a professional guardian. The bill also adds the word "alleged" before "incapacitated person or minor," and provides that the petition must explain if any other type of guardianship exists under part III of Chapter 744 (Types of Guardianship) or "alternatives to guardianship," which it defines as an advance directive, a durable power of attorney, a representative payee, or a trust instrument. The bill requires the petition to state why a guardian advocate or other alternatives to guardianship, which are less restrictive than a guardianship, are insufficient to meet the needs of the alleged incapacitated person or minor. The bill further provides that if the petitioner is a professional guardian, he or she may not petition for his or her own appointment unless the petitioner is a relative of the alleged incapacitated person or minor or is seeking appointment for a person of limited financial means and the guardian will be paid by either the Office of Public and Professional guardians or by a local government.

⁴⁹ FDLE Office of Public Information, *FDLE Statement Regarding Remains in the Rebecca Fierle Investigation* (Jan. 8, 2020) (on file with the Senate Committee on Judiciary).

Initial Guardianship Plan and Annual Guardianship Plan

Section 4 amends s. 744.363, F.S., and **Section 6** amends s. 744.3675, F.S., to specify that the initial guardianship plan and each annual guardianship plan must include a list of preexisting orders not to resuscitate and preexisting advance directives and the date an order or directive was signed, whether the document has been suspended by the court, and a description of the steps taken to identify and locate the document. These requirements are additions to other existing elements that must be included in the plans.

A Guardian's Payments and Benefits Must be Included in an Annual Guardianship Report

Section 5 amends s. 744.367, F.S., to require that guardians disclose to the court in the annual guardianship report all remuneration received by the guardian from any source for services rendered to or on behalf of the ward. This requirement applies to both guardians of the person and guardians of the property. The bill also defines remuneration as any payment or other benefit made directly or indirectly, overtly or covertly, or in cash or in kind to the guardian.

Additional Conflicts of Interests and Prohibited Activities for a Guardian

Section 7 amends s. 744.446, F.S., relating to conflicts of interest. The bill renumbers subsections (2), (3), and (4), and adds a new subsection (2), to more specifically prohibit guardians from offering, paying, soliciting, or receiving a commission, benefit, bonus, rebate, or kickback, directly or indirectly, overtly or covertly, or in cash or in kind, or engaging in split-fee arrangements in return for referring, soliciting, or engaging in a transaction for goods or services on behalf of an alleged incapacitated person or minor, or a ward, for past or future goods or services.

Additionally, the bill specifies that, unless prior approval is granted by a court order or the relationship existed before the guardian was appointed and was disclosed to the court in the petition for appointment of guardian, a guardian may not have any interest, financial or otherwise, in a business transaction or activity with the ward, the judge presiding over the case, any member of the appointed examining committee, any court employee involved in the guardianship process, or the attorney for the ward.

Section 8 provides an effective date of July 1, 2020.

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.

C. Government Sector Impact:

The State Courts Administrator predicts a likely increase in workload and judicial time as a result of modifying screening and monitoring requirements of guardians and guardianship plans. The fiscal impact, however, cannot be accurately determined at this time due to the unavailability of data needed to establish the increase in the judicial workload.⁵⁰

The Florida Court Clerks and Comptrollers (Clerks) estimates that there will be an increase in the number of items the Clerk's staff will need to review, but the impact is indeterminate. The Clerks also estimate there will be an increase in auditing if additional complaints are received relating to DNROs, assuming the number of court hearings do not increase. If the number of court hearings do increase, there will be an impact due to court docketing and related duties.⁵¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁵⁰ Office of the State Courts Administrator, *SB 994 Judicial Impact Statement* (Jan. 13, 2020) <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=30133>.

⁵¹ Florida Court Clerks and Comptrollers, *HB 709, FCCC Bill Analysis* (Dec. 19, 2019) <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=25301&yr=2020>.

VIII. Statutes Affected:

This bill substantially amends sections 744.312, 744.3215, 744.334, 744.363, 744.367, 744.3675, and 744.446 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 January 28, 2020:

Two additional provisions were added to the bill which:

- Require a court to rule within 72 hours after a petition is filed to obtain a do-not-resuscitate order. The petition must disclose the petitioner's interest in the proceeding, clarify what specific authority is requested, state the facts that constitute the basis for the relief sought, and state that the requested authority is in the ward's best interest; and
- Permit a public guardian to petition for appointment as a guardian if he or she is seeking appointment for a person of limited financial means and he or she will be compensated from the Office of Public and Professional Guardians or by a local government.

B. Amendments:

None.



785084

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/30/2020	.	
	.	
	.	
	.	

The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete line 49
and insert:
to resuscitate executed under s. 401.45(3). The court must make
such a determination within 72 hours after the filing of a
verified petition stating:

1. The petitioner's interest in the proceeding;
2. The specific authority requested; and
3. The facts constituting the basis for the relief sought



785084

and that the authority being requested is in the best interest
of the ward.

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

And the title is amended as follows:

Delete line 7

and insert:

without court approval; requiring the court to make a
determination within a specified timeframe after the
filing of a certain petition; amending s. 744.334,
F.S.;



870686

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/30/2020	.	
	.	
	.	
	.	

The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete line 87
and insert:
guardian under s. 744.309(2). This subsection does not apply to
a public guardian appointed under s. 744.2006 who seeks
appointment as a guardian of a person of limited financial means
and whose compensation as guardian for such person would be paid
from the Office of Public and Professional Guardians or any
local government. ~~The petition for appointment of a~~



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

And the title is amended as follows:

Delete line 13

and insert:

defining the term "relative"; providing that a
specified provision does not apply to public guardians
under specified circumstances; amending s. 744.363,

By Senator Passidomo

28-01346-20

2020994__

A bill to be entitled

An act relating to guardianship; amending s. 744.312, F.S.; expanding factors for a court to consider when appointing a guardian; amending s. 744.3215, F.S.; prohibiting a guardian from consenting to or signing on behalf of a ward an order not to resuscitate without court approval; amending s. 744.334, F.S.; revising requirements for a petition for the appointment of a guardian; defining the term "alternatives to guardianship"; prohibiting professional guardians from petitioning for their own appointment except under certain circumstances; defining the term "relative"; amending s. 744.363, F.S.; expanding requirements for initial guardianship plans; amending s. 744.367, F.S.; expanding requirements for annual guardianship reports; defining the term "remuneration"; amending s. 744.3675, F.S.; expanding requirements for annual guardianship plans; amending s. 744.446, F.S.; prohibiting guardians from taking certain actions on behalf of an alleged incapacitated person or minor; revising provisions relating to conflicts of interest; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (3) of section 744.312, Florida Statutes, and subsection (1) of that section is republished, to read:

Page 1 of 7

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

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744.312 Considerations in appointment of guardian.—

(1) If the person designated is qualified to serve pursuant to s. 744.309, the court shall appoint any standby guardian or preneed guardian, unless the court determines that appointing such person is contrary to the best interests of the ward.

(3) The court shall also:

(e) Inquire into and consider potential disqualifications under s. 744.309 and potential conflicts of interest under s. 744.446.

Section 2. Paragraph (f) is added to subsection (4) of section 744.3215, Florida Statutes, and paragraph (e) of subsection (1) of that section is republished, to read:

744.3215 Rights of persons determined incapacitated.—

(1) A person who has been determined to be incapacitated retains the right:

(e) To have a qualified guardian.

(4) Without first obtaining specific authority from the court, as described in s. 744.3725, a guardian may not:

(f) Consent to or sign on behalf of the ward an order not to resuscitate executed under s. 401.45(3).

Section 3. Section 744.334, Florida Statutes, is amended to read:

744.334 Petition for appointment of guardian or professional guardian; contents.—

(1) Every petition for the appointment of a guardian shall be verified by the petitioner and shall contain statements, to the best of petitioner's knowledge and belief, showing the name, age, residence, and post office address of the alleged incapacitated person or minor; the nature of her or his

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

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incapacity, if any; the extent of guardianship desired, either plenary or limited; the residence and post office address of the petitioner; the names and addresses of the next of kin of the alleged incapacitated person or minor, if known to the petitioner; the name of the proposed guardian and the reasons why she or he should be appointed guardian; whether the proposed guardian is a professional guardian; the relationship and previous relationship of the proposed guardian to the alleged incapacitated person or minor ward; any other type of guardianship under part III of this chapter or alternatives to guardianship that the alleged incapacitated person or minor has designated or is in currently or has been in previously; the reasons why a guardian advocate under s. 744.3085 or other alternatives to guardianship are insufficient to meet the needs of the alleged incapacitated person or minor; and the nature and value of property subject to the guardianship; and the reasons why this person should be appointed guardian. The petition must state whether if a willing and qualified guardian cannot be located, the petition must so state. As used in this subsection, the term "alternatives to guardianship" means an advance directive as defined in s. 765.101, a durable power of attorney as provided in chapter 709, a representative payee under 42 U.S.C. s. 1007, or a trust instrument as defined in s. 736.0103.

(2) If the petitioner is a professional guardian, she or he may not petition for her or his own appointment unless the petitioner is a relative of the alleged incapacitated person or minor. For purposes of this subsection, the term "relative" means an individual who would qualify to serve as a nonresident guardian under s. 744.309(2) The petition for appointment of a

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~~professional guardian must comply with the provisions of~~ ~~subsection (1), and must state that the petitioner is a~~ ~~professional guardian.~~

Section 4. Subsection (1) of section 744.363, Florida Statutes, is amended to read:

744.363 Initial guardianship plan.—

(1) The initial guardianship plan shall include all of the following:

(a) The provision of medical, mental, or personal care services for the welfare of the ward.†

(b) The provision of social and personal services for the welfare of the ward.†

(c) The place and kind of residential setting best suited for the needs of the ward.†

(d) The application of health and accident insurance and any other private or governmental benefits to which the ward may be entitled to meet any part of the costs of medical, mental health, or related services provided to the ward.† ~~and~~

(e) Any physical and mental examinations necessary to determine the ward's medical and mental health treatment needs.

(f) A list of any preexisting orders not to resuscitate executed under s. 401.45(3) or preexisting advance directives, as defined in s. 765.101, the date an order or directive was signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive.

Section 5. Subsection (3) of section 744.367, Florida Statutes, is amended to read:

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744.367 Duty to file annual guardianship report.—

(3)(a) The annual guardianship report of a guardian of the property must consist of an annual accounting, and the annual guardianship report of a guardian of the person must consist of an annual guardianship plan. The annual guardianship report of a guardian of the property and the annual guardianship report of a guardian of the person must both include a declaration of all remuneration received by the guardian from any source for services rendered to or on behalf of the ward. As used in this paragraph, the term "remuneration" means any payment or other benefit made directly or indirectly, overtly or covertly, or in cash or in kind to the guardian.

(b) The annual guardianship report must ~~shall~~ be served on the ward, unless the ward is a minor or is totally incapacitated, and on the attorney for the ward, if any. The guardian shall provide a copy to any other person as the court may direct.

Section 6. Paragraph (d) is added to subsection (1) of section 744.3675, Florida Statutes, to read:

744.3675 Annual guardianship plan.—Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how those needs are proposed to be met in the coming year.

(1) Each plan for an adult ward must, if applicable, include:

(d) A list of any preexisting orders not to resuscitate executed under s. 401.45(3) or preexisting advance directives, as defined in s. 765.101, the date an order or directive was

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signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive.

Section 7. Present subsections (2), (3), and (4) of section 744.446, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, a new subsection (2) is added to that section, and present subsection (2) of that section is amended, to read:

744.446 Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.—

(2) A guardian may not offer, pay, solicit, or receive a commission, benefit, bonus, rebate, or kickback, directly or indirectly, overtly or covertly, in cash or in kind, or engage in a split-fee arrangement in return for referring, soliciting, or engaging in a transaction for goods or services on behalf of an alleged incapacitated person or minor, or a ward, for past or future goods or services.

(3)(2) Unless prior approval is obtained by court order, or unless such relationship existed before ~~prior to~~ appointment of the guardian and is disclosed to the court in the petition for appointment of guardian, a guardian may not:

(a) Have any interest, financial or otherwise, direct or indirect, in any business transaction or activity with the ward, the judge presiding over the case, any member of the appointed examining committee, any court employee involved in the guardianship process, or the attorney for the ward;

(b) Acquire an ownership, possessory, security, or other pecuniary interest adverse to the ward;

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175 (c) Be designated as a beneficiary on any life insurance
176 policy, pension, or benefit plan of the ward unless such
177 designation was validly made by the ward before ~~prior to~~
178 adjudication of incapacity of the ward; and

179 (d) Directly or indirectly purchase, rent, lease, or sell
180 any property or services from or to any business entity of which
181 the guardian or the guardian's spouse or any of the guardian's
182 lineal descendants, or collateral kindred, is an officer,
183 partner, director, shareholder, or proprietor, or has any
184 financial interest.

185 Section 8. This act shall take effect July 1, 2020.



The Florida Senate
Committee Agenda Request

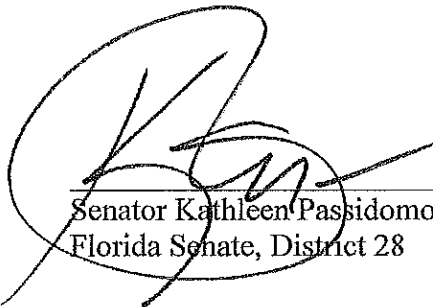
To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 15, 2020

I respectfully request that **Senate Bill #994**, relating to Guardianship, be placed on the:

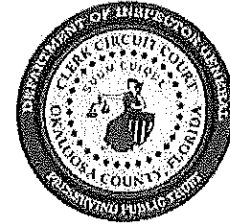
- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda. *please*



Senator Kathleen Passidomo
Florida Senate, District 28



J. D. Peacock II
Clerk of the Circuit Court and Comptroller
Okaloosa County, Florida



OPPG Investigation
Case Number 19-064

Date: July 9, 2019
Subject: Rebecca Fierle
Case Number: 19-064
OPPG Complaint: 00285
Reference: Investigative Report
Disposition: Closed

The Okaloosa County Clerk of Circuit Court and Comptroller, Department of Inspector General and the Clerks' Statewide Investigations of Professional Guardians Alliance was created to provide independent, objective, and expert investigative services to the Florida Department of Elder Affairs, Office of Public and Professional Guardians. Our investigation was performed in compliance with the Quality Standards for Investigations found within the Principles and Standards for Offices of Inspector General as published by the Association of Inspectors General. The standard or degree of proof required to establish a conclusion of fact is at least "by a preponderance of evidence", which indicates evidence that establishes the fact sought to be true is more probable than not.

*Investigations by the Clerks' Alliance will reach one of the following three conclusions of fact per allegation: substantiated, unsubstantiated, and unfounded. **Substantiated** means there is sufficient information to justify a reasonable conclusion that the allegation is true. **Unsubstantiated** means there is insufficient information to either prove or disprove the allegation. **Unfounded** means there is sufficient information to indicate the allegation is false*

A. Introduction and Scope

The Office of Public and Professional Guardians (OPPG) submitted a complaint regarding Rebecca Fierle to the Palm Beach County Clerk and Comptroller's office, which serves as the Administrative Coordinator for the OPPG and the Clerk's Statewide Investigations Alliance. It was determined by the OPPG that there was a legally sufficient basis to believe that Rebecca Fierle, a state registered Professional Guardian, may have violated Florida Guardianship Law, Florida Criminal Code, or OPPG Standards of Practice. On May 15, 2019, the complaint was forwarded to the Okaloosa County Clerk of Circuit Court and Comptroller, Department of Inspector General (OCCIG) to investigate.

B. Summary of Investigative Finding

Allegations:

There were three legally sufficient complaints about the state registered professional guardian:

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1. The guardian has moved the Ward to multiple ALFs that do not meet the Ward's needs for care or supervision, which has resulted in multiple hospitalizations.
2. The guardian did not contact either of the Ward's children regarding initiation of the guardianship.
3. The Ward has communicated that he wishes for life-saving actions to be taken should they be required, but the guardian has a DNR [*Do Not Resuscitate order*] and has not agreed to remove it per the Ward's wishes.

Background

On May 9, 2019, [F.S. 744.211(1)] the daughter of ward [F.S. 744.211(1)] filed a complaint with the Florida Department of Elder Affairs, Office of Public and Professional Guardians [F.S. 744.211(1)] alleged that Fierle moved her father to multiple ALFs that were unable to care for him, that she did not reach out to family members during the initiation of the guardianship, and that even though the Ward expressed a desire to live, Fierle refused to remove a Do Not Resuscitate order (DNR) she had placed. According to court records, Rebecca Fierle served as the Ward's court appointed guardian from [F.S. 744.211(1)] until his death on [F.S. 744.211(1)] [F.S. 744.211(1)].

Investigative Narrative

Our office conducted a review of guardianship court case proceedings in the Florida 9th Judicial Circuit Court in and for Orange County. Additionally, we reviewed medical records for the Ward that had been provided pursuant to a court order.

We conducted an interview with the complainant, [F.S. 744.211(1)] on July 2, 2019. She reiterated details forwarded to our office from the Office of Public and Professional Guardians (OPPG). She also expressed confusion as to why her father kept being released from the hospital to facilities lacking the ability to treat his chronic condition. [F.S. 744.211(1)] stated that in the week prior to the Ward's death, Fierle had agreed to give up guardianship of him. When she asked Fierle about the DNR order, Fierle told her that her decision was a "quality of life, rather than quantity" matter. [F.S. 744.211(1)] said that she believed that if not for Fierle's actions, her father would still be alive. She also forwarded an email that she received from Fierle in the days after her father's death, which she characterized as callous and disrespectful (Attached as **EXHIBIT A**).

We conducted an interview with [F.S. 744.211(1)] a friend of the Ward who had previously held a durable power of attorney for him and acted as his healthcare surrogate. She stated that Florida Hospital contacted her to ask if she wanted to be his guardian and she said no at the time. She was unaware that the hospital had already petitioned for a guardian to be appointed. [F.S. 744.211(1)] confirmed that the Ward was hospitalized several times due to chronic health conditions that the facilities Fierle placed him in where unequipped to manage. She said that the Ward required a procedure known as an EGD periodically to enable him to eat solid foods. The Ward had another EGD scheduled a few weeks after the day he died. [F.S. 744.211(1)] was in regular contact with the Registered Nurse/Case Manager at St. Joseph's Hospital in Tampa, Florida, where the Ward was receiving inpatient care from early [F.S. 744.211(1)] until his death. She said that the case manager told her that Fierle planned to let the Ward die. [F.S. 744.211(1)] confirmed that she and [F.S. 744.211(1)] had retained an attorney and were planning to petition for guardianship.

We conducted an interview with Kirtikumar Pandya, MD, a licensed psychiatrist who examined the Ward at St. Joseph's Hospital. He stated that he was concerned about the DNR filed for the Ward by Fierle. While he acknowledged that the Ward did not have the capacity to make all decisions, Dr. Pandya believed that he had the ability to decide that he wanted to live. Dr. Pandya said that the Ward wanted to be resuscitated

and wanted to be alive. Dr. Pandya said that, in his opinion, Fierle's reasons for the DNR were not rational, also noting that she does not have a healthcare background. Dr. Pandya also stated that the Ward's medical condition is not generally considered terminal. In both our interview and his psychiatric progress note in the Ward's medical records (Attached as **EXHIBIT B**), Dr. Pandya requested that the hospital rescind the DNR and order an ethics consult.

We conducted an interview with Rebecca Fierle, court-appointed guardian of [REDACTED] F.S. 744.211(1). She said that became associated with the guardianship when Florida Hospital contacted her after filing a guardianship petition. She said that she understood the Ward to be estranged from his children, but that she believed that Florida Hospital reached out to them when they petitioned for guardianship. Fierle said that it was difficult to find facilities that would accept the Ward due to his sex offender status. She knew that [REDACTED] and [REDACTED] were planning to petition for guardianship and confirmed that she would be willing to give up the guardianship if the petition was granted. When asked about the DNR, she gave the same response that [REDACTED] mentioned: that it was an issue of quality of life rather than quantity. Fierle stated that she discussed life-saving care with the Ward and that he agreed to the DNR being in place. She also stated that this was common for her and that she files DNR for Wards regularly. She acknowledged that she attended an ethics counsel meeting at St. Joseph's Hospital. The meeting determined that because she was the court-appointed guardian, she had the authority to decide on end of life care and life-saving procedures, and the DNR remained in place. Fierle stated that, to her knowledge, the Ward had been dealing with his medical condition for many years.

We attempted to interview both the RN case manager and the physician who pronounced the Ward dead, but the case manager was told by hospital management not to speak with us and the physician did not return a message left with his office staff. However, our review of the Ward's medical records confirmed what [REDACTED] told us, as well as what she said the case manager told her. The note in the records written upon the Ward's death, and digitally signed by the pronouncing physician, indicated that they did not perform life-saving procedures due to the DNR in place (Note attached as **EXHIBIT C**). The records also confirmed the upcoming EGD.

Findings of Fact, Observations, and Recommendations

Allegation 1: That the guardian has moved the Ward to multiple ALFs that do not meet the Ward's needs for care or supervision, which has resulted in multiple hospitalizations is **SUBSTANTIATED**. Even though it was difficult to find a facility willing to accept him due to his sex offender status, as court-appointed guardian, it remained Fierle's responsibility to ensure the Ward's medical care needs were met. The Ward's particular medical condition indicated that an assisted living facility was likely not the most appropriate environment for his care.

Allegation 2: That the guardian did not contact either of the Ward's children regarding initiation of the guardianship is **UNFOUNDED**. Fierle did not petition for guardianship in this case. Section 744.334, Fla. Stat. requires the petitioner to list next of kin and to state whether a willing and qualified guardian can be located. As Fierle was not the petitioner, she was not responsible for providing notice to next of kin for the petition. Fierle stated that she believed the Ward to be estranged from his children. [REDACTED] F.S. 744.211(1) even acknowledged that because of his past issues, she kept her father "at a distance." Further, once she was appointed as guardian, Fierle remained in regular contact with both the Ward's daughter and [REDACTED] F.S. 744.211(1).

Allegation 3: That the Ward has communicated that he wishes for life-saving actions to be taken should they be required, but the guardian has a DNR and has not agreed to remove it per the Ward's wishes is **SUBSTANTIATED**. Fierle's statement that the Ward agreed with the DNR is directly contradicted by statements made by the Ward's daughter, his friend, and his psychiatrist based on their discussions with the

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Ward. Fierle also acknowledged that Ward had been dealing with his condition for many years, while also citing a quality of life concern. The Ward had never previously expressed a desire to die, and it seems unlikely that, as soon as he was appointed a guardian, he would suddenly be unwilling to tolerate a condition that he had been dealing with for many years. Additionally, Fierle knew that a relative and friend of the Ward, both of whom had serious concerns about the DNR, would be petitioning for guardianship (and acknowledged that she would willingly give up the guardianship), and she remained unwilling to consider removing the DNR even temporarily. Fierle acknowledged that members of the hospital staff had ethical concerns related to the DNR, and that she attended an ethics conference at St. Joseph's Hospital, but she failed to submit this ethical dilemma to the court for direction pursuant to OPPG Standard 15.

Pursuant to Section 744.3215(1)(d), Fla. Stat., a person who has been determined to be incapacitated retains the right "to be treated humanely, with dignity and respect, and to be protected against abuse..."

Pursuant to OPPG Standard 2(a), the "Professional Guardians shall know the extent of the powers and the limitations of authority granted to them by the court and all their decisions and actions shall be consistent with applicable court orders and Florida law. Any action taken by a Professional Guardian pursuant to a court order shall not be deemed a violation of this rule." Standard 2(b) states, "Professional Guardians shall obtain court authorization for actions that are subject to court approval in advance except for emergency situations." Standard 2(c) states, "Professional Guardians shall clarify with the court any questions that the professional guardian has about the meaning of orders or directions from the court before taking action based on the orders or directions."

During our interview, Fierle stated that placing DNR orders for her Wards is common and something that she does frequently. Because she did not petition the court for approval to place the DNRs, and these records are not generally maintained in the guardianship case files, we do not currently know the extent to which Fierle's current or former Wards may be affected.

Fierle's decision to place a DNR order, against the Ward's stated wishes, constituted the removal of care necessary to maintain the Ward's physical health. Section 825.102(3)(a)1, Fla. Stat. states that Neglect of an elderly person or disabled adult means "A caregiver's failure or omission to provide an elderly person or disabled adult with the care, supervision, and services necessary to maintain the elderly person's or disabled adult's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the elderly person or disabled adult." The removal of this necessary care directly resulted in the Ward's death. Section 782.07(2), Fla. Stat. states "A person who causes the death of any elderly person or disabled adult by culpable negligence under s. 825.102(3) commits aggravated manslaughter of an elderly person or disabled adult, a felony of the first degree."

Additional Observations – Origination of the Guardianship

During our investigation, we noted two issues that, while not directly related to Fierle's performance as guardian, are concerns:

In the Florida Hospital petition for guardianship, they state that the Ward's daughter's **F.S. 744.211(1)** whereabouts were unknown. However, her contact information was listed on the Advance Directive on file with the hospital, and our office found her contact information with a quick Google search. During our interview, **[REDACTED]** stated that she was not asked if she wanted to be guardian until after the petition had already been filed. Even then, she said that she was not given details or made aware of the situation and was only asked if she wanted to be his guardian.

§ 744.211(1) a friend of the Ward, was his designated health care surrogate and held a durable power of attorney for him. Soon after she began to question the need for a guardian to be appointed, she discovered that she was under investigation by the Florida Department of Children and Families, Adult Protective Services on suspicion of elder abuse or exploitation. She was later cleared of any wrongdoing by the investigation. This is the second investigation involving Rebecca Fierle that our office has worked recently where a friend or family member who questioned the need for a guardian found themselves under DCF investigation. In both instances, the subjects were cleared by the investigation. In both cases, the complaints were submitted anonymously.

Recommendations

The Clerk's Inspector General is responsible for establishing and maintaining independence so that the inspector general opinions, conclusions, judgments, and recommendations will be impartial and viewed by others as impartial. A cornerstone and guiding principle for inspectors general is the essential and fundamental boundary of independence; independence both in appearance and in fact. As a professional standard, the Clerk's Inspector General should make necessary and appropriate recommendations to the OPPG in the body of an investigative report. The Clerk IGs' recommendations are based on the scope, observations, and findings of the investigation. The recommendations are suggestions of professional opinions. The scope of the Clerks IG's investigation may not necessarily include information derived from administrative proceedings such as interrogatories, subpoenas, discovery, or hearing testimonies. The investigation reports are issued prior to the completion of the administrative and entire investigative process.

The Clerk IG suggests that the OPPG has an obligation to reasonably consider the recommendations and take all necessary actions pursuant to statute and rules to satisfactorily resolve any and all issues. The OPPG's actions or inactions are made at its sole discretion, and may correctly differ to the Clerk's recommendation.

Since Section 744.2004(2), Fla. Stat. delineates the actions that the OPPG must take, additional recommendations for OPPG action would be redundant and potentially contradictory to Florida statute. Therefore, no additional recommendations are suggested.

C. Investigative Methods

Our office conducted interviews with the complainant and the subject. We reviewed case file documents and court documents.

D. Status of Investigation

This investigation is **complete**. The Okaloosa County Clerk of Circuit Court and Comptroller, Department of Inspector General, on behalf of the Clerk's Statewide Investigation Alliance, continues to be available for further consultation and direction.

Andrew
Thurman

Digitally signed by
Andrew Thurman
Date: 2019.07.10
15:33:02 -05'00'

Andrew Thurman, CIGI
Auditor/Investigator
Okaloosa County Clerk of Court
Department of Inspector General

From: Rebecca Fierle <rebecca@geriatricidc.com>

Subject: Re: My father is dead

Date: May 15, 2019 at 9:56:24 AM EDT

To: F.S. 744.211(1)

F.S. 744.211(1)

It was my understanding that you were in close contact with the hospital case manager so I assumed she let you know.

Any final arrangements can be handled by you and your brother. That is not a task I handle if there is family.

The funeral home of your choice can send an invoice to my office for payment from funds I have in the Guardianship account.

Rebecca Fierle

PO box 568625

Orlando, FL 32856

407-895-0504

888-858-7871 fax

Rfierle@gmail.com

On May 15, 2019, at 8:45 AM, F.S. 744.211(1) wrote:

Rebecca,

Were you even going to tell me?

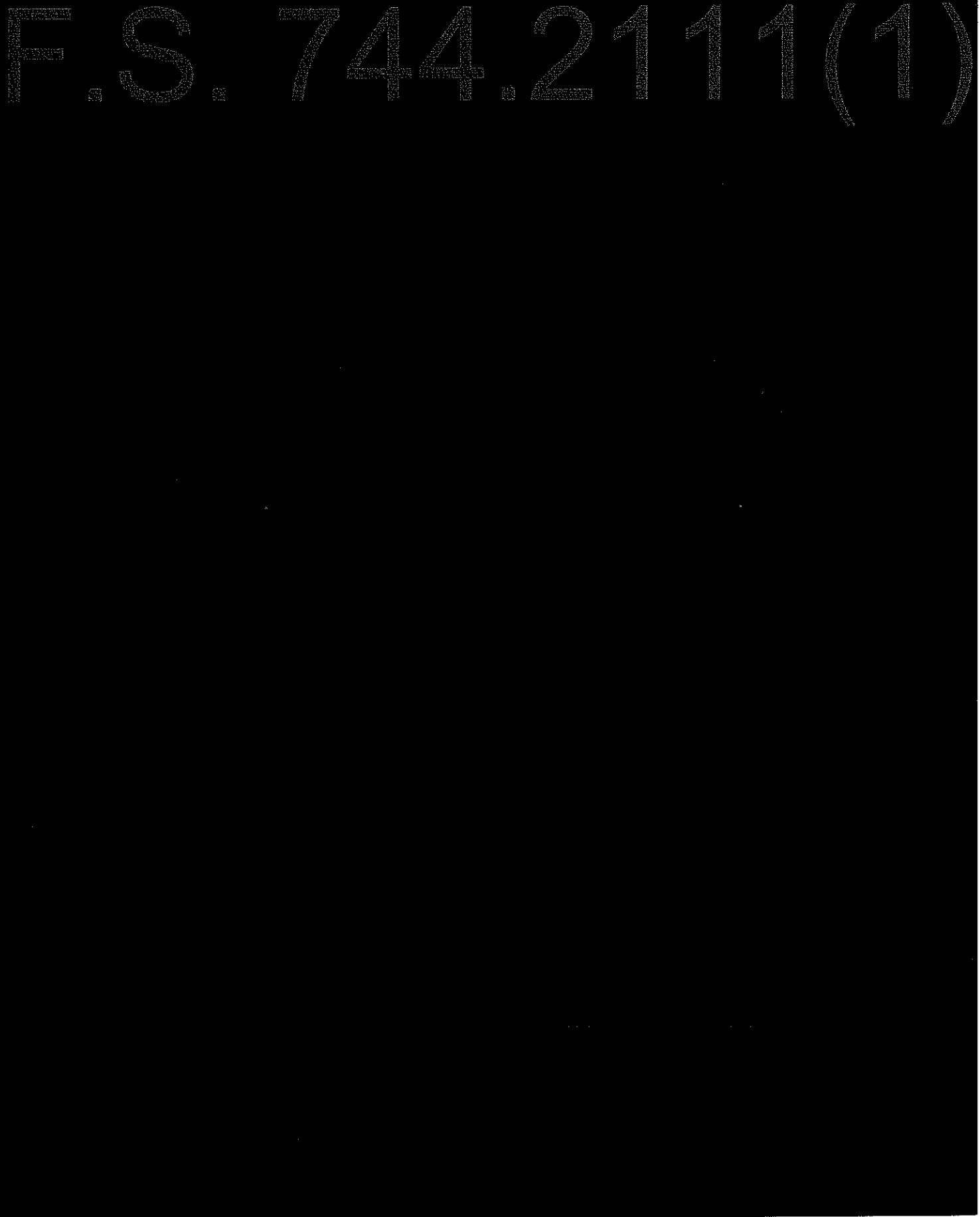
My family wants to know what is being done with my father's remains. He had specific instructions and preparations made, which you will no doubt ignore.

F.S. 744.211(1)

Sent from my iPhone

EXHIBIT A

F.S. 744.211(1)



F.S. 744.211(1)

From: Public Information Office

Sent: Thursday, January 09, 2020 9:32 AM

To: 'Walser, Adam' <adam.walser@wfts.com>

Subject: RE: Statement involving cremains at Rebecca Fierle's office

Good morning,

FDLE statement regarding remains in the Rebecca Fierle investigation

For Immediate Release

January 8, 2020

ORLANDO, Fla – FDLE has identified the cremated remains of nine individuals and one pet recovered from Rebecca Fierle's office on August 5, 2019. One individual has yet to be identified. To ensure all the proper legal procedures are followed, FDLE agents are in the process of securing court orders for the remains so they can be given to the next-of- kin or their legal guardian.

The remains were recovered during the August 5 execution of a search warrant of Fierle's office at 1646 Hillcrest Street in Orlando by FDLE agents, assisted by detectives from the Orange County Sheriff's Office and the Office of the Attorney General's Medicaid Fraud Control Unit.

In the intervening months, agents and analysts have worked to identify the remains and the next-of- kin. FDLE agents and analysts will continue working to identify the last unidentified cremated remains.

The investigation into allegations against Fierle and her business is ongoing. The presence of the cremated remains recovered at the office does not necessarily constitute a crime. No further information is available for release at this time.

For Further Information Contact:

Gretl Plessinger, Jessica Cary or Jeremy Burns

FDLE Office of Public Information

(850) 410-7001

THE FLORIDA SENATE

APPEARANCE RECORD

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

1.28.2020

Meeting Date

994

Bill Number (if applicable)

785084

Amendment Barcode (if applicable)

Topic Guadalupe Ship

Name Paul A. Ledford

Job Title President + CEO

Address 2000 Applebee Parkway Ste 200

Street

Phone 850.321.4667

Tallahassee

FL

32301

City

State

Zip

Email paul@floridahospices.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Hospices + Palliative Care 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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1.28.2020

Meeting Date

994

Bill Number (if applicable)

870686

Amendment Barcode (if applicable)

Topic Guardianship

Name Paul A. Ledford

Job Title President + CEO

Address 2000 Apalachee Parkway, Ste 200

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850.321.4617

Email paul@floridahospices.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Hospices + Palliative Care 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)

THE FLORIDA SENATE

APPEARANCE RECORD

1-28-20

Meeting Date

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

994

Bill Number (if applicable)

870686

Amendment Barcode (if applicable)

Topic

SB 994 Amendment

Name

Bryan Cherry

Job Title

Consultant

Address

150. S. Monroe St, STE 303

Street

Phone

(850)544-5673

Tallahassee

City

FL.

State

32301

Zip

Email

bryan@pinpointresults.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

FL. Public Guardian Coalition

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-28-20

Meeting Date

994

Bill Number (if applicable)

Topic

SB 994

Amendment Barcode (if applicable)

Name

Bryan Cherry

Job Title

Consultant

Address

150 S. MONROE ST, STE 303

Phone

(850) 544-5673

Street

Tallahassee

FL

32301

City

State

Zip

Email

bryan@pinpointresults.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

FL. Public Guardian Coalition

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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S-001 (10/14/14)

APPEARANCE RECORD

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

01/28/00

Meeting Date

SB 994

Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Dr. Teresa Kennedy

Job Title Founder, Elder Dignity

Address 116 West 23rd St 500

Street

Phone 917-747-6567

NY NY 10011

City

State

Zip

Email terik@power-living.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

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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)

1/27/2020

Meeting Date

SB 994

Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Zayne smith

Job Title Associate State Director

Address 215 South Monroe Suite 603

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850.228.4243

Email zsmith@aarp.org

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing AARP

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

1-28-20

Meeting Date

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

SB 914

Bill Number (if applicable)

Topic GUARDIANSHIP

Amendment Barcode (if applicable)

Name DOUG FRANKS

Job Title Fighter for Ernestine

Address 1034 Justice Ln A

Street

Acworth

City

GA

State

30102

Zip

Phone 678 570 3010

Email douglasfranks360@gmail.com

Speaking: ☐ For ☒ Against ☒ Information

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

Representing Free Ernestine.com

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)

1/28/20
Meeting Date

SB 994
Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Lynn Saylor

Job Title Grandma

Address 1909 Tanglewood Dr NE
Street
St. Pete, FL 33702
City State Zip

Phone 727-403-8816

Email LSaylor6tanglewood@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Myself

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)

1/28/20

Meeting Date

994

Bill Number (if applicable)

Topic GUARDIANSHIP

Amendment Barcode (if applicable)

Name MARLA MARTINEZ Friedman

Job Title Retired

Address 18320 NW 68th Ave Apt H

Phone 786-454-6709

Street

Hialeah

Fla

33015

Email ME F0826@gmail.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

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

1/28/2020

Meeting Date

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

994

Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Daniel Olson

Job Title Director of Government Affairs

Address 400 S. Monroe Street

Phone _____

Street

Tallahassee

FL

32399

Email dan.olson@myfloridalegal.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Office of the Attorney General

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

* May I be last speaker for this?

11-28-20

Meeting Date

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

SB 994

Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Lee Jimenez

Job Title Dietitian

Address 633 Bridgewater Dr

Phone 843-422-6634

Savannah GA 31419

Email bluebirdhhisc@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing my experience w/ GAL & my children

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

01/23/20

Meeting Date

SB 954

Bill Number (if applicable)

For 5

Amendment Barcode (if applicable)

Topic Guardianship

Name Hillary Hogue

Job Title

Address 5412 20th Place SW

Street

City

Naples

State

FL

Zip

34116

Phone (239) 682-4249

Email hillahg@aol.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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1080

INTRODUCER: Senators Perry and Baxley

SUBJECT: Nonopioid Alternatives

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Favorable
2.	Stallard	Cibula	JU	Favorable
3.			RC	

I. Summary:

SB 1080 amends the requirement that a health care practitioner advise a patient of nonopioid alternatives before providing care that uses opioid anesthesia or prescribing, ordering, dispensing, or administering an opioid drug.

More particularly, the bill amends this requirement by:

- Authorizing a health care practitioner to choose to advise the patient *or his or her representative*;
- Providing that a health care practitioner is not required to discuss nonopioid alternatives when treating a patient in a hospital critical care unit or an emergency department, or when treating a patient receiving hospice services; and
- No longer applying it to “dispensing” or “administering” of an opioid. For example, a nurse in a critical care unit does not need to advise a patient of nonopioid alternatives each time he or she gives the patient a dose of a prescribed opioid.

Both the bill and current law apply only to those opioid drugs that are listed as Schedule II controlled substances in s. 893.03, F.S., or 21 U.S.C. s. 812, including fentanyl, oxycodone, hydrocodone, codeine, and morphine.

II. Present Situation:

History of the Opioid Crisis in Florida

According to the National Institute on Drug Abuse:¹

¹ National Institute on Drug Abuse, *Opioid Overdose Crisis* (Rev. Jan. 2019), <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited Jan. 23, 2020).

- “In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates”; and
- “This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.”

Between the early 2000s and the early 2010s, Florida was infamous as the “pill mill capital” of the country. At the peak of the pill mill crisis, doctors in Florida bought 89 percent of all the oxycodone sold in the county.²

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the Prescription Drug Monitoring Program (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.³ “In 2016, the opioid prescription rate was 75 per 100 persons in Florida. This rate was down from a high of 83 per 100.”⁴

As reported by the Florida Attorney General’s Opioid Working Group,

Drug overdose is now the leading cause of non-injury related death in the United States. Since 2000, drug overdose death rates increased by 137 percent, including a 200 percent increase in the rate of overdose deaths involving opioids. In 2015, over 52,000 deaths in the U.S. were attributed to drug poisoning, and over 33,000 (63 percent) involved an opioid. In 2015, 3,535 deaths occurred in Florida where at least one drug was identified as the cause of death. More specifically, 2,535 deaths were caused by at least one opioid in 2015. Stated differently, seven lives per day were lost to opioids in Florida in 2015. Overall the state had a rate of opioid-caused deaths of 13 per 100,000. The three counties with the highest opioid death rate were Manatee County (37 per 100,000), Dixie County (30 per 100,000), and Palm Beach County (22 per 100,000).⁵

Early in 2017, the Center for Disease Control (CDC) declared the opioid crisis an epidemic.⁶ Shortly thereafter, on May 3, 2017, Governor Rick Scott signed Executive Order 17-146 declaring the opioid epidemic a public health emergency in Florida.⁷

House Bill 21 (2018)

In 2018, the Florida Legislature passed HB 21 (ch. 2018-13, L.O.F.) to combat the opioid crisis. HB 21:

² Lizette Alvarez, *Florida Shutting ‘Pill Mill’ Clinics*, The New York Times (Aug. 31, 2011), available at <http://www.nytimes.com/2011/09/01/us/01drugs.html>.

³ See chs. 2009-198, 2010-211, and 2011-141, Laws of Fla.

⁴ Attorney General’s Opioid Working Group, *Florida’s Opioid Epidemic: Recommendations and Best Practices*, 7 (March 1, 2019), available at [https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/\\$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf](https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf).

⁵ *Id.*

⁶ See Exec. Order No. 17-146, available at <https://www.flgov.com/wp-content/uploads/2017/05/17146.pdf>.

⁷ *Id.*

- Required additional training for practitioners on the safe and effective prescribing of controlled substances;
- Restricted the length of prescriptions for Schedule II opioid medications to three days or up to seven days if medically necessary;
- Reworked the PDMP statute to require that prescribing practitioners check the PDMP prior to prescribing a controlled substance and to allow the integration of PDMP data with electronic health records and the sharing of PDMP data between Florida and other states; and
- Provided for additional funding for treatment and other issues related to opioid abuse.

House Bill 451 (2019)

In 2019, the Florida Legislature passed HB 451 (ch. 2019-123, L.O.F.) that required each health care practitioner to, prior to treating a patient with anesthesia or a Schedule II opioid medication in a non-emergency situation: inform the patient of available nonopioid alternatives for the treatment of pain; discuss the advantages and disadvantages of the use of nonopioid alternatives; provide the patient with the pamphlet created by the Department of Health (DOH); and document any alternatives considered in the patient's record.

Opioid Abuse

Both nationally and in Florida, opioid addiction and abuse has become an epidemic. The Florida Department of Law Enforcement (FDLE) reported that, when compared to 2016, 2017 saw:

- 6,178 (8 percent more) opioid-related deaths;
- 6,932 (4 percent more) individuals died with one or more prescription drugs in their system;⁸
- 3,684 (4 percent more) individuals died with at least one prescription drug in their system that was identified as the cause of death;
- Occurrences of heroin increased by 3 percent and deaths caused by heroin increased by 1 percent;
- Occurrences of fentanyl increased by 27 percent and deaths caused by fentanyl increased by 25 percent;
- Occurrences hydrocodone increased by 6 percent while deaths caused by hydrocodone decreased by 8 percent;
- Occurrences of buprenorphine and deaths caused by buprenorphine increased by 19 percent.⁹

The federal Centers for Disease Control and Prevention (CDC) estimates that the nationwide cost of opioid misuse at \$78.5 billion per year.¹⁰

However, in Florida, many of the trends above have begun to reverse. Compared with 2017, 2018 saw:

- 5,576 (10 percent less) opioid-related deaths;

⁸ The drugs were identified as either the cause of death or merely present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. These drugs were not necessarily opioids.

⁹ FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners, 2017 Annual Report* (Nov. 2018), available at <http://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2017-Annual-Drug-Report.aspx>.

¹⁰ National Institute on Drug Abuse, *Opioid Overdose Crisis* (Rev. Jan. 2019), <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited on Jan. 23, 2020).

- 6,701 (3 percent less) individuals died with one or more prescription drugs in their system;¹¹
- 3,693 (9 more) individuals died with at least one prescription drug in their system that was identified as the cause of death;
- Occurrences of heroin decreased by 11 percent and deaths caused by heroin decreased by 15 percent;
- Occurrences of fentanyl increased by 29.5 percent and deaths caused by fentanyl increased by 35 percent;
- Occurrences hydrocodone increased by 19 percent while deaths caused by hydrocodone decreased by 26 percent;
- Occurrences of oxycodone decreased by 8 percent and deaths caused by oxycodone decreased by 12 percent.¹²

III. Effect of Proposed Changes:

The bill amends the requirement that a health care practitioner advise a patient of nonopioid alternatives before providing opioid anesthesia or prescribing, ordering, dispensing, or administering an opioid drug.

The bill amends this requirement by:

- Authorizing a health care practitioner to choose to advise the patient *or his or her representative*;
- Providing that a health care practitioner is not required to discuss nonopioid alternatives when treating a patient in a hospital critical care unit or an emergency department, or when treating a patient receiving hospice services; and
- No longer applying it to “dispensing” or “administering” of an opioid. For example, a healthcare practitioner does not need to advise a patient of nonopioid alternatives each time he or she gives the patient a dose of a prescribed opioid.

Both the bill and current law apply only to those opioid drugs that are listed as Schedule II controlled substances in s. 893.03, F.S. or 21 U.S.C. s. 812, including fentanyl, oxycodone, hydrocodone, codeine, and morphine.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹¹ The drugs were identified as either the cause of death or merely present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. These drugs were not necessarily opioids.

¹² FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2018 Annual Report* (Nov. 2019) <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2018-Annual-Drug-Report.aspx> (last visited on Jan. 23, 2020).

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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 456.44 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

By Senator Perry

8-00361B-20

20201080__

1 A bill to be entitled
 2 An act relating to nonopioid alternatives; amending s.
 3 456.44, F.S.; revising exceptions to certain
 4 controlled substance prescribing requirements;
 5 clarifying that a certain patient or patient
 6 representative must be informed of specified
 7 information, have specified information discussed with
 8 him or her, and be provided with an electronic or
 9 printed copy of a specified educational pamphlet;
 10 providing an effective date.
 11
 12 Be It Enacted by the Legislature of the State of Florida:
 13
 14 Section 1. Paragraph (c) of subsection (7) of section
 15 456.44, Florida Statutes, is amended to read:
 16 456.44 Controlled substance prescribing.—
 17 (7) NONOPIOID ALTERNATIVES.—
 18 (c) Except when a patient is receiving care in a hospital
 19 critical care unit or in an emergency department or a patient is
 20 receiving hospice services under s. 400.6095 in the provision of
 21 emergency services and care, as defined in s. 395.002, before
 22 providing care that requires the administration of anesthesia
 23 involving the use of an opioid drug listed as a Schedule II
 24 controlled substance in s. 893.03 or 21 U.S.C. s. 812, or
 25 prescribing or ordering, ordering, dispensing, or administering
 26 an opioid drug listed as a Schedule II controlled substance in
 27 s. 893.03 or 21 U.S.C. s. 812 for the treatment of pain, a
 28 health care practitioner who prescribes or orders an opioid
 29 drug, excluding those licensed under chapter 465, must:

Page 1 of 2

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

8-00361B-20

20201080__

30 1. Inform the patient or the patient's representative of
 31 available nonopioid alternatives for the treatment of pain,
 32 which may include nonopioid medicinal drugs or drug products,
 33 interventional procedures or treatments, acupuncture,
 34 chiropractic treatments, massage therapy, physical therapy,
 35 occupational therapy, or any other appropriate therapy as
 36 determined by the health care practitioner.
 37 2. Discuss with the patient or the patient's representative
 38 the advantages and disadvantages of the use of nonopioid
 39 alternatives, including whether the patient is at a high risk
 40 of, or has a history of, controlled substance abuse or misuse
 41 and the patient's personal preferences.
 42 3. Provide the patient or the patient's representative,
 43 electronically or in printed form, with the educational pamphlet
 44 described in paragraph (b).
 45 4. Document the nonopioid alternatives considered in the
 46 patient's record.
 47 Section 2. This act shall take effect July 1, 2020.

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: January 16, 2020

I respectfully request that **Senate Bill #1080**, relating to Nonopioid Alternatives, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

28 Jan 2019

Meeting Date

1080

Bill Number (if applicable)

N/A

Amendment Barcode (if applicable)

Topic Non-opioid Alternatives

Name Dr. Kamal Shair

Job Title Physician, Internal Medicine

Address 711 Beach Blvd, Apt 1325

Street

Jacksonville Beach

City

FL

State

32250

Zip

Phone 617 447 7909

Email KShair@hotmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1.28.2020

Meeting Date

1080

Bill Number (if applicable)

Topic Nonopioid Alternatives

Amendment Barcode (if applicable)

Name Paul Ledford

Job Title President + CEO

Address 2000 Apalachee Parkway Ste 200

Phone 850.321.4617

Tallahassee
City

FL
State

32301
Zip

Email paul@floridahospices.org

Speaking: ☒ For ☐ Against ☒ Information
If requested

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

Representing Florida Hospice + Palliative Care 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
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 1328

INTRODUCER: Judiciary Committee and Senator Wright

SUBJECT: Fines and Fees

DATE: January 30, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u> </u>	<u> </u>	<u>ACJ</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1328 requires clerks of court to actively attempt to collect fines, service charges, fees, or costs owed before revoking the driver license of the person who owes the funds. Specifically, a clerk of court must notify a person owing funds of the potential to enroll in a payment plan to defer the payment of the amounts owed before revoking the person's driver license. Once a payment plan is established, the clerk must provide a person who does not make a required payment with a delinquency notice and a 30-day grace period before revoking the person's license.

The bill further contemplates having clerks of court establish a multicounty intergovernmental authority establish consolidated payment plans for low income individuals who owe fines, service charges, fees, or costs from multiple cases across the state. Moreover, the bill gives courts authority to waive, modify, or convert the outstanding amounts if the individual is indigent or due to compelling circumstances is unable to comply with a payment plan.

The bill is effective July 1, 2020.

II. Present Situation:

Clerks of the Circuit Court

Each of the 67 Florida counties has a clerk of court. The clerk is an elected constitutional officer who oversees judiciary functions as the clerk of both the county and circuit courts.¹ The clerk may also serve as the ex-officio clerk of the board of county commissioners, as well as the auditor, recorder, and custodian of all county funds.

The State Constitution requires that the clerks of courts be funded from revenue generated from charges for service, court costs, filing fees, and fines from civil and criminal proceedings.² The revenue is used for court related functions as well as select costs, expenses, and salaries as provided by law.³ Court related functions include:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing for the assignment, reopening, reassignment, and appeals of cases;
- Reasonable administrative support costs;
- Data collection and reporting;
- Determinations of indigent status; and
- Collection and distribution of fines, fees, service charges, and court costs.⁴

The clerk of courts statewide operating budgets vary each year depending on revenues generated. For fiscal year 2013-2014 clerks had an operating budget of \$472.3 million for court-related functions. The 2017-2018 budget was \$409.04 million, while the latest 2018-2019 budget was \$424.8 million.⁵

Between October 1, 2017, and September 30, 2018, the Clerks statewide assessed \$1,163,151,976, in fines, and collected a total of \$863,594,314 for a collection rate of 74.25 percent statewide.⁶ Revenue collected from fines and fees are not solely budgeted toward the clerks of courts. The Legislature has provided, for example, a 5 percent surcharge for certain non-criminal traffic citations, which is deposited in the Crimes Compensation Trust Fund.⁷ Additionally, that same trust fund collects \$49 from every \$50 collected as a fine from every

¹ FLA. CONST. ART. V, § 16

² FLA. CONST. ART. V, § 14. Although the clerks of courts are funded through fines and fees through this provision of the State Constitution, courts have stated that mere operational underfunding which causes the poor performance of a clerk of court do not mean that the funding levels are unconstitutional. *See Fla. Dep't of Rev. v. Forman*, 273 So. 3d 223 (Fla. 1st DCA 2019), jurisdiction denied, No. SC19-1262, 2019 Fla. LEXIS 2153 (Fla Nov. 25, 2019).

³ *Id.*

⁴ Section 28.35(3)(a), F.S.

⁵ Gary Blankenship, *Court Clerks Get a Bit of the Budget Help they Need*, FLA. BAR NEWS, May 13, 2019, <https://www.floridabar.org/the-florida-bar-news/court-clerks-get-a-bit-of-the-budget-help-they-need/>.

⁶ Florida Court Clerks and Comptrollers, *2018 Annual Assessments and Collections Report*, https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents/_1_final_front_matter_cover_s.pdf.

⁷ Section 938.04, F.S. The Crimes Compensation Trust Fund was created for the purpose of compensating victims of crime. Section 960.21, F.S.

adjudication from any felony, misdemeanor, delinquent act, or criminal traffic offense.⁸ During fiscal year 2018-2019, the Crime Compensation Trust Fund received \$13,794,800.86 of revenue generated from the above fines and fees collected by the clerks of courts.⁹

Once fees, service charges, fines, or court costs have remained unpaid for 90 days, the clerk may forward the accounts to an attorney or collection agent if the clerk of court attempted to collect the unpaid amount through an internal process such as a collection docket.¹⁰ It is unclear how successful collection agents are at collecting the remaining fees and fines. However, some counties such as Broward¹¹ County have unpaid fines and fees totaling hundreds of millions of dollars which go back decades.

Payment Plans

Court costs, fines, and other fines related to a disposition are enforced by court order and collected by the clerks of the circuit and county courts. An indigent person may apply to the clerk of court to enter a payment plan. The monthly payments under a payment plan are presumed to correspond to the indigent person's ability to pay if it does not exceed 2 percent of the indigent person's annual net income divided by 12.¹² A person is indigent if their income is equal to or below 200 percent of the federal poverty guidelines¹³ or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income.¹⁴

Certain crimes in Florida have significant mandatory minimum fines. An individual convicted of trafficking cocaine, for example, must pay a fine of \$50,000, if the amount trafficked is at least 28 grams, or \$250,000 if the amount trafficked is more than 400¹⁵ grams.¹⁶ Depending on the individual's income and ability to pay, fines and fees may take decades to pay off. An individual on a payment plan in Miami-Dade, for example, is scheduled to complete her \$190,000 payment plan resulting from a grand theft conviction in 190 years.¹⁷ She pays \$100 per month under her payment plan.

⁸ Section 938.03, F.S.

⁹ Memorandum, Florida Clerks of Court Operations Corporation, *CCOC Bill Analysis for SB 1328*, January 2020 (on file with the Senate Committee on Judiciary).

¹⁰ Section 28.246(6), F.S.

¹¹ Broward County has \$735.6 million in outstanding fees and fines from felony, misdemeanor, and traffic dispositions. Similarly, Palm-Beach County has \$277.5 million outstanding while Miami-Dade County has \$278 million from felony adjudications alone. Dan Sweeney, *South Florida felons owe a billion dollars in fines - and that will affect their ability to vote*, SOUTH FLORIDA SUN SENTINEL, May 31, 2019, <https://www.sun-sentinel.com/news/politics/fl-ne-felony-fines-broward-palm-beach-20190531-5hxf7mveyree5cjhk4xr7b73v4-story.html>.

¹² Section 28.26(4), F.S.

¹³ Currently, the federal poverty level is \$12,490 for individuals, with an additional \$4,420 for each additional family member in the individual's household. See: United States Department of Health and Human Services, *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, <https://aspe.hhs.gov/2019-poverty-guidelines> (last visited Jan 14, 2020).

¹⁴ Section 27.52(1), F.S.

¹⁵ 400 grams is the equivalent to .88 of a pound.

¹⁶ Section 893.135(1)(b)1., F.S.

¹⁷ Lawrence Mower, *Should a felon who owes \$59 million be allowed to vote? How about \$190,000?* MIAMI HERALD, Mar. 29, 2019, <https://www.miamiherald.com/news/politics-government/state-politics/article228399999.html>.

Driver's License Suspension in Florida

More than 2 million of the more than 14 million driver licenses issued in Florida are currently suspended.¹⁸ A license can be suspended for a variety of different reasons, including:

- Failure to pay a fine.
- Failure to comply with or appear at a traffic summons.
- Failure to complete driver improvement school based on court order or citation.
- Unpaid citations reported by another state.
- Clearing a court financial obligation.¹⁹

III. Effect of Proposed Changes:

This bill seeks to minimize driver license revocations by clerks of court due to the failure of a person to pay fines, service charges, fees, or costs by providing more notices of the availability of payment plans to defer payments and other measures.

The notices required by the bill include:

- A notice on uniform traffic citation forms with information on paying civil penalties to a clerk of court. Although, the bill does not specify what must be included in the notice, the intent may be to provide information on payment plans.
- A notice advising a person who fails to timely pay a civil penalty for a traffic infraction that the person may contact the clerk of court to enroll in a payment plan to make partial payments for court-related fees, service charges, costs, or fines.
- A notice sent within 5 days after a person fails to make a required payment under a payment plan. The bill implies that this notice will advise the person that his or her driver license will be suspended unless the required payment is not received within 30 days after its due date or unless the person makes alternate payment arrangements or enters into revised payment plan.

Other measures provided by the bill that may minimize the need for clerks of court to revoke driver licenses include:

- A requirement that clerks of court accept payments electronically, by mail, or in person.
- A requirement that clerks of court coordinate with their courts to develop a process in which persons who have been sentenced for an offense will meet with a clerk to enroll in a payment plan.
- An express grant of authority to courts to waive, modify, or convert outstanding fees, service charges, costs, or fines to community service owed by a person who is indigent or who due to compelling circumstances is unable to comply with his or her payment plan.
- An authorization for clerks of court to establish a multicounty intergovernmental authority to administer payment plans consolidating amounts owed by an individual from cases in multiple counties.

¹⁸ Wayne K. Roustan, *Florida suspends nearly 2 million driver's licenses. Help may be on way*, SOUTH FLORIDA SUN SENTINEL, Feb. 16, 2018, <https://www.sun-sentinel.com/news/transportation/fl-reg-drivers-license-suspensions-20180208-story.html>.

¹⁹ Florida Department of Highway Safety and Motor Vehicles, *Traffic Citations or Court Suspensions*, <https://www.flhsmv.gov/driver-licenses-id-cards/driver-license-suspensions-revocations/traffic-citations-court-suspensions/> (last visited Jan. 15, 2020).

- A requirement that the clerks of court, in consultation with the Clerks of Court Operations Corporation, develop and use a uniform payment plan form for persons seeking to enroll in a payment plan.
- Authority to spread the \$25 fee to enroll in a payment plan over 5 months and allowing non-indigent persons to enroll in a payment plan.

The bill is effective July 1, 2020.

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:

Article V. s. 14(b) of the State Constitution provides that the clerks of court are to be funded from filing fees, service charges, and costs for performing court related functions. To the extent that the bill will waive or forgive collectable amounts owed by some participants in the judicial system, the Constitution may require the imposition of increased fees, charges, and costs upon others.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Limiting the authority of the clerks of court to suspend driver licenses may help those who would otherwise be affected drive to work to earn money to pay debts. On the other hand, the potential for having one's driver license suspended may be an incentive for some to enroll in payment plans and make timely payments to the clerks.

C. Government Sector Impact:

Data is not available showing how the changes by the committee substitute will affect revenues to clerks of court.

However, the information below describing the effect of the original bill is set forth below.

The original bill could have a negative impact on the overall budget of each clerk of court. The Florida Clerks of Courts Operations Corporations estimates that this bill would result in a revenue loss for Clerks of Court of between \$20.8 million and \$49.5 million statewide.²⁰

Additionally, a decline in revenue generated from fines and fees would impact government entities such as the State Attorney's and Public Defenders, as well as various trusts such as the Child Welfare Training Trust Fund²¹ and the Brain and Spinal Injury Trust Fund,²² which both receive funding from revenue generated by fines and fees collected by the clerks of courts.

The Crimes Compensation Trust Fund is one of many trust funds that will be negatively affected as a result of the original bill. This fund has experienced notable declines in revenue and increases in expenditures in recent years. There is currently an amended issue in a Legislative Budget Request submitted by the Department of Legal Affairs for \$11.5 million nonrecurring General Revenue to support the Victim Compensation Program. Passage of the bill in its original form would further exacerbate the revenue issues this trust fund has experienced in recent years. Other trust funds that will be negatively impacted by the bill in its original form include the Brain and Spinal Cord Trust Fund and the Court Facilities Fund.

According to the Office of the State Courts Administrator, provisions of the original bill that allow courts to modify payment plans or to waive financial obligations after a sufficient number of timely payments have been made will increase judicial workloads and staff workloads.²³ However, the bill may reduce court workloads by reducing the number of driving with suspended license cases.

With respect to revenue impacts on the court system, OSCA states that:

There is potential indirect negative fiscal impact from the elimination of driver license suspension for failure to pay legal financial obligations. If the elimination of this provision removes a punitive threat of driver license suspension for non-payment and creates a reduction in the collection of

²⁰ Memorandum, Florida Clerks of Court Operations Corporation, *CCOC Bill Analysis*, January 2020 (on file with the Senate Committee on Judiciary).

²¹ Section 318.21(1), F.S.

²² Section 318.21(2)(d), F.S.

²³ Office of the State Courts Administrator, *2020 Judicial Impact Statement for SB 1328* (Jan. 26, 2020) (on file with the Senate Committee on Judiciary).

legal financial obligations, this could result in a loss of revenues that are directed to the State Courts Revenue Trust Fund and other local funding sources that provide resources to the judiciary. The amount of the impact is currently unknown.²⁴

With respect to expenditure impacts on the court system, OSCA states:

“The fiscal impact of this legislation [in its original form] cannot be accurately determined due to the unavailability of data needed to quantifiably establish the effects on judicial time and workload resulting from the provisions of license suspension and payment plans related to payment of fines and fees”²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.24, 28.246, 28.42, 318.15, 318.20, 322.245, 27.52, 34.191, and 57.082.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Judiciary on January 28, 2020:

The committee substitute differs from the underlying bill by:

- Allowing the clerk of courts to apply the \$25 payment plan administrative fee to individuals, including indigent clients.
- Removing the original language of the bill which allowed authorized community based organizations to collect payment plan payments on behalf of a clerk of court
- Requiring individuals requesting a payment plan to request one within 30 days after any court order assessing related fines and costs. If the individual is incarcerated, they may request a payment plan within 30 days after release.
- Allowing a court to modify, waive, or convert any outstanding fees, service charges, costs or fines to community service if the court determines that the individual is indigent or unable to comply with the payment plan due to compelling circumstances.
- Removing the original bill’s requirement to waive any remaining costs and fines for individuals who make 12, 24, or 36 consecutive payments under a payment plan.

²⁴ *Id.*

²⁵ *Id.*

- Retaining the ability to suspend a driver license based on failure to pay a clerk of court fine or fee.
- Requiring each clerk of court to coordinate with courts to develop a process to guide individuals to the clerk upon sentencing.
- Allowing clerks of courts to establish a multicounty intergovernmental authority for the purpose of collecting payment plans from multiple counties.
- Requiring the Department of Highway Safety and Motor Vehicles to include information about the clerk of court payment plan when issuing orders to suspend an individual's driver license.
- Requiring uniform traffic citations to include information on paying the civil penalty to the clerk of court.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/30/2020	.	
	.	
	.	
	.	

The Committee on Judiciary (Wright) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (26) of section 28.24, Florida
Statutes, is amended to read:

28.24 Service charges.—The clerk of the circuit court shall
charge for services rendered manually or electronically by the
clerk's office in recording documents and instruments and in
performing other specified duties. These charges may not exceed
those specified in this section, except as provided in s.



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28.345.

(26) (a) For receiving and disbursing all restitution payments, per payment: 3.50, from which the clerk shall remit 0.50 per payment to the Department of Revenue for deposit into the General Revenue Fund.

~~(b) For receiving and disbursing all partial payments, other than restitution payments, for which an administrative processing service charge is not imposed pursuant to s. 28.246, per month.....5.00~~

~~(c) For setting up a payment plan, a one-time administrative processing charge in lieu of a per month charge under paragraph (b).....25.00~~

(c) In lieu of the administrative processing charge in paragraph (b), a one-time administrative processing charge that covers all payment plans within a particular county for a person who is indigent pursuant to s. 27.52, is receiving public assistance as defined in s. 409.2554, or whose household income is below 200 percent of the federal poverty level, based on the current year's federal poverty guidelines.....5.00

Section 2. Section 28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; monthly ~~partial~~ payments; community service; distribution of funds.—

(1) The clerk of the circuit court shall report the following information to the Legislature and the Florida Clerks of Court Operations Corporation on a form, and using guidelines developed by the clerks of court, through their association and in consultation with the Office of the State Courts



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Administrator:

(a) The total amount of mandatory fees, service charges, and costs assessed; the total amount underassessed, if any, which is the amount less than the minimum amount required by law to be assessed; and the total amount collected.

(b) The total amount of discretionary fees, service charges, and costs assessed and the total amount collected.

(c) The total amount of mandatory fines and other monetary penalties assessed; the total amount underassessed, if any, which is the amount less than the minimum amount required by law to be assessed; and the total amount collected.

(d) The total amount of discretionary fines and other monetary penalties assessed and the total amount collected.

The clerk, in reporting to the Legislature and corporation, shall separately identify the monetary amount assessed and subsequently discharged or converted to community service, to a judgment or lien, or to time served. The form developed by the clerks shall include separate entries for recording the amount discharged and the amount converted. If a court waives, suspends, or reduces an assessment as authorized by law, the portion waived, suspended, or reduced may not be deemed assessed or underassessed for purposes of the reporting requirements of this section. The clerk also shall report a collection rate for mandatory and discretionary assessments. In calculating the rate, the clerk shall deduct amounts discharged or converted from the amount assessed. The clerk shall submit the report on an annual basis 90 days after the end of the county fiscal year. The clerks and the courts shall develop by October 1, 2012, the



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form and guidelines to govern the accurate and consistent reporting statewide of assessments as provided in this section. The clerk shall use the new reporting form and guidelines in submitting the report for the county fiscal year ending September 30, 2013, and for each year thereafter.

(2) The clerk of the circuit court shall establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

(3) Court costs, fines, and other dispositional assessments shall be enforced by order of the courts, collected by the clerks of the circuit and county courts, and disbursed in accordance with authorizations and procedures as established by general law.

(4) The clerk of the circuit court shall accept monthly ~~partial~~ payments for court-related fees, service charges, costs, and fines electronically, by mail, and in person in accordance with the terms of an established payment plan and shall enroll in a monthly payment plan— an individual seeking to defer payment of fees, service charges, costs, or fines imposed by operation of law or order of the court under any provision of general law ~~shall apply to the clerk for enrollment in a payment plan~~. The clerk may provide a discount or waive fees for individuals who enroll in automatic monthly payment plan arrangements and shall encourage individuals to elect that payment option. The ~~shall enter into a payment plan with an individual who the court determines is indigent for costs. A~~ monthly payment amount, shall be calculated based upon all fines, fees, service charges, and all anticipated costs and ~~must, is presumed to~~ correspond to the person's ability to pay.



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The monthly payment plan shall be no less than \$10 per month, provided such payment does not exceed ~~if the amount does not exceed~~ 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12. The court may review the reasonableness of the payment plan.

(a) If a person is not in custody, he or she has 30 days to notify the clerk of his or her intention to set up a payment plan and shall have up to 30 days after establishing a payment plan to make the first payment. If a person is in custody, he or she has 30 days from the date of release to notify the clerk of his or her intention to set up a payment plan and shall have up to 30 days after establishing a payment plan to make the first payment. The clerk shall send notice to the Department of Highway Safety and Motor Vehicles in accordance with s. 318.15 if a person fails to pay the fines, fees, service charges, and costs that have been assessed or enter into a payment plan.

(b) If a county has more than one case open for a person against whom fines, fees, service charges, and costs have been assessed, the clerk shall notify the Department of Highway Safety and Motor Vehicles to release all driver license suspensions for failure to pay, provided the individual is not in default under such plans.

(c) The clerk shall send notice within 5 days to an individual who fails to make timely payment under a payment plan. Such notice may be made by mail or electronically. The clerk shall transmit notice to the Department of Highway Safety and Motor Vehicles if any payment due under a payment plan has not been received within 45 days of the due date, unless the individual makes alternate payment arrangements or enters into a



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revised payment plan with the clerk before such date.

(d) The court, on its own motion or by petition, may waive, modify, or convert the outstanding fees, services charges, costs, or fines to community service if the court determines that the individual is indigent or, due to compelling circumstances, is unable to comply with the terms of the payment plan.

(5) When receiving partial payment of fees, service charges, court costs, and fines, clerks shall distribute funds according to the following order of priority:

(a) That portion of fees, service charges, court costs, and fines to be remitted to the state for deposit into the General Revenue Fund.

(b) That portion of fees, service charges, court costs, and fines required to be retained by the clerk of the court or deposited into the Clerks of the Court Trust Fund within the Department of Revenue.

(c) That portion of fees, service charges, court costs, and fines payable to state trust funds, allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds as provided by law.

(d) That portion of fees, service charges, court costs, and fines payable to counties, municipalities, or other local entities, allocated on a pro rata basis among the various authorized recipients if the total collection amount is insufficient to fully fund all such recipients as provided by law.



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To offset processing costs, clerks may impose ~~either a per-month service charge pursuant to s. 28.24(26)(b) or~~ a one-time administrative processing service charge at the inception of the payment plan pursuant to s. 28.24(26)(b) ~~s. 28.24(26)(c)~~.

(6) A clerk of court shall pursue the collection of any fees, service charges, fines, court costs, and liens for the payment of attorney fees and costs pursuant to s. 938.29 which remain unpaid after 90 days by referring the account to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to chapter 559. In pursuing the collection of such unpaid financial obligations through a private attorney or collection agent, the clerk of the court must have attempted to collect the unpaid amount through a collection court, collections docket, or other collections process, if any, established by the court, find this to be cost-effective and follow any applicable procurement practices. The collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent retained by the clerk may be added to the balance owed in an amount not to exceed 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection. The clerk shall give the private attorney or collection agent the application for the appointment of court-appointed counsel regardless of whether the court file is otherwise confidential from disclosure.

Section 3. Section 28.42, Florida Statutes, is amended to read

28.42 Manual of filing fees, charges, costs, and fines;
uniform payment plan forms and work plan.—



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(1) The clerks of court, through their association and in consultation with the Office of the State Courts Administrator, shall prepare and disseminate a manual of filing fees, service charges, costs, and fines imposed pursuant to state law, for each type of action and offense, and classified as mandatory or discretionary. The manual also shall classify the fee, charge, cost, or fine as court-related revenue or noncourt-related revenue. The clerks, through their association, shall disseminate this manual to the chief judge, state attorney, public defender, and court administrator in each circuit and to the clerk of the court in each county. The clerks, through their association and in consultation with the Office of the State Courts Administrator, shall at a minimum update and disseminate this manual on July 1 of each year.

(2) By October 1, 2020, the Office of the State Courts Administrator, in consultation with the clerks of court, through their association, shall develop a Uniform Payment Plan form and informational materials to be used for individuals seeking to establish a payment plan in accordance with s. 28.246. The form and informational materials must inform the individual about the minimum payment due each month, the term of the plan, available payment options for acceptance of payment by the clerk, the contact information for the applicable clerk's office, and the consequences for nonpayment of fines, fees, service charges, and costs, including driver license suspension and collections referral.

(3) By January 1, 2021, the Office of the State Courts Administrator, the Department of Highway Safety and Motor Vehicles, and the clerks of court, through their association,



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shall develop and submit a work plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives which identifies opportunities for increased collaboration between the parties and other relevant stakeholders, examines opportunities to work with nonprofit and community-based groups to help increase awareness of payment plans, and outlines best practices, including use of text messaging or other technology, to help improve plan compliance, improve collection rates, and reduce the number of individuals who lose their driving privilege due to the nonpayment of fines, fees, service charges, and costs.

Section 4. Section 322.245, Florida Statutes, is amended to read:

322.245 Suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.—

(1) If a person charged with a violation of any of the criminal offenses enumerated in s. 318.17 or with the commission of any offense constituting a misdemeanor under chapter 320 or this chapter fails to comply with all of the directives of the court, within the time allotted by the court, other than the payment of fines, fees, costs, and service charges, the clerk of the traffic court shall mail to the person, at the address specified on the uniform traffic citation, a notice of such failure, notifying him or her that, if he or she does not comply with the directives of the court within 30 days after the date



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of the notice and pay a delinquency fee of up to \$25 to the clerk, from which the clerk shall remit \$10 to the Department of Revenue for deposit into the General Revenue Fund, his or her driver license will be suspended. The notice shall be mailed no later than 5 days after such failure. The delinquency fee may be retained by the office of the clerk to defray the operating costs of the office.

(2) In non-IV-D cases, if a person fails to pay child support under chapter 61 and the obligee so requests, the depository or the clerk of the court shall mail in accordance with s. 61.13016 the notice specified in that section, notifying him or her that if he or she does not comply with the requirements of that section and pay a delinquency fee of \$25 to the depository or the clerk, his or her driver license and motor vehicle registration will be suspended. The delinquency fee may be retained by the depository or the office of the clerk to defray the operating costs of the office after the clerk remits \$15 to the Department of Revenue for deposit into the General Revenue Fund.

(3) If the person fails to comply with the directives of the court within the 30-day period, or, in non-IV-D cases, fails to comply with the requirements of s. 61.13016 within the period specified in that statute, the depository or the clerk of the court shall electronically notify the department of such failure within 10 days. Upon electronic receipt of the notice, the department shall immediately issue an order suspending the person's driver license and privilege to drive effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6).



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(4) After suspension of the driver license of a person pursuant to subsection (1), subsection (2), or subsection (3), the license may not be reinstated until the person complies with all court directives imposed upon him or her, including payment of the delinquency fee imposed by subsection (1), and presents certification of such compliance to a driver licensing office and complies with the requirements of this chapter or, in the case of a license suspended for nonpayment of child support in non-IV-D cases, until the person complies with the reinstatement provisions of s. 322.058 and makes payment of the delinquency fee imposed by subsection (2).

~~(5)(a) A person whose driver license was suspended before October 1, 2020, pursuant to this section solely for the nonpayment of financial obligations in a criminal case may, except when there was a court-ordered directive for payment which remains unpaid or involves an offense listed under s. 318.17, and if otherwise eligible, apply to have his or her license reinstated upon payment of a reinstatement fee When the department receives notice from a clerk of the court that a person licensed to operate a motor vehicle in this state under the provisions of this chapter has failed to pay financial obligations for any criminal offense other than those specified in subsection (1), in full or in part under a payment plan pursuant to s. 28.246(4), the department shall suspend the license of the person named in the notice.~~

~~(b) The department must reinstate the driving privilege when the clerk of the court provides an affidavit to the department stating that:~~

~~1. The person has satisfied the financial obligation in~~



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~~full or made all payments currently due under a payment plan;~~
~~2. The person has entered into a written agreement for~~
~~payment of the financial obligation if not presently enrolled in~~
~~a payment plan; or~~

~~3. A court has entered an order granting relief to the~~
~~person ordering the reinstatement of the license.~~

(6)~~(e)~~ The department shall not be held liable for any
license suspension resulting from the discharge of its duties
under this section.

Section 5. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to fines and fees; amending s. 28.24,
F.S.; revising specified service charges for certain
one-time administrative processing by the clerk of the
circuit court; amending s. 28.246, F.S.; revising the
methods by which the clerk of the circuit court may
accept payments for certain fees, charges, costs, and
fines; requiring the court to enroll certain persons
in a monthly payment plan under certain circumstances;
authorizing the court to provide discounts or waive
fees for certain individuals; providing requirements
and court procedures for the payment plan; authorizing
a court to convert certain fees, services charges,
costs, or fines to community service under specified



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circumstances; conforming a cross-reference; amending
s. 28.42, F.S.; requiring the Office of the State
Courts Administrator, in consultation with the clerks
of court and by a specified date, to develop a Uniform
Payment Plan form and informational materials;
providing requirements for such form and materials;
requiring the office, the Department of Highway Safety
and Motor Vehicles, and the clerks of court to develop
and submit a work plan to the Governor and the
Legislature by a specified date; specifying
requirements for the work plan; amending s. 322.245,
F.S.; conforming provisions to changes made by the
act; authorizing a person who meets specified criteria
to apply to have his or her driver license reinstated;
deleting provisions related to the department's duty
to suspend and reinstate driver licenses; providing an
effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/30/2020	.	
	.	
	.	
	.	

The Committee on Judiciary (Wright) recommended the following:

Senate Substitute for Amendment (785038) (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (26) of section 28.24, Florida
Statutes, is amended to read:

28.24 Service charges.—The clerk of the circuit court shall
charge for services rendered manually or electronically by the
clerk's office in recording documents and instruments and in
performing other specified duties. These charges may not exceed



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those specified in this section, except as provided in s.
28.345.

(26) (a) For receiving and disbursing all restitution
payments, per payment: 3.50, from which the clerk shall remit
0.50 per payment to the Department of Revenue for deposit into
the General Revenue Fund.

~~(b) For receiving and disbursing all partial payments,
other than restitution payments, for which an administrative
processing service charge is not imposed pursuant to s. 28.246,
per month.....5.00~~

~~(c) For setting up a payment plan, a one-time
administrative processing charge in lieu of a per month charge
under paragraph (b).....25.00~~

(c) A person may pay the one-time administrative charge in
paragraph (b) in no more than five equal monthly payments.

Section 2. Present subsections (5) and (6) of section
28.246, Florida Statutes, are redesignated as subsections (6)
and (7), respectively, a new subsection (5) is added to that
section, subsection (4) and present subsection (5) of that
section are amended, and subsection (8) is added to that
section, to read:

28.246 Payment of court-related fines or other monetary
penalties, fees, charges, and costs; partial payments;
distribution of funds.—

(4) Each ~~The~~ clerk of the circuit court shall accept
scheduled ~~partial~~ payments for court-related fees, service
charges, costs, and fines electronically, by mail, or in person,
in accordance with the terms of an established payment plan and
shall enroll— an individual seeking to defer payment of fees,



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41 service charges, costs, or fines imposed by operation of law or
42 order of the court under any provision of general law shall
43 apply to the clerk for enrollment in a payment plan no later
44 than 30 calendar days after the date the court enters the order
45 assessing fines, service charge, fees, and costs. If the
46 individual is incarcerated, the defendant shall apply to the
47 clerk for enrollment in a payment plan within 30 calendar days
48 after release. Each clerk shall coordinate with the court to
49 develop a process in which the individual will meet with the
50 clerk upon sentencing or as soon as thereafter as practical. If
51 the clerk enters ~~shall enter~~ into a payment plan with an
52 individual who the court determines is indigent for costs, ~~the-~~
53 A monthly payment amount, calculated based upon all fees and all
54 anticipated fines, service charge, fees, and costs, is presumed
55 to correspond to the person's ability to pay if the amount does
56 not exceed 2 percent of the person's annual net income, as
57 defined in s. 27.52(1), divided by 12 or \$10, whichever is
58 greater. The clerk shall establish all payment plan terms other
59 than the total amount due and the court may review the
60 reasonableness of the payment plan and may, on its own or by
61 petition, waive, modify or convert the outstanding fees, service
62 charges, costs, or fines to community service if the court
63 determines that the individual is indigent or due to compelling
64 circumstances is unable to comply with the terms of the payment
65 plan.

66 (5) The clerk shall send notice within 5 days to an
67 individual who fails to make a timely payment due under a
68 payment plan. Such notice may be made by mail or electronically.
69 The clerk shall transmit notice to the Department of Highway



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Safety and Motor Vehicles if any payment due under a payment plan is not received within 30 days after the due date unless the individual makes alternate payment arrangements or enters into a revised payment plan with the clerk before such date.

(6)~~(5)~~ When receiving partial payment of fees, service charges, court costs, and fines, clerks shall distribute funds according to the following order of priority:

(a) That portion of fees, service charges, court costs, and fines to be remitted to the state for deposit into the General Revenue Fund.

(b) That portion of fees, service charges, court costs, and fines required to be retained by the clerk of the court or deposited into the Clerks of the Court Trust Fund within the Department of Revenue.

(c) That portion of fees, service charges, court costs, and fines payable to state trust funds, allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds as provided by law.

(d) That portion of fees, service charges, court costs, and fines payable to counties, municipalities, or other local entities, allocated on a pro rata basis among the various authorized recipients if the total collection amount is insufficient to fully fund all such recipients as provided by law.

To offset processing costs, clerks shall impose ~~may impose~~ ~~either a per-month service charge pursuant to s. 28.24(26)(b) or a one-time administrative processing service charge at the~~



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inception of the payment plan pursuant to s. 28.24(26)(b) ~~s. 28.24(26)(c)~~.

(8) A clerk of court may establish a multi-county intergovernmental authority pursuant to chapter 163 for the administration of payment plans in the various participating counties.

Section 3. Section 28.42, Florida Statutes, is amended to read:

28.42 Manual of filing fees, charges, costs, and fines; uniform payment plan forms.-

(1) The clerks of court, through their association and in consultation with the Office of the State Courts Administrator, shall prepare and disseminate a manual of filing fees, service charges, costs, and fines imposed pursuant to state law, for each type of action and offense, and classified as mandatory or discretionary. The manual also shall classify the fee, charge, cost, or fine as court-related revenue or noncourt-related revenue. The clerks, through their association, shall disseminate this manual to the chief judge, state attorney, public defender, and court administrator in each circuit and to the clerk of the court in each county. The clerks, through their association and in consultation with the Office of the State Courts Administrator, shall at a minimum update and disseminate this manual on July 1 of each year.

(2) By October 1, 2020, the clerks of court, through their association, in consultation with the Florida Clerks of Court Operations Corporation, shall develop a uniform payment plan form for use by persons seeking to establish a payment plan in accordance with s. 28.246. The form shall inform the person



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about the minimum payment due each month, the term of the plan,
acceptable payment methods, and the circumstances under which a
case may be sent to collections for nonpayment.

(3) Beginning on January 1, 2021, each clerk of the court
shall utilize the uniform payment plan form described in
subsection (2) when establishing payment plans.

Section 4. Paragraph (a) of subsection (1) of section
318.15, Florida Statutes, is amended to read:

318.15 Failure to comply with civil penalty or to appear;
penalty.—

(1)(a) If a person fails to comply with the civil penalties
provided in s. 318.18 within the time period specified in s.
318.14(4), fails to enter into or comply with the terms of a
penalty payment plan with the clerk of the court in accordance
with ss. 318.14 and 28.246, fails to attend driver improvement
school, or fails to appear at a scheduled hearing, the clerk of
the court shall notify the Department of Highway Safety and
Motor Vehicles of such failure within 10 days after such
failure, except as provided herein. Upon receipt of such notice,
the department shall immediately issue an order suspending the
driver license and privilege to drive of such person effective
20 days after the date the order of suspension is mailed in
accordance with s. 322.251(1), (2), and (6). The order must also
contain information that the person may contact the clerk of the
court to establish a payment plan pursuant to s. 28.246(4) to
make partial payments for court-related fees, service charges,
costs, and fines. Any such suspension of the driving privilege
which has not been reinstated, including a similar suspension
imposed outside Florida, shall remain on the records of the



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department for a period of 7 years from the date imposed and shall be removed from the records after the expiration of 7 years from the date it is imposed. The department may not accept the resubmission of such suspension.

Section 5. Section 318.20, Florida Statutes, is amended to read:

318.20 Notification; duties of department.—The department shall prepare a notification form to be appended to, or incorporated as a part of, the Florida uniform traffic citation issued in accordance with s. 316.650. The notification form shall contain language informing persons charged with infractions to which this chapter applies of the procedures available to them under this chapter. Such notification shall contain a statement that, if the official determines that no infraction has been committed, no costs or penalties shall be imposed and any costs or penalties which have been paid shall be returned. A uniform traffic citation that is produced electronically must also include the information required by this section. The notification form and the uniform traffic citation must include information on paying the civil penalty to the clerk of the court.

Section 6. Subsection (1) and paragraph (a) of subsection (5) of section 322.245, Florida Statutes, are amended to read:

322.245 Suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.—



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(1) If a person charged with a violation of any of the criminal offenses enumerated in s. 318.17 or with the commission of any offense constituting a misdemeanor under chapter 320 or this chapter fails to comply with all of the directives of the court within the time allotted by the court, the clerk of the traffic court shall mail to the person, at the address specified on the uniform traffic citation, a notice of such failure, notifying him or her that, if he or she does not comply with the directives of the court within 30 days after the date of the notice and pay a delinquency fee of up to \$25 to the clerk, from which the clerk shall remit \$10 to the Department of Revenue for deposit into the General Revenue Fund, his or her driver license will be suspended. The notice shall be mailed no later than 5 days after such failure, except as provided herein. The delinquency fee may be retained by the office of the clerk to defray the operating costs of the office.

(5)(a) When the department receives notice from a clerk of the court that a person licensed to operate a motor vehicle in this state under the provisions of this chapter has failed to pay financial obligations for any criminal offense other than those specified in subsection (1), in full or in part under a payment plan pursuant to s. 28.246(4), the department shall suspend the license of the person named in the notice. The notice must also contain information that the person may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for court-related fees, service charges, costs, and fines.

Section 7. Paragraph (i) of subsection (5) of section 27.52, Florida Statutes, is amended to read:



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27.52 Determination of indigent status.—

(5) INDIGENT FOR COSTS.—A person who is eligible to be represented by a public defender under s. 27.51 but who is represented by private counsel not appointed by the court for a reasonable fee as approved by the court or on a pro bono basis, or who is proceeding pro se, may move the court for a determination that he or she is indigent for costs and eligible for the provision of due process services, as prescribed by ss. 29.006 and 29.007, funded by the state.

(i) A defendant who is found guilty of a criminal act by a court or jury or enters a plea of guilty or nolo contendere and who received due process services after being found indigent for costs under this subsection is liable for payment of due process costs expended by the state.

1. The attorney representing the defendant, or the defendant if he or she is proceeding pro se, shall provide an accounting to the court delineating all costs paid or to be paid by the state within 90 days after disposition of the case notwithstanding any appeals.

2. The court shall issue an order determining the amount of all costs paid by the state and any costs for which prepayment was waived under this section or s. 57.081. The clerk shall cause a certified copy of the order to be recorded in the official records of the county, at no cost. The recording constitutes a lien against the person in favor of the state in the county in which the order is recorded. The lien may be enforced in the same manner prescribed in s. 938.29.

3. If the attorney or the pro se defendant fails to provide a complete accounting of costs expended by the state and



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consequently costs are omitted from the lien, the attorney or pro se defendant may not receive reimbursement or any other form of direct or indirect payment for those costs if the state has not paid the costs. The attorney or pro se defendant shall repay the state for those costs if the state has already paid the costs. The clerk of the court may establish a payment plan under s. 28.246 and may charge the attorney or pro se defendant a one-time administrative processing charge under s. 28.24(26)(b) ~~s. 28.24(26)(c)~~.

Section 8. Subsection (1) of section 34.191, Florida Statutes, is amended to read:

34.191 Fines and forfeitures; dispositions.—

(1) All fines and forfeitures arising from offenses tried in the county court shall be collected and accounted for by the clerk of the court and, other than the charge provided in s. 318.1215, disbursed in accordance with ss. 28.2402, 34.045, 142.01, and 142.03 and subject to the provisions of s. 28.246(6) and (7) ~~s. 28.246(5) and (6)~~. Notwithstanding the provisions of this section, all fines and forfeitures arising from operation of the provisions of s. 318.1215 shall be disbursed in accordance with that section.

Section 9. Subsection (6) of section 57.082, Florida Statutes, is amended to read:

57.082 Determination of civil indigent status.—

(6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the clerk or the court determines is indigent for civil proceedings under this section shall be enrolled in a payment plan under s. 28.246 and shall be charged a one-time administrative processing charge under s. 28.24(26)(b) ~~s. 28.24(26)(c)~~. A monthly payment



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amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if it does not exceed 2 percent of the person's annual net income, as defined in subsection (1), divided by 12. The person may seek review of the clerk's decisions regarding a payment plan established under s. 28.246 in the court having jurisdiction over the matter. A case may not be impeded in any way, delayed in filing, or delayed in its progress, including the final hearing and order, due to nonpayment of any fees or costs by an indigent person. Filing fees waived from payment under s. 57.081 may not be included in the calculation related to a payment plan established under this section.

Section 10. This act shall take effect July 1, 2020.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to fines and fees; amending s. 28.24, F.S.; removing the option for a monthly processing charge for certain payment plans established with the clerk of the circuit court; authorizing certain persons to pay partial payments of an existing administrative processing charge; amending s. 28.246 F.S.; revising the methods by which the clerk of the circuit court may accept payments for certain fees, costs, and fines; requiring certain persons to apply to the clerk to enroll in a payment plan within a



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specified timeframe; requiring clerks to coordinate with courts to develop a specified process; providing requirements and court procedures for the payment plan; conforming a cross-reference; authorizing clerks of court to establish multi-county governmental authorities to administer payment plans; amending s. 28.42, F.S.; requiring the clerks of court, in consultation with the Florida Clerks of Court Operations Corporation, to develop a uniform payment plan form by a specified date; providing requirements for such form; requiring clerks of court, by a specified date, to utilize such forms when establishing payment plans; amending s. 318.15, F.S.; expanding requirements for specified notice issued by the clerks of court to the Department of Highway Safety and Motor Vehicles to include information related to a person's option to enter into a certain payment plan; amending s. 318.20, F.S.; requiring that a notification form and the uniform traffic citation include certain information about paying a civil penalty; amending s. 322.245, F.S.; expanding requirements for specified notices issued by the clerks of court to the Department of Highway Safety and Motor Vehicles to include information related to a person's option to enter into a certain payment plan; amending ss. 27.52, 34.191, and 57.082, F.S.; conforming cross-references; providing an effective date.

By Senator Wright

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1 A bill to be entitled
 2 An act relating to fines and fees; amending s. 28.24,
 3 F.S.; revising specified service charges for recording
 4 documents with the clerk of the circuit court;
 5 amending s. 28.246, F.S.; revising the methods by
 6 which the clerk of the circuit court may accept
 7 payments for certain fees, charges, costs, and fines;
 8 requiring the court to enroll certain persons in a
 9 monthly payment plan under certain circumstances;
 10 providing requirements for the payment plan;
 11 authorizing a court to convert certain fines and fees
 12 to community service under specified circumstances;
 13 authorizing certain persons to have their payment
 14 plans terminated if certain requirements are met;
 15 amending s. 28.42, F.S.; requiring the Office of the
 16 State Courts Administrator to develop a uniform
 17 payment plan form by a specified date; providing
 18 minimum criteria for the form; amending s. 318.15,
 19 F.S.; deleting provisions specifying procedures to be
 20 used if a person fails to comply with certain court-
 21 ordered requirements; authorizing certain persons to
 22 reinstate their suspended driver licenses under
 23 certain circumstances; amending s. 322.245, F.S.;
 24 authorizing certain persons to reinstate their
 25 suspended driver licenses under certain circumstances;
 26 deleting provisions requiring the department to
 27 suspend the driver licenses of certain persons who
 28 have failed to pay financial obligations for certain
 29 criminal offenses; deleting provisions addressing the

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

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30 reinstatement of such suspended licenses; amending ss.
 31 34.191 and 320.03, F.S.; conforming cross-references;
 32 reenacting ss. 27.52(5)(i) and 57.082(6), F.S.,
 33 relating to determination of indigent status, to
 34 incorporate the amendment made to s. 28.24, F.S., in
 35 references thereto; providing an effective date.
 36
 37 Be It Enacted by the Legislature of the State of Florida:
 38
 39 Section 1. Subsection (26) of section 28.24, Florida
 40 Statutes, is amended to read:
 41 28.24 Service charges.—The clerk of the circuit court shall
 42 charge for services rendered manually or electronically by the
 43 clerk's office in recording documents and instruments and in
 44 performing other specified duties. These charges may not exceed
 45 those specified in this section, except as provided in s.
 46 28.345.
 47 (26) (a) For receiving and disbursing all restitution
 48 payments, per payment: 3.50, from which the clerk shall remit
 49 0.50 per payment to the Department of Revenue for deposit into
 50 the General Revenue Fund.
 51 ~~(b) For receiving and disbursing all partial payments,~~
 52 ~~other than restitution payments, for which an administrative~~
 53 ~~processing service charge is not imposed pursuant to s. 28.246,~~
 54 ~~per month.....5.00~~
 55 (b)(c) For setting up a payment plan, a one-time
 56 administrative processing charge: in lieu of a per month charge
 57 under paragraph (b).....25.00
 58 (c) In lieu of the administrative processing charge in

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 59 paragraph (b), a one-time administrative processing charge that
 60 covers all payment plans within a particular county for a person
 61 who is indigent as described in s. 27.52(2)(a), a person who
 62 receives public assistance as defined in s. 409.2554, or a
 63 person whose household income is below 200 percent of the
 64 federal poverty level based on the current year's federal
 65 poverty guidelines:.....5.00

66 Section 2. Section 28.246, Florida Statutes, is amended to
 67 read:

68 28.246 Payment of court-related fines or other monetary
 69 penalties, fees, charges, and costs; monthly ~~partial~~ payments;
 70 community service; distribution of funds.—

71 (1) The clerk of the circuit court shall report the
 72 following information to the Legislature and the Florida Clerks
 73 of Court Operations Corporation on a form, and using guidelines
 74 developed by the clerks of court, through their association and
 75 in consultation with the Office of the State Courts
 76 Administrator:

77 (a) The total amount of mandatory fees, service charges,
 78 and costs assessed; the total amount underassessed, if any,
 79 which is the amount less than the minimum amount required by law
 80 to be assessed; and the total amount collected.

81 (b) The total amount of discretionary fees, service
 82 charges, and costs assessed and the total amount collected.

83 (c) The total amount of mandatory fines and other monetary
 84 penalties assessed; the total amount underassessed, if any,
 85 which is the amount less than the minimum amount required by law
 86 to be assessed; and the total amount collected.

87 (d) The total amount of discretionary fines and other

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 88 monetary penalties assessed and the total amount collected.

89
 90 The clerk, in reporting to the Legislature and corporation,
 91 shall separately identify the monetary amount assessed and
 92 subsequently discharged or converted to community service, to a
 93 judgment or lien, or to time served. The form developed by the
 94 clerks shall include separate entries for recording the amount
 95 discharged and the amount converted. If a court waives,
 96 suspends, or reduces an assessment as authorized by law, the
 97 portion waived, suspended, or reduced may not be deemed assessed
 98 or underassessed for purposes of the reporting requirements of
 99 this section. The clerk also shall report a collection rate for
 100 mandatory and discretionary assessments. In calculating the
 101 rate, the clerk shall deduct amounts discharged or converted
 102 from the amount assessed. The clerk shall submit the report on
 103 an annual basis 90 days after the end of the county fiscal year.
 104 The clerks and the courts shall develop by October 1, 2012, the
 105 form and guidelines to govern the accurate and consistent
 106 reporting statewide of assessments as provided in this section.
 107 The clerk shall use the new reporting form and guidelines in
 108 submitting the report for the county fiscal year ending
 109 September 30, 2013, and for each year thereafter.

110 (2) The clerk of the circuit court shall establish and
 111 maintain a system of accounts receivable for court-related fees,
 112 charges, and costs.

113 (3) Court costs, fines, and other dispositional assessments
 114 shall be enforced by order of the courts, collected by the
 115 clerks of the circuit and county courts, and disbursed in
 116 accordance with authorizations and procedures as established by

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117 general law.

118 (4) The clerk of the circuit court shall accept monthly
 119 ~~partial~~ payments for court-related fees, service charges, costs,
 120 and fines electronically, by mail, in person, or by a community-
 121 based organization authorized by the clerk to collect such
 122 payments in accordance with the terms of an established payment
 123 plan and shall enroll in a monthly payment plan any person. ~~An~~
 124 ~~individual~~ seeking to defer payment of fees, service charges,
 125 costs, or fines imposed by operation of law or order of the
 126 court under any provision of general law ~~shall apply to the~~
 127 ~~clerk for enrollment in a payment plan.~~ The clerk shall enter
 128 into a payment plan with an individual who the court determines
 129 is indigent for costs. A monthly payment amount shall be,
 130 calculated based upon all fees, fees, service charges, and all
 131 anticipated costs and must, ~~is presumed to~~ correspond to the
 132 person's ability to pay. The monthly payment shall be the
 133 greater of \$10 per month, per county or if the amount does not
 134 ~~exceed~~ 2 percent of the person's annual net income, as defined
 135 in s. 27.52(1), divided by 12. If a county has more than one
 136 case open for a person against whom fines, service charges,
 137 fees, and costs have been assessed, the monthly payment plan
 138 must include the amounts assessed for all of the cases. If a
 139 person is not in custody, the plan must provide a 30-day grace
 140 period for the person to make the first payment. If a person is
 141 incarcerated, the first payment is due 90 days after the date
 142 the person is released from custody. The court may, on its own
 143 motion or by petition, review and modify the reasonableness of
 144 the payment plan or convert the outstanding fees, service
 145 charges, costs, or fines to community service if the court

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146 determines that the person is otherwise unable to comply with
 147 the terms of the payment plan.

148 (5) A person who is indigent as described in s. 27.52(2), a
 149 person who receives public assistance as defined in s. 409.2554,
 150 or a person whose household income is below 200 percent of the
 151 federal poverty level based on the current year's federal
 152 poverty guidelines may petition the court to declare that the
 153 financial obligations under the payment plan have been met and
 154 to terminate the payment plan if, up to the date of the
 155 petition, the person made timely payments for:

156 (a) Twelve consecutive months for any financial obligation
 157 that was \$500 or less;

158 (b) Twenty-four consecutive months for any financial
 159 obligation that was greater than \$500 but \$1,000 or less; or

160 (c) Thirty-six consecutive months for any financial
 161 obligation that was greater than \$1,000.

162 (6)(5) When receiving partial payment of fees, service
 163 charges, court costs, and fines, clerks shall distribute funds
 164 according to the following order of priority:

165 (a) That portion of fees, service charges, court costs, and
 166 fines to be remitted to the state for deposit into the General
 167 Revenue Fund.

168 (b) That portion of fees, service charges, court costs, and
 169 fines required to be retained by the clerk of the court or
 170 deposited into the Clerks of the Court Trust Fund within the
 171 Department of Revenue.

172 (c) That portion of fees, service charges, court costs, and
 173 fines payable to state trust funds, allocated on a pro rata
 174 basis among the various authorized funds if the total collection

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amount is insufficient to fully fund all such funds as provided by law.

(d) That portion of fees, service charges, court costs, and fines payable to counties, municipalities, or other local entities, allocated on a pro rata basis among the various authorized recipients if the total collection amount is insufficient to fully fund all such recipients as provided by law.

To offset processing costs, clerks may impose ~~either a per-month service charge pursuant to s. 28.24(26)(b) or a one-time administrative processing service charge at the inception of the payment plan pursuant to s. 28.24(26)(b) or (c) s. 28.24(26)(c).~~

(7)~~(6)~~ A clerk of court shall pursue the collection of any fees, service charges, fines, court costs, and liens for the payment of attorney fees and costs pursuant to s. 938.29 which remain unpaid after 90 days by referring the account to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to chapter 559. In pursuing the collection of such unpaid financial obligations through a private attorney or collection agent, the clerk of the court must have attempted to collect the unpaid amount through a collection court, collections docket, or other collections process, if any, established by the court, find this to be cost-effective and follow any applicable procurement practices. The collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent retained by the clerk may be added to the balance owed in an amount not to exceed 40 percent of the amount

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owed at the time the account is referred to the attorney or agent for collection. The clerk shall give the private attorney or collection agent the application for the appointment of court-appointed counsel regardless of whether the court file is otherwise confidential from disclosure.

Section 3. Section 28.42, Florida Statutes, is amended to read:

28.42 Manual of filing fees, charges, costs, and fines; uniform payment plan forms.—

(1) The clerks of court, through their association and in consultation with the Office of the State Courts Administrator, shall prepare and disseminate a manual of filing fees, service charges, costs, and fines imposed pursuant to state law, for each type of action and offense, and classified as mandatory or discretionary. The manual also shall classify the fee, charge, cost, or fine as court-related revenue or noncourt-related revenue. The clerks, through their association, shall disseminate this manual to the chief judge, state attorney, public defender, and court administrator in each circuit and to the clerk of the court in each county. The clerks, through their association and in consultation with the Office of the State Courts Administrator, shall at a minimum update and disseminate this manual on July 1 of each year.

(2) By October 1, 2021, the Office of the State Courts Administrator, in consultation with the clerks of court and the Florida Clerks of Court Operations Corporation, shall develop a uniform payment plan form for use by persons seeking to establish a payment plan in accordance with s. 28.246. The form must inform the person about the minimum payment due each month,

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the term of the plan, acceptable payment methods, and the circumstances under which a case may be sent to collections for nonpayment.

Section 4. Section 318.15, Florida Statutes, is amended to read:

318.15 Failure to comply with civil penalty or to appear; penalty.—

~~(1)(a) If a person fails to comply with the civil penalties provided in s. 318.18 within the time period specified in s. 318.14(4), fails to enter into or comply with the terms of a penalty payment plan with the clerk of the court in accordance with ss. 318.14 and 28.246, fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court shall notify the Department of Highway Safety and Motor Vehicles of such failure within 10 days after such failure. Upon receipt of such notice, the department shall immediately issue an order suspending the driver license and privilege to drive of such person effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6). Any such suspension of the driving privilege which has not been reinstated, including a similar suspension imposed outside Florida, shall remain on the records of the department for a period of 7 years from the date imposed and shall be removed from the records after the expiration of 7 years from the date it is imposed. The department may not accept the resubmission of such suspension.~~

~~(b) However,~~ A person who elects to attend driver improvement school and has paid the civil penalty as provided in s. 318.14(9) but who subsequently fails to attend the driver

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improvement school within the time specified by the court is deemed to have admitted the infraction and shall be adjudicated guilty. If the person received an 18-percent reduction pursuant to s. 318.14(9), the person must pay the clerk of the court that amount and a processing fee of up to \$18, from which the clerk shall remit \$3 to the Department of Revenue for deposit into the General Revenue Fund, after which additional penalties, court costs, or surcharges may not be imposed for the violation. In all other such cases, the person must pay the clerk a processing fee of up to \$18, from which the clerk shall remit \$3 to the Department of Revenue for deposit into the General Revenue Fund, after which additional penalties, court costs, or surcharges may not be imposed for the violation. The clerk of the court shall notify the department of the person's failure to attend driver improvement school and points shall be assessed pursuant to s. 322.27.

(2)(e) A person who is charged with a traffic infraction may request a hearing within 180 days after the date upon which the violation occurred, ~~regardless of any action taken by the court or the department to suspend the person's driving privilege,~~ and, upon request, the clerk must set the case for hearing. ~~The person shall be given a form for requesting that his or her driving privilege be reinstated.~~ If the 180th day after the date upon which the violation occurred is a Saturday, Sunday, or legal holiday, the person who is charged must request a hearing within 177 days after the date upon which the violation occurred; however, the court may grant a request for a hearing made more than 180 days after the date upon which the violation occurred. This subsection paragraph does not affect

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the assessment of late fees as otherwise provided in this chapter.

~~(2) After the suspension of a person's driver license and privilege to drive under subsection (1), the license and privilege may not be reinstated until the person complies with the terms of a periodic payment plan or a revised payment plan with the clerk of the court pursuant to ss. 318.14 and 28.246 or with all obligations and penalties imposed under s. 318.18 and presents to a driver license office a certificate of compliance issued by the court, together with a nonrefundable service charge of \$60 imposed under s. 322.29, or presents a certificate of compliance and pays the service charge to the clerk of the court or a driver licensing agent authorized under s. 322.135 clearing such suspension. Of the charge collected, \$22.50 shall be remitted to the Department of Revenue to be deposited into the Highway Safety Operating Trust Fund. Such person must also be in compliance with requirements of chapter 322 before reinstatement.~~

(3) A person whose driver license was suspended solely for nonpayment pursuant to this section before July 1, 2020, and who is otherwise eligible to drive may reinstate his or her driver license upon payment of a reinstatement fee ~~The clerk shall notify the department of persons who were mailed a notice of violation of s. 316.074(1) or s. 316.075(1)(c)1. pursuant to s. 316.0083 and who failed to enter into, or comply with the terms of, a penalty payment plan, or order with the clerk to the local hearing officer or failed to appear at a scheduled hearing within 10 days after such failure, and shall reference the person's driver license number, or in the case of a business~~

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entity, ~~vehicle registration number.~~

~~(a) Upon receipt of such notice, the department, or authorized agent thereof, may not issue a license plate or revalidation sticker for any motor vehicle owned or co-owned by that person pursuant to s. 320.03(8) until the amounts assessed have been fully paid.~~

~~(b) After the issuance of the person's license plate or revalidation sticker is withheld pursuant to paragraph (a), the person may challenge the withholding of the license plate or revalidation sticker only on the basis that the outstanding fines and civil penalties have been paid pursuant to s. 320.03(8).~~

Section 5. Subsections (1) and (5) of section 322.245, Florida Statutes, are amended to read:

322.245 Suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.—

(1) If a person charged with a violation of any of the criminal offenses enumerated in s. 318.17 or with the commission of any offense constituting a misdemeanor under chapter 320 or this chapter fails to comply with all of the directives of the court within the time allotted by the court, other than the payment of fines, service charges, fees, or costs, the clerk of the traffic court shall mail to the person, at the address specified on the uniform traffic citation, a notice of such failure, notifying him or her that, if he or she does not comply

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with the directives of the court within 30 days after the date of the notice and pay a delinquency fee of up to \$25 to the clerk, from which the clerk shall remit \$10 to the Department of Revenue for deposit into the General Revenue Fund, his or her driver license will be suspended. The notice shall be mailed no later than 5 days after such failure. The delinquency fee may be retained by the office of the clerk to defray the operating costs of the office.

(5)~~(a)~~ A person whose driver license was suspended solely for nonpayment pursuant to this section before July 1, 2020, and who is otherwise eligible to drive may reinstate his or her driver license upon payment of a reinstatement fee ~~When the department receives notice from a clerk of the court that a person licensed to operate a motor vehicle in this state under the provisions of this chapter has failed to pay financial obligations for any criminal offense other than those specified in subsection (1), in full or in part under a payment plan pursuant to s. 28.246(4), the department shall suspend the license of the person named in the notice.~~

~~(b) The department must reinstate the driving privilege when the clerk of the court provides an affidavit to the department stating that:~~

~~1. The person has satisfied the financial obligation in full or made all payments currently due under a payment plan;~~

~~2. The person has entered into a written agreement for payment of the financial obligation if not presently enrolled in a payment plan; or~~

~~3. A court has entered an order granting relief to the person ordering the reinstatement of the license.~~

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~~(e) The department shall not be held liable for any license suspension resulting from the discharge of its duties under this section.~~

Section 6. Subsection (1) of section 34.191, Florida Statutes, is amended to read:

34.191 Fines and forfeitures; dispositions.—

(1) All fines and forfeitures arising from offenses tried in the county court shall be collected and accounted for by the clerk of the court and, other than the charge provided in s. 318.1215, disbursed in accordance with ss. 28.2402, 34.045, 142.01, and 142.03 and subject to s. 28.246(6) and (7) the provisions of s. 28.246(5) and (6). Notwithstanding the provisions of this section, all fines and forfeitures arising from operation of the provisions of s. 318.1215 shall be disbursed in accordance with that section.

Section 7. Subsection (8) of section 320.03, Florida Statutes, is amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(8) If the applicant's name appears on the list referred to in s. 316.1001(4), s. 316.1967(6), ~~s. 318.15(3)~~, or s. 713.78(13), a license plate or revalidation sticker may not be issued until that person's name no longer appears on the list or until the person presents a receipt from the governmental entity or the clerk of court that provided the data showing that the fines outstanding have been paid. This subsection does not apply to the owner of a leased vehicle if the vehicle is registered in the name of the lessee of the vehicle. The tax collector and the clerk of the court are each entitled to receive monthly, as

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costs for implementing and administering this subsection, 10 percent of the civil penalties and fines recovered from such persons. As used in this subsection, the term "civil penalties and fines" does not include a wrecker operator's lien as described in s. 713.78(13). If the tax collector has private tag agents, such tag agents are entitled to receive a pro rata share of the amount paid to the tax collector, based upon the percentage of license plates and revalidation stickers issued by the tag agent compared to the total issued within the county. The authority of any private agent to issue license plates shall be revoked, after notice and a hearing as provided in chapter 120, if he or she issues any license plate or revalidation sticker contrary to the provisions of this subsection. This section applies only to the annual renewal in the owner's birth month of a motor vehicle registration and does not apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under this chapter, except for the transfer of registrations which includes the annual renewals. This section does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(8)(b).

Section 8. For the purpose of incorporating the amendment made by this act to section 28.24, Florida Statutes, in a reference thereto, paragraph (i) of subsection (5) of section 27.52, Florida Statutes, is reenacted to read:

27.52 Determination of indigent status.—

(5) INDIGENT FOR COSTS.—A person who is eligible to be represented by a public defender under s. 27.51 but who is represented by private counsel not appointed by the court for a reasonable fee as approved by the court or on a pro bono basis,

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or who is proceeding pro se, may move the court for a determination that he or she is indigent for costs and eligible for the provision of due process services, as prescribed by ss. 29.006 and 29.007, funded by the state.

(i) A defendant who is found guilty of a criminal act by a court or jury or enters a plea of guilty or nolo contendere and who received due process services after being found indigent for costs under this subsection is liable for payment of due process costs expended by the state.

1. The attorney representing the defendant, or the defendant if he or she is proceeding pro se, shall provide an accounting to the court delineating all costs paid or to be paid by the state within 90 days after disposition of the case notwithstanding any appeals.

2. The court shall issue an order determining the amount of all costs paid by the state and any costs for which prepayment was waived under this section or s. 57.081. The clerk shall cause a certified copy of the order to be recorded in the official records of the county, at no cost. The recording constitutes a lien against the person in favor of the state in the county in which the order is recorded. The lien may be enforced in the same manner prescribed in s. 938.29.

3. If the attorney or the pro se defendant fails to provide a complete accounting of costs expended by the state and consequently costs are omitted from the lien, the attorney or pro se defendant may not receive reimbursement or any other form of direct or indirect payment for those costs if the state has not paid the costs. The attorney or pro se defendant shall repay the state for those costs if the state has already paid the

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costs. The clerk of the court may establish a payment plan under s. 28.246 and may charge the attorney or pro se defendant a one-time administrative processing charge under s. 28.24(26)(c).

Section 9. For the purpose of incorporating the amendment made by this act to section 28.24, Florida Statutes, in a reference thereto, subsection (6) of section 57.082, Florida Statutes, is reenacted to read:

57.082 Determination of civil indigent status.—

(6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the clerk or the court determines is indigent for civil proceedings under this section shall be enrolled in a payment plan under s. 28.246 and shall be charged a one-time administrative processing charge under s. 28.24(26)(c). A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if it does not exceed 2 percent of the person's annual net income, as defined in subsection (1), divided by 12. The person may seek review of the clerk's decisions regarding a payment plan established under s. 28.246 in the court having jurisdiction over the matter. A case may not be impeded in any way, delayed in filing, or delayed in its progress, including the final hearing and order, due to nonpayment of any fees or costs by an indigent person. Filing fees waived from payment under s. 57.081 may not be included in the calculation related to a payment plan established under this section.

Section 10. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT

14th District

January 8, 2020

The Honorable David Simmons
404, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 1328 – Fines and Fees

Dear Chair Simmons:

Senate Bill 1328, relating to Fines and Fees has been referred to the Committee on Judiciary. I am requesting your consideration on placing SB 1328 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

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

Tom A. Wright, District 14

cc: Tom Cibula, Staff Director of the Committee on Judiciary
Joyce Butler, Administrative Assistant of the Committee on Judiciary

REPLY TO:

- ☐ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

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LAURA E. ROTH
VOLUSIA COUNTY

HARVEY RUVIN, ESQ.
MIAMI-DADE COUNTY

RON FICARROTTA
13TH JUDICIAL CIRCUIT JUDGE
SUPREME COURT APPOINTEE

**ANGELINA "ANGEL"
COLONNESO, ESQ.**
MANATEE COUNTY
SENATE APPOINTEE

VACANT
HOUSE APPOINTEE

JOHN DEW
EXECUTIVE DIRECTOR

JOE BOYD
GENERAL COUNSEL

2560-102 BARRINGTON CIRCLE | TALLAHASSEE, FLORIDA 32308 | PHONE 850.386.2223 | FAX 850.386.2224 | WWW.FLCCOC.ORG

CCOC BILL ANALYSIS

Bill Number:	HB 903
Subject:	Fines and Fees
Sponsor:	Representative Donalds
Committee Reference:	Civil Justice; Appropriations; Judiciary
Similar/Identical Bill:	SB 1328 Fines and Fees by Sen. Wright
Lead CCOC Staff:	Jason Welty, CCOC Budget and Communications Director

The proposed legislation makes various changes to Florida Statutes relating to driver license (DL) suspensions. Additionally, the bill makes changes to the way clerks receive payments.

Specifically, the bill:

- **Payment Plans**
 - Removes the \$5 per month payment plan fee
 - Standardizes all payment plan fees to be a one-time \$25 fee
 - Allows an indigent person (as defined in the bill) to only pay a one-time \$5 fee instead of the \$25 fee
 - Requires electronic payments of payment plans
 - Standardizes all payment plans to be the greater amount of either \$10 per month or 2 percent of a person's annual net income divided by 12
 - Requires all cases to be rolled into one payment plan
 - Requires the Office of the State Courts Administrator (OSCA) to work with clerks and the Clerks of Court Operations Corporation (CCOC) to create a uniform payment plan form
 - Provides a 30-day grace period from initiation of a payment plan, or a 90-day grace period from the date of release if the person is incarcerated
 - Allows an indigent person to petition the court to have financial obligations waived after a certain period
- **Suspension of Driver Licenses**
 - Removes the ability to suspend driver licenses based on failure to pay civil traffic fines and fees
 - Removes the ability to suspend driver licenses based on failure to pay criminal traffic fines and fees

- Allows persons with suspended driver licenses, based on failure to pay criminal traffic fines and fees, to have their licenses reinstated without paying the financial obligations.

Clerks of Court have a statutory duty to ensure compliance with court orders, including payment of fines and fees, on behalf of the state. Consequences to individuals for not complying with court orders can be significant, including license suspension. The suspension of a driver license is an important part of Clerks' toolkit to encourage individuals to pay their court obligations. However, it is important to note that a license is only suspended when an individual takes no action to comply.

Clerks share the policy goal of reducing driver license suspensions. Therefore, clerks have made it a priority component of their approved statewide legislative agenda this year to work with the Legislature and other stakeholders on solutions that help reduce driver license suspensions, without eliminating the ability to do so when necessary. There is an opportunity to meet the goal of reducing suspensions and keeping people driving legally through additional work, statewide and locally, with Floridians on the front end to stay in compliance with court orders and avoid suspensions.

Clerks are taking aggressive action through both the CCOC and their association, Florida Court Clerks & Comptrollers (FCCC), to promulgate best practices, seek additional technology resources to assist with easy and convenient payments, as well as looking for opportunities to gain better economies of scale for compliance activities for smaller operations. Removing the ability for clerks to suspend driver licenses for failure to pay court-ordered fines and fees would affect clerks' ability to ensure compliance and will have significant fiscal and operational impact on Florida's Clerks of Court, as well as General Revenue, judicial partners, and numerous state trust funds.

Additionally, while clerks view payment plans as an important component of a comprehensive statewide compliance program, it is important to recognize that a one-size fits all approach will present significant challenges. Florida's 67 counties are so different, and vary greatly in size, economic conditions, structure of the county operations, etc., that what works well in one county may not work in another. Setting arbitrary payment amounts, mandating processes statewide, and significantly increasing individuals being placed onto payment plans that do not work for their particular situation without the resources and systems in place to support and monitor those plans, will likely result in significant defaults on payments and other unintended negative consequences.

As currently drafted, CCOC estimates that this bill would result in a revenue loss for Clerks of Court of between \$20.8 million and \$49.5 million statewide. The bill will also result in an additional similar significant revenue loss to state General Revenue, various trust funds, as well as other judicial partners. The bill will also have an indeterminate but significant cost impact for clerks, due to increased workload to comply with the new requirements of the bill.

It is also important to note that the impacts stated in this analysis will likely be even more significant for smaller counties that do not have the existing staff or resources available to absorb the additional workload.

Clerks' Focus on Compliance

Clerks understand that many Floridians depend on driving to get to work, to get groceries, or to pick the kids up from school, and that consequences to individuals for not complying with their court orders can be significant, including license suspension and mounting debt. While clerks view driver license suspension as an important part of the compliance toolkit, clerks believe there is an opportunity to meet the public policy goal of reducing suspensions and keeping people driving legally with a statewide focus and approach to work with Floridians on the front end to stay in compliance with court orders.

Currently, clerks utilize a variety of solutions to increase compliance with court orders, including statewide best practices and local compliance programs. Clerks also recently held two important statewide events focused on compliance: a joint summit, hosted by the CCOC and FCCC, focusing on keys to a successful compliance program; and "Operation Green Light," which helped 11,624 Floridians become eligible for driver license reinstatement and placed more than 20,000 cases on payment plans.

Recognizing the importance of this issue, Florida's clerks requested, and the CCOC Executive Council subsequently approved, over \$2 million in additional funding to clerks for additional compliance services as part of the CFY 2019-20 budget.

This session, clerks also plan to work with the Legislature to offer Floridians solutions using convenient, reasonable payment plans; more payment options and locations; innovative technology to reach people with electronic reminders, making staying in compliance simpler; and cooperation to achieve economies of scale for compliance processes where needed.

CURRENT SITUATION**CONSTITUTIONAL REQUIREMENTS FOR CLERK FUNDING**

Article V of the State Constitution establishes the judicial branch of state government, including the trial and appellate courts and describes the duties and responsibilities of the clerks of the court. In 1998, voters approved to allocate more court costs to the state. Subsequent to that revision, Article V, section 14 of the Florida Constitution specifies the state and county responsibilities for funding the state courts system, by providing that the Supreme Court and the District Courts of Appeal must be fully funded by the state, and the trial courts are jointly funded by the state and counties. As it pertains to the clerks, Article V, section 14(b) provides that:

All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.

According to s. 28.35, F.S., the list of court-related functions clerks perform is limited to those functions expressly authorized by statute or court rule. Relevant to this analysis, these duties include:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Data collection and reporting; and
- Determinations of indigent status.

LEGISLATIVE IMPLEMENTATION OF CLERK FUNDING

The Legislature authorizes the clerks of the court to collect revenue and designates a portion of the collected revenues for the purpose of funding the clerks' annual budgets. Revenues are diverse and often a single revenue source will be distributed to multiple recipients.

For instance, the statutory base fine for a speeding ticket for 6-9 miles per hour over the speed limit is \$25; however, there are optional county fees (\$30 for court facilities, \$3 for teen court, \$5 for driver education programs, and \$2 for law enforcement education); a Court Cost Clearing fee of \$3; two court costs fees totaling \$32.50; two General Revenue fees totaling \$17.50; a \$5 fee for the state courts; a \$3.33 fee for the State Attorneys; a \$1.67 fee for the Public Defenders; and finally, a \$3 state radio system fee. The total cost for a 6-9 MPH speeding ticket could be up to \$131 (See Table 1). On a 6-9 mph speeding ticket, the revenue breakdown by receiving entity is:

Entity	Revenue per Citation	Percentage of Revenue
County / City	\$56.29	42.97%
Clerk	\$35.60	27.18%
State - General Revenue	\$19.10	14.58%
Other State Entities	\$20.01	15.27%
TOTAL	\$131.00	100.00%

Table 1 – Distribution of a Civil Traffic Infraction

SPEEDING 6-9 MPH ¹		
STATUTORY BASE FEES	AMOUNT	AUTHORITY
TEEN COURT (BOCC) Optional with Co. Ordinance	\$2.85	938.19(2)
TEEN COURT SERVICE CHARGE	\$0.15	938.19(4)(b)
DORI SLOSBERG (BOCC) – Optional with Co. Ordinance	\$5.00	318.1215
COURT FACILITIES FUND (BOCC) <i>Optional with Co. Ordinance</i>	\$30.00	318.18(13)(a)1.
LOCAL LAW ENFORCEMENT EDU (BOCC) <i>Optional with Ordinance</i>	\$2.00	938.15/ 318.18(11)(d)
ADDITIONAL COURT COST CLEARING TRUST FUND – (FDLE and DCF)	\$3.00	318.18(11)(d)
ADDITIONAL COURT COST - CLERK or COUNTY	\$2.50	318.18(11) (c)
COURT COSTS - (CLERK)	\$30.00	318.18(11)(a)
GENERAL REVENUE FUND	\$5.00	318.18(11)(a)
ART V - STATE COURTS REVENUE TRUST FUND	\$5.00	318.18(19)(a)
ART V - STATE ATTORNEYS REVENUE TRUST FUND	\$3.33	318.18(19)(b)
ART V - INDIGENT CRIMINAL DEFENSE TRUST FUND - (PUBLIC DEFENDERS)	\$1.67	318.18(19)(c)
GENERAL REVENUE FUND	\$12.50	318.18(18)
STATE RADIO SYSTEM SURCHARGE – (DMS)	\$3.00	318.18(17)
STATUTORY BASE FINE	\$25.00	318.18(3)
TOTAL	\$123.00	
DISTRIBUTION OF STATUTORY BASE FINE (\$17.75 of the \$25 base fee)		
10% FINE/FINE & FORFEITURE FUND – (CLERK)	\$2.50	28.37(5)
CHILD WELFARE TRUST FUND – (DCF)	\$1.00	318.21(1)
JUVENILE JUSTICE TRUST FUND – (DJJ)	\$1.00	318.21(1)
RADIO COMMUNICATIONS PROG. – (COUNTY)	\$12.50	318.21(9)
NONGAME WILDLIFE TRUST FUND – (FWC)	\$0.25	318.21(7)
OF THE REMAINDER OF FINE (\$7.75):		
GENERAL REVENUE FUND	20.6%	318.21(2)(a)
EMERGENCY MED. SERVICES – (DOH)	7.2%	318.21(2)(b)
ADD. COURT COSTS CLEARING TRUST FUND – (FDLE and DCF)	5.1%	318.21(2)(c)
BRAIN & SPINAL CORD – (DOH)	8.2%	318.21(2)(d)
DIVISION of VOC REHAB – (DOE)	2.0%	318.21(2)(e)
CLERK OF THE COURT	0.5%	318.21(2)(f)
CLERK OR SEMINOLE / MICCOSUKEE TRIBE OR	56.4%	318.21(2)(g)1
MUNICIPALITY AND	50.8%	318.21(2)(g)2
CLERK OF THE COURT	5.6%	318.21(2)2

As seen in the table above, which is derived from the 2019 Clerks' Distribution Schedule, the

¹ 2019 Distribution of Court Related Filing Fees, Service Charges, Costs and Fines, including a Fee Schedule for Recording - Effective July 1, 2019 (PDF), https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2019/19bull053_Attach_1_2019_Dist.pdf.

Legislature specifically delineated the first \$17.25 of the statutory base fine to five entities. Of the remaining \$7.75 of the fine, the Legislature split the fine between seven or eight entities, depending upon which law enforcement agency wrote the ticket.

Another example of a legislatively created revenue for clerks are the fines and fees on criminal traffic infractions. For example, a first-time offense of knowingly driving with a suspended or revoked driver license is a second-degree misdemeanor, pursuant to s. 322.34, F.S. The fines, fees, and service fees are distributed as identified in the table below.

Table 2 – Distribution of a Criminal Traffic Infraction

TRAFFIC - SECOND DEGREE MISDEMEANOR²		
Clerks are authorized to retain 10% of the fine amount prior to distribution (28.37) for deposit into the Fine and Forfeiture Fund		
DESCRIPTION	AMOUNT	AUTHORITY
FINE – Clerk	Not to Exceed \$500	775.083
FINE IF ADJUDICATION WITHHELD--CLERK	Not to Exceed \$1,000	775.083
DEPARTMENT OF LEGAL AFFAIRS – CRIMES COMPENSATION TRUST FUND 5% SURCHARGE	5% OF FINE	938.04
CRIME STOPPERS TRUST FUND – (DLA/OAG)	\$17.00	938.06
CRIME STOPPERS TRUST FEE– (DLA/OAG)	\$3.00	938.06
ADDITIONAL COURT COSTS	\$50.00	938.05(1)(c)
GENERAL REVENUE FUND	\$10.00	938.05(1)(c)
CRIMES COMP FEE	\$1.00	938.03(4)
CRIMES COMP TRUST FUND – (DLA/OAG)	\$49.00	938.03(4)
ADDITIONAL COURT COST CLEARING TRUST FUND – (FDLE and DCF)	\$3.00	938.01
LOCAL LAW ENFORCEMENT EDU <i>Mandatory with Ordinance</i>	\$2.00	938.15
CRIMES PREVENTION FUND	\$20.00	775.083(2)
STATE RADIO SYSTEM SURCHARGE (assessed on any criminal traffic charges listed in 318.17)	\$3.00	318.18(17)
COURT FACILITIES FUND <i>Mandatory with Ordinance</i>	\$30.00	318.18(13)(a)
ADDITIONAL COSTS (BOCC) - PROGRAMS <i>Mandatory with Ordinance</i>	\$65.00	939.185(1)(a)
TEEN COURT (BOCC) Optional with Co. Ordinance	\$2.85	938.19(2)
TEEN COURT SERVICE CHARGE	\$0.15	938.19(4)(b)
COST OF PROSECUTION—assessed upon conviction		
JAC/STATE ATTY GRANTS AND DONATIONS/Misdemeanor or Criminal Traffic	not less than \$50	938.27(8)

These examples are just two of several hundred fines, fees, service charges, and court costs the Legislature provided to the clerks to implement their statutory and constitutional duties.

² 2019 Distribution of Court Related Filing Fees, Service Charges, Costs and Fines, including a Fee Schedule for Recording - Effective July 1, 2019 (PDF).

https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2019/19bull053_Attach_1_2019_Dist.pdf.

TRAFFIC CITATIONS AND DRIVER LICENSE SUSPENSION

The Legislature uses the sanctioning of a driver license for individuals who violate Florida laws for both driving and non-driving-related offenses. Suspensions and revocations take away a person's driving privilege, although the focus of this analysis is on the suspension of a driver license. To reinstate a suspended license, an individual must fulfill legal and financial obligations and, in some cases, wait a minimum time before the privilege to drive is reinstated.

At the state level, Florida Highway Safety and Motor Vehicles (FLHSMV) is responsible for issuing driver licenses and has the power to suspend or revoke those licenses when certain criteria are met. FLHSMV must provide the notice required by law and communicate license reinstatement requirements when informing an individual of a sanctioned license. The role of other state agencies is to notify the department when individuals violate laws that can be sanctioned by driver license suspension. For example, if a parent is delinquent on child support payments, the Department of Revenue notifies FLHSMV to start the process of driver license suspension.

At the local level, clerks of court are responsible for collecting financial obligations imposed by the court for criminal and traffic offenses, as well as maintaining court records and ensuring that court orders are carried out. Sections 322.245, and 318.15, Florida Statutes, require clerks of court to notify FLHSMV when a driver fails to pay court-imposed financial obligations for criminal offenses or civil traffic offenses. Failure to pay criminal court obligations can result in a license suspension. Also, clerks of court provide information to the department about any court actions that require the suspension or revocation of driver licenses. On behalf of FLHSMV, clerks of court and county tax collectors may reinstate driving privileges and collect reinstatement fees.

Generally, a person has 30 days to pay or contest a traffic citation. If the citation is unpaid, clerks will send a notice to FLHSMV within 10 days after the due date. Upon receipt of the notice from the clerks, FLHSMV must immediately issue an order suspending the driver license of the person, effective 20 days after the date the order of suspension is mailed. During the 20 days, a person's license is not suspended, and they can prevent the suspension of their license by either paying the full amount of the obligation or establishing a payment plan with the clerk of court. As an illustration, during Calendar Year (CY) 2018, 43 percent of the cases that were set to be suspended paid their obligations during this 20-day window, proving to be an effective compliance tool.

After a person's license is suspended, and 90 days after the citation was issued, clerks must forward the outstanding obligation to a collection agent or private attorney to collect unpaid financial obligations if the defendant has not established a payment plan with the clerk or paid the financial obligation in full. The collection agents can charge up to 40 percent of the amount owed at the time of referral, pursuant to s. 28.246(6), F.S. To reinstate their license, a person must establish a payment plan with the clerk or pay the entire amount in full. In addition to the original fines and costs, a person must pay a \$60 reinstatement fee and a \$16 civil penalty late fee.

The table below shows the number of civil traffic infractions by calendar year and violation type.

Table 3 – Civil Traffic Citations by Type³

Calendar Year	Non-Moving	Moving	Total
2015	964,705	2,037,434	3,002,139
2016	796,944	1,983,627	2,780,571
2017	730,323	1,898,583	2,628,906
2018	713,827	1,891,072	2,604,899

Section 318.15, Florida Statutes, compels the clerks of the court to begin the suspension of a driver license of a person that does not pay the civil penalties associated with traffic infractions. This section requires the clerks to send a notification to Florida Highway Safety and Motor Vehicles (FLHSMV) within 10 days after a person fails to pay the fines. The department must immediately issue an order suspending the driver license and privilege to drive, effective 20 days after the date the order of suspension is mailed. The Legislature created this enforcement mechanism as a tool for compliance of obligations and in many instances this tool is effective.

Data from the FLHSMV shows in calendar year 2018 there were 1,237,513 sanctions created for failure to pay fines, failure to appear in court, or failure to complete driver school. Approximately 76 percent of these cases (939,712) were failure to pay traffic fines.

Of the 939,712 cases of failure to pay traffic fines, approximately 46 percent of cases (436,089) were paid before the driver license suspension took effect. Of the remaining 503,623 cases, 66 percent (330,239) had their license restored after the suspension took effect. By July 15, 2019, only 173,384 cases were unpaid, and the licenses were still suspended, which is 18 percent of the total sanctions created. The data for the past four years is similar to calendar year 2018, as seen in the table below.

Table 4 – Sanctions for Failure to Pay Civil Traffic Citations

FAILURE TO PAY MOVING OR NONMOVING TRAFFIC FINE								
Year	# of Sanctions Created	# Restored Prior to Becoming Effective	% Restored Before Losing License	# Effective Sanctions	# Restored After Becoming Effective	% Restored After Losing License	# Not Restored as of July Following Year	% not restored by July of Following Year
CY 2015	1,060,339	504,741	48%	555,598	345,866	62%	209,732	20%
CY 2016	1,022,574	476,772	47%	545,802	342,929	63%	202,873	20%
CY 2017	991,490	454,876	46%	536,614	340,654	63%	195,960	20%
CY 2018	939,712	436,089	46%	503,623	330,239	66%	173,384	18%

Criminal traffic infractions are separate from civil traffic infractions. The table below shows the number of criminal traffic infractions by calendar year and violation type.

³ Florida Highway Safety and Motor Vehicles, Crash and Citation Reports & Statistics.
<https://www.flhsmv.gov/resources/crash-citation-reports/> last visited 12/18/19

Table 5 – Criminal Traffic Citations by Type⁴

Calendar Year	DUI	DWLSR	Other	Total
2015	46,922	157,084	180,353	384,359
2016	44,643	137,668	170,727	353,038
2017	43,899	140,989	169,535	354,423
2018	43,715	140,148	176,093	359,956

Criminal Traffic offenses include⁵:

1. Fleeing or attempting to elude a police officer, in violation of s. [316.1935](#);
2. Leaving the scene of a crash, in violation of ss. [316.027](#) and [316.061](#);
3. Driving, or being in actual physical control of, any vehicle while under the influence of alcoholic beverages, any chemical substance set forth in s. [877.111](#), or any substance controlled under chapter 893, in violation of s. [316.193](#), or driving with an unlawful blood-alcohol level;
4. Reckless driving, in violation of s. [316.192](#);
5. Making false crash reports, in violation of s. [316.067](#);
6. Willfully failing or refusing to comply with any lawful order or direction of any police officer or member of the fire department, in violation of s. [316.072](#)(3);
7. Obstructing an officer, in violation of s. [316.545](#)(1); or
8. Any other offense in chapter 316 which is classified as a criminal violation.

Table 6 – Sanctions for Failure to Pay Criminal Traffic Citations

FAILURE TO PAY MOVING OR NONMOVING TRAFFIC FINE								
Year	# of Sanctions Created	# Restored Prior to Becoming Effective	% Restored Before Losing License	# Effective Sanctions	# Restored After Becoming Effective	% Restored After Losing License	# Not Restored as of July Following Year	% not restored by July of Following Year
CY 2015	52,104	7,188	14%	44,916	10,697	24%	34,219	66%
CY 2016	72,031	9,393	13%	62,638	13,775	22%	48,863	68%
CY 2017	68,169	8,867	13%	59,302	13,287	22%	46,015	68%
CY 2018	75,680	8,938	12%	66,742	14,390	22%	52,352	69%

The fines and fees for criminal traffic can be much greater than civil traffic; because of the increased cost, the percentage of suspended licenses that are reinstated before the sanction is imposed is much smaller than civil traffic cases (12 percent compared to 46 percent).

⁴ Florida Highway Safety and Motor Vehicles, Crash and Citation Reports & Statistics.
<https://www.flhsmv.gov/resources/crash-citation-reports/> last visited 12/18/19

⁵ s. 318.17, F.S.

Determinations of Indigency

Section 27.52(2), Florida Statutes, requires the clerk of the court to determine whether an applicant seeking appointment of a public defender is indigent. The clerk must consider the applicant to be indigent if the applicant is:

- At or below 200 percent of the federal poverty guidelines;
- Receiving Temporary Assistance for Needy Families-Cash Assistance (TANF);
- Receiving poverty-related veterans' benefits; or
- Receiving Supplemental Security Income (SSI).

Section 57.082, Florida Statutes, requires the clerk of the court to determine whether an applicant seeking appointment of an attorney in a civil case is indigent. Like the determination of indigency for criminal cases, a person is presumed to be indigent if they are at or below 200 percent of the federal poverty guidelines.

In both civil and criminal indigency applications, there is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value under \$5,000⁶.

In determining whether an applicant is indigent, the clerk must compare the information provided by the applicant to the criteria prescribed in either s. 27.52, F.S., or s. 57.082, F.S. This is a workload issue; therefore, clerks take the indigent applications at face-value and do not perform additional research to verify accuracy. The determination of indigent status is a ministerial act of the clerk and not a decision based on further investigation or the exercise of independent judgment by the clerk.

⁶ ss. 27.52(2) and 57.082(2), F.S.

EFFECT OF PROPOSED CHANGES – LICENSE SUSPENSION

The bill amends s. 318.15, F.S., removing the responsibility of clerks to notify FLHSMV if a person has failed to comply with the civil penalties provided in s. 318.18, F.S. Correspondingly, FLHSMV will no longer suspend a person's driver license for failure to pay a fine. Additionally, the bill removes the reinstatement process for failure to pay and the \$60 reinstatement fee. The current distribution of this fee is split between the clerks and FLHSMV with the clerks receiving \$37.50 and FLHSMV receiving \$22.50.

As illustrated in the previous tables, of the 2.6 million citations written in 2018, clerks sent approximately 1 million cases to FLHSMV for a failure to pay a moving or nonmoving traffic fine, which is approximately 36 percent of all citations. The bill will eliminate the suspension of licenses and does not provide another enforcement mechanism to encourage people to pay their obligations. While the bill will provide a positive public policy of allowing people to continue to maintain a driver license, it eliminates a compliance tool, which may disincentivize paying financial obligations. Without the potential for license suspension, it is reasonable to assume that fewer individuals will choose to comply and pay the fines owed. This reduction in compliance could significantly constrain clerks' ability to collect the fines, fees, and court costs that under current law fund their operations. Additionally, as pointed out in the speeding ticket examples, these changes impact collections for other stakeholders and judicial partners, as well as General Revenue.

CURRENT SITUATION – PAYMENT PLANS

From CFY 2013-14 to CFY 2017-18, clerks experienced an almost \$63 million budget cut due to decreasing revenues. In an effort to reverse the decreasing revenues, in October 2017, clerks held a statewide Compliance Summit to discuss various programs and best practices from around the state to keep people working, driving, and help them move on with their lives. The clerks held a second summit in October 2019 to continue to share the best practices and ideas for clerks to help keep people in compliance without suspending their licenses. Ideally, clerks would never have to begin the process of suspending a license, because everyone would simply pay their statutory obligations; however, the clerks recognize the needs of their community and work with struggling customers to develop a payment plan to fit their needs while taking care of their obligations.

As part of the statutory revisions that originated from Revision 7 of Article V, the Legislature created s. 28.246, F.S., which requires clerks to accept partial payments for unpaid court-related fees, charges, and costs in accordance with the terms of an established payment plan. Payment plans are designed to meet the needs of the individuals that owe obligations to the state. There is a diversity of payment plans that typically meets the needs of a clerks' constituency. Clerks attempt to customize or tailor the payment plan to fit the needs of the customer.

Due to the variations in payment plan types and lengths, clerks have two options under s. 28.24(26), F.S., when it comes to payment plan administrative costs. Clerks have the option to charge a \$5 per month fee or a \$25 one-time administrative fee for a case on a payment plan. Some clerks use the \$25 fee exclusively, others use the \$5 per month exclusively, while some clerks use both fees depending upon the needs of the customer. In addition to payment

plans, some clerks offer a 30-day extension to allow the customer more time to pay the obligation in full.

In addition to the variable administrative fee for payment plans, clerks have differences in payment schedules depending on the amount owed. For instance, one county has the following payment schedule:

Table 7 – Payment Schedule

Total Amount Owed	Months to Pay
\$300 or less	3 months
\$301 to \$700	6 months
\$701 to \$1200	12 months
\$1201 to \$2000	18 months
\$2001 and above	24 months

While this payment schedule works in this county, it may not work for another county due to differences in economic conditions. Another example from a different part of the state that has a lower median household income is as follows:

Table 8 – Payment Schedule

Total Amount Owed	Months to pay
50 - \$166	3 months
\$167 - \$350	6 months
\$351 - \$500	9 months
\$501 - \$750	12 months
\$750 - \$1000	15 months
\$1000.01 - \$1500	24 months
\$1500.01 - \$2500	36 months

Clerks are balancing two, sometimes conflicting, goals when creating payment plans. Clerks must construct payment plans to meet the needs of the individuals but must also try to collect the maximum amount of revenue, which funds many stakeholders within the justice system, not just the clerk's office.

EFFECT OF PROPOSED CHANGES – PAYMENT PLANS

The bill makes several changes to the structure of payment plans. The bill amends s. 28.24, F.S., removing the \$5 per month payment plan fee, making the \$25 one-time fee standard, and creates a new \$5 one-time payment fee for an indigent person in lieu of the \$25 fee.

The bill amends s. 28.246, F.S., to specify the way individuals can make payments. The bill expands the options of where an individual can make a payment and requires clerks to accept payments through a community-based organization authorized by the clerk. Additionally, the bill removes the payment plan option for individuals that are indigent for costs. The bill standardizes all payment plans to be the greater amount of either \$10 per month or 2 percent of a person's annual net income divided by 12 and requires all cases to be combined into one payment plan.

The bill also amends s. 28.246, F.S., to provide two grace periods for making the first payment of the payment plan; a 90-day grace period for individuals released from incarceration and a 30-day grace period for individuals not in custody.

Finally, the bill creates new subsection (5), which will allow an indigent person to petition the court to declare that the financial obligations under the payment plan have been met and to terminate the payment plan if, up to the date of the petition, the person made timely payments for:

1. Twelve consecutive months for any financial obligation that was \$500 or less;
2. Twenty-four consecutive months for any financial obligation that was greater than \$500 but \$1000 or less; or
3. Thirty-six consecutive months for any financial obligation that was greater than \$1000.

In addition to four designations for indigency identified in s. 27.52, F.S., the bill adds “a person who receives public assistance as defined in s. 409.2554, F.S.,” to the list of automatic indigency qualifiers.

The changes to payment plans will significantly impact Florida’s clerks of the court. Clerks individualize and negotiate payment plans to fit the needs of the people who request a payment plan. Setting an arbitrary amount undermines the clerk’s ability to work with an individual to design an agreeable payment amount. Clerks are willing to work with individuals who are struggling to make payments and need to renegotiate terms and do so on a regular basis. If a person is up-to-date with their payment plan, the clerk will not submit a request to FLHSMV to suspend their license. Eliminating the \$5 per month charge for payment plans will negatively impact the clerks’ ability to customize these plans, which will hurt those on the payment plans and will also impact the clerk’s current revenue collection.

Some clerks have payment plans of only 3 months; by eliminating the \$5 per month charge, these individuals will pay \$10 more to the clerk. On the other end of the spectrum, clerks will also lose revenue by standardizing the one-time \$25 payment; a payment plan of 36 months could see a reduction of \$155 per payment plan. Additionally, the bill further reduces the cost the clerks collect by providing a one-time \$5 fee for indigent individuals. Most felony cases in the circuit criminal court will be indigent, exacerbating the lost revenue to the clerks.

In addition to the lost revenue, clerks will see an increased workload with changes proposed in this bill. Two examples of increased workload:

1. Review the defendant’s indigent application (possibly verify the information provided) — Significant clerk time required, as this task requires frequent repetition.
2. Determine the monthly payment based on the information provided by the defendant, also factoring in the number of cases covered by the payment plan with totals due in every case — Significant clerk time required, as this task requires frequent repetition.

Indigent Financial Obligation Waiver

The bill creates a waiver of court obligations for indigent individuals. This waiver has a potentially significant negative fiscal impact to the criminal justice system. For example, the 2019 Distribution Schedule shows the following fines and court costs for a third-degree felony.

Table 9 – Distribution Schedule for a Third-Degree Felony ⁷

3RD DEGREE FELONY		
DESCRIPTION AND STATUTORY AUTHORITY	AMOUNT	ENTITY RECEIVING FUNDS
COST OF PROSECUTION—assessed upon conviction		
JAC/STATE ATTY GRANTS AND DONATIONS/Felony – s. 938.27(8), F.S.	not less than \$100	State Attorneys
PUBLIC DEFENDER APPLICATION FEE - each application		
INDIGENT CRIM TRUST FEE 2% -S. 27.52(1)(b), F.S.	\$0.80	Clerks
GENERAL REVENUE FUND - s. 27.52(1)(b), F.S.	\$0.20	State GR
INDIGENT CRIMINAL TRUST FUND – s. 27.52(1)(b), F.S.	\$49.00	Public Defenders
FINES AND FEES		
FINE NOT TO EXCEED \$5,000 – s. 775.083(1)(c)	Not to exceed \$5,000	Clerks
5% SURCHARGE (assessed only if there is a fine assessed) – s. 938.04, F.S.	5% of fine	Attorney General - Crimes Compensation Trust Fund
CRIME STOPPERS T.F. FEE – s. 938.06(2), F.S.	\$3.00	Clerks
CRIME STOPPERS T.F. – s. 938.06(1), F.S.	\$17.00	Attorney General
COURT COST		
ADDITIONAL COURT COST – s. 938.05(1)(a), F.S.	\$200.00	Clerks
GENERAL REVENUE FUND – s. 938.05(1)(a), F.S.	\$25.00	State GR
CRIMES COMPENSATION TRUST FEE - s. 938.03, F.S.	\$1.00	Clerks
CRIMES COMPENSATION TRUST FUND – s. 938.03, F.S.	\$49.00	Attorney General - Crimes Compensation Trust Fund
ADDITIONAL COURT COST CLEARING TRUST – s. 938.01, F.S.	\$3.00	1. FDLE – Criminal Justice Standards and Training Trust Fund 2. FDLE – Operating Trust Fund for the Criminal Justice Grant Program 3. DCF – Domestic Violence Trust Fund
LOCAL LAW ENFORCEMENT EDU <i>Mandatory with Ordinance</i> - s. 938.15, F.S.	\$2.00	County
CRIME PREVENTION – s. 775.083 (2), F.S.	\$50.00	County
ADDITIONAL COSTS (BOCC) - PROGRAMS <i>Mandatory with Ordinance</i> - s. 939.185(1)(a), F.S.	\$65.00	County
TEEN COURT (BOCC) Optional with Co. Ordinance – s. 938.19(2), F.S.	\$2.85	County
TEEN COURT SERVICE CHARGE – s. 938.19(4)(b), F.S.	\$0.15	County

⁷ 2019 Distribution of Court Related Filing Fees, Service Charges, Costs and Fines, including a Fee Schedule for Recording - Effective July 1, 2019 (PDF).

https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2019/19bull053_Attach_1_2019_Dist.pdf.

If an indigent person is convicted of a third-degree felony and a judge orders fifty percent of the max fine of \$5,000, that person will owe \$3,193, assuming all county-optional court costs are included. Under the proposed indigent fee waiver, a person could pay \$10 per month for 36 months (\$360), plus the one-time payment plan fee of \$5, and then petition the court to have the remaining \$2,830 waived.

Section 28.246(5), F.S., provides a prioritization schedule for revenue collected by the clerk: State General Revenue is the first priority; followed by the amount required to be retained by the clerk of the court; a pro rata share distributed to the various authorized state trust funds; and a pro rata share distributed to counties, municipalities, or other local entities.

If the proposed waiver of fees is granted, of the \$360 collected over a three-year period, the General Revenue Fund would receive the first \$25 and the balance would go to the clerk. In this scenario, the State Attorneys, Public Defenders, Attorney General and Department of Legal Affairs, Florida Department of Law Enforcement (FDLE), and Department of Children and Families would all lose out on any portion of the revenue they would typically collect. Over the last three years, clerks sent the following amounts to each of those trust funds:

Table 10: Revenue Collected by Clerks Sent to State Trust Funds for Felonies

TRUST FUNDS	CITATION	2016-2017	2017-2018	2018-2019
STATE ATTORNEYS REVENUE TRUST FUND	938.27(8)	\$18,217,141.85	\$18,114,730.28	\$19,497,763.67
INDIGENT CRIMINAL DEFENSE TF	27.52(1)	\$7,428,126.13	\$7,393,030.41	\$7,513,163.68
GENERAL REVENUE	27.52(7)(b)	\$10,239.57	\$1,466.32	\$62,291.05
JAC GRANTS AND DONATIONS TF	27.52(7)(b)	\$11,968.58	\$527.51	\$224.19
CRIMES COMPENSATION TF	938.04	\$1,783,987.00	\$1,700,840.96	\$1,763,523.07
CRIME STOPPERS TF	938.06	\$3,970,014.37	\$3,780,318.03	\$3,820,619.05
CRIMES COMPENSATION TF	938.03(4)	\$12,748,370.81	\$12,060,826.08	\$12,031,277.79
ADDITIONAL COURT COSTS - TF	938.01(1)(a)	\$1,301,730.67	\$1,258,834.61	\$1,238,479.23

Clerks recognize not all indigent defendants will have their fines waived by the court; however, for those that do, there will be a fiscal impact for these entities as well.

FISCAL SUMMARY

Clerks recognize the potential public policy benefits of some of the changes proposed by this bill and believe there is an opportunity to meet the public policy goal of reducing suspensions and keeping people driving legally by working with Floridians on the front end to stay in compliance with court orders. However, removing from the law the ability for clerks to suspend driver licenses for failure to pay court-ordered fines and fees would affect clerks' ability to ensure compliance and, as illustrated throughout this analysis, due to the current budget funding model, will have significant fiscal and operational impacts on Florida's clerks of court, General Revenue, judicial partners, and numerous state trust funds.

The CCOC estimates a REVENUE LOSS range for this bill to clerks of between \$20.8 million and \$49.5 million. CCOC bases this estimate on the revenue lost from the number of cases that fail to pay civil and criminal traffic citations, an estimate of revenue lost on the standardization of payment plans, and the revenue lost due to the waiver of outstanding financial obligations for indigent individuals.

Elimination of Driver License Suspension for Failure to Pay

Civil Traffic

Based on CY2015-CY2018 data, there were an average 2,754,129 moving and non-moving traffic citations each year, and clerks sent an average of 1,003,529 cases to FLHSMV each year for failure to pay traffic citations. Based on those figures, clerks send on average 36 percent of all civil traffic cases to FLHSMV to suspend the license. However, 47 percent (468,120) of those cases pay before the license is suspended; these people are in the "20-day window" after receiving the letter from FLHSMV that their license will be suspended. An additional 63 percent of cases (339,922) pay their obligations after FLHSMV suspends the driver license.

Based on information collected from the clerk's Expenditure and Collections report, over the last three county fiscal years, clerks collect and retain on average \$106,909,535 million from civil traffic cases. Using this figure, there is a percentage of this money that is paid by those who pay on time, those that pay within the 20-day window, and those that pay after their license is suspended. The percentage and amounts are:

Table 11: Cases and Revenue Associated with Civil Traffic*

	Estimated Cases	Percent	Revenue Collected
Pay on time	1,750,600	69%	\$73,767,580
Pay within 20-days	468,120	18%	\$19,243,716
Pay after suspension	339,922	13%	\$13,898,240
TOTAL	2,558,642	100%	\$106,909,536

* There are an additional of 195,487 citations that were still suspended as of July 15 of the following fiscal year, which when added to the 2,558,642 cases brings the total up to the 2,754,129 4-year average. It is assumed these cases did not contribute to the revenue received by the clerks

The low estimate assumes 60 percent of the 20-day cases will continue to pay. The low estimate also assumes 25 percent of the pay after suspension cases will continue to pay.

Low Assumption 1: 20-day window cases pay at 60 percent – Revenue Lost - \$7,697,487

Low Assumption 2: Suspended cases pay at 25 percent – Revenue Lost - \$10,423,680

Total Revenue lost - \$18,121,167

The middle estimate assumes 50 percent of the 20-day cases will continue to pay. The middle estimate also assumes 10 percent of the pay after suspension cases will continue to pay.

Mid Assumption 1: 20-day window cases pay at 50 percent – Revenue Lost – \$9,621,859

Mid Assumption 2: Suspended cases pay at 10 percent – Revenue Lost - \$12,508,416

Total Revenue lost - \$22,130,275

The high estimate assumes none of the 20-day cases will continue to pay. The high estimate also assumes none of the pay after suspension cases will continue to pay.

High Assumption 1: 20-day window cases pay at 0 percent – Revenue Lost – \$19,243,717

High Assumption 2: Suspended cases pay at 0 percent – Revenue Lost - \$13,898,240

Total Revenue lost - \$33,141,957

The max estimate assumes none of the 20-day cases or the pay after suspension cases will continue to pay. The max estimate also assumes 10 percent of the pay on time cases will now fail to pay.

Max Assumption 1: 20-day window cases pay at 0 percent – Revenue Lost – \$19,243,717

Max Assumption 2: Suspended cases pay at 0 percent – Revenue Lost - \$13,898,240

Max Assumption 3: Pay on time cases will pay at 90 percent – Revenue Lost – \$7,376,758

Total Revenue lost - \$40,518,715

Table 12: Low to Max Estimate of Lost Revenue on Civil Traffic Cases

	Low	Mid	High	Max
Pay within 20 days	\$7,697,487	\$9,621,859	\$19,243,717	\$19,243,717
Pay after suspension	\$10,423,680	\$12,508,416	\$13,898,240	\$13,898,240
Pay on time				\$7,376,758
TOTAL	\$18,121,167	\$22,130,275	\$33,141,957	\$40,518,715

Criminal Traffic

Criminal traffic offenses are outlined in s. 318.17, F.S. Like civil traffic cases, an individual's driver license can be suspended for failure to pay. Based on CY2015-CY2018 data, there were an average 362,944 criminal traffic citations each year, and clerks sent 66,996 cases to FLHSMV each year for failure to pay criminal traffic citations. Clerks send 18.5 percent of all criminal traffic cases to FLHSMV to suspend the license, and 13 percent (8,597) of those cases pay before the license is suspended; these cases are in the "20-day window" after receiving the letter from FLHSMV that their license will be suspended. An additional 22 percent of cases (13,037) pay their obligations after FLHSMV suspends the driver license.

Table 13: Cases and Revenue Associated with Criminal Traffic

	Cases	Percent	Revenue Collected
Pay on time	295,948	93%	\$30,971,218
Pay within 20-days	8,597	3%	\$899,684
Pay after suspension	13,037	4%	\$1,364,333
TOTAL	317,582	100%	\$33,235,235

The low estimate assumes 75 percent of the 20-day cases will continue to pay. The low estimate also assumes 25 percent of the pay after suspension cases will continue to pay.

Low Assumption 1: 20-day window cases pay at 60 percent – Revenue Lost - \$359,874

Low Assumption 2: Suspended cases pay at 25 percent – Revenue Lost - \$1,023,250

Total Revenue lost - \$1,383,124

The middle estimate assumes 50 percent of the 20-day cases will continue to pay. The middle estimate also assumes 10 percent of the pay after suspension cases will continue to pay.

Mid Assumption 1: 20-day window cases pay at 50 percent – Revenue Lost – \$449,842

Mid Assumption 2: Suspended cases pay at 10 percent – Revenue Lost - \$1,227,900

Total Revenue lost - \$1,677,742

The high estimate assumes none of the 20-day cases will continue to pay. The high estimate also assumes none of the pay after suspension cases will continue to pay.

High Assumption 1: 20-day window cases pay at 0 percent – Revenue Lost – \$899,684

High Assumption 2: Suspended cases pay at 0 percent – Revenue Lost - \$1,364,333

Total Revenue lost - \$2,264,017

The max estimate assumes none of the 20-day cases or the pay after suspension cases will continue to pay. The max estimate also assumes 10 percent of the pay on time cases will now fail to pay.

Max Assumption 1: 20-day window cases pay at 0 percent – Revenue Lost – \$899,684

Max Assumption 2: Suspended cases pay at 0 percent – Revenue Lost - \$1,364,333

Max Assumption 3: Pay on time cases will pay at 90 percent – Revenue Lost – \$3,097,122

Total Revenue lost - \$5,361,139

Table 14: Low to Max Estimate of Lost Revenue on Civil Traffic Cases

	Low	Mid	High	Max
Pay within 20 days	\$359,874	\$449,842	\$899,684	\$899,684
Pay after suspension	\$1,023,250	\$1,227,900	\$1,364,333	\$1,364,333
Pay on time				\$3,097,122
TOTAL	\$1,383,124	\$1,677,742	\$2,264,017	\$5,361,139

Payment Plans

The fiscal impact for the changes to clerks' payment plans is more difficult to calculate. Currently, many clerks utilize the one-time \$25 administrative fee; however, what is unknown is the number of payment plans that would qualify under the new indigent provision, which would drop the one-time fee down to \$5. For example, one of the largest counties in central Florida had between 9,000 and 15,000 twenty-five-dollar payment plans over the last three years. If this county were to lose the \$20 on 5,000 payment plans per year, that would be \$100,000 lost revenue. If all the payment plans were converted to the indigent \$5 administrative fee, this county would have lost more than \$305,000 in CFY 2017-18.

In another large county, the average number of payment plans per month is 1,800, and this county expects to have approximately 1,000 cases claim indigency under the proposed parameters of this bill. The expected revenue impact would be \$240,000 annually. Between the lost revenue and the changes clerks will have to make to their case maintenance systems, it is safe to assume the annualized lost revenue statewide would be close to \$1 million for the changes to the payment plans.

Indigent Financial Obligation Waiver

The creation of a waiver of the remainder of fees for indigent individuals also has a potentially significant fiscal impact. An indigent individual can pay \$120 for a \$500 financial obligation, which is a 76 percent discount, \$240 for a \$1,000 financial obligation, which is a 76 percent discount, or \$360 for \$10,000, which is a 96 percent discount.

The primary court divisions impacted by the proposed indigent financial obligation waiver are circuit criminal, county criminal, criminal traffic, and juvenile delinquency. According to the 2019 Assessments & Collections Consolidated Summary Report, the total assessed for these court divisions was \$491,902,126 of which \$476,386,991 was collectable. Of the \$476,386,991 collectable, \$118,408,818 was deemed to be from indigent cases.

It is unknown how often the judiciary will use the waiver process described in the bill. Therefore, for illustrative purposes, the table below assumes the judiciary will waive one percent, five percent, and ten percent of all fines, fees, service charges, and court costs determined to be indigent from the example year, CFY 2018-19.

Table 15 – Potential Revenue Lost for Indigent Financial Obligation Waiver

Waiver of Financial Obligations	1 percent	5 percent	10 percent
Amount Waived	\$1,184,089.00	\$5,920,441.00	\$11,840,882.00
Total Revenue Lost*	\$420,351.60	\$2,101,756.56	\$4,203,513.11
Revenue Lost – Clerks**	\$273,228.54	\$1,366,141.76	\$2,732,283.52
Revenue Lost – Other Entities	\$147,123.06	\$735,614.79	\$1,471,229.59

*Assumes the current average collection rate, which is 35.5 percent

**Assumes 65 percent revenue is retained by clerks

Other Fiscal Impacts

In addition to the fiscal impact on clerks, this bill will have a fiscal impact on every entity that relies on traffic citations for funding. For instance, in SFY 2018-19, clerks sent \$20,755,195 to FLHSMV for citations relating to failure to pay.

Table 16 – Revenue Collected by the Clerks and Distributed to FLHSMV for Failure to Pay Cases

<u>Statute</u>	<u>Fee Amount</u>	<u>Fee to Highway Safety Operating TF or GR</u>	<u>Approximate number of Cases</u>	<u>Rev Collected by Clerks sent to FLHSMV</u>
Failure to comply with civil penalty or to appear; penalty s. 318.15, F.S.	\$60	\$22.50	143,421	\$3,226,971
Surrender and return of license s. 322.29, F.S.	\$60	\$22.50	5,554	\$125,002
Late Fee – Civil Penalty s. 318.18(8)a - to FLHSMV	\$16	\$9.50	1,092,945	\$10,382,979
Late Fee – Civil Penalty 318.18(8)a - to GR		\$6.50	1,080,037	\$7,020,243
Total				\$20,755,195

If 10 percent of cases failed to pay, it would reduce the Highway Safety Operating Trust Fund by almost \$1.4 million and General Revenue would be reduced by over \$700,000.

The following tables show the amounts collected by the clerks and distributed to the various trust funds for the past three state fiscal years for traffic related statutes. As the number of cases that fail to pay criminal and civil traffic violations increases, each of these trust funds would lose revenue.

Table 17 – Revenue Collected by the Clerks Pursuant to s. 318.18, F.S. by State Fiscal Year

Trust Fund	CITATION	2016-2017	2017-2018	2018-2019	Grand Total
MOTOR VEHICLE LICENSE CLEARING TF	318.18(8)(a)	\$10,684,159.57	\$10,454,108.97	\$10,382,979.38	\$31,521,247.92
MOTOR VEHICLE LICENSE CLEARING TF	318.18(8)(a)	\$7,259,046.12	\$7,075,888.02	\$7,020,243.39	\$21,355,177.53
ADDITIONAL COURT COSTS - TF	318.18(11)(d)	\$4,624,796.14	\$4,519,683.61	\$4,612,897.41	\$13,757,377.16
TOLL AGENCIES TF	318.18(7)	\$192,179.47	\$238,022.25	\$122,540.79	\$552,742.51
EMERGENCY MEDICAL SERVICES TF	318.18(15)(a)1	\$1,508,242.28	\$1,511,240.25	\$1,574,135.05	\$4,593,617.58
EMERGENCY MEDICAL SERVICES TF	318.18(3)(h)	\$93,133.41	\$47,812.72	\$20,094.02	\$161,040.15
MOTOR VEHICLE LICENSE CLEARING TF	318.18(16)		\$2,257.33	\$125.65	\$2,382.98
LAW ENFORCEMENT RADIO SYSTEM TF	318.18(17)	\$4,317,661.57	\$4,225,758.46	\$4,234,811.11	\$12,778,231.14
STATE COURTS REVENUE TF	318.18(19)(a)	\$8,783,917.43	\$8,558,462.91	\$8,511,870.18	\$25,854,250.52
STATE ATTORNEYS REVENUE TRUST FUND	318.18(19)(b)	\$5,883,465.15	\$5,730,976.56	\$5,689,019.49	\$17,303,461.20
INDIGENT CRIMINAL DEFENSE TF	318.18(19)(c)			\$2,562,612.77	\$2,562,612.77
PUBLIC DEFENDERS REVENUE TRUST FUND	318.18(19)(c)	\$2,951,548.12	\$2,879,885.34	\$223,003.78	\$6,054,437.24
EMERGENCY MEDICAL SERVICES TF	318.18(5)(c)	\$109,098.99	\$111,533.94	\$164,718.56	\$385,351.49
EMERGENCY MEDICAL SERVICES TF	318.18(20)	\$560,522.51	\$530,671.15	\$541,322.13	\$1,632,515.79
GENERAL REVENUE	318.18(15)(a)1	\$2,126,425.26	\$2,055,440.19	\$1,798,045.07	\$5,979,910.52
BRAIN & SPINAL CORD INJURY PROGRAM TF	318.18(15)(a)1	\$273,637.05	\$239,851.19	\$182,144.77	\$695,633.01
TOTAL		\$49,367,833.07	\$48,181,592.89	\$47,640,563.55	\$145,189,989.51

Table 18 – Revenue Collected by the Clerks Pursuant to s. 318.21, F.S. by State Fiscal Year

Trust Fund	CITATION	2016-2017	2017-2018	2018-2019	Grand Total
GENERAL REVENUE	318.21(2)(a)	\$12,447,745.69	\$11,811,353.18	\$11,548,657.66	\$35,807,756.53
EMERGENCY MEDICAL SERVICES TF	318.21(2)(b)	\$4,381,892.79	\$4,240,229.65	\$4,192,262.87	\$12,814,385.31
ADDITIONAL COURT COSTS - TF	318.21(2)(c)	\$3,018,346.05	\$2,941,964.06	\$2,898,049.24	\$8,858,359.35
BRAIN & SPINAL CORD INJURY PROGRAM TF	318.21(2)(d)	\$4,871,773.04	\$4,723,292.09	\$4,696,592.28	\$14,291,657.41
AUDIT & WARRANT CLEARING TF	318.21(2)(e)	\$1,283,558.25	\$100,561.93		\$1,384,120.18
DOE GRANTS AND DONATIONS TF	318.21(2)(e)		\$1,120,569.57	\$1,174,682.13	\$2,295,251.70
DOE GRANTS AND DONATIONS TF	318.21(4)	\$118.86	\$2,977.65	\$796.68	\$3,893.19
DOE GRANTS AND DONATIONS TF	318.21(5)		\$260.42	\$15.50	\$275.92
EPILEPSY SERVICES TF	318.21(6)	\$544,337.83	\$470,983.57	\$415,700.44	\$1,431,021.84
NONGAME WILDLIFE TF	318.21(7)	\$1,230,546.98	\$1,177,344.69	\$1,218,895.93	\$3,626,787.60
JUVENILE WELFARE TRAINING TF	318.21(1)	\$1,037,999.04	\$974,918.82	\$968,411.44	\$2,981,329.30
CHILD WELFARE TRAINING TF	318.21(1)	\$1,025,657.35	\$951,442.39	\$939,000.53	\$2,916,100.27
STATE COURTS REVENUE TF	318.21(20)	\$5,040,072.08	\$4,856,570.27	\$4,934,909.04	\$14,831,551.39
TOTAL		\$34,882,047.96	\$33,372,468.29	\$32,987,973.74	\$101,242,489.99

Table 19 - Revenue Collected by the Clerks Pursuant to s. 318.14, F.S. by State Fiscal Year

Trust Fund	CITATION	2016-2017	2017-2018	2018-2019	Grand Total
CHILD WELFARE TRAINING TF	318.14(10)(b)	\$308,642.31	\$331,289.03	\$299,251.83	\$939,183.17
JUVENILE WELFARE TRAINING TF	318.14(10)(b)	\$275,407.76	\$284,290.39	\$270,829.09	\$830,527.24
EMERGENCY MEDICAL SERVICES TF	318.14(5)	\$173,116.63	\$215,300.97	\$289,388.74	\$677,806.34
STATE COURTS REVENUE TF	318.14(9)	\$3,954,710.28	\$3,812,462.98	\$3,311,353.46	\$11,078,526.72
TOTAL		\$4,711,876.98	\$4,643,343.37	\$4,170,823.12	\$13,526,043.47

SECTION BY SECTION ANALYSIS

Section 1: Amends s. 28.24, F.S., removing the option of a \$5 per month payment plan fee, creating a one-time \$5 payment plan fee for individuals that are indigent, receiving public assistance, or are below 200 percent of the federal poverty level.

Section 2: Amends s. 28.246, F.S., removing the word “partial” and replacing it with “monthly,” as it relates to payment plans. Requires clerks to accept payments electronically, by mail, in person, or by a community-based organization authorized by the clerk to collect such payments. Additionally, this section removes the payment plan option for individuals that are indigent for costs. This section also creates a 30-day grace period for individuals not in custody and a 90-day grace period after a person is released from custody. The bill also allows a person to petition the court, on its own motion, to review and modify a payment plan or to convert the outstanding fees, service charges, costs, or fines to community service.

This section also creates a new subsection (5) under s. 28.246, F.S., creating an opportunity for an indigent individual to petition the court to terminate the payment plan if they have made timely payments for 12-36 months, based on their financial obligation.

Section 3: Amends s. 28.42, F.S., creating a uniform payment plan form. The bill requires the Office of the State Courts Administrator, in consultation with the clerks of court and the Florida Clerks of Court Operations Corporation to develop a uniform payment plan form and specifies the certain details to be included in the form.

Section 4: Amends 318.15, F.S., removing the ability for the Florida Highway Safety and Motor Vehicles to suspend a driver license for failure to comply with the terms of a payment plan, failure to attend driver improvement school, and failure to appear at a scheduled hearing. This section deletes the language relating to reinstating a license for failure to pay and adds a section allowing any person whose driver license was suspended solely for nonpayment to, before July 1, 2020, simply pay a reinstatement fee to receive their license.

Section 5: Amends s. 322.245, F.S., removing the ability for the Florida Highway Safety and Motor Vehicles to suspend a driver license for failure to pay fines, service charges, fees, and costs on criminal traffic infractions. This section also allows any person whose driver license was suspended solely for nonpayment to, before July 1, 2020, simply pay a reinstatement fee to receive their license.

Sections 6-9: Make conforming changes and reenact sections amended in the bill.

Section 10: Provides an effective date of July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/28/2020

Meeting Date

SB 1328

Bill Number (if applicable)

Topic Fines + fees

Amendment Barcode (if applicable)

Name Lauren Storch

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City

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State

33602

Zip

Phone 813-245-2675

Email storchla@HCFI.gov.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Hillsborough County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

11/28/2010
Meeting Date

1328
Bill Number (if applicable)

Topic Fees + Fines

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title Public Policy

Address 126 N Mills Ave
Street

Phone 407 326 4200

Orlando FL 32801
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Organize Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/2020

Meeting Date

SB 42 1328

Bill Number (if applicable)

Topic Fines + Fees

Amendment Barcode (if applicable)

Name Ashley Thomas

Job Title Florida State Director

Address

Street

Phone 802-299-9059

City

State

Zip

Email athomas@finesandfees

justice center ors

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing Fines + Fees Justice Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1-28-2020

Meeting Date

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

1328

Bill Number (if applicable)

Topic Fines & Fees

Amendment Barcode (if applicable)

Name ALIX MILLER

Job Title VICE PRESIDENT

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Tallahassee FL 32312

City State Zip

Email alix@fltrucking.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA TRUCKING ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1/28/2020
Meeting Date

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

1328
Bill Number (if applicable)

Topic Fines and Fees

Amendment Barcode (if applicable)

Name Pamela Burch Fort

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Phone 850-425-1344

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

1-28-20
Meeting Date

1328
Bill Number (if applicable)

Topic FEES & FINES & DRIVERS LICENSES

Amendment Barcode (if applicable)

Name JOHN HAYNES

Job Title CHAIRMAN EMERITUS

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State

Zip

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA VETERANS FOUNDATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/20

Meeting Date

1328

Bill Number (if applicable)

Topic Fees & Fines & DRIVERS LICENSE RESTATEMENTS

Amendment Barcode (if applicable)

Name DAN HENDRICKSON

Job Title president, Tallahassee Veterans Legal Collaborative

Address PO Box 1201

Phone 850/570-1967

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FL

32302

City

State

Zip

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

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)

1/28/20

Meeting Date

1328

Bill Number (if applicable)

Topic Fines & Fees

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

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Phone 850 488-6850

Tallahassee FL 32301
City State Zip

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Street

City

State

Zip

Phone

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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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 1376

INTRODUCER: Senator Broxson

SUBJECT: Credit For Reinsurance

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	Favorable
2.	Davis	Cibula	JU	Favorable
3.			RC	

I. Summary:

SB 1376 provides insurers with credit for reinsurance and eliminates additional collateral requirements for reinsurers if the reinsurer is domiciled in a “reciprocal jurisdiction” and meets requirements set forth in the bill. The requirements include, but are not limited to:

- Minimum capital and surplus requirements;
- Minimum solvency or capital ratio;
- Annual confirmation from the domiciliary supervisory authority stating that the reinsurer meets the capital, surplus, and minimum solvency or capital ratio requirements; and
- Prompt claims payment practices.

The bill defines a reciprocal jurisdiction as:

- A non-United States jurisdiction that is subject to an in-force covered agreement¹ with the United States or, in the case of a covered agreement between the United States and the European Union,² an EU member state;
- A United States jurisdiction that meets the National Association of Insurance Commissioners’ requirements for accreditation; or
- Any other qualified jurisdiction that meets the Office of Insurance Regulation’s requirements as set forth in rule.

¹ The bill defines a “covered agreement” to mean an agreement entered into pursuant 31 U.S.C ss. 313 and 314 (The Dodd-Frank Wall Street Reform and Consumer Protection Act) which is effective or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

² The United States entered into such an agreement on September 22, 2017, the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance.

The bill also provides insurers with protections against reinsurer failure that include, but are not limited to, requiring the reinsurer to post collateral equal to all outstanding reinsurance liabilities in the event the reinsurer enters into receivership; requiring the reinsurer to consent to the jurisdiction of courts of the State of Florida; and requiring the reinsurer to post collateral equal to all outstanding liabilities if the reinsurer resists enforcement of a court order from a jurisdiction in which it has consented.

The bill's revisions to Florida law governing credit for reinsurance enact 2019 revisions to the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786).

The bill takes effect July 1, 2020.

II. Present Situation:

Reinsurance

Reinsurance is insurance that a primary insurance company purchases from a second insurance company to protect itself from major losses sustained by its policy holders. The large-scale losses are generally caused by natural disasters such as wildfires or hurricanes. The primary insurance company is referred to as the ceding insurer and the second insurance company is referred to as the reinsurer. In this contract of indemnity, the reinsurer agrees to compensate the ceding insurer for all or part of the losses and loss adjustment expenses the ceding insurer incurs under insurance policies it has issued to its policyholders.³ The vast majority of reinsurers, who are domiciled overseas, do not write insurance policies of their own to policyholders.

Through the reinsurance contract, the insurer reduces its probable maximum loss on either an individual risk (facultative reinsurance) or a specific class of insurance policies (treaty reinsurance) by ceding a portion of its liability to the reinsurer.⁴ Reinsurance serves to (1) increase underwriting capacity; (2) stabilize underwriting results; (3) protect against catastrophic losses; (4) finance expanding volume; (5) withdraw from a class or line of business, or a geographic area, within a short time period; and (6) share large risks with other companies.⁵ Reinsurers may in turn further spread their assumed risk by purchasing reinsurance protection, which is called retrocession.⁶

Reinsurance creates privity of contract between the insurer and reinsurer, and does not modify the insured's policy with its insurer.⁷ Therefore, the reinsurance contract does not discharge the

³ National Association of Insurance Commissioners, *Glossary of Insurance Terms* https://content.naic.org/consumer_glossary.htm#R (last visited January 13, 2020).

⁴ Barron's Dictionary of Insurance Terms, 437 (6th ed. 2013).

⁵ *Id.*

⁶ The Center for Insurance Policy and Research, National Association of Insurance Commissioners, *Reinsurance*, https://content.naic.org/cipr_topics/topic_reinsurance.htm (last visited January 13, 2020).

⁷ U.S. Department of Treasury, Federal Insurance Office, *The Breadth and Scope of the Global Reinsurance Market and the Critical Role Such Market Plays in Supporting Insurance in the United States*, 7 (December 2014), <https://www.treasury.gov/initiatives/fio/reports-and-notice/Documents/FIO%20-Reinsurance%20Report.pdf> (last visited January 13, 2020).

insurer from its primary liability to its policyholders or its obligation to pay policyholder claims.⁸ Similarly, only the insurer has direct rights to recover from the reinsurer unless expressly provided for in the reinsurance contract.⁹

Florida regulates reinsurance under s. 624.610, F.S., and rule 69O-144, F.A.C.

Regulation of Reinsurance

The United States (U.S.) is both the largest insurance market and reinsurance market in the world by premium volume.¹⁰ Furthermore, roughly half of all business originates from North America.¹¹ In support of U.S. domestic insurers, non-U.S. reinsurers provide a majority of the available reinsurance protection to fulfill the needs of the U.S. insurance market. In 2018, offshore reinsurers assumed 65.7 percent of U.S. ceded premiums.¹² Together, offshore reinsurers and alien-owned¹³ U.S. reinsurers assumed 88.9 percent of U.S. ceded premiums during the same year.¹⁴ Such access to alien reinsurance contributes to the global diversification of risk, provides claims burden relief to U.S. reinsurers, and mitigates financial impacts of catastrophes.¹⁵

The purchase of reinsurance from reinsurers not domiciled or licensed in the U.S. may expose U.S. domestic insurers to additional credit risk to the extent that any reinsurer is unable to meet the obligation assumed in the reinsurance contract. It similarly presents significant challenges to U.S. state insurance regulators charged with regulating insurer solvency.

Direct Regulation of Authorized Reinsurers

The Office of Insurance Regulation (OIR) directly regulates authorized reinsurers¹⁶ domiciled and licensed in Florida as well as reinsurers licensed in Florida but domiciled in a foreign state.¹⁷ When an insurer cedes business to a licensed reinsurer, the insurer is permitted under statutory accounting rules to recognize a reduction in its liabilities for the amount of ceded liabilities, without a regulatory requirement for the reinsurer to post collateral to secure the reinsurer's ultimate payment of the reinsured liabilities.¹⁸ A reinsurer licensed in a state is subject to solvency and other regulations imposed by the state which are applicable to insurance companies generally.

⁸ *Id.*

⁹ *Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 408 (1929); *Citizens Cas. Co. v. Am. Glass. Co.*, 166 F.2d 91, 95 (7th Cir. 1948).

¹⁰ *See supra* Note 7 at 1.

¹¹ *Id.*

¹² Reinsurance Association of America, *Offshore Reinsurance in the U.S. Market: 2018 Data*, 13

https://www.reinsurance.org/RAA/Industry_Data_Center/Offshore_Report/Offshore_Report_2018_Data.html (last visited January 13, 2020).

¹³ In the insurance context, “alien” means domiciled in a foreign country. “Alien” is distinguishable from “foreign,” which means domiciled in a state other than the one in which the company is writing business.

¹⁴ *See supra* Note 12 at 14.

¹⁵ International Association of Insurance Supervisors, *Reinsurance and Financial Stability*, 8 (July 2012), <https://www.iaisweb.org/file/34046/reinsurance-and-financial-stability> (last visited January 13, 2020).

¹⁶ An “authorized” reinsurer is one that is licensed or accredited in a given state.

¹⁷ Section 624.610(3)(a),(b), F.S.

¹⁸ *Id.*

Indirect Regulation of Unauthorized Reinsurers

In the absence of direct supervisory authority, OIR indirectly regulates unauthorized reinsurers¹⁹ by limiting the ceding insurer's credit for reinsurance unless the reinsurer posts collateral to secure the reinsurer's ultimate payment of the reinsured liabilities.²⁰

The 2007 Legislature reduced the collateral requirements for insurers to receive credit for reinsurance commensurate with the financial strength of the reinsurer and the quality of the regulatory regime, and authorized OIR to enact rulemaking to implement corresponding regulatory changes.²¹ In considering whether to allow credit for reinsurance, the reinsurer must hold surplus in excess of \$250 million and have a secure financial strength rating (SFSR) from at least two statistical rating organizations deemed acceptable by the Commissioner of OIR (Commissioner).²² The Commissioner must also consider:

- The domiciliary regulatory jurisdiction of the reinsurer;
- The structure and authority of the domiciliary regulator with regard to solvency regulation and the financial surveillance of the reinsurer;
- The substance of financial and operating standards for reinsurers in the domiciliary jurisdiction;
- The form and substance of financial reports required to be filed by the reinsurers in the domiciliary jurisdiction or other public financial statements filed in accordance with generally accepted accounting principles;
- The domiciliary regulator's willingness to cooperate with U.S. regulators in general and OIR in particular;
- The history of performance by reinsurers in the domiciliary jurisdiction;
- Any documented evidence of substantial problems with the enforcement of valid U.S. judgments in the domiciliary jurisdiction; and
- Any other matters deemed relevant by the Commissioner.²³

The collateral required to allow 100 percent credit shall be no less than the percentage specified for the lowest rating as indicated in the SFSR below:²⁴

Rating	Collateral Required	AM Best	S&P	Moody's	Fitch	Demotech
Secure – 1	0%	A++	AAA	Aaa	AAA	A"
Secure – 2	10%	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-	A'
Secure – 3	20%	A	A+, A	A1, A2	A+, A	A

¹⁹ An "unauthorized" reinsurer fails to meet the definition of an authorized reinsurer. *See supra* Note 13. Furthermore, "unauthorized" is distinguishable from "non-U.S.". A U.S. reinsurer that does not meet the definition of "authorized" reinsurer is considered "unauthorized". However, non-U.S. reinsurers cannot become accredited in a U.S. state based on their own domestic license.

²⁰ Historically, in order to receive financial statement credit for unauthorized reinsurance, a U.S. insurer must have been the beneficiary of security posted by the unauthorized reinsurer, providing collateral equal to 100 percent of the actuarially-estimated liabilities under the reinsurance contract.

²¹ Ch. 2007-1, s. 15, Laws of Fla.

²² Section 624.610(3)(e), F.S.

²³ Section 624.610(3)(e)(1)-(8), F.S.

²⁴ Rule 69O-144.007(4), F.A.C.

Secure – 4	50%	A-	A-	A3	A-	n/a
Secure – 5	75%	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-	n/a
Vulnerable – 6	100%	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD	n/a

Revisions to NAIC Model Law 785 and Regulation 786

The 2019 revisions to the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) incorporate substantive provisions from the 2017 Bilateral Agreement between the United States and European Union on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement) reached between the U.S. Department of the Treasury, U.S. Trade Representative, and the European Union (EU).

The Covered Agreement, in part, commits the U.S. to phasing-out state-based reinsurance collateral requirements for EU reinsurers by 2022.²⁵ It further exempts EU reinsurers from current U.S. domiciliary requirements for authorized reinsurer status by creating a new, broader classification of jurisdiction called “reciprocal jurisdiction.”²⁶ Credit for Reinsurance Model Law (#785) defines a “reciprocal jurisdiction” as a jurisdiction that meets one of the following requirements:

- A non-U.S. jurisdiction that is subject to an in-force covered agreement with the U.S., each within its legal authority, or in the case of a covered agreement between the U.S. and EU, is a member state of the EU;
- A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or
- A qualified jurisdiction, as determined by the Commissioner.²⁷

“Covered agreements” are authorized under 31 U.S.C ss. 313 and 314 where the term is defined. The term means:

a written bilateral or multilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance that—

(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

(B) relates to the recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or

²⁵ United States Department of Treasury, Federal Insurance Office, *Statement of the United States on the Covered Agreement with the European Union*, 1 (September 22, 2017), https://home.treasury.gov/system/files/311/US_Covered_Agreement_Policy_Statement_Issued_September_2017_1.pdf (last visited January 13, 2020).

²⁶ *Id.*

²⁷ National Association of Insurance Commissioners, *Credit for Reinsurance Model Law-785*, 7 (Summer 2019), <https://www.naic.org/store/free/MDL-785.pdf> (last visited January 13, 2020).

reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.²⁸

NAIC Accreditation and Adoption of Model Laws

NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department to promote sound insurer financial solvency regulation. The accreditation program is also designed to allow for interstate cooperation and reduces regulatory redundancies.²⁹ For example, the OIR's examinations may be recognized by other member states, thereby avoiding the need to have a Florida domestic insurer examined by multiple states.³⁰

Currently, all 50 states, the District of Columbia and Puerto Rico are accredited. Once accredited, a state is subject to a full accreditation review every five years, as well as interim reviews.³¹ One major component of NAIC accreditation standards is the adequacy of solvency laws and regulations in each accredited state to protect consumers and guaranty funds, through the adoption of model laws.³²

Effective January 1, 2019, NAIC included the 2011 revisions to the Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) as accreditation standards.³³ It subsequently included the 2019 revisions to Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) as accreditation standards to be effective October 1, 2022.³⁴

III. Effect of Proposed Changes:

Section 1 amends s. 624.610, F.S., which provides the criteria under which an insurer is given credit for reinsurance. The bill provides insurers with credit for reinsurance if the reinsurer is domiciled in a "reciprocal jurisdiction" and meets the requirements of this section. It defines "reciprocal jurisdiction" as a jurisdiction that is:

²⁸ 31 U.S.C. s. 313(r)(2).

²⁹ National Association of Insurance Commissioners, *Financial Regulation Standards and Accreditation Program*, 4 (December 2019), https://content.naic.org/sites/default/files/inline-files/FRSA%20Pamphlet%2012-2019_0.pdf (last visited January 13, 2020).

³⁰ *Id.* at 2.

³¹ National Association of Insurance Commissioners, *State Legislative Brief: The NAIC Accreditation Program* (November 2019), https://www.naic.org/documents/cmte_legislative_liaison_brief_accreditation.pdf (last visited January 13, 2020).

³² See *supra* Note 29.

³³ *Id.*

³⁴ National Association of Insurance Commissioners, *CIPR Topics: Reinsurance* (September 1, 2019), https://content.naic.org/cipr_topics/topic_reinsurance.htm (last visited January 13, 2020).

- A non-U.S. jurisdiction that is subject to an in-force covered agreement³⁵ with the U.S. or, in the case of a covered agreement between the United States and the European Union,³⁶ an E.U. member state;
- A U.S. jurisdiction that meets the NAIC's requirements for accreditation; or
- Any other qualified jurisdiction that meets the OIR's requirements as set forth in rule.

A reinsurer domiciled in a reciprocal jurisdiction must maintain minimum capital and surplus amounts, and a minimum solvency or capital ratio as specified by financial services commission rule. The reinsurer's supervisory authority must annually confirm to OIR whether the reinsurer complies with these minimum requirements. In the event the reinsurer falls below these minimum requirements, or if regulatory action is taken against it for serious noncompliance with applicable law, the reinsurer must provide written notice to OIR.

The reinsurer must consent to the jurisdiction of Florida state courts and the designation of the Chief Financial Officer for purposes of lawful service of process in any action, suit, or proceeding brought by the insurer against the reinsurer. The reinsurer must consent to pay all final judgements declared enforceable in the jurisdiction where the judgment was obtained, and the reinsurance contract must contain a provision requiring the reinsurer to provide security equal to 100 percent of reinsurance liabilities in the event the reinsurer resists enforcement of a final judgment or a properly enforceable arbitration award.

The reinsurer must agree to provide security equal to 100 percent of reinsurance liabilities and notify the insurer if the reinsurer enters into receivership for conservation, rehabilitation, or liquidation purposes.

The reinsurer must pay claims promptly pursuant to OIR rule.

The reinsurer must provide annual documentation to the OIR required by commission rule and may provide to the OIR information on a voluntary basis.

OIR may revoke the reinsurer's eligibility for recognition if the reinsurer fails to meet one or more of the requirements of the subsection. In the event OIR revokes the reinsurer's eligibility, the insurer does not qualify for credit for reinsurance except to the extent the reinsurer has provided collateral to secure the reinsurance liabilities.

Many reinsurers domiciled in what the bill defines as "reciprocal jurisdictions" are currently required under Florida law to hold surplus in excess of \$250 million and have a secure financial strength rating from at least two statistical rating agencies.³⁷ The bill will allow reinsurers in reciprocal jurisdictions to instead meet the requirements created by this bill. This will allow

³⁵ The bill defines a "covered agreement" to mean an agreement entered into pursuant 31 U.S.C. ss. 313 and 314 (The Dodd-Frank Wall Street Reform and Consumer Protection Act) which is effective or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

³⁶ The United States entered into such an agreement on September 22, 2017, the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance.

³⁷ See s. 624.610(3)(e), F.S.

insurers in this state to receive credit for reinsurance obtained from reinsurers with a surplus of less than \$250 million if the reinsurer is domiciled in a reciprocal jurisdiction and otherwise meets the requirements established by the bill.

Section 2 provides an effective date of July 1, 2020.

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:

At line 194, the bill references “certain additional requirements” that would be requisite conditions for the Office of Insurance Regulation to determine whether a jurisdiction is a qualified jurisdiction, but neither lists such additional requirements nor specifies standards or guidelines for the Office of Insurance Regulation to promulgate rules.

At line 258, the bill references “certain documentation” the reinsurer or its successors must provide the Office of Insurance Regulation upon request by the Office of Insurance Regulation, but neither lists such documentation nor specifies standards or guidelines for the Office of Insurance Regulation to promulgate rules.

The Legislature may wish to amend the provisions at lines 194 and 258 to minimize the potential for the bill to be construed as giving too much discretion to the Office of Insurance Regulation in violation of the nondelegation doctrine implicit in Article II, s. 3 of the State Constitution.³⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁸ See *Askew v. Cross Key Waterways*, 372 So. 2d 913 (Fla. 1978).

B. Private Sector Impact:

Allowing insurers to receive credit for reinsurance and eliminating additional collateral requirements for reinsurers if the reinsurer is domiciled in a “reciprocal jurisdiction” provides U.S. domestic insurers with greater access to global reinsurance and improves diversifying of risk.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.610 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Broxson

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A bill to be entitled

An act relating to credit for reinsurance; amending s. 624.610, F.S.; adding conditions under which a ceding insurer must be allowed credit for reinsurance; defining the terms "reciprocal jurisdiction" and "covered agreement"; specifying requirements for assuming insurers and reinsurance agreements; requiring the Financial Services Commission to adopt certain rules; authorizing a ceding insurer or its representative that is subject to rehabilitation, liquidation, or conservation to seek a certain court order; specifying a limitation on credit taken by a ceding insurer; authorizing the Office of Insurance Regulation to revoke or suspend an assuming insurer's eligibility under certain conditions; providing construction; deleting an obsolete provision; conforming provisions to changes made by the act; making technical changes; providing an effective date.

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

Section 1. Present subsections (4) through (14) of section 624.610, Florida Statutes, are redesignated as subsections (5) through (15), respectively, a new subsection (4) is added to that section, and subsection (2), paragraphs (c) and (e) of subsection (3), present subsections (4) and (15), paragraph (a) of present subsection (5), and paragraph (b) of present subsection (11) are amended, to read:

624.610 Reinsurance.—

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(2) Credit for reinsurance must be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (3) (a), paragraph (3) (b), ~~or~~ paragraph (3) (c), or subsection (4). Credit must be allowed under paragraph (3) (a) or paragraph (3) (b) only for cessions of those kinds or lines of business that the assuming insurer is licensed, authorized, or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed or authorized to transact insurance or reinsurance.

(3)

(c)1. Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in paragraph (6) (b) ~~(5) (b)~~, for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the office to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the office information substantially the same as that required to be reported on the NAIC Annual Statement form by authorized insurers. The assuming insurer shall submit to examination of its books and records by the office and bear the expense of examination.

2.a. Credit for reinsurance must not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(I) The insurance regulator of the state in which the trust is domiciled; or

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(II) The insurance regulator of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

b. The form of the trust and any trust amendments must be filed with the insurance regulator of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the insurance regulator.

c. The trust remains in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustee of the trust shall report to the insurance regulator in writing the balance of the trust and list the trust's investments at the preceding year end, and shall certify that the trust will not expire prior to the following December 31.

3. The following requirements apply to the following categories of assuming insurer:

a. The trust fund for a single assuming insurer consists of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20 million. Not

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less than 50 percent of the funds in the trust covering the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and trustee surplus shall consist of assets of a quality substantially similar to that required in part II of chapter 625. Clean, irrevocable, unconditional, and evergreen letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (6)(a) ~~(5)(a)~~, effective no later than December 31 of the year for which the filing is made and in the possession of the trust on or before the filing date of its annual statement, may be used to fund the remainder of the trust and trustee surplus.

b.(I) In the case of a group including incorporated and individual unincorporated underwriters:

(A) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust consists of a trustee account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(B) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust consists of a trustee account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) In addition to these trusts, the group shall maintain in trust a trustee surplus of which \$100 million must be held

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jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(II) The incorporated members of the group must not be engaged in any business other than underwriting of a member of the group, and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as the unincorporated members.

(III) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the insurance regulator an annual certification by the group's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(e) If the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), paragraph (b), paragraph (c), or paragraph (d), the office commissioner may allow credit, but only if the assuming insurer holds surplus in excess of \$250 million and has a secure financial strength rating from at least two statistical rating organizations deemed acceptable by the office commissioner as having experience and expertise in rating insurers doing business in Florida, including, but not limited to, Standard & Poor's, Moody's Investors Service, Fitch Ratings, A.M. Best Company, and Demotech. In determining whether credit should be allowed, the office commissioner shall consider the following:

1. The domiciliary regulatory jurisdiction of the assuming insurer.
2. The structure and authority of the domiciliary regulator

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with regard to solvency regulation requirements and the financial surveillance of the reinsurer.

3. The substance of financial and operating standards for reinsurers in the domiciliary jurisdiction.

4. The form and substance of financial reports required to be filed by the reinsurers in the domiciliary jurisdiction or other public financial statements filed in accordance with generally accepted accounting principles.

5. The domiciliary regulator's willingness to cooperate with United States regulators in general and the office in particular.

6. The history of performance by reinsurers in the domiciliary jurisdiction.

7. Any documented evidence of substantial problems with the enforcement of valid United States judgments in the domiciliary jurisdiction.

8. Any other matters deemed relevant by the office commissioner. The office commissioner shall give appropriate consideration to insurer group ratings that may have been issued. The office commissioner may, in lieu of granting full credit under this subsection, reduce the amount required to be held in trust under paragraph (c).

(4) Credit must be allowed when the reinsurance is ceded to an assuming insurer meeting the requirements of this subsection.

(a) The assuming insurer must be licensed in, and have its head office in or be domiciled in, as applicable, a reciprocal jurisdiction. As used in this subsection, the term "reciprocal jurisdiction" means a jurisdiction that is any of the following:

1. A non-United States jurisdiction that is subject to an

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in-force covered agreement with the United States, each within its legal authority; or, in the case of a covered agreement between the United States and the European Union, a jurisdiction that is a member state of the European Union. As used in this paragraph, the term "covered agreement" means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. ss. 313 and 314, which is currently in effect or in a period of provisional application and which addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

2. A United States jurisdiction that meets the requirements for accreditation under the Financial Regulation Standards and Accreditation Program of the National Association of Insurance Commissioners.

3. A qualified jurisdiction, as determined by the office, which is not otherwise described in subparagraph 1. or subparagraph 2. and which meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by commission rule.

(b) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount specified by commission rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis minimum capital and surplus

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equivalents (net of liabilities) calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts specified by commission rule.

(c) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as specified by commission rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer is licensed and has its head office or where it is domiciled, as applicable.

(d) The assuming insurer must agree and provide adequate assurance to the office, in a form specified by the commission, of all of the following:

1. Prompt written notice and explanation to the office if the assuming insurer falls below the minimum requirements set forth in paragraph (b) or paragraph (c), or if any regulatory action is taken against it for serious noncompliance with applicable law.

2. The assuming insurer's written consent to the jurisdiction of the courts of this state and designation of the Chief Financial Officer, pursuant to s. 48.151, or of a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company. This subparagraph does not limit or alter the capacity of parties to a reinsurance agreement to agree to an alternative dispute resolution mechanism, except to the extent that such

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233 agreements are unenforceable under applicable insolvency or
 234 delinquency laws.

235 3. The assuming insurer's written consent to pay all final
 236 judgments, wherever enforcement is sought, obtained by a ceding
 237 insurer or its legal successor which have been declared
 238 enforceable in the jurisdiction where the judgment was obtained.

239 4. Each reinsurance agreement must include a provision
 240 requiring the assuming insurer to provide security in an amount
 241 equal to 100 percent of the assuming insurer's liabilities
 242 attributable to reinsurance ceded pursuant to that agreement, if
 243 the assuming insurer resists enforcement of a final judgment
 244 that is enforceable under the law of the jurisdiction in which
 245 it was obtained or of a properly enforceable arbitration award,
 246 whether obtained by the ceding insurer or by its legal successor
 247 on behalf of its resolution estate.

248 5. The assuming insurer's confirmation that it is not
 249 presently participating in any solvent scheme of arrangement
 250 which involves this state's ceding insurers, and must agree to
 251 notify the ceding insurer and the office and to provide security
 252 in an amount equal to 100 percent of the assuming insurer's
 253 liabilities to the ceding insurer if the assuming insurer enters
 254 into such a solvent scheme of arrangement. Such security must be
 255 consistent with subsection (3) and this subsection.

256 (e) If requested by the office, the assuming insurer or its
 257 legal successor must provide on behalf of itself and any legal
 258 predecessors certain documentation to the office pursuant to
 259 criteria set forth by commission rule.

260 (f) The assuming insurer must maintain a practice of prompt
 261 payment of claims under reinsurance agreements pursuant to

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262 criteria set forth by commission rule.

263 (g) The assuming insurer's supervisory authority must
 264 confirm to the office on an annual basis, on a form adopted by
 265 the commission, that, as of the preceding December 31 or at the
 266 annual date otherwise statutorily reported to the reciprocal
 267 jurisdiction, the assuming insurer complied with the
 268 requirements of paragraphs (b) and (c).

269 (h) This subsection does not preclude an assuming insurer
 270 from providing the office with information on a voluntary basis.

271 (i) If subject to a legal process of rehabilitation,
 272 liquidation, or conservation, as applicable, the ceding insurer
 273 or its representative may seek and, if determined appropriate by
 274 the court in which the proceedings are pending, obtain an order
 275 requiring that the assuming insurer post security for all
 276 outstanding ceded liabilities.

277 (j) This subsection does not limit or alter the capacity of
 278 parties to a reinsurance agreement to agree on requirements for
 279 security or other terms in the reinsurance agreement, except as
 280 expressly prohibited by this section or other applicable law or
 281 rule of the commission.

282 (k)1. Credit may be taken under this subsection only for
 283 reinsurance agreements entered into, amended, or renewed on or
 284 after the date on which the assuming insurer has satisfied the
 285 requirements to assume reinsurance under this subsection, and
 286 only with respect to losses incurred and reserves reported on or
 287 after the later of the date on which the assuming insurer has
 288 met all eligibility requirements pursuant to this subsection or
 289 the effective date of the new reinsurance agreement, amendment,
 290 or renewal.

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2. This paragraph does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subsection, if the reinsurance qualifies for credit under any other applicable provision of this section.

3. This subsection does not authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as permitted by the terms of the agreement.

4. This subsection does not limit or alter the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(1) If the office determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the office may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection.

1. During the suspension of an assuming insurer's eligibility, a reinsurance agreement issued, amended, or renewed after the effective date of the suspension does not qualify for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with this subsection.

2. If an assuming insurer's eligibility is revoked, a credit for reinsurance may not be granted after the effective date of the revocation with respect to any reinsurance agreement entered into by the assuming insurer, including a reinsurance agreement entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the office and

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consistent with this subsection.

~~(5)(4)~~ An asset allowed or a deduction from liability taken for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of subsections (2), ~~and~~ (3), and (4) is allowed in an amount not exceeding the liabilities carried by the ceding insurer. The deduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution, as defined in paragraph (6)(b) ~~(5)(b)~~. This security may be in the form of:

(a) Cash in United States dollars;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets pursuant to part II of chapter 625;

(c) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (6)(a) ~~(5)(a)~~, effective no later than December 31 of the year for which the filing is made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement; or

(d) Any other form of security acceptable to the office.

~~(6)(a)(5)(a)~~ For purposes of paragraph (5)(c) ~~(4)(c)~~ regarding letters of credit, a "qualified United States

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financial institution" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or any state thereof;

2. Is regulated, supervised, and examined by United States or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by either the office or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the office.

(12)~~(11)~~

(b) The summary statement must be signed and attested to by either the chief executive officer or the chief financial officer of the reporting insurer. In addition to the summary statement, the office may require the filing of any supporting information relating to the ceding of such risks as it deems necessary. If the summary statement prepared by the ceding insurer discloses that the net effect of a reinsurance treaty or treaties (or series of treaties with one or more affiliated reinsurers entered into for the purpose of avoiding the following threshold amount) at any time results in an increase of more than 25 percent to the insurer's surplus as to policyholders, then the insurer shall certify in writing to the office that the relevant reinsurance treaty or treaties comply with the accounting requirements contained in any rule adopted by the commission under subsection (15) ~~(14)~~. If such

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

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certificate is filed after the summary statement of such reinsurance treaty or treaties, the insurer shall refile the summary statement with the certificate. In any event, the certificate must state that a copy of the certificate was sent to the reinsurer under the reinsurance treaty.

~~(15) Any reinsurer approved pursuant to s. 624.610(3)(a)2., as such provision existed prior to July 1, 2000, which fails to obtain accreditation pursuant to this section prior to December 30, 2003, shall have its approval terminated by operation of law on that date.~~

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

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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: January 22, 2020

I respectfully request that **Senate Bill #1376**, relating to Credit for Reinsurance, 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)

01/28/20

Meeting Date

1376

Bill Number (if applicable)

Topic Credit For Reinsurance

Amendment Barcode (if applicable)

Name TIM STANFIELD

Job Title Atty

Address 101 E College Ave
Street

Phone 222 6891

Tallahassee FL 32301
City State Zip

Email stanfieldt@gflaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Insurance Council

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)

1/28/2020

Meeting Date

1376

Bill Number (if applicable)

Topic Credit for Reinsurance

Amendment Barcode (if applicable)

Name Susanne Murphy

Job Title Deputy Commissioner

Address 400 E. Gaines Street

Phone 850-413-5005

Street

Tallahassee

FL

32399

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Office of Insurance Regulation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

409 The Capitol

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
1/23/20	SM	Report Submitted
1/27/20	JU	Favorable
	ACJ	
	AP	

January 23, 2020

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 28** – Senator Gibson
HB 6507 – Representative Daniels
Relief of Clifford Williams by the State of Florida

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$2,150,000 FROM THE GENERAL REVENUE FUND FOR THE PURCHASE OF AN ANNUITY, AND A WAIVER OF TUITION AND FEES FOR UP TO 120 HOURS OF INSTRUCTION, TO COMPENSATE CLIFFORD WILLIAMS FOR 42 YEARS AND 11 MONTHS OF WRONGFUL INCARCERATION.

FINDINGS OF FACT:

General Overview

On May 2, 1976, Clifford Williams (the claimant) and his nephew, Hubert Nathan Myers (Nathan Myers), were arrested and charged with first-degree murder of Jeanette Williams and attempted murder of Nina Marshall. Mr. Williams and Mr. Myers were convicted, eventually both were sentenced to life in prison, and remained incarcerated for 42 years and 11 months.

In seeking post-conviction relief, Mr. Myers sent a letter to the Office of the State Attorney of the Fourth Judicial Circuit in 2017. After the Conviction Integrity Review (CIR) Division was established within the Office of the State Attorney in January

of 2018, the CIR Division began a review and investigation based upon the request of Mr. Myers.¹

The CIR Division's review and investigation resulted in a report concluding Mr. Myers and Mr. Williams were serving life sentences based upon testimony from one person, and "in the face of overwhelming contradictory forensic evidence and alibi testimony,"² which had not been presented to the jury.

The CIR Division found Mr. Myers and Mr. Williams demonstrated claims of actual innocence substantiated by credible evidence³ and an audit board⁴ reviewed the report as part of the CIR Division process. The audit board was unanimous in finding there was not sufficient evidence of guilt to support the convictions; a lack of faith in the convictions; "no definitive proof of innocence, such as DNA evidence"; and there was "sufficient credible evidence to support a finding that the defendants are, in fact, 'probably' innocent of the charges."⁵ The State Attorney of the Fourth Judicial Circuit agreed with the findings.⁶

On March 28, 2019, the convictions and sentences of Mr. Myers and Mr. Williams were vacated.⁷

¹ See Special Master Hearing, Testimony of Shelley Thibodeau (Director of CIR Division), 53:10–55:30 (Oct. 30, 2019) (discussing the CIR process—generally and specifically regarding this case—and that she and an investigator lead the reviews and investigations).

² State Attorney's Office of the Fourth Judicial Circuit of Florida, Conviction Integrity Review Division Investigation (CIR Report), 42 (Mar. 2019); see https://secureservercdn.net/198.71.233.254/9c2.a8b.myftpupload.com/wp-content/uploads/2019/03/CIR_Investigative_Report_FINAL_3.28.19_R.pdf (last visited Jan. 16, 2020). The report was authored by Ms. Shelley Thibodeau, Assistant State Attorney and Director of the CIR Division. Special Master Hearing, Testimony from Shelley Thibodeau, 33:30–36:15 (Oct. 30, 2019) (discussing the general contents of the CIR Division report).

³ CIR Report at 44.

⁴ The independent audit board serves in a fact-finding capacity as a "backstop" to the CIR Division director's investigation and help prevent the potential for confirmation bias. The board reviews all of the information provided and audits the director's investigation. The board can make suggestions and ask questions regarding consideration or review of information. Special Master Hearing at 46:00–47:10. The independent audit board for this matter was comprised of two former prosecutors, a retired special agent from the Federal Bureau of Investigation, a former public defender, and a community member at large. *Id.* at 47:10–47:40.

⁵ CIR Report at 43.

⁶ Claimant's Exhibit 2, Video of State Attorney's Press Conference at 8:49–9:16 (Mar. 28, 2019).

⁷ Order Vacating Defendant's Judgment and Sentences, State of Fla. v. Williams, No. 1976-CF-000912 (Fla. 4th Circ. Ct.) (Mar. 28, 2019). The director of the CIR Division said the judge presiding over the hearing noted during the hearing she had read the CIR report, did some of her own research, and read prior post-conviction motions. Special Master Hearing at 37:00–38:44 (discussing interaction of the claimant's attorneys and the State Attorney's Office with the judge presiding over the hearing and what was provided for consideration).

Subsequently, Mr. Myers filed a petition for compensation under the Victims of Wrongful Incarceration Compensation Act.⁸ On September 10, 2019, the court in which he sought relief determined he is eligible to receive compensation and demonstrated actual innocence by clear and convincing evidence as required by statute.⁹

Mr. Williams, however, has two unrelated prior felonies¹⁰ precluding him from receiving compensation through the statutory procedure and seeks relief through a claim bill. Despite the prior felonies, attorneys for Mr. Williams filed a petition due to the 90-day jurisdictional window of the statute.¹¹ Mr. Williams also filed a motion to have portions of the Victims of Wrongful Incarceration Compensation Act found unconstitutional and that matter is ongoing.¹²

The Shooting as Alleged by the Surviving Witness and Law Enforcement Interaction as Described in the General Offense Report

On May 2, 1976, at approximately 1:30 a.m., Jeanette Williams and Nina Marshall were shot while in their bed.¹³ Ms. Williams died instantly¹⁴ from the bullet that entered the back of her head while Ms. Marshall survived the wounds she sustained.¹⁵

Ms. Marshall recalled falling asleep while watching television, waking at the sound of someone unlocking the door, falling

⁸ Chapter 961, Fla. Stat.

⁹ Order Granting Petition of Wrongful Incarceration and Eligibility for Compensation Pursuant to the “Victims of Wrongful Incarceration Act” of Florida, State of Fla. v. Hubert Nathan Myers, No. 76-CF-000912 (Fla. 4th Circ. Ct.) (Sept. 10, 2019).

¹⁰ In 1960, Mr. Williams was found guilty of attempted arson and sentenced to two years in county jail. In 1965, Mr. Williams was found guilty of robbery and sentenced to eight years in prison.

¹¹ Special Master Hearing at 48:00–48:36.

¹² Motion to Declare Portions of Chapter 961, Florida Statutes, “Victims of Wrongful Incarceration Compensation Act” Unconstitutional, State of Fla. v. Williams, No. 76-912 (Fla. 4th Cir. Ct.) (June 10, 2019); *see also* Senate Rule 4.81(6) (regarding when claim bills shall be held in abeyance but stating “[t]his section does not apply to a bill which relates to a claim of wrongful incarceration”).

¹³ See Jacksonville Police Department, General Offense Report, at 2 and 7 (July 8, 1976).

¹⁴ State of Fla. v. Williams and Myers, No. 76-912 (Fla. 4th Circ. Ct.) (Second Trial Testimony of Dr. Sam E. Stephenson) 336 (Sept. 1976).

¹⁵ Dr. Stephenson, the Chief of Surgery at University Hospital who oversaw Ms. Marshall’s surgery stated she had two, possibly three, gunshot wounds. There was a “through and through” wound. One bullet “entered just below the left cavity on the left side and blew out the anterior part of the neck about the level of the thyroid.” The second wound (the “through and through” entered on the left side of her neck, across her voice box, and exited through the right side of her neck. The third wound was on her left forearm and was the only bullet in her body when she presented at the hospital. He also noted Ms. Marshall had only “mild shock,” which would have had “practically” no effect on an individual. Second Trial Testimony of Dr. Sam E. Stephenson at 326–328.

back asleep, and sometime later waking for the second time with a burning sensation in her neck from a bullet wound.¹⁶ She heard popping sounds and said the sounds were coming from in front of the television, where two men were standing.¹⁷ She said she saw sparks as they fired guns, wrapped in something, from the foot of the bed.¹⁸ She claimed she saw who they were when she rolled onto the floor, then sat up while leaning on the bed, and she then fell back to the floor.¹⁹

Ms. Marshall gave inconsistent statements with regard to what occurred after she was shot. In her written statement from the morning of May 4, 1976, Ms. Marshall stated, after she was shot, she laid across Ms. Williams and acted as though she were dead.²⁰ Other inconsistent statements from Ms. Marshall were she fell out of the bed with both knees on the ground and then an account that she fell out of the bed with one leg still on the bed.²¹ Ms. Marshall also gave conflicting testimony as to whether Ms. Williams said anything during the shooting.²²

After the shooting, Ms. Marshall said she was stepped over (but could not recall if she was stepped over by one or both shooters after she fell to the floor).²³ She also claimed this was the moment she identified the shooters (while she was laying on the ground) because she saw them looking into the room from the doorway on their way out. She later exited the apartment, attempted to get help at a neighboring apartment but no one opened the door; she then walked toward the road where she said she saw Clifford Williams and Nathan Meyers walking toward the party; and a passerby stopped and gave her a ride to the hospital.²⁴ Multiple times, the driver asked

¹⁶ First Trial Testimony from Nina Marshall, 23 (July 1976); Deposition, Nina Marshall, 50–51 (July 8, 1976).

¹⁷ Second Trial Testimony from Nina Marshall at 176; Deposition, Nina Marshall at 52–53.

¹⁸ See Deposition, Detective Richard Bowen, 41 (June 15, 1976). Detective Bowen stated no weapon(s) or items used to muffle a gun were found. *Id.* at 42–43.

¹⁹ First Trial Testimony of Nina Marshall at 122 (stating she saw sparks coming from two directions); Deposition, Nina Marshall at 55–58.

²⁰ Written Statement from Nina Marshall (May 5, 1976). See Deposition, Henry Curtis, 5 (January 2, 1997) (stating Ms. Marshall told him she had laid across Ms. Williams and played dead).

²¹ First Trial Testimony from Nina Marshall at 65–69.

²² First Trial Testimony from Nina Marshall at 63 (stating Ms. Williams called out for her).

²³ Deposition, Nina Marshall at 106; see Deposition, Nina Marshall at 58–59; see also Nina Marshall, Written Statement (May 5, 1986). Ms. Marshall also stated she saw them walking outside and did not pay any attention as to whether they had pillows or blankets. First Trial Testimony from Nina Marshall at 90.

²⁴ Second Trial Testimony from Nina Marshall at 180; Deposition, Nina Marshall, at 65–66. Ms. Marshall was logged into the emergency room at 2:07 a.m. on May 2, 1976. General Offense Report at 12. Harold Torrence was the individual who gave Ms. Marshall a ride to the hospital and confirms there was a vehicle in front of him—

Ms. Marshall who shot her but she did not answer the question. While in the hospital, Ms. Marshall wrote separate notes to an officer—one with “Clifford Williams” and the other with “Nathan”²⁵ and claimed both men had entered the apartment and shot her and Ms. Williams.²⁶

Around 2:40 a.m., officers noted approximately 35–50 people gathered in a crowd at the scene.²⁷ While speaking with people from the crowd, an officer was approached by Nathan Myers, who identified himself as a resident of the apartment and asked what happened.²⁸ In response to inquiries from the officer, Mr. Myers stated he had not been at the apartment since the morning and provided information about where he had been—including his presence at the party down the street.²⁹ Mr. Williams also spoke with the officer and stated he had been at the party, as well.

As the officer’s investigation continued, the officer determined Ms. Rachel Jones hosted the party down the street and Ms. Jones, as well as others, confirmed the attendance of Mr. Myers and Mr. Williams at the party, before and during the time when shots rang out.³⁰ See footnotes 90 and 91 for alibi witness accounts.

Alleged Motives and Statements

Although the CIR investigation was not able to substantiate any of the following alleged motives and statements, the following information is provided as a matter of completeness with regard to contents of records and information furnished.

which matches Ms. Marshall’s account; however, he did not see any men walking down the street and Ms. Williams did not stop for a significant period of time (as she stated she did when seeing Mr. Williams and Mr. Myers) once she started toward his vehicle. Second Trial Testimony from Harold Torrence at 310, 315, 318, and 322; Deposition, Harold Torrence 4 (July 6, 1976). Mr. Torrence said he asked Ms. Marshall five times who shot her and she did not answer but told him to stop talking and get her to the hospital. Deposition, Harold Torrence at 5–6, 9; see Second Trial Testimony from Harold Torrence at 318.

²⁵ General Offense Report at 6. A third note requested for someone to check on Jeanette Williams. See Hospital Notes and Deposition, Officer Kenneth Monroe (July 7, 1976).

²⁶ Second Trial Testimony from Nina Marshall at 167; General Offense Report at 15–16. Mr. Myers, Ms. Marshall, and Ms. Williams were roommates and Mr. Williams kept personal items at the apartment, stayed there sometimes, and helped pay rent on occasion and both men had keys to the apartment. Additionally, after Mr. Myers identified himself as someone who lived at the apartment, he was asked to identify Ms. Williams at the crime scene.

²⁷ General Offense Report at 4.

²⁸ *Id.* at 4.

²⁹ *Id.*; Deposition, Detective Richard Bowen at 26.

³⁰ General Offense Report at 4.

Records and information provided during the claim bill process show Ms. Marshall made various statements with regard to whether Mr. Williams or Mr. Myers may have had motive to hurt her and Ms. Williams. For example, the police report includes an alleged issue over a drug deal involving Mr. Williams, Mr. Meyers, Ms. Williams, Ms. Marshall, and others. The police report also includes reference to the possibility Mr. Williams demanded \$100 of rent money be returned to him during an alleged physical altercation with Ms. Williams a week before the shooting.³¹

Additionally, in her deposition, Ms. Marshall initially responded in the negative with regard to whether she could think of any reason Mr. Myers would have wanted to shoot her or Ms. Williams. When asked again, “No reason whatsoever?” Ms. Marshall replied, “Nothing but that we had heard them talking about some murders and things. I really don’t know why.”³² Ms. Marshall alleged the conversation occurred about a month, or a month-and-a-half, before the shooting. She stated she overheard “they had killed a guy and took him off and buried him in the woods.”³³ She then indicated it was actually not a conversation with both men that was overheard but an alleged conversation she had with Mr. Myers and she was not sure whether Mr. Williams had heard their conversation.³⁴ She also stated “they” were smoking marijuana at the time of the conversation and Mr. Myers had supposedly bragged about being high.³⁵

With regard to the alleged statement from Mr. Williams, in 1976, a man named Christopher Snype provided a written statement describing statements made to him by an individual named Tony Gordon. Mr. Snype stated Mr. Gordon told him he was around the crime scene when people found out only one person had died and Mr. Williams allegedly walked “over close to him, hit a car with his fist and [said], ‘[Expletive], one of the [expletive] ain’t dead!’”³⁶ Mr. Gordon did not want to be involved and did not cooperate with the CIR investigation.³⁷

³¹ Deposition, Nina Marshall at 73–74;127. General Offense Report at 13–14; Deposition, Detective J.R. Bradley at 46 – 47.

³² Deposition, Nina Marshall at 111.

³³ *Id.* at 116.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Christopher Snype, Statement July 13, 1976.

³⁷ *Infra* 11–12.

The undersigned inquired of counsel and the director of the CIR Division regarding these alleged potential motives and statements, as well as whether anything in the investigation suggested the men had knowledge the shooting would occur. Significantly, the CIR director was unable to substantiate any of the alleged potential motives.³⁸ The director located and interviewed the brother of the individual Ms. Marshall alleged Mr. Williams and Mr. Myers may have killed and buried. Through the interview with the brother of the deceased, the director was informed that the brother heard someone else (not Mr. Williams or Mr. Myers) may be responsible for his brother's death.³⁹

The director also noted concern with changes and variations from Ms. Marshall regarding motives. She also attempted to find, but was not able to develop, any information the men would have had knowledge the shooting was going to happen. Additionally, in response to the alleged comment of Mr. Williams, she did not know the context or what to make of the alleged comment. She noted no one else made a statement similar to Mr. Snype's, and referred to other witnesses not understanding why Mr. Myers and Mr. Williams were being arrested because they had been at the party.⁴⁰

With regard to the relationship of Mr. Myers and Mr. Williams with Ms. Marshall and Ms. Williams, the CIR director noted they had dinner together the Friday before the evening of the party during which the shooting occurred.⁴¹

Arrest of Mr. Williams and Mr. Myers

Officers at the scene were informed of the names written down by Ms. Marshall.⁴² At approximately 3:00 a.m. and 3:10 a.m., respectively, Mr. Williams and Mr. Myers were arrested

³⁸ Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019); see also E-mail correspondence from Shelley Thibodeau (Dec. 18, 2019).

³⁹ *Id.*

⁴⁰ Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

⁴¹ E-mail correspondence from Shelley Thibodeau (Dec. 18, 2019).

⁴² Second Trial Testimony from Nina Williams at 188. Additionally, in July of 1976, Ms. Marshall provided she had smoked marijuana the night of the shooting. Second Trial Testimony from Nina Marshall at 170; First Trial Testimony from Nina Marshall at 16; Deposition, Nina Williams at 106. Deposition, Detective J.R. Bradley at 45. Ms. Marshall stated she used methadone as she had been to the methadone clinic the morning before the shooting. Second Trial Testimony from Nina Marshall, 165; Deposition, Nina Marshall at 16 and 70. First Trial Testimony from Nina Marshall at 6 (July 20, 1976).

for murder and attempted murder.⁴³ The police report notes Mr. Williams shouted to people nearby to get a list of all of the people who were at the party and to contact his attorney.⁴⁴

After being arrested, Mr. Meyers told law enforcement he did not have anything to worry about because he did not shoot the victims and he had been at the party.⁴⁵ Mr. Williams and Mr. Myers have consistently proclaimed their innocence.⁴⁶

The Convictions and Sentences of Mr. Myers and Mr. Williams

Prior to trial, Mr. Myers was offered 2–5 years⁴⁷ in exchange for a guilty plea. Mr. Myers, who was 18-years old at the time, maintained his innocence and did not take the offer.⁴⁸

Mr. Williams and Mr. Myers were tried in July of 1976 (two months after the shooting) and then, after a mistrial was declared, they were tried again in September of 1976, and each faced the death penalty if convicted.

Both men were convicted with Mr. Myers being sentenced to life in prison and Mr. Williams being sentenced to death contrary to the jury's recommendation. Mr. Williams's death sentence was overturned and he was subsequently sentenced to life after spending four years on death row.

Physical Evidence and Information Contradicting Testimony of the Surviving Victim

The Conviction Integrity Review (CIR) Division's investigation and report focused on information not presented to the jury (or not available at the time), including the physical evidence, individuals stating another man had confessed to shooting

⁴³ General Offense Report at 5–6.

⁴⁴ General Offense Report at 5; Deposition, Detective Richard Bowen at 35–36. See *also* Deposition, Officer Robert Horne, 48 (July 14, 1976).

⁴⁵ Deposition, J.R. Bradley at 33–35.

⁴⁶ Williams and Mr. Meyers also independently told officers they had not fired a weapon in the last 24 hours; with Mr. Williams further stating he had not fired a weapon since New Year's. Deposition, Detective J.R. Bradley at 34. The police report contains a statement that the physical evidence matches Ms. Williams's account of shooters in the room while also noting the holes and damage to the window. A part of the report reads, "it appears as though the suspects in this case intended to make it look as though the victims had been shot by someone from the bedroom window." General Offense Report at 16.

⁴⁷ Special Master Hearing, Testimony of Shelley Thibodeau at 1:35:10–1:36:00 Mr. Myers recalled the offer being two years while the State provided the offer was five years. CIR Report at 1, n. 4.

⁴⁸ Special Master Hearing, Testimony of Shelley Thibodeau at 32:30–33:20 (discussing prior attempts at post-conviction relief).

Ms. Williams and Ms. Marshall, and alibi witnesses. This section provides an overview of the CIR Division report (including the findings of crime scene reconstruction professionals⁴⁹) and information provided during the claim bill process.⁵⁰

Sound Experiment

Crime scene reconstruction professionals from Knox and Associates, LLC (Knox) conducted a sound experiment to determine what could be heard at the party if a gun was fired inside of the bedroom versus through the window (from the outside).⁵¹ The shots fired inside of the room “were barely perceptible and were not measurably louder than the ambient noise level” during testing.⁵² Individuals from the State Attorney’s Office who were at the location of the recording device, which was in the location of the party, reported the shots as being “only faintly perceptible.”⁵³

Contrary to the shots fired inside of the bedroom, shots fired from outside the bedroom window produced “clearly perceptible” audio recordings at the location of the party.⁵⁴ The experiment supported statements by witnesses that the shooting had occurred from outside of the bedroom window and contradicted the statements of the lone testifying witness.⁵⁵

Window Screen and Frame

Knox demonstrated, from near contact, three inches, six inches, and 12 inches from the muzzle to the screen, it was possible to fire six shots through the screen and form just a single tear⁵⁶ as was present in the screen from the crime scene.

⁴⁹ See CIR Report. In 2018, the CIR Division hired Knox and Associates, LLC to reconstruct, analyze, and report findings with regard to the crime scene.

⁵⁰ See *generally* Special Master Hearing, Testimony of Shelly Thibodeau at 1:02:45–1:28:56 (describing the CIR’s investigation and comparison to Ms. Marshall’s report).

⁵¹ Special Master Hearing, Testimony of Shelley Thibodeau at 2:04:00–2:05:44 (describing the sound experiment in detail and the inability to hear, at the location of the party, shots fired from inside the bedroom).

⁵² Knox and Associates, LLC Report (Knox) 16–17 (Nov. 27, 2018).

⁵³ *Id.* at 17.

⁵⁴ *Id.*

⁵⁵ *Id.* at 21.

⁵⁶ *Id.* at 17.

The curtains, screen, and window of the north bedroom window all had holes in them.⁵⁷ The lower right portion of the window frame “revealed an apparent bullet hole” and had “carbonaceous material” on it.⁵⁸

Additionally, by deposition in 1976, the lead detective stated, “the physical evidence at the window itself indicated that a projectile of some sort had gone inside of the bedroom from the outside.”⁵⁹ Another detective made the same observation, stating the “screen was pushed from the outside to the inside” and recalled glass fragments being on the bed, which he believed to be from the window.⁶⁰ All of this information supported the shots being fired from outside of the window.

Wound Path

The reconstruction included analysis of the wound paths. Knox found the wound to the back of Ms. Williams’s head was “most consistent” with having been fired from outside of the window.⁶¹ The report states, “other gunshot wounds were non-specific as to location from which they were fired, though all of the gunshot wounds could have been inflicted from outside the bedroom window.”⁶²

The director testified she spent significant time on the issue of wound dynamics and wound path to determine if it would have been possible for the women to have received their injuries from shots being fired at the foot of the bed as Ms. Marshall described. She summarized all of the injuries of Ms. Williams, who was laying on her right side with her back to the window (and was closest to the window), who had wounds to her backside. She had four injuries—three to the back of her left arm and the fatal injury to the back of her head while Ms. Marshall was struck twice. The director highlighted that none of the injuries were to the front side of either woman.⁶³

Using a computer program, the CIR investigation created visual representations of the wound paths with the use of

⁵⁷ General Offense Report at 4.

⁵⁸ FDLE, Tallahassee Regional Crime Laboratory Report (July 5, 1976); see Special Master Hearing, Testimony of Shelley Thibodeau at 1:11:00–1:11:45.

⁵⁹ Deposition, Detective Richard Bowen at 46.

⁶⁰ Deposition, Detective J.R. Bradley at 11–12.

⁶¹ Knox at 18.

⁶² *Id.* at 18.

⁶³ Special Master Hearing, Testimony of Shelley Thibodeau at 1:12:15–1:13:30.

dowels going into entry and exit wounds. The extended dowel moved with the body in the recreation. The finding was of all wounds being demonstrably possible with shots fired from the window, but they could not find a plausible pathway for all wounds when recreating shots being fired from the foot of the bed and television.⁶⁴

The CIR director also testified with regard to the current medical examiner's findings—and particularly, with regard to an irregular wound of significance. The most important wound for the director was the irregular entrance wound because the medical examiner, without knowing information about this case, described the irregularity would be created by the projectile having struck something prior to entering the victim. Striking something would cause the projectile to tumble, which would then result in the unique entrance wound as the projectile entered the skin.⁶⁵ The CIR director found this information significant because, if the shooting had occurred from the foot of the bed—there would not have been an intervening object for the bullet to hit and cause the bullet to tumble and create the irregular entrance wound. However, the information provided by the medical examiner made sense to the director if the bullet was shot through the window and struck the glass, screen, or window frame causing it to tumble and then enter the skin of the victim.⁶⁶ The rest of the entrance wounds on Ms. Williams were circular but for the one irregular wound. This information corroborated the shooting having occurred from outside of the window.⁶⁷

Blood Evidence

The report includes the observation that Ms. Marshall was bleeding profusely from her wounds and left bloody footprints when she left the apartment. The Knox report notes, and pictures from the crime scene show, an absence of bloody footprints from any other individual despite Ms. Marshall stating two people had shot from inside of the bedroom and she was stepped over after she laid on the ground bleeding.⁶⁸

⁶⁴ *Id.* at 1:23:10–1:24:12.

⁶⁵ *Id.* at 1:15:00–1:15:56.

⁶⁶ *Id.* at 1:15:56 – 1:16:38.

⁶⁷ *Id.* at 1:16:38–1:17:14.

⁶⁸ See Knox at 19. The CIR director testified the blood evidence was “a smaller piece of the puzzle” but did identify inconsistencies with Ms. Marshall's statements and the blood evidence. She noted the undisturbed pool of blood where Ms. Marshall laid, injured, in the middle of the floor and a lack of footprints from indoor perpetrators as described by Ms. Marshall. Special Master Hearing at 2:20:40–2:22:40.

Flashes and Sounds of Gunshots

The Knox report found Ms. Marshall's testimony of having seen flashes coming from two guns was inconsistent with her statement that the guns were wrapped in pillows or blankets. The report also notes there were no pillows or blankets with singed or gunshot residue fibers found.⁶⁹

Room Arrangement

A review of evidence demonstrates the shooters would have needed to enter the room, then walk at about a 90-degree angle to get to the foot of the bed to attain the position Ms. Marshall described.⁷⁰ The pictures show an apparently undisturbed box fan balanced on the arms of a small wooden rocking chair, an undisturbed laundry basket filled with stacked laundry,⁷¹ and undisturbed, neatly arranged shoes partially tucked under the dressers.⁷²

The Knox report notes, "[t]he likelihood of a shooter(s) entering the residence and taking a position at the furthestmost position within the scene (foot of the bed and back of the bedroom) is in conflict with the ease of which a shooter could take a position outside and effectively hit targets on the bed." The report also notes shooting from outside would have no risk of survivor identification, defensive movements, and would allow for an unimpeded escape.⁷³

Summary of Knox Report Conclusion

The Knox report provides the following in support of the likelihood the shooting occurred from outside of the bedroom window: 1) broken glass on the floor and on top of the bed by the window; 2) the tear in the window screen; 3) a bullet on the floor below the window; 4) the identified bullet hole in the window frame.⁷⁴ The report also noted the wound to Ms. Williams's head in conjunction with the position of her body was consistent with having been shot from the window. The

⁶⁹ Knox at 20.

⁷⁰ See Special Master Hearing, Testimony of Ms. Thibodeau at 1:02:44–1:06:37 (summarizing the testimony of Ms. Marshall; referencing the police had documented shattered glass on the bed from the window next to the bed, damage to the aluminum screen with prongs facing inward, damage to the window frame they thought was from a bullet, etc.; and noting the physical evidence was not presented to the jury).

⁷¹ The basket of clothes remained how Ms. Williams remembered it prior to the shooting. Deposition, Nina Williams at 92–93; see also Special Master Hearing, Testimony of Shelly Thibodeau at 1:08:00–1:09:03.

⁷² CIR Report, exhibits P and Q at 62–63.

⁷³ Knox at 21.

⁷⁴ *Id.* at 22.

sound experiment demonstrated it would have been unlikely for individuals at a party to have heard gunshots if they were fired from inside the bedroom; and the physical evidence was consistent with shots having been fired from outside of the bedroom window.

Gunshot Residue Testing

The hands of Mr. Williams and Mr. Myers were tested for gunshot residue at approximately 5:15 a.m. on May 2, 1976.⁷⁵ Results of the tests were negative for gunshot residue.⁷⁶

Polygraph

Mr. Myers and Mr. Williams agreed to take polygraph exams. Mr. Myers was asked three questions during the polygraph—all of which asked whether he shot either of the women. He responded in the negative and there was no deception indicated in his exam results.⁷⁷ With regard to Mr. Williams, the polygraph examiner noted he was having difficulty understanding the instructions and was incorrectly answering questions and, therefore, was “not a suitable subject for a polygraph examination” because of his “advanced age.”⁷⁸

Evidence of One Shooter

Analysis of the evidence (including recovered bullets and statements) supports the crime being committed with the use of one gun by a single individual.

Five .38 caliber bullets were recovered (three from the scene and two from the body of Ms. Williams) as well as a damaged .38 caliber bullet from Ms. Marshall.⁷⁹ An additional .32 caliber bullet was removed from Ms. Williams and noted to be from a healed wound as it was covered in scar tissue.⁸⁰ The crime

⁷⁵ General Offense Report at 7. Mr. Williams and Mr. Myers were arrested around 3:00 a.m. while present in the crowd at the scene. *Id.* at 5.

⁷⁶ Department of the Treasury Bureau of Alcohol, Tobacco, and Firearms, Report of Laboratory Examination (May 18, 1976) (“The amount of antimony found in the hand swabs was insufficient to indicate the presence of gunshot residue; therefore, no testing for barium was conducted. From these findings, no conclusion can be drawn as to whether the subject(s) did or did not handle or fire a weapon.”); see General Offense Report at 7.

⁷⁷ Office of the Sheriff, Jacksonville, FL, Intradepartmental Correspondence Re: Hubert [Nathan] Myers Polygraph Examination 2–3 (July 20, 2018).

⁷⁸ Office of the Sheriff, Jacksonville, FL, Intradepartmental Correspondence Re: Clifford Williams Polygraph Examination 2 (November 7, 2018).

⁷⁹ CIR Report at 28.

⁸⁰ See FDLE, Tallahassee Regional Crime Laboratory Report (“FLDE, Crime Lab Report”) (July 5, 1976); Lipkovic, M.D., Peter, Report: Office of the Medical Examiner, 3 (May 2, 1976); General Offense Report at 7. The three .38 caliber bullets removed from Ms. Williams were from her head, left upper arm, and left lower arm. *Id.*

laboratory report indicates five of the bullets were able to be microscopically compared and were all fired from the same weapon. A damaged bullet and a fragment were determined to have “some evidence of a relationship” to the others, but the relationship was “too limited in amount and character” for conclusive results.⁸¹

Henry Curtis, an individual who knew Mr. Williams, Mr. Myers, Ms. Williams, and Ms. Marshall, was deposed in 1997, and provided information indicating Ms. Marshall told him conflicting stories. Mr. Curtis said Ms. Marshall once told him Mr. Williams and Mr. Myers were the shooters and she laid on the bed and acted as if she were dead once she had been shot.⁸² However, she also told him she did not know who shot her because she was asleep when it happened.⁸³ Mr. Curtis also stated he was positive Ms. Marshall used heroin during the trial, including while she was at his house.⁸⁴

Mr. Torrence, who gave Ms. Marshall a ride to the hospital, returned to the scene later and stated about three or four people said the shots came from outside of the window and there was a man who saw it but would not say anything.⁸⁵

A July 13, 1976, statement from Christopher Snype states a friend of his, named Tony Gordon, told him he looked out the window after hearing the first shot and saw a black male, dressed in black, standing outside of the bedroom window shooting several more times.⁸⁶ Testimony from the director and the witness chart from the CIR investigation note Mr. Gordon claimed he did not see or witness anything; however, he also failed a polygraph in 1976 when answering in the negative as to whether he had knowledge of the shooting.⁸⁷ The notes also indicate Mr. Gordon remembered the event but did not want to be involved; he did not cooperate during the CIR investigation.⁸⁸

⁸¹ FDLE, Crime Lab Report at 2; see Special Master Hearing, Testimony of Shelley Thibodeau at 1:14:30–1:14:55 regarding the analyst finding the bullets were fired from the same weapon).

⁸² Deposition, Henry Curtis at 5.

⁸³ *Id.* at 7 and 15.

⁸⁴ See Deposition, Henry Curtis at 1 and 14.

⁸⁵ Deposition, Harold Torrence at 11.

⁸⁶ Christopher Snype, Statement (July 13, 1976).

⁸⁷ Special Master Hearing, Testimony from Shelley Thibodeau at 2:09:48–2:10:43; Witness Chart; Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

⁸⁸ Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

The CIR director testified evidence only shows one gun being fired and (but for Ms. Marshall's account) no evidence of more than one shooter.⁸⁹

Alibi Witnesses

Mr. Williams and Mr. Myers informed officers they were at a party in an apartment building nearby. The presence of both men at the party, before and during the time when shots rang out, was confirmed by the host,⁹⁰ as well as a number of other individuals.⁹¹

⁸⁹ Special Master Hearing, Testimony of Shelley Thibodeau at 2:15:16–2:15:35.

⁹⁰ Rachel Jones, the host of the party, confirmed both men and Mr. Williams's wife, Barbara Williams, were all at the party. Ms. Jones recalled she was intoxicated that evening. She first recalled being in a bedroom with Mr. Myers when someone asked them to turn the music down because they thought they heard gunshots. Later, she stated she was on the porch when three shots were fired and both Mr. Williams and Mr. Myers were in her apartment. General Offense Report at 8.

⁹¹ Virginia Wilkerson also attended the party and told police she saw Mr. Williams and Mr. Myers arrive approximately fifteen minutes after she did (about 20 minutes after 1:00 a.m.). She stated she heard about the gunshots after they had arrived; Mr. Williams was in the kitchen, and subsequently asked Mr. Williams what time it was and went to her apartment to check on her children. She also said she saw Mr. Williams and Mr. Myers walking with everyone else toward the scene. See Deposition, Virginia Wilkerson, 9, 11, 17, and 23 (July 16, 1976); General Offense Report at 9. Frances Brown, the other host of the party, confirmed seeing Mr. Williams and Mr. Myers arrive at the party with Barbara Williams and Rico Rivers. Ms. Brown told police she did not drink and remembered making plates of food for Mr. Williams and Mr. Myers after they got to the party. She recalled hearing five shots sometime after they had arrived. General Offense Report at 9–10. Debra White lived near the party and went back and forth from her apartment to the party throughout the night. She recalled hearing shots and saw Mr. Williams walking out of the party toward the road with a plate of food in his hand. General Offense Report at 11. Ella Ruth Maddox recalled Mr. Williams and Mr. Myers being at the party before she left to take a friend home. Upon returning to the party, the police were at the scene of the shooting. General Offense Report at 11. Joann Fleming, roommate of Debra White and Ella Ruth Maddox, was at her apartment with Ms. White when she heard five shots, looked outside to see Mr. Williams walk out of the party to the road and then return to the party; she also confirmed seeing Mr. Myers coming from the porch where the party was after the shots were fired. Deposition, Joann Fleming, 6–7 (July 16, 1976). About five to fifteen minutes later, she walked with Mr. Williams to the scene (where two police cars were present) and he asked her to go find out what was going on. *Id.* at 7–8; General Offense Report at 10. Vanessa Snypes confirmed the presence of Mr. Williams, Mr. Myers, Barbara Williams, and another man arriving at the party together. She recalled being intoxicated and did not hear any shots. General Offense Report at 11. Nellie Mae Anderson saw Mr. Williams, Mr. Myers, Barbara Williams, and Rico Rivers arrive at the party and was eating with Mr. Williams and Mr. Myers when she heard five shots. Once someone announced police being at the scene, she walked to the scene with others from the party. General Offense Report at 11; Deposition, Nellie Mae Anderson, 10–11 (July 16, 1976). Rosa Lee Royster, a friend of the deceased, stated the victim owed Mr. Williams \$100, and said she saw Mr. Williams and Mr. Myers arrive at the party. She later heard four shots fired and said she saw Mr. Williams walk toward the street with a plate of food and walk back to the party commenting that it was an intoxicated person shooting into the air. General Offense Report at 12. Pauline Dawson was at the party, recalled Mr. Williams being there and giving her seat at the table to Barbara Williams because she was pregnant at the time. In her deposition, she stated she saw Mr. Williams arrive and thought he was still in the kitchen when the shots rang out. Deposition, Pauline Dawson, 5–8 (July 16, 1976). She said Mr. Williams walked along with others from the party down to the scene. *Id.* at 10. Barbara Williams recalled arriving at the party with Mr. Williams and Mr. Myers and Mr. Williams eating while seated on the arm of a sofa when the shots rang out; she also recalled Mr. Myers being seated by a stereo. Deposition, Barbara Williams, 34–35 (July 16, 1976). She also stated, from the time they arrived until the shots were fired, Mr.

Information gathered in interviews conducted by the CIR director were consistent with testimony from 1976 with regard to Mr. Myers and Mr. Williams being at the party at the time shots were fired.⁹²

The CIR report highlighted three of the alibi witnesses.⁹³ First, Joann Fleming, whose apartment was next door to the party, who still clearly recalls see Mr. Myers when the shots rang out. Second, Vincent Williams, who is noted in the report as being related to Mr. Williams and Mr. Myers, but whose parents did not like him spending time with his cousin because of his lifestyle. He did not know anyone else at the party, but was able to accurately describe the apartment layout, made statements consistent with other witnesses, and remembered seeing Mr. Williams and Mr. Myers when people heard the shots being fired. The third alibi witness was Geraldine Prey. Although not present at the time of the shooting, she provided information that “everyone” knew Mr. Williams and Mr. Myers were not the shooters because they were at the party. She also noted Ms. Williams was well-liked and did not think other women from the area would provide an alibi for Mr. Williams or Mr. Myers if it were not true because of their like of Ms. Williams. She also noted Mr. Myers told her the prosecution wanted him to testify against his uncle but he could not do that because he and his uncle (Mr. Williams) were at the party together. See footnotes 90 and 91 for additional statements from alibi witnesses.

Sometime after hearing the shots, a group of people attending the party (including Mr. Williams and Mr. Myers) gathered outside of the apartment building where the shooting had taken place.

Reported Confessions by Nathaniel Lawson

The Conviction Integrity Review (CIR) Division’s director testified to interviewing four individuals to whom a man named Nathaniel Lawson allegedly confessed. The director attempted to link the four individuals together and found, but for them growing up in the same area, she could not tie them

Williams never left the party. *Id.* at 40. Mrs. Williams left the party with Rosetta Simon, Raymond Rico Rivers, and Nathaniel Lawson. *Id.*

⁹² Special Master Hearing, Testimony of Shelley Thibodeau at 2:05:50–2:06:54.

⁹³ CIR Report at 17–19.

together in any other way and found them credible.⁹⁴ The four individuals are Tony Brown, Leatrice Carter, Frank Williams, and James Stepps.

Alleged Confession to Tony Brown

By sworn affidavit, Mr. Tony Brown stated Nathaniel Lawson (who was incarcerated with him) told him he had shot Ms. Marshall and Ms. Williams. He said Mr. Lawson stated he was paid, by Albert Young, to shoot the women because Ms. Williams had not paid Mr. Young for heroin Ms. Marshall stole from him. He said he was never caught, and Mr. Williams and Mr. Myers were serving time for the shooting. Mr. Brown said Mr. Lawson told him he had looked through the bedroom window to see where Ms. Williams was, he shot from outside the window, and then ran to the back of the apartments and jumped over a fence to get into a vehicle driven by Rico Rivers.⁹⁵

Mr. Brown had known Mr. Myers only as “Nate” while incarcerated, but once he learned “Nate” was Hubert Nathan Myers—he shared this information and Mr. Myers requested he write it down.⁹⁶

Alleged Confession to Leatrice Carter

Leatrice Carter told the CIR director that Mr. Lawson confessed to her in the early 1990s at the tavern she and her husband owned. Mr. Lawson allegedly told her Mr. Williams did not commit the crime and admitted that he was the one who committed the crime. Ms. Carter also told the director Mr. Lawson said the only people who were mad were “Dot and Frank” (Clifford Williams’s siblings and Nathan Myers’s mother and uncle).⁹⁷

Alleged Confession to Frank Williams

The third person to whom Mr. Lawson allegedly confessed is Franks Williams (brother of Clifford Williams and uncle to Nathan Myers). Mr. F. Williams, who had dated Diane Lawson (sister of Nathaniel Lawson) stated he actually confronted Mr. Lawson when he heard he may have been involved and told

⁹⁴ Special Master Hearing, Testimony of Shelley Thibodeau at 3:13:50–3:15:55. Mr. Lawson died in 1994. *Id.*

⁹⁵ Sworn Affidavit, Tony Brown, 1–2 (October 21, 2014); see CIR Report at 20.

⁹⁶ *Id.*

⁹⁷ CIR Report at 21.

the director Mr. Lawson said he was “staying out of it” and did not want to speak about it.⁹⁸

Years after the first interaction, Mr. F. Williams told the director that he saw Ms. Lawson and she said her brother was “sick and might want to clear his conscience,” so Mr. F. Williams had a meeting arranged with Mr. Lawson. Mr. F. Williams said Mr. Lawson requested the meeting be in public, gave details of the interaction, and said Mr. Lawson ultimately confessed to shooting the women because one of the women was stealing from him and he had to send a message. Mr. Lawson also allegedly admitted to giving money to Dot (sister of Clifford and Frank Williams and mother of Nathan) for Mr. Myers and Mr. Williams. Mr. F. Williams said his sister confirmed she had received money from Mr. Lawson for the incarcerated men.⁹⁹

Alleged Confession to James Stepps

James Stepps was the fourth individual to tell the CIR director Mr. Lawson confessed to him and the director found Mr. Stepps to be “most credible.”¹⁰⁰ Mr. Stepps was friends with Mr. Lawson through his death and said, not long before he died, Mr. Lawson indicated he had killed Ms. Williams and wanted to send money to Mr. Williams.¹⁰¹ Mr. Lawson allegedly wondered aloud and stated, “What can I do? I can’t turn myself in.”¹⁰² Mr. Stepps did not ask questions, believed Mr. Lawson, and—because he believed his friend was telling him this in confidence—he would not have come forward if Mr. Lawson were alive.¹⁰³

The CIR director was able to place Nathaniel Lawson at the scene when reviewing the materials a second time because, in reviewing the deposition of Barbara Williams (Mr. Williams’s wife), she referenced leaving with a group of individuals including Nathaniel Lawson.¹⁰⁴

⁹⁸ *Id.* at 22.

⁹⁹ *Id.*

¹⁰⁰ Special Master Hearing, Testimony of Shelly Thibodeau at 3:29:00–3:29:00.

¹⁰¹ CIR Report at 23.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Special Master Hearing, Testimony of Shelley Thibodeau at 1:54:30–1:56:05. The others in the group leaving with Ms. Barbara Williams were a woman named “Cookie” and a man named Rico Rivers. This is the same group, with the addition of Mr. Myers and Mr. Williams, the CIR director found, via witness interviews and prior testimony, had arrived to the party together. *Id.* at 1:59:40–1:59:55.

A Court Determined Mr. Myers is Eligible for Compensation and Demonstrated Clear and Convincing Evidence of Actual Innocence

After the CIR Division's investigation and the vacation of convictions and sentences of Mr. Myers and Mr. Williams, Mr. Myers sought statutory relief. He filed a petition for compensation under the Victims of Wrongful Incarceration Compensation Act,¹⁰⁵ and on September 10, 2019, the court in which he sought relief determined he is eligible to receive compensation and demonstrated actual innocence by clear and convincing evidence as required by statute.¹⁰⁶

The findings of the CIR Division's investigation and report pertain to Mr. Williams, as well; however, Mr. Williams seeks relief through a claim bill because he has two prior felonies. State law currently precludes Mr. Williams from eligibility for compensation through the statutory process.

The undersigned sought clarification as to the scope of the investigation and report of the CIR Division. The director confirmed the scope of the finding of substantial evidence of actual innocence was applicable with regard to any involvement in the crime in the murder and attempted murder. The CIR director noted an inability to uncover any evidence to support the conviction of Mr. Williams¹⁰⁷ and was not able to find any evidence Mr. Williams is anything other than innocent.¹⁰⁸ Significantly, the director noted there was no evidence to suggest either Mr. Williams or Mr. Myers had been involved in any capacity;¹⁰⁹ and a member of the audit board, a former prosecutor, indicated he is "as confident as [he] can get" with regard to Mr. Williams's innocence.¹¹⁰

¹⁰⁵ Chapter 961, Fla. Stat.

¹⁰⁶ Order Granting Petition of Wrongful Incarceration and Eligibility for Compensation Pursuant to the "Victims of Wrongful Incarceration Act" of Florida, State of Fla. v. Hubert Nathan Myers, No. 76-CF-000912 (Fla. 4th Circ. Ct.) (Sept. 10, 2019). The order provides, "[t]he Petitioner has met the burden of establishing by clear and convincing evidence that the Petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the [P]etitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense." *Id.*

¹⁰⁷ Special Master Hearing, Testimony of Shelley Thibodeau at 2:31:58–2:32:49.

¹⁰⁸ *Id.* at 3:17:21–3:19:34.

¹⁰⁹ Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

¹¹⁰ Special Master Hearing, Testimony of Raymond Reid at (3:40:50–3:47:27 and 3:50:58–3:51:16) (describing evidence he found significant in demonstrating Mr. Williams and Mr. Myers were wrongfully convicted and believing there are supported claims of actual innocence in this matter).

Lastly, counsel for the respondent (the State Attorney's Office of the Fourth Judicial Circuit) indicated, although his client expressed no position on the claim bill, he would agree "there is, in fact, substantial credible evidence of Mr. Williams's innocence" and "given that experienced lawyers and judges have gone before [him] and come to that same conclusion [he thinks] it would be disingenuous to suggest that is not the case."¹¹¹

CONCLUSIONS OF LAW:

Generally, the standard of proof used in the claim bill process is preponderance of the evidence. The report for the one wrongful incarceration claim bill that passed since chapter 961 was created discussed the clear and convincing standard from the Victims of Wrongful Incarceration Act (Chapter 961), but ultimately applied the preponderance standard.¹¹²

Standard of Proof Used in Wrongful Incarceration Compensation Claims

Chapter 961 requires the petitioner provide evidence of "actual innocence" and a court to find the petitioner has provided clear and convincing evidence "the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense."¹¹³

For reference, the standard of clear and convincing evidence is defined as "[e]vidence indicating that the thing to be proved is highly probable or reasonably certain" and "is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials."¹¹⁴ Jury instructions provide clear and convincing evidence "is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief, without hesitation, about the matter in issue."¹¹⁵

¹¹¹ Special Master Hearing, Britt Thomas, counsel for the respondent at 4:19:00–4:20:19.

¹¹² Senate Special Master Report Re: CS/SB 2 (2012) (Nov. 1, 2011) (recommending relief regarding Mr. William Dillon's wrongful incarceration claim); see *also* Ch. 2012–229, Laws of Fla.

¹¹³ Section 961.03(3), Fla. Stat.

¹¹⁴ Bryan A. Garner, *Black's Law Dictionary* (2006).

¹¹⁵ *E.g.*, In re Standard Jury Instruction in Criminal Cases–Report 2012–07, 122 So.3d 302 (Mem) (Fla. 2013); Standard Jury Instructions–Civil Cases (No. 98–3), 720 So.2d 1077 (Mem) (Fla. 2008).

Statutory Compensation

Compensation for an eligible individual who meets the standard includes \$50,000 for each year of wrongful incarceration; a waiver of tuition and fees for up to 120 hours of instruction at a career center, Florida College System institution, or any state university; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; and the amount of attorney's fees and expenses incurred by the wrongfully incarcerated person. Per statute, the total amount awarded may not exceed \$2 million.¹¹⁶

Credibility of Ms. Marshall's Testimony

Although only able to read prior depositional and trial testimony and handwritten documents from Ms. Marshall, serious concerns exist regarding the credibility of her statements when compared to substantiated physical evidence and consistent statements of other witnesses.

Physical Evidence Demonstrates the Shooting Did Not Occur as Ms. Marshall Described

Of great significance, undercutting Ms. Marshall's credibility is the physical evidence does not support her account. Additionally, information and details provided by Ms. Marshall varied. Some of the variations previously described include: stating she laid over Ms. Williams then indicating that did not happen; the different ways she described falling off of the bed; how many times she fell off of the bed; and at what point she claimed she saw the alleged shooters.

The CIR Director was Unable to Develop Information Supporting other Statements Made by Ms. Marshall

The director of the CIR Division stated there were attempts to verify some general statements made by Ms. Marshall during the investigation. These statements included attempts to substantiate Ms. Marshall's claims of having been married twice, having children, and the name of her father and where he lived.¹¹⁷

The director was unable to substantiate Ms. Marshall being married to the individuals she named or that she had children. Ms. Marshall claimed she had married a man named Eddie

¹¹⁶ Section 961.06(1), Fla. Stat.

¹¹⁷ See Special Master Hearing, Testimony of Shelley Thibodeau at 2:57:05–2:59:20 (describing these attempts and a finding that Ms. Marshall used approximately 30 aliases over time).

Lee Dyals. The CIR Division director noted although Mr. Dyals is deceased she was able to contact the widow of Mr. Dyals and she had never heard of Nina Marshall.¹¹⁸ The director interviewed the other man Ms. Marshall claimed to have married, Mr. Felton Marshall, and he admitted knowing Ms. Marshall and using drugs with her but denied ever being married to Ms. Marshall.¹¹⁹ The director was unable to develop information regarding Ms. Marshall having children and noted none of the women in the neighborhood had ever met children of Ms. Marshall.¹²⁰

Conclusion Based upon Findings of Fact and Substantiated and Credible Evidence

The physical evidence demonstrates the shooting did not occur as Ms. Marshall described. Although, the physical evidence does not go to the identity of who committed the shooting, it greatly undercuts the credibility of Ms. Marshall. The undersigned does not find Ms. Marshall's testimony credible.

The testimony of Ms. Marshall was the only tie of Mr. Williams and Mr. Myers to the commission of the crime. From the materials submitted during the special master hearing process, the undersigned does not find evidence to substantiate Mr. Williams committing the shooting of Ms. Williams and Ms. Marshall. To the contrary, the statements of alibi witnesses made to the police in 1976, in depositions in 1976, and in interviews during the CIR investigation corroborate Mr. Williams and Mr. Myers being at a party while shots were heard.

The materials presented did not include any substantiated evidence with regard to Mr. Williams being otherwise involved. While Ms. Marshall alleged various motives—the evidence provided did not substantiate any of them. While the undersigned had questions with regard to the statement Mr. Williams allegedly made (according to Mr. Snype whose written statement provides he was told about the alleged statement by Mr. Gordon), the truthfulness, significance, and context of the statement is unknown. There were no other

¹¹⁸ See Deposition, Nina Marshal, 4–5; Witness Chart; Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

¹¹⁹ Special Master Hearing, Testimony of Shelley Thibodeau at 2:57:05–2:59:20; Witness Chart; Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

¹²⁰ Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

similar statements to compare this piece of information. This unsubstantiated piece of evidence is not enough to undercut the numerous, consistent statements of alibi witnesses, or the four individuals who stated another man had confessed to the crime.

Therefore, given the evidence provided during the claim bill process, which included:

- the CIR Division's report, testimony from the director and a member of the independent audit board, and the press conference of the State Attorney supporting a finding of substantial evidence of actual innocence;
- a showing of physical evidence contradicting testimony of the only surviving victim through the report of an independent crime scene recreationist;
- the eye witness's inconsistent statements and statements contradicting physical evidence;
- individuals stating another person, Mr. Nathaniel Lawson, confessed to the shooting;
- alibi witnesses stating Mr. Williams was at a party with them at the time the shots rang out;
- the finding of a court that Mr. Myers successfully demonstrated clear and convincing evidence of actual innocence for the same crime using the same CIR Division report and findings in seeking statutory relief; and
- other information addressed in this report, the CIR Division's report, and provided before, during, and after the special master hearing,

the undersigned finds the claimant has demonstrated actual innocence by clear and convincing evidence.

Although the amount of \$2,150,000 in the bill exceeds the cap available in the statutory process, the undersigned finds the amount is reasonable as it is close to the calculation of years served multiplied by the statutory amount of \$50,000 per year of wrongful incarceration.¹²¹

Lastly, although the claim bill includes coverage for 120 hours of instruction, counsel for Mr. Williams indicated he would not be able to utilize compensation related to the 120 hours of

¹²¹ Mr. Williams served 42 years and 11 months. The amount of 42.92 years multiplied by \$50,000 equals \$2,145,833.33.

educational instruction given his advanced age and health and is not seeking the educational compensation.¹²²

ATTORNEY FEES:

The bill does not allocate any funds for attorney or lobbying fees. Additionally, the claimant's counsel, Mr. George E. Schulz, Jr. of Holland and Knight, provided a closing statement indicating, "representation of Mr. Williams is on a pro bono basis and that there are no fees, expenses or costs associated with the claim."

RECOMMENDATIONS:

Per Mr. Williams's counsel representing he is not seeking the educational component of compensation provided in the bill, the undersigned recommends deleting lines 83–92 of SB 28.

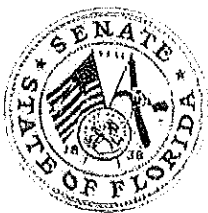
Based upon the information and evidence provided before, during, and after the special master hearing, the undersigned finds the claimant has demonstrated actual innocence by clear and convincing evidence and the amount sought is reasonable.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate

¹²² Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Rules, Vice Chair
Appropriations
Innovation, Industry, and Technology
Judiciary

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR AUDREY GIBSON

Minority Leader
6th District

October 7, 2019

Senator David Simmons, Chair
Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Simmons:

I respectfully request that SB 28, a claims bill on behalf of Clifford Williams, relating to wrongful incarceration, be placed on the next committee agenda. The claim arises from significant damages for being wrongfully incarcerated for 43 years. The bill also provides a waiver of certain tuition and fees for Mr. Williams.

SB 28, requires \$2,150,000.00 to be paid upon approval of the claims bill for the sole compensation to Clifford Williams' arrest, conviction, and incarceration.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Audrey Gibson".

Audrey Gibson
State Senator
District 6

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553
200 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

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)

1/25/2020

Meeting Date

SB 28

Bill Number (if applicable)

Topic In Relief of Clifford Williams

Amendment Barcode (if applicable)

Name Seth Miller

Job Title Executive Director - Innocence Project of Florida

Address 1100 E. Park Ave

Phone 850-561-6767

Street

TLH

City

FL

State

32301

Zip

Email Smiller@innocence.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Innocence Project 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 1668

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: Damages

DATE: January 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u> </u>	<u> </u>	<u>HP</u>	<u> </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/SB 1668 requires evidence of medical expenses in personal injury claims to be based on the usual and customary charges in the community where the expenses are incurred. The bill bars the use of expenses that have been increased based on the outcome of litigation.

The bill states that the amounts paid or to be paid through any public or private health insurance coverage on behalf of the claimant are presumed to be usual and customary medical charges. The bill permits parties to introduce evidence of the availability of insurance to prove future medical expenses.

II. Present Situation:

“Florida law permits the recovery of ‘the reasonable value or expense of hospitalization and medical and nursing care and treatment necessarily or reasonably obtained by [a] (claimant) in the past or to be so obtained in the future.’”¹

““In proving special [past] medical damages for personal injuries, proof should be offered (1) that the medical services were rendered, (2) what the reasonable charges are therefor, (3) that

¹ *Auto Club Ins. Co. of Florida v. Babin*, 204 So. 3d 561, 562 (Fla. 5th DCA 2016) (quoting *Volusia Cty. v. Joynt*, 179 So.3d 448, 452 (Fla. 5th DCA 2015) (internal alterations removed)).

the services for which they were rendered were necessary, and (4) that they were related to the trauma suffered in the accident.”²

“Awards [of medical expenses] exceeding ... a definite and ascertainable amount [in evidence] are readily vacated and remanded.”³ Jury awards for medical expenses can be reversed if they are “excessive and not supported by the undisputed evidence,”⁴ or “contrary to the manifest weight of the evidence.”⁵

“[T]he plaintiff has the burden at trial to prove the reasonableness and necessity of medical expenses and ... Florida requires more than just evidence of the amount of the bill to establish that reasonableness.”⁶ “[E]xpert medical testimony is not required in order to admit medical bills into evidence.”⁷ “When a plaintiff testifies as to the amount of his or her medical bills and introduces them into evidence, it becomes ‘a question for the jury to decide, under proper instructions, whether these bills represented reasonable and necessary medical expenses.’”⁸

Florida law restricts recovery of future medical expenses to those expenses “reasonably certain” to be incurred.⁹ Therefore, “it follows that a recovery of future medical expenses cannot be grounded on the mere ‘possibility’ that certain treatment ‘might’ be obtained in the future.”¹⁰ Further, there must also be an evidentiary basis upon which the jury can, with reasonable certainty, determine the amount of those expenses.¹¹ It is a plaintiff’s burden to establish, through competent, substantial evidence, that future medical expenses will more probably than not be incurred.¹²

The Collateral Source Rule

Trial courts must reduce jury awards for medical damages “by the total of all amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from all collateral sources....”¹³ That is, if a claimant’s medical expenses were covered by insurance, an award for medical damages must be reduced by the amount paid by the insurer. “This statutory modification was intended to reduce insurance costs and prevent plaintiffs from receiving windfalls.”¹⁴ While awards must be set off by the amount the claimant received from insurance, “[a]s an evidentiary rule, payments from collateral source benefits are not admissible

² *Crowe v. Overland Hauling, Inc.*, 245 So. 2d 654, 656 (Fla. 4th DCA 1971) (quoting *Ratay v. Yu Chen Liu*, 260 A.2d 484, 486 (Pa. Superior 1969)).

³ *Aircraft Service Intern., Inc. v. Jackson*, 768 So. 2d 1094, 1096 (Fla. 3d DCA 1995).

⁴ *Burger King Corp. v. Lastre-Torres*, 202 So. 3d 872, 873 (Fla. 3d DCA 2016).

⁵ *Ludwig v. Ladner*, 637 So. 2d 308, 310 (Fla. 2d DCA 1994).

⁶ *East West Karate Ass’n, Inc. v. Riquelme*, 638 So. 2d 604, 605 (Fla. 4th DCA 1994).

⁷ *Albertson’s, Inc. v. Brady*, 475 So. 2d 986, 988 (Fla. 2d DCA 1985) (citing *Garrett v. Morris Kirschman & Co.*, 336 So. 2d 566 (Fla.1976)).

⁸ *Irwin v. Blake*, 589 So. 2d 973 (Fla. 4th DCA 1992) (quoting *Garrett v. Morris Kirschman & Co., Inc.*, 336 So. 2d 566 (Fla.1976)).

⁹ *Loflin v. Wilson*, 67 So. 2d 185, 188 (Fla.1953).

¹⁰ *White v. Westlund*, 624 So.2d 1148, 1150 (Fla. 4th DCA 1993) (citing 2 *Damages in Tort Actions* § 9.55(1), at 9–45 (1986)).

¹¹ *Joynt*, 179 So.3d at 452.

¹² See *Fasani v. Kowalski*, 43 So. 3d 805, 812 (Fla. 3d DCA 2010).

¹³ Section 768.76(1), F.S.

¹⁴ *Joerg v. State Farm Mut. Auto Ins. Co.*, 176 So. 3d 1247, 1249 (Fla. 2015).

because such evidence may confuse the jury with respect to both liability and damages.”¹⁵ Section 768.76, F.S., “does not allow reductions for *future* medical expenses.”¹⁶ Benefits received under Medicare or other federal programs providing for a Federal Government lien on or right of reimbursement from a plaintiff’s recovery are not considered collateral sources.¹⁷

“[C]ontractual discounts fit within the statutory definition of collateral sources.”¹⁸ Thus, in cases in which a medical provider bills for services at one amount but negotiates with an insurer for the payment of a decreased amount, the negotiated decreased amount is the amount used for setoff.¹⁹ In *Goble*, the hospital billed the claimant \$574,554.31 for medical treatment, but due to preexisting fees schedules in contracts between the medical providers and Aetna U.S., the claimant’s insurer, Aetna paid and the medical providers accepted \$145,970.76 for the services rendered.²⁰ The differences in the amount billed and the amounts accepted in *Goble*, also demonstrate that medical bills are not always related to the amount a healthcare provider typically expects to receive in payment or accepts for payment in full for medical care.²¹

Letters of Protection

A letter of protection is a document sent by an attorney on a client’s behalf to a health-care provider when the client needs medical treatment[] but does not have insurance. Generally, the letter states that the client is involved in a court case and seeks an agreement from the medical provider to treat the client in exchange for deferred payment of the provider’s bill from the proceeds of [a] settlement or award[,] and typically if the client does not obtain a favorable recovery, the client is still liable to pay the providers’ bills.²²

Section 768.76(2)(a), F.S., defines collateral sources as “payments made to the claimant,” and therefore under letters of protection, which defer payment until after a judgment, the amount negotiated in a letter of protection is not a “collateral source.”

“[T]he question of whether a plaintiff’s attorney referred him or her to a doctor for treatment is protected by the attorney-client privilege,” and thus evidence of letters of protection are inadmissible to prove bias.²³ “Even in cases where a plaintiff’s medical bills appear to be inflated for the purposes of litigation,” the Supreme Court stated that “we do not believe that engaging in

¹⁵ *Id.* (citing *Sheffield v. Superior Ins. Co.*, 800 So.2d 197, 203 (Fla.2001)).

¹⁶ *Id.*

¹⁷ Section 768.76(2)(b), F.S.

¹⁸ *Goble v. Frohman*, 901 So. 2d 830, 833 (Fla. 2005).

¹⁹ *Id.*

²⁰ *Id.*

²¹ For more discussion on how billing practices may differ significantly from the reasonable value of medical services, see George A. Nation III, *Determining the Fair and Reasonable Value of Medical Services: The Affordable Care Act, Government Insurers, Private Insurers and Uninsured Patients*, 65 BAYLOR L. REV. 425 (Spring 2013).

²² Caroline C. Pace, *Tort Recovery for Medicare Beneficiaries: Procedures, Pitfalls and Potential Values*, 49 Hous. Law. 24, 27 (2012).

²³ *Worley v. Central Florida Young Men’s Christian Ass’n, Inc.*, 228 So. 3d 18, 25 (Fla. 2017).

costly and time-consuming discovery to uncover a ‘cozy agreement’ between the law firm and a treating physician is the appropriate response.”²⁴

PIP and the Florida Motor Vehicle No-fault Law

The Florida Statutes limit, in certain circumstances, what amounts may be considered “reasonable medical expenses.” Section 627.736(1)(a), F.S., “requires automobile insurers to provide PIP [“Personal-Injury Protection”] coverage for eighty percent of all ‘reasonable expenses’ for medically necessary services”²⁵ The Florida Motor Vehicle No-Fault Law provides two ways of determining whether expenses are “reasonable” for purposes of insurer reimbursements. The first is a fact-dependent methodology that takes into account the service provider’s usual and customary charges, community-specific reimbursement levels, and other relevant information.²⁶ This is the default methodology for calculating PIP reimbursements, which also apparently results in higher reimbursements than the second methodology.²⁷ The second methodology, introduced by the Legislature in 2008, allows reimbursements for medical services to be limited via the use of fee schedules identified in s. 627.736(5)(a)2., F.S.²⁸

HMOs

“Usual and customary” charges also factor into reimbursements to hospitals by health maintenance organizations (HMOs).

Reimbursement to hospitals providing emergency medical services to patients who subscribe to an HMO that does not have a contract with the hospital is determined according to section 641.513(5), Florida Statutes (2006)²⁹, which provides:

Reimbursement for services pursuant to this section by a provider who does not have a contract with the health maintenance organization shall be the lesser of:

- (a) The provider’s charges;
- (b) The usual and customary provider charges for similar services in the community where the services were provided; or
- (c) The charge mutually agreed to by the health maintenance organization and the provider within 60 days of the submittal of the claim.

In the context of the statute, it is clear what is called for [by subsection (5)(b)] is the fair market value of the services provided. Fair market value is the price that a willing buyer will pay and a willing seller will accept in an arm’s-length transaction.³⁰

²⁴ *Id.*

²⁵ *Allstate Fire and Cas. Ins. v. Stand-Up MRI of Tallahassee, P.A.*, 188 So. 3d 1, 1 (Fla. 1st DCA 2015).

²⁶ See s. 627.736(5)(a)1., F.S.

²⁷ *Stand-UP MRI*, 188 So 3d at 2.

²⁸ See *Geico Gen Ins. Co. v. Virtual Imaging Servs. Inc.*, 141 So. 3d 147,156 (Fla. 2013).

²⁹ Section 641.513(5), F.S., as it reads today, contains the same provision for usual and customary charges as it did in 2006.

³⁰ *Baker Cty. Med. Servs., Inc. v. Aetna Health Mgmt, LLC*, 31 So. 3d 842, 844 (Fla. 1st DCA 2010).

III. Effect of Proposed Changes:

The bill states that, in any claim for damages if personal injury to a claimant, evidence of past, present, or future medical expenses must be based on the usual and customary charges in the community where medical expenses are incurred.

This may significantly alter the current methods for proving damages, which involves presenting medical bills as evidence of past expenses and testimony of reasonably certain needed procedures as evidence of future expenses. Notably, the amount of an award of past medical damages would be determined without consideration of evidence of the billed costs of any medical services actually rendered for a claimant.

This new methodology is consistent with the current methodology for calculating PIP reimbursements under existing s. 627.736(5)(a)1, F.S., which also requires a determination of costs based on usual and customary charges in a community. As the methodology in the bill is still a “fact-dependent methodology”³¹ it requires evidence of a service provider’s typical charges and the amounts charged to others in the community. Moreover, because the bill contains similar language to the method described in existing s. 627.736(5)(a)1, F.S., courts will likely interpret the bill as requiring the same type of evidence. Similarly, courts would presumably also construe the “usual and customary” community standard to mean the fair market value that a willing buyer would likely pay in an arm’s-length transaction.³²

The bill states that evidence of usual and customary charges may not include evidence of increased or additional charges based on the outcome of litigation. This provision would prevent using evidence of costs that have been “inflated” in anticipation of a jury award that may be larger than the amount insurers are typically willing to pay and larger than amounts healthcare providers typically accept. The requirement in the bill that evidence of medical costs be based on usual and customary charges in the community will decrease the opportunity for claimants to present evidence of “inflated” costs through the use of letters of protection.

The bill states that evidence of the availability of insurance may be used to prove future damages. This provision undoes the rule announced in *Joerg v. State Farm*, in which the Supreme Court held that evidence of the availability of Medicare could not be used to establish future damages in which it receded from prior precedent allowing the practice.³³

The bill also states that the amounts paid or payable to claimants under insurance coverage are presumed to be the usual and customary medical charges, unless a claimant shows that the amounts are inadequate under the circumstances.

³¹ *Stand-UP MRI*, 188 So. 3d at 2.

³² *Baker*, 31 So. 3d at 844.

³³ The majority in *Joerg* found the use of the availability of Medicare to establish future damages was prejudicial to the claimant and speculative. The *Joerg Court* receded from the Supreme Court’s opinion in *Florida Physician’s Ins. Reciprocal v. Stanley*, 452 So. 2d 514, 515 (Fla. 1984), in which it stated, “Petitioners claim that evidence of free or low cost services from governmental or charitable agencies available to anyone with specific disabilities is admissible on the issue of future damages. We agree.” The *Stanley Court* further explained that “[k]eeping such evidence [of governmental or charitable benefits available to all citizens] from the jury may provide an undeserved and unnecessary windfall to the plaintiff.” *Id.* 616.

The bill takes effect July 1, 2020.

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 requires evidence of medical expenses in personal injury claims to be based on the usual and customary charges in the community. This change may make awards of damages for medical costs more predictable.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 768.042, F.S.

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 January 28, 2020:

The committee substitute differs from the underlying bill by:

- Stating that parties to a personal injury lawsuit may introduce evidence of the availability of insurance to establish future medical expenses.
- Clarifying that payments paid or payable by insurers are presumed to be the usual and customary charges in the community.

B. Amendments:

None.



447214

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/30/2020	.	
	.	
	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment

Delete lines 20 - 30
and insert:

(2) In any claim for damages relating to personal injury to a claimant, evidence regarding the past, present, or future medical expenses must be based on the usual and customary charges in the community where the medical expenses are, or are reasonably probable to be, incurred. With respect to past and present medical expenses, if the claimant is entitled to be reimbursed through any public or private health insurance or



447214

12 governmental health coverage, the amounts paid or payable under
13 the insurance or governmental health coverage shall be presumed
14 to be the usual and customary medical charges, unless the
15 claimant shows that such amounts are inadequate under the
16 circumstances. With respect to damages for future medical
17 expenses, evidence of the availability of private or public
18 health insurance coverage may be considered along with other
19 relevant evidence. Usual and customary charges may not include
20 increased or additional charges based on the outcome of the
21 litigation

By Senator Simmons

9-01516A-20

20201668__

A bill to be entitled

An act relating to damages; amending s. 768.042, F.S.; requiring that certain medical expenses in personal injury claims be based on certain usual and customary charges; specifying what constitutes a usual and customary charge; deleting an obsolete provision; providing an effective date.

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

Section 1. Section 768.042, Florida Statutes, is amended to read:

768.042 Damages.—

(1) In any action brought in the circuit court to recover damages for personal injury or wrongful death, the amount of general damages shall not be stated in the complaint, but the amount of special damages, if any, may be specifically pleaded and the requisite jurisdictional amount established for filing in any court of competent jurisdiction.

(2) In any claim for damages relating to personal injury to a claimant, evidence regarding the past, present, or future medical expenses must be based on the usual and customary charges in the community where the medical expenses are, or are reasonably probable to be, incurred. Evidence of usual and customary charges may not include evidence of increased or additional charges based on the outcome of the litigation. If the claimant is entitled to be reimbursed through any public or private health insurance or governmental health coverage, the amounts paid or payable under the insurance or governmental

Page 1 of 2

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

9-01516A-20

20201668__

health coverage shall be the usual and customary medical charges
~~The provisions of this section shall not apply to any complaint filed prior to May 20, 1975.~~

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

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1 28 2020

Meeting Date

1668

Bill Number (if applicable)

Topic Limitation Medicine Payments

Amendment Barcode (if applicable)

Name DR JOHN MASON

Job Title Physician

Address 2830 Bee Ridge Rd

Phone 941 374 7660

Street

SARASOTA FL 34239

City

State

Zip

Email MASONMDMBA@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SARASOTA MEDICAL CENTER

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)

1/28/2020
Meeting Date

1668
SB1682
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable) _____

Name TIFFANY FADDIS

Job Title _____

Address 7335 W. Sand Lake Rd.

Phone 407 845 1256

Street

Orlando 32819

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

Jan 28, 2020

Meeting Date

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

1668

Bill Number (if applicable)

Topic DAMAGES

Amendment Barcode (if applicable)

Name DR. Michael WeissJob Title MEDICAL DIRECTOR OF INTEGRITY SPINE + ORTHOPEDICSAddress 4235 SUNBEAM ROAD Phone (904) 456-0017

Street

Jacksonville, FL

City

State

32257

Zip

Email DRWEISS@INTEGRITYSPINEortho.comSpeaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing SELFAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28

Meeting Date

1668

Bill Number (if applicable)

Topic Accuracy in Damages

Amendment Barcode (if applicable)

Name MONTE STEVENS

Job Title Consultant

Address 123 S. ADAMS

Phone 671 4401

Street

City TALLY State FL Zip 32301

Email Stevens@theSoutherngroup.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Property & Casualty Insurance Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/20

Meeting Date

SB 1668

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ronald Giffler

Job Title Medical Doctor

Address 1430 Piedmont Dr. E.

Phone 850 224-6496

Street

Tallahassee

FL

32308

City

State

Zip

Email ronaldgiffler@att.net

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

11/28/2020

Meeting Date

SB 1668

Bill Number (if applicable)

Topic Damages

Amendment Barcode (if applicable)

Name Frank Walker

Job Title VP, Govt. Affairs

Address 136 S. Bronough St.

Phone _____

Street

Tallahassee

FL

32308

City

State

Zip

Email _____

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

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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)

1-28-2020

Meeting Date

11668

Bill Number (if applicable)

Topic Damages

Amendment Barcode (if applicable)

Name ALIX MILLER

Job Title VICE PRESIDENT

Address 358 E College Ave

Phone 850-868-1050

Street

Tallahassee

FL

32301

City

State

Zip

Email alix@fltrucking.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA TRUCKING ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

1/28/2020

Meeting Date

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

1668

Bill Number (if applicable)

Topic Damages

Amendment Barcode (if applicable)

Name Scott Matiyow (Mat-e-o)

Job Title Vice President, Legislative & Regulatory Affairs

Address 215 S. Monroe Street Suit 835

Phone 850-597-7425

Street

Tallahassee

FL

32301

Email Scott.Matiyow@PIFF.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Personal Insurance Federation of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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1/28/2020

Meeting Date

1668

Bill Number (if applicable)

Topic Damages

Amendment Barcode (if applicable)

Name Scott Matiyow (Mat-e-o)Job Title Vice President, Legislative & Regulatory AffairsAddress 215 S. Monroe Street Suit 835Phone 850-597-7425

Street

TallahasseeFL32301Email Scott.Matiyow@PIFF.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Personal Insurance Federation of FloridaAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

01.28.20

Meeting Date

1668

~~1168~~

Bill Number (if applicable)

Topic Damages

Amendment Barcode (if applicable)

Name Andy Bolin

Job Title _____

Address 1905 E 7th Ave

Phone 813-848-0600

Street

Tampa

FL

33605

Email asb@bolin-law.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

01.28.20

Meeting Date

1668
~~1468~~

Bill Number (if applicable)

Topic Damages

Amendment Barcode (if applicable)

Name Lauren McBride

Job Title _____

Address P.O. Box 32023

Phone 863-499-8521

Street

Lakeland

FL

33802

Email lauren.mcbride@publix.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Publix Super Markerts Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-28-20

1668

Meeting Date

Bill Number (if applicable)

Topic DAMAGES

Amendment Barcode (if applicable)

Name JAKE FARMER

Job Title Director of Government Affairs

Address 227 S Adams St.

Phone 352-359-6835

City Tallahassee State FL Zip 32301

Email Jake@Prf.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

1/28/20

Meeting Date

1668

Bill Number (if applicable)

Topic Damages

Amendment Barcode (if applicable)

Name Roderick Claybrooks

Job Title Doctor

Address 3900 Millenia Blvd
Street

Phone 1 407 537-5577

Orlando FL 32839
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

1/28/20

Meeting Date

1268

Bill Number (if applicable)

Topic Damages

Amendment Barcode (if applicable)

Name Reginald J. Davis MD

Job Title Spine Surgeon

Address 4211 W Boy Scout #400

Phone 813 443 2108

Street

Tampa

FL

33607

City

State

Zip

Email Reginald.Davis@Bioscience

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1/28/20

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

1668

Meeting Date

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim NungesserJob Title Legislative DirectorAddress 110 East Jefferson StreetPhone 850-445-5367

Street

TallahasseeFL32301Email Tim.nungesser@nfib.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing National Federation of Independent BusinessAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

1/28
Meeting Date

SB#1668
Bill Number (if applicable)

Topic Damages

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 576 N Adams
Street

Phone 224-7173

TLH FL 3234
City State Zip

Email bbevis@aol

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

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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)

01.28.20

Meeting Date

1668

Bill Number (if applicable)

Topic Damages

Name Andy Bolin

Job Title _____

Address 1905 E. 7th Ave.

Phone 813-848-0600

Street

Tampa

City

FL

State

33605

Zip

Email asb@bolin-law.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

1/28/2020
Meeting Date

1668
SB1688

Bill Number (if applicable)

447214

Amendment Barcode (if applicable)

Topic SB 1688

Name TIFFANY FADDIS

Job Title _____

Address 7335 W. Sand Lake Rd.

Street

Orlando, FL 32819

City

State

Zip

Phone 407 845-1756

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice 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
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 838

INTRODUCER: Commerce and Tourism Committee and Senator Simmons

SUBJECT: Business Organizations

DATE: January 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Harmsen	McKay	CM	Fav/CS
2. Ravelo	Cibula	JU	Favorable
3. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 838 amends several sections of the Florida Business Corporation Act, ch. 607, F.S., and its related statutes to:

- Make clarifying and conforming changes to, and fix minor errors in, the 2019 Florida Business Corporation Act legislation;¹
- Modify the laws that govern the makeup of not-for-profit corporations' board committees to allow persons other than board directors to serve on those committees; and
- Re-instate the Florida Department of State's ability to direct interrogatories to a corporation to determine the corporation's compliance with ch. 607, F.S.

II. Present Situation:

In 2019, the Legislature substantially amended ch. 607, F.S., the Florida Business Corporation Act (FBCA),² to better reflect recent changes to the Model Business Corporation Act³ and ch. 605, F.S., the Florida Revised Limited Liability Corporate Act (FRLCA). These changes were made with the input of the Florida Bar's Business Law Section (Business Law Section). Since final passage of the 2019 legislation, the Business Law Section has identified errors and

¹ Chapter 2019-90, L.O.F. CS/CS/HB 1009 was signed into law on June 7, 2019, and took effect on January 1, 2020.

² *Id.*

³ American Bar Association, *Model Business Corporation Act* (2016),

https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2016_mbca.authcheckdam.pdf (last visited Jan. 14, 2020).

inconsistencies to the 2019 legislation. Prior to the 2019 legislation, FBCA had not been substantially amended within the last 30 years.⁴ This bill, in part, attempts to resolve the issues identified.

Further discussion of the present situation is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Interrogatories issued by the Department of State

The 2019 FBCA revision inadvertently deleted language from s. 607.0130, F.S., that permitted the Department of State (Department) to direct interrogatories⁵ to a corporation that was regulated under the FBCA, including any of its officers or directors.⁶ The Department used these interrogatories to determine a corporation's compliance with the FBCA. The Department could institute civil proceedings against a corporation found to be in violation of the FBCA based on the interrogatories.⁷

Section 67 creates s. 607.1703, F.S., to restore the Department's authority to issue interrogatories to corporations that operate pursuant to the FBCA and to their officers or directors. Like the deleted FBCA provision, the bill:

- Gives the corporation 30 days to respond, or longer if the Department permits;
- Requires that interrogatories directed to an individual be answered by that individual;
- Provides timeframes for filing a court record relating to the interrogatories; and
- Grants powers and duties to the Department to administer the FBCA, including authority to:
 - Institute a civil action in a circuit court to collect a penalty, fee, or tax that is owed to the state by the corporation, and to compel any legally required finding, qualification, or registration;
 - File a *lis pendens*⁸ against any property owned by the corporation;
 - Refer its findings to the Department of Legal Affairs for the purpose of initiating further action; and
 - Adopt rules necessary to carry out the FBCA.

The bill slightly modifies the FBCA's prior language to specify that the Department may serve interrogatories on a *domestic or foreign* corporation, and to change references from a corporation's "president, vice president, secretary, or assistant secretary" to a corporation's "officer or director" [or] "shareholder ... or fiduciary," when specified.

⁴ The Florida Bar, *Legislature Rewrites Corporations Statute*, FLA. BAR. NEWS, May 1 2019, <https://www.floridabar.org/the-florida-bar-news/legislature-rewrites-corporations-statutes/>

⁵ "Interrogatories" are a list of questions posed by one party to its opposing party in a civil action as part of the discovery process. The recipient must answer the questions under oath. Fla. R. Civ. P. 1.340(a)

⁶ See Ch. 2019-90, Laws of Fla.; see also The Florida Bar Business Law Section, *Proposed Modifications to Chapter 607* (Jan. 24, 2019)(on file with the Senate Committee on Commerce and Tourism).

⁷ Section 607.0130 (2007).

⁸ A "lis pendens," is filed with the clerk of the court to provide written notice that a lawsuit has been filed that involves either title to or a claimed ownership interest in real property. See Legal Information Institute, *Lis Pendens*, https://www.law.cornell.edu/wex/lis_pendens (last visited Jan. 14, 2020).

Not-for-Profit Corporation Board Committees

A not-for-profit corporation's board of directors is vested with the corporation's powers⁹ and must fulfill the corporation's obligations to its members, beneficiaries, donors, and community.¹⁰ The board of directors may also appoint board directors to serve as members of a corporate committee, which acts with the board's full authority, except that the committee cannot:¹¹

- Approve or recommend for approval actions or proposals that members must approve;
- Fill board or board committee vacancies; or
- Adopt, amend, or repeal the bylaws.

Florida law does not allow a not-for-profit corporation's board to appoint non-directors to its board committees. Despite a lack of authority, it is believed that many not-for-profit corporations include non-director members on the board committees.¹²

The Model Not-For-Profit Corporation Act permits a not-for-profit corporation's board to create an advisory committee made up of non-director appointees. The Model Not-For-Profit Corporation Act also dictates that an advisory committee may not have board authority, and may only make recommendations to the board or the not-for-profit corporation's officers or members.¹³

Section 77 authorizes a not-for-profit corporation's board of directors to create board committees and appoint as members thereto any person, whether or not they serve as a director for the not-for-profit corporation's board, subject to the following requirements:

- If an executive committee is created by a resolution of the board of directors, the board may appoint non-board members, but the majority of the executive committee's membership must consist of board directors; and
- If the committee is created by the board or is otherwise authorized by the articles of incorporation or bylaws, and its scope of authority relates to director elections, nominations, or credentials, or is otherwise involved in the director election process, the committee's membership may be made up of entirely non-board members; and
- If an advisory committee is created by the corporation, its membership may consist of any number of non-directors, but the advisory committee may not act on behalf of the board, exercise any board power or authority, or bind the not-for-profit corporation to any action. The advisory committee may make recommendations to the board or corporate officers or members, however.

⁹ See s. 617.01401(2), F.S. (defining a "board of directors" as the "group of persons vested with the management of the affairs of the corporation..."), and s. 607.0302, F.S., which outlines corporate duties as the powers to: sue and be sued; purchase, lease or acquire, and own, hold, improve, use and deal with, real or personal property; sell, convey, mortgage, or otherwise dispose of all or part of its property; lend or borrow money; and make contracts and incur liabilities.

¹⁰ Jeffrey A. Baskies and Cara Freedman, *To Protect and to Serve: The Duties and Responsibilities of Directors of Florida Not-For-Profit Corporations*, Florida Bar Journal Vol. 89, No. 9 (Nov. 2015), available at <https://www.floridabar.org/the-florida-bar-journal/to-protect-and-to-serve-the-duties-and-responsibilities-of-directors-of-florida-not-for-profit-corporations/> (last visited Jan. 14, 2020).

¹¹ Section 617.0825(1) and (3), F.S.

¹² The Florida Bar Business Law Section, *White Paper for S.B. [838] & H.B. [495]*, (Oct. 21, 2019)(on file with the Senate Committee on Commerce and Tourism).

¹³ American Bar Association Committee on Nonprofit Organizations, *Model Nonprofit Corporation Act* §8.25 (3d ed. 2008).

Additionally, the bill defines a non-director committee member's responsibility, fiduciary duty,¹⁴ and liability protections¹⁵ as equal to those provided to a director committee member.

This section does not apply to a condominium, cooperative, or homeowners' association board's fining or architectural review committees acting pursuant to ss. 718.303(3), 719.303(3), and 720.303(2) or 720.3035(1), F.S., respectively.

Conforming Changes

The bill amends ss. 607.0120, 607.0125, 607.0141, 607.0620, 607.0720, 607.1002, 607.11921, 607.1202, 607.1302, 607.1333, 607.1422, 607.1431, 607.14401, 607.1502, 607.1504, 607.15091, 607.1602, and 605.0116, F.S., to provide for consistent terminology throughout ch. 607, F.S., by amending the following terms from:

- "act" to "chapter;"
- "action" to "proceeding;"
- "representative" to "authorized representative;"
- "corporation" to "domestic corporation or foreign corporation;"
- "his or her" to "his, her, or its;"
- "business entity" to "eligible entity;"¹⁶
- "successor" to "successor or assignee;"
- "rights of action" to "proceedings and actions;" and
- "do business" to "transact business."

The bill also amends ss. 607.1103, 607.1106, 607.11920, 607.11921, 607.11923, 607.11924, 607.11935, 607.1432, 607.1520, and 607.504, F.S., to:

- Add references to obligations, other securities, eligible interests, and rights to acquire any combination of shares, securities, cash, or property in connection with organic transactions;
- Ensure consistent use of the term "separate voting group;"
- Change "the receiver" to "any receiver" to reflect that a court may appoint and order compensation for one or more receivers;
- Tailor a reference regarding the process for the withdrawal and cancellation of certificate of authority for a foreign corporation to refer to a foreign corporation, rather than to "it;" and
- Clarify that an entity may elect to become a social purpose corporation by domestication.

Clarifying Changes

The bill makes clarifying changes to ss. 607.0601, 607.0602, 607.0705, 607.0808, 607.0850, 607.0901, 607.1102, 607.1103, 607.11921, 607.11932, 607.1501, 607.1509, and 607.1602, F.S. The changes include:

¹⁴ A director must discharge his or her duties to the corporation in good faith, with the care of an ordinarily prudent person in a similar position, and in a manner he or she reasonably believes to be in the not-for-profit corporation's best interest. *See* s. 617.0830(1)(a)-(c), F.S.

¹⁵ A director is not liable for monetary damages for any statement, vote, decision to act or not act, or failure to act, unless the director breached his or her duties. *See* ss. 607.0831 and 617.0830, F.S.

¹⁶ An "eligible entity" is a domestic corporation, foreign corporation, nonprofit corporation, general partnership, limited partnership, limited liability company, real estate investment trust, or any other foreign or domestic entity that is organized under an organic law. Section 607.01401(28)(a), F.S.

- Specifying that a series of shares that has voting rights is authorized to receive the corporation's net assets upon its dissolution;
- Replacing language to clarify that a series of shares may exist only within one class of shares rather than in one or more classes;
- Changing the term "checks in payment" to "payment" to permit forms of payment to shareholders other than by check;
- Permitting a corporate board to meet on the issue of removal of a board director *and* any additional purpose, if all of the purposes are stated on a properly distributed meeting notice;
- Expanding the definition of "expenses" to include reasonable attorney fees *and expenses*;
- Replacing, in the context of affiliated transactions governed by s. 607.0901, F.S., the term "shares" with "interests" to accommodate those entities that do not have shares;
- Clarifying that a domestic corporation may acquire all of, or one or more classes or series of, both another corporation's shares *and* its rights to acquire shares;
- Ensuring that laws that govern organic transactions contemplate the transaction of all of the following: obligations, other securities, eligible interests, and rights to acquire any combination of shares, securities, cash, or property;
- Specifying that s. 607.1103(6)(a), F.S., details the voting procedures on a plan of merger only;
- Permitting a corporation's articles of incorporation to limit or eliminate specific voting rights, or any combination thereof, as applies to a plan of merger or plan for share exchange;
- Clarifying that ch. 607, F.S., in addition to a foreign corporation's articles of incorporation or board action, may require a vote greater than a quorum to approve the foreign corporation's plan of domestication or plan of conversion;
- Clarifying that a foreign corporation that maintains an account (not just a bank account) in a financial institution is not transacting business, and is therefore not subject to the Department's regulatory authority in virtue thereof;
- Replacing an incorrect word to clarify that a statement of change or similar document is effective when it has been filed *with* the department, not *by* it; and
- Specifying that a shareholder may only inspect the records of actions taken without a meeting by a board committee *of the corporation*.

Cross-Reference Corrections

The bill corrects missing or incorrect cross references in ss. 607.1406, 607.1422, 607.1430, 607.1504, 607.1604, and 607.1622, F.S.

The bill also modifies the sections, subsections, or paragraphs to which provisions apply in ss. 607.0721 and 607.605.0702, F.S.

Grammar, Punctuation, and Duplicative Language Corrections

The bill corrects non-substantive grammar and punctuation errors in ss. 607.0127, 607.01401, 607.0501, 607.0623, 607.0630, 607.0704, 607.0732, 607.0750, 607.0832, 607.0855, 607.0858, 607.1003, 607.11 03, 607.11035, 607.11045, 607.11932, 607.11935, 607.1303, 607.1320, 607.1340, 607.1403, 607.1430, 607.1503, 607.1505, 607.1507, 607.15101, 605.0702, 605.0716, and 617.0501, F.S.

The bill also deletes unnecessary and duplicative language in ss. 605.1104, 607.0630, 607.0707, and 607.1301, F.S.

Effective Date

Section 78 provides that the act takes effect upon becoming law.

Bill Section Directory

Section 1	Section 607.0120, F.S.
Section 2	Section 607.0123, F.S.
Section 3	Section 607.0125, F.S.
Section 4	Section 607.0127, F.S.
Section 5	Section 607.01401, F.S.
Section 6	Section 607.0141, F.S.
Section 7	Section 607.0501, F.S.
Section 8	Section 607.0601, F.S.
Section 9	Section 607.0602, F.S.
Section 10	Section 607.0620, F.S.
Section 11	Section 607.0623, F.S.
Section 12	Section 607.0630, F.S.
Section 13	Section 607.0704, F.S.
Section 14	Section 607.0705, F.S.
Section 15	Section 607.0707, F.S.
Section 16	Section 607.0720, F.S.
Section 17	Section 607.0721, F.S.
Section 18	Section 607.0732, F.S.
Section 19	Section 607.0750, F.S.
Section 20	Section 607.0808, F.S.
Section 21	Section 607.0832, F.S.
Section 22	Section 607.0850, F.S.
Section 23	Section 607.0855, F.S.
Section 24	Section 607.0858, F.S.
Section 25	Section 607.0901, F.S.
Section 26	Section 607.1002, F.S.
Section 27	Section 607.1003, F.S.
Section 28	Section 607.1102, F.S.
Section 29	Section 607.1103, F.S.
Section 30	Section 607.11035, F.S.
Section 31	Section 607.11045, F.S.
Section 32	Section 607.1106, F.S.
Section 33	Section 607.11920, F.S.
Section 34	Section 607.11921, F.S.
Section 35	Section 607.11923, F.S.
Section 36	Section 607.11924, F.S.
Section 37	Section 607.11932, F.S.
Section 38	Section 607.11933, F.S.
Section 39	Section 607.11935, F.S.
Section 40	Section 607.1202, F.S.
Section 41	Section 607.1301, F.S.
Section 42	Section 607.1302, F.S.
Section 43	Section 607.1303, F.S.

Section 44	Section 607.1320, F.S.
Section 45	Section 607.1333, F.S.
Section 46	Section 607.1340, F.S.
Section 47	Section 607.1403, F.S.
Section 48	Section 607.1406, F.S.
Section 49	Section 607.1422, F.S.
Section 50	Section 607.1430, F.S.
Section 51	Section 607.1431, F.S.
Section 52	Section 607.1432, F.S.
Section 53	Section 607.14401, F.S.
Section 54	Section 607.1501, F.S.
Section 55	Section 607.1502, F.S.
Section 56	Section 607.1503, F.S.
Section 57	Section 607.1504, F.S.
Section 58	Section 607.1505, F.S.
Section 59	Section 607.1507, F.S.
Section 60	Section 607.1509, F.S.
Section 61	Section 607.15091, F.S.
Section 62	Section 607.15101, F.S.
Section 63	Section 607.1520, F.S.
Section 64	Section 607.1602, F.S.
Section 65	Section 607.1504, F.S.
Section 66	Section 607.1622, F.S.
Section 67	Section 607.1703, F.S.
Section 68	Section 607.1907, F.S.
Section 69	Section 607.504, F.S.
Section 70	Section 605.0116, F.S.
Section 71	Section 605.0207, F.S.
Section 72	Section 605.0215, F.S.
Section 73	Section 605.0702, F.S.
Section 74	Section 605.0716, F.S.
Section 75	Section 605.1104, F.S.
Section 76	Section 617.0501, F.S.
Section 77	Section 617.0825, F.S.
Section 78	Effective Date

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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 607.1703 of the Florida Statutes and substantially amends the following sections of the Florida Statutes: 607.0120, 607.0123, 607.0125, 607.0127, 607.01401, 607.0141, 607.0501, 607.0601, 607.0602, 607.0620, 607.0623, 607.0630, 607.0704, 607.0705, 607.0707, 607.0720, 607.0721, 607.0732, 607.0750, 607.0808, 607.0832, 607.0850, 607.0855, 607.0858, 607.0901, 607.1002, 607.1003, 607.1102, 607.1103, 607.11035, 607.11045, 607.1106,

607.11920, 607.11921, 607.11923, 607.11924, 607.11932, 607.11933, 607.11935, 607.1202, 607.1301, 607.1302, 607.1303, 607.1320, 607.1333, 607.1340, 607.1403, 607.1406, 607.1422, 607.1430, 607.1431, 607.1432, 607.14401, 607.1501, 607.1502, 607.1503, 607.1504, 607.1505, 607.1507, 607.1509, 607.15091, 607.15101, 607.1520, 607.1602, 607.1604, 607.1622, 607.1907, 607.504, 605.0116, 605.0207, 605.0215, 605.0702, 605.0716, 605.1104, 617.0501, and 617.0825.

IX. Additional Information:

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

CS by Commerce and Tourism on January 14, 2020:

- Deletes unnecessary language that implies that a corporation could obtain a life insurance policy for a shareholder that is not a natural person;
- Clarifies that a favorable vote of a majority of all shares entitled to vote on an amendment are required to amend a corporation's articles of incorporation;
- Provides that changes made to board committee membership requirements do not apply to condominium, cooperative, or homeowner's association committees that perform specific duties; and
- Deletes duplicative rulemaking authority in chs. 605 and 607, F.S.

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senator Simmons

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1 A bill to be entitled
 2 An act relating to business organizations; amending s.
 3 607.0120, F.S.; making technical changes; amending s.
 4 607.0123, F.S.; specifying that certain documents
 5 accepted by the Department of State for filing are
 6 effective on the date the documents are accepted by
 7 the department; making technical changes; amending ss.
 8 607.0125, 607.0127, 607.01401, 607.0141, 607.0501, and
 9 607.0601, F.S.; making technical changes; amending s.
 10 607.0602, F.S.; revising the authority of a board of
 11 directors to reclassify certain unissued shares;
 12 amending ss. 607.0620, 607.0623, 607.0630, 607.0704,
 13 607.0705, 607.0707, 607.0720, 607.0721, 607.0732, and
 14 607.0750, F.S.; making technical changes; amending s.
 15 607.0808, F.S.; revising the required contents of a
 16 meeting notice relating to the removal of a director
 17 by shareholders; amending s. 607.0832, F.S.; making a
 18 technical change; amending s. 607.0850, F.S.; revising
 19 the definition of the term "expenses"; amending ss.
 20 607.0855 and 607.0858, F.S.; making technical changes;
 21 amending s. 607.0901, F.S.; revising definitions;
 22 amending ss. 607.1002 and 607.1003, F.S.; making
 23 technical changes; amending s. 607.1102, F.S.;
 24 authorizing a domestic corporation to acquire one or
 25 more classes or series of shares under certain
 26 circumstances; amending ss. 607.1103, 607.11035,
 27 607.11045, 607.1106, and 607.11920, F.S.; making
 28 technical changes; amending s. 607.11921, F.S.;
 29 revising an exception for the procedure to approve a

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30 plan of domestication; making a technical change;
 31 amending ss. 607.11923 and 607.11924, F.S.; making
 32 technical changes; amending s. 607.11932, F.S.;
 33 revising an exception for the procedure to approve a
 34 plan of conversion; making a technical change;
 35 amending ss. 607.11933, 607.11935, 607.1202, 607.1301,
 36 607.1302, 607.1303, 607.1320, 607.1333, 607.1340,
 37 607.1403, 607.1406, 607.1422, 607.1430, 607.1431,
 38 607.1432, 607.14401, 607.1501, 607.1502, 607.1503,
 39 607.1504, 607.1505, 607.1507, 607.1509, 607.15091,
 40 607.15101, 607.1520, 607.1602, 607.1604, and 607.1622,
 41 F.S.; making technical changes; creating s. 607.1703,
 42 F.S.; authorizing the department to direct certain
 43 interrogatories to certain corporations and to
 44 officers or directors of certain corporations;
 45 providing requirements for answering the
 46 interrogatories; providing requirements for the
 47 department relating to interrogatories; authorizing
 48 the department to bring certain actions; authorizing
 49 the department to file a lis pendens against certain
 50 property and to certify certain findings to the
 51 Department of Legal Affairs; amending ss. 607.1907,
 52 607.504, and 605.0116, F.S.; making technical changes;
 53 amending s. 605.0207, F.S.; specifying that certain
 54 documents accepted by the department for filing are
 55 effective on the date the records are accepted by the
 56 department; making a technical change; amending ss.
 57 605.0215, 605.0702, 605.0716, 605.1104, and 617.0501,
 58 F.S.; making technical changes; amending s. 617.0825,

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F.S.; authorizing a board of directors to appoint persons to serve on certain committees; requiring that a majority of the persons on such committees be directors; providing exceptions; making technical changes; providing responsibilities and duties for non-director committee members; authorizing a corporation to create or authorize the creation of advisory committees; specifying an advisory committee is not a committee of the board of directors; providing prohibitions and authorizations for advisory committees; providing applicability; providing an effective date.

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

Section 1. Subsection (10) of section 607.0120, Florida Statutes, is amended to read:

607.0120 Filing requirements.—

(10) When the document is delivered to the department for filing, the correct filing fee, and any other tax, license fee, or penalty required to be paid by this chapter ~~act~~ or other law shall be paid or provision for payment made in a manner permitted by the department.

Section 2. Subsections (1) and (2) of section 607.0123, Florida Statutes, are amended to read:

607.0123 Effective time and date of document.—Except as otherwise provided in s. 607.0124(5), and subject to s. 607.0124(4), any document delivered to the department for filing under this chapter may specify an effective time and a delayed

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effective date. In the case of initial articles of incorporation, a prior effective date may be specified in the articles of incorporation if such date is within 5 business days before the date of filing.

(1) Subject to s. 607.0124, a document accepted for filing is effective:

(a) If the record filed ~~filing~~ does not specify an effective time and does not specify a prior or a delayed effective date, on the date and at the time the record ~~filing~~ is accepted, as evidenced by the department's endorsement of the date and time on the filing.

(b) If the record filed ~~filing~~ specifies an effective time, but not a prior or delayed effective date, on the date the record ~~filing~~ is accepted, as evidenced by the department's endorsement, and filed at the time specified in the filing.

(c) If the record filed ~~filing~~ specifies a delayed effective date, but not an effective time, at 12:01 a.m. on the earlier of:

1. The specified date; or

2. The 90th day after the date the record is filed ~~of the filing~~.

(d) If the record filed ~~filing~~ specifies a delayed effective date and an effective time, at the specified time on the earlier of:

1. The specified date; or

2. The 90th day after the date the record is filed ~~of the filing~~.

(e) If the record filed ~~filing~~ is of initial articles of incorporation and specifies an effective date before the date of

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the filing, but no effective time, at 12:01 a.m. on the later of:

1. The specified date; or
2. The 5th business day before the date ~~of~~ the record is filed filing.

(f) If the record filed filing is of initial articles of incorporation and specifies an effective time and an effective date before the date of the filing, at the specified time on the later of:

1. The specified date; or
2. The 5th business day before the date the record is filed of the filing.

(2) If the record filed ~~a filed document~~ does not specify the time zone or place at which the date or time, or both, is to be determined, the date or time, or both, at which it becomes effective shall be those prevailing at the place of filing in this state.

Section 3. Subsection (3) of section 607.0125, Florida Statutes, is amended to read:

607.0125 Filing duties of the department.—

(3) If the department refuses to file a document, the department shall return the document to the domestic or foreign corporation or its authorized representative within 15 days after the document was received for filing, together with a brief, written explanation of the reason for refusal.

Section 4. Section 607.0127, Florida Statutes, is amended to read:

607.0127 Certificates to be received in evidence; evidentiary effect of certified copy of filed document.—All

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certificates issued by the department pursuant to this chapter must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated. A certificate the department delivered with a copy of a document filed by the department, bearing the signature of the secretary of state, which may be in facsimile, and the seal of this the state, is conclusive evidence that the original document is on file with the department.

Section 5. Subsections (1), (2), (22), (51), (61), and (63) of section 607.01401, Florida Statutes, are amended to read:

607.01401 Definitions.—As used in this chapter, unless the context otherwise requires, the term:

(1) "Acquired eligible entity" means the ~~a~~ domestic or foreign eligible entity that will have all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

(2) "Acquiring eligible entity" means the ~~a~~ domestic or foreign eligible entity that will acquire all of one or more classes or series of shares or eligible interests of the acquired eligible entity in a share exchange.

(22) "Domesticating corporation" means the ~~a~~ domestic corporation that approves a plan of domestication pursuant to s. 607.11921, or the ~~a~~ foreign corporation that approves a domestication pursuant to the organic law of the foreign corporation.

(51) "New interest holder liability," in the context of a merger or share exchange, means interest holder liability of a person resulting from a merger or share exchange that is:

- (a) In respect of an eligible entity which is different

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from the eligible entity and not the same eligible entity in which the person held shares or eligible interests, immediately before the merger or share exchange became effective; or

(b) In respect of the same eligible entity as the one in which the person held shares or eligible interests, immediately before the merger or share exchange became effective if:

1. The person did not have interest holder liability immediately before the merger or share exchange became effective; or

2. The person had interest holder liability immediately before the merger or share exchange became effective, the terms and conditions of which were changed when the merger or share exchange became effective.

(61) "Public organic record" means a record, the filing of which by a governmental body is required to form an entity, and ~~or~~ an amendment to or restatement of such record. Where a public organic record has been amended or restated, the term means the public organic record as last amended or restated. The term includes the following:

(a) The articles of incorporation of a corporation for profit;

(b) The articles of incorporation of a nonprofit corporation;

(c) The certificate of limited partnership of a limited partnership;

(d) The articles of organization, certificate of organization, or certificate of formation of a limited liability company;

(e) The articles of incorporation of a general cooperative

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association or a limited cooperative association;

(f) The certificate of trust of a statutory trust or similar record of a business trust; or

(g) The articles of incorporation of a real estate investment trust.

(63) "Record date" means the date fixed for determining the identity of the corporation's shareholders and their share holdings for purposes of this chapter. Unless another time is specified when the record date is fixed, the determination shall be made as of the close of ~~the~~ business at the principal office of the corporation on the date so fixed.

Section 6. Subsections (4) and (11) of section 607.0141, Florida Statutes, are amended to read:

607.0141 Notice.—

(4) Written notice to a domestic corporation or to a foreign corporation authorized to transact business in this state may be addressed:

(a) To its registered agent at the domestic corporation's or foreign corporation's registered office; or

(b) To the domestic corporation or foreign corporation or to the domestic corporation's or foreign corporation's secretary at the domestic corporation's or foreign corporation's principal office or electronic mail address as authorized and shown in its most recent annual report or, in the case of a domestic corporation or foreign corporation that has not yet delivered an annual report, in a domestic corporation's articles of incorporation or in a foreign corporation's application for certificate of authority.

(11) If this chapter ~~act~~ prescribes requirements for

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233 notices or other communications in particular circumstances,
 234 those requirements govern. If articles of incorporation or
 235 bylaws prescribe requirements for notices or other
 236 communications not less stringent than the requirements of this
 237 section or other provisions of this chapter act, those
 238 requirements govern. The articles of incorporation or bylaws may
 239 authorize or require delivery of notices of meetings of
 240 directors by electronic transmission.

241 Section 7. Subsections (1) and (5) of section 607.0501,
 242 Florida Statutes, are amended to read:

243 607.0501 Registered office and registered agent.—

244 (1) Each corporation shall designate and continuously
 245 maintain in this state:

246 (a) A registered office, which may be the same as its place
 247 of business in this state; and

248 (b) A registered agent, which must be:

249 1. An individual who resides in this state whose business
 250 address is identical to the address of the registered office;

251 2. Another domestic entity that is an authorized entity and
 252 whose business address is identical to the address of the
 253 registered office; or

254 3. A foreign entity authorized to transact business in this
 255 state which is an authorized entity and whose business address
 256 is identical to the address of the registered office.

257 (5) The department shall maintain an accurate record of the
 258 registered agent agents and registered office for service of
 259 process and shall promptly furnish any information disclosed
 260 thereby upon request and payment of the required fee.

261 Section 8. Subsection (2) of section 607.0601, Florida

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262 Statutes, is amended to read:

263 607.0601 Authorized shares.—

264 (2) The articles of incorporation must authorize:

265 (a) One or more classes or series of shares that together
 266 have unlimited voting rights, and

267 (b) One or more classes or series of shares (which may be
 268 the same class or series or classes or series as those with
 269 voting rights) that together are entitled to receive the net
 270 assets of the corporation upon dissolution.

271 Section 9. Subsection (1) of section 607.0602, Florida
 272 Statutes, is amended to read:

273 607.0602 Terms of class or series determined by board of
 274 directors.—

275 (1) If the articles of incorporation so provide, the board
 276 of directors is authorized, without shareholder approval, to:

277 (a) Classify any unissued shares into one or more classes
 278 or into one or more series within a class;

279 (b) Reclassify any unissued shares of any class into one or
 280 more classes or into one or more series within a class ~~one or~~
 281 ~~more classes~~; or

282 (c) Reclassify any unissued shares of any series of any
 283 class into one or more classes or into one or more series within
 284 a class.

285 Section 10. Subsection (5) of section 607.0620, Florida
 286 Statutes, is amended to read:

287 607.0620 Subscriptions for shares.—

288 (5) If a subscriber defaults in payment of money or
 289 property under a subscription agreement entered into before
 290 incorporation, the corporation may collect the amount owed as

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any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days after the corporation delivers written demand for payment to the subscriber. If the subscription agreement is rescinded and the shares sold, then, notwithstanding the rescission, the defaulting subscriber or his, ~~or her~~, or its legal representative shall be entitled to be paid the excess of the sale proceeds over the sum of the amount due and unpaid on the subscription and the reasonable expenses incurred in selling the shares, but in no event shall the defaulting subscriber or his, ~~or her~~, or its legal representative be entitled to be paid an amount greater than the amount paid by the subscriber on the subscription.

Section 11. Subsection (1) of section 607.0623, Florida Statutes, is amended to read:

607.0623 Share dividends.—

(1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series of ~~or~~ shares. An issuance of shares under this subsection is a share dividend.

Section 12. Paragraphs (c) and (d) of subsection (2) of section 607.0630, Florida Statutes, are amended to read:

607.0630 Shareholders' preemptive rights.—

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights" (or words of similar import) means that the following principles apply except to the extent the articles of incorporation

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expressly provide otherwise:

(c) There is no preemptive right with respect to:

1. Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

2. Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

3. Shares authorized in the articles of incorporation that are issued within 6 months from the effective date of incorporation;

4. Shares issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a law of this state or of the United States; or

5. Shares issued for consideration other than money.

(d) Holders of shares of any class or series without general voting rights but with preferential rights ~~to distributions~~ to receive the net assets upon dissolution have no preemptive rights with respect to shares of any class or series.

Section 13. Subsection (7) of section 607.0704, Florida Statutes, is amended to read:

607.0704 Action by shareholders without a meeting.—

(7) The notice requirements in subsection (3) do not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirement does not invalidate actions taken by written consent. This subsection shall ~~may~~ not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected

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349 by a failure to give such notice within the required time
350 period.

351 Section 14. Subsection (5) of section 607.0705, Florida
352 Statutes, is amended to read:

353 607.0705 Notice of meeting.—

354 (5) Notwithstanding the foregoing, whenever notice is
355 required to be given to any shareholder under this chapter or
356 the articles of incorporation or bylaws of any corporation to
357 whom:

358 (a) Notice of two consecutive annual meetings, and all
359 notices of meetings or the taking of action by written consent
360 without a meeting to such person during the period between such
361 two consecutive annual meetings; or

362 (b) All, and at least two payments ~~checks in payment~~ of
363 dividends or interest on securities during a 12-month period,
364
365 have been sent by first-class United States mail, addressed to
366 the shareholder at such person's address as it appears in the
367 record of shareholders of the corporation, maintained in
368 accordance with s. 607.1601(4), and returned undeliverable, then
369 the giving of such notice to such person shall not be required.
370 Any action or meeting which is taken or held without notice to
371 such person has the same force and effect as if such notice has
372 been duly given. If any such person delivers to the corporation
373 a written notice setting forth such person's then current
374 address, the requirement that a notice be given to such person
375 with respect to future notices shall be reinstated.

376 Section 15. Subsections (2), (9), and (10) of section
377 607.0707, Florida Statutes, are amended to read:

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378 607.0707 Record date.—

379 ~~(2) If not otherwise provided by or pursuant to the bylaws,~~
380 ~~the record date for determining shareholders entitled to demand~~
381 ~~a special meeting is the date the first shareholder delivers his~~
382 ~~or her demand to the corporation.~~

383 (9) Shares of a corporation's own stock acquired by the
384 corporation between the record date for determining shareholders
385 entitled to notice of or to vote at a meeting of shareholders
386 and the time of the meeting may be voted ~~on~~ at the meeting by
387 the holder of record as of the record date and shall be counted
388 in determining the total number of outstanding shares entitled
389 to be voted at the meeting.

390 (2) (10) If not otherwise fixed under s. 607.0703 or
391 otherwise provided by or pursuant to the bylaws, the record date
392 for determining shareholders entitled to demand a special
393 meeting is the earliest date on which a signed shareholder
394 demand is delivered to the corporation. A written demand for a
395 special meeting is not effective unless, within 60 days of the
396 earliest date on which such a demand delivered to the
397 corporation as required by s. 607.0702 was signed, written
398 demands signed by shareholders holding at least the percentage
399 of votes specified in or fixed in accordance with s.
400 607.0702(1) (b) have been delivered to the corporation.

401 Section 16. Subsection (2) of section 607.0720, Florida
402 Statutes, is amended to read:

403 607.0720 Shareholders' list for meeting.—

404 (2) The shareholders' list for notice must be available for
405 inspection by any shareholder for a period of 10 days prior to
406 the meeting or such shorter time as exists between the record

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date and the meeting and continuing through the meeting at the corporation's principal office, at a place identified in the meeting notice in the city where the meeting will be held, or at the office of the corporation's transfer agent or registrar. Any separate shareholders' list for voting, if different, must be similarly available for inspection promptly after the record date for voting. A shareholder or the shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of s. 607.1602(3), copy a list during regular business hours and at his, ~~or~~ her, or its expense, during the period it is available for inspection.

Section 17. Subsection (3) of section 607.0721, Florida Statutes, is amended to read:

607.0721 Voting entitlement of shares.—

(3) Shares held by the corporation in a fiduciary capacity for the benefit of any person are entitled to vote unless they are held for the benefit of, or otherwise belong to, the corporation directly, or indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or which is otherwise controlled by the corporation. For the purposes of this section ~~subsection~~, "voting power" means the current power to vote in the election of directors of a corporation or to elect, select, or appoint those persons who will govern another entity.

Section 18. Subsection (2) of section 607.0732, Florida Statutes, is amended to read:

607.0732 Shareholder agreements.—

(2) An agreement authorized by this section shall be:

(a)1. Set forth or referenced in the articles of

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incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

2. Set forth in a written agreement that is signed by all persons who are shareholders at the time of the agreement and such written agreement is made known to the corporation; and

(b) Subject to termination or amendment only by all persons who are shareholders at the time of the termination or amendment, unless the agreement provides otherwise.

Section 19. Subsection (1) of section 607.0750, Florida Statutes, is amended to read:

607.0750 Direct action by shareholder.—

(1) Subject to subsection (2), a shareholder may maintain a direct action against another shareholder, an officer, a director, or the company, to enforce the shareholder's rights and otherwise protect the shareholder's interests, including rights and interests under the articles of incorporation, the bylaws or this chapter or arising independently of the shareholder relationship.

Section 20. Subsection (4) of section 607.0808, Florida Statutes, is amended to read:

607.0808 Removal of directors by shareholders.—

(4) A director may be removed by the shareholders only at a meeting of shareholders called for the purpose of removing the director, and the meeting notice must state that the removal of the director is the purpose, or one of the purposes, of the meeting.

Section 21. Subsection (7) of section 607.0832, Florida Statutes, is amended to read:

607.0832 Director conflicts of interest.—

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465 (7) ~~If where~~ shareholders' action under this section does
 466 not satisfy a quorum or voting requirement applicable to the
 467 authorization of the transaction by shareholders as required by
 468 the articles of incorporation, the bylaws, this chapter, or any
 469 other law, an action to satisfy those authorization
 470 requirements, whether as part of the same action or by way of
 471 another action, must be taken by the shareholders in order to
 472 authorize the transaction. In such action, the vote or consent
 473 of shareholders who are not disinterested shareholders may be
 474 counted.

475 Section 22. Subsection (4) of section 607.0850, Florida
 476 Statutes, is amended to read:

477 607.0850 Definitions.—In ss. 607.0850-607.0859, the term:

478 (4) "Expenses" includes reasonable attorney fees and
 479 expenses, including those incurred in connection with any
 480 appeal.

481 Section 23. Subsection (2) of section 607.0855, Florida
 482 Statutes, is amended to read:

483 607.0855 Determination and authorization of
 484 indemnification.—

485 (2) The determination shall be made:

486 (a) If there are two or more qualified directors, by the
 487 board of directors by a majority vote of all of the qualified
 488 directors, a majority of whom shall for such purposes constitute
 489 a quorum, or by a majority of the members of a committee of two
 490 or more qualified directors appointed by such a vote; ~~or~~

491 (b) By independent special legal counsel:

492 1. Selected in the manner prescribed by paragraph (a); or
 493 2. If there are fewer than two qualified directors,

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494 selected by the board of directors, in which selection directors
 495 who are not qualified directors may participate; or

496 (c) By the shareholders, but shares owned by or voted under
 497 the control of a director or officer who, at the time of the
 498 determination, is not a qualified director or an officer who is
 499 a party to the proceeding may not be counted as votes in favor
 500 of the determination.

501 Section 24. Subsection (1) of section 607.0858, Florida
 502 Statutes, is amended to read:

503 607.0858 Variation by corporate action; application of ss.
 504 607.0850-607.0859.—

505 (1) The indemnification provided pursuant to ss. 607.0851
 506 and 607.0852 and the advancement of expenses provided pursuant
 507 to s. 607.0853 are not exclusive, and a corporation may, by a
 508 provision in its articles of incorporation, bylaws, or any
 509 agreement, or by vote of shareholders or disinterested
 510 directors, or otherwise, obligate itself in advance of the act
 511 or omission giving rise to a proceeding to provide any other or
 512 further indemnification or advancement of expenses to any of its
 513 directors or officers. Any such obligatory provision shall be
 514 deemed to satisfy the requirements for authorization referred to
 515 in ss. 607.0853(3) and 607.0855(3). Any such provision that
 516 obligates the corporation to provide indemnification to the
 517 fullest extent permitted by law shall be deemed to obligate the
 518 corporation to advance funds to pay for or reimburse expenses in
 519 accordance with s. 607.0853 to the fullest extent permitted by
 520 law, unless the provision specifically provides otherwise.

521 Section 25. Paragraph (f) of subsection (1) of section
 522 607.0901, Florida Statutes, is amended to read:

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523 607.0901 Affiliated transactions.—

524 (1) For purposes of this section:

525 (f) "Control," "controlling," "controlled by," and "under
526 common control with" mean the possession, directly or
527 indirectly, through the ownership of voting interests ~~shares~~, by
528 contract, arrangement, understanding, relationship, or
529 otherwise, of the power to direct or cause the direction of the
530 management and policies of a person. A person who is the owner
531 of 20 percent or more of the outstanding voting interests ~~shares~~
532 of any corporation, partnership, unincorporated association, or
533 other entity is presumed to have control of such entity, in the
534 absence of proof by a preponderance of the evidence to the
535 contrary. Notwithstanding the foregoing, a person shall not be
536 deemed to have control of an entity if such person holds voting
537 interests ~~shares~~, in good faith and not for the purpose of
538 circumventing this section, as an agent, bank, broker, nominee,
539 custodian, or trustee for one or more beneficial owners who do
540 not individually or as a group have control of such entity.

541 Section 26. Subsection (11) of section 607.1002, Florida
542 Statutes, is amended to read:

543 607.1002 Amendment by board of directors.—Unless the
544 articles of incorporation provide otherwise, a corporation's
545 board of directors may adopt one or more amendments to the
546 corporation's articles of incorporation without shareholder
547 approval:

548 (11) To make any other change expressly permitted by this
549 chapter ~~act~~ to be made without shareholder approval.

550 Section 27. Paragraph (a) of subsection (2) and subsections
551 (4) and (5) of section 607.1003, Florida Statutes, are amended

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552 to read:

553 607.1003 Amendment by board of directors and shareholders.—
554 If a corporation has issued shares, an amendment to the articles
555 of incorporation shall be adopted in the following manner:

556 (2) (a) Except as provided in s. 607.1002, ~~s. 607.1002~~,
557 s. and 607.1008, ~~or and~~, with respect to restatements that do
558 not require shareholder approval, s. 607.1007, the amendment
559 shall then be approved by the shareholders.

560 (4) If the amendment is required to be approved by the
561 shareholders, and the approval is to be given at a meeting, the
562 corporation must notify each shareholder, whether or not
563 entitled to vote, of the meeting of shareholders at which the
564 amendment is to be submitted for approval. The notice must be
565 given in accordance with s. 607.0705; must state that the
566 purpose, or one of the purposes, of the meeting is to consider
567 the amendment; and must contain or be accompanied by a copy of
568 the amendment.

569 (5) Unless this chapter, the articles of incorporation, or
570 the board of directors, acting pursuant to subsection (3),
571 requires a greater vote or a greater quorum, the approval of the
572 amendment requires the approval of the shareholders at a meeting
573 at which a quorum exists consisting of at least a majority of
574 the shares entitled to be cast on the amendment ~~exists~~, and, if
575 any class or series of shares is entitled to vote as a separate
576 group on the amendment, except as provided in s. 607.1004(3),
577 the approval of each such separate voting group at a meeting at
578 which a quorum of the voting group exists consisting of at least
579 a majority of the votes entitled to be cast on the amendment by
580 that voting group.

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Section 28. Subsections (1) and (6) of section 607.1102, Florida Statutes, are amended to read:

607.1102 Share exchange.—

(1) By complying with this chapter, including adopting a plan of share exchange in accordance with subsection (3) and complying with s. 607.1103:

(a) A domestic corporation may acquire all of the shares or one or more classes or series of shares or rights to acquire shares of one or more classes or series of shares or rights to acquire shares of another domestic or foreign corporation, or all of the eligible interests of one or more classes or series of interests of a domestic or foreign eligible entity, or any combination of the foregoing, pursuant to a plan of share exchange, in exchange for:

1. Shares or other securities.

2. Eligible interests.

3. Obligations.

4. Rights to acquire shares, other securities, or eligible interests.

5. Cash.

6. Other property.

7. Any combination of the foregoing; or

(b) All of the shares of one or more classes or series of shares or rights to acquire shares of a domestic corporation may be acquired by another domestic or foreign eligible entity, pursuant to a plan of share exchange, in exchange for:

1. Shares or other securities.

2. Eligible interests.

3. Obligations.

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4. Rights to acquire shares, other securities, or eligible interests.

5. Cash.

6. Other property.

7. Any combination of the foregoing.

(6) A plan of share exchange may be amended only with the consent of each party to the share exchange, except as provided in the plan. A domestic eligible entity may approve an amendment to a plan:

(a) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) In the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

1. The amount or kind of shares or other securities; eligible interests; obligations; rights to acquire shares, other securities, or eligible interests; cash; ~~or~~ other property; or any combination of the foregoing, to be received under the plan by the shareholders, members, or interest holders of the acquired eligible entity; or

2. Any of the other terms or conditions of the plan if the change would adversely affect such shareholders, members, or interest holders in any material respect.

Section 29. Section 607.1103, Florida Statutes, is amended to read:

607.1103 Action on a plan of merger or share exchange.—In the case of a domestic corporation that is a party to a merger

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or is the acquired eligible entity in a share exchange, the plan of merger or the plan of share exchange must be adopted in the following manner:

(1) The plan of merger or the plan of share exchange shall first be adopted by the board of directors of such domestic corporation.

(2) (a) Except as provided in subsections (8), (10), and (11), and in ss. 607.11035 and 607.1104, the plan of merger or the plan of share exchange shall then be adopted by the shareholders.

(b) In submitting the plan of merger or the plan of share exchange to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan, or in the case of an offer referred to in s.

607.11035(1)(b), that the shareholders tender their shares to the offeror in response to the offer, unless:

1. The board of directors makes a determination that because of conflicts of interest or other special circumstances, it should not make such a recommendation; or

2. Section 607.0826 applies.

(c) If either subparagraph (b)1. or subparagraph (b)2. applies, the board shall inform the shareholders of the basis for its so proceeding without such recommendation.

(3) The board of directors may set conditions for the approval of the proposed merger or share exchange by the shareholders or the effectiveness of the plan of merger or the plan of share exchange.

(4) If the plan of merger or the plan of share exchange is required to be approved by the shareholders, and if the approval

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is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is submitted for approval in accordance with s. 607.0705. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or the plan of share exchange, regardless of whether or not the meeting is an annual or a special meeting, and contain or be accompanied by a copy of the plan. If the corporation is to be merged into an existing foreign or domestic eligible entity, the notice must also include or be accompanied by a copy of the articles of incorporation and bylaws or the organic rules of that eligible entity into which the corporation is to be merged. If the corporation is to be merged with a domestic or foreign eligible entity and a new domestic or foreign eligible entity is to be created pursuant to the merger, the notice must include or be accompanied by a copy of the articles of incorporation and bylaws or the organic rules of the new eligible entity. Furthermore, if applicable, the notice shall contain a clear and concise statement that, if the plan of merger or share exchange is effected, shareholders dissenting therefrom may be entitled, if they comply with the provisions of this chapter regarding appraisal rights, to be paid the fair value of their shares, and shall be accompanied by a copy of ss. 607.1301-607.1340.

(5) Unless this chapter, the articles of incorporation, or the board of directors (acting pursuant to subsection (3)) requires a greater vote or a greater quorum in the respective case, approval of the plan of merger or the plan of share exchange shall require the approval of the shareholders at a

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meeting at which a quorum exists by a majority of the votes entitled to be cast on the plan, and, if any class or series of shares is entitled to vote as a separate voting group on the plan of merger or the plan of share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group is present by a majority of the votes entitled to be cast on the merger or share exchange by that voting group.

(6) (a) Subject to subsection (7), voting by a class or series as a separate voting group is required on a plan of merger:

1. By each class or series of shares of the corporation that would be entitled to vote as a separate voting group on any provision in the plan which, if such provision had been contained in a proposed amendment to the articles of incorporation of a surviving corporation, would have entitled the class or series to vote as a separate voting group on the proposed amendment under s. 607.1004.~~, or~~

2. If the plan contains a provision that would allow the plan to be amended to include the type of amendment to the articles of incorporation referenced in subparagraph 1., by each class or series of shares of the corporation that would have been entitled to vote as a separate voting group on any such amendment to the articles of incorporation.~~, or~~

3. By each class or series of shares of the corporation that is to be converted under the plan of merger into shares; other securities; eligible interests; obligations; rights to acquire shares, other securities, or eligible interests; cash; property; or any combination of the foregoing.~~, or~~

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4. If the plan contains a provision that would allow the plan to be amended to convert other classes or series of shares of the corporation, by each class or series of shares of the corporation that would have been entitled to vote as a separate voting group if the plan were to be so amended.

(b) Subject to subsection (7), voting by a class or series as a separate voting group is required on a plan of share exchange:

1. By each class or series that is to be exchanged in the exchange, with each class or series constituting a separate voting group.~~, or~~

2. If the plan contains a provision that would allow the plan to be amended to include the type of amendment to the articles of incorporation referenced in subparagraph (a)1., by each class or series of shares of the corporation that would have been entitled to vote as a separate voting group on any such amendment to the articles of incorporation.

(c) Subject to subsection (7), voting by a class or series as a separate voting group is required on a plan of merger or a plan of share exchange if the group is entitled under the articles of incorporation to vote as a separate voting group to approve the plan of merger or the plan of share exchange, respectively.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in any one or more of subparagraphs (6) (a)3. and 4. and subparagraph (6) (a)3., or subparagraph (6) (a)4., or subparagraph (6) (b)1. as to any class or series of shares, except when the plan of merger or the plan for share exchange:

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755 (a) Includes what is or would be, in effect, an amendment
 756 subject to any one or more of subparagraphs (6) (a)1. and 2. and
 757 (6) (b)2.; and
 758 (b) Will not affect a substantive business combination.
 759 (8) Unless the corporation's articles of incorporation
 760 provide otherwise, approval by the corporation's shareholders of
 761 a plan of merger is not required if:
 762 (a) The corporation will survive the merger;
 763 (b) The articles of incorporation of the surviving
 764 corporation will not differ (except for amendments enumerated in
 765 s. 607.1002) from its articles of incorporation before the
 766 merger; and
 767 (c) Each shareholder of the surviving corporation whose
 768 shares were outstanding immediately prior to the effective date
 769 of the merger will hold the same number of shares, with
 770 identical designations, preferences, rights, and limitations,
 771 immediately after the effective date of the merger.
 772 (9) If, as a result of a merger or share exchange, one or
 773 more shareholders of a domestic corporation would become subject
 774 to new interest holder liability, approval of the plan of merger
 775 or the plan of share exchange shall require, in connection with
 776 the transaction, the signing by each such shareholder of a
 777 separate written consent to become subject to such new interest
 778 holder liability, unless in the case of a shareholder that
 779 already has interest holder liability with respect to such
 780 domestic corporation:
 781 (a) The new interest holder liability is with respect to a
 782 domestic or foreign corporation (which may be a different or the
 783 same domestic corporation in which the person is a shareholder);

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784 and
 785 (b) The terms and conditions of the new interest holder
 786 liability are substantially identical to those of the existing
 787 interest holder liability (other than for changes that reduce or
 788 eliminate such interest holder liability).
 789 (10) Unless the articles of incorporation otherwise
 790 provide, approval of a plan of share exchange by the
 791 shareholders of a domestic corporation is not required if the
 792 corporation is the acquiring eligible entity in the share
 793 exchange.
 794 (11) Unless the articles of incorporation otherwise
 795 provide, shares in the acquired eligible entity not to be
 796 exchanged under the plan of share exchange are not entitled to
 797 vote on the plan.
 798 Section 30. Subsection (1) of section 607.11035, Florida
 799 Statutes, is amended to read:
 800 607.11035 Shareholder approval of a merger or share
 801 exchange in connection with a tender offer.—
 802 (1) Unless the articles of incorporation otherwise provide,
 803 shareholder approval of a plan of merger or a plan of share
 804 exchange under s. 607.1103(1) (b) is not required if:
 805 (a) The plan of merger or share exchange expressly:
 806 1. Permits or requires the merger or share exchange to be
 807 effected under this section; and
 808 2. Provides that, if the merger or share exchange is to be
 809 effected under this section, the merger or share exchange will
 810 be effected as soon as practicable following the satisfaction of
 811 the requirement in paragraph (f);
 812 (b) Another party to the merger, the acquiring eligible

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entity in the share exchange, or a parent of another party to the merger or the parent of the acquiring eligible entity in the share exchange, makes an offer to purchase, on the terms provided in the plan of merger or the plan of share exchange, any and all of the outstanding shares of the corporation that, absent this section, would be entitled to vote on the plan of merger or the plan of share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror, or by any wholly owned subsidiary of any of the foregoing;

(c) The offer discloses that the plan of merger or the plan of share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement in paragraph (f) and that the shares of the corporation that are not tendered in response to the offer will be treated pursuant to paragraph (h);

(d) The offer remains open for at least 10 days;

(e) The offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) The shares listed below are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this section, would be required by this chapter and by the articles of incorporation for the approval of the merger or share exchange by the shareholders and by each other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

1. Shares purchased by the offeror in accordance with the

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offer;

2. Shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of the foregoing; and

3. Shares subject to an agreement that provides that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or eligible interests in such offeror, parent, or subsidiary;

(g) The offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation; and

(h) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and that is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, or is to be exchanged in the share exchange for, or for the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, other property, or any combination of the foregoing, to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in subparagraph (f)2. or subparagraph (f)3. need not be converted into or exchanged for the consideration described in this paragraph.

Section 31. Subsection (1) of section 607.11045, Florida Statutes, is amended to read:

607.11045 Holding company formation by merger by certain

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871 corporations.—

872 (1) This section applies only to a corporation that has
873 shares registered pursuant to s. 12 of the Securities Exchange
874 Act of 1934, or held of record by not fewer than 2,000
875 shareholders.

876 Section 32. Subsection (1) of section 607.1106, Florida
877 Statutes, is amended to read:

878 607.1106 Effect of merger or share exchange.—

879 (1) When a merger becomes effective:

880 (a) The domestic or foreign eligible entity that is
881 designated in the plan of merger as the survivor continues or
882 comes into existence, as the case may be;

883 (b) The separate existence of every domestic or foreign
884 eligible entity that is a party to the merger, other than the
885 survivor, ceases;

886 (c) All real property and other property, including any
887 interest therein and all title thereto, owned by, and every
888 contract right possessed by, each domestic or foreign eligible
889 entity that is a party to the merger, other than the survivor,
890 become the property and contract rights of and become vested in
891 the survivor, without transfer, reversion, or impairment;

892 (d) All debts, obligations, and other liabilities of each
893 domestic or foreign eligible entity that is a party to the
894 merger, other than the survivor, become debts, obligations, and
895 liabilities of the survivor;

896 (e) The name of the survivor may be, but need not be,
897 substituted in any pending proceeding for the name of any party
898 to the merger whose separate existence ceased in the merger;

899 (f) Neither the rights of creditors nor any liens upon the

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900 property of any corporation party to the merger shall be
901 impaired by such merger;

902 (g) If the survivor is a domestic eligible entity, the
903 articles of incorporation and bylaws or the organic rules of the
904 survivor are amended to the extent provided in the plan of
905 merger;

906 (h) The articles of incorporation and bylaws or the organic
907 rules of a survivor that is a domestic eligible entity and is
908 created by the merger become effective;

909 (i) The shares, obligations, and other securities (and the
910 rights to acquire shares, obligations, or other securities) of
911 each domestic or foreign corporation party to the merger, and
912 the eligible interests in any other eligible entity that is a
913 party to the merger, that are to be converted in accordance with
914 the terms of the merger into shares or other securities;
915 eligible interests; obligations; rights to acquire shares, other
916 securities, or eligible interests; cash; other property; or any
917 combination of the foregoing, are converted, and the former
918 holders of such shares, obligations, other securities, and
919 eligible interests (and the rights to acquire shares,
920 obligations, other securities, or other eligible interests) are
921 entitled only to the rights provided to them by those terms of
922 the merger or to any rights they may have under s. 607.1302 or
923 under the organic law governing the eligible entity;

924 (j) Except as provided by law or the plan of merger, all
925 the rights, privileges, franchises, and immunities of each
926 eligible entity that is a party to the merger, other than the
927 survivor, become the rights, privileges, franchises, and
928 immunities of the survivor; and

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929 (k) If the survivor exists before the merger:

930 1. All the property and contract rights of the survivor
931 remain its property and contract rights without transfer,
932 reversion, or impairment;

933 2. The survivor remains subject to all of its debts,
934 obligations, and other liabilities; and

935 3. Except as provided by law or the plan of merger, the
936 survivor continues to hold all of its rights, privileges,
937 franchises, and immunities.

938 Section 33. Subsection (3) of section 607.11920, Florida
939 Statutes, is amended to read:

940 607.11920 Domestication.—

941 (3) In a domestication under subsection (2), the
942 domesticating eligible entity must enter into a plan of
943 domestication. The plan of domestication must include:

944 (a) The name of the domesticating corporation;

945 (b) The name and jurisdiction of formation of the
946 domesticated corporation;

947 (c) The manner and basis of reclassifying the shares and
948 rights to acquire shares of the domesticating corporation into
949 shares or other securities, obligations, rights to acquire
950 shares or other securities, cash, other property, or any
951 combination of the foregoing;

952 (d) The proposed organic rules of the domesticated
953 corporation which must be in writing; and

954 (e) The other terms and conditions of the domestication.

955 Section 34. Subsections (5) and (6) of section 607.11921,
956 Florida Statutes, are amended to read:

957 607.11921 Action on a plan of domestication.—In the case of

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958 a domestication of a domestic corporation into a foreign
959 jurisdiction, the plan of domestication shall be adopted in the
960 following manner:

961 (5) Unless this chapter, the articles of incorporation, or
962 the board of directors acting pursuant to subsection (3)~~7~~
963 require a greater vote or a greater quorum in the respective
964 case, approval of the plan of domestication requires:

965 (a) The approval of the shareholders at a meeting at which
966 a quorum exists consisting of a majority of the votes entitled
967 to be cast on the plan; and

968 (b) Except as provided in subsection (6), the approval of
969 each class or series of shares voting as a separate voting group
970 at a meeting at which a quorum of the voting group exists
971 consisting of a majority of the votes entitled to be cast on the
972 plan by that voting group.

973 (6) The articles of incorporation may expressly limit or
974 eliminate the separate voting rights provided in paragraph
975 (5) (b) as to any class or series of shares, except when the
976 public organic rules of the foreign corporation resulting from
977 the domestication include what would be in effect an amendment
978 that would entitle the class or series to vote as a separate
979 voting group under s. 607.1004 if it were a proposed amendment
980 of the articles of incorporation of a domestic domesticating
981 corporation.

982 Section 35. Subsection (1) of section 607.11923, Florida
983 Statutes, is amended to read:

984 607.11923 Amendment of a plan of domestication;
985 abandonment.—

986 (1) A plan of domestication of a domestic corporation

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adopted under s. 607.11920(3) may be amended:

(a) In the same manner as the plan of domestication was approved, if the plan does not provide for the manner in which it may be amended; or

(b) In the manner provided in the plan of domestication, except that a shareholder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change:

1. The amount or kind of shares or other securities; obligations; rights to acquire shares or, other securities, ~~or~~ ~~eligible interests~~; cash; other property; or any combination of the foregoing, to be received by any of the shareholders or holders of rights to acquire shares or, other securities, ~~or~~ ~~eligible interests~~ of the domesticating corporation under the plan;

2. The organic rules of the domesticated corporation that are to be in writing and that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the shareholders of the domesticated corporation under its organic rules as set forth in the plan of domestication; or

3. Any of the other terms or conditions of the plan, if the change would adversely affect the shareholder in any material respect.

Section 36. Subsection (1) and paragraph (d) of subsection (3) of section 607.11924, Florida Statutes, are amended to read: 607.11924 Effect of domestication.—

(1) When a domestication becomes effective:

(a) All real property and other property owned by the

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domesticating corporation, including any interests therein and all title thereto, and every contract right possessed by the domesticating corporation, are the property and contract rights of the domesticated corporation without transfer, reversion, or impairment;

(b) All debts, obligations, and other liabilities of the domesticating corporation are the debts, obligations, and other liabilities of the domesticated corporation;

(c) The name of the domesticated corporation may be, but need not be, substituted for the name of the domesticating corporation in any pending proceeding;

(d) The organic rules of the domesticated corporation become effective;

(e) The shares and other securities (and the rights to acquire shares or other securities) or equity interests of the domesticating corporation are reclassified into shares, ~~or~~ other securities, obligations, rights to acquire shares or other securities, cash, ~~or~~ other property, or any combination of the foregoing, in accordance with the terms of the domestication, and the shareholders or equity owners of the domesticating corporation are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

(f) The domesticated corporation is:

1. Incorporated under and subject to the organic law of the domesticated corporation;

2. The same corporation, without interruption, as the domesticating corporation; and

3. Deemed to have been incorporated or formed on the date

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the domesticating corporation was originally incorporated.

(3) Except as otherwise provided in the organic law or organic rules of a domesticating foreign corporation, the interest holder liability of a shareholder or equity holder in a foreign corporation that is domesticated into this state who had interest holder liability in respect of such domesticating corporation before the domestication becomes effective shall be as follows:

(d) The shareholder or equity holder shall ~~may~~ not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that are incurred after the domestication becomes effective.

Section 37. Paragraph (a) of subsection (2) and subsection (5) of section 607.11932, Florida Statutes, are amended to read: 607.11932 Action on a plan of conversion.—In the case of a conversion of a domestic corporation to a domestic or foreign eligible entity other than a domestic corporation, the plan of conversion must be adopted in the following manner:

(2)(a) The plan of conversion must ~~shall~~ then be approved by the shareholders of such domestic corporation.

(5) Unless this chapter, the articles of incorporation, or the board of directors acting pursuant to subsection (3), require a greater vote or a greater quorum in the respective case, approval of the plan of conversion requires:

(a) The approval of the shareholders at a meeting at which a quorum exists consisting of a majority of the votes entitled to be cast on the plan; and

(b) The approval of each class or series of shares voting as a separate voting group at a meeting at which a quorum of the

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voting group exists consisting of a majority of the votes entitled to be cast on the plan by that voting group.

Section 38. Paragraph (a) of subsection (4) of section 607.11933, Florida Statutes, is amended to read:

607.11933 Articles of conversion; effectiveness.—

(4)(a) If the ~~a~~ converted eligible entity is a domestic eligible entity, the conversion becomes effective when the articles of conversion are effective.

Section 39. Subsection (1) and paragraph (d) of subsection (4) of section 607.11935, Florida Statutes, are amended to read: 607.11935 Effect of conversion.—

(1) When a conversion becomes effective:

(a) All real property and other property owned by, including any interest therein and all title thereto, and every contract right possessed by, the converting eligible entity remain the property and contract rights of the converted eligible entity without transfer, reversion, or impairment;

(b) All debts, obligations, and other liabilities of the converting eligible entity remain the debts, obligations, and other liabilities of the converted eligible entity;

(c) The name of the converted eligible entity may be, but need not be, substituted for the name of the converting eligible entity in any pending action or proceeding;

(d) If the converted eligible entity is a filing entity, a domestic corporation, or a domestic or foreign nonprofit corporation, its public organic record and its private organic rules become effective;

(e) If the converted eligible entity is a nonfiling entity, its private organic rules become effective;

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(f) If the converted eligible entity is a limited liability partnership, the filing required to become a limited liability partnership and its private organic rules become effective;

(g) The shares, obligations, eligible interests, and other securities (and the rights to acquire shares, obligations, eligible interests, or other securities) ~~and obligations~~ of the converting eligible entity are reclassified into shares, other securities, eligible interests, obligations, rights to acquire shares, ~~or other securities, or~~ eligible interests, ~~obligations~~, cash, other property, or any combination of the foregoing ~~thereof~~, in accordance with the terms of the conversion, and the shareholders or interest holders of the converting eligible entity are entitled only to the rights provided to them by those terms and to any rights they may have under s. 607.1302 or under the organic law of the converting eligible entity; and

(h) The converted eligible entity is:

1. Deemed to be incorporated or organized under and subject to the organic law of the converted eligible entity;

2. Deemed to be the same entity without interruption as the converting eligible entity; and

3. Deemed to have been incorporated or otherwise organized on the date that the converting eligible entity was originally incorporated or organized.

(4) Except as otherwise provided in the organic law or the organic rules of the domestic or foreign eligible entity, the interest holder liability of an interest holder in a converting eligible entity that converts to a domestic corporation who had interest holder liability in respect of such converting eligible entity before the conversion becomes effective shall be as

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follows:

(d) The eligible interest holder ~~shall~~ may not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

Section 40. Subsection (4) of section 607.1202, Florida Statutes, is amended to read:

607.1202 Shareholder approval of certain dispositions.—

(4) If the disposition is required to be approved by the shareholders under subsection (1) and if the approval is to be given at the meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition and the consideration to be received by the corporation. Furthermore, the notice shall contain a clear and concise statement that, if the transaction is effected, shareholders dissenting therefrom are or may be entitled, if they comply with the provisions of this chapter ~~act~~ regarding appraisal rights, to be paid the fair value of their shares and such notice must be accompanied by a copy of ss. 607.1301-607.1340.

Section 41. Subsection (2) and paragraph (a) of subsection (6) of section 607.1301, Florida Statutes, are amended to read:

607.1301 Appraisal rights; definitions.—The following definitions apply to ss. 607.1301-607.1340:

(2) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by,

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or is under common control with, another person or is a senior executive of such person. For purposes of paragraph (6) (a), a person is deemed to be an affiliate of its senior executives.

(6) "Interested transaction" means a corporate action described in s. 607.1302(1), other than a merger pursuant to s. 607.1104, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition:

(a) "Interested person" means a person, or an affiliate of a person, who at any time during the 1-year period immediately preceding approval by the board of directors of the corporate action:

1. Was the beneficial owner of 20 percent or more of the voting power of the corporation, other than as owner of excluded shares;

2. Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of 25 percent or more of the directors to the board of directors of the corporation; or

3. Was a senior executive or director of the corporation or a senior executive of any affiliate of the corporation, and will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

a. Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

b. Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate

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action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in s. 607.0832; or

c. In the case of a director of the corporation who, in the corporate action, will become a director or governor of the acquirer or any of its affiliates ~~in the corporate action~~, rights and benefits as a director or governor that are provided on the same basis as those afforded by the acquirer generally to other directors or governors of such entity or such affiliate.

Section 42. Subsection (1) of section 607.1302, Florida Statutes, is amended to read:

607.1302 Right of shareholders to appraisal.—

(1) A shareholder of a domestic corporation is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(a) Consummation of a domestication or a conversion of such corporation pursuant to s. 607.11921 or s. 607.11932, as applicable, if shareholder approval is required for the domestication or the conversion;

(b) Consummation of a merger to which such corporation is a party:

1. If shareholder approval is required for the merger under s. 607.1103 or would be required but for s. 607.11035, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remains outstanding after consummation of the merger where the terms of such class or series have not been materially

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1219 altered; or

1220 2. If such corporation is a subsidiary and the merger is
1221 governed by s. 607.1104;

1222 (c) Consummation of a share exchange to which the
1223 corporation is a party as the corporation whose shares will be
1224 acquired, except that appraisal rights are not available to any
1225 shareholder of the corporation with respect to any class or
1226 series of shares of the corporation that is not acquired in the
1227 share exchange;

1228 (d) Consummation of a disposition of assets pursuant to s.
1229 607.1202 if the shareholder is entitled to vote on the
1230 disposition, including a sale in dissolution, except that
1231 appraisal rights shall not be available to any shareholder of
1232 the corporation with respect to shares or any class or series
1233 if:

1234 1. Under the terms of the corporate action approved by the
1235 shareholders there is to be distributed to shareholders in cash
1236 the corporation's net assets, in excess of a reasonable amount
1237 reserved to meet claims of the type described in ss. 607.1406
1238 and 607.1407, within 1 year after the shareholders' approval of
1239 the action and in accordance with their respective interests
1240 determined at the time of distribution; and

1241 2. The disposition of assets is not an interested
1242 transaction;

1243 (e) An amendment of the articles of incorporation with
1244 respect to a class or series of shares which reduces the number
1245 of shares of a class or series owned by the shareholder to a
1246 fraction of a share if the corporation has the obligation or the
1247 right to repurchase the fractional share so created;

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1248 (f) Any other merger, share exchange, disposition of
1249 assets, or amendment to the articles of incorporation, in each
1250 case to the extent provided by the articles of incorporation,
1251 bylaws, or a resolution of the board of directors, except that
1252 no bylaw or board resolution providing for appraisal rights may
1253 be amended or otherwise altered except by shareholder approval;

1254 (g) An amendment to the articles of incorporation or bylaws
1255 of the corporation, the effect of which is to alter or abolish
1256 voting or other rights with respect to such interest in a manner
1257 that is adverse to the interest of such shareholder, except as
1258 the right may be affected by the voting or other rights of new
1259 shares then being authorized of a new class or series of shares;

1260 (h) An amendment to the articles of incorporation or bylaws
1261 of a corporation, the effect of which is to adversely affect the
1262 interest of the shareholder by altering or abolishing appraisal
1263 rights under this section;

1264 (i) With regard to a class of shares prescribed in the
1265 articles of incorporation prior to October 1, 2003, including
1266 any shares within that class subsequently authorized by
1267 amendment, any amendment of the articles of incorporation if the
1268 shareholder is entitled to vote on the amendment and if such
1269 amendment would adversely affect such shareholder by:

1270 1. Altering or abolishing any preemptive rights attached to
1271 any of his, ~~or~~ her, or its shares;

1272 2. Altering or abolishing the voting rights pertaining to
1273 any of his, ~~or~~ her, or its shares, except as such rights may be
1274 affected by the voting rights of new shares then being
1275 authorized of any existing or new class or series of shares;

1276 3. Effecting an exchange, cancellation, or reclassification

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of any of his, ~~or her~~, or its shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder's voting rights or alter his, ~~or her~~, or its percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares;

4. Reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his, ~~or her~~, or its shares, or making any of his, ~~or her~~, or its shares subject to redemption when they are not otherwise redeemable;

5. Making noncumulative, in whole or in part, dividends of any of the shareholder's preferred shares which had theretofore been cumulative;

6. Reducing the stated dividend preference of any of the shareholder's preferred shares; or

7. Reducing any stated preferential amount payable on any of the shareholder's preferred shares upon voluntary or involuntary liquidation;

(j) An amendment of the articles of incorporation of a social purpose corporation to which s. 607.504 or s. 607.505 applies;

(k) An amendment of the articles of incorporation of a benefit corporation to which s. 607.604 or s. 607.605 applies;

(l) A merger, domestication, conversion, or share exchange of a social purpose corporation to which s. 607.504 applies; or

(m) A merger, domestication, conversion, or share exchange of a benefit corporation to which s. 607.604 applies.

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Section 43. Subsection (1) of section 607.1303, Florida Statutes, is amended to read:

607.1303 Assertion of rights by nominees and beneficial owners.—

(1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder or the a voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

Section 44. Subsection (1) of section 607.1320, Florida Statutes, is amended to read:

607.1320 Notice of appraisal rights.—

(1) If a proposed corporate action described in s. 607.1302(1) is to be submitted to a vote at a shareholders' meeting, the meeting notice (or, where no approval of such action is required pursuant to s. 607.11035, the offer made pursuant to s. 607.11035), must state that the corporation has concluded that shareholders are, are not, or may be entitled to assert appraisal rights under this chapter. If the corporation

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concludes that appraisal rights are or may be available, a copy of ss. 607.1301-607.1340 must accompany the meeting notice or offer sent to those record shareholders entitled to exercise appraisal rights.

Section 45. Subsection (1) of section 607.1333, Florida Statutes, is amended to read:

607.1333 Limitation on corporate payment.—

(1) No payment shall be made to a shareholder seeking appraisal rights if, at the time of payment, the corporation is unable to meet the distribution standards of s. 607.06401. In such event, the shareholder shall, at the shareholder's option:

(a) Withdraw his, ~~or~~ her, or its notice of intent to assert appraisal rights, which shall in such event be deemed withdrawn with the consent of the corporation; or

(b) Retain his, ~~or~~ her, or its status as a claimant against the corporation and, if it is liquidated, be subordinated to the rights of creditors of the corporation, but have rights superior to the shareholders not asserting appraisal rights, and if the corporation is not liquidated, retain his, ~~or~~ her, or its right to be paid for the shares, which right the corporation shall be obliged to satisfy when the restrictions of this section do not apply.

Section 46. Subsection (1) of section 607.1340, Florida Statutes, is amended to read:

607.1340 Other remedies limited.—

(1) A shareholder entitled to appraisal rights under this chapter may not challenge a completed corporate action for which appraisal rights are available unless such corporate action was either:

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(a) Not authorized and approved in accordance with the applicable provisions of this chapter; or

(b) Procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading.

Section 47. Subsection (3) of section 607.1403, Florida Statutes, is amended to read:

607.1403 Articles of dissolution.—

(3) For purposes of ss. 607.1401-607.1410, the term "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity. Further, for the purposes of this subsection, the term "successor entity" includes a trust, receivership, or other legal entity governed by the laws of this state to which the remaining assets and liabilities of a dissolved corporation are transferred and which exists solely for the purposes of prosecuting and defending suits by or against the dissolved corporation, thereby enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation's shareholders any remaining assets, but not for the purpose of continuing the activities and affairs for which the dissolved corporation was organized.

Section 48. Paragraph (a) of subsection (5) of section 607.1406, Florida Statutes, is amended to read:

607.1406 Known claims against dissolved corporation.—

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1393 (5) (a) For purposes of ss. 607.1401-607.1410, the term ~~this~~
 1394 ~~section~~, "known claims" means any claim or liability that, as of
 1395 the date of the giving of the written notice contemplated by
 1396 subsections (1) and (2):

1397 1. Has matured sufficiently on or prior to the effective
 1398 date of the dissolution to be legally capable of assertion
 1399 against the dissolved corporation; or

1400 2. Is unmatured as of the effective date of the dissolution
 1401 but will mature in the future solely based on the passage of
 1402 time.

1403 Section 49. Subsections (1) and (6) of section 607.1422,
 1404 Florida Statutes, are amended to read:

1405 607.1422 Reinstatement following administrative
 1406 dissolution.—

1407 (1) A corporation that is administratively dissolved under
 1408 s. 607.1420 or that was dissolved under former s. 607.1421
 1409 before January 1, 2020, may apply to the department for
 1410 reinstatement at any time after the effective date of
 1411 dissolution. The corporation must submit all fees and penalties
 1412 then owed by the corporation at the rates provided by law ~~laws~~
 1413 at the time the corporation applies for reinstatement, together
 1414 with an application for reinstatement prescribed and furnished
 1415 by the department, which is signed by both the registered agent
 1416 and an officer or director of the corporation and states:

1417 (a) The name of the corporation;

1418 (b) The street address of the corporation's principal
 1419 office and mailing address;

1420 (c) The date of the corporation's organization;

1421 (d) The corporation's federal employer identification

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1422 number or, if none, whether one has been applied for;

1423 (e) The name, title or capacity, and address of at least
 1424 one officer or director of the corporation; and

1425 (f) Additional information that is necessary or appropriate
 1426 to enable the department to carry out this chapter.

1427 (6) If the name of the dissolved corporation has been
 1428 lawfully assumed in this state by another eligible ~~business~~
 1429 entity, the department shall require the dissolved corporation
 1430 to amend its articles of incorporation to change its name before
 1431 accepting its application for reinstatement.

1432 Section 50. Subsection (1), paragraph (b) of subsection
 1433 (3), and subsection (4) of section 607.1430, Florida Statutes,
 1434 are amended to read:

1435 607.1430 Grounds for judicial dissolution.—

1436 (1) A circuit court may dissolve a corporation or order
 1437 such other remedy as provided in s. 607.1434:

1438 (a) In a proceeding by the Department of Legal Affairs to
 1439 dissolve a corporation if it is established that:

1440 1. The corporation obtained its articles of incorporation
 1441 through fraud; or

1442 2. The corporation has continued to exceed or abuse the
 1443 authority conferred upon it by law.

1444 The enumeration in subparagraphs 1. and 2. of grounds for
 1445 involuntary dissolution does not exclude actions or special
 1446 proceedings by the Department of Legal Affairs or any state
 1447 official for the annulment or dissolution of a corporation for
 1448 other causes as provided in any other statute of this state;

1449 (b) In a proceeding by a shareholder to dissolve a

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corporation if it is established that:

1. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and:

a. Irreparable injury to the corporation is threatened or being suffered;

b. The business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

c. Both sub-subparagraphs a. and b.; or

2. The shareholders are deadlocked in voting power and have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors;

3. The corporate assets are being misapplied or wasted, causing material injury to the corporation; or

4. The directors or those in control of the corporation have acted, are acting, or are reasonably expected to act in a manner that is illegal or fraudulent;

(c) In a proceeding by a creditor if it is established that:

1. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

2. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

(d) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(e) In a proceeding by a shareholder if the corporation has

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abandoned its business and has failed within a reasonable period of time to liquidate and distribute its assets and dissolve.

(3)

(b) ~~For purposes of As used in~~ this section, the term "deadlock sale provision" means a provision in a shareholder agreement that complies with s. 607.0732, which is or may be applicable in the event of a deadlock among the directors or shareholders of the corporation, ~~which neither the directors nor the shareholders, as applicable, of the corporation are able to break,~~ and which provides for a deadlock breaking mechanism, including, but not limited to:

1. A redemption or a purchase and sale of shares or other equity securities;

2. A governance change;

3. A sale of the corporation or all or substantially all of the assets of the corporation; or

4. A similar provision that, if initiated and effectuated, breaks the deadlock by causing the transfer of the shares or other equity securities, a governance change, or a sale of the corporation or all or substantially all of the corporation's assets.

(4) A deadlock sale provision in a shareholder agreement ~~that which~~ complies with s. 607.0732 which is not initiated and effectuated before the court enters an order of judicial dissolution under subparagraph (1)(b)1. or subparagraph (1)(b)2., as the case may be, or an order directing the purchase of petitioner's interest under s. 607.1436, does not adversely affect the rights of shareholders to seek judicial dissolution under subparagraph (1)(b)1. or subparagraph (1)(b)2., as the

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case may be, or the rights of the corporation or one or more shareholders to purchase the petitioner's interest under s. 607.1436. The filing of an action for judicial dissolution on the grounds described in subparagraph (1)(b)1. or subparagraph (1)(b)2., as the case may be, or an election to purchase the petitioner's interest under s. 607.1436, does not adversely affect the right of a shareholder to initiate an available deadlock sale provision under the shareholder agreement that complies with s. 607.0732 or to enforce a shareholder-initiated or an automatically-initiated deadlock sale provision if the deadlock sale provision is initiated and effectuated before the court enters an order of judicial dissolution under subparagraph (1)(b)1. or subparagraph (1)(b)2., as the case may be, or an order directing the purchase of petitioner's interest under s. 607.1436.

Section 51. Subsection (5) of section 607.1431, Florida Statutes, is amended to read:

607.1431 Procedure for judicial dissolution.—

(5) If the court determines that any party has commenced, continued, or participated in a proceeding under s. 607.1430 and has acted arbitrarily, frivolously, vexatiously, or not in good faith, the court may, in its discretion, award attorney fees and other reasonable expenses to the other parties to the proceeding ~~action~~ who have been affected adversely by such actions.

Section 52. Subsection (5) of section 607.1432, Florida Statutes, is amended to read:

607.1432 Receivership or custodianship.—

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense

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disbursements or reimbursements made to any ~~the~~ receiver or custodian and his, her, or its counsel from the assets of the corporation or proceeds from the sale of the assets.

Section 53. Section 607.14401, Florida Statutes, is amended to read:

607.14401 Deposit with Department of Financial Services.— Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the Department of Financial Services for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount ~~or assets~~ deposited, the Department of Financial Services shall pay such person or his, ~~or~~ her, or its representative that amount.

Section 54. Paragraphs (c), (h), and (k) of subsection (2) of section 607.1501, Florida Statutes, are amended to read:

607.1501 Authority of foreign corporation to transact business required; activities not constituting transacting business.—

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(c) Maintaining ~~bank~~ accounts in financial institutions.

(h) Securing or collecting debts or enforcing mortgages or security interests in property securing the debts, or ~~and~~ holding, protecting, or maintaining property so acquired.

(k) Owning and controlling a subsidiary corporation incorporated in or limited liability company formed in, or

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transacting business within, this state; or voting the shares of any such subsidiary corporation~~7~~ or voting the membership interests of any such limited liability company, which it has lawfully acquired.

Section 55. Subsections (3) and (8) of section 607.1502, Florida Statutes, are amended to read:

607.1502 Effect of failure to have a certificate of authority.—

(3) A court may stay a proceeding commenced by a foreign corporation or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor or assignee has obtained a certificate of authority to transact business in this state.

(8) If a foreign corporation transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its agent for service of process in proceedings and actions for ~~rights of action~~ arising out of the transaction of business in this state.

Section 56. Subsection (2) of section 607.1503, Florida Statutes, is amended to read:

607.1503 Application for certificate of authority.—

(2) The foreign corporation shall deliver with a completed application under subsection (1) a certificate of existence or a record of similar import, duly authenticated~~7~~ not more than 90 days prior to delivery of the application to the department, signed by the official having custody of the foreign

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corporation's publicly filed records in its jurisdiction of incorporation. A translation of the certificate, under oath of the translator, must be attached to a certificate which is in a language other than the English language.

Section 57. Paragraph (c) of subsection (1) and paragraph (c) of subsection (2) of section 607.1504, Florida Statutes, are amended to read:

607.1504 Amended certificate of authority.—

(1) A foreign corporation authorized to transact business in this state shall deliver for filing an amendment to its certificate of authority to reflect a change in any of the following:

(c) The name and street address in this state of the foreign corporation's registered agent in this state, unless the change was timely made in accordance with s. 607.1508 or s. 607.1509 ~~s. 607.0502 or s. 607.0503~~.

(2) The amendment must be filed within 90 days after the occurrence of a change described in subsection (1), must be signed by an officer of the foreign corporation, and must state the following:

(c) The date the foreign corporation was authorized to transact ~~do~~ business in this state.

Section 58. Subsection (1) of section 607.1505, Florida Statutes, is amended to read:

607.1505 Effect of a certificate of authority.—

(1) Unless the department determines that ~~than~~ an application for a certificate of authority of a foreign corporation to transact business in this state does not comply with the filing requirements of this chapter, the department

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shall, upon payment of all filing fees, authorize the foreign corporation to transact business in this state and file the application for certificate of authority.

Section 59. Subsection (3) of section 607.1507, Florida Statutes, is amended to read:

607.1507 Registered office and registered agent of foreign corporation.—

(3) Each initial registered agent, and each successor registered agent that is appointed, shall file a statement in writing with the department, in the form and manner prescribed by the department, accepting the appointment as a registered agent while simultaneously being designated as the registered agent. The statement of acceptance must provide that the registered agent is familiar with, and accepts, the obligations of that position.

Section 60. Subsection (3) of section 607.1509, Florida Statutes, is amended to read:

607.1509 Resignation of registered agent of foreign corporation.—

(3) A registered agent is terminated upon the earlier of:

(a) The 31st day after the department files the statement of resignation; or

(b) When a statement of change or other record designating a new registered agent is filed with ~~by~~ the department.

Section 61. Subsection (1) of section 607.15091, Florida Statutes, is amended to read:

607.15091 Change of name or address by registered agent.—

(1) If a registered agent changes his, ~~or~~ her, or its name or address, the agent may deliver to the department for filing a

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statement of change containing the following:

(a) The name of the foreign corporation represented by the registered agent.

(b) The name of the registered agent as currently shown in the records of the department for the corporation.

(c) If the name of the registered agent has changed, his, her, or its new name.

(d) If the address of the registered agent has changed, the new address.

(e) A statement that the registered agent has given the notice required under subsection (2).

Section 62. Subsection (7) of section 607.15101, Florida Statutes, is amended to read:

607.15101 Service of process, notice, or demand on a foreign corporation.—

(7) Any notice or demand on a foreign corporation under this chapter may be given or made: to the chair of the board, the president, any vice president, the secretary, or the treasurer of the foreign corporation; to the registered agent of the foreign corporation at the registered office of the foreign corporation in this state; or to any other address in this state that is in fact the principal office of the foreign corporation in this state.

Section 63. Paragraph (e) of subsection (1) of section 607.1520, Florida Statutes, is amended to read:

607.1520 Withdrawal and cancellation of certificate of authority for foreign corporation.—

(1) To cancel its certificate of authority to transact business in this state, a foreign corporation must deliver to

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the department for filing a notice of withdrawal of certificate of authority. The certificate of authority is canceled when the notice of withdrawal becomes effective pursuant to s. 607.0123. The notice of withdrawal of certificate of authority must be signed by an officer or director and state the following:

(e) That the foreign corporation ~~it~~ revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process based on a cause of action arising during the time it was authorized to transact business in this state.

Section 64. Subsections (1), (2), and (8) of section 607.1602, Florida Statutes, are amended to read:

607.1602 Inspection of records by shareholders.—

(1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in s. 607.1601(1), excluding minutes of meetings of, and records of actions taken without a meeting by, the corporation's board of directors and any board committees of the corporation established under s. 607.0825, if the shareholder gives the corporation written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation written notice of the shareholder's demand at least 5 business days before the date on

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which the shareholder wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of, or records of any actions taken without a meeting by, the corporation's board of directors and board committees of the corporation maintained in accordance with s. 607.1601(1);

(b) The financial statements of the corporation maintained in accordance with s. 607.1601(2);

(c) Accounting records of the corporation;

(d) The record of shareholders maintained in accordance with s. 607.1601(4); and

(e) Any other books and records.

(8) A corporation may deny any demand for inspection made pursuant to subsection (2) if the demand was made for an improper purpose, or if the demanding shareholder has within 2 years preceding his, ~~or~~ her, or its demand sold or offered for sale any list of shareholders of the corporation or any other corporation, has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the records of the corporation or any other corporation.

Section 65. Subsections (1) and (3) of section 607.1604, Florida Statutes, are amended to read:

607.1604 Court-ordered inspection.—

(1) If a corporation does not allow a shareholder who complies with s. 607.1602(1) to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the applicable county may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder. If

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the court orders inspection and copying of the records demanded under s. 607.1602(1) ~~s. 607.1601(1)~~, it shall also order the corporation to pay the shareholder's expenses, including reasonable attorney fees, incurred to obtain the order and enforce its rights under this section.

(3) If the court orders inspection or ~~and~~ copying of the records demanded under s. 607.1602(2), it may impose reasonable restrictions on the disclosure, use, or distribution of, and reasonable obligations to maintain the confidentiality of, such records, and it shall also order the corporation to pay the shareholder's expenses incurred, including reasonable attorney fees, incurred to obtain the order and enforce its rights under this section unless the corporation establishes that the corporation refused inspection in good faith because the corporation had:

(a) A reasonable basis for doubt about the right of the shareholder to inspect or copy the records demanded; or

(b) Required reasonable restrictions on the disclosure, use, or distribution of, and reasonable obligations to maintain the confidentiality of, such records demanded to which the demanding shareholder had been unwilling to agree.

Section 66. Subsections (2) and (4) of section 607.1622, Florida Statutes, are amended to read:

607.1622 Annual report for department.—

(2) If an annual report contains the name and address of a registered agent which differs from the information shown in the records of the department immediately before the annual report becomes effective, the differing information in the annual report is considered a statement of change under s. 607.0502 or

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s. 607.1508, as the case may be.

(4) The first annual report must be delivered to the department between January 1 and May 1 of the year following the calendar year in which a domestic corporation's articles of incorporation became effective or a foreign corporation obtained its certificate of authority to transact business in this state. Subsequent annual reports must be delivered to the department between January 1 and May 1 of each calendar year thereafter. If one or more forms of annual report are submitted for a calendar year, the department shall file each of them and make the information contained in them part of the official record. The first form of annual report filed in a calendar year shall be considered the annual report for that ~~the~~ calendar year, and each report filed after that one in the same calendar year shall be treated as an amended report for that calendar year.

Section 67. Section 607.1703, Florida Statutes, is created to read:

607.1703 Interrogatories by department; other powers of department.—

(1) The department may direct to any domestic corporation or foreign corporation subject to this chapter, and to any officer or director of any domestic corporation or foreign corporation subject to this chapter, interrogatories reasonably necessary and proper to enable the department to ascertain whether the domestic corporation or foreign corporation has complied with the provisions of this chapter applicable to the domestic corporation or foreign corporation. The interrogatories must be answered within 30 days after the date of mailing, or within such additional time as fixed by the department. The

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answers to the interrogatories must be full and complete and must be made in writing and under oath. If the interrogatories are directed to an individual, they must be answered by the individual, and if directed to a domestic corporation or foreign corporation, they must be answered by an officer or director of the domestic corporation or foreign corporation, by a shareholder if there are no officers or directors of the domestic corporation or foreign corporation, or by a fiduciary if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary.

(2) The department need not file a record in a court of competent jurisdiction to which the interrogatories relate until the interrogatories are answered as provided in this chapter, and is not required to file a record if the answers disclose that the record is not in conformity with the requirements of this chapter or if the department has determined that the parties to such document have not paid all fees, taxes, and penalties due and owing this state. The department shall certify to the Department of Legal Affairs, for such action as the Department of Legal Affairs may deem appropriate, all interrogatories and answers that disclose a violation of this chapter.

(3) The department may, based upon its findings under this section or as provided in s. 213.053(15), bring an action in circuit court to collect any penalties, fees, or taxes determined to be due and owing the state and to compel any filing, qualification, or registration required by law. In connection with such proceeding, the department may, without prior approval by the court, file a lis pendens against any

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property owned by the corporation and may further certify any findings to the Department of Legal Affairs for the initiation of an action permitted pursuant to this chapter which the Department of Legal Affairs may deem appropriate.

Section 68. Section 607.1907, Florida Statutes, is amended to read:

607.1907 Saving provision.—

(1) Except as to procedural provisions, chapter 2019-90, Laws of Florida, ~~this act~~ does not affect a pending action or proceeding or a right accrued before January 1, 2020, and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if chapter 2019-90, Laws of Florida, ~~this act~~ had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by chapter 2019-90, Laws of Florida, ~~this act~~, the penalty or punishment, if not already imposed, shall be imposed in accordance with chapter 2019-90, Laws of Florida ~~this act~~.

Section 69. Subsection (3) of section 607.504, Florida Statutes, is amended to read:

607.504 Election of social purpose corporation status.—

(3) If an entity elects to become a social purpose corporation by amendment of the articles of incorporation or by a merger, domestication, conversion, or share exchange, the shareholders of the entity are entitled to appraisal rights under and pursuant to ss. 607.1301-607.1340.

Section 70. Subsection (1) of section 605.0116, Florida Statutes, is amended to read:

605.0116 Change of name or address by registered agent.—

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1857 (1) If a registered agent changes his, ~~or her, or its~~ name
 1858 or address, the agent may deliver to the department for filing a
 1859 statement of change that provides the following:

1860 (a) The name of the limited liability company or foreign
 1861 limited liability company represented by the registered agent.

1862 (b) The name of the registered agent as currently shown in
 1863 the records of the department for the limited liability company
 1864 or foreign limited liability company.

1865 (c) If the name of the registered agent has changed, his,
 1866 her, or its new name.

1867 (d) If the address of the registered agent has changed, the
 1868 new address.

1869 (e) A statement that the registered agent has given the
 1870 notice required under subsection (2).

1871 Section 71. Subsections (2) and (7) of section 605.0207,
 1872 Florida Statutes, are amended to read:

1873 605.0207 Effective date and time.—Except as otherwise
 1874 provided in s. 605.0208, and subject to s. 605.0209(3), any
 1875 document delivered to the department for filing under this
 1876 chapter may specify an effective time and a delayed effective
 1877 date. In the case of initial articles of organization, a prior
 1878 effective date may be specified in the articles of organization
 1879 if such date is within 5 business days before the date of
 1880 filing. Subject to ss. 605.0114, 605.0115, 605.0208, and
 1881 605.0209, a record filed by the department is effective:

1882 (2) If the record filed specifies an effective time, but
 1883 not a prior or delayed effective date, on the date the record is
 1884 accepted, as evidenced by the department's endorsement, and
 1885 filed at the time specified in the filing.

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1886 (7) If the record filed ~~a filed document~~ does not specify
 1887 the time zone or place at which the date or time, or both, is to
 1888 be determined, the date or time, or both, at which it becomes
 1889 effective shall be those prevailing at the place of filing in
 1890 this state.

1891 Section 72. Section 605.0215, Florida Statutes, is amended
 1892 to read:

1893 605.0215 Certificates to be received in evidence and
 1894 evidentiary effect of certified copy of filed document.—All
 1895 certificates issued by the department in accordance with this
 1896 chapter shall be taken and received in all courts, public
 1897 offices, and official bodies as prima facie evidence of the
 1898 facts stated. A certificate from the department delivered with a
 1899 copy of a document filed by the department bearing the signature
 1900 of the secretary of state, which may be in facsimile, and the
 1901 seal of this state, is conclusive evidence that the original
 1902 document is on file with the department.

1903 Section 73. Paragraph (b) of subsection (2) of section
 1904 605.0702, Florida Statutes, is amended to read:

1905 605.0702 Grounds for judicial dissolution.—

1906 (2)

1907 (b) For purposes of ~~As used in~~ this section, the term
 1908 "deadlock sale provision" means a provision in an operating
 1909 agreement which is or may be applicable in the event of a
 1910 deadlock among the managers or the members of the limited
 1911 liability company which the members of the company are unable to
 1912 break and which provides for a deadlock breaking mechanism,
 1913 including, but not limited to:

1914 1. A redemption or a purchase and sale of interests;

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1915 2. A governance change, among or between members;
 1916 3. The sale of the company or all or substantially all of
 1917 the assets of the company; or
 1918 4. A similar provision that, if initiated and effectuated,
 1919 breaks the deadlock by causing the transfer of interests, a
 1920 governance change, or the sale of all or substantially all of
 1921 the company's assets.

1922 Section 74. Subsection (2) of section 605.0716, Florida
 1923 Statutes, is amended to read:
 1924 605.0716 Judicial review of denial of reinstatement.—
 1925 (2) Within 30 days after service of a notice of denial of
 1926 reinstatement, a limited liability company may appeal the denial
 1927 by petitioning the Circuit Court of Leon County to set aside the
 1928 dissolution. The petition must be served on the department and
 1929 must contain a copy of the department's notice of administrative
 1930 dissolution, the company's application for reinstatement, and
 1931 the department's notice of denial.

1932 Section 75. Subsection (4) of section 605.1104, Florida
 1933 Statutes, is amended to read:
 1934 605.1104 Interrogatories by department; other powers of
 1935 department.—
 1936 ~~(4) The department has the power and authority reasonably~~
 1937 ~~necessary to administer this chapter efficiently, to perform the~~
 1938 ~~duties herein imposed upon it, and to adopt reasonable rules~~
 1939 ~~necessary to carry out its duties and functions under this~~
 1940 ~~chapter.~~

1941 Section 76. Subsection (1) of section 617.0501, Florida
 1942 Statutes, is amended to read:
 1943 617.0501 Registered office and registered agent.—

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1944 (1) Each corporation shall have and continuously maintain
 1945 in this state:
 1946 (a) A registered office which may be the same as its
 1947 principal office; and
 1948 (b) A registered agent, who may be either:
 1949 1. An individual who resides in this state whose business
 1950 office is identical with such registered office; or
 1951 2.a. Another domestic entity that is an authorized entity
 1952 whose business address is identical to the address of the
 1953 registered office;7 or
 1954 b. A foreign entity authorized to transact business in this
 1955 state that is an authorized entity and whose business address is
 1956 identical to the address of the registered office.

1957 Section 77. Section 617.0825, Florida Statutes, is amended
 1958 to read:
 1959 617.0825 Board committees and advisory committees.—
 1960 (1) Unless the articles of incorporation or the bylaws
 1961 otherwise provide, the board of directors, by resolution adopted
 1962 by a majority of the full board of directors, may create an
 1963 executive committee and one or more other committees of the
 1964 board and appoint directors or such other persons as the board
 1965 of directors designates to serve on such committee or
 1966 committees. The majority of the persons on each committee must
 1967 be directors.

1968 (2) Notwithstanding subsection (1), a board committee may
 1969 be composed of less than a majority of directors or entirely of
 1970 non-directors if:
 1971 (a) The committee is created by the board of directors or
 1972 is otherwise authorized by the articles of incorporation or the

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1973 bylaws; and

1974 (b) The committee relates to the election, nomination,
 1975 qualification, or credentials of directors or is involved in the
 1976 process of electing directors. ~~designate from among its members~~
 1977 ~~an executive committee and one or more other committees each of~~
 1978 ~~which.~~

1979 (3) To the extent provided by the board of directors in a
 1980 such resolution or in the articles of incorporation or the
 1981 bylaws of the corporation, each such committee shall have and
 1982 may exercise powers and all the authority of the board of
 1983 directors, except that no such committee shall have the power or
 1984 authority to:

1985 (a) Approve or recommend to members actions or proposals
 1986 required by this act to be approved by members.

1987 (b) Fill vacancies on the board of directors or any
 1988 committee thereof.

1989 (c) Adopt, amend, or repeal the bylaws.

1990 (4)(2) Unless the articles of incorporation or the bylaws
 1991 provide otherwise, ss. 617.0820, 617.0822, 617.0823, and
 1992 617.0824, which govern meetings, notice and waiver of notice,
 1993 and quorum and voting requirements of the board of directors,
 1994 apply to committees and their members as well.

1995 (5)(3) Each committee must have two or more members who
 1996 serve at the pleasure of the board of directors. The board, by
 1997 resolution adopted in accordance with and consistent with
 1998 subsection (1), may designate one or more ~~directors as~~ alternate
 1999 members of any such committee who may act in the place and stead
 2000 of any absent member or members at any meeting of such
 2001 committee.

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2002 (6) A committee member who is not a director has the same
 2003 responsibility and fiduciary duties with respect to activities
 2004 of such committee, and the same liability protections, as a
 2005 committee member who is a director.

2006 (7)(4) Neither the designation of any such committee, the
 2007 delegation thereto of authority, nor action by such committee
 2008 pursuant to such authority shall alone constitute compliance by
 2009 any member of the board of directors not a member of the
 2010 committee in question with his or her responsibility to act in
 2011 good faith, in a manner he or she reasonably believes to be in
 2012 the best interests of the corporation, and with such care as an
 2013 ordinarily prudent person in a like position would use under
 2014 similar circumstances.

2015 (8) A corporation may create or authorize the creation of
 2016 one or more advisory committees with any number of persons on
 2017 the committee being non-directors. An advisory committee:

2018 (a) Is not a committee of the board of directors; and

2019 (b) May not act on behalf of or exercise any of the powers
 2020 or authority of the board of directors or bind the corporation
 2021 to any action, but may make recommendations to the board of
 2022 directors, to the officers, or to the members.

2023 (9) This section does not apply to a committee established
 2024 under chapter 718, chapter 719, or chapter 720 to perform the
 2025 functions set forth in s. 718.303(3), s. 719.303(3), s.
 2026 720.303(2), or s. 720.3035(1), respectively.

2027 Section 78. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/28
Meeting Date

SB 838

Bill Number (if applicable)

Topic Business Organizations

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title _____

Address 119 South Monroe Street, #200
Street

Phone 850-205-9000

Tallahassee FL 32301
City State Zip

Email aimee.diazlyon@mhdfirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Business Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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 1224

INTRODUCER: Senators Simmons and Gruters

SUBJECT: Real Estate Conveyances

DATE: January 22, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 1224 removes a statutory requirement that a lessor's signature on a lease of longer than one year be subscribed by two witnesses.

II. Present Situation:

Section 689.01, F.S., requires that the sale of real property, or the leasing of real property for a term of more than 1 year, be conveyed by a written instrument that is signed by the party conveying the real property, or the party's authorized agent, in the presence of two subscribing witnesses.

In 2019 the Legislature amended s. 689.01, F.S., to provide that the requirement that the instrument conveying property be signed in the presence of two subscribing witnesses may be satisfied by witnesses being present and electronically signing by means of audio-video communication technology.¹

Chapter 692, F.S., provides to corporations an alternative method of conveying real property through a sale or lease. A corporation may instead execute a document sealed with the common or corporate seal that is signed in its name by the president, vice-president, or chief executive officer. This alternative method may not be used by other forms of business organizations such as a limited liability company (LLC).²

Notably, under s. 689.01, F.S., only the lessor's (generally the landlord's) signature must be witnessed. Section 689.01, F.S. operates to ensure that the lessor actually intended to convey the rights as described in the instrument.

¹ Ch. 2019-71, s. 21, Laws of Fla.

² *Skylake Ins. Agency v. NMB Plaza, LLC*, 23 So. 3d 175, 178 (Fla. 3rd DCA 2009).

Both landlords and tenants can be estopped from relying on the two-witness rule as the principles of equity require in an otherwise valid agreement. A landlord, for example, can be estopped from breaking a lease due to a lack of two witnesses where the landlord accepts benefits under the unwitnessed lease and transfers possession to a tenant, and the parties otherwise recognize the instrument as being an effective conveyance.³ Similarly, a tenant can be estopped from breaking the lease for lack of witnesses to a signature where the tenant occupies the conveyed property under the lease (or similar agreement) and makes rental payments under that agreement for two years.⁴

III. Effect of Proposed Changes:

The bill amends s. 689.01(1), F.S., to provide that a written leasehold estate in real property does not require subscribing witnesses. Currently, two subscribing witnesses are required. This change removes a protection afforded to landlords. However, it also streamlines the process by which leaseholds may be conveyed.

This bill takes effect July 1, 2020.

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.

³ *Gill v. Livingston*, 29 So. 2d 631, 632 (Fla. 1947); *see also Skylake*, 23 So. 3d at 178.

⁴ *Taylor v. Rosman*, 312 So. 2d 239, 241 (Fla. 3d DCA 1975).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 689.01 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Simmons

9-01300-20

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A bill to be entitled

An act relating to real estate conveyances; amending s. 689.01, F.S.; providing that subscribing witnesses are not required to validate certain instruments conveying a leasehold interest in real property; providing an effective date.

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

Section 1. Subsection (1) of section 689.01, Florida Statutes, is amended to read:

689.01 How real estate conveyed.—

(1) No estate or interest of freehold, or for a term of more than 1 year, or any uncertain interest of, in, or out of any messuages, lands, tenements, or hereditaments shall be created, made, granted, transferred, or released in any ~~other~~ manner other than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring, or releasing such estate, interest, or term of more than 1 year, or by the party's lawfully authorized agent, unless by will and testament, or other testamentary appointment, duly made according to law; and no estate or interest, either of freehold, or of term of more than 1 year, or any uncertain interest of, in, to, or out of any messuages, lands, tenements, or hereditaments, shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by the party's lawfully authorized agent, or by the act and operation of law; provided, however, that no

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subscribing witnesses shall be required for any such instrument pertaining to a leasehold estate in real property. No seal shall be necessary to give validity to any instrument executed in conformity with this section. Corporations may execute any and all conveyances in accordance with the provisions of this section or ss. 692.01 and 692.02.

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

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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)

1/28/20

Meeting Date

1224

Bill Number (if applicable)

Topic ~~SEA~~ Witnesses for Leases

Amendment Barcode (if applicable)

Name Chris Carmody

Job Title Attorney

Address 301 E. Pine St., Suite 1400

Street

Orlando

FL

32801

City

State

Zip

Phone

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing NAIP 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 1044

INTRODUCER: Senator Pizzo and others

SUBJECT: Animal Cruelty

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wagoner	Jones	CJ	Favorable
2.	Davis	Cibula	JU	Pre-meeting
3.			RC	

I. Summary:

SB 1044 creates “Allie’s Law” to require the reporting of suspected or known cruelty to dogs and cats. A licensed veterinarian who knows, or has reasonable cause to suspect, that a dog or cat showing visible signs of animal cruelty has been or is being subjected to animal cruelty by its owner or under its owner’s care must report such knowledge or suspicion to a law enforcement or animal control agency for investigation. A veterinary technician or an employee or volunteer of an animal treatment provider, facility, or shelter who knows or has reason to suspect that a dog or cat has been or is being subjected to animal cruelty must report that information to a veterinarian.

The bill provides that a veterinarian, a veterinary technician, or an employee or volunteer of a treatment provider, facility, or shelter shall be held harmless from either criminal or civil liability for reporting suspected cruelty. Additionally, the bill provides that any such animal treatment provider, facility, or shelter is immune from all civil liability reporting the suspected cruelty and for cooperating with any related investigation of cruelty to animals.

The bill prohibits a veterinary technician or any employee or volunteer of a veterinary practice, treatment provider, facility, or shelter to knowingly alter or destroy an existing medical record for the purpose of concealing or attempting to conceal cruelty to a dog or cat. An initial violation would be a first degree misdemeanor but a second or subsequent violation would constitute a third degree felony.

The failure to report suspected animal cruelty to the proper authorities is grounds for disciplinary action against an applicant for a veterinary license or a veterinarian by the Board of Veterinary Medicine.

The bill may have a positive fiscal impact on law enforcement agencies. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2020.

II. Present Situation:

Animal Cruelty; Generally

Section 828.12(1), F.S., provides that a person commits animal cruelty if he or she unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner. Animal cruelty is a first degree misdemeanor, punishable by up to one year in jail or a fine of up to \$5,000, or both.¹

Identification of animal abuse may play a crucial role in the intervention against other forms of violence in society.² Ample research demonstrates a link between animal abuse in a household and domestic violence and child abuse.³ Therefore, through the identification of animal cruelty, veterinarians are uniquely positioned to bring attention to other forms of interpersonal violence.⁴

Confidentiality of Veterinary Medical Information

Chapter 474, F.S., addresses veterinary medical practice and contains a confidentiality provision that prohibits a veterinarian from discussing a patient's medical condition with anyone except the client and other limited entities.⁵ However, in any criminal action or situation where a veterinarian suspects a criminal violation, a veterinarian may report such violation to a law enforcement officer, an animal control officer, or an appointed animal protection agent without notice to the client.⁶ The report may not include written medical records except upon issuance of a court order.⁷

Further, s. 828.12(4), F.S., provides that a licensed veterinarian shall be held harmless from either criminal or civil liability for any decisions made or services rendered for his or her part in an investigation of cruelty to animals. Therefore, a veterinarian acting under s. 828.12, F.S., is immune from a lawsuit for his or her part in an investigation of cruelty to animals.

¹ A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000, or any higher amount specifically authorized by statute. Section 775.082, F.S.

² Stefany Monsalve, Fernando Ferreira and Rita Garcia, "The connection between animal abuse and interpersonal violence: A review from the veterinary perspective," p. 34, *Research in Veterinary Science*, (Oct. 1, 2017) <https://www.ncbi.nlm.nih.gov/pubmed/28279899>

³ *Id.*

⁴ See also, Elizabeth DeViney, Jeffrey Dickert and Randall Lockwood, "The Care of Pets Within Child Abusing Families," *Animal Studies Repository*, 1983.

https://animalstudiesrepository.org/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1014&context=acwp_away This article provides a survey of families which reported child abuse and animal abuse. This survey found that a majority of these pet owners (60 percent of dog owners and 66 percent of cat owners) utilized veterinary services (p. 325). This survey also found that 88 percent of families with reported child abuse and household pets also reported animal abuse (p. 327).

⁵ Section 474.2165(4), F.S.

⁶ Section 474.2165(4)(d), F.S.

⁷ *Id.*

Board of Veterinary Medicine; Discipline

Section 474.204, F.S., creates within the Department of Business and Professional Regulation the Board of Veterinary Medicine (“Board”), tasked with ensuring that every veterinarian practicing in this state meets minimum requirements for safe practice. The Board is responsible for disciplining applicants for veterinary licenses and veterinarians found guilty of misconduct as provided in s. 474.214(1), F.S.⁸

Pertaining to record keeping, s. 474.214(1)(d), F.S., provides that making or filing a report or record which the veterinary licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing, is grounds for disciplinary action by the Board. Such reports or records shall include only those which are signed in the capacity of a licensed veterinarian.⁹ Also, s. 474.214(1)(ee), F.S., provides that failure to keep contemporaneously written medical records as required by rule of the Board is grounds for discipline.^{10,11}

Further, s. 474.213, F.S., provides acts by veterinarians which constitute third degree felonies.¹² Such acts include the misuse or misrepresentation of a veterinary license. Additionally, this section prohibits a person from knowingly concealing information relative to violations of ch. 474, F.S.¹³ In addition to criminal charges, violations of this section also provide grounds for disciplinary action by the Board.¹⁴

III. Effect of Proposed Changes:

The bill creates “Allie’s Law” after Allie, a 4-year-old Boston Terrier, whose obvious signs of abuse during veterinary visits went long unreported until she was surrendered and rescued.¹⁵

The bill defines the term “treatment provider” to include any animal care facility, animal hospital, private veterinary practice, animal shelter, veterinary school, specialized veterinary hospital or any place dogs or cats are seen for any kind of treatment.

⁸ Section 474.214, F.S.

⁹ The usual action of the Board is to impose a penalty of one year suspension followed by one year probation and an administrative fine from \$3,000 to \$5,000 per count or violation. For a second or subsequent offense, the usual action of the Board is to impose a penalty of a two year suspension followed by a two year probation and an administrative fine of \$5,000 to revocation. Chapter 61G18-30.001, F.A.C.

¹⁰ The usual action of the Board is to issue a reprimand and up to one year probation, and an administrative fine of up to \$2,000. Chapter 61G18-30.001, F.A.C.

¹¹ Chapter 61G18-18.002, F.A.C., provides for the maintenance of veterinary medical records. This rule requires that medical records be created as treatment is provided or within 24 hours from the time of treatment and contain specified information, including medical history, results of physical examination, and any present illness or injury.

¹² A third degree felony is punishable by up to five years imprisonment and a fine of up to \$5,000. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

¹³ Section 474.213(1)(g), F.S.

¹⁴ Chapter 61G18-30.001, F.A.C. For a violation of s. 474.213(1)(g), F.S., the usual action of the Board is to impose a penalty of six months’ probation and an administrative fine of \$1,000. For a second or subsequent offense, the usual action of the Board is to impose a penalty of up to one year probation and an administrative fine of \$3,000.

¹⁵ “Allie’s Law,” available at <https://allieslaw.org/>

Currently, the reporting of suspected animal cruelty is within the discretion of veterinarians. The bill provides that a veterinarian licensed to practice in the state who knows, or has reasonable cause to suspect, that a dog or cat showing visible signs of cruelty, as prohibited under s. 828.12(1), F.S., has been or is being subjected to animal cruelty by its owner or under its owner's care shall report such knowledge or suspicion within 48 hours after obtaining such knowledge or suspicion to a local law enforcement or animal control agency for investigation.

The bill also provides that a veterinary technician or an employee or volunteer of an animal treatment provider, facility, or shelter who during the normal course of care of a dog or cat knows or has reason to suspect that a dog or cat showing visible signs of cruelty, as prohibited under s. 828.12(1), F.S., has been or is being subjected to animal cruelty by its owner or under its owner's care shall report within 24 hours to a veterinarian such knowledge or suspicion, who shall, if the cooperation of the owner or caretaker is obtained, attempt to examine the dog or cat within 24 hours after notification of suspected cruelty. If the owner or caretaker refuses to permit a veterinarian to examine a dog or cat that has been reported to a veterinarian under this subsection as possibly subjected to animal cruelty, or the veterinarian is otherwise unable to examine the animal, then the veterinarian shall report the suspected cruelty to a local law enforcement or animal control agency for investigation.

The bill provides that a veterinarian, a veterinary technician, or an employee or volunteer of a treatment provider, facility, or shelter practicing in this state shall be held harmless from either criminal or civil liability for any decisions made to report suspected cruelty. Any such animal treatment provider, facility, or shelter is immune from all civil liability for any decisions made to report suspected cruelty and its cooperation with any related investigation of cruelty to animals.

The bill prohibits a veterinary technician or any employee or volunteer of a veterinary practice, treatment provider, facility, or shelter to knowingly alter or destroy an existing medical record for the purpose of concealing or attempting to conceal cruelty to a dog or cat. Such violation would constitute a first degree misdemeanor.¹⁶ A second or subsequent violation would constitute a third degree felony.¹⁷

The bill provides that failure to report suspected animal cruelty to the proper authorities is an act that constitutes grounds for which disciplinary actions may be taken against an applicant for a veterinary license or veterinarian by the Board of Veterinary Medicine.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁶ A first degree misdemeanor is punishable by up to a year imprisonment and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

¹⁷ A third degree felony is punishable by up to five years imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

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.

C. Government Sector Impact:

There may be a positive, i.e., increased, fiscal impact for law enforcement agencies to investigate and charge a veterinarian, veterinary technician or any employee or volunteer of a veterinary practice, treatment provider, facility, or shelter with a criminal offense for knowingly altering veterinarian medical records to conceal the abuse of a dog or cat.¹⁸

VI. Technical Deficiencies:

The bill amends s. 474.214(1), F.S., to provide that a failure to report suspected “animal cruelty” to the proper authorities is grounds for disciplinary action. Perhaps this should be amended to limit the scope of suspected animal cruelty to dogs and cats, because those are the only animals to which the substance of the bill applies.

VII. Related Issues:

None.

¹⁸ Department of Agriculture and Consumer Services, *2020 Agency Analysis for SB 1044*, <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=25416&yr=2020>.

VIII. Statutes Affected:

This bill substantially amends section 474.214 of the Florida Statutes.

This bill creates section 828.124 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.



840766

LEGISLATIVE ACTION

Senate

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. .

House

The Committee on Judiciary (Pizzo) recommended the following:

Senate Amendment

Delete line 77
and insert:
proper authorities, as provided in s. 828.124.

By Senator Pizzo

38-01198-20

20201044__

A bill to be entitled

An act relating to animal cruelty; providing a short title; creating s. 828.124, F.S.; defining the term "treatment provider"; requiring veterinarians to report suspected animal cruelty in certain circumstances; requiring certain persons to report suspected animal cruelty to a veterinarian; providing duties for veterinarians; providing immunity from criminal and civil liability for certain persons and entities; prohibiting the alteration or destruction of certain records; providing criminal penalties; providing enhanced penalties for repeat violations; amending s. 474.214, F.S.; specifying that failure of a veterinarian to report suspected animal cruelty is grounds for discipline; providing an effective date.

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

Section 1. This act may be cited as "Allie's Law."

Section 2. Section 828.124, Florida Statutes, is created to read:

828.124 Reporting animal cruelty; medical records.—

(1) As used in this section, the term "treatment provider" includes any animal care facility, animal hospital, private veterinary practice, animal shelter, veterinary school, specialized veterinary hospital or any place dogs or cats are seen for any kind of treatment.

(2) A veterinarian licensed to practice in the state who knows, or has reasonable cause to suspect, that a dog or cat

Page 1 of 3

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

38-01198-20

20201044__

showing visible signs of cruelty, as prohibited under s. 828.12(1), has been or is being subjected to animal cruelty by its owner or under its owner's care shall report such knowledge or suspicion within 48 hours after obtaining such knowledge or suspicion to a local law enforcement or animal control agency for investigation.

(3) A veterinary technician or an employee or volunteer of an animal treatment provider, facility, or shelter who during the normal course of care of a dog or cat knows or has reason to suspect that a dog or cat showing visible signs of cruelty, as prohibited under s. 828.12(1), has been or is being subjected to animal cruelty by its owner or under its owner's care shall report within 24 hours to a veterinarian such knowledge or suspicion, who shall, if the cooperation of the owner or caretaker is obtained, attempt to examine the dog or cat within 24 hours after notification of suspected cruelty. If the owner or caretaker refuses to permit a veterinarian to examine a dog or cat that has been reported to a veterinarian under this subsection as possibly subjected to animal cruelty, or the veterinarian is otherwise unable to examine the animal, then the veterinarian shall report the suspected cruelty to a local law enforcement or animal control agency for investigation.

(4) A veterinarian, a veterinary technician, or an employee or volunteer of a treatment provider, facility, or shelter practicing in this state shall be held harmless from either criminal or civil liability for any decisions made to report suspected cruelty. Any such animal treatment provider, facility, or shelter is immune from all civil liability for any decisions made to report suspected cruelty and its cooperation with any

Page 2 of 3

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

38-01198-20

20201044__

59 related investigation of cruelty to animals.

60 (5) It is a violation of this section for a veterinary
61 technician or any employee or volunteer of a veterinary
62 practice, treatment provider, facility, or shelter to knowingly
63 alter or destroy an existing medical record for the purpose of
64 concealing or attempting to conceal cruelty to a dog or cat.

65 (6) (a) Except as provided in paragraph (b), a person who
66 violates subsection (5) commits a misdemeanor of the first
67 degree, punishable as provided in s. 775.082 or s. 775.083.

68 (b) A person who commits a second or subsequent violation
69 of subsection (5) commits a felony of the third degree,
70 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

71 Section 3. Paragraph (qq) is added to subsection (1) of
72 section 474.214, Florida Statutes, to read:

73 474.214 Disciplinary proceedings.—

74 (1) The following acts shall constitute grounds for which
75 the disciplinary actions in subsection (2) may be taken:

76 (qq) Failure to report suspected animal cruelty to the
77 proper authorities.

78 Section 4. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

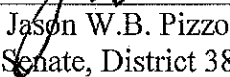
To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 21, 2020

I respectfully request that **SB 1044**, relating to Animal Cruelty, be placed on the:

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



Senator Jason W.B. Pizzo
Florida Senate, District 38

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/2020

Meeting Date

1044

Bill Number (if applicable)

Topic Animal Abuse - Allie's Law

Amendment Barcode (if applicable)

Name Nanette Parratto-Wagner

Job Title Dr. (veterinarian)

Address 14349 Chinese Elm Dr

Phone 3216631341

Street

Orlando

FL

32828

City

State

Zip

Email npwagner003@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Allie's Law

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)

1/28/2020
Meeting Date

1044
Bill Number (if applicable)

Topic Allies Law

Amendment Barcode (if applicable)

Name Dave Heine

Job Title _____

Address 220 Silverthorn Lane

Phone 321-231-8926

Street

Altamonte Springs FL

32714

City

State

Zip

Email Dave@AlliesLaw.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Allie

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)

1-28-20

Meeting Date

1044

Bill Number (if applicable)

Topic ANIMAL CRUELTY

Amendment Barcode (if applicable)

Name MICHAEL CRABB

Job Title LIEUTENANT

Address 2500 W. CORONAL DR
Street

Phone 321-436-4447

ORLANDO
City

FL
State

32804
Zip

Email MICHAEL.CRABB@OCL.NET

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.

S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 1/28/2020 4:04:39 PM

Ends: 1/28/2020 5:58:34 PM Length: 01:53:56

4:04:37 PM Meeting called to order by Chair Simmons
4:04:40 PM Roll call by AA Joyce Butler
4:04:46 PM Quorum present
4:04:54 PM Comments from Chair Simmons
4:05:16 PM CS/SR's 214 & 222 temporarily postponed
4:06:51 PM Introduction of Tab 4 by Chair Simmons
4:07:09 PM Explanation of SB 994, Guardianship by Senator Passidomo
4:09:43 PM Introduction of Amendment Barcode No. 785084 by Chair Simmons
4:10:00 PM Explanation of Amendment by Senator Passidomo
4:10:40 PM Paul Ledford, Florida Hospice & Palliative Care Association waives in support
4:11:29 PM Closure waived
4:11:38 PM Amendment adopted
4:12:41 PM Introduction of Amendment Barcode No. 870686 by Chair Simmons
4:12:55 PM Explanation of Amendment by Senator Passidomo
4:13:57 PM Paul Ledford, Florida Hospice & Palliative Care Association waives in support
4:14:08 PM Bryan Cherry, Florida Public Guardian Coalition waives in support
4:14:29 PM Closure waived
4:14:39 PM Amendment adopted
4:15:28 PM Bryan Cherry, Florida Public Guardian Coalition waives in support
4:15:37 PM Dr. Teresa Kennedy, Founder Elder Dignity
4:18:10 PM Speaker Zayne Smith, AARP in support
4:19:22 PM Speaker Doug Franks, Free Ernestine in opposition
4:21:35 PM Speaker Lynn Saylor in support
4:23:09 PM Speaker Marcia Martinez Friedman
4:25:51 PM Daniel Olson, Office of Attorney General waives in support
4:26:11 PM Speaker Lee Jimenez in support
4:27:55 PM Speaker Hillary Hogue in opposition
4:30:08 PM Senator Passidomo in closure
4:30:38 PM Roll call by AA
4:30:43 PM CS/SB 994 reported favorably
4:31:09 PM Introduction of Tab 1 by Chair Simmons
4:31:23 PM Explanation of SB 186, Contracts for the Sale or Lease of Pets by Senator Taddeo
4:32:53 PM Introduction of Amendment Barcode No. 929734 by Chair Simmons
4:33:12 PM Explanation of Amendment by Senator Taddeo
4:33:49 PM Jennifer Hobgood, ASPCA waives in support
4:34:00 PM Amy Carotenuto, Flagler Human Society waives in support
4:34:19 PM Jennifer Bitner, Pensacola Humane Society waives in support
4:34:31 PM Lauren Cappas, Pensacola Humane Society waives in support
4:34:53 PM Closure waived
4:34:58 PM Roll call by AA
4:35:01 PM CS/SB 186 reported favorably
4:35:30 PM Closure waived

4:35:36 PM CS/SB 186 reported favorably
4:36:07 PM Comments from Chair Simmons
4:36:54 PM Introduction of Tab 8 by Chair Simmons
4:37:02 PM Explanation of SB 28, Relief of Clifford Williams by the State of Florida by Senator Gibson
4:39:07 PM Seth Miller, Innocence Project of Florida waives in support
4:39:21 PM Closure by Senator Gibson
4:41:02 PM Roll call by AA
4:42:02 PM SB 28 reported favorably
4:42:24 PM Comments from Senator Gibson
4:42:55 PM Chair passed to Chair Simmons
4:43:02 PM Introduction of Tab 3 by Chair Simmons
4:43:14 PM Explanation of SB 604, Servicemembers Civil Relief Act by Senator Bean
4:44:52 PM Introduction of Amendment Barcode No. 162920 by Chair Simmons
4:45:07 PM Explanation of Amendment by Senator Bean
4:45:49 PM Candice Brower, Offices of Criminal Conflict & Civil Regional Counsel waives in support
4:46:02 PM Dan Hendrickson, Tallahassee Veterans Legal Collaborative waives in support
4:46:18 PM John Haynes, Florida Veterans Foundation waives in support
4:46:26 PM Alan Abramowitz, Guardian Ad Litem Program waives in support
4:46:47 PM Closure waived
4:46:50 PM Amendment adopted
4:47:20 PM Closure by Senator Bean
4:47:36 PM Roll call by AA
4:48:07 PM CS/SB 604 reported favorably
4:48:18 PM Introduction of Tab 12 by Chair Simmons
4:48:43 PM SB 1044, Animal Cruelty per Senator Pizzo TP'd
4:49:36 PM Introduction of Tab 5 by Chair Simmons
4:50:21 PM Explanation of SB 1080, Nonopioid Alternatives by Senator Baxley
4:53:08 PM Speaker Dr. Kamal Shair, Physician Internal Medicine in support
4:54:54 PM Paul Ledford, Florida Hospice & Palliative Care Association waives in support
4:55:13 PM Senator Gibson in debate
4:57:25 PM Closure waived
4:57:28 PM Roll call by AA
4:57:34 PM SB 1080 reported favorably
4:57:46 PM Introduction of Tab 7 by Chair Simmons
4:58:10 PM Explanation of SB 1376, Credit for Reinsurance by Senator Baxley
4:59:51 PM Closure waived
4:59:54 PM Roll call by AA
5:00:02 PM SB 1376 reported favorably
5:00:15 PM Comments from Chair Simmons
5:01:00 PM Chair given to Vice Chair Rodriguez
5:01:11 PM Introduction of Tab 10 by Chair Rodriguez
5:01:32 PM Explanation of CS/SB 838, Business Organizations by Senator Simmons
5:02:46 PM Aimee Diaz Lyon, The Business Law Section of the Florida Bar waives in support
5:02:58 PM Closure waived
5:03:03 PM Roll call by AA
5:03:06 PM CS/SB 838 reported favorably
5:03:21 PM Introduction of Tab 11 by Chair Rodriguez
5:03:36 PM Explanation of SB 1224, Real Estate Conveyances by Senator Simmons
5:03:56 PM Chris Carmody, NAIOP Florida waives in support
5:04:17 PM Closure waived
5:04:20 PM Roll call by AA

5:04:25 PM SB 1224 reported favorably
 5:04:40 PM Introduction of Tab 9 by Chair Rodriguez
 5:04:58 PM Explanation of SB 1668, Damages by Senator Simmons
 5:07:38 PM Introduction of Late-filed Amendment Barcode No. 447214 by Chair Rodriguez
 5:07:56 PM Explanation of Amendment by Senator Simmons
 5:10:12 PM Speaker Tiffany Faddis, Florida Justice Association in opposition
 5:13:53 PM Speaker Andy Bolin, Florida Justice Reform Institute in support
 5:19:35 PM Question from Senator Gibson
 5:20:33 PM Response from Mr. Bolin
 5:22:03 PM Follow-up question from Senator Gibson
 5:22:12 PM Response from Mr. Bolin
 5:23:13 PM Closure waived
 5:23:16 PM Amendment adopted
 5:23:34 PM Question from Chair Rodriguez
 5:24:09 PM Response from Senator Simmons
 5:29:56 PM Brewster Bevis, Associated Industries of Florida waives in support
 5:30:08 PM Tim Nungesser, National Federation of Independent Business waives in support
 5:30:28 PM Speaker Reginald Davis, Spine Surgeon
 5:33:23 PM Speaker Dr. Roderick Claybrooks
 5:35:17 PM Jake Farmer, Florida Retail Federation waives in support
 5:35:25 PM Speaker Lauren McBride, Publix Super Markets, Inc. in support
 5:37:55 PM Andy Bolin, Florida Justice Reform Institute waives in support
 5:38:03 PM Scott Matiyow, Personal Insurance Federation of Florida
 5:38:11 PM Alix Miller, Florida Trucking Association waives in support
 5:38:21 PM Frank Walker, Florida Chamber of Commerce waives in support
 5:38:45 PM Ronald Giffler, Florida Medical Association in opposition
 5:39:51 PM Monte Stevens, American Property & Casualty Insurance Association waives in support
 5:40:00 PM Speaker Dr. Michael Weiss, Medical Director of Integrity Spine & Orthopedics in opposition
 5:42:21 PM Speaker Tiffany Faddis, Florida Justice Association in opposition
 5:44:59 PM Speaker Dr. John Mason, Sarasota Medical Center in opposition
 5:47:28 PM Senator Gibson in debate
 5:48:55 PM Chair Rodriguez in debate
 5:49:58 PM Senator Simmons in closure
 5:50:05 PM Roll call by AA
 5:51:00 PM CS/SB 1668 reported favorably
 5:51:20 PM Chair returned to Chair Simmons
 5:51:28 PM Introduction of Tab 6 by Chair Simmons
 5:51:45 PM Explanation of SB 1328, Fines and Fees by Senator Wright
 5:52:44 PM Introduction of Amendment Barcode Nos. 7850338 and 118198
 5:53:23 PM Explanation of Amendment by Senator Wright
 5:55:35 PM Nancy Daniels, Florida Public Defender Association in support
 5:55:41 PM Dan Hendrickson, Tallahassee Veterans Legal Collaborative in support
 5:55:59 PM Pamela Burch Fort, ACLU of Florida in support
 5:56:05 PM Alix Miller, Florida Trucking Association in support
 5:56:10 PM Ashley Thomas, Florida State Director in support
 5:56:19 PM Ida Eskamani, Organize Florida in support
 5:56:24 PM Lauren Storch, Hillsborough County in support
 5:56:30 PM Michael Dobson, The Dream Foundation in support
 5:56:40 PM Closure waived
 5:56:55 PM Amendment adopted
 5:57:06 PM Closure waived

5:57:10 PM Roll call by AA
5:57:19 PM CS/SB 1328 reported favorably
5:57:28 PM Comments from Chair Simmons
5:57:43 PM Senator Baxley moves to show voting in the affirmative on SB 186 and SB 994
5:58:14 PM Senator Baxley moves to adjourn, meeting adjourned